

~~SECRET~~

UNCLASSIFIED

Approved for Release
Date 3/17/05

Page 1 of 125 pages

Mowhoush
Trial

The Article 32 Investigation in the case of United States v. CW2 Williams, SFC Sommer and SPC Loper, 66th Military Intelligence Company, 3rd Squadron, 3rd Armored Cavalry Regiment, Fort Carson Colorado 80913, was called to order at 0915 hours, 2 December 2004.

PERSONS PRESENT

INVESTIGATING OFFICER

Captain Robert Ayers

GOVERNMENT COUNSEL

Senior Trial Counsel Tiernan Dolan

Trial Counsel Kelly Davison

DEFENSE

Captain Michael Melito

Captain Peter Kageliery

Captain Robin Bunch

Mister Bill Cassara

ACCUSED

Chief Warrant Officer Two Jefferson L. Williams

Sergeant First Class William J. Sommer

Specialist Jerry L. Loper

REPORTER

Sergeant John E. Philibert

ADMINISTRATIVE SUPPORT

Specialist Jeniffer Hargroves

Page 1 of 125 pages

CLBY:
CL REASO
DECLO
DRV FROM:

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 2 of 125 pages

Following preliminary matters, the Article 32 hearing recessed at 0950 hours.

The Article 32 hearing re-convened at 1005 hours and entered into a closed session.

[REDACTED] took the witness stand and testified as follows:

Major Dolan: Do you swear that the evidence that you shall give in the case now hearing shall be the truth, the whole truth and nothing but the truth so help you God.

[REDACTED] I do.

Major Dolan: Please be seated. Ma'am can you state your full name for the record?

[REDACTED] My name is [REDACTED]

Major Dolan: And where do you work?

[REDACTED] I work at [REDACTED]

Major Dolan: What do you do there?

[REDACTED] I am the, I work for [REDACTED]

Major Dolan: What does [REDACTED] do?

Major Dolan: Do you yourself classify materials?

[REDACTED] Yes, I do.

Major Dolan: What gives you that authority?

Page 2 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 3 of 125 pages

[REDACTED]

Major Dolan: When you say 'what level', what do you mean?

[REDACTED] There are three levels of classification. The first, we will call 'confidential'. That indicates that release of that information could cause damage to the national security. The second level is 'secret' and that indicates that that information, if it were released publicly, could cause serious damage to the national security. The third level is 'top secret' and that is information that could cause very serious damage to the national security.

Major Dolan: Ma'am, have you reviewed any material related to this case?

[REDACTED] Yes, I have.

Major Dolan: What?

[REDACTED] I have reviewed the CID investigation report.

Major Dolan: Is that the, like, interim report?

[REDACTED] That is correct.

Major Dolan: And what did you conclude after having reviewed that report?

[REDACTED] I concluded that the information in there that is properly classified at the secret level and that needs to remain classified.

Major Dolan: Now, let me read off some names to you, names that we've discussed: Colonel Teeples, MAJ Layton; three CID agents whose last names are Hughes, Ryan, Conner; three soldiers whose last names are Bleibaum, Higgins, Shieley; CPT Rossignol who's a doctor; LTC Kievenaar. What do you think about them testifying in court?

[REDACTED] They all, from what I saw in that report, have information that I would anticipate, that they would be providing, that should properly classified and remain classified.

Major Dolan: Generically speaking, what sort of information is that?

Page 3 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 4 of 125 pages

[REDACTED]

Major Dolan: I'm sorry, could repeat that? I didn't catch it.

[REDACTED]

Major Dolan: What do you mean by that?

Major Dolan: [REDACTED]

Major Dolan: Ma'am, you've had a chance to review the materials associated with this case, a chance to review the prospective witness list.

[REDACTED] Correct.

Major Dolan: In your opinion, should this session be held in the open for the public to attend or in closed session?

Page 4 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 5 of 125 pages

[REDACTED] I believe that it should be held in a closed session.

Major Dolan: Why?

[REDACTED] The information that I have reviewed indicated that there's classified information that would need to be included in testimony, in documents, in anything related to this case that is inextricably connected to the discussions that would take place.

Major Dolan: Thank you.

Captain Ayers: Alright, [REDACTED] regarding your last answer; so, what you're saying is it would be hard to distinguish between, in their testimony as a whole, what would be properly classified and what would not be?

[REDACTED] That is correct because you would be looking at the statements that I've read, what I've seen in the document. But you also have whatever questions would be asked. We have to clear counsel on both sides, everyone here has been cleared on classified information and has classified information, and there are questions that I can't anticipate myself and answers that could come up that could include the classified information.

Captain Ayers: Alright, and you said all this is a secret classification?

[REDACTED] Correct.

Captain Ayers: And your words were, 'Serious damage...'

[REDACTED] '... to the national security.'

Captain Ayers: '... to the national security.'

[REDACTED] I could go into more detail about that national security, if you would like.

Captain Ayers: Yes, please.

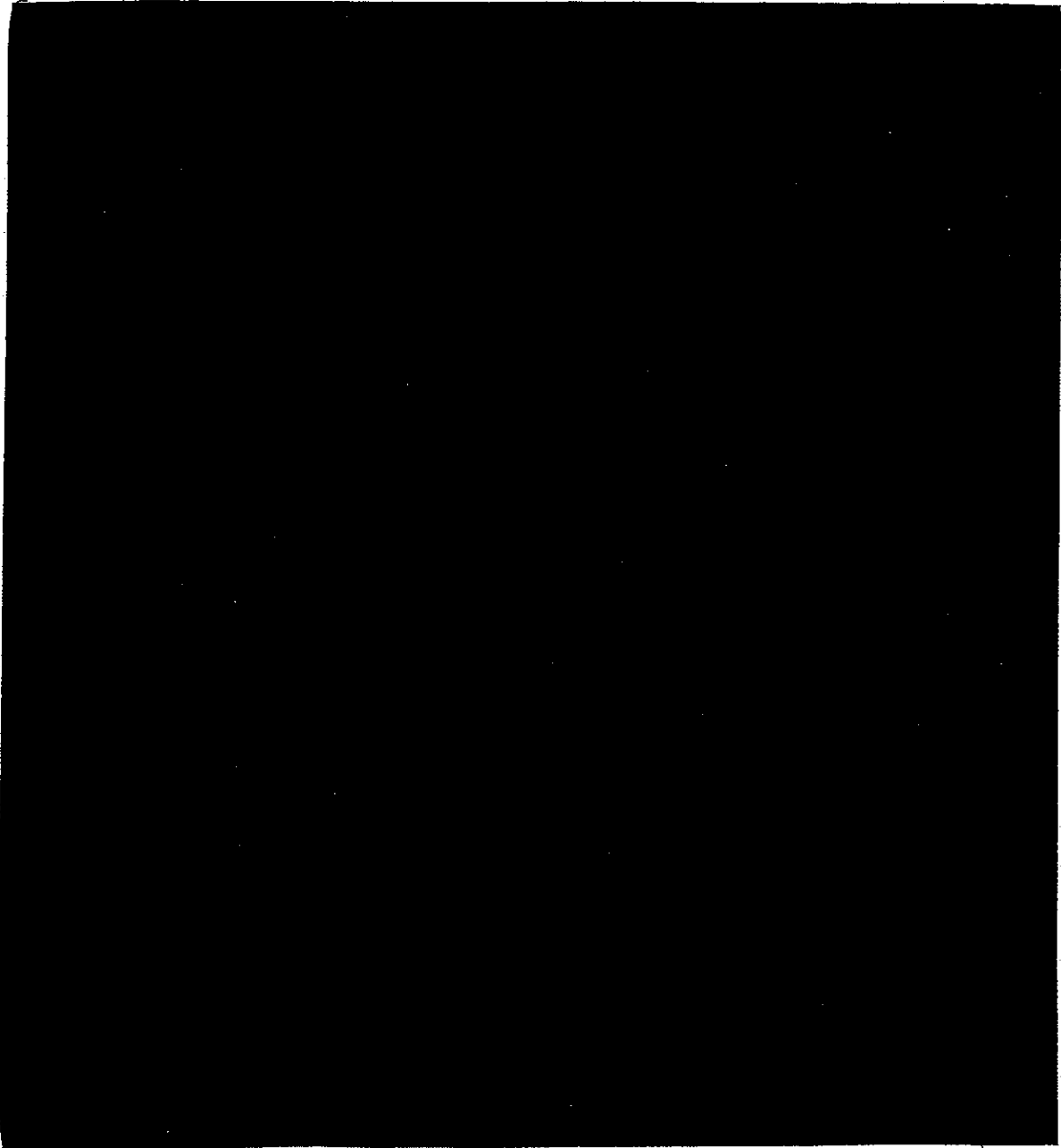
[REDACTED]

Page 5 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 6 of 125 pages



Page 6 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 7 of 125 pages

[REDACTED]

Captain Ayers: Okay. Mister Cassara, do you want the opportunity to ask some questions?

Mister Cassara: Sure. Ma'am, just have a couple of brief questions for you. I'm sitting here looking at the press reports and they appear to know more about this case than I did before yesterday. Do you know how it is that information that is already out in the public domain, how that occurred?

[REDACTED] No, I do not. But as you know, there are leaks, there are unauthorized disclosures every day of the week.

Mister Cassara: I mean, the press seems to know that this gentleman died, they know the names of all four of the individuals who are charged in his death. They seem to know where it occurred. They seem to know the method as to how it allegedly occurred. In your estimate, does the release of that information, in any way, compromise [REDACTED]

[REDACTED] What effect, if any, do you believe that this has on [REDACTED]

[REDACTED] it obviously makes it much more difficult. But, that does not mitigate against my need to still protect that information because that's still an unauthorized disclosure and for [REDACTED]

Page 7 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 8 of 125 pages

[REDACTED] That is a problem and we do investigate those. But beyond that, it is still a higher level of damage if we publicly acknowledge that.

Mister Cassara: And there is some discussion about a, I believe it's [REDACTED]

[REDACTED] would the press' ability to have obtained that information been authorized or not?

[REDACTED] I don't believe so.

Mister Cassara: Finally, do you, in reality believe that there's any potential danger to the individuals in the room should the press stay here?

[REDACTED] I think there could be. I'm not the expert on their situations.

Mister Cassara: I understand that. I'm awfully concerned about my client and my co-counsel, not so much the trial counsel.

[REDACTED] My concern has to be of course for, I don't have any personal or professional stake in what happens in the proceeding or with the individuals. But if we were talking about [REDACTED]

[REDACTED] I would say yes, there is a risk.

Mister Cassara: From people in theater, I take it?

[REDACTED] Frankly, from anywhere. We're in a world where the war on, the enemy is everywhere.

Mister Cassara: Thank you ma'am. That's all I have.

Captain Bunch: No questions.

Captain Ayers: Captain Melito?

Captain Melito: No.

Captain Ayers: [REDACTED] one last question here. Mister Cassara brought up that some information has become available to the press, but your opinion is that is not a reason to de-classify some of the information.

Page 8 of 125 pages

~~SECRET~~
UNCLASSIFIED

[REDACTED] No it is not. No it is not. That is that we continue as we are doing to investigate those unauthorized disclosures and try to stop it and to punish those who have done it. And as I've said [REDACTED]

[REDACTED] if there's an unauthorized disclosure as [REDACTED] when we publicly, we as a government authorize those disclosures.

Captain Ayers: Ratify some type of disclosure.

[REDACTED] Correct.

Captain Ayers. Okay. Alright, Government Counsel, do you have any other questions for [REDACTED]

Major Dolan: No.

Captain Ayers: Alright, [REDACTED] I'm going to excuse you. It's a little unusual situation regarding my instructions to you personally. I imagine it's a temporary excusal because you'll be sitting in the gallery. I imagine you'll be here through the entire time of the investigation. Basically understand the rules that you follow, but also if someone attempts to gain information from you regarding this investigation you would also want to report that to me. It can be through trial counsel.

[REDACTED] Absolutely, yes.

Captain Ayers: So, I guess in this situation you gotta look at it from our perspective as well.

[REDACTED] Absolutely.

Captain Ayers: Okay [REDACTED] why don't you go ahead and step down, have a seat in the gallery.

Mister Casarra: Captain Ayers, if I may make a couple more requests.

Captain Ayers: Sure.

Mister Cassara: Regardless of what your decision is, I would prefer that any discussions that we have or argument. I would tell you that we do not object to closing.

Captain Ayers: Okay.

Mister Cassara: It's my understand that neither CPT Melito or CPT Bunch do either.

Captain Melito: That's correct.

Captain Ayers: Okay.

Mister Cassara: I would ask that whatever decision you make not refer to the individual positions of the parties.

Captain Ayers: Okay, makes sense.

Mister Cassara: I'm also, I forgot to do this earlier. I'd also like to ask for either: A) A verbatim transcript or B) Saving of the tapes. I'm putting that out now. Especially with regards to the pathologist. I don't know if you have any individual feelings about this.

Captain Ayers: We'll certainly secure the tapes and make them available.

Mister Cassara: It's going to be difficult for us to get them transcribed, though, because they're going to be classified. So, it may be easier to get them transcribed here. I mean, I've got a court reporter who transcribes all my 32's, but...

Major Dolan: We can do one of two things: We can produce a summarized transcript, because we plan on doing it.

Mister Cassara: Right.

Major Dolan: And then make them available through ways and means through each set of defense counsel. We can forward the tapes with the transcript, copies of the tapes. But because of the classification, we're going to have to do it, we can do it by mail, but we're going to have to send it to a repository capable of holding information.

Mister Cassara: Or you could just produce a verbatim transcript.

Captain Ayers: Continue to address me. Major Dolan, what about the piece about the verbatim transcript?

Major Dolan: We're going to have to decline to produce, we're under no obligation to produce one. We'll produce the tapes. We'll produce an accurate summarized transcript. But we don't have a...

Mister Cassara: My concern, CPT Ayers, just so you know, is I don't know what type of machine you need to transcribe the tapes as they're classified. I don't know that we have a 27D where CPT Kagaliery is located that is cleared, that has: A) The equipment to do it and B) is cleared to do it. And I think the other two co-counsel and the third co-counsel next week plans to find themselves in the exact same situation which is trying to find: A) The mechanism for doing and B) The individual that's able to do it. So, it puts us in the position of finding four people that can do that as opposed to the Government just having one person that can do it.

Captain Ayers: Well, at the close of this investigation we do have a court-reporter with the appropriate clearance to prepare a summarized transcript of all that was spoken here on the record and that should be provided to each of you as well as the tapes. Now, I don't know quite all the procedures that need to take place because it is classified. But you each should receive a copy of the summarized transcripts and a copy of the tapes and you just might need to make sure you secure them. Am I not correct in that assumption?

Major Dolan: Yeah, assuming... we should be able to produce copies of the tapes. It'll probably require us to effectively burn a tape machine but I think we can afford it.

Mister Cassara: But to understand my concern CPT Ayers, is normally what I would do is I would get the tape, I mean I understand you're only under obligation to provide a summarized transcript. Normally, I get the tapes from the Trial Counsel and I have either a private court-reporter or my co-counsel can get a 27D to transcribe a verbatim transcript. We can't do that in this case.

Captain Ayers: Right.

Mister Cassara: Which is why we're asking that they produce a verbatim transcript because, I can't speak for CPT Melito or CPT Bunch, but I assume they're in the same position I am.

Captain Ayers: I don't see myself having the authority to order a verbatim transcript. I mean, I agree with Government Counsel. However, regarding the circumstances of this investigation, I would certainly do a written request to my appointing authority, COL McMaster for the reasons why a verbatim transcript should be completed rather than a summarized. Captain Bunch, do you have anything?

Captain Bunch: I just note for the record that we're in agreement that we would also request a verbatim transcript and agree with Mr. Cassara's concerns with regard to transcribing the tape set at my particular location at Fort Leavenworth and being able to secure those tapes.

Captain Ayers: Alright, Captain Melito, do you have anything else to add?

Captain Melito: No, because I'm at a distinct advantage compared to the other defense counsel being located here at Carson.

Captain Ayers: Everyone hold on one moment.

Captain Melito: But, I wouldn't mind a verbatim transcript, to tell you the truth. Even the summarized transcript is going to be classified, too. We're going to run into some stuff, run into maybe a little bit of hitches depending on what materials are touched upon for folks like CPT Bunch and Mr. Cassara because of who's going to run across it. Just kind of like the logistics of what Mr. Cassara described and the difficulties that they pose.

Mister Cassara: And Captain Ayers, I know that you don't the authority to do this, but my client just pointed something out, as well as having folks in the back room sort of triggered his memory. We're now exposing this material to four people who wouldn't otherwise have a need to know. Four court reporters for four defense counsel.

Captain Ayers: Well, again, it seems like everyone's in agreement that I don't have the authority to order the Government to produce a verbatim transcript. I will say your concerns or your

issues are valid and I would send a written request through me and through the appointing authority, probably to MG Wilson, the Post Commander.

Captain Mefito: Captain Ayers, just to springboard from Mr. Cassara, if you were to recommend that as well, that would go a long way in terms of accomplishing that in your report. I know it's unusual to go out on a limb like that, but if you were to recommend that to the convening authority explaining very much along the lines of what Mr. Cassara, in concert with CPT Bunch and myself have already expressed, it might be more convincing in order to prevent the exposure in an unnecessary to four folks who don't have to see it.

Major Dolan: In that case, I would ask that you ask each and every witness if they've talked to defense counsel, because I suspect this hearing is more going to be a fishing expedition on the part of defense counsel, than an effort to nail down information they know these witnesses possess.

Captain Ayers: Alright, well the main purpose of an Article 32 is discovery. I won't make a recommendation regarding the verbatim transcript. I think I will leave that to defense counsel to raise to the convening authority to see about ordering that verbatim transcript. But, again regarding MAJ Dolan's comments, this is a discovery process for the accused and counsel.

Alright, government counsel, is there anyone else that you think I should hear from in this closed session?

Major Dolan: Well, every other witness.

Captain Ayers: Well, this classification review.

Major Dolan: Not on this issue, no.

Captain Ayers: Okay. And I think I understand from the defense counsel that they don't object to closing the entire investigation, is that correct?

Mister Cassara: That's correct.

~~SECRET~~

Page 14 of 125 pages

Captain Bunch: Captain Ayers, I'd actually like to ask if [REDACTED] can take the stand again and express her opinion in regard to exposing four other individuals to the information. I'm back on the verbatim transcript issue. If you're not going to make a recommendation, then I think I recommendation from [REDACTED] could impact the CG's decision.

Captain Ayers: Okay, having that on the record?

Captain Bunch: Right.

Captain Ayers: Okay, that's fine. [REDACTED]

[REDACTED] took the witness stand and testified as follows.

Major Dolan: Are you the same [REDACTED] who testified earlier?

[REDACTED] Yes, I am.

Major Dolan: You are reminded, Ma'am that you remain under oath.

Captain Bunch: [REDACTED] Ma'am, I'm sorry, is it Ms. or Mrs.?

[REDACTED] actually. I'm not picky.

Captain Bunch: [REDACTED] having just heard what has transpired, what is your opinion with regard to having additional people have access to this information?

[REDACTED] Difficult for me to say exactly at this point because I don't know who these individuals are. If they are what I have dealt with in other cases where they're cleared court reporters. They are people who have clearances. But I don't know that that's the case. I don't know exactly what people they're talking about. Obviously, any time you share classified information with additional people, there's an additional risk of exposure. It's difficult to say whether that risk is worth taking in order to ensure that the proceeding is done correctly. You would need to make sure that somebody, if a verbatim transcript were done, I would ask that someone, preferably myself review it, for classification, make sure it's classified appropriately and then, of course that it's stored and handled appropriately.

Page 14 of 125 pages.

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 15 of 125 pages

Captain Bunch: So, if for example, I were to have somebody at my location at Fort Leavenworth, what would I need to do to ensure that it's protected. Would I have to go through you? Would each individual counsel have to do that?

[REDACTED] Yes, and there are people who specialize in that security and I would want to consult with them on how to do that correctly.

Captain Bunch: Okay, in terms of timeline, can you estimate how long it would take for us to actually transcribe given what you've just told us?

[REDACTED] I couldn't say because that would depend on the press of people's business and how fast they are and how long the transcript is. I just really don't know.

Captain Bunch: Given your expertise, would it be your preference, in your position that less people know.

[REDACTED] It's always my preference that fewer people know.

Captain Bunch: Less people have access to that information?

[REDACTED] Absolutely.

Captain Bunch: And you did indicate that there would be some risk.

[REDACTED] There's always increased risk, but a lot of risk is manageable. Obviously, it would be better if we didn't have as many people in this room as we have in this room. But you have to have people to conduct the proceeding and do it correctly and you have to have all the people that are here. And it may be that that's the correct decision that, in fact, you need those additional four people.

Captain Bunch: And who would be responsible informing the, I'm assuming 27D's who would transcribe the tapes, what their responsibilities are insuring that the material remains classified?

[REDACTED] I'm sorry, I'm not sure how that chain of command works [REDACTED]

Captain Bunch: Would someone have to brief them on classification procedures and what they're allowed to disclose and what they're not allowed to disclose?

Page 15 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 16 of 125 pages

[REDACTED] I would assume so, yes.

Captain Bunch: But you wouldn't know who that particular person would be?

[REDACTED] Those would be the people who specialize in security and who do those briefings and I'm just not sure who in this particular case would be the ones to do that.

Captain Bunch: We signed MOU's, the counsel did not, but the individual accused did. Would something like that have to be done as well with those?

[REDACTED] Something of the sort, yes. I don't know what the specific mechanism would be, but yes. There's some kind of a secrecy agreement or MOU that would need to be done, yes.

Captain Bunch: I don't have any other questions.

Captain Ayers: Captain Melito?

Captain Melito: No, I'm good.

Major Dolan: If defense counsel seriously wants a verbatim transcript, we'll take reasonable requests, but the entire transcript's probably an unreasonable request. If defense counsel have specific witnesses in mind, we're all ears. But, a blanket request will be....

Captain Ayers: Okay, so you may agree to verbatim transcript on certain testimony?

Major Dolan: I wouldn't think that an unreasonable request. But a verbatim transcript of this entire hearing would be considered an unreasonable request.

Captain Ayers: Okay, your position. Alright, Mr. Cassara, if you would provide me...

Mister Cassara: We'll talk about this at the end.

Captain Ayers: Yeah, let's bring this back up at the end, get it all on the record of what may be agreed to among the parties and then what we may need to request of the convening authority.

Mister Cassara: Thank you.

Captain Ayers: All right, [REDACTED] again, go ahead and have a seat in the gallery.

Page 16 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 17 of 125 pages

Mister Cassara: Captain Ayers, if I may, how do you want to proceed? Are we going to hear back from the Denver Post? Do we know if he's here? Is he going to present an argument to you? What are you doing?

Captain Ayers: I certainly will address his request on the record. He does have standing. Because he does have standing I will give him a few minutes to address me on the record as well.

Mister Cassara: That's assuming he's here.

Captain Ayers: Assuming that he's here, of course. That's how I have to handle it. And I will not mention that all parties have agreed to close the entire investigation, but I will make a ruling based upon the secret classification, the serious damage to the national security should some of this be disclosed. I will mention that there is a safety interest of all parties involved as well, and that it would be difficult to differentiate that material that should be classified in that it may be derivative or unclassified material. So that's basically what my reasoning will be on the record, to close the entire investigation. All right, let's go ahead a recess for another ten minutes.

Government counsel, please be sure someone lets the media that is still available know that we will have an open session again for a few minutes to allow Mr. Zansberg to provide an argument to me and for my ruling on the record.

The Article 32 investigation recessed at 1035 hours.

Page 17 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 18 of 125 pages

[The Article 32 investigation reconvened at 1130 hours. 2 December 2004.]

IO: All right, we've ended our short recess. All parties present prior to the last recess are again present. Any spectators have been excused, and we are now going into a closed session of this investigation for the remainder of the investigation.

As I understand it from counsel, they do not wish to provide an introductory or opening statement to me, so we're going to go ahead and start with the evidence. We have Colonel David Teeples on the line, and he will be the first witness that is called.

Major Dolan, would you swear the witness to his testimony, and then I will let Mr. Cassara do the direct examination.

COL David Teeples, U.S. Army, was called telephonically as a witness.]

TC: Sir, Major Dolan here. Can you hear me?

WITNESS: Yes.

TC: Please stand and raise your right hand. Are you doing as instructed?

WITNESS: Yes.

TC: Thank you, sir.

[The trial counsel, standing with his right hand raised, administered an oath to the witness.]

TC: Thank you, sir. Please take a seat, and make yourself comfortable. Mr. Bill Cassara will have some questions for you.

WITNESS: [unintelligible]

TC: Mr. Bill Cassara, civilian defense counsel, or CW2 Williams.

DIRECT EXAMINATION

Page 18 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 19 of 125 pages

Questions by the civilian defense counsel:

Q. _____ trial counsel, Captain Ayers, and the investigating officer, the three accused soldiers, Sergeant Sommer, Chief Williams, and Specialist Loper, along with all of their respective defense counsel. So, that is audience to whom we are speaking.

Sir, for the record, we need your full name and current duty station.

A. My name is Colonel David A. Teeples, and my duty station is the Joint Staff, J-3, at the Pentagon.

Q. And, sir, prior to being the J-3 at the Pentagon, what was your duty position?

A. Previous, I was the commander of the 3d Armored Cavalry Regiment.

Q. And what were the inclusive dates of your command at the Cav?

A. The inclusive dates were 18 June 2002 to 24 June 2004.

Q. And did that time include the time of deployment to Iraq?

A. Yes. The deployment to Iraq was basically April of 2003 to March of 2004.

Q. And, sir, while you were in Iraq, where were you physically located?

A. Well, I was headquarters in two different locations at different times, headquarters--first location was in Ah Ramadi, and the headquarters the second location was at Al Asad Air Field. Both of those are in Al Ad M _____ province.

Q. And for what--can you hear, Captain _____?

? Yes.

Q. For what period of time were you at Al Asad Air Field, sir?

A. I was at Al Asad from 19 September 2003 until 15 March 2004.

Q. And, sir, while you were at Al Asad, would you take trips to the other facilities where your soldiers were located?

A. Yes.

Q. And was one of them the Al Qaim facility?

Page 19 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 20 of 125 pages

A. Yes.

Q. And could you please explain for the investigating officer what the Al Qaim facility was.

A. The 4th Squadron of the regiment had a border operating base near the Al Qaim region, and that was most frequently visited by me. And that was basically in a squadron headquarters out there.

