



DEPARTMENT OF DEFENSE
COMBINED/JOINT TASK FORCE (CJTF)-180
OPERATION ENDURING FREEDOM
BAGRAM AIRFIELD, AFGHANISTAN
APO AE 09354

10 December 2002

MEMORANDUM THRU

Commander, Headquarters and Headquarters Company, Combined/Joint Task Force-180, Bagram Airfield, Afghanistan, APO AE 09354

Deputy Commander, Base Operations, Combined/Joint Task Force-180, Bagram Airfield, Afghanistan, APO AE 09354

FOR Commander, Combined Joint Task Force 180, Operation Enduring Freedom, Bagram Airfield, Afghanistan APO AE 09354

SUBJECT: Recommendation for Award of the Joint Service Commendation Medal

1. Under the provisions of DoD 1348.33-M, September 1996, the following Service member is recommended for award of the Joint Service Commendation Medal:

a. SGT. Selena M. Ryan, U. S. Army,

b. HQ, CJTF 180 APO AE 09354

c. Interrogation Team Leader, A Company, 519 MI BN, Fort Bragg, NC 28310

d. From 06 September 2002 through 01 February 2003.

e. Service member to be reassigned from temporary change of duty on 01 February 2003.

f. Presentation required on 30 January 2003. Mailing address:

A Company, 519 MI BN (TE) (ABN)
Fort Bragg, NC 28310.

g. Previous Defense awards:

Award: Army Achievement Medal

h. No other award for their Service member for their action is pending, and no previous award has been made for the act of service described herein.

2. Enclosed is a narrative description of service rendered and proposed citation.

Encl

1. Narrative
2. Citation

Carolyn A. Wood
CPT, MI
Bagram Collection Point, OIC

NARRATIVE
Joint Service Commendation Medal
SGT Selena M. Ryan

SGT Ryan has demonstrated outstanding leadership while operating as an interrogation team leader at the Bagram Collection Point. SGT Ryan's team has interrogated 416 Person's Under U.S. Control (PUCS) and elicited life saving, time sensitive intelligence information utilized by Task Force 82, Task Force 11, Task Force 5, the Leadership Targeting Cell, and other coalition forces such as Task Force 62. SGT Ryan's team has published 175 Intelligence Information Reports (IIR), 5 Spot Reports, and 780 Internal Interrogation Reports utilized by the BCP. These published reports have given Task Force Commanders important intelligence information to better assist them in making key decisions about conducting operations, helped identify the locations of High Value Targets (HVT's), and quite possibly saved the lives of American, Coalition, AMF, and ATA officials and representatives. SGT Ryan's team conducted 221 screenings to determine the level of cooperation and knowledge of the PUC's brought into the BCP. They conducted 1062 interrogations and spent 1,526 hours in the interrogation booth eliciting information from less than cooperative sources. SGT Ryan's responsibilities as an interrogation team leader included scheduling her interrogators to best manage her case load, supervise the development of approach strategies and questioning outlines for each case her team was operating, having intimate familiarity with each one of the PUC's assigned to her team, supervising the quality of reports generated by her team, identifying PIR and national level requirements each PUC may have information regarding, and handling personnel issues for her interrogations, i.e. monthly counseling's.

As well as supervising the activities of her interrogation team SGT Ryan was also personally involved in 215 interrogations, 90 of which she was the lead interrogator. She spent 251 hours in the interrogation booth eliciting intelligence information and personally published 23 IIR's and 189 internal intelligence reports utilized by the BCP. SGT Ryan screened 6 PUC's and personally interrogated 110 PUC's. SGT Ryan assumed supervisory duties of her interrogation team as a Specialist(P) and had no schoolhouse training or real world experience as an interrogator. She used her experience as a HUMINT collector and built upon those skills in order to be effective as an interrogator.


SGT Ryan's commitment to excellence, outstanding work ethic, and superior technical expertise has bestowed great honor upon himself, her unit, the United States Army, and her country.

RECOMMENDATION FOR AWARD

For use of this form, see AR 600-8-22; the proponent agency is ODCSPER

For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

TO DR, 205TH MI BDE PO AE 09302-1375		2. FROM CDR, 519TH MI BN (TE) (ABN) APO AE 09302-1375		3. DATE 26 MAY 03	
PART I - SOLDIER DATA					
NAME YAN, SELENA M.		5. RANK SGT		6. SSN	
ORGANIZATION CO, 519TH MI BN (TE) (ABN) FORTBRAGG, NC 28310-5000		8. PREVIOUS AWARDS JSCM		11. PERIOD OF AWARD	
BRANCH OF SERVICE		10. RECOMMENDED AWARD ARCOM		b. FROM 11 APR 03	
				b. TO 15 MAY 03	
2. REASON FOR AWARD		12b. INTERIM AWARD IF YES, STATE AWARD GIVEN		13. POSTHUMOUS	
12a. INDICATE ACH, SVC, PCS, ETS, OR RET ACH		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

14. NAME BRITTON T. HOPPER		15. ADDRESS A CO, 519TH MI BN (TE) (ABN) FORTBRAGG, NC 28310-5000	
16. TITLE/POSITION Company Commander		17. RANK CPT	
18. RELATIONSHIP TO AWARDEE Supervisor		19. SIGNATURE 	
PART III - JUSTIFICATION AND CITATION DATA (Use specific bullet examples of meritorious acts or service)			

20. ACHIEVEMENTS

ACHIEVEMENT #1
SGT Ryan exploited foreign national detainees for information that led to the employment of U.S. Forces against targets that had not previously been reported, while assigned as the Corps Interrogation Facility's (CIF) High Value Detainee Interrogation Team Leader in support of Operation Iraqi Freedom. SGT Ryan's thorough and timely exploitation of these targets resulted in the successful interdiction by U.S. Forces and potentially saved countless American lives.

ACHIEVEMENT #2

ACHIEVEMENT #3

ACHIEVEMENT #4

21. PROPOSED CITATION
FOR MERITORIOUS ACHIEVEMENT WHILE SERVING AS A HIGH VALUE DETAINEE INTERROGATION TEAM LEADER AT THE V CORPS INTERROGATION FACILITY (CIF) DURING COMBAT OPERATIONS IN IRAQ WHILE SUPPORTING OPERATION IRAQI FREEDOM. SGT RYAN'S LEADERSHIP AND TACTICAL EXPERTISE CONTRIBUTED SIGNIFICANTLY IN COLLECTING TIMELY AND ACCURATE INTELLIGENCE WHICH HELPED ANSWER THE V CORPS COMMANDER'S PRIORITY INTELLIGENCE REQUIREMENTS (PIR). SGT RYAN'S PERFORMANCE REFLECTS GREAT CREDIT UPON HER, V CORPS AND THE UNITED STATES ARMY.

AN, SELENA M.		SSN	
PART IV - RECOMMENDATIONS/APPROVAL/DISAPPROVAL			
I certify that this individual is eligible for an award in accordance with AR 600-8-22; and that the information contained in Part I is correct.		22a. SIGNATURE <i>[Signature]</i>	22b. DATE
INTERMEDIATE AUTHORITY		b. FROM CDR, 519TH MI BN (TE) (ABN) APO AE 09302-1375	c. DATE
a. TO CDR, 205TH MI BDE APO AE 09302-1375			
RECOMMEND: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO:	DOWNGRADE TO:
NAME RIFFITH, JAMES E.		i. RANK LTC	
TITLE/POSITION Battalion Commander		h. SIGNATURE <i>[Signature]</i>	
COMMENTS SIR, ONE OF THE BEST IN THE T.F. WITH DESERVA <i>[Signature]</i>		b. FROM	c. DATE
INTERMEDIATE AUTHORITY		a. TO	
RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO:	DOWNGRADE TO:
NAME		i. RANK	
TITLE/POSITION		h. SIGNATURE	
COMMENTS		b. FROM	c. DATE
INTERMEDIATE AUTHORITY		a. TO	
RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO:	DOWNGRADE TO:
NAME		i. RANK	
TITLE/POSITION		h. SIGNATURE	
COMMENTS		b. FROM	c. DATE
INTERMEDIATE AUTHORITY		a. TO	
RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO:	DOWNGRADE TO:
NAME		i. RANK	
TITLE/POSITION		h. SIGNATURE	
COMMENTS		b. FROM CDR, 205TH MI BDE APO AE 09302-1375	c. DATE 7 June 03
APPROVAL AUTHORITY		a. TO ORDERS ISSUING AUTHORITY	
RECOMMEND: <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED		RECOMMEND UPGRADE TO:	DOWNGRADE TO:
NAME PARRISH, GARY L.		i. RANK COL	
TITLE/POSITION Brigade Commander		h. SIGNATURE <i>[Signature]</i>	
COMMENTS			

PART V - ORDERS DATA			31. DISTRIBUTION
27a. ORDERS ISSUING HQ 205TH MI BDE APO AE 09320	27b. PERMANENT ORDER NO. 158-04		
28a. NAME OF ORDERS APPROVAL AUTHORITY DREW, ALYSSA G	28b. RANK CPT		
28c. TITLE/POSITION BRIGADE ADJUTANT	29. APPROVED AWARD ARCOM		
28d. SIGNATURE <i>[Signature]</i>	30. DATE 7 JUN 03		

RECOMMENDATION FOR AWARD

For use of this form, see AR 600-8-22; the proponent agency is JDCSPER

For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

205TH MI BDE
AE 093422. FROM
CDR, 519TH MI BN (TE)(ABN)
APO AE 09323

3. DATE

PART I - SOLDIER DATA

5. RANK

SGT

6. SSN

NAME

N, SELENA M.

ORGANIZATION

519TH MI BN (TE)(ABN)

BRAGG, NC 28310

BRANCH OF SERVICE

10. RECOMMENDED AWARD

ARCOM

IMPACT

11. PERIOD OF AWARD

a. FROM

20 SEP 03

b. TO

20 SEP 03

ARMY

REASON FOR AWARD

INDICATE ACH, SVC, PCS, ETS, OR RET

ACH

12b. INTERIM AWARD

YES

☒

NO

IF YES, STATE AWARD GIVEN

YES

☐

NO

☒

13. POSTHUMOUS

PART II - RECOMMENDER DATA

NAME

LLETT, DONALD L.

TITLE/POSITION

TALION CSM

RELATIONSHIP TO AWARDEE

M

15. ADDRESS

HHS, 519TH MI BN (TE)(ABN)

APO AE 09323

17. RANK

CSM

19. SIGNATURE

Donald L. Llett

PART III - JUSTIFICATION AND CITATION DATA (Use specific bullet examples of meritorious acts or service)

ACHIEVEMENTS

ACHIEVEMENT #1

T Ryan responded immediately and without regard for her own personal safety to the site of a mortar attack in the prison yard of the Central Baghdad Prison where a dozen soldiers lay seriously wounded.

ACHIEVEMENT #2

T Ryan calmly assisted medical personnel by retrieving and delivering supplies and equipment needed for emergency medical care. Her sense of urgency and attention to detail helped provide quick and timely medical care to wounded comrades.

ACHIEVEMENT #3

T Ryan's efforts in the first critical minutes after the devastating attack helped to minimize U.S. casualties. Her calm composure assured the wounded and strengthened the efforts of emergency caregivers.

ACHIEVEMENT #4

PROPOSED CITATION

EXCEPTIONALLY MERITORIOUS ACHIEVEMENT IN THE AFTERMATH OF A MORTAR ATTACK ON THE CENTRAL BAGHDAD PRISON. SERGEANT RYAN ASSISTED MEDICAL CAREGIVERS IN THE FIRST CRITICAL MINUTES FOLLOWING THE EXPLOSIONS. HER COURAGE, RESOURCEFULNESS, AND PRESENCE OF MIND DIRECTLY BENEFITED HER WOUNDED COMRADES. SERGEANT RYAN'S EFFORTS REFLECT DISTINCT CREDIT UPON HERSELF, 519TH MILITARY BATTALION, AND THE UNITED STATES ARMY.

FORM 638, NOV 94

REPLACES DA FORM 638-1,
PREVIOUS EDITIONS OF DA FORM 638 ARE OBSOLETE.

