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US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

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Criminal Investigation Report

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*Appellate Exh. XXIV*

United States

)  
 ) Government Response to Defense  
 ) Motion to Abate and Motion to  
 ) Compel Discovery

v.

)  
 )  
 ) PFC Damien M. Corsetti  
 ) Company A  
 ) 519<sup>th</sup> Military Intelligence Battalion  
 ) Fort Bragg, North Carolina 28310  
 )

27 February 2006

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COMES NOW the government, by and through the undersigned counsel and makes this Response to Defense Motion to Abate and Motion to Compel Discovery, and hereby requests that this Honorable Court deny the Defense motion.

### I. R.C.M. 701

Rule for Courts-Martial 701(a)(2)(A) requires that "the Government shall permit the defense to inspect: Any...documents...within the possession, custody, or control of military authorities, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the...case-in-chief..."

Since at least October, 2005, when the Article 32 hearing in this case was being scheduled, the Defense has had the ability to inspect the government's classified materials in this case. In fact, at the Article 32 hearing, the government introduced defense counsel to CW2(P) Forman, the Bagram Team security manager, showed the defense counsel the location of the classified materials safe, and expressly invited defense counsel to review whatever classified materials they desired.

After Mr. Cassara was added to the defense team, the government has repeatedly asserted, both formally and informally, that the classified materials are available for his inspection (these include several electronic mail exchanges, as well as Section III disclosure, response to the first discovery request, and response to the supplemental discovery request). This inspection could take place at either Fort Bliss, TX or Fort McPherson, GA. In fact, the government specifically invited Mr. Cassara to name a date and time of his choosing in order to review the classified materials.

In short, defense counsel asserts no authority that would require the government to ship the classified materials to Fort Gordon or to Fort Bragg. On the contrary, the clear text of R.C.M. 701 demonstrates that the government has satisfied the requirements of military law.

DEPOSITION  
Of Ahmed al Darbi  
Guantanamo Bay, Cuba  
8 March 2006

The deposition was called to order at 1658 hours, 8 March 2006 at the U.S. Detention Facility at Guantanamo Bay, Cuba.

Persons present:

CPT Craig Drummond – Deposition Officer (DO)  
CPT Christopher E. Ellis – Trial Counsel for the Government (TC)  
CPT David R. Trainor – Assistant Trial Counsel for the Government (ATC)  
CPT Ryan B. Dowdy – Appointed Military Defense Counsel (DC)  
Mr. William E. Cassara – Civilian Defense Counsel (CDC)  
SFC Brenda L. Hain – Court Reporter

DO: My name is CPT Craig Drummond and I am a deposition officer. SFC Brenda L. Hain is the detailed court reporter for this deposition. At this time I will swear in Sergeant First Class Hain.

[The Deposition Officer and SFC Hain both stood and raised their right hands.]

DO: Sergeant First Class Hain if you will raise your right hand. Do you swear or affirm that you will faithfully perform the duties of reporter for this deposition, so help you God?

Court Reporter: I do.

DO: Thank you, SFC Hain. Present here in the room today is Eagle 5. He has been appointed the interpreter in this matter. At this time I will ask the interpreter to affirm that he will interpret correctly. Interpreter if you will please stand.

[The Deposition Officer and Interpreter Eagle 5 both stood and raised their right hands.]

Eagle 5, do you affirm that during the deposition now being taken that you will interpret truly the testimony you are called upon to interpret?

Eagle 5: I do.

DO: Thank you Eagle 5. Briefly, ah, for the record if you would list your experience as an interpreter.

Eagle 5: Say again, I wasn't.....

DO: Sure. Eagle 5 if you...we could briefly go over your experience as an interpreter. What languages do you speak fluently?

Eagle 5: I speak Arabic, I speak Yugoslavian, and I've been a contractor, subcontractor, with U.S. Military since 19...203 [sic].

Court Reporter: I'm sorry, since when?

Eagle 5: 203...like, ah, 2003.

DO: Does anyone have any questions about the interpreter's qualifications?

TC: None from the Government.

CDC: A couple from the defense. Sir, are you a -- are you certified?

Eagle 5: Yes.

CDC: And from where is your certification?

Eagle 5: While I was DSS, Defense Security Clearance Services.

CDC: Okay, and then so that certifies you as a translator from Arabic to English and English to Arabic?

Eagle 5: Yes.

CDC: Okay.

Eagle 5: That's regarding for my own level of clearance from the Government.

CDC: And when did you receive your certification?

Eagle 5: Since 204 [sic].

CDC: Since 2004?

Eagle 5: 2004. Basically I get it from 2003 and a security clearance from the Government.

CDC: Okay, now I'm not speaking of your security clearance, I'm speaking of your certification as an interpreter.

Eagle 5: As interpreter we have to go through some kind of qualification with the company, they give you this exam. But it doesn't have to be any one with the Government.

CDC: Okay, so is there no -- is there a certification process as an interpreter?

Eagle 5: Just to pass a written exam and you have to have your clearance.

CDC: Okay, and the name of your company, sir?

Eagle 5: ALC.

CDC: ALC. Thank -- um, where did you receive your training in English?

Eagle 5: Back home from -- back home and in the United States since I've been a citizen in the United States.

CDC: Okay, I have no further questions for him. I may launch an objection at some point. We'll get to that later.

DO: Sure. For the record, those questions were from defense counsel Mr. William E. Cassara who is the civilian defense counsel for the accused.

Thank you Eagle 5.

Again, my name is CPT Craig Drummond and we are here on the day of March 8<sup>th</sup>, 2006. We are currently located at the U.S. Detention Facility on Guantanamo Bay, Cuba. I have been assigned as the deposition officer under Rules for Courts-Martial 702 by Brigadier General Robert Lennox, the General Court-Martial Convening Authority in the matter of the United States v. Private First Class Damien M. Corsetti. We are here today to depose a witness, Ahmed al Darbi. Present in the room today are myself, the Court Reporter Sergeant First Class Brenda L. Hain, the interpreter Eagle 5, the lawyers for the Government, CPT David R. Trainor and CPT Christopher E. Ellis, the defendant PFC Corsetti [PFC Corsetti was not present in the room at this time], his civilian defense counsel Mr. William E. Cassara, and his appointed military defense counsel CPT Ryan B. Dowdy.

At this time the witness, Ahmed al Darbi, is not present. We are going to take a break and then Lieutenant Commander Kelvin Stroble, who is the Deputy Staff Judge Advocate for Joint Task Force Guantanamo, will explain the current status of the witness, Ahmed al Darbi.

At this time are there any other matters that anyone would like to address?

TC: Yes, the Government would like for the Assistant Trial Counsel, CPT Trainor, to ask a couple questions of Eagle 5, the interpreter in this matter.

DO: Yes, Eagle 5, the--the--the other attorney has a couple more questions for you please, sir.

Eagle 5: Sure.

ATC: Sir, my name is CPT David Trainor. Where were you born?

Eagle 5: Well, this is a confidential ---

ATC: Fair enough.

Eagle 5: -- because of OPSEC. I work in Guantanamo Bay, Cuba. I shouldn't tell anything [inaudible] for myself.

ATC: Your native language, is that Arabic?

Eagle 5: Yes.

ATC: And how long have you spoken Arabic?

Eagle 5: Maybe 40 years.

ATC: 40 years.

[LCDR Stroble stuck his head in the room.] Okay, gentlemen, it's a go.

ATC: And have you taken any formal studies in Arabic?

Eagle 5: Yes.

ATC: What are those?

Eagle 5: Well, back home in my country we are taught that until high school [inaudible] back home.

ATC: And how many years is that of school?

Eagle 5: Total is 12.

ATC: 12 Years. Did you have any schooling in the Arabic language or any schooling that was done primarily in the Arabic language after that?

Eagle 5: No.

ATC: Okay. Um, when did you begin to learn English?

Eagle 5: In 19--- till I was in middle school back home.

ATC: Okay, about what year was that?

Eagle 5: Roughly in '72.

ATC: 1972?

Eagle 5: 1972.

ATC: So you've been speaking the English language in some capacity since 1972?

Eagle 5: Yes.

ATC: Um, have--are you able to read in the English language?

Eagle 5: Yes.

ATC: Um, have you taken any formal studies in the English language?

Eagle 5: Yes.

ATC: Can you tell us what those were.

Eagle 5: Well, I was in some American college for my previous, ah, job what I had was some kind of certification with U.S. Coast Guard, and in some other college Delgado College in Louisiana --

ATC: Okay.

Eagle 5: --- and the University of New Orleans.

ATC: And all total between those colleges, how many hours did you take or how many years were you ----

Eagle 5: Basically certifications---roughly I say like the whole---12 months.

ATC: 12 months?

Eagle 5: 12 months, yes.

ATC: Have you translated from Arabic to English before?

Eagle 5: Yes.

ATC: And from English into Arabic?

Eagle 5: Yes.

ATC: How many times have you done that?

Eagle 5: Plenty of times since my --- 203.

ATC: 2003?