Q. Approximately how often did you visit Al Qaim, sir?

A. Oh, probably twice a week.

Q. Sir, who was the commander at Al Qaim? What was the chain-of-command structure?

A. The chain of command was myself, of course, and then the 1st Squadron commander was in charge of that section.

Q. And who was that?

A. That was Lieutenant Colonel Greg Riley.

Q. And, sir, if you would, please explain for us the chain-of-command structure regarding Chief Williams as it related to yourself.

A. Chief Williams was a member of the 66th MI Company, which is a regimental separate, and for administrative purposes, the 66th MI falls under the 3d Squadron. But for operations, it works directly for the regiment, and that was the case in Operation Iraqi Freedom. 66th MI commanded by Major Jess Voss, and Chief Williams worked in the Ace, and that was headed up at different times by different officers, and I don't have both of their names.

Q. That's fine.

A. But Major Voss then, as the commander of the 66th MI, was first as far as overview of CW2 Williams. And then Major Voss would report to the regimental executive officer and in coordination with the S-2, and they would report to me.

Page 20 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Q. Okay. Do you remember--was Lieutenant Colonel Kevenar in Chief Williams' chain of command?

A. Lieutenant Colonel Kevenar was the 1st Squadron commander. And, as I said, 66th MI is attached to the 3d Squadron for administration. And, so, yes, Lieutenant Colonel Kevenar was in the chain of command administratively.

Q. Okay. Were you in Chief Williams' rating chain, sir?

A. No, I was not in his rating chain.

Q. Okay.

A. And I believe that--and I'm not certain of this, but I believe that his senior rater was probably Lieutenant Colonel Kevenar.

Q. Okay. Thank you, sir. Sir, you became--let me ask you this, sir. Prior to the day of November 26th, 2003, when was the last time that you had visited the Al Qaim detention facility?

A. Well, that's going to be a tough one to remember.

Q. I mean, do you remember if it was a day prior or 2 days prior or a week prior?

A. When was the last time? Well, during that period, I moved my kak. I was in the Al Qaim area through that--from--basically from the 19th--18th or 19th of November to the 29th or 30th of November, I was located in my kak in the Al Qaim area.

Q. Okay, thank you. Sir, what was Operation Rifles Blitz?

A. Operation Rifles Blitz was basically a cordon and search operation that encompassed three towns of the Al Qaim region, and they were Bisega, Sadah, and Karbala. And the operation made us task organize, re-task organize. We received a battalion from the 101st Airborne. We brought 1st Squadron into that AO, so we had 1st Squadron, 3d Squadron from the regiment, and this battalion from the 101st. To operate in Rifles Blitz, we closed the Syrian border, and we surrounded those three communities that I just mentioned.

~~SECRET~~

Q: And what was the--

A: And--

Q: I'm sorry. Go ahead, sir.

A: And the intent was to search homes. And we searched nearly or just over 8,000 homes. [REDACTED]

Q: And what is the interrelationship between the Al Qaim detention facility and Operation Rifles Blitz?

A: Well, first of all, there are a couple of different detention facilities. FOB Tiger had its own detention facility, and there was a temporary detention facility that was set up specifically for Rifles Blitz. And that was set up at a train station--and I believe it was a train station--somewhere to the west of FOB Tiger. And it was set up, as I said, specifically for detainees that we would take in as a result of our searches in Rifles Blitz.

Q: And where were you physically located in relationship to the Al Qaim detention facility? You know, how far were you from the detention facility?

A: From the detention facility that was set up for Rifles Blitz, I was not more than 10 or 12 kilometers to the east. I was located right at FOB Tiger.

Q: Sir, when did you first find out about the death of Major General Mowhosh?

A: I first found out from--I can't remember who told me, exactly, but I was at FOB Tiger, and they had brought his body to FOB Tiger, and that's when I first found out about it.

Q: And how did they transport the body to FOB Tiger? Do you recall?

A: As I recall, it was--naturally, it was in a body bag. It was in the back of a cargo HMMWV, I believe.

~~SECRET~~

Page 23 of 125 pages

Q. And, sir, upon learning of the death of Major General Mowhosh, what, if anything, did you do regarding initiating an investigation into the death?

A. I immediately called Major Keliswarin, the commander of the 82d, and he then dispatched a 15-6 officer.

Q. Okay. And, sir, I hate to go backward, but sometimes I forget things. Who was Major General Mowhosh?

A. Major General Mowhosh was a civilian. He wasn't a major general; he was a civilian that lived in the Al Qaim area, region. And I don't remember exactly which city he was from, but it was suspected that he had a pretty close relationship with the criminal element that was operating in that area and that he and/or his sons were involved in criminal activity which I spoke of before.

Q. And had you been regularly briefed about his activities?

A. Pardon me?

Q. Had you--I mean, you knew who he was. You had been regularly briefed about his activities?

A. I won't say about his activities, specifically him; but on the group of cells that were working in the area.

Q. Okay. Now, you mentioned that he wasn't really a general, and we keep referring to him as General Mowhosh. Can you please tell us how that--you know, that rank was provided to him?

A. Yeah, my understanding is that--and this was told to me from [REDACTED] that he was a major general in the army, in the Iraqi army, that he had commanded, quote, one of the golden divisions in the south, that he had a great deal of influence, and that--and, basically, I don't know what--you know, I never heard of, you know, why they kept referring to him as

Page 23 of 125 pages

~~SECRET~~
UNCLASSIFIED

"Major General Mowhosh." But that kind of stuck with him. I guess because it was easier to say than just "Mowhosh."

Q. Okay. All right, so, sir, let's get back to when the investigation was initiated. When you--after contacting Major General's wife, you said a 15-6 investigation was conducted; is that correct?

A. That's correct.

Q. Okay. At the conclusion of that investigation, what information was provided to you as the regimental commander to make a determination as to what cause of action should be taken, if any, against the soldiers that were allegedly involved?

A. Well, the recommendation at the conclusion of that was that the people involved should be suspended from their duties. And that was done. And then there were letters of reprimand that were prepared by the CG because he is the general court-martial convening authority. And that was the action that we took. There were--I can't remember if there were three or four letters of reprimand that were issued.

Q. And prior to--

A. And--

Q. Go ahead, sir. I'm sorry. Please finish.

A. And I'm trying to remember now if--and I went back to General Swanick and told him basically that there were extenuating circumstances that were under investigation--or no, that were not under investigation at the time, but had a great deal to do with the death of General Mowhosh, and I needed to inform General Swanick of that so that he could better understand my position as far as the use of these intel people in the ongoing operations.

Q. At the conclusion of the 15-6 investigation and based on your recommendations, am I correct that letters of reprimand were issued to Mr. Welshofer, Major Voss, and Mr. Williams; is that correct?

~~SECRET~~

Page 25 of 125 pages

A. Yeah, I believe those were the three.

Q. To the best of your recollection, the letter of reprimand to Chief Williams was rescinded; is that correct?

A. Yes.

Q. Was that based on your recommendation to General Swanick?

A. Yes, that was based on my recommendation because, as I said, in all the letters of reprimand, it was--I'm not sure that the investigating officer really took into account the

[REDACTED] And then as the recommendation came down, the letters of reprimand came down, I went to--

CDC: Sir, one second, please. Sir, I need you to ask you to pause one second. They're switching tapes.

Q. Go ahead, sir.

A. Basically said to him that the letter of reprimand--or the 15-6 showed that Mr. Williams was present, but, I mean, he, in my estimation, had nothing to do with the physical death of Mowhosh, and I believed that he should not be reprimanded.

Q. And, sir, also, you made a recommendation that Major Voss--her letter of reprimand should be also disposed of. Is that correct?

A. Right.

Q. Okay. But in that instance, Major General Swanick disagreed with you and opposed her letter of reprimand locally. Is that correct?

A. That's correct.

Q. Okay. Sir, do you recall reviewing the rebuttal to the letter of reprimand completed by Major Voss?

A. Yes.

Q. Go ahead, sir, please.

Page 25 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 26 of 125 pages

A. I reviewed the rebuttals for all three.

Q. Okay.

A. For--or at least I know for Voss and Rosifer. I'm not sure if I ever saw one for Williams or if he wrote one.

Q. Now, sir, based on your--and I realize you don't have this in front of you, and I'm going to show a copy now and ask that--your indulgence, sir.

CDC: Has the IO been provided a copy of any of this _____ last night?

IO: No.

CDC: Okay.

WITNESS: I'm sorry. You're showing what?

CDC: No, that's okay, sir. I wasn't--I was talking to one of the other people in the room. I'm going to show the investigating officer a copy of Major Voss's rebuttal to the letter of reprimand. And we will at some point move this into evidence.

[further questions by the civilian defense counsel:]

Q. Do you recall--you said you recalled reading that rebuttal?

A. Yes, but I really don't remember much of anything from that.

Q. Okay. Do you recall whether or not, based upon reading her rebuttal, if you had any question in your mind as to whether or not Major Voss knew of the technique that Chief Welshofer was using about putting people in sleeping bags as an interrogation technique?

A. To the best of my recollection, I don't--I do not believe she had knowledge of those techniques.

Q. Okay. And, sir, I'm not trying to trip you up because I realize you don't have the letter of reprimand in front of you, but would it surprise you if I told you that in her rebuttal to the letter of reprimand she said that she thought the use of the sleeping bag was an authorized technique?

Page 26 of 125 pages

~~SECRET~~
UNCLASSIFIED

A. No, that would not surprise me.

Q. And, sir, you also--

A. And--

Q. Go ahead, sir, please.

A. Well, I mean, just to shed a little--why that doesn't surprise me is because I don't--you know, I didn't know what the authorized techniques were. And I don't know that--I know that I never read any documentation, instructions, training, or anything like that that had to do with authorized techniques of interrogation.

Q. Okay, and we'll get back to that in a minute, sir.

A. Okay.

Q. Now, with regards to Chief Welshofer, do you recall what action General Swanick took with regards to his letter of reprimand?

A. Chief Welshofer was--I don't remember now if his was locally filed or it was to be placed in his restricted fiche.

Q. Okay. Now, sir, do you recall reviewing Chief Welshofer's--and, sir, just to refresh your recollection--and the investigating officer will have it--that was also filed in the local MPF. Do you recall Chief Welshofer's rebuttal to the letter of reprimand? Do you recall reading that?

A. Yeah. I--in the part that I recall--I did read it. I recall something about techniques of interrogation, and I recall reading something about Afghanistan.

Q. Okay. Do you recall whether you saw the letter of reprimand?

A. And you can correct me. You've probably got that there. You can tell me if it's in error.

Q. No, I think you're correct, sir. Do you recall when the letter of reprimand came back, seeing a notation on the top of it by General Swanick, saying, "Death was from

asphyxiation. I expect better adherence to standards in the future." Do you recall reading that language by General Swanick?

A. Oh, yes. Now, what I'm trying to remember is when that came back like that. How does that--when did that--the timing of the autopsy and his return of that letter.

Q. Got it.

A. I'm not sure.

Q. Just to sort of help you out, sir, to make it a little bit easier for you, I can tell you that the decision by General Swanick to impose the letters of reprimand in the local MPF for Major Voss and Chief Welshofer and, presumably, the decision to not impose a letter of reprimand on Chief Williams was dated 1 March 2004.

A. Okay.

Q. Now, is it fair to say, then, sir, that upon your review of the 15-6 investigation in the case and upon General Swanick's review of the 15-6 investigation in this case, that a decision was made by the general court-martial convening authority to impose local letters of reprimand on Chief Welshofer and Major Voss and to withdraw the letter of reprimand on Chief Williams?

A. That's correct.

Q. And as far as Chief Williams goes, you concurred in that recommendation; is that correct?

A. I did.

Q. Okay. Now, sir, I'm also showing the investigating officer a recommendation for an award that you signed on Chief Williams. Do you remember putting him in for an award at the end of his tour of duty in Iraq?

A. I did not--

Q. Not putting him in, but approving.

A. --myself put him in.

Q Right.

A I'm certain he was recommended for an award, which I probably signed the recommendation because, as you know, I'm not the approving authority for--

Q Sure.

A --a--

Q Sure.

A --Bronze Star.

Q And, sir, I'm looking at it. So, let me just give you some dates to help you out. On 13 January of '04, you recommended approval of a Bronze Star for Chief Williams; is that correct?

A If that's the date that's on the 348 and I've got a signature, then, yes.

Q Okay.

A But you got to remember that there were hundreds of awards that I signed.

Q Absolutely. I understand.

A And I didn't read each one.

Q And, sir, just so you know, the only--

A A lot of times I didn't even pick up on every name that was in front of me.

Q Sure. Sure. Would it surprise you to know that part of the language used in making the recommendation for the Bronze Star for Chief Williams included the time during Rifles Blitz and his activities during Rifles Blitz?

A No, that would not surprise me.

CDC: Your indulgence, sir.

WITNESS: Pardon me?

CDC: One second, sir.

[pause]

CDC: All right, sir. I just have a few more questions for you, and you're, unfortunately, going to be tag-teamed by a number of other lawyers today. I apologize for that, but since we're doing this in a joint operation, you're going to hear from lots of other lawyers.

[further questions by the civilian defense counsel:]

Q. Sir, did you personally ever witness Chief Welshofer interrogating detainees?

A. Yes.

Q. Did you ever witness hi using either a wall locker or a sleeping bag or anything like that as a means of interrogation?

A. I did not.

Q. Okay. Did you ever witness-- or did you witness [REDACTED]

A. I did not.

Q. Were you present at the Al Qaim detention facility [REDACTED]

A. No.

Q. Okay. Did you witness the general leave an interrogation at any point--you know, would walk past you after having been interrogated by [REDACTED] A personnel? If you recall, sir.

A. I may have. I've seen some people come out of being questioned. But, one, I don't know who was questioning them.

Q. Okay.

A. And, two. I don't know who they were.

Q. Okay.

A. I mean, I wouldn't know General Mowhosh from you.

CDC: We look a little different, but I understand the analogy, sir.

All right, sir, that's all the questions that I have for you.

Captain Melito?

DC (CPT MELITO): Hold on a second, sir.

CDC: Okay, if you'll just hold on. Like I said, there's a couple other lawyers here that may have some questions for you.

WITNESS: Okay.

[pause]

DC (CPT MELITO): I don't have any questions, Captain Ayers, right now.

DC (CPT BUNCH): I don't have any questions either at this time.

IO: Identify yourself first.

TC: Sir, this is Major Dolan. Can you hear me okay?

WITNESS: Yes.

CROSS-EXAMINATION

Questions by the trial counsel:

Q. When you witnessed someone leaving an interrogation room--who did you see leaving the interrogation room?

A. Well, in fact, I don't know for sure that they came from the interrogation room. I saw people being walked back to their cage.

Q. Did it appear one of them was being--

A. And I'm assuming--I guess I was just assuming that they had come from being interrogated, but I don't know that for sure.

Q. Did it appear that military personnel were aiding a detainee back to his cell?

A. Yes. There were always military people accompanying moving people back to their cells or to their cage.

~~SECRET~~

Page 32 of 125 pages

Q. This person you saw being led back to his cage. how much do you think he weighed?

A. Oh--well, I mean, there were some that were thin as rails, and then there were some that were grossly overweight.

Q. Do you recall seeing a grossly-overweight man being led back to his cell after leaving what may have been an interrogation room?

A. I did see a person being led back, a grossly-overweight man that was being led back to the cage, but I don't know where he was coming from. I don't know if he had just, you know, been brought to the camp or where exactly he was coming from.

Q. Did you say anything to this group of people?

A. Did I say anything?

Q. Yes, sir.

A. No. I did not say anything.

Q. Okay, sir, I'm switching subjects. What did ~~██████████~~ say about the rank, if any, of Mowhosh?

A. Say it again. I didn't hear the end of it.

Q. Did you get a biographical sketch of the prisoner, Mowhosh, from any government officials?

A. No. I didn't get a--the only thing that I heard was that they said that he was a major general in the Iraqi army. I mean, I don't have a--and there was, as I remember, some talk that they were op--that he had operated in southern Iraq and was infamous among the Sheea population in the south.

Q. Roger. And that was by virtue of his having commanded, as you put it, a golden division in the south?

Page 32 of 125 pages

~~SECRET~~
UNCLASSIFIED

A. And I remember the word "golden division" and, in other words--and I don't know what that meant. I also remember somebody saying that Mowhosh was one of a handful of generals that had execution authority. In other words, he could execute somebody on sight. He was given that authorization from Saddam.

Q. Sir, you talked earlier about having two separate detention facilities, one at FOB Tiger and another--

A. Yeah.

Q. --set up at a train station. The one that was--

A. Right.

Q. --set up at a train station, did it have a name?

A. Well, you got to realize that FOB Tiger is also a train station.

Q. Okay, sir. Well, there's FOB Tiger. Did the other detention facility have a name?

A. The other detention facility, the temporary one that we put up for Rifles Blitz, was called Blacksmith Hotel.

Q. When you say "temporary," does that mean it's safe to say it's no longer in use?

A. Absolutely. No longer in use. It was no longer in use after Rifles Blitz.

Q. Okay, sir.

A. It was only prepared for Rifles Blitz.

Q. Yes, sir. Who commanded Blacksmith Hotel?

A. The commandant, so to speak, of Blacksmith Hotel was Captain Jimmy Hendricks, who was Blacksmith 6, the commander of our maintenance troop. The entire facility, Lieutenant Colonel Kristen French, the commander of Support Squadron, was assigned the task of, you know, building that thing and supporting its functions, both the security portion of it, the medical facility, and having an area for prisoners to be kept out of the elements and then also for the administration buildings to serve as interrogation and medical screening and class I and food

and all the _____ of supply. So, she was given the overall mission, and she assigned Captain Hendricks as the builder of the detention facility.

Q. Is it fair to say, then, the chain of command from Blacksmith Hotel went from Hendricks, Captain Hendricks, to Colonel French, to you?

A. Yes.

Q. Sir, do you feel that you were well-informed about operations there?

A. Yes.

Q. When it comes to the letter of reprimand issued to Mr. Williams, is it fair to say that at the time you were dealing with that letter of reprimand, your thought was that _____ caused the death of Mowhosh?

A. Yes. My thought was that the death of Mowhosh was brought about by _____ and then it was unfortunate and accidental, what had happened under an interrogation by our people.

Q. Sir, if it could be shown to you that _____ had no causal part in the death of Mowhosh, would that change your mind?

A. Say again, please. I missed the first part of your question.

Q. Yes, sir. If it could be shown to you that the _____ had no part in his death but, rather, the death was caused entirely by the interrogation of Williams, Welshofer, Sommer, and Loper, would that change your mind?

A. Yeah, if you could prove that to me.

Q. Yes, sir. Assuming I could, would you change your mind?

A. There's a lot of speculation there, and I'm not sure that--if we're talking about intent or something that is not intended. I'm not sure that I would change my mind. I mean, a lot of it has to do with intent, I think. If you take away what the _____ did, then I think you have to look at the intent of the interrogation.

Q Yes, sir. Would you countenance interrogation techniques that cause physical pain in a subject?

A. Did I--

Q. No, would you?

A. -- _____ that?

Q. No, no, sir. Would you countenance such techniques?

CDC: If I may object, what techniques are we talking about?

WITNESS: No. No. No, I would--I would not. But how do you--I mean, there's some things that we did--for instance, keep them from sleeping. And I'm assuming that that was an approved technique. But some people could say, "Well, that caused physical pain, if you can't sleep."

Q. Would you countenance--

A. You know--

Q. Yes, sir. How about--

A. I don't know what you mean exactly by "physical pain," you know. We could sit here and argue all day about that.

Q. I'm asking speculative questions, sir. How about this? Would you countenance a technique that required the interrogator to slap his subject across the face?

A. No.

Q. How about to--

A. No, I would not condone that.

Q. How about to punch him in the sternum or stomach area?

A. Pardon me?

Q. How about punching the subject in the sternum area?

A. No.

Q. How about sitting on the chest of a subject until he was no longer able to breathe?

A. No.

TC: Sir, thank you for your time. There may be some more questions from either the IO or Mr. Cassara. And I appreciate you standing by for us, sir.

WITNESS: Okay.

REDIRECT EXAMINATION

Questions by the civilian defense counsel:

Q. Sir, this is Mr. Cassara again. I just have a couple of follow-ups. Of course, I've been warned never, ever to say that 'cause I usually lie when I tell you I've only got a couple more questions.

Sir, you stated previously when I asked you a question about whether or not it would surprise you that Major Voss said that she was aware of the sleeping-bag technique, you said that it wouldn't surprise you because what was permitted--I'm not sure I understood why it was you told me that would not surprise you, and I'd like to expand on that, sir.

A. Yeah. Here's my thought on that, and it still is. I don't know what the approved techniques are or were. I do know that I saw people that were detainees that were kept standing for hours, just to fatigue them. And I know that, you know, sleep deprivation was a technique, and I believe that the first time I heard about the claustrophobic effect was in Chief Welshofer's rebuttal to the letter of reprimand. And, so, I could understand why the sleeping-bag technique could be used as a claustrophobic technique, not intending to harm someone, not intending to kill someone, but intending to put some type of fear into their mind. Now, I mean, the--and so--you know, and the way I answered that one question about sitting on somebody, certainly I wouldn't condone sitting on somebody until they stopped breathing. Now, just sitting on somebody--you know, maybe you got--make somebody afraid. That--you know, and I don't know that that's wrong.

Q. And, sir, if you--

A. Uh--

Q. I'm sorry. I keep interrupting you, sir. Please go ahead.

A. So, when Major Voss said that she was not surprised by that technique, the reason I said that doesn't surprise me is that, you know, I'm thinking maybe she was on the same sheet of music as I was, you know, that there are some techniques of interrogation that either cause a claustrophobic condition, some kind of fear. But it's not physical harm. It's not slapping somebody; it's not touching somebody; it's not breaking their bones or bruising them. So, I mean, I think that--I don't know that there was clarification on anybody's part on what were approved interrogation methods. You know, Major Voss is an intelligence officer, not an interrogator.

Q. And, so, would you think that she would be more--well, let me ask you this, sir. As the regimental commander, if you were unaware of what were or were not permissible interrogation techniques, would you expect Major Voss, as an intel officer, to be aware of what were or were not permissible interrogation techniques?

A. I would think that she would be a little bit closer to it because of her contact with the personnel under her command, I mean, on a daily basis, where the only times, really, that I talked with Chief Williams or Mr. Welshofer is when they were giving me briefings.

Q. Would it be fair to say, sir, that the people who should be the most aware of what were or were not permissible techniques would be interrogators; is that correct?

A. Yes.

Q. Okay. To the best of your recollection, Chief Williams is not an interrogator; is that correct?

A. To the best of my recollection, he is an intel analyst.

- Q. He is an analyst. And to the best of your recollection, Specialist Loper is a mechanic; is that correct? Do you recall that?
- A. I have no recollection because I don't know who Specialist Loper is.
- Q. To the best of your recollection, Sergeant Sommer was a linguist; is that correct?
- A. The best of my recollection, he did linguist work.
- Q. Okay. So, none of the three people that are subject of the Article 32 investigation in today's case, to the best of your recollection, were interrogators; is that correct?
- A. That's correct. None of them are interrogators.
- Q. Now, sir, what are ISOMs?
- A. I'm sorry, what are what?
- Q. ISOMs, intelligence summaries.
- A. Yes.
- Q. What are those, sir?
- A. What are they?
- Q. Yes, sir.
- A. Yeah, they're just a brief summary of intelligence gathered or received that has some impact or is relevant to an operation that we're conducting.
- Q. And were you privy to the ISOMs generated by Chief Welshofer in theater?
- A. Yes. And I'm not certain if I've seen all of them, but there were several that I was aware of.
- Q. Is it fair to say that in some of those, Chief Welshofer would be a little bit lack-- maybe lax in his language about, you know, what he was doing? Do you understand my question?
- A. Right. Yeah, as I remember a couple of them, they were--I mean, they weren't, you know, completely focused on the--it was almost if he had added a little color to the situation.

CDC: Thanks. That was the words I was looking for. All right, sir. I have no more questions for you, sir, but I believe some of the other captains may.

WITNESS: Okay.

DIRECT EXAMINATION

Questions by defense counsel, Captain Melito:

Q. Good morning, sir. This is Captain Melito.

A. How you doing?

Q. Good, sir. Sir, who was the, I guess, head interrogator in the Blacksmith Hotel?

A. I don't know.

Q. What were you aware Chief Welshofer's position was within the Blacksmith Hotel, sir?

A. I am assuming he was there to help in the interrogation of detainees.

Q. Sir, was there someone in the regiment who put out policies about interrogation or someone in charge of brainstorming policies about how to handle interrogations or detainees?

A. No. Okay, let me put this in context for you because this isn't--the year that we were there, we were in an economy of force organization, and that means that we are put into a position to perform a very large mission with a small force, and in the realm of detainees and interrogation, we did not have official interrogators. That's not part of the 3d ACR. But we requested and sometimes got mobile interrogation teams, but we were responsible for detaining those people that we believed were performing insurgent activities or criminal activities, and that's why we established our own detainee cells. And the really bad guys were supposed to be moved to Abu Graib. And several times when we had detainees for either an extended period of time or they were really bad guys and we'd try to get them moved to Abu Graib, there was no room. So, we were put into a situation where we've got individuals that have valuable intelligence into the insurgency, and we cannot get them to the professional interrogators, and we

~~SECRET~~

Page 40 of 125 pages

can't get professional interrogators on a mobile team. So, that's why we installed having our own interrogation team, which uses somewhat of an intelligence background, uses a linguist, and things you have to make do. I mean, it's like me as the military governor of Alnabar. I've never been a governor any place, and especially in a foreign country. So, I pick up a couple of linguists and then just do the best that I can. So, that's the situation that you have with interrogating. In the process of 10 days during Rifles Blitz, we had in excess of 350 detainees. And that's a 10-day period.

Q. Okay, sir. Was there anyone who maybe brought to your attention--excuse me, sir. Let me rephrase this. Who wound up being in charge of those human intelligence teams or mobile intelligence teams in relation to how they interacted with your regiment?

A. It was probably Chief Welshofer. I mean, as far as I can remember, I think he was the senior guy, and, you know, there was coordination done with [REDACTED] and they had their own interrogation ongoing, so what we would try to do is share intelligence, share and cooperate, and not just in Rifles Blitz but in the entire operation, to better prosecute the war.

Q. Okay, sir, if Chief--

A. So, there were some times when there were senior people in--I mean, in the [REDACTED] [REDACTED] that, you know, were not anywhere in my chain of command.

Q. Sir--

A. But there was an understanding to share information and incorporate that in our operations.

Q. Okay, sir. Sir, if Chief Welshofer was sort of the center point or, rather, focus, for taking care of the mobile intelligence teams, who coordinated--if you're aware of it, sir, who coordinated the way in which detainees were questioned?