USAPPC V6.00

ME AN, SELENA M.		SSN
PART IV - RECOMMENDATIONS/APPROVAL/DISAPPROVAL		
I certify that this individual is eligible for an award in accordance with AR 600-8-22; and that the information contained in Part I is correct.		22a. SIGNATURE <i>[Signature]</i>
22b. DATE 16 Nov 03		c. DATE
INTERMEDIATE AUTHORITY	a. TO CDR, 519TH MI BN (TE)(ABN) APO AE 09323	b. FROM HHS, 519TH MI BN (TE) (ABN) APO AE 09323

RECOMMEND:	<input checked="" type="checkbox"/> APPROVAL	<input type="checkbox"/> DISAPPROVAL	UPGRADE TO:	DOWNGRADE TO:
NAME	HALEN, ROBERT P.		f. RANK	LTC
TITLE/POSITION	attalion Commander		h. SIGNATURE	<i>[Signature]</i>

COMMENTS
SGT RYAN'S CALM PRESENCE OF MIND FOLLOWING THE 20 SEPTEMBER ATTACK ON THE PRISON MAGNIFIED THE EFFORTS OF MEDICAL CARE GIVERS. SHE HAS EARNED RECOGNITION VIA THE ARPA COMMENDATION MEDAL.

4. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE
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RECOMMEND:	<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DISAPPROVAL	UPGRADE TO:	DOWNGRADE TO:
NAME			f. RANK	
TITLE/POSITION			h. SIGNATURE	

COMMENTS

25. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE
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RECOMMEND:	<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DISAPPROVAL	UPGRADE TO:	DOWNGRADE TO:
NAME			f. RANK	
TITLE/POSITION			h. SIGNATURE	

COMMENTS

26. APPROVAL AUTHORITY	a. TO ORDERS ISSUING AUTHORITY APO AE 09342	b. FROM CDR, 205TH MI BDE APO AE 09342	c. DATE
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RECOMMEND	<input type="checkbox"/> APPROVED	<input type="checkbox"/> DISAPPROVED	UPGRADE TO:	DOWNGRADE TO:
NAME			f. RANK	
TITLE/POSITION			h. SIGNATURE	

COMMENTS

PART V - ORDERS DATA			
27a. ORDERS ISSUING HQ 205TH MI BDE APO AE 09342	27b. PERMANENT ORDER NO.	31. DISTRIBUTION 1-FILE 1-SOLDIER 1-OMPF 1-MPRJ	
28a. NAME OF ORDERS APPROVAL AUTHORITY PROCHNOW, ROBERT A. JR.	28b. RANK CPT		
28c. TITLE/POSITION BRIGADE ADJUTANT	29. APPROVED AWARD ARCOM		
28d. SIGNATURE	30. DATE		

NCO EVALUATION REPORT										SEE PRIVACY ACT STATEMENT IN AR 623-205, APPENDIX C. +	
For use of this form, see AR 623-205; the proponent agency is ODCSPER											
PART I - ADMINISTRATIVE DATA											
a. NAME (Last, First, Middle Initial) SALCEDO, SELENA M.				b. SSN		c. RANK SGT		d. DATE OF RANK 021201		e. PMOSC 97B2P	
f. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND HHC, 525TH MI BDE (Rear) (Provisional), Fort Bragg, NC 28310-5000						FORSCOM		g. REASON FOR SUBMISSION 02 ANNUAL			
h. PERIOD COVERED		i. RATED MONTHS		j. NON-RATED CODES		k. NO. OF ENCL		l. RATED NCO COPY (Check one and Date)		m. PSC Initials	
FROM THRU		12						1. Given to NCO		n. CMD CODE	
YYYY MM YYYY MM								2. Forwarded to NCO 3 Feb 05		FC	
2003 12 2004 11										FS27	
PART II - AUTHENTICATION											
a. NAME OF RATER (Last, First, Middle Initial) ROBERTSON, CORY D.				SSN		SIGNATURE		DATE			
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT SSG, 11B, HHC, 525TH MI BDE (Rear) (Provisional), Fort Bragg, NC 28310						Platoon Sergeant		3 Feb 05			
b. NAME OF SENIOR RATER (Last, First, Middle Initial) BRESCIA, ROBERT L. JR.				SSN		SIGNATURE		DATE			
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT SPC, 74D, HHC, HHC, 525TH MI BDE (Rear) (Provisional), Fort Bragg, NC 28310						First Sergeant		3 Feb 05			
c. RATED NCO: I understand my signature does not constitute agreement or disagreement with the evaluations of the rater and senior rater. I further understand my signature verifies that the administrative data in Part I, the rating official in Part II, the duty description in Part III, and the AFPT and rating/weight entries in Part IV are correct. I have seen the report completed through Part V, except Part III and IV, and agree in the absence of AR 623-205				SSN		SIGNATURE		DATE			
d. NAME OF REVIEWER (Last, First, Middle Initial) BRUMGARD, HELEN B.				SSN		SIGNATURE		DATE			
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT CPT, MI, HHC, 525TH MI BDE (Rear) (Provisional), Fort Bragg, NC 28310						Company Commander		3 Feb 05			
e. [X] CONCUR WITH RATER AND SENIOR RATER EVALUATIONS				NONCONCUR WITH RATER AND/OR SENIOR RATER EVAL (See attached comments)							
PART III - DUTY DESCRIPTION (Rater)											
a. PRINCIPAL DUTY TITLE Company Training NCO						b. DUTY MOSC 97E2P					
c. DAILY DUTIES AND SCOPE (To include, as appropriate, people, equipment, facilities and dollars) Serves as a training NCO for a 66 Soldier Counterintelligence/HUMINT company; directly responsible for facilitating company training events, maintaining training records and updating the company training database; ensures Soldiers in the company complete all pre-deployment training requirements, including Counterintelligence and Human Intelligence tasks in preparation for Operation IRAQI FREEDOM 04-06; advises the commander on all training issues											
d. AREAS OF SPECIAL EMPHASIS Reflexive Fire Range; Convoy Live Fire Exercise Rater: cory.robertson@ SR: robert.brescia@ REV: helen.brumgard@											
e. APPOINTED DUTIES											
f. COUNSELING DATES				INITIAL 031216		LATER 040330		LATER 040629		LATER 040920	
PART IV - ARMY VALUES/ATTRIBUTES/SKILLS/ACTIONS (Rater)											
a. ARMY VALUES. Check either "YES" or "NO". Comments are mandatory for "No" entries; optional for "Yes" entries.										YES NO	
1. LOYALTY: Bears true faith and allegiance to the U. S. Constitution, the Army, the unit, and other soldiers.										X	
2. DUTY: Fulfills their obligations.										X	
3. RESPECT/EO/EOD: Treats people as they should be treated.										X	
4. SELFLESS-SERVICE: Puts the welfare of the nation, the Army, and subordinates before their own.										X	
5. HONOR: Lives up to all the Army values.										X	
6. INTEGRITY: Does what is right - legally and morally.										X	
7. PERSONAL COURAGE: Faces fear, danger, or adversity (physical and moral).										X	
Bullet comments											
o exercises integrity with maintenance of training records											
o displays strong personal courage in all situations											
o exemplifies a strong sense of duty											

DA FORM 2166-8, OCT 2001

REPLACES DA FORM 2166-7, SEP 87, WHICH IS OBSOLETE

USAPA V1.01

4/15/2005

RATED NCO'S NAME (Last, First, Middle Initial)		SSN	THRU DATE
+ SALCEDO, SELENA M. <i>selena.salcedo@</i>			2004 11 +
PART IV (Rater) - VALUES/NCO RESPONSIBILITIES Specific Bullet examples of "EXCELLENCE" or "NEEDS IMPROVEMENT" are mandatory. Specific Bullet examples of "SUCCESS" are optional.			
b. COMPETENCE <input type="checkbox"/> Duty proficiency; MOS competency <input type="checkbox"/> Technical & tactical; knowledge, skills, and abilities <input type="checkbox"/> Sound judgment <input type="checkbox"/> Seeking self-improvement; always learning <input type="checkbox"/> Accomplishing tasks to the fullest capacity; committed to excellence		<input type="checkbox"/> volunteered as the unit's training NCO and utilized her outstanding organizational skills to overhaul the unit's training records <input type="checkbox"/> established clear procedures for platoons to turn in and file training records <input type="checkbox"/> provided valuable input for improving the capabilities of the company training database	
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>		APFT PASS 0404 HEIGHT/WEIGHT 62/130 YES	
c. PHYSICAL FITNESS & MILITARY BEARING <input type="checkbox"/> Mental and physical toughness <input type="checkbox"/> Endurance and stamina to go the distance <input type="checkbox"/> Displaying confidence and enthusiasm; looks like a soldier		<input type="checkbox"/> scored 285 on record APFT <input type="checkbox"/> conducted physical fitness training during off-duty time to raise her fitness level <input type="checkbox"/> presented a professional, soldierly appearance at all times	
EXCELLENCE (Exceeds std) <input checked="" type="checkbox"/> SUCCESS (Meets std) <input type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>		<input type="checkbox"/> influenced subordinates to excel personally and professionally through her personal conduct <input type="checkbox"/> impacted the Commander and First Sergeant's decisions regarding the scheduling and execution of company training events <input type="checkbox"/> ensured 100% of the company was trained to standard for deployment to Operation IRAQI FREEDOM 04-06	
d. LEADERSHIP <input type="checkbox"/> Mission first <input type="checkbox"/> Genuine concern for soldiers <input type="checkbox"/> Instilling the spirit to achieve and win <input type="checkbox"/> Setting the example: Be, Know, Do		<input type="checkbox"/> arranged Soldier's attendance in eight military schools, resulting in career progression for more than 90% of Alpha Company Soldiers <input type="checkbox"/> trained 66 soldiers in a reflexive fire range where safety was enforced through patient, methodical instruction <input type="checkbox"/> tracked 26 pre-deployment training requirements, supplying the command with numbers and percentages completed <input type="checkbox"/> maintained 100% accountability of all assigned equipment <input type="checkbox"/> always took personal responsibility for her actions and the actions of those she supervised	
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
e. TRAINING <input type="checkbox"/> Individual and team <input type="checkbox"/> Mission focused; performance oriented <input type="checkbox"/> Teaching soldiers how; common tasks, duty-related skills <input type="checkbox"/> Sharing knowledge and experience to fight, survive and win			
EXCELLENCE (Exceeds std) <input checked="" type="checkbox"/> SUCCESS (Meets std) <input type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
f. RESPONSIBILITY & ACCOUNTABILITY <input type="checkbox"/> Care and maintenance of equipment/facilities <input type="checkbox"/> Soldier and equipment safety <input type="checkbox"/> Conservation of supplies and funds <input type="checkbox"/> Encouraging soldiers to learn and grow <input type="checkbox"/> Responsible for good, bad, right & wrong			
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
PART V - OVERALL PERFORMANCE AND POTENTIAL			
a. RATER. Overall potential for promotion and/or service in positions of greater responsibility. AMONG THE BEST <input checked="" type="checkbox"/> FULLY CAPABLE <input type="checkbox"/> MARGINAL <input type="checkbox"/>		e. SENIOR RATER BULLET COMMENTS <input type="checkbox"/> promote immediately <input type="checkbox"/> send to PLDC immediately <input type="checkbox"/> tremendous performer with potential to excel in the most demanding assignments and leadership positions <input type="checkbox"/> proven combat leader and intelligence professional	
b. RATER. List 3 positions in which the rated NCO could best serve the Army at his/her current or next higher grade. Field Office NCOIC THT Team Leader Detachment Operations NCOIC			
c. SENIOR RATER. Overall performance <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		d. SENIOR RATER. Overall potential for promotion and/or service in positions of greater responsibility. <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
1 2 3 4 5 Successful Fair Poor		1 2 3 4 5 Superior Fair Poor	