Eagle 5: 2003. Since I was become a contractor with U.S. military.

ATC: Is that over a 100 times?

Eagle 5: You mean hours?

ATC: No, a hundred different separate sessions --- that you translated for.

Eagle 5: Yes, more than that.

ATC: Can you give us a rough number?

Eagle 5: So basically --- we have some kind of doc--certification, but it's different, I can't tell, ya know, ---

ATC: Sure.

Eagle 5: -- what kind of these things.

ATC: Okay, very well. Have you ever been counseled by anyone to the effect that your translations are improper?

Eagle 5: No.

ATC: Okay. And have you done at least over a hundred translations for the United States Government or at least since in its employ?

Eagle 5: Yes.

ATC: Um, and do you believe there's any reason why you would be unable to understand a witness in Arabic and be able to translate properly?

Eagle 5: I have no problem, and I will translate properly.

ATC: Thank you very much.

CDC: Can I ask one quick follow-up?

ATC: Sure.

CDC: Have you ever translated in a court proceeding-- a U.S. Court proceeding before?

Eagle 5: No.

TC: What about one of these commissions, do you work for the Commissions hearings at all?

Eagle 5: Well, it's some other unit, uh ---

TC: Okay.

Eagle 5: --- who work in that commission.

TC: Let me ask you this. To the extent that you can answer the question, have you been in a formal setting anything similar to this where you have translated?

Eagle 5: Yes.

TC: Okay, thank you. That's what I was asking.

DO: Defense, do you have any other questions?

CDC: I have no questions.

DO: Okay, at this time where there any other issues that either side would like to address.

[Each party nodded negative.]

Being no other issues, we're going to go off the record for just a minute here.

[The deposition recessed at 1708 hours, 8 March 2006.]

[The deposition reconvened at 1840 hours, 8 March 2006. All parties present prior to the recess were again present.]

DO: Okay, let the record reflect again, this is CPT Craig Drummond. I am the Deposition Officer and we are here in the case of United States v. Private First Class Damien M. Corsetti. We are waiting very soon for the witness, Ahmed al Darbi. The defendant, Private First Class Damien M. Corsetti, has waived his right to be physically present in the room today and he will be present via a video monitor watching the, uh, watching the proceedings.

At this time I would just, uh, for the record, Mr. William Cassara, you are his civilian defense counsel. Is it true that your client has waived his right to be present in the room today?

CDC: Yes.

DO: And is there anything else briefly that the parties would like to put on the record prior to the witness coming in?

TC: There was a delay this afternoon while the witness was, uh, in his area, his holding area here at Guantanamo. A member of the Joint Task Force Guantanamo went down and spoke to the witness and encouraged him to participate in the deposition where upon he did agree to come up and take part in the deposition. Therefore, we are getting a later start then we would have normally and gotten and thus it is now about 1835 hours for this deposition.

DO: Okay, and I understand there is some more record we are going to make after the witness is testifying here today. I will just say one issue that has come up regarding this and in talking with the local staff here, uh, they ask that we limit the use of our names as best we can. Obviously I am not the rule maker on that, and the attorneys will—will need to act however they feel best to protect their clients, either the Government or their clients' best interest in that. I just wanted to throw that out there for the record.

Um, and I will be trying, as long as the Court Reporter will be able to understand who the party is, I will be trying to ensure that the parties are identified in our record for who's talking.

If there is nothing else we will go off the record as we wait for the witness. Anything else?

CDC: Not from me.

DO: Thank you.

[The deposition recessed at 1842 hours, 8 March 2006.]

[The deposition reconvened at 1848 hours, 8 March 2006. All parties present prior to the recess were again present. In addition, the witness Ahmed al Darbi is now present as well as his two U.S. military escorts.]

DO: Okay, I am the deposition officer in this matter that we are here today, the United States versus a United States Soldier. All parties that were previously present in the room earlier when we made the record, all are present again. In addition there are two, uh, escorts who are JTF-Guantanamo personnel. For reasons of Operational we will not be having their names put into the record. Does any party object to that?

TC: Not from the Government.

CDC: Nor the Defense.

DO: Seeing no objections, at this time I will swear in the witness and, uh, if the interpreter would then go ahead and, uh, begin interpreting my question ----

Are you Ahmed al Darbi?

WIT: Yes.

DO: Do you affirm that the evidence and testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

WIT: I want to see what precedes this. I want to see the introduction, the things that you stated before. And it is not I want to just hear it from the first place. So I'm going to present being in the court, I have to know everything.

DO: I will go ahead and repeat so he does understand, let me make sure that he's understanding --- I am the Deposition Officer, we are here in the matter of a case of the United States versus a United States Soldier. And we are here to gain testimony from Ahmed al Darbi as a witness. For the testimony that you are about to give, do you affirm that the evidence and testimony that you give will be the truth, the whole truth and nothing but the truth?

WIT: So the testimony I'm going to say I hope is not going to be a result negative to me.

DO: Okay, he has --- just for the record, if the interpreter, did he say that yes that he will affirm and, uh, that the evidence and testimony he will give will be the truth, the whole truth and nothing but the truth?

WIT: Yes.

DO: Okay. At this time, the witness Ahmed al Darbi is present in the room and if the attorneys for the Government will begin their questioning.

TC: Before I begin my questions, as a matter of procedure I have two minor issues I want to put on the record. Do you want me to hold that until the end of my questions for the ease of the record, or should I state this right now?

DO: Go ahead and state your objections.

TC: Okay. One, it's not an objection. The first is that the defense, I just want the record to reflect this, that the defense was given prior access to this witness satisfying our requirements under R.C.M. 702. Also, that we do note an objection for the record, and don't understand that you don't rule on objections but want it noted, that the defendant is

not in the room. Apparently for the purposes of this witness did not identify him on the record at this time and we would just like that objection noted before I begin my question.

DO: Okay, at this time, let's -- uh, does defense counsel wish to lay any--any record?

CDC: Well, I mean I thought we were going to do this afterwards. I would certainly disagree with the Trial Counsel's assertion that we were given equal access to the witness. We were not. But I think that's something that is better resolved and better stated for the record after the witness has left the room.

DO: Yes. At this time then, knowing for the record that he will be making some--some record later on during this proceeding, we will go ahead and move with the attorneys for the Government going ahead and presenting their questions.

TC: Mr. al Darbi, do you know when you were captured by Americans?

WIT: Yes, I was captured in Azerbaijan, to Azerbaijan government and then straight to American Government.

TC: Do you know where you were taken after you were captured or turned over to the Americans?

WIT: No, I don't know till long time -- a period of long time and then I know.

TC: Were you taken to an American facility?

WIT: He was in [inaudible], there was American guards, and American interrogators.

TC: Did those American interrogators question him?

WIT: Yes.

TC: Do you remember any of those who--who questioned you?

WIT: Basically, ya know, they don't have names, they don't have numbers, so that would have to be none.

TC: Could you describe any of those who questioned you?

WIT: There's been a lot of interrogators.

TC: Does he remember if any of the interrogators had tattoos?

WIT: Yes, I remember him well. He the one, he'd been torture me. And then previously, ya know, I just trying to know this person or some people to show me the picture and then I identify him in pictures.

CDC: Objection, non-responsive.

DO: Noted.

TC: You said a minute ago someone tortured you. Can you describe that person?

WIT: Yes. He's just a little bit higher than me in tall, he's a builder...like heavy built, and he have a tattoo, but I don't if it's the left hand or right hand. Ya know, I--I don't know about the tattoo well, but I believe it's the Virgin Mary. I believe he have a beard.

TC: The tattoo of the Virgin Mary, would that be on the arm?

WIT: Yes, in this side of arm.

TC: Let the record reflect that the interpreter has motioned to the inside of his, um, I believe it to be a left forearm.

CDC: I think he can translate that.

WIT: I can't remember if it's left or right hand.

TC: Was it an arm?

WIT: I believe it's in the arm, but I don't know, here, there, I believe it's an arm. Ya know, I been in just like a torture situation. That why I can't tell.

TC: All right. He refers to this --- when he refers to the, um, this torture situation -----

CDC: Objection, one second. Would you please note for the record what the interpreter just did in terms of the pointing on his arms.

TC: I'm sor---Okay, let the record reflect that the interpreter pointed to the lower portion of his arm in motion to both the inside and the outside of the arm. Is that okay?

CDC: That's fine, thank you.

DO: So noted.

CDC: And before you start, I'm going to object to --- a running objection to the use of the term torture as opposed to simply stating what the ----

TC: We're fixing to clarify that.

CDC: Okay, thank you.

DO: So noted.

TC: The person that you say tortured you, uh, what did he do to you?

WIT: I'd been in isolation room, it's a wood isolation room, for a long time and I'd been taken to a reservations, and also I'd been laying down from my head till I feel a lot of pain. I sit a longer time on my knee. That's the beginning of the days. After that I'd been hanging for two weeks without sleeping ----

CDC: Objection, uncharged and non-responsive.

WIT: ---- and been hitting ----

DO: Objection noted for the record.