Page 40 of 125 pages

[REDACTED]
~~SECRET~~

CJT _____ approved," or, you know, he's heard about it before, when Major Voss was told that by him, she probably said, "Okay. I got it." If you take that one example there of a CW3 in charge of interrogation techniques, that's small compared to some of the things that you would see in the fact throughout our AO, where people like a captain briefs Ambassador Brimmer on border operations, where we have a captain in the south that runs the entire hodge pilgrimage, strategic things done by captains and CW3s. I mean, it's amazing. And, so--and all of this is accomplished in an economy of force operation because of trust.

DC (CPT MELITO): Okay, thank you, sir. I don't have any further questions. But just hold on, please, sir.

WITNESS: Okay.

DC (CPT BUNCH): I actually have some questions, Captain Ayers.

IO: Okay, go ahead.

DIRECT EXAMINATION

Questions by the defense counsel, CPT Bunch:

Q. Sir, my name is Captain Bunch. I'm the attorney for Specialist Loper. How are you?

A. I'm sick.

Q. Sir, in terms of the function of an escort, Specialist Loper was a mechanic here at Carson. When he was deployed to Iraq, he became an escort. Do you know what the main function of an escort was, what their job description was?

A. No, I don't.

Q. Could you tell me who would be the best person to be able--who could answer that question?

A. And the question is, What were the functions of an escort?

Q. Yes, sir.

A. Yeah. Probably his first-line supervisor. And I'm not sure who that is, even, for Specialist Loper.

Q. Yes, sir. Was it your understanding, if you have any understanding, even limited, that an escort's duties were to protect the interrogators and not necessarily the prisoners themselves?

A. That makes sense to me. I mean, you know, we are talking about people that have--that are, you know, violent criminals, insurgents, that are bent on killing anybody with any Western affiliation. So, yeah, we want to make sure that, I would think, you know, an escort is, first and foremost, looking after the protection of interrogators or linguists.

Q. Yes, sir. My next few questions also relate to the function of an escort, how they're trained and how they were chosen. And if you don't know, if you could just, again, direct me to the person that could best answer that question.

A. Yeah. I will answer that with the same way that I finished answering the last question, is that, you know, there's no MOS for escort of detainees. It's something that is an additional duty. Somebody says, "Hey, you, you, you, and you--you need to come over here and take these guys from the cage, take them to the interrogation room." And it grows. I mean, you basically learn what you're doing as you're doing it. And if there's not a training program, a lot of these people throughout Iraq are put into situations that they've never been trained before, but they have to do what they think is right. And that's what we were doing; I mean, just doing the best that we can with what we have. So, if Loper was assigned to be an escort, it's not something that, you know, he was taught at Fort Benning. But it's something that he learned through experience because of the situation that he was put into in Iraq.

Q. Okay, yes, sir. So, if I understand your answer, he wasn't trained prior to deploying to Iraq, probably wasn't trained *per se*, at Iraq; just kind of learn as you go? Is that correct?

~~SECRET~~

Page 44 of 125 pages

A. You know, that's my assumption. You know, I don't know. Maybe Loper did receive specialized training, you know, some time, and maybe he always wanted to be an escort and sought it out in the Army, and, so, they trained him. I don't know 'cause I don't know Specialist Loper. But I'm saying for generally, for the most part, for the operation that was ongoing in there, we are not an MP unit or an interrogation unit, so a lot of people had to learn other skills as we went along.

DC (CPT BUNCH): Yes, sir. I don't have any other questions.

REDIRECT EXAMINATION

Questions by the civilian defense counsel:

Q. Sir, Mr. Cassara again. Sir, what is--Chief Williams was an analyst, you said? Is that correct, sir?

A. I believe that's his specialty _____

Q. And he was the ace; is that correct?

A. Right.

Q. And what does the ace do? What was his job in theater?

A. Job in theater was to collect intelligence and analyze it and give a analysis of the intelligence information and how it affected operations.

Q. Be safe to say that his job was to get that intel to the command--

A. [unintelligible]

Q. His job was to get the intel to the commanders in the field?

A. Yes.

CDC: Okay. I have nothing further for you, sir. Major Dolan?

TC: Nothing.

CDC: Well, Captain Ayers might.

IO: Temporary or permanent excusal?

Page 44 of 125 pages

~~SECRET~~

TC: Permanent is fine, as far as I'm concerned.

CDC: Permanent.

DC (CPT MELITO): Same here.

IO: Captain Bunch?

DC (CPT BUNCH): Same.

IO: Okay.

[The witness was permanently excused and was duly warned.]

ATC: Colonel Teeples, this is Captain Davison again. Once thing before you leave, can we get a commercial telephone number for you?

WITNESS: Commercial telephone?

ATC: Yes, sir.

WITNESS: Here at work or--

ATC: Yes, sir. At work, sir.

WITNESS: Yeah, [REDACTED]

ATC: Okay, sir. Thank you. That's it. I'm going to terminate the communication at this time.

WITNESS: Okay.

ATC: Thank you, sir.

[The telephone connection was terminated.]

IO: Mr. Cassara, you gave me a rebuttal--

CDC: Right. What I'd like to do, Captain Ayers, is take those back from you. I'm going to put together a packet that we'll move to admit to you.

IO: Excellent. That's what I would prefer.

CDC: It should be _____. Didn't I give you another one, too?

IO: And I handed it back to you.

CDC: Did you? Okay, thank you.

IO: All right, we'll recess for lunch. Let's be back in an hour and 10 minutes, at quarter till.

DC (CPT BUNCH): Captain Ayers, before _____, I'd like to add Sergeant Fisher, who is in the Maintenance Troop. He's here at Carson--as a witness. He's the first-line supervisor of Specialist Loper.

IO: Sergeant Fisher?

DC (CPT BUNCH): Sergeant Fisher, from Maintenance Troop.

IO: E-5?

DC (CPT BUNCH): Yeah.

IO: Okay. We're in recess.

[The Article 32 investigation recessed at 1230 hours, 2 December 2004.]

[The Article 32 investigation reconvened at 1410 hours, 2 December 2004.]

IO: We're back from recess. All parties present prior to recess are again present, although I see Specialist Hargroves is out of the courtroom. We took a lengthy recess for lunch, our lunch break.

All right, which witness--oh, wait. Sir, one second, actually. You know, when I reviewed the packet, the Article 32 packet, I had asked for Special Agents Conner, Hughes, and Ryan, and a Major Michael E. Smith. I understand that the defense will probably call Major Smith. Now, regarding the agents, I know that two are on standby by phone, and one, Agent Ryan, is here. Mainly, I was going to ask some questions regarding the taking of statements from the accused. I have those statements in evidence now, so I wouldn't call them personally. Now, of course, government counsel or defense counsel may decide that they're relevant and needed. I do not think they're needed at this time.

DC (?): My _____ wishes to speak. I'm going to defer to the lead counsel

CDC: We want Agent Ryan.

IO: Available.

CDC: The other two, I don't think we need.

DC (CPT MELITO): I want Agent Hughes, I believe.

IO: Okay. So, there is still a need for these agents.

ATC: Well, ask about Agent _____

TC: Two of three right now.

CDC: Well, I think we're going to need Connor now, based on information I just got, so I think we're going to need all three of them.

TC: They're all--

IO: Okay. They'll still be--okay.

TC: --three ready to go, two telephonically, one live. So, my suggestion would be let's take the telephonic testimony now and move to live witnesses and conclude with Major Smith.

IO: Okay. And these witnesses are standing by?

TC: Yes. Yes.

IO: Okay. If they're standing by, who's the next witness, then?

TC: I got Major Layton called by Mr. Cassara.

CDC: It should be very short. I only have a couple or three questions.

TC: And he is at the same number as Agent Hughes.

IO: Okay. And it's a secured line?

TC: Yes.

IO: Okay. Let's go ahead and call Major Layton.

TC: Can we, to save tape, go into a recess?

IO: Yeah, let's recess in place.

[The Article 32 took a recess in place to call the witness telephonically.]

~~SECRET~~

Page 48 of 125 pages

IO: All right, we're back from a short recess to secure another witness. I understand that Major Layton is on the line.

[MAJ Christopher E. Layton, U.S. Army, was called as a witness telephonically and testified as follows:]

IO: Trial counsel, if you would swear Major Layton, and then we'll begin with his testimony.

TC: Major Layton, are you there?

WITNESS: Yes.

TC: This is Major Dolan. We spoke on the phone earlier.

WITNESS: Okay.

TC: I'm in a courtroom with an IO, Captain Robert Ayers; a court reporter, Sergeant John Philibert; three sets of accused and two defense counsel; that's Specialist Loper and his attorney, Captain Bunch; Sergeant Sommer and his attorney, Captain Melito; and CW3 Williams and his attorneys, Captain Kageliery and Mr. Cassara; as well as myself and Captain Davison in the room. Do you understand, sir?

WITNESS: I cannot understand anything that you're saying. It's coming in garbled.

TC: Can you hear me now?

WITNESS: I can barely make out your voice.

TC: We're going to call you right back, okay?

WITNESS: Okay.

TC: We'll redo this out here.

[The connection was terminated and retried.]

TC: Okay, good to go. Can you hear me now?

WITNESS: Okay, we're secure.

TC: All right, can you hear me?

Page 48 of 125 pages

~~SECRET~~
UNCLASSIFIED

WITNESS: I can hear you fine. When you put me on the speaker, it was totally garbled, and I couldn't understand anything you were saying.

TC: How about now?

WITNESS: I can make it out.

TC: Okay. I'm just going to recount for you who is in the room. There's Sergeant John Philibert, who's tape recording this conversation and these proceedings. There's Captain Rob Ayers, who's acting as an investigating officer. There's myself and Captain Kelly Davison, who are acting as the trial counsel. Then there's Mr. Williams and his attorneys, Mr. Cassara and Captain Kageliery. There's Specialist Loper and his attorney, Captain Bunch. And then there's Sergeant First Class Sommer and his attorney, Captain Melito. Do you understand, sir?

WITNESS: Yes.

TC: Okay. I want to put you under oath, and then we'll have a few questions for you. Can you stand up and raise your right hand.

WITNESS: Okay.

[The trial counsel, standing with his right hand raised, administered an oath to the witness.]

TC: Go ahead, take a seat. Make yourself comfortable.

Questions by the trial counsel:

Q. Can you state your full name.

A. My full name is Christopher--middle initial, E as in Echo. Last name is Layton.

Lima, Alpha, Yankee, Tango, Oscar, November.

Q. What's your current duty assignment?

A. Can you say again, please?

Q. What is your current duty assignment?

A. My current duty assignment is the rear detachment commander for the 503d

Military Police Battalion, Fort Bragg, North Carolina.

TC: Okay. Mr. Bill Cassara is going to have some questions for you, sir.

WITNESS: Okay.

DIRECT EXAMINATION

Questions by the civilian defense counsel:

Q. Major Layton, this is Mr. Cassara. Can you hear me clear?

A. I can hear you.

Q. Okay. Major Layton, during what time frame were you in theater in Iraq?

A. Yes, I was in theater in Iraq.

Q. When?

A. When?

Q. Yes.

A. I was in theater in Iraq from September '03 to April of '04.

Q. While you were there, were you appointed an AR 15-6 investigating officer involving the death of a General Mowhosh?

A. I was appointed an AR 15-6 investigating officer into the conduct and detention-- let me back--into detention and interrogation operations in the 3d ACR area.

Q. Okay, thank you. Do you remember who appointed you?

A. The appointing officer was the commanding general, 82d Airborne Division.

Major General _____

Q. And as part of your appointment, were you limited in the scope of your investigation to only those folks in 3d ACR?

A. Could you repeat the question again?

Q. Were you limited by that appointment to only personnel within 3d ACR?

A. Yes.

~~SECRET~~

Page 51 of 125 pages

Q. You were not to investigate any allegations involving [REDACTED] personnel; is that correct?

A. That is correct.

Q. During the course of your investigation into the death of General Mowhosh, do you recall the names of the--or do you have a list of the names of the people that you interviewed personally?

A. I do not have a list of everybody that I interviewed, but it is part of my 15-6 investigation.

Q. Okay. Is there anybody from whom you took a statement whose statement is not included in the 15-6?

A. Everybody that I took a statement from is in the 15-6.

Q. Okay. You did not take a statement from my client, Chief Williams. Is that correct?

A. That is correct.

Q. Nor did you take a statement from Chief Welshofer.

A. That is correct. I didn't take a statement from--

Q. Nor Sergeant First--nor Sergeant First Class Sommer or Specialist Loper. Am I correct?

A. That is correct.

Q. Okay. Now, in your report, which is dated 18 January 2004, you indicated that the autopsy report in this case was pending. Do you remember that?

A. That is correct.

Q. What information did you have that told you that the autopsy was pending?

A. The information that I received from CID.

Page 51 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 52 of 125 pages

Q. And do you recall when you received that information in relationship to when you finalized your report on the 18th of January?

A. It was, from the time the appointment was made, approximately a week. While I was conducting my 15-6 investigation, the CID agents were also conducting--or continuing their investigation, and I met with them at R _____ at Al Asad to talk to them, and they said it was still pending.

Q. Do you recall who from CID you spoke with?

A. I believe that was Special Agent Ryan.

Q. Okay, thank you. Did you go to the detention facility at Al Qaim?

A. No, I did not.

Q. Did you go to any detention facilities in the conduct of your investigation?

A. I did. I went to the detention facility at Rifles Base.

Q. And during your tour of that facility, did you enter into any of the rooms where interrogations were supposed to have taken place?

A. I did.

Q. In any of those rooms, did you see a sleeping bag that was allegedly used during any of the interrogations?

A. There was a sleeping bag in one of the rooms at the Rifles Base detention facility.

Q. Did you examine the sleeping bag?

A. No, I did not.

Q. Okay. Were there wall lockers that were allegedly used during the interrogations?

A. Yes, there was a wall locker in the same room as the sleeping bag.

Q. Okay. And in your conversations or in the conduct of your investigation, did you interview Major Voss, the squadron commander? Company commander; excuse me.

A. Major Voss? The female Major Voss of the 66th--

Page 52 of 125 pages

~~SECRET~~

Q. That's correct.

A. --MI Company?

Q. That's correct.

A. I did.

Q. And that statement was typed into the 15-6; is that correct?

A. That is correct. We had a conversation of which I took notes and summarized, which is in the 15-6 investigation.

CDC: Thank you. One second, Major.

[further questions by the civilian defense counsel:]

Q. Now, what I am holding--and I realize you can't see this, but what I am holding is a one-page, typed interview with Major Voss. Did you type that after the interview took place, or was that done at the same time while you were conducting the interview?

A. That was after--I typed that afterwards, after the interview.

Q. Okay. Thank you.

A. I took handwritten notes while I talked to her.

Q. Okay. Do you still have your handwritten notes anywhere?

A. No, I do not.

Q. During that conversation with Major Voss, did she ever indicate to you whether she was aware of a wall locker being used to interrogate detainees?

A. Yes, she was aware. That was part of the conversation.

Q. Did she ever indicate to you whether she was aware of the sleeping bag being used in interrogating detainees?

A. That I do not recall.

Q. Okay, that's fine.

A. I would have to go back and read the statement that I typed up

~~SECRET~~

Page 54 of 125 pages

CDC: I have no further questions for you, Major. I think some of the other lawyers here in the room may, though, okay? So, hold tight.

WITNESS: Okay.

CROSS-EXAMINATION

Questions by the trial counsel:

Q. What detention facility did you visit?

A. The detention facility that I visited was the one located on Rifles Base in Al Asad.

Q. On the airfield?

A. Pardon me?

Q. Was it at the airfield?

A. I'm sorry; I can't understand the question.

Q. Was it at the airfield?

A. Yes, it was.

Q. When did you go there?

A. During the time frame when I conducted my 15-6.

Q. Was it--

A. It would have been the week of 12 through 16 January.

TC: Nothing further. Is Mr. Hughes nearby?

WITNESS: I can go get him.

TC: Okay, don't terminate the connection, and do not leave yet. Captain Ayers has something to say to you. Okay?

WITNESS: Can you say again, please?

TC: Captain Ayers has something to say to you. When he finishes, can you please go get Mr. Hughes?

WITNESS: Yes, I will.

Page 54 of 125 pages

~~SECRET~~
UNCLASSIFIED

TC: Thanks. Here's Captain Ayers.

IO: All right, temporary or permanent excusal?

[All counsel said "permanent."]

[The witness was permanently excused and was duly warned.]

IO: Do you understand?

WITNESS: Yes, I do.

IO: All right, if you would go get Special Agent Hughes for us, we would appreciate it.

WITNESS: Okay, one moment, please.

[pause]

[SA William G. Hughes, U.S. Army, was called telephonically as a witness.]

WITNESS: This is Agent Hughes.

TC: Hey, Mr. Hughes, Major Dolan here.

WITNESS: Yes, sir.

TC: Can you hear me okay?

WITNESS: Sir?

TC: Can you hear me okay?

WITNESS: Yes, I can hear you, but you're a little broken.

TC: Okay. We're at an Article 32 session. This conversation is being taped by Sergeant John Philibert. The IO here is Captain Rob Ayers. We got Mr. Williams, Sergeant Sommer, Specialist Loper, represented in that order by Mr. Cassara, Captain Kageliery, Captain Melito, and Captain Bunch. Myself and Captain Davison are representing the government. Do you understand that?

WITNESS: Okay. Yes, sir.

TC: I'm going to put you under oath, and then Captain Melito is going to ask you some questions. So, please stand and raise your right hand.

WITNESS: Yes, sir.

TC: Are you standing with your right hand raised?

WITNESS: Yes, sir.

[The trial counsel, standing with his right hand raised, administered an oath to the witness.]

TC: Please take a seat and make yourself comfortable.

Are you comfortable?

WITNESS: Yes, sir.

Questions by the trial counsel:

Q. What's your full name?

A. William George Hughes.

Q. What's your current duty assignment?

A. I didn't get that last part, sir.

Q. What is your current duty assignment?

A. I'm currently assigned as a special agent for the 87th Military Police Detachment (CID), Fort Bragg, North Carolina.

TC: Okay. I'm going to turn you over to Captain Melito.

WITNESS: Okay.

DIRECT EXAMINATION

Questions by the defense counsel, Captain Melito:

Q. Agent Hughes, this is Captain Melito. Can you hear me okay?

A. Yes, sir.

Q. All right, Agent Hughes, you interviewed my client, Sergeant First Class Sommer?

A. Yes, sir, I did.

Q. And that took place shortly after the general had passed away?

A. Yes, sir, it was.

Q. You took a statement. Was there anything that Sergeant Sommer relayed to you that is not encompassed in the statement, that you can recall?

A. No, sir, not that I can recall, no.

Q. Now, we have no rights warning in the pack that was provided to us. You didn't have Sergeant Sommer fill out a 3881, did you?

A. No, sir, I did not. Not at that time.

Q. Okay. What was your understanding of his involvement when you took his statement?

A. My understanding of his involvement was that he was the interpreter between Mr. Welshofer and the detainee.

Q. Did you understand that he was present when the detainee had died?

A. Yes, sir.

Q. Did you understand that the detainee had undergone an interrogation by Chief Welshofer?

A. Yes.

Q. Did you understand that Sergeant Sommer and a number of other people witnessed the interrogation by Chief Welshofer?

A. At the time that I interviewed Sergeant Sommer, other than the people that he told me that were in the room, that was all I knew of who was in the room.

Q. In what order did you participate in interviews revolving around the death of General Mowhosh?

A. In what order of the people I talked to?

Q. Yes, please.

A. Hold on one second, sir. I was checking my notes. I believe I spoke to Captain Rossignol, Captain Marlow--and I believe there was one other person, a medic, and then Sergeant Sommer.

Q. Okay. Before you spoke to Sergeant Sommer, was Agent Ryan there with you?

A. He was at the same compound, yes, but he wasn't right there with me, no.

Q. I'm sorry. Could you repeat that?

A. He was in the compound, but I was not with him. He was doing interviews on his own.

Q. Okay. When did you guys talk about information you had learned?

A. After I had spoken with Sergeant Sommer--it was after I had already obtained the statement from Sergeant Sommer.

Q. What did you learn from Captain Rossignol and the other captain that you spoke to?

A. Can you repeat that, sir?

Q. What did you learn from Captain Rossignol and Captain Marlow?

A. They told me that Sergeant Sommer had--or the detainee had become unconscious and unresponsive, and they told me who was--or, rather, what the condition of the patient was on their arrival and what medical lifesaving measures they took.

Q. Did they tell you who was present when they arrived to perform those lifesaving measures?

A. They told me Mr. Welshofer was present, and that's all that I remember them telling me.

Q. Okay. And they told you that Sergeant Sommer had reported the death to them?

A. Right.

Q. Or the unresponsiveness?

A. Correct.

DC (CPT MELITO): Okay, thank you.

IO: That's all you have, Captain Melito?

DC (CPT MELITO): That's all.

DC (CPT BUNCH): I don't have anything.

DC (CPT MELITO): Anyone?

DC (CPT KAGELIERY): Yeah, I have a few questions.

DC (CPT MELITO): All right, just hold on a second, okay?

WITNESS: Okay.

DIRECT EXAMINATION

Questions by the defense counsel, CPT Kageliery:

Q. Agent Hughes, this is Captain Kageliery. Can you hear me all right?

A. Yes, I can hear you, but can I get your name again, sir?

Q. Captain Kageliery.

A. Okay.

Q. I represent Mr. Williams. You mentioned some of the individuals that you interviewed previously, and you mentioned a medic. You weren't sure of his name. Is it Staff Sergeant Bernard?

A. Say again. I didn't get the last part, sir.

Q. You said before that you interviewed one of the medics, but you couldn't remember his name.

A. Right. I believe--I'm looking at the copy of the AIR. I believe it was Sergeant Perry, Staff Sergeant Perry.

Q. Yeah, okay. I'm sorry. That's his first name, Bernard Perry. I'm looking at the same document.

A. Okay.

Q. I have another document here, and it's got your name in the upper right-hand corner. It's dated 28 October '03, and then it's got a CID case number on it. And it looks like a cut-and-paste from an e-mail. And it's addressed to somebody named Dave.

A. What is this again, sir?

Q. It's a one-page document. It's got your name in the upper right-hand corner. It says "Special Agent Hughes." It's dated 28 October.

A. Er--

Q. Say again.

A. I was trying to say okay.

Q. And it's got a CID case number on it. And it says "Dave," and it says, "Good they can interview [REDACTED] but doubt they will get far," period. And then it goes on some more. Do you remember what document I'm referring to?

A. Can you say what it says again, sir? I didn't hear that.

Q. It's addressed to a person named Dave, no last name, and it says, "Good they can interview [REDACTED] but doubt they will get far." And then it says, "The regs I am aware of are"--and then it lists some different regs that apparently pertain to detainee operations.

A. Okay. I don't recall that document, sir, without seeing it.

Q. Any idea who "Dave" could be? Somebody that you would have been communicating with back in the end of October of '03 about detainee operations.

A. I can't think of anybody off the top of my head right now, no, sir.

Q. Okay. Do you know--did anybody in this investigation, any of the subjects or witnesses, take a polygraph?

SECRET

Page 61 of 125 pages

A. In this investigation, there were some. I do not know who they were, though. As far as my involvement, none of the people that I was involved with took--or I didn't take any polygraphs.

Q. Did you interview a Sergeant First Class [REDACTED]? Or, actually, I think he might be a warrant officer; I'm not sure.

A. Sergeant First Class [REDACTED]?

Q. No, [REDACTED], a [REDACTED]--

A. No. No, I did not.

Q. Well, you're fairly sure that some individuals did take polygraphs in relation to this investigation?

A. I believe there were some polygraphs done, yes, but I don't know who they were. Agent _____ would know better on that.

Q. Okay. The interrogation that took place of General Mowhosh on the 24th, who was involved in that interrogation?

A. That was taken on the 24th?

Q. Two days before he died.

A. I don't know the _____. I wasn't a case agent for this thing, for the most part. I was involved in the initial part of it. That would be better answered by Curtis Ryan. I'm not sure on the names of the people who were actually involved in that interrogation.

Q. Well, do you know what organizations were involved? I mean, the people that you talked to when--the ones that you actually interviewed were well aware of it. I was just wondering if you followed up on trying to track down on who the [REDACTED] individuals--

A. Who those personnel were?

Q. Right.

Page 61 of 125 pages

SECRET

A. Through the statements that I got on that day, they said that they were interviewed--completed their interview by [REDACTED] I might be skipping ahead, but I believe in their statements, Sergeant Sommer's statement, he said that the general had been interviewed previously by personnel from [REDACTED] I'd have to check his statement to make sure that that's in there. But I believe that is in there.

Q. But bottom line is nobody followed up on trying to find out who the [REDACTED] personnel were.

A. No, that's actually not true. They were followed-up on.

Q. Who followed up on?

A. Just not on that particular day.

Q. Well, who followed up on it, then?

A. Curtis Ryan. It is well-documented in the case file.

DC (CPT KAGELIERY): Okay. Thank you.

ATC: Does anyone else have any questions?

[negative responses]

OI: Permanent excusal?

[positive responses]

[The witness was permanently excused and duly warned.]

ATC: Agent Hughes, this is Captain Davison. Can you hear me?

WITNESS: Yes, I can.

ATC: Okay, Agent Hughes, we're going to sever the communication at this time.

WITNESS: Okay.

[The telephone connection was terminated.]

IO: Who are you going to call?

ATC: Agent Conner.

[REDACTED]
UNCLASSIFIED

~~SECRET~~

Page 63 of 125 pages

IO: Does somebody want to speak to Agent Conner?

DC (?): Yeah, we do.

IO: Okay. Go ahead and--we're not going to go off the record. Go ahead and start trying to call Agent Conner.

While Captain Davison is trying to--

DC (?): Hold on. Hold on. Before you do that, Captain Davison, we may not need to do this.

IO: Well, shall we hear from Agent Ryan first and then maybe decide whether or not you need Agent Conner?

DC (?): That's not a bad point. Let's do that. Let's call Agent Ryan, and then we can determine--

ATC: Well, Agent Conner's standing by. I mean, I'm trying to--give us a brief recess in place.

IO: Okay. Recess in place.

[The Article 32 recessed while the witness was telephonically called.]

SA Patrick J. Conner, U.S. Army, was called telephonically as a witness.

ATC: _____ for the government. Sergeant Philibert will be recording everything that's said. Investigating officer is Captain Rob Ayers. Captain Michael Melito will be asking you a few questions in a second. He is representing Sergeant Sommer. Captain Bunch is representing Specialist Loper. Captain Kageliery and Mr. Cassara are representing CW2 Williams. Do you understand all that?