USAPA V1.01

DA FORM 2166-8, OCT 2001

NCO EVALUATION REPORT										SEE PRIVACY ACT STATEMENT IN AR 623-205, APPENDIX C.	
For use of this form, see AR 623-205; the proponent agency is ODCSPER											
PART I - ADMINISTRATIVE DATA											
a. NAME (Last, First, Middle Initial) RYAN, SELENA M.				b. SSN		c. RANK SGT		d. DATE OF RANK 021201		e. PMOSC 97B2P	
f. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND Alpha Company, 519th Military Intelligence Battalion, Fort Bragg, NC 28310-5000 FORSCOM								g. REASON FOR SUBMISSION 02 ANNUAL			
h. PERIOD COVERED		i. RATED MONTHS		j. NON-RATED CODES		k. NO. OF ENCL		l. RATED NCO COPY (Check one and Date)		m. PSC Initials	
FROM THRU								1. Given to NCO		n. CMD CODE	
YYYY MM 2002 12		YYYY MM 2003 11		12				2. Forwarded to NCO 31 Dec 03		RC PS27	
PART II - AUTHENTICATION											
a. NAME OF RATER (Last, First, Middle Initial) MCBRIDE, ROBERT S.				b. SSN		c. SIGNATURE <i>Robert S. McBride</i>				d. DATE 31 Dec 03	
e. RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT SFC, 97E4P, Alpha Company, 519th Military Intelligence Battalion, Fort Bragg, NC 28310, First Sergeant											
f. NAME OF SENIOR RATER (Last, First, Middle Initial) LEWIS, CHAD B.				g. SSN		h. SIGNATURE <i>Chad B. Lewis</i>				i. DATE 31 Dec 03	
j. RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT CPT, MI, Alpha Company, 519th Military Intelligence Battalion, Fort Bragg, NC 28310, Commander											
k. RATED NCO: I understand my signature does not constitute agreement or disagreement with the evaluation of the rater and senior rater. I further understand my signature verifies that the administrative data in Part I, the rating official in Part II, the duty description in Part III, and the administrative data in Part IV are correct. I have seen the report completed through Part V, except Part III and its 1 and 2 are at the end of the report of AR 623-205.				l. NAME OF REVIEWER (Last, First, Middle Initial) WHALEN, ROBERT P. Jr.		m. SSN		n. SIGNATURE <i>Robert P. Whalen</i>			
o. RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT LTC, MI, 519th Military Intelligence Battalion, Fort Bragg, NC 28310, Commander				p. SSN		q. SIGNATURE <i>Robert P. Whalen</i>				r. DATE 31 Dec 03	
c. <input checked="" type="checkbox"/> CONCUR WITH RATER AND SENIOR RATER EVALUATIONS <input type="checkbox"/> NONCONCUR WITH RATER AND/OR SENIOR RATER EVAL (See attached comments)											
PART III - DUTY DESCRIPTION (Rater)											
a. PRINCIPAL DUTY TITLE HUMINT Team Leader						b. DUTY MOSC 97B3P					
c. DAILY DUTIES AND SCOPE (To include, as appropriate, people, equipment, facilities and dollars) Team Leader of an XVIII Airborne Corps Tactical HUMINT Team deployed in support of Operation Iraqi Freedom. Primary duties are: ensure health, welfare and training of five-soldier team, provide technical and intelligence oversight to deployed Tactical HUMINT Teams, conduct and supervise interrogation and source operations, conduct split-based operations in austere locations, and maintain vehicles and equipment to operate in severe environmental conditions.											
d. AREAS OF SPECIAL EMPHASIS Operation Enduring Freedom, Operation Iraqi Freedom, Train-up for 223rd Military Intelligence Battalion, Redeployment preparation Rater: robert.s.mcbride@ S/R: chad.lewis1@ Rev: robert.whalen1@											
e. APPOINTED DUTIES Company Communications NCO, Motor NCO											
1. COUNSELING DATES		INITIAL 030113		LATER 030301		LATER 030623		LATER 030818			
PART IV - ARMY VALUES/ATTRIBUTES/SKILLS/ACTIONS (Rater)											
a. ARMY VALUES. Check either "YES" or "NO". Comments are mandatory for "No" entries; optional for "Yes" entries.										YES NO	
1. LOYALTY: Bears true faith and allegiance to the U. S. Constitution, the Army, the unit, and other soldiers.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
2. DUTY: Fulfills their obligations.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
3. RESPECT/EO/EEQ: Treats people as they should be treated.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
4. SELFLESS-SERVICE: Puts the welfare of the nation, the Army, and subordinates before their own.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
5. HONOR: Lives up to all the Army values.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
6. INTEGRITY: Does what is right - legally and morally.										<input checked="" type="checkbox"/> <input type="checkbox"/>	
7. PERSONAL COURAGE: Faces fear, danger, or adversity (physical and moral).										<input checked="" type="checkbox"/> <input type="checkbox"/>	
b. Rater comments: o unquestionable loyalty o can be trusted to do what is right without supervision o accomplishes all missions and places welfare of the soldiers above her own											

RATED NCO'S NAME (Last, First, Middle Initial)		SSN	THRU DATE
+ RYAN, SELENA M. selena.ryan@			200311 +
Specific Bullet examples of "EXCELLENCE" or "NEEDS IMPROVEMENT" are mandatory. Specific Bullet examples of "SUCCESS" are optional.			
PART IV (Rater) - VALUES/NCO RESPONSIBILITIES			
b. COMPETENCE <input type="checkbox"/> Duty proficiency; MOS competency <input type="checkbox"/> Technical & tactical; knowledge, skills, and abilities <input type="checkbox"/> Sound judgment <input type="checkbox"/> Seeking self-improvement; always learning <input type="checkbox"/> Accomplishing tasks to the fullest capacity; committed to excellence		<input type="checkbox"/> performed superbly as Platoon Sergeant for 60 days during combat operations in Iraq <input type="checkbox"/> responsible for over 40 intelligence reports during Operation Enduring Freedom and Operation Iraqi Freedom <input type="checkbox"/> considered a subject matter expert in both interrogation and Tactical HUMINT Team operations by leaders, peers and subordinates	
EXCELLENCE (Exceeds std) <input checked="" type="checkbox"/> SUCCESS (Meets std) <input type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>		APFT PASS 0311 HEIGHT/WEIGHT 62/120 YES	
c. PHYSICAL FITNESS & MILITARY BEARING <input type="checkbox"/> Mental and physical toughness <input type="checkbox"/> Endurance and stamina to go the distance <input type="checkbox"/> Displaying confidence and enthusiasm; looks like a soldier		<input type="checkbox"/> scored 291 on APFT during continuous operations over a 12-month period in a combat zone <input type="checkbox"/> continued to drive on with mission despite eighteen-hour work days <input type="checkbox"/> set the example for her soldiers	
EXCELLENCE (Exceeds std) <input checked="" type="checkbox"/> SUCCESS (Meets std) <input type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
d. LEADERSHIP <input type="checkbox"/> Mission first <input type="checkbox"/> Genuine concern for soldiers <input type="checkbox"/> Instilling the spirit to achieve and win <input type="checkbox"/> Setting the example; Be, Know, Do		<input type="checkbox"/> the best interrogation team leader in 3 separate interrogation facilities in Afghanistan and Iraq <input type="checkbox"/> responsible for over 30 successful combat intelligence missions in Kirkuk during Operation Iraqi Freedom <input type="checkbox"/> worked endlessly in balancing mission and welfare of soldiers	
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
e. TRAINING <input type="checkbox"/> Individual and team <input type="checkbox"/> Mission focused; performance oriented <input type="checkbox"/> Teaching soldiers how; common tasks, duty-related skills <input type="checkbox"/> Sharing knowledge and experience to fight, survive and win		<input type="checkbox"/> primary trainer of 64 personnel of the 223rd Military Intelligence Battalion in support of Operation Iraqi Freedom <input type="checkbox"/> provided invaluable SINCGARS and GPS training to mobile interrogation teams prior to missions during the initial push of the war <input type="checkbox"/> mentored numerous soldiers in the interrogation booth, providing expertise and sharing knowledge that ensured mission success	
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
f. RESPONSIBILITY & ACCOUNTABILITY <input type="checkbox"/> Care and maintenance of equipment/facilities <input type="checkbox"/> Soldier and equipment safety <input type="checkbox"/> Conservation of supplies and funds <input type="checkbox"/> Encouraging soldiers to learn and grow <input type="checkbox"/> Responsible for good, bad, right & wrong		<input type="checkbox"/> sustained 100% accountability of equipment valued at over \$100,000 during five tactical moves in combat <input type="checkbox"/> regarded as the company's best driver for safety while accomplishing over 100 convoys during combat operations <input type="checkbox"/> provided expertise and oversight for all company motor stables conducted during Operation Iraqi Freedom	
EXCELLENCE (Exceeds std) <input type="checkbox"/> SUCCESS (Meets std) <input checked="" type="checkbox"/> NEEDS IMPROVEMENT (Some) <input type="checkbox"/> (Much) <input type="checkbox"/>			
PART V - OVERALL PERFORMANCE AND POTENTIAL			
a. RATER. Overall potential for promotion and/or service in positions of greater responsibility. AMONG THE BEST <input checked="" type="checkbox"/> FULLY CAPABLE <input type="checkbox"/> MARGINAL <input type="checkbox"/>		a. SENIOR RATER BULLET COMMENTS <input type="checkbox"/> promote immediately <input type="checkbox"/> send to NCOES at first available opportunity <input type="checkbox"/> outstanding NCO who does what is right for mission and soldiers <input type="checkbox"/> solid NCO through two combat deployments, keep in tactical unit leadership positions <input type="checkbox"/> will excel in the future as a platoon sergeant	
b. RATER. List 3 positions in which the rated NCO could best serve the Army at his/her current or next higher grade. Service School Instructor Operations NCO Team Leader			
c. SENIOR RATER. Overall performance <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		d. SENIOR RATER. Overall potential for promotion and/or service in positions of greater responsibility. <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
1 2 3 4 5 Successful Fair Poor		1 2 3 4 5 Superior Fair Poor	

USAPA V1.01

APPELLATE EXHIBITS

**United States Army Trial Judiciary
Third Judicial Circuit, Fort Bliss, Texas**

UNITED STATES

v.

**SGT Selena M. Salcedo
Company A
519th MI Battalion
Fort Bragg, NC 28310**

Pretrial Order

June 17, 2005

1. Trial for the above case is scheduled to begin at 0830 hours on **3 August 2005**. An Article 39(a) session will be held at 0900 hours on **14 July** to hear all pretrial motions raised by the parties. Pursuant to R.C.M. 801, the following orders are issued to ensure a fair, orderly, and expeditious court-martial:

a. Defense counsel will provide the Trial Counsel and the Court with notice of motions not later than 1700 hours on **30 June**; and notice of plea and forum not later than 1700 hours on **20 July**.

- i. The plea shall include the actual language of the plea, should the accused plead by exceptions, exceptions and substitutions, or to a lesser-included offense.
- ii. Counsel need to consider the issues required to be raised prior to entry of plea (R.C.M. 905(b)(1)-(6) and 906), the issues that must be raised prior to final adjournment of the court-martial (R.C.M. 906 and 907(b)(2)), and the grounds for motions that are not waived (R.C.M. 907(b)(1)). The following issues, if relevant, will be addressed in notice of motions / motions:

- (1) Objections based on defects in the preferral, forwarding, investigation or referral of charges (R.C.M. 905(b)(1)).
- (2) Objections based on defects in the charges and specifications (R.C.M. 905(b)(2) and R.C.M. 907(B)(1)).
- (3) Any motions to suppress evidence (R.C.M. 905(b)(3)).
- (4) Any motions for discovery, or production of evidence or witnesses (to include requests for expert witnesses or investigative assistants) (R.C.M. 701, 703, 905(b)(4), and 906(b)(7)).
- (5) Any motions for severance of charge or accused (R.C.M. 905(b)(5); R.C.M. 906((b)(9)-(10)).