WIT: ---- They hit me by hand. They used me for hard work. And I'd been handcuffed and he let me carry a boxes, if I have two, he put another one or two on the top of it. I specifically were happened to that person the one I met, he'd been the one taking me to a reservations, used to have high loud music. He was taking me inside and hit me to the wall with a force, and he'd been, err, pulling my hair in my chest, and he used to be kicking me by his knee in my testicles and my stomach.

CDC: Objection, uncharged and non-responsive.

TC: No, it is charged.

CDC: You don't get to respond, he gets to note the objection.

DO: Can you say the objection one more time, please?

CDC: Uncharged and non-responsive.

DO: Objection noted for the record. Please proceed.

WIT: From the things where he'd been done, he let me down in the ground and he was pulled me over with my cuffs around the cell, around the room. And that one time, ya know, I was being tired, less sleeping time. One--one of the times I'd been covered from my head. I believe it was a male and a female, an interpreter, and they'd been jerking around the cell. Basically I run around myself. I remember the lady. She was laying on my right side, and she was hanning and talking in my ear, it was sexual stedmental [sic] talk. And she'd been feeling me on this side.

TC: Let the record reflect that the interpreter motioned to the inside of his thigh.

DO: Reflect it please.

WIT: And the man he was on the other side. And he was telling me I'm going to rape you. And been continuous all night with the female and the male. And the end of it, the man he was put me on the ground, he was, uh, like prostrated -- my knee on the ground like a curb, sitting curb, and he was doing for sexual over my clothes.

The inter--the interrogator would been mentioned it, one of the times, he been torturing me, and then I just say 'Oh God' and then he takes his genital and he put it in my face. And he was telling me 'That's your God.' And at the same time he was sitting on my chest with his knee in my chest, and I'd been, uh, like prosecuted [sic], like breathing. There's a lot of things been happen.

One of the time, from the time, ya know, that this interrogator ----

CDC: I'm going to object here, we haven't had a question in about ten minutes, I mean. So objection to non-responsive and narrative testimony.

DO: Objection noted.

TC: The man who, uh, hit you, was that the man...the same man with the tattoo?

WIT: Yes.

TC: And the man who kicked you in the, uh, in your groin and stomach, was that the man with the tattoo?

WIT: Yes. Even he was been hitting in my chest by his, uh, ar--finger and it was real painful. One time he put his finger all the way down here [the interpreter motioned to his throat], even this part of my neck is being swallowed.

TC: Is all this conduct you're describing, the hitting, the kicking in the groin, the finger up under the jaw, is that all done by the larger man than you, of the heavy build who had the tattoo of the Virgin Mary?

CDC: Objection, leading.

[The interpreter continued to translate the question.]

DO: One second. There was an objection prior to--prior--er, or immediately after asking the question and that objection was leading and note that for the record please.

CDC: [To the interpreter] It might be helpful sir, if you were to just wait a few seconds after the question is asked so that we -- if there's an objection lodged we don't wind up talking over one another. I think it'd just be helpful to everyone.

TC: It would be helpful for the record, and he's right that we don't need to be talking over each other. That's fine.

Eagle 5: We have to tell him these things because when he's talking at me an answer I have to do ---

CDC: Agreed.

TC: Why don't you hold up—why don't you hold up your hand or something like that when it's time to talk?

Eagle 5: I just tell him that when I raise up my hand he has to stop, he don't answer.

TC: Okay, let me try this again. The large — the man with the tattoo of the Virgin Mary, he was the large guy, correct?

CDC: Objection, leading.

DO: One second, sir, one second. There's a leading question noted right prior to the witness, uh, answering the question and that was leading. Note that for the record. Please proceed sir.

TC: How large ----

Eagle 5: Can you repeat the question please?

TC: How large was the man with the tattoo?

WIT: I'm—I'm kinda thing, but I believe he just like more---more fatter than you [the witness pointed to the Deposition Officer].

TC: Let the record reflect that the witness has stated that CPT Drummond, the Deposition Officer, may be roughly the same size but not nearly as fat or heavy as the, uh, the person who committed these acts against the witness.

CDC: And objection, that's not what he said. He said he was more fatter, not nearly as -- -- not not nearly as fat. Those are two different terms.

TC: No, he said that the person who did these things to him was fatter ----

CDC: That's right.

TC: Yes.

CDC: That's different that what you just said.

TC: If I misspoke, I apologize.

DO: The objection noted for the record, and sir when you translate that if you would not translate my name as well.

CDC: That person.

Eagle 5: I have some statement, can I say?

CDC: No.

TC: Did this same person --- yeah, strike that. Did this same person pull your chest hairs?

WIT: Yes.

TC: And is he the same person that pulled you around the room by your calves?

WIT: The one he was pulling me around on the ground?

TC: Yes.

WIT: Yes. Ya know, I --he--he done a little of other things, can I say?

TC: We'll get that. I'd just like to clarify for the record, there's a lot of things that were spoken about, I'm trying to go through verifying some things.

Is this the same person -- the fat person with the tattoos, is the same person who, um, pulled out his genitals and stuck them near your face?

CDC: Objection, leading.

DO: Lead objection noted. Go ahead sir.

Eagle 5: Can you repeat the questions please.

TC: Is the same --- is the person with the tattoo, the heavy person we're talking about, is that the same person who pulled out his genitals and placed them near his face?

WIT: Yes.

TC: And is that same person who also made some type of sexual act over your clothing?

CDC: Objection, leading.

DO: Noted.

WIT: To be honest, ya know, my head's been covered. At that moment, I--I can't tell you that's the same person. I can't see him. But I can see him before that actions. I don't see him, but it could be him, or I don't know.

TC: Okay, who said 'This is your God' when referencing his genitals?

WIT: The same interrogator, he have the tat--tattoo.

TC: And who pulled his penis out of his pants, or genitals out of his pants, and put it near his face?

WIT: The interrogator.

TC: And -- which interrogator?

WIT: The one with the tattoo.

TC: And who kicked him in the groin and the stomach area?

WIT: The same interrogator.

TC: Which interrogator?

WIT: The one with the tattoo, the same person we talk about.

TC: Okay, who hit him?

WIT: The interrogator and some guards.

TC: How many times did this interrogator hit him?

WIT: Truthfully, ya know, more than two, three times.

TC: How many more than two or three times?

WIT: I can't remember but he's been hit.

TC: Can you give us any idea how many more than two or three times?

WIT: I can't remember. I can't remember.

TC: How many times did he kick you?

WIT: More times.

TC: Did he ever threaten you?

WIT: Yes.

TC: How did he threaten you?

WIT: First things he said I'm gonna do sexual to you, and I'm going to send you to Israel to the Moussad and I'm going to send you to Egypt. And we have a detention center here, Afghanis, and always, ya know, they practicing sex ....sexual.

[The witness sighed heavily.]

That's why I can't remember the way he is [inaudible].

TC: What does it mean 'do sexual' to you?

WIT: That's just like a faggot. That's ---

TC: What do you mean it's just like faggot?

WIT: Ya know, just like, ah, this is, ya know, like a penis going into the rectum.

TC: Okay, who threatened to put his penis in your rectum?

WIT: The interrogator.

TC: Which interrogator?

WIT: The same one with the tattoo.

TC: During the interrogations, uh, were you handcuffed?

WIT: Yes, with two cuffs, not one. Sometime, ya know, they have two cuffs. One small ones over here [motioning to where the wrist bone meets the hand], and I have the bigger one on the other side [motioning an inch above the wrist bone more toward the forearm].

Sometime also, ya know, the same one, he was [inaudible] with one cuffs on this side so they can just get more weight in your hands than when I have the other cuffs on.

TC: Did this heavy set interrogator with the tattoo, did he ever make contact with your hands?

WIT: No, he used to be just pressurized by his feet.

TC: Who -- who put pressure on the handcuffs?

WIT: The interrogator.

TC: Okay, how did he put pressure on there?

WIT: Yes, my hands cuffed and being on the ground and he come by his feet and he push down.

TC: Did he step on your cuffs?

WIT: Yes.

Court Reporter: We need to state what he did.

TC: Let the record reflect that the witness has described a motion whereby his wrists were together towards down by the ground and that a - another motion was made simulating the interrogators foot whereby pressure was applied to the handcuff chains.

Did that cause pain?

WIT: Of course.

TC: Did this interrogator, the one with that tattoo, did he ever sit on you?

WIT: He sat with his knees on my chest.

TC: Did that cause pain?

WIT: Almost be killed. If it were—if he wasn't have another interrogator tell him to stop, I'd be killed.

TC: Why does he think he would have been killed?

CDC: Objection, speculation.

DO: One second, one second. There was an objection, the objection was speculation, it was prior to the witness answering the question. Please note for the record. Go ahead please, sir.

Eagle 5: I'm going to have to ask him to answer again.

WIT: Because I have short breathness and I could be prostecated [sic].

TC: Okay, when this interrogator put his knees on your chest, did it make it hard to breathe?

Eagle 5: Please say again.