WITNESS: Yes, I heard you.

ATC: Okay. I'm going to place you under oath now. If you would, please stand and raise your right hand.

WITNESS: I have my right hand raised.

Page 63 of 125 pages

~~SECRET~~

~~SECRET~~

Page 64 of 125 pages

[The assistant trial counsel, standing with his right hand raised, administered an oath to the witness.]

DIRECT EXAMINATION

Questions by the defense counsel, CPT Melito:

Q. Agent Conner, it's Captain Melito. How you doing?

A. Good, Captain Melito. How are you?

Q. Good. Long time no talk to. What is your current duty assignment, Agent Conner?

A. I'm sorry. I'm listening to you, but it sounds like you're coming through a glass of water. I didn't quite hear that last question.

Q. What's your duty assignment?

A. Right now I'm the assistant special agent in charge of the Fort Hood CID office, and I'm the forensic science officer for the 11th MP Battalion.

Q. With CID?

A. Yes. Special agent with CID.

Q. Okay. Agent Conner, did you interview Chief Williams?

A. Yes, roughly a year ago in Iraq, I interviewed Chief Williams.

Q. Did you interview Sergeant First Class Sommer?

A. No. I believe that was done by one of the other agents.

Q. Were you present at any time Sergeant First Class Sommer was interviewed?

A. Yes, I believe I was present a few times, coming in and out of the room, when I think Agent Hughes was interviewing him, if I'm not mistaken. I could be mistaken.

Q. Okay. Do you know if Sergeant First Class Sommer--do you recall hearing him say anything, or were you just traveling in passing?

Page 64 of 125 pages

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 65 of 125 pages

A. I believe I was just traveling in passing. I don't believe I stopped and took part in the interview at any time.

Q. Do you recall--

A. Not to my knowledge.

Q. Okay. Do you have any recollection of him saying anything? Can you recall the substance of what he has said?

A. Well, I believe he was telling us about interviewing Mowhosh.

Q. Can you go into the detail of whatever it is you remember about what Sergeant First Class Sommer said?

A. Unfortunately, sir, like I say, it was about a year ago, and I don't have--because of the nature of the case and whatnot, I don't have any of the notes. I don't have any of my reports or even the statements taken. I don't remember specifically what Sergeant Sommers [sic] did or did not say to Agent Hughes.

Q. Okay. How about Specialist Loper? Did you partake in any interview--


A. I remember that Agent Ryan interviewed--is it Loper?

Q. Yes.

A. And I do remember Loper telling us about the interview and about the sleeping bag being put over Mowhosh and the cord being wrapped around him and also about the time when--and I'm not sure if this was Loper that was telling this--that he stopped breathing at one point. They stopped the interview, and then he took a large breath--or if it was one of the other people. But I do remember someone telling us that.

Q. Okay. Do you--

A. I believe it was Loper, but I could be mistaken. It could have been--is it Welshofer? Maybe not Welshofer. It could have been Loper.

Q. Okay. Did you interview any of the 

Page 65 of 125 pages

~~SECRET~~

~~SECRET~~

Page 66 of 125 pages

A. No. I did not interview any of the [REDACTED]

Q. Who did that?

A. I do not know.

Q. Okay.

A. It's my understanding that Agent Hughes and Agent Ryan were trying to track down the [REDACTED] to interview them. I wasn't part of that detachment. I went back to the battalion in Baghdad after the initial preliminary investigation.

Q. Did you work with the civilian translator that originally translated for Chief Welshofer?

A. Who interviewed that person?

Q. Yes.

A. Again, without looking at my notes, I wouldn't be able to tell you without looking at the AIR and the AS entries.

Q. Okay, it wasn't you?

A. No, I didn't interview the--I don't believe I interviewed _____. But, again, it was a year ago. I don't believe I interviewed that person, no.

DC (CPT MELITO): Okay. Thank you, Agent Conner.

CDC: Agent Conner, are you still there?

WITNESS: Yes, I'm still here.

DIRECT EXAMINATION

Questions by the civilian defense counsel:

Q. Agent Conner, my name is Bill Cassara. I am a civilian attorney, and I represent Chief Jeff Williams. Agent Conner, you are the agent who interviewed Chief Williams in theater?

A. Yes, I took a statement from Chief Williams. I did interview him, yes.

Page 66 of 125 pages

~~SECRET~~

Q. Okay, thank you. And during that statement, he told you that he was not in the room during the entire course of the interrogation of Mr. Mowhosh; is that correct?

A. I believe he did tell me that he was in and out, that he was not the preliminary [sic] interrogator.

Q. Right. In fact, he told you he was not an interrogator at all; is that correct?

A. He told me that he was present for the interrogation but he did not--I do believe you are correct. I believe he said he did come in and out.

Q. Okay. And, in fact, he said that he left after it first started and came in later on in the interview; correct? If you remember, you know, please.

A. Again, without looking at the statement or the AS entries, I can't tell you exactly where he came in or where he told me he came in. I can only tell you that I do remember that he said he was not there for the whole thing.

Q. Okay. Now, he also told you that he was aware that the general had been interrogated by [REDACTED] personnel a couple of days prior. Is that correct?

A. Yes. He did tell me that information.

Q. And I forgot to ask you this, and I apologize for this. Who else besides Agent Williams did you interview as part of this investigation?

A. I did canvass interviews of the guards. I remember talking to quite a few of the guard personnel. I remember talking to some of the medical personnel. Those may have been joint interviews with some of the other agents. Apart from that, I'm sure I did a few other interviews, but without looking at the AIR or the notes, the AS's, I wouldn't be able to tell you exactly who.

Q. I understand. Based on just your general recollection from the interviews that you conducted, do you recall what General Mowhosh was wearing during the interrogation?

A. As far as his clothing?

Q. Right. Was he--he was in the--do you recall him being in what they call the "man dress" or the full-length clothing that--

A. They call it a burga?

Q. I think women call it a burga. I don't know what men call it, but it's the, you know, the full shoulder-to-toe attire. Is that what he was wearing?

A. A long garment.

Q. Okay.

A. I don't remember exactly what he was wearing, but I believe it was--I seem to believe that it was a long garment, yeah.

Q. Okay. Thank you. And do you also recall from all of your interviews in this case and the discussions about the ~~██████████~~ personnel that interrogated General Mowhosh a couple of days prior, do you recall those interviews revealing that he had been pretty severely beaten a couple of days prior?

A. Not just silent; I don't want to answer your question, sir, but I'm under the impression that a lot of that information I can't talk about over a ___ line.

Q. One second.

A. Am I clear on that or not?

TC: Hey, Agent Conner, this is Major Dolan again. Can you hear me?

WITNESS: Yes, sir.

TC: We are in a secure environment, and you are free to talk. There is no answer you can give us from the file that you are not clear to disclose in this session.

WITNESS: Okay.

TC: Okay.

WITNESS: When I was talking to Chief Williams, he did mention that Mowhosh was interviewed--I guess you could say interviewed. He was--he had contact with ~~██████████~~

~~SECRET~~

Page 69 of 125 pages

several days or--I don't exactly remember how far, but it was before the interview in which he died or the interrogation in which he died, yes.

[further questions by the civilian defense counsel:]

Q. Did any of the other people whom you interviewed tell you that same thing?

A. I'm sorry. Can you repeat the question, sir?

Q. Sure. Did any of the other people that you interviewed also tell you about that prior interrogation of Mr. Mowhosh?

A. I believe there was a couple people who mentioned to not only me but also the other agents in the case in reference to hearing the interview or hearing the encounter between Mowhosh and the [REDACTED]. I believe we took some statements from one or two of the people who helped Mowhosh back to the holding area after his encounter with the [REDACTED].

Q. Okay. Do you recall who--I think I know the answer to this, but do you recall who told you that?

A. Who told me outside the door?

Q. That's correct.

A. I don't remember exactly who it was, but I believe it was one of the--it was one of the reasons why we were canvassing all the guards, was because we had already talked to someone who told us that they heard the encounter between Mowhosh and the [REDACTED] and that we were seeing if there was anybody else who could corroborate the story. I may be wrong. Again, I don't want to say a name and be wrong, so I'm just going to say I don't remember exactly who it was.

CDC: And I appreciate that. Okay, I have no more questions for you. I don't know if any of the other individuals do, so stand by, okay?

WITNESS: Yes, sir.

Page 69 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 70 of 125 pages

IO: Okay, before you let this agent go, my understanding is that he said [REDACTED]

CDC: That's my understanding, as well.

IO: Okay. Permanent excusal?

[affirmative responses]

[The witness was permanently excused and was duly warned.]

ATC: Agent Hughes, this is Captain Davison again.

WITNESS: I'm sorry?

ATC: Agent Hughes, this is Captain Davison. I'm going to sever the connection at this time.

WITNESS: Okay. This is Agent Conner, and I understand that you're going to sever the connection now.

ATC: I'm sorry. Roger, Agent Conner.

WITNESS: Okay. Out here.

ATC: Out.

[The telephone connection was terminated.]

IO: Okay, before we call the next witness, let me cover a few things.

Now, when Agent Hughes was testifying, he was referring to his notes, which really--if there would have been an objection, I would have sustained that. But nobody objected, so we just went on.

Captain Kageliery brought up the information regarding polygraphs or possible polygraphs, and I note that it was a defense counsel that brought that up. Again, normally, maybe I wouldn't consider that information, but defense counsel brought it up, and there were no objections, so I just, again, let that go, as well.

Page 70 of 125 pages

~~SECRET~~

~~SECRET~~

Page 71 of 125 pages

DC (?): It's a discovery issue at this point 'cause they don't know of any, but there's information in here that indicates that there might be.

IO: There might be. Okay. Very good. And I will let things to if I--like the notes, for example, unless there is an objection, unless there's something that I think is affecting the rights of the accused soldiers. All right. Who else are we going to call now?

TC: We're now going to call live witnesses, and I suggest in this order: Sergeant Bleibaum, Sergeant Higgins, Sergeant Sheley, Sergeant Lamb, and then Agent Ryan.

IO: Okay. Any objections? Okay, who's the first one on your list?

TC: The next four witnesses up have all been called by Captain Melito, the first being Sergeant Bleibaum.

IO: Okay. Let's get that soldier in here. Normally, I would be the one to swear the witnesses, but I'm just letting government counsel do that because of my hand here, so . . . SGT Taylor J. Bleibaum, U.S. Army, was called as a witness, was sworn, and testified as follows:

Questions by the trial counsel:

- Q. State your full name for the record.
A. Taylor J. Bleibaum.
Q. What's your current duty assignment?
A. I'm the signals intelligence squad leader for the Ace, 3d ACR.

DIRECT EXAMINATION

Questions by the defense counsel, CPT Melito:

- Q. How you doing?
A. Hoo-ah, sir.
IO: Captain Melito, can we get his--the witness's first name again?
Q. What's your first name?

Page 71 of 125 pages

~~SECRET~~

~~SECRET~~

Page 72 of 125 pages

A. Taylor.

IO: Okay.

Q. How do you spell that?

A. T-A-Y-L-O-R.

Q. Okay. What's your MOS?

A. I'm a 98-Charlie, signals intelligence analyst.

Q. All right. Were you present the day that General Mowhosh died in the Black
_____ facility?

A. Negative.

Q. Okay. I just want you to go into some generalities between the various collection
methods and interpreters versus interrogators. If you could just help us familiarize ourself with
the positions of the varying MOS's.

A. _____

Q. Who are those people who worked with you when you were in Iraq?

A. From the CI human?

Q. Yes.

A. Mostly. I either saw Sergeant Lamb or Mr. Welshofer

Q. And what was your understanding that their roles were with regard to the
detainees?

Page 72 of 125 pages

~~SECRET~~

~~SECRET~~

Page 73 of 125 pages

A. As far as I know, they were both interrogators. Their job was to take the detainees and get information from them. And then they made their reports, and we received those reports.

Q. Who were the individuals--I guess speaking from the perspective of the soldiers that are working in and around Chief Welshofer and Sergeant Lamb, who are the individuals who were promulgating the rules or creating SOPs relating to how detainees are handled?

A. I honestly wouldn't know. I never went into that.

DC (CPT MELITO): Okay. I guess that's all I have, then.

IO: Anyone?

[negative responses]

TC: Does any defense counsel have any questions?

[negative responses]

TC: Are you going TDY anytime soon?

WITNESS: Yes, I am, sir.

TC: When and for how long?

WITNESS: January 10th until February 2nd.

TC: Hoo-ah. That's all I got. Thanks.

IO: All right, permanent excusal?

[affirmative responses]

[The witness was permanently excused, was duly warned, and departed the courtroom.]

SGT Conrad Sheley, U.S. Army, was called as a witness, was sworn, and testified as follows:

Questions by the trial counsel:

Q. What's your first and last name?

A. Conrad Sheley.

Q. How do you spell your last name?

Page 73 of 125 pages

~~SECRET~~

~~SECRET~~

Page 74 of 125 pages

A: S-H-E-L-E-Y.

Q: I know I can read it plain as day; it's for the court reporter. What's your current duty assignment?

A: I'm a team leader in the counterintelligence section of 66th MI.

TC: Thank you.

DIRECT EXAMINATION

Questions by the defense counsel, CPT Melito:

Q: How you doing, Sergeant Sheley?

A: Pretty good, sir.

Q: Okay, I just want to have you talk a little bit about the SOPs that occurred under Chief Welshofer when you were in Iraq. [REDACTED]

A: [REDACTED]

Q: And what's the difference between a Bravo and Echo?

A: [REDACTED]

Q: Okay, now, who was in charge of the [REDACTED] when you were in Iraq?

A: My first-line--I was a team leader, and my first-line supervisor would be Chief Welshofer.

Q: How did Chief Welshofer develop rules for dealing with detainees, or did he create any SOPs that you were aware of?

Page 74 of 125 pages

~~SECRET~~

~~SECRET~~

Page 75 of 125 pages

A. Not that I was aware of. He put guidance down through e-mails on the [redacted] and when I went up to see him from time to time, he put out guidance that he gathered from [redacted] cops.

Q. Okay, so, what sort of guidance, specifically, did he put out?

A. Regarding what, sir?

Q. Regarding how to interrogate detainees or methods and approaches to be used?

A. Okay, the guidance he had for us at the [redacted] level was not to do interrogations so much as running a cage at our level. We were just supposed to do like the initial screenings or the tactical questioning of the people. But we were giving--he did give us some guidance on what we were supposed to--or authorized techniques in the booth when we were doing our tactical questioning--

Q. So--

A. --which would be like stress positions--

Q. What stress positions did he utilize?

A. Did he utilize?

Q. Yes.

A. Or approve?

Q. Well, approve of.

A. Approve of? He approved of like getting on your knees, putting the detainee on their knees, making the detainee stand for the entire interrogation, holding different objects, like holding a cup of water or something out in front of you.

Q. Something of weight?

A. Something of weight.

Q. Okay. And let me just kind of fast-forward you a little bit.

A. Okay.

Page 75 of 125 pages

~~SECRET~~

~~SECRET~~

Page 76 of 125 pages

Q. You said Chief Welshofer sort of promulgated the rules and received them from corps.

A. Right.

Q. Was it your understanding that Chief Welshofer was sort of the one who said, "Here's what's allowed"?

A. Roger.

Q. Was he that source person?

A. He was the guy that said, "This is what's allowed."

Q. And "This is what's permissible."

A. Yes.

DC (?): Captain Melito, I'm having a hard time hearing the witness.

Just raise your voice a little bit.

WITNESS: Okay.

DC (?): Thank you.

[further questions by the defense counsel, CPT Melito:]

Q. What did Chief Welshofer say his sources regarding permissible interrogation techniques were?

A. The exact source I don't think he mentioned. He just said this came down from higher. I don't remember the exact verbiage he used of where he got the guidance from. I think it came from corps.

Q. Okay, but this is what Chief Welshofer was putting out to you and other soldiers?

A. Yeah. "This is what"--he said. "This is what they have approved." "they" meaning somebody above him.

Q. Okay, and did he talk about like the sleeping-bag technique and the various stress positions you've already mentioned?

Page 76 of 125 pages

~~SECRET~~

~~SECRET~~

Page 77 of 125 pages

A. He never mentioned anything about a sleeping-bag technique to me.

Q. Okay, but Chief Welshofer seemed to be the person who was in the know about authorized techniques.

A. Yes.

DC (CPT MELITO): Okay. Thank you.

TC: Any questions from defense?

[negative responses]

CROSS-EXAMINATION

Questions by the trial counsel:

Q. You said you got guidance from Chief Welshofer through two ways, occasional guidance from e-mails--

A. Roger.

Q. --and that he would hold meetings where he talked about what came from higher?

A. Not really a meeting, sir. He couldn't gather--the regiment's mission was spread out over hundreds of kilometers.

Q. Roger.

A. And we had different [redacted] with each squadron, so they had to--he had to get us on a one-by-one basis. So, whenever I came back to where he was--like I was in Falujah, and whenever I came back to Ramadi, where he was, that's when he would put out the guidance to us face-to-face, just my team.

Q. You said initially when he would hold those face-to-face meetings--

A. Right.

Q. --that that's where he would deliver information from corps. Why did you say that?

A. 'Cause that's where he got his guidance from.

Page 77 of 125 pages

~~SECRET~~

~~SECRET~~

Page 78 of 125 pages

Q. And he explained, "This is what corps wants. This is the guidance from corp."

A. I don't know if he ever used "corps," but he did say that this is the guidance that he's received that says this is what's authorized.

Q. He was your rater at the time?

A. Yes.

Q. He was your rater until when?

A. Till November of this year.

Q. So, just until last month?

A. Yes.

TC: Nothing further.

DC (CPT MELITO): I just have some follow-ups, Captain Ayers.

IO: Go ahead.

REDIRECT EXAMINATION

Questions by the defense counsel, CPT Melito:

Q. The face-to-face guidance that you talked about from Chief Welshofer, that was for CI; right?

A. Roger.

Q. And it was also for interrogators.

A. Yes.

Q. Were you aware that he was doing that for anyone else, like, say, mechanics or other MOS's?

A. No, he was just talking to us. He didn't even talk to my translator, just to the team leader to give guidance for the [REDACTED]. I don't think he was telling the guys that were going out to gate how to do stuff or anybody who wasn't--it wasn't in their job description to go and do the questioning.

Page 78 of 125 pages

~~SECRET~~

Q. Okay, that you saw.

A. That I saw.

DC (CPT MELITO): Okay. Thank you.

IO: Captain Bunch?

DC (CPT BUNCH): I have nothing.

IO: Okay. Permanent excusal?

TC: Permanent.

DC (CPT MELITO): Sure.

[The witness was permanently excused and was duly warned.]

TC: Can you tell Sergeant Higgins to come in?

DC (CPT MELITO): Actually, sir, he's--Sergeant Higgins is kind of cumulative, so if they could skip to someone else.

TC: It's your witness, so--

DC (CPT MELITO): Yeah, I know.

TC: We'll call him off, then.

DC (CPT MELITO): That's why I'm saying it.

TC: You can tell Sergeant Lamb to come in.

WITNESS: All right, if he's here, sir. He wasn't here when I came in.

IO: Okay. Regarding Sergeant Higgins, nobody wants to hear from Sergeant Higgins. Is that correct?

TC: He's here to be called. Otherwise, we'll release him.

DC (CPT MELITO): I say no at this point 'cause I was able to just pull out something I don't want to waste you guys' time.

IO: Okay, Captain Bunch?

DC (CPT BUNCH): I don't need him. Thanks.

~~SECRET~~

Page 80 of 125 pages

IO: All right. why don't we make sure Sergeant Higgins knows he can be released.
What about Sergeant First Class Carrasco?

DC (CPT MELITO): I already said he can be released.

IO: All right. Nobody else wants Sergeant Carrasco?

TC: If Sergeant Lamb is here, I'd like to call him.

DC (CPT MELITO): Okay, that's fine.

TC: If he's here. If he's not, I can go with Agent Ryan.

IO: All right. I'm going to remove Sergeant Carrasco. Let's go ahead and get
Sergeant Lamb if he's available.

(?) Sergeant Lamb's not here yet, sir.

TC: Okay.

IO: Go ahead and let Sergeant Higgins go.

Let's take like a 5-minute comfort break, and then we'll hear from Agent Ryan.

[The Article 32 recessed at 1520 hours, 2 December 2004.]

[The Article 32 reconvened at 1530 hours, 2 December 2004.]

IO: All right, all parties are present that were present prior to the last recess. I
understand, instead of Agent Ryan, that Sergeant Lamb is now available, so let's go ahead and
call Sergeant Lamb.

TC: And Sergeant Perry is apparently here, too, so I anticipate both these folks taking
pretty quick, while Agent Ryan may take a bit longer.

IO: Okay. Well, let's go ahead and--

DC (CPT MELITO): Who was the other sergeant you mentioned, sir?

TC: Perry.

DC (CPT MELITO): Okay.

IO: That's it. Let's get Sergeant Lamb.

Page 80 of 125 pages

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 81 of 125 pages

I tell you what. While we're waiting for Sergeant Lamb, one administrative note that I had not thought of was I know personally that Mr. Cassara is able to represent accused soldiers at Article 32s, but, Mr. Cassara, why don't you give your qualifications.

CDC: I am a member of the highest courts of the states of Georgia and Maryland. I am a member of all service courts of appeal as well as the Court of Appeals for the Armed Forces. And while on active duty, I was qualified and certified under 27(b) and 42-Alpha.

IO: All right. Good enough for me. And sorry about that. I just wanted to get that on the record.

Sergeant Justin Lamb, U.S. Army, was called as a witness at the Article 32 investigation, was sworn, and testified as follows:

Questions by the trial counsel:

Q. What's your first and last name?

A. Justin Lamb.

Q. You're a sergeant in the U.S. Army?

A. Yes.

Q. What is your current duty assignment?

A. Fort Carson, 66th MI Company.

TC: Thank you.

Captain Melito, your witness.

DIRECT EXAMINATION

Questions by the defense counsel, Captain Melito:

Q. Sergeant Lamb, do you have an attorney?

A. Yes, I do, sir.

Q. What's the name of that attorney?

A. Lieutenant Collins, sir.

Page 81 of 125 pages

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 82 of 125 pages

Q. Okay. I spoke with Lieutenant Collins. He's out at Fort McCoy; is that correct?

A. Correct, sir.

Q. Okay. I don't intend on going into anything that you may or may not be accused of, just merely have you talk about Chief Welshofer and the difference between an interrogator and a linguist.

A. Roger.

Q. Can you explain what a 97-Echo is?

A. 97-Echo is a human intelligence collector, commonly known as an interrogator, sir.

Q. Okay, what is the generalized description for that MOS?

A. I guess we collect intelligence from detained individuals, whether they're EPWs, civilian detainees.

Q. And how about a linguist?

A. A linguist is a linguist, sir. They translate documents, conversations, meetings, briefings, whatever then need to translate under their target language, sir.

Q. Who was in charge in the facility in Iraq in terms of where you guys handled detainees?

A. Chief Welshofer, sir.

Q. Who put out policy regarding the handling of detainees at that facility?

A. CJTF-7, sir.

Q. And who spread that amongst the soldiers at the facility you worked at?

A. Chief Welshofer.

Q. Okay, if you could just explain to Captain Ayers there, how do linguists and interrogators interact when interviewing or, rather, interrogating a detainee or EPW or what have you?

Page 82 of 125 pages

~~SECRET~~

~~SECRET~~

Page 83 of 125 pages

A. Generally, in a good situation, they get briefed prior. The linguist will get briefed prior by the interrogator about the nature of the interrogation, the nature of the individual, the nature of the questions asked, the way we ask questions, that sort of thing, because the interrogator has to maintain control of the situation. So, they don't want a linguist to be, you know, questioning their questions or questioning their actions.

Q. So, the linguist just translates, purely.

A. Yes.

Q. Okay. Doreen Merza--do you remember her?

A. Yes.

Q. Is she the Titan employee that normally worked with Chief Welshofer?

A. Yes, sir.

IO: What was that name again?

DC (CPT MELITO): Doreen Merza.

[further questions by the defense counsel, Captain Melito:]

Q. Could you just explain to Captain Ayers what her role was.

A. Her role, sir, was as a contract linguist. She was brought to our facility because there's always a shortage of Arab linguists that speak Arabic and English. And for the most part, I speak Arabic, so I didn't need to use her. And Chief was the other interrogator, so he generally used her as a linguist.

DC (CPT MELITO): Okay. That's all I have. Thank you, Sergeant Lamb.

DC (CPT BUNCH): I have some questions.

IO: Okay. Go ahead.

DIRECT EXAMINATION

Questions by the defense counsel, Captain Bunch:

Q. Sergeant Lamb, do you know Specialist Loper?

Page 83 of 125 pages

~~SECRET~~

~~SECRET~~

Page 84 of 125 pages

A. Yes.

Q. How do you know him?

A. From our working together out at the detention facility, ma'am.

Q. How many times did you work with Specialist Loper?

A. Daily interaction, just about, in periods of time that he was a guard, you know,

due to, you know, all sorts of issues relating to detainees.

Q. In terms of when you were interrogating somebody, how often did you work with Specialist Loper? How often was he in the room with you?

A. Oh, I don't know, ma'am.

Q. More than 10?

A. Yes, I would say between 10 and 20, ma'am.

Q. And what was your understanding of what his job was as a guard or an escort? Or is there a difference between guard and escort?

A. At our facility, there wasn't, due to a shortage of guards. We would call for a detainee, a guard would bring a detainee to the interrogation building, and then, depending upon the situation, we may or may not have them remain in the room. But if they do remain in the room, it's as security for us because we can't be armed in any way in the interrogation room. So, we can have a guard stay there. They would have maybe like an MP baton, and it's security for us because we don't have any way to defend ourselves in closed quarters if somebody comes at us.

Q. And who told you that? How did you come to know--how did you not assume that the escort was there to protect the detainee as opposed to yourself?

A. I guess that's just how I look at it, ma'am. I mean, that's--

Q. Did anybody tell you that that's what Specialist Loper was there to do; that as an escort, he was there to protect you?

Page 84 of 125 pages

~~SECRET~~

~~SECRET~~

Page 85 of 125 pages

A. No, ma'am.

Q. That was just your understanding based on your experience or--

A. Yeah, based on my experience, ma'am. It's--you know, we had detainees that were quite unruly, and I didn't fear for their safety. I feared for mine.

Q. Did you have a lot of interaction with the other interrogators where you were located?

A. Yes, ma'am.

Q. Do you know whether or not that was their understanding, as well, that escorts were there to protect the interrogators?