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- (6) Any objections based on denial of individual counsel (R.C.M. 903(b)(6)).
- (7) Any request for continuance (R.C.M. 906(b)(1)).
- (8) Objections based on corrections or defects in the Article 32 Investigation or pretrial advice (R.C.M. 906(b)(3)).
- (9) A request for relief from pretrial confinement (R.C.M. 906(b)(8)).
- (10) A request for a bill of particulars (R.C.M. 906(b)(6)).
- (11) Any request for change of venue (R.C.M. 906(b)(11)).
- (12) Any motions on multiplicity (R.C.M. 906(b)(12)).
- (13) Any evidentiary issues capable of resolution before trial by motion *in limine* (for example, hearsay issues under Mil. R. Evid. 801, 802, 803, 804 and 807; R.C.M. 906 (b)(13)).
- (14) Whether a sanity board will be requested, or whether there is any good faith basis to question the mental capacity or responsibility of the accused (R.C.M. 906(b)(14)).
- (15) Any motion to dismiss:
 - a. On speedy trial grounds (R.C.M. 907(b)(2)(A)).
 - b. On statute of limitations grounds (R.C.M. 907(b)(2)(B)).
 - c. On the grounds of double jeopardy or that the prosecution is otherwise barred (R.C.M. 907(b)(2)(C)-(D)).

b. The Government must strictly comply with the Section III disclosure provisions of MRE 304(d), 311(d) and 321(c). Notice of intent to admit Section III evidence (statements of the accused, evidence seized from the person or property of the accused, or prior identification of the accused) shall be provided to counsel for the accused at the earliest possible time.

c. Defense Counsel will file any motions (supporting any notice of motions filed above), with the Trial Counsel and the Court not later than 1700 hours on **7 July**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court.

d. Trial Counsel provide the Defense Counsel and the Court with any notice of motions no later than 1700 hours on **30 June** and will file any motions (supporting any

notices of motion filed above) no later than 1700 hours on **7 July**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court.

e. Both counsel will file responses to any motions no later than three duty days after receipt of the motion from the opposition, or two duty days before the scheduled date for the hearing on the motion, whichever is earlier.

f. Trial Counsel and Defense Counsel will submit to each other, to the Court and to the Court Reporter, a complete list of witnesses (full names with correct spelling) each party intends on calling in all phases of the trial by 1700 hours on **1 August**.

g. Trial Counsel will provide to the Court, not later than 1700 hours on **1 August**, all Court-Martial Convening Orders, a seating chart, the flyer, electronic copies of the Findings and Sentence Worksheets, and copies of completed panel member questionnaires.

h. Both counsel will provide to the Court no later than 1700 hours on **1 August** a list of proposed voir dire questions. Neither counsel may ask voir dire questions unless previously approved by the Court.

i. Defense Counsel will notify the Trial Counsel of any local military witnesses whose production by the Government the Defense requests, no later than 1700 hours on **27 July**. The Defense Counsel will notify the Trial Counsel of any other witnesses whose production by the Government the Defense requests, no later than 1700 hours on **20 July**. This notification will comply with RCM 703(c)(2). (Counsel are reminded of R.C.M. 703(b) and (c) concerning what must be contained in the request (*United States v. Rockwood*, 52 M.J. 98 at 105 (1999)) and potential penalties for failure to submit the name of a witness in a timely manner. If any witnesses requested by counsel are represented by their own Defense Counsel, counsel shall contact their counsel and determine (1) is the witness a suspect or accused, and (2) will the witness invoke his or her Article 31, UCMJ rights.)

j. Defense Counsel will provide notice of any defenses described in R.C.M. 701(b)(2), in writing, to the Trial Counsel no later than 1700 hours on **20 July**.

2. Questions regarding this order should be directed to the undersigned at 915-568-7225 or sposatom@bliss.army.mil.



MARK P. SPOSATO
LTC, JA
Military Judge

IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
US ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES

v.

SALCEDO, SELENA
SGT, US Army,
Company A,
519th Military Intelligence Battalion,
Fort Bragg, North Carolina, 28310

MOTION FOR A BILL
OF PARTICULARS

16 July 2005

RELIEF REQUESTED

COMES NOW THE ACCUSED, Sergeant Selena Salcedo, by and through detailed defense counsel in the above-captioned case and submits the following Motion for a Bill of Particulars in accordance with Rules for Courts-Martial (RCM) 906(b)(6) regarding Charge I and its Specification in the above referenced case.

BURDEN OF PROOF AND STANDARD OF PROOF

As the moving party, the burden of proof is on the Defense by a preponderance of the evidence. RCM 905(c)(1).

Law

RCM 906(b)(6).
United States v. Williams, 4 U.S.C.M.A. 241 (C.M.R. 1954)
United States v. Bortnovsky, 820 F.2d 572 (2d Cir. 1987).

EVIDENCE

Defense does not request any witnesses, but requests that the Charge Sheet (DD Form 458) be considered as evidence for the purpose of this motion.

ARGUMENT

The Discussion of RCM 906(b)(6) states that the purposes of a Bill of Particulars are: (1) to fully inform the accused of the nature of the charges

APPELLATE EXHIBIT ✓

UNITED STATES v. SERGEANT SELENA SALCEDO

against him so that he can prepare for trial; (2) to avoid or reduce the possibility that he will be surprised during trial; (3) to ensure that he will be protected against double jeopardy; and (4) so that he can determine whether or not a motion for multiplicity is appropriate.

When deciding whether or not to grant a Bill of Particulars the court must decide if "the specification contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet; and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction." US v. Williams, 40 M.J. 379, 382 (C.M.A. 1994).

In accordance with RCM 906(b)(6) the Defense moves this Court for an order directing the Government to furnish a Bill of Particulars with respect to the following matters, particularly setting forth the following:

What is the source of the duty the Government alleges is the basis for the charge?

What is the nature of the inadequate performance that is the basis for the charge?

It is clear that the Specification of Charge I alleges that Sergeant Salcedo was derelict in her duties. What is unclear, however, is the source of the duty imposed upon Sergeant Salcedo and the specific acts that are the basis for the Charge.

This court should consider the fact that there was no pre-trial investigation and the only discovery was in the form of hundreds of unmarked documents. The Second Circuit has cautioned that the prosecution does not fulfill its obligations "merely by providing mountains of documents to defense counsel who are left unguided" as to the nature of the charges pending. United States v. Bortnovsky, 820 F.2d 572, 575 (2d Cir. 1987).

The information the Defense seeks to obtain through this motion is necessary in order to properly prepare for trial and to avoid any undue surprise.

UNITED STATES v. SERGEANT SELENA SALCEDO**RELIEF REQUESTED**

Defense respectfully requests this Court direct the Government to furnish a Bill of Particulars with respect to the aforementioned Charge and Specification.

Respectfully submitted



MARIO J. DEROSI
CPT, JA
Defense Counsel

I hereby certify that a copy of this request was provided to the Military Judge and the United States on 7 July 2005.

**IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
US ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT**

UNITED STATES

v.

SALCEDO, SELENA
SGT, US Army,
Company A,
519th Military Intelligence Battalion,
Fort Bragg, North Carolina, 28310

MOTION IN LIMINE

16 July 2005

RELIEF REQUESTED

COMES NOW THE ACCUSED, Sergeant Selena Salcedo, by and through detailed defense counsel in the above-captioned case and requests that this Court prohibit the Government and all Government witnesses from referring to Dillawar (a.k.a. BT 421) as a/the "victim" pursuant to Rule for Courts-Martial (RCM) 905(b)(3) and 906(b)(13).

BURDEN OF PROOF AND STANDARD OF PROOF

Pursuant to RCM 905(c)(2)(A), the Defense, as moving party, bears the burden of proof by a preponderance of the evidence as to the inadmissibility of the term "victim." However, the Government must prove the admissibility of the remaining evidence by a preponderance of the evidence. United States v. Griffin, 50 M.J. 278 (C.A.A.F. 1999).

STATEMENT OF FACTS

Sergeant Salcedo is charged with committing offenses against the person of BT 421. It is anticipated that the Government counsel and Government witnesses may refer to BT 421 as "victim" throughout the trial.

LAW

Taylor v. Kentucky, 436 U.S. 478, 485 (1978)
Estelle v. Williams, 425 U.S. 501, 503, (1976)
United States v. Lincoln, 277 F.3d 1112 (2002)

APPELLATE EXHIBIT

VI

UNITED STATES v. SERGEANT SELENA SALCEDO

United States v. Allison, 599 F. Supp. 958 (1985)
United States v. Kaiser, 58 M.J. 146 (C.A.A.F. 2003)
People v. Kanan, 186 Colo. 255; 526 P.2d 1339 (Colo. 1974)
Jackson v. State, 600 A.2d 21 (Del 1991)
People v. Wright, 182 Colo. 87; 511 P.2d 460 (1973)
18 USCS § 3663(a)(2) (2004)
Article 51(c)(1), UCMJ, 10 U.S.C. § 51(c)(1) (2002)

WITNESSES/EVIDENCE

The inadmissibility of the term "victim" as applied to a complaining witness is a question of law for the military judge and no witnesses or evidence are required or requested for this determination.

ARGUMENT

Defense requests that the Court suppresses all reference or use by the Government, or the Court, of the term "victim", as well as order the Government's witnesses to refrain from referring to BT 421 as "victim". In the instant case, the Government has charged Sergeant Salcedo with maltreatment and assault upon the body of BT 421. Sergeant Salcedo denies these charges.

A. The Government's use of the term "victim" violates Sergeant Salcedo's statutory right to a presumption of innocence

According to Art 51(c)(1), of the Uniform Code of Military Justice (UCMJ), Sergeant Salcedo has the right to have all court-martial members instructed as to her presumption of innocence. According to the court, the presumption of innocence flows from the fundamental right to a fair trial. United States v. Kaiser, 58 M.J. 146, 150 (C.A.A.F. 2003).

The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under all systems of criminal justice in the United States. Estelle v. Williams, 425 U.S. 501, 503, (1976). As reflected in the language of Article 51(c)(1) UCMJ, the presumption of innocence is directly related to the requirement that guilt be established by legal and competent evidence beyond a reasonable doubt. As the Kaiser court stated, "Put another way, the presumption of innocence embodies the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.'" United States v. Kaiser, 58 M.J. 146, 150 (C.A.A.F. 2003), quoting Taylor v. Kentucky, 436 U.S. 478, 485 (1978) (emphasis added). "The presumption of innocence, coupled with proof of each element charged beyond a reasonable

UNITED STATES v. SERGEANT SELENA SALCEDO

doubt, provides the foundation for our system of criminal justice." People v. Kanan, 186 Colo. 255; 526 P.2d 1339 (Colo. 1974).

Under the Victim Witness Protection Act, Congress defined the term "victim" as "a person directly and proximately harmed as a result of the commission of an offense for which restitution maybe ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct". 18 USCS § 3663(a)(2) (See also, United States v. Lincoln, 277 F.3d 1112 (2002) and United States v. Allison, 599 F. Supp. 958 (1985) (citing 18 U.S.C. § 3579(a)(1) "victim is generally defined as someone who suffers direct or threatened physical, emotional or financial harm as the result of the commission of a crime". In a sexual assault case where the defendant asserts consent, references to the accuser as the "victim" necessarily convey the speaker's opinion that a crime in fact occurred, thereby evincing a bias against the defendant and violating the presumption of innocence. Jackson v. State, 600 A.2d 21, (Del 1991).

In the instant case, by allowing the Government to refer to BT 421 as a "victim" before there is an official finding of guilt, the court would allow Sergeant Salcedo's criminal liability to be presupposed on "other circumstances not adduced as proof at trial." The fact finder should determine the issue as to whether BT 421 was directly harmed by Sergeant Salcedo's alleged criminal conduct and the Government should be precluded from preliminarily making this presumption.

B. The Government's use of the term "victim" is unfairly prejudicial under MRE 403


An analysis under Military Rules of Evidence (MRE) 403 reveals that it would be highly prejudicial for the court members to hear the complaining witness referred to as "victim" by Government witnesses and the trial counsel. Such references by witnesses and trial counsel would be tantamount to commenting on their credibility, i.e., that they believe the complaining witness's version of events and therefore that he is a "victim."

There is no probative value in calling the complaining witness a "victim." The term does not assist the court members in any fashion in determining the facts of this case. However, it is unfairly prejudicial because--at every utterance--it lends credibility to the Government's version of events. "It is unprofessional conduct for the prosecutor to express his personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant." People v. Wright, 182 Colo. 87, 511 P.2d 460 (1973). Since there is no probative value and the unfair prejudice is extreme, the Defense motion should be granted.

UNITED STATES v. SERGEANT SELENA SALCEDO**CONCLUSION**

Based on the above, Defense respectfully requests that this Court prohibit the Government from using the term "victim" in reference to BT 421.

Respectfully submitted



MARIO J. DEROSI
CPT, JA
Defense Counsel

I hereby certify that a copy of this request was provided to the Military Judge and the United States on 7 July 2005.

**IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
US ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT**

UNITED STATES

v.

SALCEDO, SELENA
SGT, US Army,
Company A,
519th Military Intelligence Battalion,
Fort Bragg, North Carolina, 28310

MOTION IN LIMINE

16 July 2005

RELIEF REQUESTED

COMES NOW THE ACCUSED, Sergeant Selena Salcedo, by and through detailed defense counsel in the above-captioned case and moves this Court, pursuant to the 6th Amendment of the United States Constitution, Military Rule of Evidence (MRE) 804, and M.R.E. 807, to exclude any and all out-of-court statements made by Dilawar (a.k.a. BT 421) offered by the Government under the auspice of M.R.E. 804 and M.R.E. 807.

BURDEN OF PROOF AND STANDARD OF PROOF

As the moving party, the burden of proof is on the Defense by a preponderance of the evidence. Rules for Courts-Martial (RCM) 905(c)(1), & (2)(A).