TC: When the interrogator put his knees on your chest, what affect did that have on your breathing?

WIT: His weight, cause it be pressure.

TC: Did it make it hard for him to breathe?

CDC: Objection, leading.

DO: There was an objection, the objection was leading, prior to the witness answering the question. We'll note it for the record. Go ahead, sir.

WIT: Yes.

TC: Was it easier or harder to breathe when he had his knees on your chest?

WIT: It's difficult to breathe.

TC: Did this interrogator, the one with the tattoo and the heavy set build, did he ever throw anything on you?

WIT: Yes.

TC: What did he throw on you?

WIT: The chairs they have it in the room, they used to be take the trash and throw it over --over myself, some time it'd be like, uh, cigarette parts and some paper, napkin papers -- just like, uh, uh, trash. And he was ordering me to collect all this and at the same time he be just sitting and smoking.

Court reporter: Stop please.

Court reporter: Okay, continue.

WIT: He used to be throw me with water. Sometime he bring some kind of material, but I don't if it's cologne or [inaudible] and he sprayed it on me.

At the same time when he show me his genital, he was --- his companion was with some other interrogator and at the same time he wiped --- he took off his pants, he wiped his rectum and he throw that napkin to me.

TC: Who threw that on him?

WIT: The interrogator.

TC: The same -- which interrogator?

WIT: Some other interrogator always with him.

TC: Was that another interrogator who worked with the heavy set interrogator?

WIT: Yes, he used to be like go with him and come with him.

TC: This other interrogator, was he in the same room at the same time with the heavy set interrogator with the tattoo?

CDC: Objection, relevance.

DO: Objection noted.

WIT: Yes.

TC: Can you describe the other interrogator?

CDC: Objection, relevance.

DO: Objection of relevance noted. Go ahead, sir.

WIT: He have a tattoo in his both hands.

TC: Let the record reflect that the interpreter has motioned, uh, to the lower part of his arms.

Did he say his arms, or his hands, or what?

TC: The wit---let the record

WIT: I believe it was his forearm.

TC: --- let the record reflect that the witness motioned to both of his forearms. Go ahead, sir.

WIT: It was in his forearm and it looks like a blaze, like a fire blaze.

TC: Let the record reflect that the interpreter again motioned to his forearms.

Could the heavy set interrogator with the tattoo see the other interrogator do these things?

CDC: Objection, speculation.

DO: Noted. Go ahead, sir.

WIT: Yes.

TC: Did the heavy set interrogator with the tattoo do anything to stop this from happening?

WIT: The interrogator, the one with the two tattoo in his hands, he the one he stop the other interrogator just to push his knee in my chest.

TC: Which interrogator stopped the knee in the chest?

WIT: The interrogator, the one with the two tattoo, he the one he stop the big interrogator with his knee in my chest.

TC: What else, if anything, did the heavy set interrogator with the tattoo do to you?

WIT: He forced me to have to say some word in English I don't know.

TC: Please explain that, I—I don't understand.

WIT: He used to be let me repeat after him in English, but I don't know what its meaning.

TC: Did you ever attack any of the interrogators?

WIT: Attack me?

TC: No, did he attack, fight, any of the interrogators?

WIT: That's impossible.

TC: I'm sorry, repeat that.

WIT: Impossible.

TC: Did you want the large interrogator, the heavy set one with the tattoo, to do any of these things to you?

WIT: How? I don't understand the question.

TC: Did he give him permission to do any of these things?

WIT: I give the interrogator permission to do —

TC: Did he do that?

WIT: — all these things?

[The witness laughs.] That's impossible.

TC: I have a, um, no let's—let's go off the record for just a minute please.

DO: Let's go off the record for just a minute, please. You can just let the witness know--

[The deposition recessed at 1926 hours, 8 March 2006.]

[The deposition reconvened at 1934 hours, 8 March 2006. All parties present prior to the recess were again present. During the recess the guards of Mr. al Darbi performed a shift change.]

DO: Alright, we are back on the record here. All parties previously present are again present. The only difference is the two escorts have been changed out. They are JTF-Guantanamo personnel and again their names are not being put on the record here and I believe both sides have consented to that.

Ah, we'll go ahead and continue with the attorneys for the Government questioning.

TC: Okay, is there anything else that you would like to say, if anything, about what the heavy set interrogator did that I did not ask about?

CDC: Objection, my objection would be that it's -- um, what's the word I'm looking for -- overly broad.

DO: Objection overly broad noted. Go ahead and ask the witness.

WIT: I can't remember these things.

TC: I'm sorry, I didn't hear that.

WIT: I can't remember things.

TC: One moment please. The Assistant Trial Counsel I believe has a few questions and it'll take him just a minute to, um, get something prepared.

Eagle 5: He was trying to mention something but I stopped him and asked him if he wanted to say anything -- he said no.

TC: Is it in response to a question I asked?

WIT: Yeah, just maybe -- just he initiated the whole situation in Bagram.

ATC: Um, I'm Assistant Trial Counsel and I'm handing what we've marked as Prosecution Exhibit 1 to defense counsel.

DC: The ah, the only objection we'd like to have noted is it appears this going in the same order that was presented to him by the Agent and so we're objecting to the order of this iden---pho---again, another photo identification.

DO: The record will reflect the objection. The objection was by the military defense counsel just for the record.

ATC: And for the record if the Court Reporter would hand that to the witness.

[The Court Reporter took Prosecution Exhibit 1 from the ATC and handed it to Eagle 5 who handed it to the Witness.]

ATC: -- to the interpreter, I'm sorry. And would you hand it to the witness please. And for the record he's handing it to the witness what has been marked as Prosecution Exhibit 1.

Mr. al Darbi, do you recognize, ah, out of those photos the heavy set man with the tattoo on his forearm?

WIT: Yes, this person he pointed.

ATC: And let the record reflect that the witness is pointing to the photograph with a number 2 underneath it.

If you would hand that back to the translator, Mr. Darbi.

Let the record reflect that we are handing to Defense Counsel what has been marked Prosecution Exhibit 2.

CDC: Can we have [Prosecution Exhibit] 1 again?

[Prosecution Exhibit 1 was handed to the Defense Counsel.]

DC: Ugh, same objection as before. It appears to be going in the same order as it was by the Investigator.

DO: Objection noted.

ATC: I'm handing same to the Deposition Officer.

DO: Did you get [Prosecution Exhibit] 1 back?

[Prosecution Exhibit 1 was handed to the Court Reporter. Prosecution Exhibit 2 was handed from the ATC to Eagle 5.]

ATC: And I'm now handing it to the interpreter. Would you please pass that to Mr. al Darbi?

Mr. al Darbi, do you recognize the heavy set interrogator with the tattoo on his forearm in that -- in that set of photographs?

WIT: Yes.

ATC: Let the record reflect he has pointed at the photograph above number six.

Would you please hand that back? Thank you.

[Prosecution Exhibit 2 was handed from the Witness to the Court Reporter.]

DO: For the record which one are we labeling this?

ATC: Prosecution Exhibit 2.

DO: Okay.

ATC: And we'd ask that they be added to the record of this deposition.

That's all we have.

TC: At this time, of course, we would ----

CDC: The Government rests? I mean not rests, but I mean you're done?

TC: We're done with the main line of questions. We reserve respectfully the chance to redirect if that becomes necessary.

DO: Okay, reserving the chance to redirect, the Government does not have any more questions at this time. At this time we'd move ----

CDC: I didn't realize that, we're going to need about a five minute recess.

DO: At this time we will go ahead and take a five minute recess and then we will resume with questions from the Defense.

CDC: Thank you.

[The deposition recessed at 1940 hours, 8 March 2006.]

[The deposition reconvened at 1949 hours, 8 March 2006. All parties present prior to the recess were again present.]

DO: Okay, real quick. Prior to defense being out to examine the witness, there was one issue I was briefed on that I just very briefly put on the record. While it is not—while it is not believed that any classified information will be gotten into today, ah, just so—just so it's clear, I understand that it would be the Government attorneys who would have the duty to protect that information, ah, and we would deal with that information at that time should we have to—should we have to discuss it. Just so that it is on the record and, uh, we'll—we'll address it if we have to, but I don't believe that we will be needing to.

Now if the civilian attorney for the Defense would like to examine the witness.

CDC: Mr. al Darbi, I'm going to ask you some questions now. Mr. al Darbi, I tried to speak with you earlier today, is that correct?

WIT: Yes.

CDC: And you answered some of my questions, correct?

WIT: Yes.

CDC: And then you would not answer more questions from me, is that correct?

ATC: Objection, irrelevant.

DO: Noted.

WIT: Yes.

CDC: In fact, we spoke for about ten minutes before you told me you would not answer any more questions, correct?

ATC: Objection, irrelevant.

DO: Objection noted.

WIT: Yes, approximately.

CDC: Mr. al Darbi, did you tell me earlier that you speak a little bit of English?

WIT: From the beginning I tell you I speak a little bit English. At the beginning I say no. But actually I would say yes because I use that term for the English I have just to deal with the guards.