A. As far as I know, that's their understanding, ma'am.

Q. Okay. Now, I have not spoken to Lieutenant Collins, and I do have questions that actually may implicate you or that you may not want to answer. So, I don't know where Captain Ayers wants to go from here.

IO: Well, tread lightly. I mean, what--

WITNESS: If you can ask the question, ma'am, I can tell you whether or not I'll answer it.

TC: Is Lieutenant Collins back in his office?

WITNESS: He should be, sir. He said he'd be there for the entire period of time that this goes on.

TC: We can just throw him on speaker phone, and he can pipe up if . . .

(?): Okay, that's fine by us.

TC: Oh, I'm sorry. He's not going to have a secure connection, though, so that won't work. So, I'm sorry.

IO: Well, I think . . .

Page 85 of 125 pages

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 86 of 125 pages

TC: Sergeant Lamb is capable of protecting his own interests. He does have counsel. So, it's your call, Captain Ayers.

DC (CPT BUNCH): Maybe I should just go ahead and ask the question. Maybe that would help.

IO: Ask what--yeah, and let's see what's--but don't answer right away, Sergeant Lamb. And what's the question that you want to . . .

DC (CPT BUNCH): Whether or not--as an interrogator, did you ever use the sleeping-bag technique?

IO: Well, I don't--whether Sergeant Lamb did or did not, I think to protect his own rights, that he shouldn't answer that question if there's going to be even an issue whether he's going to incriminate himself.

DC (CPT BUNCH): Then I'd ask him to invoke and have that be on the record, as opposed to anyone else answering for him.

IO: Yeah. Do you wish to invoke your rights rather than answer that question?

WITNESS: Yes, sir.

IO: Okay. And that would be your line of questioning, Captain Bunch?

DC (CPT BUNCH): Right. Mm-hmm.

IO: Okay. I think it's good--well, in a clean way, it's good that Sergeant Lamb just went ahead and invoked his rights. And if there's no more questions, I'll just permanently--other questions, I'll just permanently excuse him.

DC (?): I have a question for him that's not anywhere near like that.

IO: Okay.

DC (?): Just a couple of quick questions for him.

IO: Okay, let's go ahead.

DC (?): Did you have anything else, Captain Bunch?

Page 86 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 87 of 125 pages

DC (CPT BUNCH): No. I did not.

DIRECT EXAMINATION

Questions by _____:

Q. Sergeant Lamb, just based on--an obvious question, but in an interrogation room, who is in charge of the setting?

A. The interrogator, sir.

Q. Okay. Who--and I'm asking you this in a generic sense, not in terms of anything to you specific--who establishes what type of an interrogation technique will be used?

A. The interrogator, sir.

Q. Generally speaking, who else may be in the room with the interrogator and the detainee?

A. A linguist, sir; a guard, possibly, if they choose--if the interrogator chooses to have a guard; an analyst if the interrogator thinks that the could add to the interrogation, just because analysts have such a large data base in their brain of information. And that's--

Q. And what is the role of the analyst?

A. To pick up on things the interrogator might not know from an intel standpoint and let the interrogator know he might want to pursue a certain line of questioning.

Q. Now, you said that Lou put out the policy that was promulgated by CJTF-7; is that correct?

A. It depends on the policy, sir.

Q. Okay. But with regards to interrogation techniques.

A. Yes.

Q. Okay, so, the CJTF-7, which is Command Joint Task Force 7; am I correct?

A. Correct.

Q. Commanded by--do you know? Was that General Sanchez or--

Page 87 of 125 pages

~~SECRET~~
UNCLASSIFIED

A. I know General Sanchez was there for a while, but he replaced somebody else. I believe.

Q. But whatever operational office within CJTF-7 would have the interrogation policy, and Lou disseminated it to the interrogators at the facilities, is that correct?

A. Are you referring to Chief Warrant Officer Three Welshofer?

Q. I am; I'm sorry. Mr. Welshofer. Thank you, Captain Williams.

A. I knew who you were referring to, but, yeah; that's my understanding, yes.

Q. Besides you and Chief Welshofer, who were the other interrogators?

A. At varying times, we had other interrogators. CW2 Manwaring interrogated there; Sergeant First Class Voigt. We had several mobile interrogation teams that came in and out that helped us with backlog and that kind of thing. 82d sent up a couple of guys at one point.

Q. Was it common when dealing with a non-high-value target or high-value--you know what I mean; not somebody--I realize that General Mowhosh was somebody somewhat important. But when dealing with just routine detainees, was it common to use non-interrogators to do the general screening or questioning of those individuals? Do you know?

A. The initial screening?

Q. Right.

A. Would be done possibly by a non-interrogator.

Q. Okay. And, finally, to the best of your knowledge, Ms. Ramira is out there--or Doreen Merza--she was a native speaker; correct?

A. Correct.

Q. She spoke English fairly well?

A. Yes.

Q. Do you know if General Mowhosh spoke English?

A. We think he spoke it better than he let on.

DC (?): Okay. Thanks. That's all the questions I have for Sergeant Lamb.

IO: Okay. Do you have some questions?

TC: Yes.

CROSS-EXAMINATION

Questions by the trial counsel:

Q. An analyst will clue the interrogator on details that perhaps the interrogator is missing?

A. Yes, sir.

Q. So, might guide the questioning?

A. Yes. In most detention facilities, part of the facility is an analyst, but the regiment's short on all intel people. So, it was just once in a while that an analyst would be present.

Q. But if an analyst is present, chances are that analyst is going to be, in some ways, guiding questioning.

A. He can give the interrogator recommendations on lines of questioning but not necessarily guiding it because that takes it out of the interrogator's hands.

Q. The interrogator is in charge.

A. Yes.

Q. But he would, nonetheless, rely on and follow the advice of his analyst.

A. On certain lines of questioning, it's possible.

Q. Have you ever been to a range?

A. A firing range?

Q. Yeah.

A. Yes, sir.

Q. What kind of ranges?

A. M-16 range, a saw range, sir.

Q. Have you ever ran a range?

A. No.

Q. So, on a range, you've only been a guy who fires?

A. Yes.

Q. Well, what have you been told about what to do if you see a safety violation?

A. To report it.

Q. You report it.

DC (?): Objection to relevance. This has nothing to do with what we're talking about.

IO: I see Major Dolan's point. I'll let it--

DC (?): Unless he can prove that the rules for a range are the same as the rules for an interrogation, then it's irrelevant.

TC: Well, I would just point you to _____ 4. I'm not talking about the rules. I'm talking about the law.

IO: I'll go ahead and give Major Dolan some leeway. I think I understand his point, that if someone sees an infraction, they should raise it. Go ahead.

[further questions by the trial counsel:]

Q. Is that fair to say? If you see an infraction at a range, it's your duty to report it.

A. Yes, sir.

Q. And that's whether or not you're running the range.

A. Yes, sir.

TC: Nothing further.

DIRECT EXAMINATION

Questions by the defense counsel, _____:

Q. Would I be correct, Sergeant Lamb, then saying that that is assuming that you know that there's an infraction?

A. Yes.

Q. Okay. Would you agree with me that the person running the range is going to know a whole lot more about what constitutes an infraction than the person firing the weapon?

A. There's obvious infractions, but I'm sure there's infractions that we wouldn't know about as just soldiers.

Q. Now, they asked a question with regards to whether or not an analyst can guide an interrogator. Remember that question the major just asked you?

A. Yes.

Q. That's on lines of questioning, though, not in terms of interrogation techniques; am I correct?

A. Yes.

DC (?): Thank you. I have nothing further.

IO: All right, hold on everybody.

All right, Sergeant Lamb, I do have, actually, a couple questions that I just want to clarify.

EXAMINATION BY THE INVESTIGATOR

Questions by the IO:

Q. Now, you did say earlier--you testified that initial screening may take place by non-interrogators.

A. Yes.

Q. And any further interrogations would be conducted by whom?

A. By an interrogator; in some cases a 97-Bravo, which was allowable at the time but has since come down that nobody but 97-Echos will interrogate.

- Q. It should be 97-Echos. What is a 97-Bravo?
- A. A counterintelligence agent, sir. Also, a human intelligence collector.
- Q. Okay, and who was 97-Echos or 97-Echos-qualified, if you can recall?
- A. CW2 Manwaring, Sergeant First Class--
- Q. Hold on a second.

[Tapes were changed.]

Q. Okay, you said Chief Manwaring.

A. Yes.

Q. And then who else?

A. Sergeant First Class Voigt, myself, CW3 Welshofer, various mid-level

interrogation team members that were there, in and out at various times in both facilities: the S2d guys that I mentioned. That's all I recall at this time, sir.

IO: Okay. Any other questions?

DC (?): I just have one quick follow-up.

IO: Okay.

REDIRECT EXAMINATION

Questions by defense counsel _____:

Q: Prior to--and I'm not asking about you in specific, Sergeant Lamb--prior to your arrival at the detention facility, was there a training course for people working at detention facilities in theater?

A. In what way?

Q. In terms of how the deten--was there any sort of a training program that you all went through about how to run a detention facility or how to work in a detention facility?

A. Not that I'm aware of.

Q. Are you aware of the fact that one has been established recently by DA?

~~SECRET~~

Page 93 of 125 pages

A. I was aware that they were going to establish one, but I didn't know that it had been done.

Q. Okay. But it wasn't in fact in place when you all were at Rifles Blitz or Al Asad, correct?

A. No.

DC (?): Okay, thank you. That's all I have.

REEXAMINATION BY THE INVESTIGATION

Questions by the IO:

Q. Wasn't there guidance in like the MP room about running a detention facility?

A. I believe the MPs have part of their, quote, unquote, bible--I don't know what the FM is, but it talks about holding facilities and the MP's role in a holding facility. But it doesn't discuss the interrogation role; it doesn't discuss the guard role if the guards are other than MPs.

IO: Captain Bunch?

DIRECT EXAMINATION

Questions by the defense counsel, Captain Bunch:

Q. Sergeant Lamb, you stated earlier that Specialist Loper had been in the room before with you with you as an interrogator. Were there any occasions where he'd have to protect you from one of the detainees that you were interrogating?

A. I don't remember if he had to protect me at any point. I know that there were a couple of interrogations where the guards did have to restrain the individual, but I can't recall specifically if he was one of them, ma'am.

DC (CPT BUNCH): That's all I have.

IO: Okay. Permanent excusal?

DC (?): Permanent.

DC (CPT BUNCH): I'm going to ask for temporary.

Page 93 of 125 pages

~~SECRET~~
UNCLASSIFIED

IO: Temporary?

TC: Can we keep him on telephonic standby?

IO: Yeah. Okay.

[The witness was temporarily excused, was duly warned, and departed the courtroom.]

SSG Bernard Perry, U.S. Army, was called as a witness at the Article 32 investigation, was sworn, and testified as follows:

Questions by the assistant trial counsel:

Q. You are Staff Sergeant Bernard Perry from A Troop, Support Squadron, 3d ACR?

A. Yes, sir.

DIRECT EXAMINATION

Questions by the civilian defense counsel:

Q. Staff Sergeant Perry, my name is Bill Cassara. I'm the civilian defense counsel for Chief Williams, and, obviously, you can see all the other individuals and their lawyers all in a row. Sergeant Perry, I just have a couple of quick questions for you. November 26th of 2003, where were you?

A. I was--participated in Operation Rifles Blitz.

Q. Okay, at Al Qaim detention facility?

A. In that facility, yes, sir.

Q. Okay. And what was your duty position there?

A. I was the NCOIC of the medics that were out there.

Q. Okay. How long were you in theater total?

A. The whole deployment; about a year, sir.

Q. Were you at Al Qaim the whole time that the operation was going on?

A. Yes, sir.

Q. Okay. I want you to sort of walk me through what the medic's role was when a detainee arrived on site at the detention facility when he was apprehended or turned himself in.

A. When they arrived at that detention center, they're to basically go quick somewhat of a evaluation of them, just to see if they have like any chronic illnesses or injuries, anything that the need, any type of medical attention for.

Q. And how did you go about doing that, Sergeant Perry?

A. It was just a--basically, a quick screening of them, what they had, with an interpreter with them. And it was just basically trying to find out if they had like any meds that they had to take or if they had like any injuries that may have occurred to them while they were being apprehended.

Q. Okay. Was any record taken of their entry into the facility, from a medical standpoint?

A. Not that I can remember. I'm not saying it wasn't, but I can't remember.

Q. This medical screening was not on a form that you went down and said, "Okay, no for hepatitis, no for headaches, no for"--

A. None that I saw.

Q. Okay. And I'm sure as the NCOIC of--if your folks were using such a form, you would have known it, I would imagine.

A. Right.

Q. Okay. Did you know--not personally, obviously, but by sight--the alleged victim in this case?

A. Yes, sir.

Q. Okay. How would you describe General Mowhosh from a physical standpoint?

A. I had only got a vague glimpse of him before he had died. He was a very tall man, kind of a--I wouldn't say obese but very stocky gentleman. And that's all I can remember from him.

Q. Now, on November 26th, tell me what your involvement was, if any, with regard to the attempts to resuscitate General Mowhosh.

A. By the time I had heard about him having some kind of medical problem, by the time I got on the scene, some of my NCOs were already doing chest compressions on him, and one of the PAs was ready to start intubation on him.

Q. Who was the NCO that was doing chest compressions?

A. Sergeant Shaheen.

Q. E-5 type?

A. Yes, sir.

Q. And was it Captain Marlow that was trying to tube him?

A. Yes, sir.

Q. Okay, just walk us through what you observed from the time you got there.

A. Once I got there, what I saw was Sergeant Shaheen, like I said, doing compressions. Captain Marlow was about to start intubation. And when I saw him, his eyes were already rolled in the back of his head, and it looked like he had already urinated on himself. And Captain Rossignol wanted me to try and get some evacuation assets out there for him. And I left the scene to go to the TOK to try and do that.

Q. Some evacuation assets?

A. Yes, sir, to have him--to get some type of ground or area evacuation out there to evacuate him higher.

Q. So, Captain Rossignol was on the scene, as well--

A. Yes, sir.

~~SECRET~~

Page 97 of 125 pages

Q. --when you got there? Do you recall what he was wearing?

A. The general?

Q. Yes.

A. It was some sort of robe. It came all the way down to his ankles. I don't really remember exact details what he was--

Q. Covered him from the chest down to the ankle--the shoulders down to the ankles. rather?

A. Yes, sir.

Q. Did you ever hear the expression "man dress" used for that type of attire?

A. No, sir.

Q. Okay. But it was full-length robe.

A. Yes, sir.

Q. Long sleeves?

A. I can't recall, but that time of year, I'd probably assume it was.

Q. Okay, so, again, take off on where you were in terms of what you saw or did once you got there.

A. After she told me she wanted some evacuation, I went to the TOK. I was there for quite a while, but I don't ever recall ever going back to the part where they were actually working on him. I had never went back.

Q. So, that was your only involvement.

A. That was it.

Q. Okay. How long were you there? You know. 1 minute, 20 minutes? You know, if you can recall.

A. I'd say maybe 15 to 20 seconds.

Q. Oh, that was it? Okay.

Page 97 of 125 pages

~~SECRET~~

A. That was it.

CDC: That's all the questions I have for the sergeant. Thank you.

DC (CPT BUNCH): I have a few.

IO: You have a few? Okay, Captain Bunch.

DIRECT EXAMINATION

Questions by the defense counsel, Captain Bunch:

Q. Staff Sergeant Perry, did you ever have an opportunity to see his body when you were performing any kind of CPR, or was the clothing he had off, _____, or ripped or anything? Could you see any part of his body?

A. I never actually physically touched him, but when I saw my medics working on him, he was fully clothed.

DC (CPT BUNCH): That's all I have. Thanks.

IO: Okay. Captain Melito now?

DC (CPT MELITO): No.

IO: Government counsel?

ATC: No.

IO: Permanent excusal?

TC: Yes.

[The witness was permanently excused, was duly warned, and departed the courtroom.]

IO: All right, the next witness?

ATC: That would be Agent Ryan.

[former] SA Curtis E. Ryan, a civilian, was called as a witness at the Article 32 investigation, was sworn, and testified as follows:

Questions by the assistant trial counsel:

Q. Would you please state your whole name for the record.

~~SECRET~~

Page 99 of 125 pages

A. Curtis Edward Ryan.

Q. And your current unit of assignment.

A. I'm a criminal investigator. I work for the Army CID Command in Indianapolis, Indiana.

ATC: Okay. Are we just going to go ahead with him?

?: You can go ahead and start.

DIRECT EXAMINATION

Questions by the assistant trial counsel:

Q. Agent Ryan, can you tell us--the IO--your involvement in this case.

A. Yes. I was in Iraq with the 87th MP Detachment, attached to the Headquarters, 82d Airborne Division. It was about this time last year, November 26th, we were notified by the division that a detainee named Mowhosh, who was a major general in the former regime--I think an Air Defense Artillery commander--had died during an interrogation being conducted by 66th MI Company during Operation Rifles Blitz about 1330 on the 26th. A few hours later, we received an e-mail with some attached digital photographs of the remains. There was some bruising, pretty obvious bruising, dark purple, definitely indications to us that something had happened that required investigation. That was pretty much it for that day because of some difficulties with transportation. The next day we traveled to Baghdad, picked up our forensic science officer, Special Agent Conner; drove back to Ramadi to the 82d Headquarters; and then flew to Al Asad. And then myself, Special Agent Bill Hughes, and Special Agent Conner. Patrick Conner, examined the remains of Major General Mowhosh in Al Asad at FOB Rifles Base.

Q. What did you find upon examining the remains?

A. Extensive bruising on the arms, legs, front and back of the torso. Really nothing evident on the head or face. And there were some bruises that indicated that he perhaps had been

Page 99 of 125 pages

~~SECRET~~

struck with a long, cylindrical object. And then there were some other bruises that looked like maybe they were caused by a rifle butt. We exposed some digital photographs to document what we saw, took some notes, and then briefed the 3d ACR chain of command. At that point we were informed that the incident where Major General Mowhosh died was part of an ongoing operation. It was a temporary facility; it was only going to be there for a few more days, and then they flew us out

there--or close to there--that night. And then the next morning, we got up--it's the morning of the 28th now, of November--and drove to the detention facility, which we were told was called the Blacksmith Hotel. Early morning on the 28th. At that point--actually, we were met by Chief Warrant Officer Welshofer. At that time we were unaware of his involvement with the case, that he had been conducting the interrogation. He started to give us a walk-through of the facility. Maybe 10 minutes into it, he informed us that he was conducting the interrogation at the time that Mowhosh died and that he'd spoken to counsel and been advised not to answer any questions. We kind of took a time out and told him that we didn't think it was appropriate for him to be the person showing us around, and then a Lieutenant Joe Corso finished the walk-through, just gave us a basic understanding of how the facility was designed to operate, what the layout of the ground was.

At that point, myself and Special Agent Conner examined the room that Mowhosh died in. It was interrogation room 6 in the building that they had set up for interrogations. It was also the building that contained the company admin office for 66th MI. Again, made some notes, drew a sketch, took some photographs of the room. And then I left the room and took some photographs of the exterior of the building and then other areas of the facility away from that one building.

When I returned, Special Agent Conner was interviewing Chief Warrant Officer Williams. I was in there for a short time. While I was in there, Mr. Williams was describing the

interrogation on Mowhosh that was conducted on the 26th, the one when he died, and he was saying that at one point during the interrogation, they had laid Mowhosh on the floor to ask him questions and that they had rolled him from his back to his stomach and then back to his back. And that was pretty much it for my involvement in the interrogation.

I left the room at that point and went to speak with Specialist Loper. I was told that he was the guard that escorted Mowhosh from the holding pens to the interrogation room on the morning of the 26th. I started talking to him, asking him about that day. Excuse me.

Q. Do you need some water?

A. Yes, please.

[Water was provided to the witness.]

A. And then I was talking to him for a short time about the day. He described that he was told to go get prisoner 76, who was the general, General Mowhosh, from the pen. He went to pen 8, where Mowhosh was housed, walked him up to the detention facility, said he had to help him most of the way, that he was pretty tired, breathing hard, moaning at the end of each breath. He got up there, put Mowhosh in the room. Mr. Welshofer, who he referred to as "Big Chief," was in the room, and Sergeant Sommers was in the room. They began the interrogation. At some point, Mr. Williams, who he referred to as "Little Chief," walked in. What did he tell me? He said that Mr. Williams said--well, first, he said that Mowhosh was not really answering any questions. He wasn't providing any information. And then the decision was made to put Mowhosh in the sleeping bag. And then he described to me that he went in and was instructed to actually assist in that. At that point I kind of called a time out because I didn't realize that he had been ever a part of the--the actual active part of the interrogation. I consulted with First Lieutenant Dave Herber, who was a SJA officer with 3d ACR that had traveled out to the detention facility with us. We agreed that it would be best to go back, make Specialist Loper aware of his rights before we continued talking about that day. I did that. I advised him of his

rights, using a DA Form 3881. He stated he understood his rights, waived them in writing; and then we continued and finished talking about it, and then Specialist Loper provided a sworn statement on a 2823, documenting what we had talked about. The continuation of what we talked about was that at the guidance of Chief Warrant Officer Welshofer, Loper assisted in placing a green Army sleeping bag--the old OD green ones, not the new modular sleep system bag--over Mowhosh's head, actually the feet area over the head so that the face was covered. And then to hold the bag tight, they wrapped a length of electrical wire; not like an extension cord but like white wire that was used to actually run the wiring in the buildings over there.

Q. Okay.

A. Maybe about 20 feet long. And then they laid Mowhosh on the floor, and Specialist Loper assisted with that. And then at that point with Mowhosh on his back, he told me that Welshofer straddled Mowhosh, one foot on either side and then kind of squatted or sat on Mowhosh's upper body while he was on the floor in the sleeping bag. He said as the interrogation continued, at one point Welshofer covered Mowhosh's face with his hand, held it there for a few seconds, and then released. He stated that he and Mr. Williams were where Mowhosh's feet were or his legs, standing on the bag so that Mowhosh wouldn't be able to kick Mr. Welshofer and knock him off. The other thing that he said is that at one point Mr. Welshofer had his hands on either side of Mowhosh's head, holding the sleeping bag down. And then shortly after that, he was called out of the room for something.

Q. Who was called out?

A. Oh, no, Specialist Loper was.

Q. Okay. It was Sergeant First Class Paar came in and told him to leave. He went outside, and he stepped away, I think he said to smoke a cigarette or talk to a friend. And then the next thing he noticed was somebody was calling for the docs to come to room 6. And then sometime after that, he learned that Mowhosh had died.

Q. Who was that, Carr, or--

A. No, Specialist Loper.

Q. Okay, do you recall Specialist Loper making a statement that he was in the room when he saw the general stop breathing?

A. Yes. He said at one point while the general was on the floor in the sleeping bag, he was on his back; he was being questioned; he still wasn't providing information. Mr. Welshofer stood up, and he said everybody kind of paused for a minute, and they were looking at the general, and it looked like the general wasn't breathing. Then he said after a few seconds, the general took a long, deep breath, and then that he shook or spasmed for a couple seconds. He said that Mr. Welshofer made the statement, "Thank God. I thought he had stopped breathing." And then at that point they rolled Mowhosh over onto his stomach, and then Mr. Welshofer sat on him again, this time on his back, and continued the interrogation.

Q. Okay. Did the story that Specialist Loper told--did it marry up with the story that CW2 Williams had told, what you heard?

A. From the portion of the interview that Special Agent Conner did with Mr. Williams that I was present for, I didn't hear any discussion or explanation of the sleeping bag. Mr. Williams didn't tell us that Mowhosh was in the sleeping bag. He only said that they laid him on the floor and then rolled him from back to front and front to back as they asked him questions.

Q. Okay. Did you have a conversation with Special Agent Conner?

A. I did. I told Special Agent Conner what Specialist Loper had told me. At that point Special Agent Conner said he was going to go back and talk to Mr. Williams farther.

Q. Did he in fact do that?

A. He did.

ATC: One second.

[pause]

ATC: That's all I have.

IO: Okay. Mr. Cassara or Captain Kegeliery?

CROSS-EXAMINATION

Questions by the defense counsel, Captain Kegeliery:

Q. The first statement was written, the statement that Agent Conner took from Mr. Williams.

A. I believe there's only one written statement taken, sir.

Q. The second statement was verbal.

A. No, I don't think that was the sequence. But, you know, I'm trying to guess about what Conner did. What I remember--

Q. Hold on a minute. Well, you said that Chief Williams left out the part about the sleeping bag.

A. When I was in the room.

Q. When you were in the room.

A. That that's all I can--

Q. But this is--this handwritten statement on the 20th of November--the time I assume when it was completed was about 10:37. Have you seen that report?

A. Yes.

Q. And could you look at the third line.

A. And that's Chief Williams' statement of 28 November.

Q. Yeah, on 28 November.

A. It says that he was put in a sleeping bag--

Q. Okay, so--

A. --and laid on the ground.

~~SECRET~~

Page 105 of 125 pages

Q. Correct. So, he told Agent Conner--I mean, it's right there in black and white

A. Yes, sir. But whether that's before or after I spoke to Conner I don't know

Q. You did some further investigation back in the summer of 2004, correct?

A. Oh, yeah. I'd say a rather extensive investigation.

Q. And you went to Fort Campbell, and you interviewed a [REDACTED]

A. I actually probably interviewed each of those indiv--well, not Staff Sergeant [REDACTED] but--two or three times, each of them.

Q. When was the first time that you interviewed them?

A. The first time I interviewed Sergeant [REDACTED] and Mr. [REDACTED] was actually in Iraq at FOB Tiger, January 2004, maybe early February.

Q. When was the next time?

A. Spoke to--let's see--all three of them again in April and then again in July.

Q. And were they truthful in the first couple interviews?

TC: Objection.

IO: Yeah. Can you ask like, "Were their statements inconsistent?" something along those lines?

[further questions by the defense counsel, CPT Kelegiery:]

Q. Their statements, if you look at the statements, which we'll admit later, it'll become clear, but--

A. Okay.

Q. Were their first statements consistent with their later statements?

A. No, there was significantly more detail in the later statements.

Q. Okay, but, in fact, you actually--or whoever was conducting the interview which [REDACTED] witnessed, correct?

Page 105 of 125 pages

~~SECRET~~

A. Which interview?

Q. 9 July with--

A. I know I participated in the July interviews with Special Agent Jobear. In all three of them. I mean, I'm probably on the sworn statement as the witness.

Q. Yes.

A. But I was in the room, participating in the interview.

Q. And Special Agent Jobear is out of Fort Campbell.

A. Yes.

Q. And one of the questions they asked was--either you or Special Agent Jobear-- "Why were you not entirely honest in your previous statements?" That was in all three of them.