LAW

MRE 401

MRE 402

MRE 801

MRE 804

MRE 807

FRE 807

Maryland v. Craig, 497 U.S. 836 (1990)

California v. Green, 399 U.S. 149 (1970)

Mattox v. United States, 156 U.S. 237 (1895)

Ohio v. Roberts, 448 U.S. 56 (1980)

Idaho v. Wright, 497 U.S. 805 (1990)

APPELLATE EXHIBIT VII

UNITED STATES v. SERGEANT SALENA SALCEDO

U.S. v. Love, 592 F.2d 1022 (8th Cir. 1979)
U.S. v. Bailey, 581 F.2d 341 (3d Cir. 1978)
U.S. v. Hsia, 87 F. Supp 2d 10 (D.D.C. 2000)
U.S. v. McPartlin, 595 U.S. F.2d 1321 (7th Cir. 1979)
U.S. v. Chapman, 866 F.2d 1326 (11th Cir. 1989)

EVIDENCE

Defense does not request any witnesses, but requests that the sworn statements of Mr. Ahmad Ahmadzai, dated 17 December 2002 and 15 November 2003 be considered as evidence for the purpose of this motion.

ARGUMENT

The United States Constitution guarantees, "in all criminal prosecutions, [that an] accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. Amend VI. The Confrontation Clause ensures the reliability of evidence against a defendant by subjecting it to rigorous testing in an adversary proceeding. Maryland v. Craig, 497 U.S. 836, 845 (1990). This confrontation right forces all witnesses to "submit to cross-examination, the 'greatest legal engine ever invented for the discovery of truth.'" California v. Green, 399 U.S. 149, 158 (1970) (footnote and citation omitted). At the most fundamental level, the Confrontation Clause compels the witnesses to "stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief." Mattox v. United States, 156 U.S. 237, 242-43 (1895).

"Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). These statements are generally inadmissible due to their lack of reliability. Hearsay statements are sufficiently dependable to allow their untested admission against an accused only when (1) the statements fall "within a firmly rooted hearsay exception" or (2) they contain "particularized guarantees of trustworthiness" such that adversarial testing would be expected to add little, if anything to their reliability. Ohio v. Roberts, 448 U.S. 56, 66 (1980).

Statements are admissible under a "firmly rooted" hearsay exception when they fall within a hearsay category whose conditions have proven over time "to remove all temptation to falsehood, and to enforce as strict an adherence to the truth as would the obligation of an oath" and cross-examination at trial. Mattox v. United States, 156 U.S. 237, 244 (1895).

UNITED STATES v. SERGEANT SALENA SALCEDO

In Idaho v. Wright, 497 U.S. 805, 820 (1990), the Supreme Court held that the appropriate inquiry for evaluating whether there are "particularized guarantees of trustworthiness" must focus on the "totality of the circumstances that surround the making of the statement and that render the declarant particular worthy of belief." Id. Thus, unless the circumstances under which the statement was made provided "a basis for rebutting the presumption that a hearsay statement is not worthy of reliance at trial, the Confrontation Clause requires exclusion of the out-of-court statement. Id., at 821. The court may not consider evidence that merely corroborates the truth of the hearsay statement, such as other evidence of a defendant's guilt when ruling on whether the statement has particularized guarantees of trustworthiness. Id., at 822-23.

A statement under belief of impending death is an exception to the hearsay rule, and thus provides in pertinent part:

The following [is] excluded by the hearsay rule if the declarant is unavailable as a witness:

(2) Statement under belief of impending death. In a prosecution for homicide or for any offense resulting in the death of the alleged victim, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death. MRE 804(b)(2).

In the present case, the Government may seek to introduce statements made by BT 421, since he is unavailable to testify at trial. The Government may take the position that BT 421's statements were made under the belief of impending death because they concern possible leg and knee injuries which may have resulted in BT 421's death. The Government may intend to offer these statements in its prosecution against Sergeant Salcedo. Furthermore, the Government may also seek to introduce said statements under MRE 807.

BT 421's statements were not made under the belief of impending death, but are rather garden variety hearsay. First, Sergeant Salcedo has not been charged with either homicide or an offense resulting in BT 421's death. The Government may argue that the alleged assault and maltreatment contributed to BT 421's death. However, the Defense is not aware of any evidence sufficient to draw such a conclusion. Second, none of BT 421's statements were made under the belief that his death was imminent. At least there is nothing in the Government's discovery to suppose that BT 421 was under the belief that he was dying. Finally, statements made by BT 421 that his legs and knees hurt does not satisfy that rule, which mandates that the statements must concern the cause of what is believed to be the declarant's impending death. BT 421 was not aware of his impending death on 8 December 2002, and he certainly was not aware of the cause of his death. Therefore, statements made by BT 421 are inadmissible under MRE 804(b)(2).

UNITED STATES v. SERGEANT SALENA SALCEDO

Nonetheless, BT 421's statements fail the residual trustworthy test. The statements at issue were not made under the belief of impending death. Therefore, the Government must show that the statements "contain particularized guarantees of trustworthiness such that adversarial testing would be expected to add little, if anything to their reliability." Ohio v. v. Roberts, 448 U.S. 56, 66 (1980).

MRE 807 provides in pertinent part:

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

MRE 807 is a relatively new rule and there is no case law on point. However, Federal Rule of Evidence (FRE) 807, the federal equivalent of M.R.E. 807, became effective on 1 December 1997. The contents of the former catch-all hearsay exceptions found in Rule 803(24) and Rule 804(b)(5) were moved to the new Rule 807. As the Advisory Committee Note to this 1997 Amendment explains, "[t]he contents of Rule 803(24) and Rule 804(b)(5) have been combined and transferred to a new Rule 807. This was done to facilitate additions to Rule 803 or 804. No change in meaning is intended." The Conference Report to the former Rules 803(24) and 804(b)(5) makes clear that Congress intended that these exceptions would be used with restraint. It states:

It is intended that the residual hearsay exceptions will be used very rarely, and only in exceptional circumstances. The committee does not intend to establish a board license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in rules 803 and 804(b). The residual exceptions are not meant to authorize major judicial revisions of the hearsay rule.

S. Rep. No. 93-1277 (1974), reprinted in United States Code Congressional and Administrative News p. 7051, 7066; see also U.S. v. Love, 592 F.2d 1022, 1025 (8th Cir. 1979) ("other exceptions" provision of rule concerning hearsay exceptions was not intended to create broad new hearsay exception, but rather the intent of Congress was that it would be used very rarely and only in exceptional circumstances.); U.S. v. Bailey, 581 F.2d 341, 347 (3d Cir. 1978).

Statements squarely within established hearsay exceptions possess the 'imprimatur of judicial and legislative experience' . . . and that fact must heavily

UNITED STATES v. SERGEANT SALENA SALCEDO

weigh in our assessment of their reliability for constitutional purposes . . . Hearsay statements admitted under the residual exception, almost by definition, therefore do not share the same tradition that supports the admissibility under a firmly rooted hearsay exception. Idaho v. Wright, 497 U.S. 805, 817 (1990) (citations omitted).

Like FRE 807, MRE 807 also states that the statement must have "circumstantial guarantees of trustworthiness" equivalent to those in the specific hearsay exceptions. To determine reliability, "a trier must be able to determine the credibility of the extra-judicial declarant when he made the statement attributed to him, and to do this the statement must be viewed as part of the other evidence of the case." Such factors as the character of the statement, whether it is written or oral, the relationship of the parties, the probable motivation of the declarant in making the statement, and the circumstances under which it was made must be assessed. See 4 Weinstein & Berger, Weinstein's Federal Evidence Section 803.30[2][b] (2d ed) (citation omitted); see also U.S. v. Hsia, 87 F. Supp 2d 10 (D.D.C. 2000) (grand jury testimony of absentee witnesses regarding violations of Federal Election Campaign Act did not have indicia of reliability and trustworthiness required for admission at trial under the residual exception to the hearsay rule).

Two other factors may be relevant in appraising the trustworthiness of a statement. First, is the declarant available and testifying at trial? If so, the hearsay concerns are substantially reduced. See, e.g., U.S. v. McPartlin, 595 U.S. F.2d 1321, 1350-51 (7th Cir. 1979) (degree of reliability required is "greatly reduced where declarant is available for cross). A second factor courts sometimes rely on is corroboration. If other evidence corroborates the hearsay statement, some courts have considered that other evidence in evaluating the trustworthiness of the statement. See, e.g., U.S. v. Chapman, 866 F.2d 1326, 1330-33 (11th Cir. 1989). The Supreme Court's decision in Idaho v. Wright, 497 U.S. 805 (1990), however, has cast major doubt on the validity of this factor when the evidence is being offered against a defendant in a criminal case.

Wright held that a court may not consider corroborative evidence of a defendant's guilt when evaluating a statement's trustworthiness under the Confrontation Clause. More specifically, in Wright, the Court first found that the catch-all exception was not "firmly rooted" within the meaning of the confrontation clause. Id., at 817. Thus, to avoid confusion under that clause, the government must show that the statement had "particularized guarantees of trustworthiness." The Wright Court concluded that when evaluating the trustworthiness of the statement, the trial court could consider only the statement itself and the circumstances surrounding its making. It could not consider other evidence corroborating the defendant's guilt. "The circumstantial guarantees of trustworthiness on which the various specific exceptions to the hearsay rule are based are those that existed at the time the statement was made and do not

UNITED STATES v. SERGEANT SALENA SALCEDO

include those that may be added by using hindsight." *Id.*, at 820 (citations omitted).

Although technically the constitutional standard is not necessarily identical to the standard for trustworthiness under the catch-all exception, "it makes no sense to suppose a judge could apply one standard to decide whether a statement offered against a defendant is trustworthy enough to satisfy the catchall and another to decide whether it is trustworthy enough to satisfy the confrontation clause." Mueller and Kirkpatrick, Evidence, Section 8.65 (1995).

MRE 807 states that the exception applies only if the statement is "offered as evidence of a material fact." While all evidence must be admissible under MRE 401 and 402, arguably since Congress specifically included this language in the rule, "material" must mean that the point to be proven must be important rather than simply relevant. See Mueller & Kirkpatrick, Evidence, Section 8.65 (1995). "If the point to be proved is already strongly supported and the proffered hearsay would add little to what is already there, or it would waste or consume time out of proportion to its apparent value, it does not satisfy the material fact requirement." *Id.*

Suffice it to say that BT 421's statements are not material. The pain BT 421 may or may not have felt on 8 December 2002 is not only immaterial, but completely irrelevant to the charges. Whether or not BT 421 felt discomfort in his legs and knees has nothing to do with whether Sergeant Salcedo was derelict in her duties or committed an assault upon him. The Government may argue that BT 421's statements are material to the pending charge of maltreatment. However, whether Sergeant Salcedo's behavior did constitute maltreatment is an objective test based on the totality of the circumstances. See DA PAM 27-9, paragraph 3-16-4. Thus, the discomfort BT 421 may have felt is not material to the maltreatment charge.

UNITED STATES v. SERGEANT SALENA SALCEDO**RELIEF REQUESTED**

Defense respectfully requests this Court exclude any and all out-of-court statements made by BT 421 offered by the Government under the auspice of M.R.E. 804 and M.R.E. 807.

Respectfully submitted



MARIO J. DEROSI
CPT, JA
Defense Counsel

I hereby certify that a copy of this request was provided to the Military Judge and the United States on 7 July 2005.

**IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
US ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT**

UNITED STATES

v.

SALCEDO, SELENA
SGT, US Army,
Company A,
519th Military Intelligence Battalion,
Fort Bragg, North Carolina, 28310

MOTION IN LIMINE

16 July 2005

RELIEF REQUESTED

COMES NOW THE ACCUSED, Sergeant Selena Salcedo, by and through detailed defense counsel in the above-captioned case and moves this Court, pursuant to Military Rule of Evidence (MRE) 401, 402 and 403, to exclude the Government's use of any and all references to the possible abuse and or death of Dillawar (a.k.a. BT 421), including the testimony of Doctor Elizabeth Rouse.

BURDEN OF PROOF AND STANDARD OF PROOF

As the moving party, the burden of proof is on the Defense by a preponderance of the evidence. Rules for Courts-Martial (RCM) 905(c)(1), & (2)(A).

LAW

MRE 401

MRE 402

MRE 403

MRE 404

United States v. Griffin, 50 M.J. 278 (1999)

United States v. Simmons, 48 M.J. 193 (1998)

United States v. Wright, 53 M.J. 476 (C.A.A.F. 2000).

APPELLATE EXHIBIT V III

UNITED STATES v. SERGEANT SELENA SALCEDO**EVIDENCE**

Defense does not request any witnesses, but requests that the Court consider the photographs from the autopsy of BT 421.