CDC: Would you say that now you speak a little bit of English or pretty good English?

WIT: From the beginning as I mention I say no, but also I say I know a little bit English so I can deal with my guards.

CDC: What does he mean -- what do you mean from the beginning?

WIT: Just the first answer I answer.

CDC: When you were in Bagram, did you speak any English?

WIT: We have a problem. If somebody come ask you 'Do you speak English' and you say no, so he would determine you speak English because you answer him 'No' in English. So basically, obviously so it does mean you speak English. When actually in fact you don't speak English.

CDC: Did he understand the guards when they spoke English to him?

WIT: Maybe four or five words, that's what I use with the guards. I want to eat, I want a TP -- toilet paper, I want to take shower ----

CDC: Okay.

WIT: Actually the guard, he ask me these questions, and I just answer yes or no.

CDC: In fact there was an interpreter with him at all times when he was being questioned by the guards, is that correct?

WIT: Ya know, I said ya know, I come here for testimony. I don't have to answer this. Ya know, because now I have a headache from too much questioning. Ya know, I have some kind of depression because I've been a lot of questions being asked. Ya know, I've been four years ----

CDC: Will he answer my --- well let me just ask the question again. When he was being questioned in Bagram, was there an interpreter with him during that questioning?

WIT: For reservations? In reservation or does mean interrogations?

CDC: Yes, during the interrogations. Did he have any interpreter with him at all times?

WIT: Sometime the interpreters are present, sometimes not.

CDC: Isn't it tru --- umph, withdraw that. You have spoken to a number of other people about these allegations today, is that correct?

WIT: I don't understand the question. Just repeat the question.

CDC: Isn't it true that you have spoken to a number of other people about the allegations that you are making today?

WIT: Yes, I've been interrogated maybe like five times.

CDC: Ask him if he has signed any papers --- I'm sorry, withdraw that. I need to ask the same question.

Have you signed any papers regarding the allegations that you are making today?

WIT: Never.

CDC: How many other people have you spoken to about the allegations that you are making today?

WIT: I don't understand.

CDC: How many other people has he spoken to about the allegations that he is making today?

WIT: I can't remember to be honest, but more than one person.

CDC: Okay. You've spoken to Capta --- the gentlemen right there, correct?

ATC: Let the record ---

WIT: Yes.

ATC: --- Let the record reflect defense counsel is pointing to CPT Ell---

CDC: The Captain right ther---- the Trial Counsel.

ATC: ---the Trial Counsel.

CDC: Have you ever spoken to the Assistant Trial Counsel, the gentlemen to his right?

WIT: This is the first time I saw him today.

CDC: Okay. Have you spoken to any individuals who told you that they were with the Army and they were investigating these allegations?

WIT: I mentioned before to you, you know, I've been interrogations for more than five times.

CDC: How many different people interrogated him besides the Trial Counsel?

TC: Objection, objection, objection. I prefer the counsel did not, um, talk about us as interrogators, and it's improper ---

CDC: Okay, good question. How many other people --- thank you, I will rephrase.

How many other people have questioned him about the allegations that he is making today besides the Trial Counsel?

WIT: I just answer you before, like more than one person, maybe three, four, but I can't remember.

CDC: Okay. Does he remember ---

TC: Counsel careful about any names there.

CDC: I'm not -- no names will be -- I don't have the names so I can't ---

TC: Oh, I think they're on the [inaudible].

CDC: -- no I don't, but we'll get to that at some other point.

Does he remember when was the first time that he spoke to somebody about the allegations that he is making today?

WIT: Yes.

CDC: When?

WIT: Ya know, honestly, because I can't remember because we don't have a calendar.

CDC: Was it here at Guantanamo or was it in Afghanistan?

WIT: In Guantanamo.

CDC: Does he remember when was the last time that he spoke to somebody besides the Trial Counsel about the allegations that he is making today?

WIT: Yes.

CDC: When was that?

WIT: Well, when they start beginning to talk to me about this case it used to be at like for one year behind. But the last time I'd been interrogated for this allegation for the case, the last two months..

CDC: And does he remember ----

WIT: Approximately more than two months.

CDC: Okay. Ask him if he remembers telling --- well, do you remember telling somebody about six months ago that every time that you were questioned there would always be three to five people in the room with you?

WIT: Yes, it is happened. Ya know interrogator female, interrogator male, and interpreter.

CDC: Describe the female interrogator, please.

WIT: That's not my business. I'm not going [inaudible].

ATC: It's irrelevant. Objection, relevance.

DO: Objection noted.

CDC: What did she look like?

WIT: I'm not going to answer.

CDC: What did the interpreter look like?

WIT: It's a man.

CDC: How old was he approximately?

WIT: [Witness sighs heavily] I don't know.

CDC: What country was he from?

WIT: [Witness laughs.] Ya know over here, ya know, if you ask any person which country with you--your name, they say that's not your business because you're not going to be able to ask such a question.

CDC: I'm not --- um, is he telling me that he doesn't what country the person is from or he will not tell me what country the person is from?

WIT: I don't want to answer.

CDC: When you were originally brought to Bagram, what were you told you were suspected of?

ATC: Objection. That is irrelevant, it's beyond the scope of the deposition, it seeks information that would be unduly prejudicial, it would unduly confuse the issues in this case, it seeks to bring in improper impeachment, and improper character evidence. And also, as we're aware the detainee is here in Guantanamo Bay, he has certain charges that

he's obviously going to be facing. I don't know what the rules are as far as his need to incriminate himself but there's certainly those considerations.

CDC: When he was brought to Bagram, what was he sus---what was he told he was suspected of?

WIT: Kidnapping.

CDC: He was suspected of kidnapping?

WIT: I don't know. I just going to the airport. But I don't know if I have to answer this question.

[Eagle 5 began to say something but the Witness spoke as well and it made Eagle 5 inaudible.]

--- me at the airport and actually they tell me you're going to your home and you don't have any problem you're going home, but they took me to the airport and they cover me with a bag and then they hand---they cuff me, they change my clothes [sic], and I--I feel myself I'm just running on air and then I just feel myself riding in airplane, and I just saw myself present in background [sic].

CDC: Isn't it true that he was told he's suspected of terrorist activities?

ATC: The same objection as before, do I need to note them for the record again?

CDC: We've been making a running objection.

DO: Ugh---

CDC: Was he told that he was suspected of terroristic activities?

WIT: Repeat the question.

CDC: Was he told that he was suspected of terroristic activities?

WIT: You can't give more explanations?

CDC: Was he told that his father-in-law was suspected of making phone call to Osama bin Ladin?

ATC: Same objections.

DO: Go ahead and answer him.

Eagle 5: Can you repeat it?

CDC: Was he told that his father-in-law was suspected of having made phone calls to Osama bin Ladin?

WIT: This is not our discussion today.

CDC: I'm not asking him whether or not that is true, I'm asking him whether he was told that that's why he was brought to Bagram.

WIT: I'm not going to be able to answer.

CDC: Okay. When he was first taken to Bagram, ask -- what--when you were first taken to Bagram, what happened upon your arrival?

WIT: I feel like, ya know, I'm not going to give any more statement. No more. Ya know, because sometime I feel like I go through kind of a depression.

[The witness sighed heavily.]

CDC: Is he telling me that he will not answer any more of my questions?

WIT: I swear, I don't know.

TC: Perhaps a short break?

CDC: Sure.

DO: At --

WIT: I don't know.

DO: Okay, at this time we'll go ahead and go off the record for a two minute quick break so we can continue to move things along here. We'll go ahead and do a two minute break.

[The deposition recessed at 2006 hours, 8 March 2006.]

[The deposition was called to order at 2015 hours, 8 March 2006. All parties present prior to the recess were again present.]

DO: Okay, again I am the Deposition Officer and all parties previously present are once again present. And I believe we were continuing with Defense questions.

CDC: Mr. al Darbi, when you first arrived at Bagram, what is ---where's the first place that you were brought to?

WIT: I don't understand the question.

CDC: When you were first brought to the Bagram facility, where did they bring you first within the facility?

WIT: I'd just been under the airplane.

CDC: When you left the airplane, how did you get to the Bagram facility?

WIT: Guards, or some person, I don't know, they took me away in a car, they took me to the detention [inaudible], but they speaking in English language.

CDC: How far -- no, withdraw that. Um, when you got to the facility, where did they bring you within the facility when you first got there?

WIT: I just prostrated on my knee and they keep asking me.

CDC: When he was first --- when you first arrived at the facility, were you handcuffed?

WIT: For sure.

CDC: Were your legs cuffed? Were you in leg irons?

WIT: I was being everything except maybe my neck and [inaudible].

CDC: Were you hooded?

WIT: Yes.

CDC: How long did you remain in the facility in that condition?

WIT: I'd been asking some questions, I'd been transferred to someplace else.

CDC: How long when he first arrived at the facility with a hood on did he remain in the facility with a hood on?

WIT: About roughly half an hour, one hour.

CDC: When they took the hood off, where in the facility was he?