A. Okay.

Q. And Staff Sergeant [REDACTED] said--or he explained, "Well, it's because ops sec. I wasn't sure what could be said about the [REDACTED]. Do you remember that?"

A. Yes, I do.

Q. So, is it fair to say, then, those previous statements before 9 or 10 July, they were trying to hold--at least hold back information, if not lie about it?

A. No, I'd say that's fair.

IO: That they were trying to hold back on information?

WITNESS: Right. That they, in the previous statements, did not provide all the information that they knew about what they were being asked about.

IO: And this was [REDACTED]-and who were the other two?

WITNESS: Staff Sergeant [REDACTED] and Staff Sergeant [REDACTED]. At the time, they were--November of 2003, [REDACTED]

IO: [REDACTED]

~~SECRET~~

Page 107 of 125 pages

WITNESS: Yes.

IO: All right.

[Further questions by defense counsel, Captain Kegeliery:]

Q. Prior to obtaining these statements on 9 and 10 July, did you or another agent ask [REDACTED] to take a polygraph?

A. I did a day or two prior.

Q. And did they actually complete the polygraph or start the polygraph? I mean, what happened?

A. [REDACTED] and [REDACTED] started. [REDACTED] actually took the test and failed. And when I say [REDACTED] and [REDACTED] started, they came in, and during the pre-test interview is where they made the statements that I think you have in front of you.

Q. So--I'm sorry; you said [REDACTED] and [REDACTED]

A. Right--

Q. --_____ the pre-test.

A. --the sequence was that a day or two prior to that, I spoke to all three of them. All three of them agreed to take a polygraph examination. And I think it was the next day. Sergeant [REDACTED] came in, and during the pre-test portion where the polygraph examiner is talking to the person who's going to be examined--and that's Special Agent Jobear--Sergeant [REDACTED] made that statement that I think is the one you're looking at. It's dated 8 or 9 July. And he never actually took the instrument portion of the polygraph examination.

Q. Okay, that was [REDACTED]. What about [REDACTED] and [REDACTED]?

A. The next day, Sergeant [REDACTED] came in, maintained his earlier statements through the pre-test portion, took the instrument portion, didn't pass, and then in the post-test portion made the statement that's in the case file, the July statement. And then like there was a day

Page 107 of 125 pages

~~SECRET~~

break, and then on Monday Mr. [REDACTED] came in, and then during the pre-test, you know, pre-instrument phase of the examination, made the statement that's in there, dated July.

Q: Who was the polygrapher that administered--

A: Special Agent Jobear was the polygraph examiner.

Q: Okay. So, he would have the results of the polygraph, then?

A: They're--the originals are sent to the Crime Records Center. But he probably maintains a copy. I'm sure he maintains a copy.

CDC: You know, I guess--I had previously asked for those, but we'd just renew our discovery request for those records.

TC: For what? For the graph paper and the peaks and valleys?

CDC: No, the pre-test questions and the test results.

TC: Well, by "test results" do you mean the graph paper with the peaks and valleys?

CDC: No, I mean the questions and the answers.

TC: Without the--

CDC: We can talk about it.

TC: Okay.

IO: Yeah, you can talk about it later. I think what Mr. Cassara is asking for is the one- or two-page report that the calligrapher provides after, you know, an interview with the subject to a polygraph.

All right, any other questions, Captain Kegeliery?

DC (CPT KEGELIERY): Yes.

[further questions by defense counsel, Captain Kegeliery:]

Q: Through your investigation--well, let's back up a minute. Why did you go and re-interview CW2 [REDACTED] Staff Sergeant [REDACTED] and [REDACTED]?

~~SECRET~~

Page 109 of 125 pages

A. As I stated earlier, when we viewed Mowhosh's remains, he was black and blue, purple; indications that he had been beaten pretty severely. And, you know, I'm not a forensic scientist, but I know that you don't bruise the day you die. So, at some point prior to the 26th, he had been beaten, and we were trying to determine how that happened, when that happened, and who was present, participated in that event. And as part of doing that, we identified that [REDACTED] and some other people that were part of that--the [REDACTED] to FOB Tiger that interviewed, interrogated Mowhosh on the 24th of November. Specialist Loper told me that during that interrogation, he heard the sounds of Mowhosh being beaten. I think Mr. Williams told Special Agent Conner the same thing. So, we were trying to nail that down and figure out exactly what happened and who was there.

Q. You mentioned several names of soldiers that belonged to the--

A. There was a Master Sergeant Amelio Perez. He's not retired. He was the company S-2 for [REDACTED] which is, I think, [REDACTED] It was the higher headquarters of the [REDACTED] team that [REDACTED] and [REDACTED] were on. He was their--according to what we could find out, one of their interpreters who was an employee of the Italian corporation named Kadoom Jewel, who everybody referred to as "KJ." When I say "one of theirs," I'm talking about the [REDACTED] guys. They had at least three of the--maybe before I answer this, are we operating in a--

TC: Secure environment.

A. --classified environment? Okay. There were three--at least three of the indigenous Iraqis [REDACTED] attached to [REDACTED] in the room on the 24th. There are mixed reports about whether or not [REDACTED] was on the room on the 24th. And what we ultimately learned

Page 109 of 125 pages

~~SECRET~~

UNCLASSIFIED

about the 24th was that--well, and this is primarily according to Mr. [REDACTED] but it may merge together a little bit with some of the other ones, but what Mr. [REDACTED] told me was that he was out there on the 24th with his team; he's the assistant team commander for [REDACTED]. They were doing other interrogations not related to Mowhosh. They were getting ready to leave. He was in the hallway of the building that he was working in, and in the hallway he ran into Mr. Welshofer, who he knew from previous contact at either FOB Tiger or Rifles Base at Al Asad. Somehow, a conversation was struck up. Mr. Welshofer told Mr. [REDACTED] that he was interrogating General Mowhosh but that they were having a hard time; they weren't getting any information out of him. He wasn't wanting to answer questions. According to Mr. [REDACTED] they reached a collective decision that they would try using the [REDACTED] who would--you know, obviously spoke the local, native Iraqi Arabic--as a means of trying to shake Mowhosh up, and that the other thing that they were going to try to do was put a bunch of people in the room, a tactic that Mr. [REDACTED] called "fear up," I guess as a means of intimidation. So, several people, of whom the names I've mentioned are some--and there are some who we've never been able to identify--go into the room. Mowhosh is in a corner. Doreen Merza, who's a female, a civilian employee of Titan, who was out there as a linguist, was asking him some questions. Two of the [REDACTED] came in. Their nicknames that they were given were, I think, [REDACTED]. The tall one, whose first name, as I recall, is [REDACTED] and then a short one whose first name is [REDACTED] and they started doing what Mr. [REDACTED] or--and several other people called the "good cop/bad cop." [REDACTED] played the good cop; [REDACTED] played the bad cop. [REDACTED] would ask Mowhosh a question. When he didn't answer or provided an answer that they didn't like, at first [REDACTED] would slap Mowhosh, and then after a few slaps, it turned into punches. And then from punches, it turned into [REDACTED] using a piece of hose. It's been described as several ways. Some people have described it as a rubber hose, like a garden hose. Some people have said it was foamy, like a Nerf ball. But from the best we can tell, a piece of black insulation that you'd use

~~SECRET~~

Page 111 of 125 pages

to insulate water pipes in a house to keep them from freezing, about 3 feet long, or a meter long, and he was hitting Mowhosh with that when he provided answers that they didn't like. And then, you know, everybody else in the room is pretty much back, and this action is going on in one corner. But at some point, somebody outside of that group of Mowhosh and [REDACTED] came forward, yelled something at Mowhosh. Mowhosh kicked at that person, and then a scuffle ensued, and then basically it was described to us as a free-for-all. The room collapsed on Mowhosh. Sergeant [REDACTED] for example, said he took out some frustrations by punching Mowhosh six or seven times. Mr. [REDACTED] said he punched Mowhosh a couple times and probably hit him with his heel of a hand a couple times. And that lasted for 1 or 2 minutes. Nobody can really say for sure. And then Mowhosh was let out of the room. Specialist Loper said he was one of the people that took him back to pen 8 that day. Some people say he was walking. You know, Specialist Loper told me that he had to carry Mowhosh with the help of Sergeant Sommer and two or three other soldiers. So, to get to that is why we went back and talked to those guys several times.

Q. Did you identify the [REDACTED]

A. Well, there were [REDACTED] that worked at FOB Tiger on what they referred to as the soft side. So, FOB Tiger was actually split. You had Tiger proper, for lack of a better term, that is where 1st Squadron, 3d ACR, was headquartered. And then at this time, actually, the regimental headquarters had moved there. Almost the entire regiment was there or somewhere farther west. And then, you know, [REDACTED] and some people called it [REDACTED]. Well, anyway, [REDACTED] there were [REDACTED]

Q. How do you spell--you said [REDACTED]. Could you spell that for us?

Page 111 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 112 of 125 pages

A. I'd have to look at my report. I think it's [REDACTED]

Q. All one word?

A. No, no, no. [REDACTED]

Q. [REDACTED] you think?

A. I think so. But on the 24th, [REDACTED] is the only person that we were told was present in the interrogation room with Mowhosh and the [REDACTED] and everybody called him [REDACTED]—he would go over to the detention facility. [REDACTED]

[REDACTED] So, he would ride around with those guys. And he had been to the detention facility, but nobody puts him in that room on the 24th at that point in time.

DC (CPT KEGELIERY): All right. One minute, please.

[pause]

DC (CPT KEGELIERY): Thank you.

IO: Captain Melito?

CROSS-EXAMINATION

Questions by defense counsel, Captain Melito:

Q. Agent Ryan, how big were the [REDACTED]

A. How big?

Q. Mm-hmm. Height and weight, if you could. Best guess.

A. Mr. [REDACTED] is maybe 5-foot-10, kind of a stocky guy. [REDACTED] is the same height or a little bit shorter and a muscular guy. And there [REDACTED] is maybe a couple inches—like in the five-eight range, maybe, and a little bit of a thinner guy.

Q. How much would you say he weighs?

Page 112 of 125 pages

~~SECRET~~
UNCLASSIFIED

A. I mean, it's written down somewhere. Less than 200 pounds, maybe 180 pounds. I'm guessing. I don't remember what he told me.

Q. Okay, you contributed to the CID report, obviously. Why was Miss Doreen Merza, the Titan employee who you mentioned earlier--

A. Mm-hmm.

Q. --why was she titled with false official statements?

A. When we were over there on the 28th, she provided a statement that she'd never seen Mowhosh beaten during an interrogation; she had no idea how he got black and blue--this is to Special Agent Hughes, and I only know this from reading his report and talking to him. But--and then subsequently, you know, we interviewed a litany of people, all of whom put her in the room on the 24th when Mowhosh is beaten during the interrogation. So, her statement that she made to us on the 28th of November of last year is inconsistent with what everybody else was saying.

Q. Okay, so, she sort of gave a blanket denial of any contact by Chief Welshofer?

A. By anybody, period.

Q. Okay.

A. From what I can recall.

DC (CPT MELITO): Okay. Thank you.

IO: Captain Bunch?

CROSS-EXAMINATION

Questions by defense counsel, Captain Bunch:

Q. You said [REDACTED] local to the area

A. I don't know that they were local to that part of Iraq. We actually--I went back to Iraq in May of this year and interviewed them with some people who work for [REDACTED]

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 114 of 125 pages

[REDACTED]

Q. Who had given them permission to be there?

A. From what we were able to determine, they were [REDACTED]

[REDACTED] For the purpose of Operation Rifles Blitz, they had been attached to [REDACTED] which is another [REDACTED] from the same company as [REDACTED]. And [REDACTED] normally worked out of Rifles base at Al Asad, but because the whole regiment went west, the [REDACTED] guys went west with them. They were out there for their language capabilities. Originally, there was some talk of maybe inserting one or two of them into the prison population to see what they could pick up. That was determined to be unfeasible. They were supposed to be out there to be working checkpoints and going out when [REDACTED] would search a house so that if there was someone present in the house, there was somebody who could speak Iraqi that could--you know, Iraqi Arabic, to talk to whoever was in the house. At some point--and it's not really clear how this happened, but they started being used in interrogations for the same reason, because they spoke the local dialect--or at least the Iraqi dialect. On the morning of the 24th, Captain [REDACTED], who's the commander of [REDACTED] had his half of that team at the headquarters, at FOB Tiger, for some thing that he could not remember. His team sergeant took the other half of the team and [REDACTED] that were attached to that team to the detention facility maybe an hour or an hour and a half, 2 hours, ahead of Captain [REDACTED]. They weren't really sure. And it seems--from what people told us, it seems like they just happened to be some of the people that were around when Mr. Welshofer and Mr. [REDACTED] had the conversation in the hallway, you know, trying to come up with a game plan for how to continue the interrogation of Mowhosh.

Q. If they were there for language interpretation--can you hear me okay?

A. Yes.

Page 114 of 125 pages

~~SECRET~~

~~SECRET~~

Page 115 of 125 pages

Q. Okay. If they were there for language interpretation and they were beating the detainees--who was responsible for giving them what their duty description was or what they were there for?

A. I think that was a little bit murky.

Q. Yeah, let me--I'll ask again.

A. No, no, not your question. I think the issue was murky.

Q. Okay.

A. Because [REDACTED] so in that capacity, [REDACTED]

[REDACTED] For the purpose of the operation, they were attached to [REDACTED] so they worked for Captain [REDACTED]. I talked to Captain [REDACTED] three or four times throughout the investigation, and he told me that--he was the one who described to me why they were split up and how they got out there ahead of him that day. He told me that when he arrived that day, himself and a sergeant from the Army Reserve, who was, I think, Lebanese, that could speak Arabic, was attached to him for the operation, too--they went looking for [REDACTED] and they found them interrogating another detainee, and they were roughing that detainee up, as well, and he went in the room and put a stop to it, pulled them out of there, went back, voiced his concerns about what he observed to [REDACTED]. And then [REDACTED] never went back to the detention facility to interrogate after that.

Q. And did you say you did or did not interview any of [REDACTED]?

A. I did.

Q. And you have written statements from them or just your notes or--

A. No, there are notes, and then what's in the AIR. They-[REDACTED] said that he was in the room. They were in there, asking questions; that [REDACTED] had the long rubber hose thing whenever it is--how heavy it is we don't really know--and that he was hitting the floor with it as an intimidation tool but that they weren't hitting him when he didn't answer questions. And then

Page 115 of 125 pages

~~SECRET~~

~~SECRET~~

Page 116 of 125 pages

at some point [REDACTED] turned around, and when he turned around, Mowhosh tried to punch him, and then [REDACTED] had to hit him a couple times with the hose. [REDACTED] --or, excuse me, [REDACTED] hit him with the hose, and then [REDACTED] told us basically the same thing, which was inconsistent with what the other people in the room told us about how they were using that hose or why.

Q. How did you first hear about Specialist Loper? Who first told you that he was somebody who was around at the time?

A. When we went out there on the 28th of November, we went out there with the intent of speaking to every Army soldier that we could that was out there for Rifles Blitz on the day of the 26th. So, in trying to figure out who all those people were, Specialist Loper was identified to me as the guard that brought Mowhosh to the interrogation room that morning. I don't remember who told me that, though.

Q. How long was it, in between that time, did you actually speak to Specialist Loper?

A. I think it was--it would have been very soon after, if it wasn't immediately.

Q. Was that the only information that was given to you regarding Specialist Loper, that he was an escort, that had escorted--

A. Right.

Q. --the general?

A. Right.

Q. In terms of the number of people that you spoke to, that you actually took statements from, what order was Specialist Loper? I mean, was he the first or second or third?

A. Well, the first person that I spoke to was Mr. Welshofer, but when I advised him of his rights, it was really just a formality because he had said that he had already spoken to counsel. So, it was just documenting that he wanted an attorney on a 3881. And then the next person I spoke to was Specialist Loper.

Q. Was anybody else with you when you spoke to him?

Page 116 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 117 of 125 pages

A. To Specialist Loper? No.

Q. Conner wasn't with you?

A. No, I think he was talking to Mr. Williams at about the same time.

Q. How long would you say you talked to Specialist Loper for?

A. An hour, maybe. I'm not sure. I mean, by the time he wrote the statement and we talked, and then I took the break, and before we even got to the statement and went and talked to Lieutenant Herber, I'm sure it took at least an hour.

Q. Where did you talk to him?

A. On the hood of a HMMWV that was parked there by the building. We were just standing there.

Q. Where did he write his statement?

A. On the hood of the HMMWV.

Q. So, you didn't--are you sure you didn't take him to a room?

A. Maybe. It's possible that after I talked to Lieutenant Herber, we moved. I just remember that we started--we were standing by a HMMWV.

Q. So, you don't recall how long you were in the room when you took his statement or when he wrote his statement?

A. I don't--I didn't sit with him while he wrote the statement, the narrative part of it. I mean, he may have been sitting in a room--it was cold and windy--to get him out of the weather while he wrote the statement. I don't know.

DC (CPT BUNCH): Can I have a minute?

IO: Sure.

{pause}

[further questions by defense counsel, Captain Bunch:]

Q. Did you actually read Specialist Loper's statement over, or no?

Page 117 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 118 of 125 pages

A. Did I read it after he was done writing it?

Q. Mm-hmm.

A. Yes.

Q. Did you ask him how long he had been outside of the room before the medics came?

A. I don't recall if I asked that specific question. I don't know if he said it or I asked it, and I don't remember what the time gap was.

Q. Do you recall whether or not you asked him if the major--or the general--was still alive when he left the room?

A. Which day? Or on the 26th?

Q. Mm-hmm.

A. Yes. He said he was. Or, I mean, presumably. He was in the sleeping bag, so . . .

Q. But it's your understanding that, according to what Specialist Loper told you, that the general was still alive when Loper left the room.

A. Yes.

Q. Agent Ryan, are you the lead agent on the case? Is there a designated lead agent?

A. I was, up until, I guess, probably mid-October. I'm no longer on active duty, and I'm no longer assigned to Fort Bragg, so the case was transferred to Special Agent Hughes.

Q. So, you're a civilian now?

A. Yes.

Q. And do you live in the local area?

A. No, I live in Indianapolis.

DC (CPT BUNCH): I don't have anything further.

IO: Okay. Actually, I have a few questions.

DC (CPT MELITO): Yeah, me, too.

Page 118 of 125 pages

~~SECRET~~

~~SECRET~~

Page 119 of 125 pages

ATC: We're also going to have some follow-ups.

(?): Well, I was assuming that you were going to work your way back.

IO: Okay. Let me ask a couple questions, and then I'll give it back over to you guys.

EXAMINATION BY THE ARTICLE 32 INVESTIGATION

Questions by the IO:

Q. All right, Agent Ryan, I need you to help me connect the dots here a little bit, or just some clarification. First, we have General Mowhosh dying on 26 November. Do you know how long he had been detained up to that point?

A. He was taken into custody November 10th.

Q. All right. Now, you talk about--testified to, you know, being struck or beat on 24 November. Is there any other evidence of other days that some kind of assault took place against General Mowhosh?

A. There were some reports--and I can't remember who exactly said it--that maybe he had been interrogated another time on the roof of that same building that the 66th MI Company's admin shop was in by maybe [REDACTED], and maybe there were some [REDACTED] there, and maybe there weren't. But, you know, some--a couple people say that happened, and there are other people that say absolutely no. There's no way of knowing how many times he was interrogated between the 10th, the 24th, and the 26th. The only day his file was signed out for interrogation was on the 26th. But there are people who said that maybe he was interrogated every day, twice a day. Some people say every other day, so . . .

Q. Okay. So, maybe [REDACTED] in another occasion. But you have a clear picture of maybe what took place on 24 November.

A. Right.

Q. Okay. Let's first start with groups that you knew were there on 24 November. I understand there was a bunch of people present. You say [REDACTED].

Page 119 of 125 pages

~~SECRET~~

~~SECRET~~

Page 120 of 125 pages

A. Right.

Q. --was possibly there and--

A. There are some people that say that not all [REDACTED] but that [REDACTED] was there in the room on the 24th, specifically--I think Sergeant [REDACTED] made the most specific statement about that. And then there were other people who said that he was there.

Q. Okay. And then [REDACTED] this [REDACTED] personnel were there?

A. Right. And that's actually-- [REDACTED]

[REDACTED] And sometimes [REDACTED] which is short for [REDACTED]

[REDACTED] which just means [REDACTED] guys. [REDACTED]

Q. Okay, so, [REDACTED] and you had said [REDACTED] and [REDACTED]

A. Definitely [REDACTED] [REDACTED] and [REDACTED]

Q. Okay.

A. And then also there, the interpreter that worked for them, Kadoom Jewel, who everybody referred to as, "KJ," or "Titan KJ."

Q. Okay. And then Doreen Merza, another Titan contract linguist--

A. Who worked for 3d ACR.

Q. --was there.

A. Present in the room.

Q. Okay. What about 3d ACR personnel?

A. Mr. Williams was there for a portion of it but then left when he heard a helicopter approaching because he was going to see who it was. Mr. Welshofer was there. Ah--

Q. Wait. Chief Welshofer. Was that the first person you just mentioned, or Chief Williams?

Page 120 of 125 pages

~~SECRET~~

~~SECRET~~

A. Mr. Williams, when we talked to him in April, said that he was there for a part of the time; then he heard a helicopter approaching, and he left the room, and he didn't actually see anything.

Q. Okay.

A. Other than people asking questions. Mr. Welshofer was there through all the events that transpired on the 24th, and then Doreen Merza, and then the rest of it's just reports of guys that were in DCUs that might have been guards, who we've never been able to identify who those people were.

IO: Okay. Captain Kegeliery?

RE-CROSS-EXAMINATION

Questions by defense counsel, Captain Kegeliery:

Q. You mentioned [REDACTED]

A. Yes.

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. Well, do you know [REDACTED]

A. [REDACTED]

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 122 of 125 pages

[REDACTED]

Q.

A.

[REDACTED]

Q.

A. Yes.

Q.

A.

[REDACTED]

Q.

A. Yes.

Q.

A. Right.

Q. And you're not sure about the other ones.

A. I don't know if they were referred, the other individuals or not.

[REDACTED]

Q.

A.

[REDACTED]

Q. You mentioned a couple minutes ago that General Mowhosh's file had only been checked out one time. What do you mean by--

Page 122 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 123 of 125 pages

A. This I only know from talking to Special Agent Hughes, but there was a system of--was established by Sergeant First Class Pratt, who was designated as the interrogation NCOIC. And Pratt told me a little bit about this, as well. But there was a log where, if you were going to interrogate detainee 398, you would go sign for detainee 398 on the log; you'd get the detainee's file to review, and you'd actually sign the log when you got the file; and then you would call on the radio to the holding area and say, "I need detainee 398 brought to room A." And then whenever you were finished, then you'd turn the file back in. The file got signed back in. That sign-out procedure was only done for Mowhosh on the 26th, but several people told us that he was interrogated multiple times before that. And Sergeant Pratt told me that he'd had difficulty getting Mr. Welshofer to sign out detainees in accordance with that SOP that had been set up for tracking who was interrogated by whom, when.

Q. Do you know, did Sergeant Pratt ever confront Mr. Welshofer?

A. I think in the statement that Hughes took, it says that Pratt talks about confronting him and Mr. Welshofer made the reply that, "Chief does what Chief wants." It's in the December statement of Pratt.

Q. When I was first questioning, you mentioned the reason why you went back and investigated--or one of the reasons why you went back and investigated was because of the bruising--

A. Right.

Q. --on General Mowhosh's body and that people don't bruise the day that they die.

A. Correct.

Q. So, it was your conclusion, then, that the bruises had to have occurred before that day, the 26th of November.

Page 123 of 125 pages

~~SECRET~~
UNCLASSIFIED

~~SECRET~~

Page 124 of 125 pages

A. Right. When we talked to the medical examiner about it, you know, he said that the bruising was not consistent with injuries inflicted on the 26th of November. You know, you can't date a bruise, but they said probably at least 2 days before that for the--

Q. But the medical examiner--

A. --bruises to develop that far.

Q. I'm sorry, I interrupted you.

A. Probably at least 2 days before the 26th, those injuries were inflicted. And it's not like we were ever able to number them and attribute specific injuries to the 24th and these other ones to the 20th. We just knew they weren't consistent with the 26th.

Q. What about the broken ribs and--what other injuries _____?

A. The medical examiner, Dr. Smith, showed us photographs from the autopsy earlier this year when we were at AFIP in Maryland to talk about the case. And he said there were some lateral rib fractures with very little hemorrhage, which he explained meant that they happened at or near the time of death and that they were consistent with a crushing injury, like somebody getting pinned against a wall by a heavy object or, you know, pushed into a wall by a car, something like that. Or something falling on somebody.

Q. Consistent with 15 people piling on--

A. Well--

Q. Big pile on top of the general?

A. Could be consistent with that except for the lack of hemorrhage. Had they been 2-day-old rib fractures, there would have been more hemorrhage, according to the doctors when we spoke to them.

Q. You collected some physical evidence, the sleeping bag?

A. Yeah, there was a--when we were in the interrogation room, room 6, on the 28th, the sleeping bag and the electrical wire were still there. We collected those as evidence.

Page 124 of 125 pages

~~SECRET~~

~~SECRET~~

Page 125 of 125 pages

Q. Do you know where those are right now?

A.

Page 125 of 125 pages

~~SECRET~~
UNCLASSIFIED

Q. Okay, so, who were the either American or [REDACTED] that were able to speak that language who were present?

A. Nizikauzi was an Arabic speaker, and Kadoom Jewel is an Arabic speaker. Some of those [REDACTED] guys that had Arabic training, but they all said that they don't--you know, they've been trained in modern, standard Arabic, and they weren't proficient enough to keep up with the exchange.

Q. Okay. But who of the [REDACTED] guys were able to speak in the modern, standard Arabic?

A. I think Mr. [REDACTED] had some training in that. I can't remember what language [REDACTED] and [REDACTED] said they were trained in. But they all told me that they didn't have enough Arabic to be able to keep up. That's why they had to have [REDACTED] people like that, when they were interacting with Iraqis.

DC (CPT MELITO): Okay. Thank you.

ATC (CPT DAVISON): Yes, just real quickly.

Questions by ATC, CPT Davison:

Q. Earlier, there was some discussion about Chief Williams' statement and what came first, his verbal or his written. What normally comes first when you're interrogating someone?