ARGUMENT

Evidence of the possible abuse and or death of BT 421 are logically and legally irrelevant. The Court of Appeals for the Armed Forces has held that for evidence to be admitted, it must be both logically (MRE 401 and 402) and legally (MRE 403) relevant at trial. See, e.g., United States v. Griffin, 50 M.J. 278, 283 (1999); United States v. Simmons, 48 M.J. 193, 196 (1998). Therefore, this Court should prohibit the Government from making any reference to such evidence.

The fact that BT 421 may or may not have been abused is logically irrelevant. There is absolutely no evidence that would suggest that any of BT 421's injuries were caused by Sergeant Salcedo. Several individuals were in contact with BT 421 before and after the incident that took place in December 2002. In fact, several soldiers have been charged with abusing BT 421 within the same period of time.

Rule 401 defines logically relevant evidence as "evidence ... having any tendency and reason to prove or disprove any disputed fact that is of consequence to the determination of the action." Whether BT 421 was abused by someone unidentified in the charge sheet is neither a disputed fact in this case nor of any consequence to allegations in the charges. Also, since there is no connection between what the Government alleges and the evidence the Government may offer, to include the testimony of Doctor Rouse, there is no logical explanation for its use. Therefore, the Court should view such evidence as logically irrelevant for trial. In accordance with Rule 402, evidence that is not logically relevant is not admissible.

If, however, this Court determines that said evidence is logically relevant, the military judge must apply the balancing test for legal relevance under which evidence may be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members." MRE 403. In conducting the MRE 403 balancing test a military judge should consider the following factors: the strength of the proof of the prior act; the probative weight of the evidence; the potential to present less prejudicial evidence; the possible distraction of the fact-finder; the time needed to prove the prior conduct; the temporal proximity of the prior event; the frequency of the acts; the presence of any intervening circumstances; and the relationship between the parties. United States v. Wright, 53 M.J. 476, 482 (C.A.A.F. 2000).

UNITED STATES v. SERGEANT SELENA SALCEDO

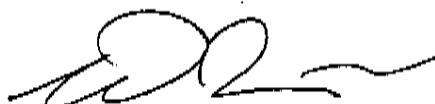
Applying the above factors to the instant case, the Court should consider the following: the evidence does not establish a causal connection between Sergeant Salcedo and BT 421, several individuals were in contact with BT 421 before and after the incident in December 2002, the evidence lacks the power to persuade the fact finder as to the truth of the allegations set forth in the charges; there is plenty evidence that is much less prejudicial to Sergeant Salcedo that the Government can offer in an attempt to meet their burden of proof; the evidence has the potential to distract the fact finder as to the issues in this matter with other potential cases arising out of Bagram, Afghanistan; and a substantial amount of time and money would be needed to produce the proper witnesses to offer said evidence for the witnesses are located all over the United States.

In conclusion, evidence that would suggest that BT 421 was abused, and later died, would be unfairly prejudicial to Sergeant Salcedo, cause confusion as to the issues, and be misleading to the members, and should therefore be inadmissible at trial.

RELIEF REQUESTED

Defense respectfully requests this Court prohibit the Government from using any evidence that refers to the possible abuse and or death of BT 421.

Respectfully submitted



MARIO J. DEROSI
CPT, JA
Defense Counsel

I hereby certify that a copy of this request was provided to the Military Judge and the United States on 7 July 2005.

IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
U.S. ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES)	MOTION FOR JUDICIAL
)	NOTICE
V.)	
)	
SELENA M. SALCEDO)	
SGT, U.S. Army)	
HQB, USAADACENFB, Fort Bliss, Texas)	18 JULY 2005

I. RELIEF SOUGHT

COMES NOW the Government, and requests that this Honorable Court take judicial notice of Army Field Manual 34-52, Army Regulation 190-8, and White House Memorandum 7 February 2002.

II. BURDEN

The military judge shall take judicial notice if requested by a party and supplied with the necessary information. R.C.M. 201(d). Judicial notice may be taken at any stage of the proceeding. R.C.M. 201(f).

III. FACTS

FM 34-52, "Intelligence Interrogation," promulgated by Headquarters, Department of the Army on 28 September 1992, addresses Army interrogation tactics, techniques, and procedures. Army Regulation 190-8, "Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees," promulgated by Headquarters, Departments of the Army, Navy, Air Force, and Marine Corps on 1 October 1997, is a joint service regulation governing the treatment of personnel captured or detained during military operations. The White House Memorandum of 7 February 2002 was signed by the President and requires humane treatment of detainees.

IV. EVIDENCE

1. The above-referenced documents.

V. LAW

1. M.R.E. 201 and 201A
2. M.C.M. Article 92(3)
3. United States v. Townsend, 49 M.J. 175 (1998)

VI. ARGUMENT

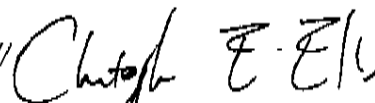
FM 34-52 qualifies for judicial notice of adjudicative facts, because it is an Army Field Manual not subject to reasonable dispute—"it is generally known in the area pertinent to the event" (Military Intelligence interrogations) (M.R.E. 201(b)). Additionally, it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." (M.R.E. 201 (b)). While the government submits the entire document for the Court's review, the government requests specific judicial notice of at least the information contained on pages 1-6 through 1-15 (prohibiting the use of force and any form of torture), 3-13 through 3-20 (describing proper interrogation procedure), and Appendix D (which reiterates treaty and other legal requirements to humanely treat interrogation subjects).

AR 190-8 and the White House Memo qualify for judicial notice of law under M.R.E. 201A. These documents are "laws and regulations of the United States" within the meaning of United States v. Townsend, 49 M.J. 175 (1998). The government submits these documents in their entirety, while requesting specific judicial notice of at least the AR 190-8 directives contained at sections 1-5 (general protection policy); 3-7(e)(1) (forbidding improper punishment, cruelty, torture); and 6-11 (prohibiting inhumane or brutal punishment); and paragraph 3 of the White House Memo.

VII. CONCLUSION

FM 34-52, AR 190-8, and the White House Memorandum of 7 February 2002 satisfy M.R.E. 201 and 201A requirements for being granted judicial notice. The government respectfully requests that this Honorable Court grant the same.

I have served the foregoing on CPT Mario DeRossi in person, this 18th day of July, 2005.

//SIGNED// 
CHRISTOPHER E. ELLIS
CPT, JA
Trial Counsel

IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
U.S. ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES

V.

SELENA M. SALCEDO

SGT, U.S. Army

HQB, USAADACENFB, Fort Bliss, Texas

) RESPONSE TO MOTION IN
) LIMINE
)
)
)
)

) 11 JULY 2005

I. RELIEF SOUGHT

COMES NOW the Government, and requests that a Defense Motion In Limine to "exclude any and all out-of-court statements made by Dilawar (a.k.a. BT 421) offered by the Government under the auspice of M.R.E. 804 and M.R.E. 807" be denied.

II. BURDEN

The moving party, in this case the Defense, must prove any factual issues by a preponderance of the evidence. See Manual for Courts-Martial, R.C.M. 905(c)(1).

III. FACTS

This Court has previously been apprised of the 17 December 2002 and 15 November 2003 statements by Mr. Ahmad Ahmadzai, a civilian interpreter employed at the Bagram Collection Point. During an interrogation conducted by SGT Salcedo on or about 8 December 2002, Mr. Ahmadzai claims in those statements that he witnessed the accused, accompanied by SPC Walls, commit acts of abuse on Dilawar. According to the first statement, Dilawar, as he was being abused, stated, *inter alia*: That he was tired; that the MI personnel were beating him; complained of pain; and said that he was beaten by the personnel downstairs. Mr. Ahmadzai, when asked about his reaction to the events, related to CID that he was "really shocked" at the events that transpired during the interrogation, and that he immediately lodged a complaint with the NCOIC, SSG Loring. According to the second statement, Mr. Ahmadzai states that Dilawar: Denied involvement in criminal activities or attacks on Americans; complained that he could not hold his hands up any longer; kept complaining about discomfort; stated that a position that the accused had Dilawar assume against the wall hurt him; asked for help; complained that the accused and SPC Walls were punishing him; and said the guards were also beating him. Mr. Ahmadzai again related to CID that Dilawar's treatment was "shocking."

IV. EVIDENCE

1. 17 December 2002 statement of Mr. Ahmad Ahmadzai
2. 15 November 2003 statement of Mr. Ahmad Ahmadzai

V. LAW

1. M.R.E. 803
2. M.R.E. 807
3. United States v. Brown, 48 M.J. 578 (1998)
4. United States v. Arnold, 25 M.J. 129 (C.M.A. 1987)
5. United States v. Feltham, 58 M.J. 470 (2003)
6. California v. Green, 399 U.S. 149, 158 (1970)
7. United States v. Pollard, 38 M.J. 41 (1993)
8. United States v. Kelley, 45 M.J. 275
9. United States v. Graf, 35 M.J. 450, 465 (CMA 1992)
10. United States v. Donaldson, 58 M.J. 477 (2003)
11. United States v. Wellington, 58 M.J. 420 (2003)

VI. ARGUMENT

This Court should not exclude testimony or evidence of Dilawar's statements made to, or in the presence of, Mr. Ahmad Ahmadzai, who is expected to testify at trial. The government believes the Defense motion to "exclude any and all" such statements to be broadly inclusive; hence, the Defense appears to be arguing that none of these statements should be allowed into evidence because the Defense contends they are inadmissible hearsay. However, the Defense motion omits reference to M.R.E. 803. These well known hearsay exceptions are highly persuasive, even dispositive, of the issue at bar. The government also cites M.R.E. 807 as an alternate means of admission.

A. M.R.E. 803

M.R.E. 803 is titled: "Hearsay exceptions, availability of declarant immaterial." Black's Law Dictionary, Fifth Edition, defines immaterial: "Not material, essential, or necessary; not important or pertinent; not decisive; of no substantial consequence; without weight; of no material significance." Thus, Dilawar's (un)availability is not necessary. Although Dilawar is distinctly unavailable, his statements are not. Introduced through Mr. Ahmadzai, the statements are admissible, provided that they fit into an M.R.E. 803 exception.

M.R.E. 803 lists several exceptions to the hearsay rule. For purposes of the case at bar, the government directs the Court's attention to the first three exceptions so listed:

- (1) Present sense impression. A statement describing or explaining an event or condition made while declarant was perceiving the event or condition or immediately thereafter.

- (2) Excited utterance.—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)...

Dilawar's complaints occurred spontaneously during an interrogation. While this event was happening, Dilawar was speaking to Ahmadzai about his personal knowledge of the event. Further, the statements describe and explain the event as Dilawar experienced it. Timeliness is not an issue. Dilawar's statements qualify as a present sense impression of the event which in this case was the interrogation. Interrogations, even more than other conversations, qualify as "events." United States v. Brown, 48 M.J. 578 (1998); (involving a CID interrogation of a criminal suspect; however, the purpose of a Military Intelligence interrogation is the same, to gather reliable and important information). As such, the statements are admissible.

Similarly, Dilawar's complaints occurred during a startling event that was causing stress—he was being beaten and forced to maintain painful positions. A beating is startling. Maintaining painful positions causes stress. Witnessing a beating and the painful positions is also startling. The related statements qualify as excited utterances because they satisfy the three prong analysis in the seminal case of United States v. Arnold, 25 M.J. 129 (C.M.A. 1987). As recently reviewed by CAAF in United States v. Feltham, 58 M.J. 470 (2003), this test requires: 1) the statement must be spontaneous, excited, or impulsive rather than the product of reflection or deliberation; 2) the event prompting the utterance must be startling; and 3) the declarant must be under the stress of excitement caused by the event. (at 474). As stated above, Dilawar's statements as related by Ahmadzai so qualify.

Dilawar's complaints further describe his mental, emotional, and physical condition. He said he was tired, in pain; he asked for help, stated he was not involved in criminal or other violent acts, and complained about being punished. All of this information was relayed through Ahmadzai, the only person who spoke Dilawar's dialect. Thus, the statements directly reflect Dilawar's mental, emotional and physical condition.

B. M.R.E 807

This Court should recognize that the "Residual exception" rule applies to Dilawar's statements because they are evidence material to the issues in this case, more probative than any other evidence which can be reasonably obtained, and admission would serve the general purpose of the Military Rules of Evidence and be in the interests of justice.

The accused's charges, which include Cruelty and Maltreatment, as well as Assault Consummated by Battery, essentially rest upon evidence of offensive touching and conduct toward Dilawar. Thus, evidence of maltreatment and assault are material to

charges thereof. It is patently obvious that Dilawar's contemporaneous complaints about how the accused was visiting pain and abuse upon him are material to whether or not the accused is guilty of inflicting the pain and abuse.