WIT: I don't know because [inaudible] because any place you'd been transferring facilities you have the hood on. So basically you don't know which places you are.

CDC: When they took the hood off, who's the first person that he saw?

WIT: The same person I'd been seeing in the pictures.

CDC: And isn't it true that at that point there were guard dogs in the room with him?

ATC: Objection, relevance.

DO: There's an objection, relevance. Noted. Go ahead please, sir.

WIT: Dogs?

CDC: Yes.

WIT: I don't see.

CDC: He didn't see dogs. Were they playing loud music?

WIT: No.

CDC: Were you scared when you first arrived.

WIT: I was being terrified to death.

CDC: You didn't think you belonged -- you should be there, did you?

ATC: Objection, relevance.

DO: Noted.

WIT: Ya know, to be honest, that's the first thing that's happened to me in my life incident. I don't know who took me or where they took me. And suddenly they being caught your clothes and they put their finger in my rectum. Someone he was telling me in English in my ear he said 'Fuck you' and that's all the word I'd been hearing the whole entire trip till we get to Bagram. And then he would put his finger in my rectum. Ya know, for this -- they tell me this words and then what's right they have to do [inaudible]. I don't know which Government, what human being, what people.

CDC: When he first arrived, did he -- well, okay, let me just ask the question again. He did not think that he'd done anything wrong and that he should be there, did he?

ATC: Objection, that's asked and answered and it's irrelevant.

WIT: Yes.

CDC: How long was he at Bagram before he was transferred to what he calls the ---- withdraw that.

He said that he was in Bagram for a couple of days or for -- he was in Bagram and then they sent him somewhere else. How long was he in Bagram before they sent him to that other place?

WIT: I believe I stayed the whole---the entire of my time in Bagram.

CDC: Okay. Where --- when he went to this reservation -- when to this reservation that he spoke of, how far was the reservation from Bagram?

WIT: I believe we're in the same building.

ATC: Can I clarify something?

CDC: No---

ATC: Okay.

CDC: ---but I'll ask ya later.

ATC: Okay.

CDC: Um, everybody in the facility was in uniform, correct?

[Eagle 5 began to translate to the witness.]

CDC: Withdraw that. Let me ask the question differently.

Everybody except the detainees was in a military uniform, correct?

WIT: No.

CDC: Was the fat Italian guy in a military uniform?

WIT: Sometime he wearing the civilian, sometime it was uniforms---military uniforms.

CDC: Did he have any facial hair?

WIT: Ah, I can't remember exact, to be honest ya know, he have a little bit hair. He have hair but I can't remember if I call it longer hair, short hair.

CDC: Did he have a beard?

WIT: Yes.

CDC: Did he have a moustache?

WIT: Yes.

CDC: Were there other interrogators who had moustaches and beards?

WIT: I believe interrogator the one he have he have like a moustache with a beard come together.

CDC: Does he mean without sideburns?

WIT: The one I mentioned before, the interrogator with his companion, he the one he have the beard with a moustache which he think maybe meant a beard.

CDC: Okay. The interrogator who you claim did these things to you, did he have a moustache and a beard?

WIT: Yes, I remember, he have a light beard and a light moustache. And I remember sometime he been shaved.

CDC: How many other interrogators had a moustache and a beard?

WIT: Approximately, ya know, they have some people that interrogate him especially for when they're going to interrogate with him [sic].

CDC: Now you said when they first pulled the mask off of you the first person you saw was the fat Italian guy, correct?

WIT: Yes.

CDC: And this scared you, correct?

WIT: Ya know, naturally, ya know I'd been the entire trip I'd been terrified.

CDC: How long after he first saw the fat Italian guy was it before he saw anybody else within the facility?

WIT: I don't understand the questions.

CDC: How long after he -- when -- withdraw that.

After he took his hood --- after they took his hood off and he saw the fat Italian guy, how long was it before he saw another interrogator or anybody else with the U.S. forces?

WIT: After that, ya know, that they took all my clothes off and they took me in some other cell or room and they have a lot of people inside.

CDC: Was he hooded at that time?

WIT: No, they took the hood off and they took off my clothes.

CDC: Did any of the people in uniform have their names on their uniforms?

WIT: Ya know, just like looking at Cuba, ya know, that's impossible.

[Court Reporter note: When entering the JTF-Guantanamo facility, all U.S. forces personnel put a strip of dark tape over the name tags of their uniform so detainees can not know any persons name.]

CDC: How many -- umph, did the person who interrogated him along with the fat Italian guy also have tattoos?

WIT: Repeat the questions.

CDC: Did the person who interrogated him along with the fat Italian guy also have tattoos?

WIT: Yes, I believe he have it here along with the other interrogator.

ATC: Let the record---

CDC: -- Let the record reflect that he has -- the interrogator -- the interpreter, excuse me, has indicated on his left arm and his right arm. [The civilian defense counsel motioned to both his forearms.]

WIT: Did you say interpreter or an interrogator.

CDC: Tell him I said interpreter.

Eagle 5: He's misunderstanding, ya know, like [inaudible] for the record like I say interrogator but actually it's ---

CDC: Okay, you can tell him the translator, interpreter, whatever word he wants to use.

WIT: Yeah, I need the other interpreter.

CDC: He doesn't want you as his interpreter?

[REDACTED]

CDC: How does he know that?

WIT: [REDACTED] you said interrogator and I told him interpreter. Because when you tell him you mention to them interpreter. Because we use this word interpreter everyday.

CDC: Okay, let's go off the record for a minute.

DO: We'll go off the record for a minute.

[The deposition recessed at 2032 hours, 8 March 2006.]

[The deposition was called to order at 2033 hours, 8 March 2006. All parties present prior to the recess were again present.]

DO: Okay, again we're back on the record and all parties previously present are still present again. Just as a clarification, what has just happened there was a conversation between Defense Counsel and attorneys for the Government regarding a possibility of a misunderstanding regarding interpreting a--a word. At this time, uh, both parties it seems to agree that we hopefully can fix the issue by the interpreter just explaining to the witness that there was a mistake in a statement made by one of the counsel and that was the mistake in interpretation. So please go ahead, sir, and explain.

[Eagle 5 spoke to the witness.]

WIT: So actually your question is not about the interpreter he was being with interrogator. That was what he misunderstood.

TC: Is that right?

DC: Yeah ---

CDC: Okay ---

DC: Your question was about the interrogator in Bagram that has the other tattoos.

CDC: That's correct.

DC: That's correct.

WIT: That's where he was with him and other interrogator, he have a tattoo.

CDC: So we're okay now?

Eagle 5: I just want to add something, ya know, for I just sometime when I was appointed ---

CDC: Sure go ahead

Eagle 5: --- because you're going to put it in the record but sometimes he misunderstand it.

ATC: I got ya.

Eagle 5: But I interpret the same way. He was doing it and just like you put on the record.

CDC: I understand.

Eagle 5: Say I'm sorry, we misunderstood.

[Eagle 5 then spoke to the witness.]

Eagle 5: So I tell him, you know, the way is you're talking and signaling in your body, hands, if you did like these things [Eagle 5 made a gesture with his hands] I would do it. So just we try to do the good translation.

CDC: Sure.

[Eagle 5 again spoke to the witness.]

DO: Are both sides okay to continue?

TC: Yes.

DC: Yes.

DO: Okay, please Defense, go ahead and continue the questions.

CDC: So the interrogator that was with the fat Italian guy had tattoos on both of his arms, correct?

WIT: Yes.

CDC: And the fat Italian guy only had a tattoo on one arm, correct?

WIT: That's the one I see.

CDC: How much bigger was the fat Italian guy than the guy with the two tattoos?

ATC: Objection, it assumes a fact not in evidence.

CDC: Was the fat Italian guy bigger than the guy with the two tattoos?

WIT: Yes.

CDC: How much bigger?

WIT: Ya know, I don't have a scale weight to weight him.

CDC: Was he taller?

WIT: I'm not sure.

CDC: Was he heavier?

WIT: I believe just he's muscular.

CDC: When he was first brought into the Bagram collection facility was he placed into an isolation cell?

WIT: Yes.

CDC: And how long were you in the isolation cell?

WIT: Approximate long time.

CDC: Days, weeks, or months?

WIT: Approximately it's going to be plus or minus months.

CDC: Can he give me any idea as to how many months he was in isolation?

WIT: [The witness sighed heavily.] I -- I don't know I'd been going through a bad situation so I don't know.

CDC: When he was placed into the isolation cell, was he hooded?

WIT: Sometime they use it.

CDC: Would he remain hooded in the isolation cell.

WIT: Not all the time. Yeah, but the hands cuff, most of the time, always.

CDC: Leg irons?

WIT: Yes.

CDC: What were the cell doors made of?

WIT: All the cell is wood except the ground, its cement. At the top they have like nets, iron nets.

CDC: Did the fat Italian guy --- the fat Italian guy yelled at you a lot, didn't he?

WIT: Yes.

CDC: Made ya mad?