A. You talk to a person.

Q. And then what?

A. Usually--and this was the usual. I'm not trying to be specific to Mr. Williams here, but you talk to a person and you get one version of the events, and then it changes as you talk to them until you think you've--you know, they tell you, "This is it. This is everything," the people that say that, and then you say, "Okay, would you be willing to write that down on a piece of paper?" If they say yes, you hand them a statement form and let them write it down.

ATC (CPT DAVISON): Okay. That's all I have.

DC (CPT MELITO): I have some follow-up.

Questions by the defense counsel, CPT Melito:

Q. Earlier, Captain Bunch was questioning you about Specialist Loper. You said there was a point at which you were outside, talking near a HMMWV? Is that right?

A. Yes.

Q. And then later on was some point at which he was in a room, writing? Something to that effect?

A. He may have gone to the room. I don't remember. I know I left him alone to write the statement.

Q. Okay, so, you're unsure about the--maybe the exact order? What happened first?

A. No, I'm sure we started at the HMMWV.

Q. And at that point, during that conversation, is when you suspected him of potentially being involved in--

A. Yeah, or it was when I became concerned because he was introduced to me only as the guard who escorted Mowhosh to the interrogation room, and we'd previously been told that, you know, guards stand outside of the room, and then when the interrogation's over, they take the detainee back. So, my original intent in speaking to him was, "What did you see? What did you hear while you were outside of the room?"

Q. Purely as an eyewitness for a short period of time. Was that your understanding?

A. Right. My understanding is that he was somebody who was in the proximity during the interrogation, not somebody who was actually in the room while it was going on, assisting in the, you know, placing the sleeping bag. We didn't even know about the sleeping bag when I started to talk to Specialist Loper.

Q. Okay. To the best of your recollection, was it the sleeping bag that triggered your sort of concern that you might have to read him his rights? Or what exactly did he say that led you to that conclusion?

A. It was the sleeping bag, not necessarily because at the time I had done any research on interrogation techniques or anything like that. That just seemed unusual. It was something that I'd never heard of, and that's why instead of just making the decision, I went and talked to Lieutenant Herber about it and asked him what he thought, as well, and, you know, collectively, we said, "Yeah, it's--we need to go back and advise this guy."

Q. What else did he say before you took the time out, as you mentioned earlier?

A. Well, I mean, he described bringing Mowhosh up. It was that type of stuff, being there at the room.

Q. So, at the very least, he told you up until the point where General Mowhosh was brought into the room and then put in a sleeping bag?

A. Yeah. I mean, we got to the point where he said, "And then Mr. Welshofer had me come in and help put the sleeping bag on."

Q. Okay. And then at that point, you said, "Hold on," or something--

A. At that point or shortly thereafter. I don't remember exactly when. I mean, it was--the sleeping bag was the thing that made me stop and wonder what the heck was going on.

Q. Okay, so, even though he stated the word "sleeping bag," he might have gone on a little bit afterwards?

A. He may have.

Q. Okay. And then after that, you consulted with Lieutenant Herber?

A. Yes.

Q. How soon after was that?

A. I walked from the HMMWV to where Lieutenant Herber was standing.

Q. How far away was Lieutenant Herber at the time?

A. I don't know, 50 feet, 100 feet.

Q. Okay.

A. I mean, I could see him.

Q. How soon did you come back to talk to Specialist Loper?

A. Immediately.

Q. Okay. And then did you give him a rights advisement at that point?

A. Yes.

Q. And then he told you the same stuff again, the sleeping bag and what transpired in the room?

A. Right.

DC (CPT MELITO): Okay. Thank you.

IO: Anyone else have any questions for Special Agent Ryan?

? One quick question.

Questions by _____:

Q. Do you know--has any disciplinary action been taken against CW2 [REDACTED] or [REDACTED]?

A. I don't know.

Q. And what's a good phone number for us to get in touch with you?

A. Area code [REDACTED]

Q. Is that your office?

A. Yep.

IO: Okay. Any other questions for Special Agent Ryan?

[no affirmative responses]

IO: All right, temporary or permanent excusal?

DC (CPT BUNCH): Temporary.

IO: Temporary? All right. Do you have tickets to fly back anywhere?

WITNESS: On Saturday morning.

IO: Okay. That's good shape because I think other people have tickets on Saturday morning, as well. All right.

[The witness was temporarily excused, was duly warned, and departed the hearing room.]

IO: Okay, we haven't had a break in a while. Let's take a 10-minute break.

[The hearing recessed at _____, 3 December 2004.]

[The hearing reconvened at _____, 3 December 2004.]

IO: All right, we were in recess. All parties present prior to recess are again present.

I have, you know, in my script earlier today--one of the first things we did is go over witnesses or potential witnesses. Is there anybody that the parties are aware of now that I mentioned that will not need to be called at all on this investigation?

?: Can I see the list of who was going to be here tomorrow?

IO: Yeah, I can just rattle off--

DC (CPT MELITO): The NCOs that I had mentioned earlier, to include Sergeant

Downs--

IO: Okay, Sergeant Downs, no?

DC (CPT MELITO): Sergeant Diest.

TC (MAJ DOLAN): Diest [pronounced DEEST].

DC (CPT MELITO): Diest; excuse me.

IO: No on Sergeant Diest?

DC (CPT MELITO): That's correct.

IO: So, it's Sergeant Downs and Sergeant Diest--

DC (CPT MELITO): Well, you can eliminate--with the exception of Sergeant Carr, I don't care to talk to the remainder of the NCOs on my list.

IO: Okay.

TC (MAJ DOLAN): And Carr, as I understand it, will invoke. I mean, we can call him to have him invoke, if you want.

DC (CPT MELITO): He might not. I spoke to his attorney.

IO: All right, to make sure we're clear here, I'm going to strike that we'll talk to Sergeant Downs, Sergeant Diest, and Sergeant Jamile Sheehan. Is that correct?

DC (CPT MELITO): Well, that person is not from my list, so I don't want to speak for that individual.

? Yeah. Sergeant Sheehan's from my--

IO: Okay, we'll keep Sergeant Shee--

? 'Cause I still want him.

IO: Okay. So, Sergeant Downs and Sergeant Dice have been--

? From my list--I'm sorry. Go ahead.

DC (CPT MELITO): I was just purely talking about my list.

IO: Okay, Sergeant Downs and Sergeant Diest have been removed.

? From my list, we will not be calling Lieutenant Colonel Kievenaar.

IO: Okay, Lieutenant Colonel Henry Kievenaar.

? Right. Or Sergeant McCoy.

IO: And not on Sergeant McCoy. Okay. And nobody else wants to call those witnesses.

TC (MAJ DOLAN): That leaves us with _____ now. So, this is what I have. Let me know if I'm missing--

? Please.

~~SECRET~~

Page 132 of 285 pages

TC (MAJ DOLAN): Pratt, Rossignol, Carr, Marlow, Voss--

IO: Can you slow down? I'm sorry.

TC (MAJ DOLAN): Excuse me.

IO: Pratt, Rossignol--

TC (MAJ DOLAN): Carr, Marlow, Voss, Voigt, French, Baldrate, and Sheehan.

IO: All right, is Pratt somebody that was added today?

TC (MAJ DOLAN): Added two days ago, I think, sir. I sent an e-mail out, saying we were going to call him in for evidence under the additional charge against Mr. Williams.

IO: Okay, I don't think I got that list. Sergeant First Class Pratt?

TC (MAJ DOLAN): Roger. I mean, I sent that out by an e-mail.

? I know I got it.

? Yeah, I got it, as well.

IO: It must have been when we were having e-mail problems.

TC (MAJ DOLAN): It could be, as I would be certain to have addressed it to you.

IO: Okay.

TC (MAJ DOLAN): I'll resend it tonight.

DC (CPT BUNCH): We have the two additional that I requested. I don't know if you--

TC (MAJ DOLAN): Oh, excuse me. I forgot about that.

IO: Sergeant Fisher and--

DC (CPT BUNCH): Sergeant Connelly.

IO: Connelly, E-5?

DC (CPT BUNCH): Yes. He's a 6. Connelly's an E-6? Connelly's an E-6.

TC (MAJ DOLAN): Connelly's E-6, Fisher's E-5.

IO: Connelly. All right. And you've made arrangements with government counsel?

Page 132 of 285 pages

~~SECRET~~

~~SECRET~~

Page 133 of 285 pages

TC (MAJ DOLAN): They'll be here at zero nine tomorrow. They tell me they will. If I have to call the commander, I'll do that.

? One update. Scratch Colonel French from our list.

IO: Colonel French?

TC (MAJ DOLAN): Scratch her?

? Yeah, I'm sorry. I meant to tell you that earlier.

IO: Okay.

TC (MAJ DOLAN): Are you sure 'cause it kind of took a lot of doing to get her _____

? Sorry. Well, basically, she would have been repetitive with Colonel Teeples at this point.

ATC (CPT DAVISON): Okay. Well, I'm going to--then, I'm going to call--she's got a mem _____ to go to tomorrow, so I'm going to tell her--

TC (MAJ DOLAN): Can we take a recess in place so--

? I'm sorry. I apologize for that.

TC (MAJ DOLAN): --'cause we just actually finalized that detail about 5 minutes ago.

IO: Yes, but let's be clear. I know Major Dolan just provided a list of people. Let me make sure that I have everybody. Sergeant First Class Platt--

TC (MAJ DOLAN): Pratt.

IO: Pratt. Okay.

ATC (CPT DAVISON): P-R-A-T-T.

IO: Then Sergeant Fisher and Sergeant Connelly from Captain Bunch. Then on the original list, Major Smith, Major Voss, Chief Warrant Officer Two (Retired) Manwaring, Captain (Doctor) Rossignol, Sergeant John Pullen, Sergeant First Class Julie Voigt, Captain Marlow, Sergeant Sheehan, Sergeant first Class Carr, and Captain Baldrate. And, also, we have temporary excusals for Special Agent Ryan, Staff Sergeant Perry, and Staff Sergeant Lamb.

Page 133 of 285 pages

~~SECRET~~

~~SECRET~~

Page 134 of 285 pages

TC (MAJ DOLAN): We're going to call Smith right now.

IO: Major Smith?

TC (MAJ DOLAN): Correct.

IO: Is he available by a secured line?

TC (MAJ DOLAN): He's standing by a secure line right now.

IO: Okay. Defense counsel, did you want Major Smith in person, or . . .

CDC: Yes, but here is the situation, Captain Ayers. We take exception to his commander/supervisor's statement that there is nothing within his statement that can be refuted or, you know, that's clear science, whatever. I forget the exact wording he used, but--are we on the record?

IO: Yes.

CDC: Okay. I have spoken with our own physician, who has consulted with a pathologist who takes exception to the findings within the autopsy report and says in fact that the pathologist with whom we spoke said there was no way that this guy was asphyxiated. Okay.

IO: Okay. Well, I mean--

CDC: But here's why it's relevant for purposes of this, okay?

IO: Okay.

CDC: We would then, under normal circumstances, request that the witness appear in person because I had--if it's my physician on standby, that I was going to be consulting with him. However, what I would be willing to accept as a substitute is if we did the direct exam of Dr. Smith tonight, allow me to speak with my physician overnight or first thing in the morning, and then continue with cross-examination of him in the morning. If we can do that, I'll waive his personal appearance here. I think he's going to be a couple-hour witness anyway.

IO: Yeah.

TC (MAJ DOLAN): The reason--

Page 134 of 285 pages

~~SECRET~~

SECRET

Page 135 of 285 pages

IO: Hold on.

TC (MAJ DOLAN): Oh, excuse me.

IO: Hold on. Mr. Cassara said a whole bunch of things in a short time. All right, Mr. Cassara, when I read Commander Malick's memo here, you know, I disregard the language where he says, you know, the medical testimony is clear-cut or whatever he says, because that's hard for me to believe anything is clear-cut. But what I do need to rely on and must rely on is that he is not reasonably available and that we would have to do an alternative to his in-person testimony, being something along the lines of testifying by phone. Now, the thing is, you know, his direct examination probably will be lengthy, and we probably could temporarily excuse him, giving you time to consult--I mean, you could do that anyway, say temporarily excuse him anyway.

CDC: Right. I'm trying to save us the trouble of doing that, and I'm saying let's just do the direct tonight and the cross tomorrow instead of saying let's do my cross and then, "Oh, by the way, I'm going to recross you tomorrow after I talk to my doc anyway."

IO: Yeah. So, I see that as feasible that--I find him not reasonably available; we go to having him telephonic. But, apparently, you would have time to speak to your consultant and then cross-examine Major Smith early tomorrow morning. Now, he is in Maryland. What I suggest is, you know, we still have--we try to front-load quite a few witnesses, but we still have quite a few witnesses to go. I would actually--because there are at least two witnesses, Major Smith and Captain Baldrate, on the East Coast, start, say, at 7 o'clock tomorrow morning. Is that feasible for everyone? Captain Bunch?

DC (CPT BUNCH): That's fine.

CDC: Begrudgingly. You know, I'm on East Coast time--

DC (CPT BUNCH): I gotta be here.

CDC: --I'm waking up at 4 o'clock anyway. It don't matter.

Page 135 of 285 pages

SECRET

? That's actually zero nine, so 7's fine.

IO: All right, government counsel, zero seven tomorrow?

TC (MAJ DOLAN): Yeah. I'd just as soon go earlier just to--I mean, the reason he's not available is apparently because of Paluja, he's got a lot of work in front of him.

IO: Yeah. And I can understand that. Captain Melito, 7 o'clock? Okay. Well, that's what we'll do. Let's go ahead--

TC (MAJ DOLAN): So we're clear, there are no objections from defense to the telephone?

CDC: I object to him not being called in person. You have overruled that objection.

IO: Yeah.

CDC: Therefore, we'll willing to accept that.

IO: Okay.

CDC: He's going to do his direct examination--

TC (MAJ DOLAN): I just wanted to know if you were objecting or not.

CDC: No. We have an objection on the record.

IO: Yeah. I will note your objection on the record.

DC (CPT BUNCH): Can you do that for each defense counsel, as well? I don't know that him preserving his rights for Williams preserves the rights--

CDC: So, we all three objected, and you've overruled all three.

IO: I can do that. Well, I really don't have the authority to overrule what his commander has said, that he's not reasonably available to attend in person. But I will certainly note for the record your objection.

All right, Major Dolan, I'm sorry. Did you have anything else for me?

DC (MAJ DOLAN): Not in the face of your ruling, Your Honor.

IO: Okay. Let's get Major--

TC (MAJ DOLAN): Can we take a recess in place so that we can call Colonel French off, and then we'll get right to it?

[recess in place]

IO: All right, we'll all back from recess; that is, all parties present prior to recess are again present. We have Major Michael Smith on the line for testimony. I already explained to him who is present in the room, and I'm going to have Major Dolan swear him to his testimony. But before he does that, I want to--the statement or the memo from Commander Malick, I want to have that as--introduce that as Exhibit 10. Any objections from any of the counsel? No? Okay. That will be Exhibit 10. Major Dolan, would you swear Major Smith, please.

[MAJ Michael E. Smith, U.S. Army, was called telephonically as a witness at the Article 32 investigation, was sworn, and testified as follows:]

Questions by TC (MAJ DOLAN):

Q. Are you Major Michael Smith?

A. Yes, I am.

Q. Are you a forensic pathologist with the Armed Forces Institute of Pathology in Rockville, Maryland?

A. That is correct.

Q. What were you doing on the beginning of December of last year?

A. On 2 December 2003, I performed an autopsy on a Major General _____ Mowhosh, an Iraqi detainee who died in U.S. custody.

Q. How did you identify him?

A. He was identified by the 3d Armored Cavalry Regiment from fingerprints, and DNA samples were obtained.

Q. What did you do, in layman's terms?

A. I'm sorry?

Q. Did you conduct an autopsy?

A. Yes, I did.

Q. Did you determine a cause of death?

A. Yes, I did.

Q. What did you determine was the cause--

A. The cause of death was asphyxia due to smothering and chest compression.

Q. In reaching that determination, what did you consider?

A. I considered, number one, the circumstances surrounding the death; and, number two, the findings I found on external inspection of the body; number three, findings I found on internal inspection of the body; number four, laboratory tests consisting of microscopic swabs that I submitted once I returned to the U.S. and toxicology results that became available once I returned to the U.S.

Q. What was number one? A description of what had happened?

A. The circumstances surrounding the death.

Q. How did you determine what those circumstances were?

A. They were relayed to me by Warrant Officer--a CID Warrant Officer Patrick

Kline.

Q. Did you read any statements relating to the case?

A. I was not allowed to read any statements. I was told the statements verbally.

Q. What was your general understanding of what had happened?

A. My understanding of what had happened was that General Mowhosh had been in U.S. custody for several days. He had been restrained. At times, a sleeping bag was placed over his head and chest area and secured. At times, individuals were sitting either on his chest, abdomen, or back while interrogating him and that intermittently someone might have put their hands, covering the mouth and nose area.

Q. When you say that these things happened "at times," do you mean over a period of days, hours, minutes? What do you mean?

A. I was told that this had happened in relation to the death, so in the minutes preceding the death.

Q. Was there anything of a physiological nature that might corroborate that?

A. I'm sorry. I can't--

Q. Did you find any evidence of a physiological or biological nature that might corroborate that?

A. Yes, I did.

Q. What?

A. He had what's referred to as facial suffusion, which is blood basically being congested in the face. He also had what is referred to as pulmonary edema, or fluid that builds up in the lungs. He also had numerous bruises on his chest, abdomen, arms, legs, one bruise on the head, and he also had several rib fractures.

Q. Did the bruises, in your opinion, occur that day of death?

A. It is impossible to accurately give the exact day that the bruises occurred. The bruises appeared to be fresh; that is, they appeared to be days old, not weeks or months old.

Q. In your opinion, were those bruises part of the--do you know when those bruises occurred, then?

A. I--my opinion is the bruises occurred before death and within no more than several days prior to death. It could have occurred hours before death.

Q. The bruises that you saw--how, if at all, did they relate to the death of the general?

A. They were a marker of significant physical violence. The bruises themselves did not cause death, although that is possible in some individuals. However, the bruising on General

Mowhosh was confined to the skin and tissue just under the skin. It did not extend down into muscles.

Q. In your opinion, based on the bruises you examined, did those bruises indicate a level of physical violence that would have caused the general's death?

A. They were significant. The bruises themselves did not cause death. Again, they were a marker of significant violence surrounding the time of death.

Q. You mentioned earlier facial suffusion and pulmonary edema. What did that tell you, if anything?

A. Well, those are signs of inadequate pumping of blood by the heart, and those could be due to multiple causes, one of which is asphyxia.

Q. What other signs of asphyxia did you find?

A. There were no signs of asphyxia to indicate that he was--had any signs of strangulation or hanging; that is, there were no petiquii or small bruises within the eyelids or within the lining of the mouth. There were no tears around the structure of the mouth to indicate that any significant force was applied to the mouth and nose area.

Q. What do you call those signs?

A. We refer to them just as that, signs.

Q. Is petechia a term you might use?

A. Petechia?

Q. Petechia.

A. Yes, and those are seen typically in cases of strangulation; that is, when someone puts their hands around someone's neck and squeezes, or a hanging, when a rope or a ligature is--circles the neck. They may also be seen when very heavy objects fall on the chest and abdomen, enough to completely impede the flow of blood.

Q. Well, there were no petechia, then?

A. That is correct. There were no petechia.

Q. Well, is it possible to cause asphyxia in a restrained adult without leaving these petiquii or these classic signs of asphyxiation?

A. Absolutely. If an adult is restrained, it would be very possible to cause smothering; that is, to block the airways from the outside with material, a gag, a pillow, *et cetera*, and to not leave any signs whatsoever. The other potential is to sit on someone's chest or abdomen until they tire out the breathing; that is, their respiratory muscles are having to work extremely hard against the weight of someone sitting on his chest that they would tire out, and the person would stop breathing. So, it is entirely possible.

Q. Did you consider that the victim might have died of a heart attack or myocardial infarction?

A. Of course. We consider that in every death that we examine. I did a thorough examination of the heart and found that the heart was enlarged. He did not have any blockages in the blood vessels that supply blood to the heart that are typically seen with what most people would refer to as a heart attack.

Q. Is an infarction when the pump of the heart begins to work the wrong way, pumping out rather than in?

A. An infarction is when the heart muscle is not getting enough blood flow and oxygen muscle and the heart muscle itself dies.

Q. Did you find any evidence of that?

A. No, I did not.

Q. Did you discuss with some of your colleagues the possibility of a myocardial infarction?

A. I discussed it with six other forensic pathologists here in the office, and we were all in agreement that myocardial infarction was not the cause of death.

Q. You discussed it with six. And counting yourself, there's seven. How many years of forensic pathology experience would you say the seven of you have between you?

A. Fifteen to 20, roughly.

Q. How long have you been a forensic pathologist?

A. I've been a forensic pathologist for the last 2½ years. I've been board-certified for the last 1½ years.

Q. How many autopsies have you performed?

A. I have performed in excess of 500. I do not have the exact number, but it is in excess of 500.

Q. Did you prepare a--

A. Less than 1,000 but more than 500.

Q. Did you prepare a report of your findings?

A. Yes, I did.

Q. And how many pages is it?

A. The autopsy report itself is eight pages in length.

Q. Do you have it in front of you?

A. Yes, I do.

Q. I'm going to try and authenticate the report that we have here. What does the first page look like?

A. The first page basically has a Department of Defense seal, our office symbol, and states in bold lettering across the top "Armed Forces Institute of Pathology." It includes some demographic data, circumstances of death, authorization, identification, cause of death, and manner of death.

Q. And is the cause of death what you stated earlier, asphyxia due to smothering and chest compression, right there on the first page?

A. Correct.

Q. Now, on the eighth page, what do you see?

A. The eighth page is labeled at the top "Autopsy Report, ME03-571, Mowhosh, Abede, MG." The first sentence starts with the word "brain" and includes--other headings are _____ muscle, contusion of the right buttock, serology, toxicology, and then opinion. And following the opinion is my signature block with my signature and the signature of another forensic pathologist that has reviewed the report.

Q. It has your signature and the signature of another pathologist who's reviewed the report?

A. It'd be--those are the initials of another pathologist who has read the report.

Q. We have a copy here that's not signed by you nor initialed by any other forensic pathologist. Do you know what report I'm talking about?

A. All of my reports are--valid reports are signed.

Q. Let's go back to the first page. What's the date of report?

A. On the first page, the date of report is 18 December 2003.

Q. Were any changes made after that date?

A. No changes were made to the autopsy report after that date.

TC (MAJ DOLAN): At this time we'd move the eight-page report of autopsy into your report as Exhibit 11.

IO: To consider. Any objections from defense counsel?

CDC: Yes. We object on two grounds: one, we would request that be held off until cross-examination tomorrow; two, he apparently has a different report than the one that we're looking at, so can he fax us the one that he has? It's not classified. We received it as a non-classified document, so, I mean, you know, just to be sure. Let's make sure we're not talking about two separate reports.

~~SECRET~~

Page 144 of 285 pages

IO: It doesn't appear that we are, but I don't see the harm in waiting--we certainly can discuss the report that I have in front of me because I assume it's going to be the same, just minus his signature.

CDC: I would just ask that you hold off on admitting it until tomorrow.

IO: I'll wait to admit it until we have the signed copy from Major Smith.

[further questions by TC (MAJ DOLAN):

Q. And Major Smith--

A. Yes.

Q. --we don't have a signed copy of the autopsy. Can you fax me a copy of what you've got as soon as possible?

A. Yes, I can.

Q. Let me give you that number. Are you ready to copy?

A. Okay.

Q. It's ~~SECRET~~

A. Now, does this need to be faxed securely?

Q. No, it does not.

A. Okay. Would you like me to fax it now?

Q. You can do it when we're done here. That'd be fine. We're not going to--

A. Okay.

Q. I've got some bad news for you. Well, I've got good news and bad news.

A. Okay.

Q. Are you ready? Which would you prefer to hear?

A. I'm sorry?

Q. I've got good news and bad news. The good news is that you're not going to be cross-examined tonight.

Page 144 of 285 pages

~~SECRET~~

UNCLASSIFIED

A. Okay.

Q. But the bad news is you're going to be cross-examined tomorrow morning.

A. Okay.

Q. So, can you be by a secure line about 0900 your time?

A. Zero nine hundred my time?

Q. Let's make it 0920. Let's not pretend we're going to call you at zero nine. At
0920.

A. Okay.

Q. Will that work?

A. That will work.

Q. Okay.

IO: Is that all the questions you have for him, Major Dolan?

TC (MAJOR DOLAN): Yeah.

IO: Okay.

TC (MAJOR DOLAN): Oh.

[further questions by TC (MAJ DOLAN):]

Q. Were you aware of any traumatic events that might have occurred to the general a couple of days before the 26th?

A. I was told that he was arrested. The events surrounding the arrest I do not have.

Q. I beg your pardon?

A. I did not have an investigative report about the events surrounding the arrest; that is, I don't know if there was a physical altercation involved with his arrest or if it was non-violent in nature.

TC (MAJ DOLAN): Okay.

IO: Major Dolan, could you ask about the rib fractures.

TC (MAJ DOLAN): Oh.

[further questions by TC (MAJ DOLAN):

Q. Your report of autopsy notices a couple of rib fractures.

A. That's correct.

Q. Was there much hemorrhaging around these rib fractures?

A. Yes, there was.

Q. What does that indicate, if anything?

A. Hemorrhaging around the rib fractures indicates that the rib fractures occurred while the general was alive; that is, blood still had to be pumping from the heart to get around the rib fractures, so those did not occur after death.

Q. Are you able to determine how soon before death--I mean, roughly--the fractures could have occurred?

A. The best I can say is they most likely occurred within days to hours before death. I cannot give an exact number of days or time.

Q. Is it possible--

A. They did not appear to be healing fractures; that is, weeks' or months' old.

Q. Is it possible that they were the result of chest compressions, CPR?

A. The rib fractures, particularly on the left side, that are closer to around the back, are not seen with CPR. Fractures of ribs seen with CPR are seen on the front of the chest; that is, typically, right around where the rescuer is doing compressions.

Q. Are these rib fractures consistent with a 220-pound man sitting on the chest or back of the general?

A. It could be consistent with someone kneeling onto his chest, like with a knee. They are more consistent with blunt-force trauma; that is, either punching, kicking, or striking with an object or being thrown into an object.

Q. Is it possible that these rib fractures caused his death?

A. It is unlikely in that they did not disrupt the lining of the lung cavity itself and therefore would not have caused what I'll refer to as a pneumothorax or a collapse of the lung. However, they would have been extremely painful, and they would have impaired respiration; that is, it would have been extremely hard to take in a good, deep breath with these rib fractures, due to the amount of pain that rib fractures cause.