Similar analysis should be applied to the other factors. Dilawar's statements, taken in their entirety, allege that the accused's conduct was a beating; that the conduct was actually causing pain; and that Dilawar asked for help. These statements are more probative than any other reasonably available evidence on the point of whether the accused's conduct amounted to offensive touching. The person who experienced the physical contact is in a singular position to opine on whether the contact was offensive. The government would prefer to have Dilawar's live testimony, but his death of course precludes that. The best available evidence are the statements that Dilawar made to the only person who could understand what he was saying—the interpreter, Ahmadzai.

Further, the admission of this evidence would be in the interests of justice in that it directly supports the criminal charges against the accused. Any concerns over reliability are best addressed at trial. Ahmadzai will be present, subject to cross examination, which, as the Defense points out, is the "greatest legal engine ever invented for the discovery of truth." California v. Green, 399 U.S. 149, 158 (1970). Indeed, it is expected that Ahmadzai may be the *only* person who was present at the interrogation who will testify.

Contrary to the curious assertion made in the Defense motion, there is ample case law to assist interpretation of the residual hearsay exception. Primarily, "a military judge has considerable discretion in determining whether to admit residual hearsay." United States v. Pollard, 38 M.J. 41, 49 (1993). Further, the Court in United States v. Kelley, 45 M.J. 275 at 281 provided a succinct review of analyzing residual hearsay:

"The rules of evidence contemplate that a military judge will be 'a real judge,' exercising discretion rather than slavishly applying mathematical formulae. See United States v. Graf, 35 M.J. 450, 465 (CMA 1992) ('In our view, the Uniform Code of Military Justice contemplates that a military judge be a real judge as commonly understood in the American legal tradition.'). Our holding favors neither prosecution nor defense. It favors the proponent of evidence, either prosecution or defense, by broadening the number of factors that may be considered. A holding favoring admissibility is consistent with the purposes of the rules. See Mil.R.Evid. 102, Manual for Courts-Martial, United States (1995 ed.) ('These rules shall be construed . . . to the end that the truth may be ascertained'); Mil.R.Evid. 402 ('All relevant evidence is admissible, except as otherwise provided . . .')."

A cursory examination of the voluminous case law available on this subject reveals that there is a long, rich history of military legal analysis on residual hearsay. For example, CAAF decided three cases regarding M.R.E. 807 in 2003 alone (United States v. Donaldson, below; United States v. Holt, and United States v. Wellington, below).

United States v. Donaldson, 58 M.J. 477 (2003) identified four primary indicia of reliability: the mental state of the declarant, the spontaneity of the statement, the use of suggestive questioning, and whether the statement can be corroborated. As applied to this case, the statements meet every burden of this test. There is no reason to believe that Dilawar was not of a competent mental state when he made his statements to Ahmadzai; the statements were spontaneous, occurring during a stressful interrogation setting; there was no suggestive questioning on the part of the interrogators that would lead Dilawar to imply he was being abused; and Dilawar's statements appear to be corroborated by Ahmadzai's own recollection and also by some of the available medical evidence (such as damage to Dilawar's body apparent in autopsy photographs).

United States v. Wellington, 58 M.J. 420 (2003) stands for the proposition that residual hearsay is admissible under circumstances that satisfy both a reliability and a necessity test. There, as here, the original declarant died. CAAF satisfied the first (reliability) prong by analyzing the statements to see if they met or approached the inherent reliability standard of enumerated hearsay exceptions. In this case, Dilawar's statements arguably meet three enumerated exceptions, as previously stated and explained above in the discussion on M.R.E. 803. In satisfying the second (necessity) prong, CAAF concluded that "there is no other more probative evidence of the fact." (at 425). Obviously, Dilawar's death makes him unavailable. Further, there is no other more probative evidence of the fact (that Dilawar was subjected to unlawful, offensive physical contact) than Dilawar's own words, spoken to the interpreter as he was experiencing his ordeal. There is only one person alive who witnessed, heard, and understood Dilawar's statements during the 8 December 2002 interrogation—Mr. Ahmadzai. Necessity dictates that Dilawar's words be admitted.

VII. CONCLUSION

This Court should allow for the admission of Dilawar's statements through Mr. Ahmadzai's testimony. M.R.E. 803 allows for one or more applicable hearsay exceptions. M.R.E. 807 further provides the residual hearsay exception. The government requests that the Defense motion be denied.

I have served the foregoing on CPT Mario DeRossi via email to Mario.derossi@us.army.mil, this 11th day of July, 2005.

//SIGNED//

CHRISTOPHER E. ELLIS
CPT, JA
Trial Counsel

IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
U.S. ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES

V.

SELENA M. SALCEDO

SGT, U.S. Army

HQB, USAADACENFB, Fort Bliss, Texas

) RESPONSE TO MOTION IN LIMINE

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11 JULY 2005

I. RELIEF SOUGHT

COMES NOW the Government, and requests that a Defense Motion In Limine to "exclude the Government's use of any and all references to the possible abuse and or death of Dilawar (a.k.a. BT 421), including the testimony of Doctor Elizabeth Rouse" be denied.

II. BURDEN

The moving party, in this case the Defense, must prove any factual issues by a preponderance of the evidence. See Manual for Courts-Martial, R.C.M. 905(c)(1). The legal standard under M.R.E. 403 requires that the danger of unfair prejudice must *substantially* outweigh the evidence's probative value.

III. FACTS

SGT Selena M. Salcedo was assigned to the Bagram Collection Point in December 2002, as a member of A Company, 519th Military Intelligence Battalion. SGT Salcedo was assigned duties as an interrogator. SGT Salcedo is charged with violating UCMJ Articles 92 (Dereliction of Duty), 93 (Cruelty and Maltreatment), 107 (False Official Statement) and 128 (Assault Consummated by Battery). The statements of two witnesses, among others, support these charges. SPC Glendale C. Walls, in his 17 December 2002 statement, recounted how SGT Salcedo "...would push down on his (Dilawar's) shoulders to make him go to his knees. She also grabbed his ears once and lifted him up." (p.2). Further, SGT Salcedo would "place her foot in between his knees." (p.2). Mr. Ahmad Ahmadzai, a civilian contract interpreter, told CID agents in his 17 December 2002 statement that "Salina (sic) grabbed the detainee's (Dilawar's) beard and behind his ears with her hands; she kicked him in the genital area; and punched the detainee in the chest." In his 15 November 2003 statement, Mr. Ahmadzai asserted that, in reference to SGT Salcedo and SPC Walls' conduct: "They weren't questioning him. They were roughing him up."

IV. WITNESSES/EVIDENCE

1. 17 December 2002 statement of SPC Glendale C. Walls.
2. 17 December 2002 statement of Mr. Ahmad Ahmadzai.
3. 15 November 2003 statement of Mr. Ahmad Ahmadzai.

V. LAW

1. Military Rules of Evidence 101(b)
2. Military Rules of Evidence 401-403
3. Old Chief v. United States, 519 U.S. 172, 180 (1997)
4. United States v. George, 40 M.J. 540, 543 (C.M.R. 1994)
5. United States v. Dimberio, 56 M.J. 20, 24 (C.A.A.F. 2001)
6. United States v. White, 23 M.J. 84 (1986)
7. United States v. Burks, 36 M.J. 447 (1993)
8. United States v. Bartholemew, 3 C.M.R. 41 (1952)

VI. ARGUMENT

Evidence is relevant if it has a tendency to make more or less probable a fact that is of consequence to the determination of the action. MRE 401. Although logically relevant, evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay." MRE 403.

A. Medical evidence of damage to Dilawar's body is highly probative to the elements of the charges and is therefore relevant.

LTC Rouse's testimony and the autopsy photographs are necessary to prove the Cruelty and Maltreatment charge and Assault Consummated by Battery charges. Further, this testimony and the related photographs corroborate witness statements that SGT Salcedo abused Dilawar.

SGT Salcedo is charged with, inter alia, making unlawful physical contact against Dilawar and subsequently lying about having done so. The MCM defines the elements of Assault Consummated by a Battery at Article 128 b.(2): "(a) that the Accused did bodily harm to a certain person; and (b) that the bodily harm was done with unlawful force or violence." "Battery" is defined at Article 128 c. (2)(a) as "...an assault in which the attempt or offer to do bodily harm is consummated by the infliction of that harm." Further, at (b): "...a battery can be committed...by striking the person directly." Regarding Article 93, the Manual states "Assault...may constitute this offense."

MRE 401 states: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 402 states: "Evidence which is not relevant is not admissible."

MRE 401 allows admission of evidence that has a tendency to make the existence of any fact of consequence more or less probable. United States v. George, 40 M.J. 540, 543 (C.M.R. 1994), Weinstein's Federal Evidence § 401.04 ("Relevance is not inherent in any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case.") quoting Notes of Advisory Committee on Rules, Fed. R. Evid. 401.

Medical evidence of damage to Dilawar's body directly supports the elements of these charges. As such, medical evidence is highly probative to the fact finder. The medical evidence available in this case includes Dr. Rouse's expected testimony that she discovered damage to the parts of Dilawar's body consistent with the witness's statements, as well as the autopsy photos that show damage to these same areas. Thus, the medical evidence supports a causal connection between the accused's alleged conduct and actual damage to Dilawar's body. This evidence meets every standard for relevance, as does other evidence of abuse against Dilawar allegedly committed by the accused.

B. Medical evidence of damage to Dilawar's body is not unfairly prejudicial.

MRE 403 states *inter alia*: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, ...misleading the members, or by considerations of undue delay, [or] waste of time."

Relevant evidence must be weighed against its tendency to create unfair prejudice, mislead the fact finder, cause undue delay, or waste time. United States v. Dimberio, 56 M.J. 20, 24 (C.A.A.F. 2001). Unfair prejudice occurs when the proffered evidence causes, or leads, the fact finder to make a decision on an improper basis. Old Chief v. United States, 519 U.S. 172, 180 (1997).

The purpose of the medical evidence in this case is to neither create unfair prejudice nor to lead the fact finder astray; it is simply to use the best and most objective evidence available to assist the fact finder. Dr. Rouse's testimony will aid the fact finder in making a reasoned decision regarding the assault/battery charges. The introduction of autopsy photos related to the specific acts of abuse that the witnesses identified as having been conducted by the accused will make the medical testimony easier to understand. Such valid purposes were specifically recognized as legitimate uses of pathologist testimony and autopsy photographic evidence in United States v. White, 23 M.J. 84 (1986), even when the photos did not create a "pretty picture." Arguably, the greatest danger of confusion lies with *excluding* relevant medical evidence.

To alleviate any lingering concerns regarding unfair prejudice or confusion, the government acknowledges the following. First, the autopsy photos of Dilawar's legs, which show a high degree of damage, are not relevant in this case because there is no evidence that SGT Salcedo struck Dilawar in the leg or thigh region. Second, the government does not seek to introduce against the accused autopsy photos that are unrelated to events alleged in witness testimony. Third, the government does not contend that SGT Salcedo caused Dilawar's death and the testimony of Dr. Rouse will not be solicited to support such a claim. Finally, a limiting instruction could ensure that the members understand the purpose for which the evidence is admissible.

The United States Court of Military Appeals, in United States v. Burks, 36 M.J. 447 (1993), cited such a limitation in its ruling (where only a limited amount of autopsy photos were used by the government). The Court held that it was proper for the government to use autopsy photos to "necessarily and appropriately reflect the violent nature of the attack..."

While "photographs are not admissible for the illegitimate purpose of inflaming or shocking the court-martial," (citing United States v. White, at 88), the (Accused) must remember, however, that, "if the item of proof is admissible for a legitimate purpose, the fact that it also may possibly tend in this undesirable direction is, in and of itself, no ground for reversal." United States v. Bartholemew, 3 C.M.R 41 (1952).

The medical evidence of damage to Dilawar's body is "an item of proof...admissible for a legitimate purpose." Furthermore, and contrary to the Defense's claims, there is no other person who can introduce this highly relevant evidence. Dr. Rouse is not only the best person to do so, she is the only one because she examined Dilawar soon after his death and discovered the specific damage which is consistent with the assault and battery allegations against the accused. Dr. Rouse is also the most efficient witness on this point, as she is a Lieutenant Colonel in the United States Air Force, stationed in Maryland, and is ready to serve the interests of justice by testifying in this case.