WIT: [The witness laughed.] You know all the things he's done [inaudible] don't get mad.

CDC: Did it make him mad at the time?

WIT: Made me cry.

CDC: Need to take another break?

DC: He said it made him cry.

CDC: Oh, I thought --

Eagle 5: It made him cry.

CDC: I'm sorry. Okay. I thought he needed to have a good cry.

DC: No--no.

CDC: Okay, got it.

Um, I may have already asked him this so if he did -- if I did you can note your objection. Did it scare him?

WIT: We are human.

CDC: Does that mean yes?

WIT: For sure.

CDC: Did it anger him?

WIT: What you guys, uh, testify for anger?

CDC: Did it make him mad?

WIT: That time I was desired to death.

CDC: I'm sorry, could you repeat ---

Eagle 5: I desired death that time.

CDC: Did it -- that doesn't answer my question. Tell--ask him did it make you mad?

WIT: I call off. I don't want to answer.

CDC: Did it make you mad at Americans?

ATC: Objection, it's irrelevant, it's unduly prejudicial.

CDC: Did it make you mad at Americans?

WIT: Repeat the questions.

CDC: Did it make you mad at Americans?

WIT: I don't answer.

CDC: Did--the fact that he was required to do hard work make him angry?

ATC: Objection, it assumes facts not in evidence that he did hard work.

CDC: He said he did.

WIT: [The witness sighed heavily.] I feel like you hurt my feelings.

CDC: Ask him --- I need to ask you the question again. Did the fact that you were made to do hard work make you angry?

[A long period of silence wherein it appeared the witness was considering an answer.]

ATC: Does he need a break?

[Bagle 5 asked the witness if he needed a break.]

WIT: I think we just have to just get to the conclusion for this meeting.

CDC: Is he saying that he will not answer any more of my questions?

WIT: No, if it's---if it don't have any question related to the case I don't have an answer.

CDC: Okay. Suggestions gentlemen, I'm not certain ---

TC: Go off the record for a second.

DO: We'll go off the record for a second.

[The deposition recessed at 2044 hours, 8 March 2006.]

[The deposition was called to order at 2047 hours, 8 March 2006. All parties present prior to the recess were again present.]

DO: All parties previously present are now again present. Defense counsel was questioning the witness.

CDC: Sir, will you continue to answer my questions?

WIT: Ya know, I've been required to come here for testi--testify and I came here for this case to testify.

CDC: So does that mean yes he will or no he won't continue to answer my questions?

WIT: I believe these two persons down here they ask me enough questions and I have enough questions for this case.

CDC: Does anybody have a follow-up, I mean ---

TC: Why don't you just ask him another question?

CDC: Okay. When you were put naked in the isolation cells --- oh, no, let me withdraw that. Were you ever placed naked in the isolation cells?

WIT: No.

CDC: Was he placed naked in front of female guards at any time?

WIT: In a clinic it happen. In a shower happen.

CDC: Did that anger you?

WIT: I don't understand what's---what's these questions.

CDC: Did that make you mad?

WIT: I don't answer this questions.

CDC: Did that make you ashamed?

WIT: Yes, at some point.

CDC: When you were questioned by the fat Italian guy, was the guy with the tattoos on both of his arms always with him?

WIT: Repeat the questions.

CDC: When you were questioned by the fat Italian guy, was the man with the tattoos on both of his arms always with him?

WIT: Sometimes he present, sometime he not.

CDC: How many times did the fat Italian guy interrogate you?

WIT: It's time, it's times.

CDC: How many times?

WIT: I can't remember.

CDC: More than ten?

WIT: I don't know.

CDC: How many times did the guy with the tattoos on both of his arms interrogate you?

WIT: I believe these two guys, ya know, they used to be like a torture group.

CDC: How many times did the guy with the tattoos on both of his arms interrogate you?

WIT: I can't remember.

CDC: Was it more than ten?

WIT: I can't remember.

CDC: How many times did the female who said that you -- who whispered sexual things in your ear interrogate you?

WIT: To be honest I don't know, that's a female if he sees military or Army, I don't know.

CDC: But it wasn't ---

WIT: I don't know. Don't remember. Because I'd been in the hood, so ---

CDC: Why does he think it was a female who whispered sexual things in his ear?

WIT: Because her voice.

CDC: How many times was he interrogated by that -- by a female?

WIT: I don't --- I don't see her because I'd been in the hood.

CDC: How many females were at the Bagram collection facility?

WIT: I was in [inaudible] work with the defense department.

CDC: I'm sorry, repeat your answer.

WIT: I wasn't working with the defense like to determine how many guys there.

CDC: He testified that the lady was whispering sexual talk in his ear and touching his groin. Did he have a hood on at that time?

WIT: Ya know, they have things that they use like a goggles, and they have the hood, but I don't remember, but I believe I was in a hood.

CDC: And this was the time that the man said that he was going to rape you, correct?

WIT: Yes.

CDC: Now you testified that that interrogation took all night, is that correct?

WIT: Approximately.

CDC: When he was brought to be interrogated did the interrogators have to sign papers to get him out of his cell?

WIT: What?

CDC: When he was -- ya know what I'll withdraw that question.

When the interrogator placed his genitals on your face and said "This is your God" were you hooded?

WIT: No.

CDC: How close did the man's penis come to your face?

WIT: Close.

CDC: And is it your testimony that the man was --- had his knees on your chest when he was doing this?

WIT: Approximately.

CDC: And the person who put his penis near your face is not the person who put --- threw toilet paper at you, is that correct?

WIT: Yes.

CDC: And the person who -- the fat, excuse me, the fat Italian guy also threatened you, correct?

WIT: Yes.

CDC: He told you that if you went to an American prison that men would have sex with you, correct?

WIT: I heard this statement but I can't remember if I heard it from him or somebody else.

CDC: Did it scare him to go to an American prison?

WIT: Yes.

CDC: And the fat Italian guy also threatened to turn you over to the Israeli mossad, correct?

WIT: Yes, he was saying and he said we have it actually in our buildings.

CDC: That scared you, correct?

WIT: Yes.

CDC: Made you mad?

WIT: Approximately you want to answer me the same questions. Ya know, just like you want to come to the point, like you get angry, you hate the American.

CDC: Yes -- did it make you angry?

ATC: Objection, relevance.

[A long silence.]

CDC: Has he answered? Did it make you angry?

WIT: I can't answer this questions.

CDC: Did it make you hate Americans.

[Witness sighed heavily.]

ATC: Objection, relevance.

WIT: No.

CDC: Is it your testimony that you never showed any aggression towards an interrogator?

WIT: How? Repeat the questions again.

CDC: Is it your testimony that you never showed any aggression towards another --- towards any interrogators?

WIT: Basically I don't understand the questions.

CDC: Did you ever physically hit an interrogator?

WIT: Me?

CDC: Yes.

WIT: No. That's impossible, I never thought about it.

CDC: Did you ever try and kick an interrogator?

WIT: No.

CDC: How many different interrogators have you made testimony against?

WIT: This is the first time.

CDC: How many different interrogators have you given statements against to --- well, just how many different interrogators have you made statements against?

WIT: This case, this story. What--what story you mean?

CDC: How many different interrogators at the Bagram facility has he, umm, made a statement against?

Bagle 5: He want me to repeat it back again.

CDC: Okay.

WIT: This truthly, ya know, this is the first time and basically from the beginning I refuse to.

CDC: When he was first questioned about any abuse at -- when, let me withdraw that. When you were first questioned about any abuse at Bagram, you said that nothing had happened to you, correct?

Eagle 5: He want me to repeat the --- the --- the interpretation again.

ATC: I'd like to interpose an objection.

WIT: No.

DO: All right hang on just before you answer, there's an objection. Go ahead.

ATC: Yeah, um, I'd object to --- to the manner or the ---the form of the question. I believe the proper way is to ask him if he made a statement on such and such a date and -  
---uh ---

CDC: We don't have all the statements so we can't do that.

ATC: Well then the question is improperly asked because what one --- what you're asking and ---and then---then the further objection is that what you're asking for is for him to remember what he told an interrogator at an earlier point in time, and that's --- it's --- it's improper because you've got to show him the statement to do it. Err, don't say interrogator, CID agent.

DO: Go ahead and answer the question please.

Eagle 5: Can you please sir---

CDC: Sure.

Eagle 5: --- ask the question.

CDC: When he was first questioned about his treatment at Bagram he told them that he had --- he did not say anything about anybody mistreating him, correct?

WIT: Repeat the questions.

CDC: When you were first questioned about your treatment at the Bagram facility you did not make any statements that anybody had mistreated you, correct?

WIT: I don't understand the questions and the interpretations.

CDC: You have spoken to a number of different people about the way you were treated at Bagram, correct?

WIT: Yes.

CDC: Do you remember the first time you spoke to somebody about it?

WIT: I can't remember, I can't say.

CDC: Did you tell the --- did you tell one of the people who questioned you about your treatment at Bagram that you hoped that it would help you get home early?