VII. CONCLUSION

Contrary to Defense's claims, evidence of the possible abuse of Dilawar is logically and legally relevant. Witness statements connect alleged abuse by the accused against Dilawar with medical evidence of injuries consistent with this conduct. In short, medical or any other evidence of Dilawar's abuse and/or injuries that the government contends were committed by the accused should not be excluded in a case alleging Cruelty and Maltreatment and Assaults Consummated by Battery.

Dr. Rouse's testimony regarding these injuries is highly probative of the elements of the charges against the accused. Furthermore, the introduction of certain autopsy photos will assist the fact finder in understanding Dr. Rouse's testimony. Both the medical testimony describing the injuries and the photographs showing these injuries are highly relevant. There is no legally cognizable risk of unfair prejudice because the government will only seek to introduce the evidence properly supported by witness testimony and directly within the knowledge of the pathologist, Dr. Rouse. Both the Military Rules of Evidence and the case law interpreting the same strongly support the inclusion of the vital medical evidence. The Defense's motion to exclude the same should be denied, especially in light of the fact that a ruling on "any and all references to the possible abuse and or death of Dilawar" would be premature at this point.

I have served the foregoing on CPT Mario DeRossi via email to Mario.derossi@us.army.mil, this 11th day of July, 2005.

//SIGNED//

CHRISTOPHER E. ELLIS
CPT, JA
Trial Counsel

IN A SPECIAL COURT-MARTIAL OF THE UNITED STATES
U.S. ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES

v.

SELENA M. SALCEDO

SGT, U.S. Army

HHB, USAADACENFB, Fort Bliss, Texas

) GOVERNMENT MOTION TO PROHIBIT
) THE DEFENSE FROM IMPROPERLY
) REFERRING TO THE DETAINEE AS
) A TERRORIST

) 29 JUNE 2005

I. RELIEF SOUGHT

COMES NOW the Government, pursuant to MRE 401 - 405, and moves the Court for an order *in limine* prohibiting the Defense from referring to the detainee in the present case as a "terrorist" during the findings portion of the trial.

II. BURDEN

The moving party must prove any factual issues by a preponderance of the evidence. See Manual for Courts-Martial, R.C.M. 905(c)(1).

III. FACTS

SGT Selena M. Salcedo was assigned to the Bagram Collection Point in December 2002, as a member of A Company, 519th Military Intelligence Battalion. SGT Salcedo was assigned duties as an interrogator. SGT Salcedo is charged with violating UCMJ Articles 92 (Dereliction of Duty), 93 (Cruelty and Maltreatment), 107 (False Official Statement) and 128 (Assault Consummated by Battery). The statements of two witnesses, among others, support these charges. SPC Glendale C. Walls, in his 17 December 2002 statement, recounted how SGT Salcedo "...would push down on his (Dilawar's) shoulders to make him go to his knees. She also grabbed his ears once and lifted him up." (p.2). Further, SGT Salcedo would "place her foot in between his knees." (p.2). Mr. Ahmad Ahmadzai, a civilian contract interpreter, told CID agents in his 17 December 2002 statement that "Salina (sic) grabbed the detainee's (Dilawar's) beard and behind his ears with her hands; she kicked him in the genital area; and punched the detainee in the chest." In his 15 November 2003 statement, Mr. Ahmadzai asserted that, in reference to SGT Salcedo and SPC Walls' conduct: "They weren't questioning him. They were roughing him up."

IV. WITNESSES/EVIDENCE

1. 17 December 2002 statement of SPC Glendale C. Walls.
2. 17 December 2002 statement of Mr. Ahmad Ahmadzai.
3. 15 November 2003 statement of Mr. Ahmad Ahmadzai.

V. LAW

1. Military Rules of Evidence 101(b)
2. Military Rules of Evidence 401-404
3. Federal Rules of Evidence 404(a) (as amended in 2000)
4. Old Chief v. United States, 519 U.S. 172, 180 (1997)
5. United States v. George, 40 M.J. 540, 543 (C.M.R. 1994)
6. United States v. Dimberio, 56 M.J. 20, 24 (C.A.A.F. 2001)
7. United States v. Townsend, 987 F.2d 927, 931 (2d Cir. 1993)
8. Stathos v. Bowden, 728 F.2d 15, 19 (1st Cir. 1984)

VI. ARGUMENT

Generally, only relevant evidence is admissible. MRE 402. Evidence is relevant if it has a tendency to make more or less probable a fact that is of consequence to the determination of the action. MRE 401. Although logically relevant, evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay." MRE 403.

- A. This court should exclude any testimony, evidence, or argument referring to Dilawar as a "terrorist" because it is irrelevant under MRE 401 and 402.

MRE 401 states: "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 402 states *inter alia*: "Evidence which is not relevant is not admissible."

MRE 401 allows admission of evidence that has a tendency to make the existence of any fact of consequence more or less probable. United States v. George, 40 M.J. 540, 543 (C.M.R. 1994), Weinstein's Federal Evidence § 401.04 ("Relevance is not inherent in any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case.") quoting Notes of Advisory Committee on Rules, Fed. R. Evid. 401.

On each of the occasions that SGT Salcedo is alleged to have mistreated or assaulted Dilawar, it was during an interrogation session. The possible defenses to SGT Salcedo's charges might range from justification, to obedience to orders, to self-defense. The detainee's status as a potential "terrorist" has no bearing on any of these defenses. Further, reference to the detainee as a "terrorist" by Defense counsel is not evidence that a detainee was a "terrorist".

- B. Even if Dilawar was a "terrorist" and that fact were deemed relevant to some matter at issue, this court should exclude any such evidence because the potential for unfair prejudice, undue delay, waste of time, and misleading the jury substantially outweighs any minimal probative value (MRE 403).

MRE 403 states *inter alia*: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, ...misleading the members, or by considerations of undue delay, [or] waste of time."

United States Army Trial Judiciary
Fourth Judicial Circuit, Fort Bliss, Texas

UNITED STATES

v.

SGT Selena M. Salcedo
Company A
519th MI Battalion
Fort Bragg, NC 28310

**Essential Findings of Fact,
Conclusions of Law and Ruling
Defense Motion *In Limine* to
Exclude Autopsy Photographs
and Testimony**

July 22, 2005

1. The defense has moved *in limine*, pursuant to Military Rules of Evidence 401-403 to exclude the Government's use of certain evidence relating to the alleged victim. I have considered the briefs submitted by the parties, documents and photographs appended thereto, and the arguments of counsel.

Facts.

Facts.

2. The Court finds the following facts by a preponderance of the evidence:

2. The Court finds the following:

a. The accused is charged with: one specification alleging willful dereliction of duty; one specification of maltreatment (by placing Dilawar in painful or stressful positions several times despite Dilawar's repeated complaints of having already suffered injury to his knees or legs); making a false official statement (to the effect that she never hit, did not kick in the genitals, or grab the ears of a detainee); and four specifications of assault consummated by a battery. All but one specification relate to the accused's interaction with a detainee at the Bagram Airbase in Afghanistan on or about 8 December 2002.

b. The three assault specifications relating to the detainee known as Dilawar alleged that the accused kicked him in the groin with a shod foot; unlawfully grabbed and pulled his ears; and shoved him repeatedly against a wall.

c. The fourth assault specification alleges that the accused assaulted an unknown detainee between on or about 15 October 2002 and 15 February 2003 by placing her shod foot on the detainees neck while he was lying on the floor during an interrogation.

d. Enclosures 1- 22 to Appellate Exhibit VIII are photographs taken during the autopsy conducted on the detainee known as Dilawar.

Enclosures 1- 8, 10 - 17, and 19, 20 and 22 depict what appear to the untrained eye to be various abrasions to the detainee known as Dilawar's ear lobes and the adjoining facial areas. Enclosure 9 depicts the front upper torso; Enclosure 18 depicts an apparent abrasion to the back of the head; and Exhibit 21 depicts a frontal view of the neck and upper torso, all of the detainee known as Dilawar.

e. The Government appended three sworn statements to its brief. Enclosures 1 and 2 are the 17 December 2002 and 15 November 2003 statements of Ahmad Ahmadzai, a civilian interpreter then employed by the Department of Defense. Enclosure 3 is comprised of a rights advice form and the accompanying statement of SPC Glendale Walls, both apparently executed on 17 December 2002. According to the statements, both Mr. Ahmadzai and SPC Walls were present when the accused assaulted and maltreated the detainee known as Dilawar.

f. SPC Walls statement reflects that the accused "would push down on his [Dilawar's] shoulders to make him go to his knees. She also grabbed his ears once and lifted him up." SPC Walls also described how the accused would "place her foot in between his knees."

g. In his 17 December 2002 statement, Mr. Ahmadzai detailed how the accused grabbed Dilawar's beard and behind his ears with her hands, and how she kicked him in the genital area.

h. The Government has proffered that LTC (Dr.) Rouse, the Air Force forensic pathologist who conducted an autopsy on the detainee Dilawar, will testify that the injuries to Dilawar's ears depicted in the photographs are consistent with the conduct alleged against the accused.

i. The Government has further proffered in its brief that it will not attempt to introduce any photographs depicting other injuries sustained by the detainee Dilawar to his lower extremities. None of the proffered photographs depicts any incisions, internal organs, or damage to same.

Law and Analysis.

3. The defense asserts that the photographs and testimony of Dr. Rouse would be irrelevant and otherwise excludable as being substantially more prejudicial than probative under Military Rule of Evidence (MRE) 403. The Government asserts that the proffered evidence is highly relevant in that it corroborates witness statements and testimony, and is not otherwise excludable under MRE 403.

4. MRE 401 provides that "relevant evidence" means evidence "having any tendency to make the existence or any fact of consequence more or less

probable." MRE 402 requires that irrelevant evidence is not admissible. The Court concludes that medical evidence, including the testimony of the doctor who performed the autopsy on the detainee known as Dilawar, as well as photographs which depict injuries to his ears and the surrounding areas directly support the elements of several charged offenses, and are thus highly probative. Such evidence logically connects the accused's conduct with injuries to the alleged victim's body. Pursuant to MRE 403, relevant evidence must be weighed against its tendency to mislead the fact finder, create unfair prejudice, cause undue delay, or waste time. Unfair prejudice occurs when proffered evidence causes or leads the fact finder to make a decision on an improper basis. The Court considered the following factors in evaluating the proffered evidence under MRE 403 balancing: the strength of the proof; the probative weight of the evidence; the potential to present less prejudicial evidence; the possible distraction of the fact finder; the time needed to present the evidence; temporal proximity; the presence of any intervening circumstances; and the relationship between the parties. The Court concludes that the photographs marked as Enclosures 9, 18 and 21 of Appellate Exhibit VIII do not appear to be relevant, and are otherwise more prejudicial than probative. The Court further concludes that in light of these factors, references to abuse, and/or the death of Dilawar, as well as the remaining photographs appended to Appellate Exhibit VIII and testimony of Dr. Rouse, are not unfairly prejudicial and will not create an undue tendency to suggest a decision on an improper basis.

Ruling.

5. The defense *motion in limine* to exclude all references to Dilawar's death or abuse, as well as autopsy photographs and the testimony of Dr. Rouse, as specified above, is DENIED.



MARK P. SPOSATO
LTC, JA
Military Judge

e. In a sworn statement dated 17 December 2002, Mr. Ahmadzai related that Dilawar died in custody several days after the accused and SPC Glendale Walls interrogated Dilawar in early December 2002.

f. As reflected in his 17 December 2002 statement, Mr. Ahmadzai attributes the following statements to Dilawar, made during the accused's interrogation of Dilawar, and in his presence:

"After a few minutes [of sitting on his knees with his hands over his head] the detainee said that he was tired."

"The detainee was pleading with me to me several times that the MI personnel were beating him ..."

"He told me he was being beaten by the MI personnel ..."

g. As reflected in his 15 November 2002 statement, Mr. Ahmadzai attributed the following statements to Dilawar, also made during the accused's interrogation Dilawar, and in his presence:

"Dilawar complained that he could not hold his hands up and the he couldn't do it anymore."

"He did not get angry, he simply kept complaining about the discomfort."

"Dilawar also told me this [sitting along the wall with no chair under you] hurt him and that he could not do it."

"He continued to tell me that his legs hurt and that he could not do this."

"Dilawar was trying to talk with me[during the interrogation], asking for help."

"As Selena and Glen were pushing him around, Dilawar told me that they were 'punishing him.' He told me to look at his nose, which was cut and he told me that guards were beating him."

h. Mr. Ahmadzai related in his two statements that he was "really shocked" at the events that transpired during Dilawar's interrogation by the accused and SPC Walls, and he lodged a complaint against them with their supervisor.