ATC: Objection, the witness has already stated that he doesn't remember making a statement and therefore couldn't answer this question. And in any event the proper method is to refresh his recollection with a transcript of that statement and if it is refreshed then he can, uh, he can answer the question.

Eagle 5: Can you repeat ---

CDC: Sure.

Eagle 5: --- it again please.

CDC: Did you tell one of the people that you spoke with about your treatment at Bagram that you hoped that by making these allegations you would be sent home?

WIT: [Witness sighed heavily.] Actually I was scared, ya know, the press guys when they come talk to me about these things I refused to give them any statement. And he was [inaudible] that, ya know, the things we were going to talk about. It's not going to do anything for your case. And all these things were just your witness and we have some kind of a suicide happening background and you've been down there. And then he would show me picture for the interrogators and the guards and he show me the person who'd been killed in Bagram, and he was promise me these people they'd been like --- I take that word back -- like cumulation [sic] to American Government. And then there gonna be just present and we thank you a lot because you help us with this case. And you're helping us to capture these people who'd been done this and I was happy because I'd been helping the American Government. And I believe so, I mean I'd been insulted in this sitting because you have some kind of questions you answer me you consider me just like I'm criminal. Ya know, just like if he testifies he's gonna be terrifying me, it's not my self I withdraw everything I'd been saying. I just humble person, I have some kids, they're waiting for me home. But if he thinks this going to cause me poor consequences, some kind of problem for me, I can zip my mouth the whole entire life.

CDC: Did anybody make any promises to you if you would testify against the interrogators at Bagram?

WIT: Just for you gen--generous just to --- and you're just sending a message to the justice.

CDC: And you were, um, when we first got here today you would not speak -- you did not want to come down here, is that correct?

ATC: Objection, that's irrelevant.

WIT: Yes.

CDC: Okay. And you told your --- you told your guards that you were not going to give any statements today, correct?

ATC: Objection, irrelevant.

WIT: Yes, I'd been told the guards I have an appointment today but I don't want to go.

CDC: And then somebody came down and spoke to you and convinced you to come down here, correct?

WIT: One person come in and he was telling me you have to present for yourself just for testimony. It's just like a [inaudible] court and people was coming in and this things it's not going to be just a dance or lay to your case or have nothing to do with it. Just -- just, ya know, like paper. If I'd known it was gonna drag on this long hour's time I wouldn't be coming.

CDC: And you were told you had to come down here, correct?

WIT: No, they said it's optional. It's not mandatory, nobody going to force you to come.

CDC: And then when we wanted to talk to you earlier today you would not talk to us, correct?

WIT: I talk to you. As I mentioned before, you know, you have a lot of questions and it's not the place and it's not on the case.

CDC: Okay, we're done.

ATC: I have a few follow-up.

DO: Okay, the attorneys for the Government have a few follow-up questions.

ATC: Um, I'm Assistant Trial Counsel. Mr. al Darbi, when the defense counsel came to you in the room earlier today to ask you questions, did he ask you questions about the fat interrogator with the tattoo on his arm?

WIT: No.

ATC: Okay. Did he ask you questions about what, um, you were accused of doing to be here in Guantanamo Bay?

WIT: He was asked me why they brought you to Bagram, what kind of accusations you have.

ATC: Okay, and you didn't want to answer those questions, is that correct?

WIT: Yes, but actually I was mentioned back, I said you don't want to just to count all-- all the questions in entire counting in my life. And then he would say yes and he said I have to know even from the day you'd been captured.

ATC: That's all I have, thank you.

DO: Are there any following questions from the defense?

[Defense counsel indicated no.]

DO: Are there any following questions from the Government?

TC: No.

DO: Seeing that there are no follow-up questions I think at this time the witness and the interpreter you can all be --- you can all be excused. And I know that we want to --- we'll go off the record for just a minute then we'll come back on because I know that some of the attorneys would like to lay some---lay some record that we didn't do at the beginning. So we'll go off the record for about one minute. Thank you.

[The deposition recessed at 2114 hours, 8 March 2006.]

[The deposition was called to order at 2121 hours, 8 March 2006. The witness, his two American military guards, and the interpreter were not present. All other persons present prior to the recess were again present.]

DO: Okay, we're back on the record here in Guantanamo. The parties present are the Defense Counsel, and the attorneys for the Government, myself as the Depo Officer, and the Court Reporter. The witness has been excused and so has the interpreter.

At this time I realize the parties wanted to lay some record so we'll start with the attorneys for the Government. Go ahead and begin --- whatever issues you wanted to discuss on the record.

TC: Take your time, I believe we have discussed everything that we need to put on the record, um, we'd reserve the right to consult my notes but I don't have anything present at this moment.

DO: Sure. While the attorney for the Government consults his notes, does the defense have anything they would like to address ---

CDC: Yes, sir, ---

DO: --- on the record?

CDC: -- just a couple things. First off, um, we would like to respond to the Government counsel's statement regarding a delay. While technically what he said was -- was correct, we believe that it was not complete. Um, I think we would like the record to note that we arrived here at approximately 1430 hours, the um, ---

[The detailed military defense counsel whispered to the civilian defense counsel.]

CDC: -- 1400 hours, somewhere around there, detainee was supposed to meet with us at approximately 1400, 1430 hours and the deposition was supposed to start at 1530 hours. The detainee refused to come out of his cell as he just testified and did not -- and was spoken to by an unnamed individual, we don't know who spoke with him, and eventually arrived here at the start of the deposition. Um, secondly, when the detainee arrived, we, being the defense team, attempted to interview him. We asked him approximately five to ten minutes worth of questions, some of which were about his background and his reasons for arriving at GITMO, some of which were about the charges that were under investigation today. After approximately five or ten minutes he refused to speak with us any further. We sought Government intervention, the Government counsel spoke with him, we went back, tried to speak to him again and he would not speak with us.

Um, next matter for the record, we object to the lack of a video taping of the deposition. While I realize that the Convening Authority's order does not specifically require videotaping, we believe that in order for a panel to accurately gauge the mannerisms of the witness, a video tape is required.

We object to the qualifications of the interpreter. The interpreter is not a certified interpreter. There were some issues with the interpretation tonight, and since none of us speak Arabic it is impossible for us to ascertain whether or not the testimony was accurately translated.

In addition, we would request a copy of the vide---of the audio from the proceeding in addition to the transcript.

And, and in addition to the fact that we object to the qualifications of the interpreter, I would note for the record, that my observations were, and I think CPT Dowdy would agree, that the witness seemed to understand, um, a large portion of the questions that were asked of him. Although that's a matter that we will explore later.

DO: Sure, does the defense counsel have any other information to add for the record?

[The defense counsel indicated they did not.]

DO: You don't. Okay, does the attorneys for the Government have any other information to add?

TC: I'd just like a chance to respond to a couple of those allegations -- or a couple matters that the Defense Counsel's put on the record.

Uh, first of all, the request for a video deposition is completely untimely. The first time that anyone heard about that was today. This deposition has been scheduled and rescheduled for the sake of the defense attorney's scheduling, uh, several times and never was a video request put in for. It's not required under the Rules for Courts-Martial, and it is not required, or even mentioned, in the order for this deposition.

Uh, secondly the interpreter put his extensive qualifications on the record and the fact that the defense attorney alludes to the fact that the witness may have understood some English, uh, kind of undercuts his point that -- about the interpreter. If in fact the witness did understand some English then it's—it's less imperative that the interpreter have extensive qualifications. Nevertheless, he did have extensive qualifications, he's used here in a very, uh, sensitive role and, uh, he put his qualifications on the record.

DO: Okay, well, I will leave it to you two and the judges to hash all those issues out. The only thing I would report is that under Rule 702 I was supposed to report back to the Convening Authority if there were any abnormalities. The only thing I will report—the only thing I will be reporting is that the witness did initially refuse to appear and did in fact refuse to answer some questions. However, what that does and how that effects anything I have no idea. But that's just what I'm required to do. And I think both of you will probably get a copy of that.

Any -- If there's nothing else this concludes --

TC: One further thing, one minor thing we don't also know is the extent of the delay, we don't know how long a possible delay with --- from the --- that the delay was possibly caused by the witness unwilling to come out or also their camp security measures too. We have no way of knowing—

DO: I have no way of knowing that—but if nobody has anything else, defense anything else?

CDC: No sir.

DO: Attorneys for the Government, anything else?

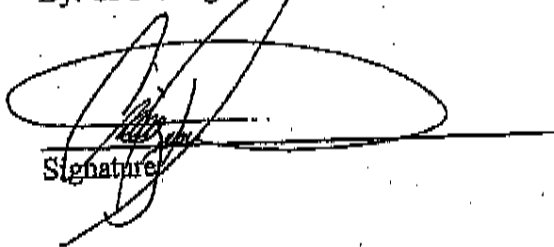
TC: No.

DO: This concludes the deposition.

[The deposition ended at 2126 hours, 8 March 2006.]

Record Authentication IAW R.C.M.702(f)(8)

By: CPT Craig Drummond, Detailed Deposition Officer

  
Signature