TC (MAJ DOLAN): Thank you.

CDC: May I ask him about two preliminary questions that'll help me tonight and save me a lot of time tomorrow morning? Do you have any objection to my doing that?

[multiple people talking at once]

CDC: If you can just ask him, was he--did he fly to Ir--was he stationed in Iraq?

[further questions by TC (MAJ DOLAN):]

Q. Oh, where did you perform the autopsy?

A. The autopsy was performed at the Baghdad International Airport Mortuary in Baghdad, Iraq.

Q. Is that what BIAP means in "place of autopsy" on page 1?

A. Correct. Correct.

Q. How is it you found yourself at that airport?

A. I'm sorry?

Q. How is it you were there to perform the autopsy?

A. Oh, we are notified of deaths of detainees that occur in U.S. custody, and when notified, we travel. In the case of Iraq, we travel to Iraq and perform the autopsies there.

Q. Did you specifically travel to Iraq to perform this autopsy, then?

A. Yes, I did.

CDC: That's all I would ask him, so, thank you.

TC (MAJ DOLAN): Major Smith, I appreciate your time. And, again, I'm sorry to bifurcate this, but the defense counsel will be asking you some questions tomorrow.

WITNESS: Okay.

TC (MAJ DOLAN): So, we'll be calling you at about 0920 your time.

WITNESS: Okay.

TC (MAJ DOLAN): At this number, if that's okay.

WITNESS: This--I will be at a different number, as I will be in a different location.

TC (MAJ DOLAN): Will you have a secure number?

WITNESS: I will have access to a secure number, and I will give that to you tonight by e-mail.

TC (MAJ DOLAN): Right. Okay, I'll look for it tomorrow, and we'll reinitiate by cell and figure it out.

WITNESS: Okay.

TC (MAJ DOLAN): Thanks for your patience. I appreciate it. Oh, hang on. Captain Ayers has something. Captain Ayers would like to talk to you for a minute.

WITNESS: Okay.

[The witness was temporarily excused and was duly warned. The telephone connection was terminated.]

IO: All right, let's take a 5-minute recess. Let's just try to keep it 5 minutes.

[recess]

IO: _____ ess. All parties present prior to last recess are again present.

Okay, let's go on to more discussion with witnesses. Is there other witnesses that may not need to be called now?

? Sergeant Pullen, whom we were going to call tonight, we are not going to call.

IO: You do not need Sergeant Pullen.

CLASSIFIED

? No, we believe we have gotten his same testimony from other witnesses and it would be repetitive.

IO: Okay. Is there a chance we could--

TC (CPT DAVISON): This is the one at Fort Gordon?

? Yes.

TC (CPT DAVISON): Yeah, let me try to call him--

IO: Can we call him by cell to stop him from traveling to the secured phone?

TC (CPT DAVISON): I'm going to try to do that.

? I'll talk to him next week and apologize to him in person, but we don't know what the testimony was going to be until we start calling other witnesses.

IO: Sure. Understand. Okay, so, is there any other witnesses that should be heard from tonight?

TC (MAJ DOLAN): I don't think there's any that we can call tonight.

IO: Okay.

TC (MAJ DOLAN): I've got some housekeeping, though.

IO: Okay.

TC (MAJ DOLAN): We've all taken notes here, but because we're in a secure environment, we can't treat our notes as we might otherwise like to. With the exception of the medical, of the direct.

CDC: Yeah. I can take my notes on Dr. Smith--

TC (MAJ DOLAN): You can take your notes on Dr. Smith, pull them out of your notebooks.

CDC: Right.

TC (MAJ DOLAN): But no other notes can leave this room. They can leave the room-- strange as it may sound, you must give them to me. Or, actually, give them to Captain Davison

~~SECRET~~

Page 150 of 285 pages

because we're going to put them in our safe. Captain Melito--do we need to do this on the record?

IO: Probably so, to make sure--

TC (MAJ DOLAN): Okay.

IO: --we did handle the classified notes properly.

TC (MAJ DOLAN): Yeah. Captain Melito, maybe you've got some envelopes downstairs. I mean, you can all secure your notes. I'll keep them in a secure environment. Seal your envelopes; do whatever you need to do. Or however you do it, you can be certain no government official is going to read them. We can then make copies of the notes, send them to [REDACTED] who can redact the objectionable portions, and then you will have unclassified notes at your disposal.

CDC: Can't we--it would be easier--

TC (MAJ DOLAN): Or--

CDC: Can we just keep them with our classified material?

TC (MAJ DOLAN): Or keep them with your classified material.

CDC: Okay. Absolutely. What's another 5 pounds?

TC (MAJ DOLAN): Well, Captain Kageliery's got a courier card, and he's carrying materials.

? [inaudible]

TC (MAJ DOLAN): Well, can you do that tonight?

? [inaudible]

TC (MAJ DOLAN): No, can Mr. Kageliery take his notes with him tonight?

? Well, I'll give them to you tonight, along with everything else.

CDC: We don't need them tonight.

Page 150 of 285 pages

~~SECRET~~

UNCLASSIFIED

IO: All right, it sounds like we--okay, I think we can go off the record. So, I think we've got an understanding of how we're going to secure our notes. We'll recess until tomorrow at 0700.

[The hearing recessed at _____, 2 December 2004.]

[The hearing reconvened at _____, 3 December 2004.]

IO: All right, we had an overnight recess. All parties present prior to our recess are again present.

We have Major Smith on a secured line, and let's go ahead and begin with his cross-examination after Major Dolan reminds him that he's under oath.

TC (MAJ DOLAN): Mr. Smith, are you there?

WITNESS: I can barely understand you.

TC (MAJ DOLAN): Can you hear me now? Can you hear me now?

WITNESS: Yes.

TC (MAJ DOLAN): Okay. Are you the same Major Michael Smith who testified yesterday?

WITNESS: Yes, I am.

TC (MAJ DOLAN): I know it's a strange question. But you're reminded you remain under oath.

WITNESS: Okay.

TC (MAJ DOLAN): Mr. Cassara has some questions for you.

Questions by the civilian defense counsel, Mr. Cassara:

Q. Major Smith, can you hear me?

A. Yes, I can.

Q. Great. Major Smith, my name is William Cassara. I am a civilian defense attorney. I, along with Captain Pete Kageliery, represent CW2 Jeff Williams. Also in the room,

~~SECRET~~

Page 152 of 285 pages

as the same as last night, are Sergeant First Class Sommer, Specialist Loper, their respective attorneys, the investigating officer, a court reporter, and the trial counsel.

Now, Major Smith, I want to follow up on some of the questions that you answered last night. Major Smith, first off, starting sort of where you ended last night, how long were you in theater before you began the performing of this autopsy?

A. I arrive in theater at approximately 0400, and we started the autopsy at approximately 0730.

Q. And who besides yourself was involved in performing this autopsy?

A. In the actual performance of the autopsy was a photographer, a Tech Sergeant Michael Goblin, as well as another CID agent, Agent Phil Currin.

Q. Were you the only physician involved in the performing of the autopsy?

A. Yes, I was.

Q. Describe for us, if you will, the environment in which the autopsy was performed.

A. The autopsy was performed at the mortuary facilities at BIAF, or Baghdad International Airport. The facilities--the autopsy room consists of a one-room suite, obviously dry and dusty. The p___ system was adequate for what we needed to do, and we did have running water and electricity.

Q. The medical instruments that were used, are these instruments that you brought with you from the States or that were there, waiting for you?

A. We take a kit with us, so they were ones that I brought from the United States.

Q. Prior to the autopsy on General Mowhosh, had other autopsies been performed at BIAF, to the best of your knowledge?

A. Other autopsies?

Q. Yes.

A. Yes, there have been several autopsies performed at BIAF.

Page 152 of 285 pages

~~SECRET~~

CLASSIFIED

Q. Were you involved in any of those?

A. Yes, I was.

Q. And which ones were those, sir?

A. I was involved in processing some of the remains from the UN bombing that occurred in August of last year. I also autopsied four Iraqi detainees on the same trip.

Q. Were you involved in any way in the autopsy of a Nageem Hatab, H-A-T-A-B?

A. I do not have those records with me right now. I can't comment on that.

Q. Does that name in any way ring a bell?

A. The name doesn't.

Q. Okay. Were you aware--prior to beginning this autopsy, were you aware of any problems with any prior autopsies at the morgue?

A. Not problems with the autopsies, no.

Q. Were you aware of problems with the preservation of data and body parts from other autopsies at the morgue?

A. Yes. There have been issues with freezing and thawing of the bodies.

Q. And what problems, if any, were you aware of?

A. The autopsies themselves, there are no problems. It's the circumstances surrounding the autopsies; that is, whether running water was available or whether electricity was available. Again, all of that was available during my autopsy.

Q. What problems does the lack of freezing have for an autopsy?

A. If the body is not kept very cold, it will undergo decomposition.

Q. Are you aware of any autopsies in which body parts were either lost or misplaced?

A. I'm not aware of any autopsies from our office where body parts were lost or misplaced, no.

Q. Okay. Outside of your office--well, let me ask you this. Was your office the only office using the BIAF mortuary?

A. To the best of my knowledge, yes.

Q. Where did the Navy, for example, perform their autopsies?

A. We are a tri-service agency.

Q. Okay.

A. We perform them for Army, Navy, Air Force, Marines.

Q. Got it. So, to the best of your knowledge--

A. All at BIAF.

Q. So, to the best of your knowledge, any autopsies performed by U.S. personnel in theater were done in the same morgue where the autopsy of General Mowhosh was performed?

A. Not every autopsy, no. There was an autopsy performed in Mosel, and I believe one or two autopsies have been performed in Balad.

Q. Okay. And was it your office that performed those autopsies?

A. Yes.

Q. Can you tell me who Lieutenant Colonel Kathleen Ingersen is?

A. Colonel Kathleen Ingersen is the regional armed forces medical examiner for Europe.

Q. And was she in theater when you were there?

A. I do not believe she was in theater while I was there, no.

Q. Was she in theater at all, to the best of your knowledge?

A. While I was there or--

Q. No, ever.

A. --since the conflict started?

Q. Since the conflict started.

TC (MAJ DOLAN): Objection. What's the relevance?

IO: There's relevance.

CDC: I can explain, very briefly.

IO: Okay.

CDC: Dr. Ingersen was involved in an autopsy in which body parts were lost and which tissue was lost. The results of that autopsy were recently thrown out of a court-martial. I want to find out if she had any involvement in this case or if they used the same facilities, in which case the same problems may have existed.

IO: Well, but the witness has already said he's not aware of any autopsies in which body parts were missing.

CDC: I'm trying to explore whether or not that's correct.

TC (MAJ DOLAN): Well, then, that can be explored without asking when and where Dr. Ingersen has been.

CDC: If you want to conduct my cross for me, go ahead.

TC (MAJ DOLAN): I'm talking to the IO. If the issue is, "Hey, Dr. Smith, have you lost any body parts?" I think that's a pretty direct question that could be asked and answered.

CDC: That's not the question, though, which is why it's better for me to conduct my cross.

IO: And what's your next question?

CDC: My next question was going to be, "Are you aware that, in the conducting of autopsies at BIAF, of the loss of body parts and tissue?"

IO: But he's already said he's not aware of any.

CDC: I don't recall that answer from him.

IO: All right. If he says no, that would be the end of your line of questioning on that?

CDC: There would be one more after that, which--yeah, there would be just one more after that.

IO: All right, go ahead and ask your questions, but don't--you know, if the answers are no or he's not aware, let's go on to something else.

[further questions by the civilian defense counsel:]

Q. Are you aware of any autopsies performed in theater in which body parts, tissues, or organs were either lost or misplaced?

A. Yes. As you referenced, Dr. Ingersen had a case where some of the tissue was either lost or misplaced.

Q. Okay. And can you just tell us systemically what causes a problem such as that?

A. The main issue, I believe with her case--we have not had it in any of our cases--was that there was some miscommunication on shipping the samples; as well, apparently, some of the samples did not get on an outbound flight; that is, they remained on the tarmac in the desert heat, and as a result, the utility of the samples was lost.

Q. Thank you. In your original report, you listed the cause of death in this case as "pending"; is that correct? In your interim report?

A. In the preliminary report, yes, I did.

Q. And the final report listed it as a homicide; correct?

A. Correct.

Q. And the preliminary report said that it was pending both toxicology, histology, and an investigation; correct?

A. Correct.

Q. What toxicology reports did you receive after the interim report?

A. I received a toxicology report from our toxicology lab within our office.

Q. And what did that toxicology report tell you that you did not already know?

A. It told me that the general was not exposed to carbon monoxide, that he was not poisoned by cyanide, that he had no alcohol within his system, and he had no drugs of abuse or some common prescription drugs within his system.

Q. Thank you. What histology reports did you receive after the interim report?

A. The histology report is based on my interpretation of the slides.

Q. Okay. What histology discoveries did you make after your interim report before your final report?

A. It showed that the lungs had fluid within them, some other minor changes. The heart had some fibrosis and fatty infiltration of the right ventricle. The liver had some fatty change. The brain showed no significant abnormality, and a section of muscle from the neck showed no significant abnormality, and a section of a bruise off the right buttock showed changes consistent with bruising.

Q. What investigative reports did you receive after your preliminary report?

A. I did not receive an investigative report, *per se*. I received confirmation of the information that I was given in theater.

Q. And when you say "confirmation," could you please explain that for me, Doctor. I'm not sure I understand what you're talking about.

A. Once I got back to the office here in the United States, I called and e-mailed the agent that was in charge of the investigation at the time I was there, Agent Patrick Conner, and asked if any new information had surfaced or if there were any changes to the information that I was given in theater. And there was not.

Q. Okay. And, again, the information that you were given in theater was all relayed to you verbally by Special Agent Conner; is that correct?

A. Yes, Special Agent Conner.

Q. And for how long and on how many occasions did you and Special Agent Conner speak?

A. I would say four to five times since the initial event.

Q. And can you give us, you know, just gross approximations about how long? Five-minute conversations, 2-hour conversations, that sort of thing?

A. Five-minute conversations, and some were through e-mail.

Q. Okay. And it was your understanding, based on the information that he provided to you, that Mr. Mowhosh had been restrained and placed in a sleeping bag, that people were sitting on him and intermittently covering his mouth and his nose; is that correct?

A. Yes, that is correct.

Q. Were you provided any information at all that General Mowhosh had been subject to physical beatings at any time?

A. Yes, I was.

Q. And what is it that you were told?

A. I was told that he had been impacted by several blunt objects during his detention.

Q. Was it your understanding that the impacting with those blunt objects occurred on the same day as his death? And when I say "your understanding," I mean based on your conversation with Special Agent Conner.

A. Based on my conversation with him, I can't say that he told me that those injuries were caused on the day of his death, no.

Q. Okay. Doctor, where is the body currently?

A. The body was released to the mortuary in Miers at Baghdad International Airport.

Q. Okay.

A. From there, it goes on to release to the Red Cross, Red Crescent, and back to the family members. I do not know the current whereabouts of the body today.

Q. Is it fair to say that if we were to attempt to have a second autopsy conducted, that that would not be possible at this point?

A. I would not say that it wouldn't be possible. It would involve--I imagine it would involve disinterring him; that is, removing him from the grave, if he was not cremated. If he has been cremated, it would be impossible to perform a second autopsy.

Q. This may be well beyond your area of expertise, but I don't know. Is it customary in the Islamic culture, to your knowledge, to cremate?

A. To my knowledge, it is not common.

Q. Okay. Where are the tissue samples that were taken from the body?

A. The tissue samples that were taken from the body are within my office.

Q. Okay. And were are the organs: the heart, the lungs, that sort of thing?

A. The organs were returned to the body for burial with the body.

Q. Okay. Besides the tissue samples, what physical evidence from the autopsy do you currently possess?

A. I possess the tissue samples. I possess microscopic slides. I possess photos of the autopsy as well as the scene findings. I possess the toxicology reports, and I possess my notes and drawings from the autopsy.

Q. With regards to the tissue samples and the toxicology reports, would that, in an of itself, be enough to give you an indication as to what caused death in this case?

A. Just based on the samples that I have and the toxicology report, it would be impossible to determine the cause of death.

Q. Again, Doctor, if somebody were going to redo the autopsy, they could not do it with what you currently have in your possession; is that correct?

A. That is correct.

Q. Okay.

~~SECRET~~

Page 160 of 285 pages

A. Yes, it is.

Q. Thank you. Now, Doctor, you listed the cause of death eventually as asphyxia; correct?

A. Yes, I did.

Q. Okay. And tell us again in general terms--

A. Actually, asphyxia due to smothering and chest compression.

Q. And chest pressure or chest compressions?

A. Compression.

Q. Okay.

A. Asphyxia due to smothering and chest compression.

Q. Thank you. What are the signs of asphyxia in general?

A. It depends on what type of asphyxia that you're talking about. There are many types of asphyxia, some which involve removal of oxygen from the atmosphere, which would leave no signs or symptoms whatsoever. There is strangulation. That is when a person puts his hands around a victim's throat and squeezes. That would leave injuries that have been discussed before, like petechia and possibly bruising within the neck muscle, fracture of the hyoid bone. There is ligature hanging; that is, a rope or cord, some type of ligature, is placed around the neck and the body is suspended or tension is placed on the rope. Again, that could cause petechia and may cause bruising within the neck muscles. There is smothering, which may or may not leave any findings.

Q. And in a case--

A. But smothering--

Q. Go ahead, Doctor.

A. Smothering may or may not leave any findings, depending on the condition of the victim; that is, if they were restrained and cannot fight back, there may be no findings

Page 160 of 285 pages

~~SECRET~~

UNCLASSIFIED

whatsoever. If the person is chemically restrained; that is, intoxicated, they may not be able to fight back, and therefore there may be absolutely no findings. Any many times kids are smothered, babies particularly, and they leave absolutely no findings whatsoever.

Q. Doctor, what is SVC syndrome as it relates to asphyxia?

A. I'm sorry?

Q. SVC syndrome, superior vena cava--

A. SVC syndrome?

Q. Superior vena cava--

A. Yes, superior vena cava syndrome is when a tumor or a mass of some kind impedes the superior vena cava, which is a very large blood vessel that drains blood into the heart; or, as a result of that, blood will back up to areas proximal to that obstruction, that being primarily the arms, head, and neck.

Q. And in such a case, is it fair to say that the capillaries basically pop or burst, for lack of a better term. Is that correct?

A. Sure. Eventually, if enough pressure builds up, that will be the case.

Q. And that can be caused or exacerbated by the weakening of the heart muscles or the heart walls; correct?

A. No. It has nothing to do with the strength of the heart muscle. It has to do with the amount of pressure. Basically, you have excess pressure going into the head; blood, that is, and it cannot drain out adequately. It has nothing to do with the pumping action of the heart other than the heart pumps the blood to the head.

Q. Okay. And if a heart is weakened and unable to pump blood to the head appropriately, what effect, if any, does that have on SVC syndrome?

A. It would exacerbate SVC syndrome.

Q. Thank you.

A. That is, it would make it worse.

Q. Okay. Now, in typical asphyxia cases--and when I say "typical," I mean one in which somebody has been sitting on a victim, on the victim's chest, as is alleged here, would you see any signs of SVC syndrome?

A. No. The SVC syndrome is not associated or classically associated with someone sitting on someone's chest.

Q. What is traumatic asphyx--

A. SVC syndrome is a medical diagnosis.

Q. What is traumatic asphyxia?

A. Traumatic asphyxia is when the position of the victim does not allow for adequate respiration, and that can be because the victim is in such an awkward position that the chest muscles cannot effectively respire. It can be from something sitting on the chest; it could be something sitting on the back, pressing the chest or something sitting on the--or pressing on the abdomen, causing the organs of the abdominal cavity to press up against the diaphragm to not allow adequate respiration.

Q. And what are the pathological findings associated with traumatic asphyxia, in general?

A. I can't say that there are pathological findings. There are sometimes findings. It depends on the amount of pressure that is put on the chest. Someone who, say, is intoxicated and collapses in a position that does not allow their chest to expire would, more than likely, have no findings. If a car fell on somebody; that is, if someone were working under a car and the jack failed and the car fell on their chest, that is strong enough to impede blood flow back from the head, and they will have petechia as well as evidence of blunt-force injuries of the chest.

Q. And you found no evidence of petechia in this case; correct?

A. That is correct.

Q. Doctor, you talked about something earlier called--and let me just make sure I quote you correctly--facial suffusion. Could you please tell us what that is.

A. Facial suffusion is basically congestion of the face. It is caused by blood not adequately draining from the head and neck area.

Q. And spell suf--is it subfusion or suffusion?

A. Suffusion, S-U-F-F-U-S-I-O-N.

Q. Thank you. And, again, Doctor, you found no petechia of the eyes, face, or oral mucosa in this case; is that correct?

A. That is correct.

Q. And that is something that is typically associated with a crushing of the chest; correct?

A. It is associated with significant crushing of the chest; that is, something heavy, like a car or a steel beam.

Q. Now, Doctor, would you agree with me that General Mowhosh was likely an alcoholic?

A. I cannot say that. He has changes within his liver that are consistent with alcohol use. However, those changes are nonspecific and may be seen with things such as diabetes, obesity, and exposure to certain chemicals. So, I cannot say, based on his autopsy, that he was an alcoholic.

Q. Do you have suspicions that he was an alcoholic?

A. I'm sorry?

Q. Do you have suspicions that he was an alcoholic?

A. Again, the findings are suggestive that he used alcohol. Now, to say that he is an alcoholic is something that I cannot judge from the autopsy. He did not have cirrhosis of the liver, which is commonly seen in alcoholics.

UNCLASSIFIED

~~SECRET~~

Page 164 of 285 pages

Q. Did you find evidence of alcoholic cardiomyopathy?

A. He did have an enlarged heart, and it is not possible to say, based on the autopsy, what caused the enlarged heart. Alcohol is a potential cause. There are also many other causes, such as infection, a long history of high blood pressure, *et cetera*. So, I cannot say, based on the autopsy findings, that he was _____ an alcoholic. He has findings that are seen in people with alcohol abuse but may be seen in people who never use alcohol.

Q. And what is cardiomyopathy?

A. Cardiomyopathy is basically an enlargement of the heart, where it does not squeeze as well as it should.

Q. And what is the manifestation of cardiomyopathy?

A. Many people, especially young people, may have no symptoms whatsoever. It depends on how far progressed it is and their susceptibility. People with really bad cardiomyopathy will exhibit signs and symptoms of heart failure; that is, they have swelling within the legs; they may have difficulty breathing when lying down flat; and their condition may progress to where they may have an arrhythmia and die.

Q. And what is an arrhythmia?

A. It's an irregular heartbeat.

Q. And is death by arrhythmia generally a slow process or generally a sudden process?

A. People can live with arrhythmias for their entire life and die of completely unrelated causes, and a completely otherwise healthy person may collapse suddenly due to an arrhythmia. So, it's not possible to say.

Q. Did General Mowhosh have evidence of arrhythmia?

A. I cannot say that, based on the autopsy findings. Arrhythmias are diagnosed while someone is alive.

Page 164 of 285 pages

~~SECRET~~

UNCLASSIFIED

[REDACTED]

Q. Can you get pulmonary edema from asphyxiation?

A. Yes, you can.

Q. Doctor, are people with cardiomyopathy predisposed to pulmonary edemas?

A. Yes, they can, especially if they are in a heart failure.

Q. And is the instance or probability of that exacerbated by one's age and/or weight?

A. As one continues to get older and more obese, it would aggravate any underlying heart condition.

Q. Would you agree that General Mowhosh had enlarged lungs?

A. Enlarged lungs?

Q. Yes.

A. No. His lungs were not enlarged. They were heavy due to fluid accumulation.

Q. And what causes fluid accumulation in the lungs?

A. There are many causes. Asphyxiation is one of them. Heart failure is one of them. Exposure to noxious chemicals is one of them. Overdose with drugs like heroin is one of them. It's a nonspecific finding that can be seen with many things.

Q. Can pulmonary edema cause fluid in the lungs?

A. Pulmonary edema is fluid in the lungs.

Q. I'm sorry. And is it safe to say that edema is likely a sequela to cardiac arrest?

A. I'm sorry?

Q. Is it safe to say that edema is likely a sequela to cardiac arrest?

A. Once the heart stops beating, there will not be fluid build-up into the lungs. It does require that the heart is actually beating.

Q. And you're going to have to excuse me. From a non-doctor's standpoint, I'm not sure that that answered--I'm sure you answered my question from a medical standpoint. I'm trying to get an answer from a legal standpoint or at least from a person's standpoint that's not a

[REDACTED]

UNCLASSIFIED

~~SECRET~~

Page 166 of 285 pages

doctor. Is--I mean, basically, a "yes or no" question. Is pulmonary edema a sequela to cardiac arrest?

A. It may be.

Q. Okay. Well, that's almost--

A. If someone has heart failure for an hour before they actually have an arrhythmia and die, well, then, yes, they very well likely may have edema fluid within their lungs. If someone collapses who is otherwise healthy and immediately collapses and dies, they may have absolutely no edema fluid within their lungs whatsoever.

Q. Now, moving on a little bit, you noticed numerous bruises on General Mowhosh; is that correct?

A. Yes, I did.

Q. Is it fair to say that the majority of those bruises--in fact, I think your testimony said all except one were either on the limbs or torso. Is that correct?

A. Yes, and by "torso" I mean chest, abdomen, and back.

Q. Right. So, if one were wearing clothing that covered their entire arms, legs, and torso, the only bruise that would be noticeable would be the one that was on his head. Is that correct?

A. That would be correct.

Q. And you said the one--

A. If he was completely clothed.

Q. Right. And you said the one on his head was the least severe of all; that it was a pretty minor bruise. Right?

A. Correct.

Q. Okay. And you can't date those bruises, can you?

Page 166 of 285 pages

SECRET

~~SECRET~~

A. I cannot accurately date them. I can give a range and say that they appear to be at least days' to hours' old, and they do not appear to be weeks' or months' old. I cannot give you a date or a time on when the bruises were inflicted.

Q. Is it possible that they are postmortem?

A. No, they are not.

Q. And what leads you to that conclusion?

A. Many of the bruises were patterned, and that would require that the heart was beating at the time of the bruising. It is possible to bruise a body after death. However, it is usually focal and not extensive, as was seen with this case, and it is usually on areas that we see with moving the body, that are impactive. That would be, typically, the head.

Q. I'm sorry; you said moving a body that is impacted? Is that what you said?

A. If you move a body and a portion of the body strikes a surface or if the body is dropped, it is possible, but unlikely, to cause some bruising.

Q. Okay. When you spoke with Special Agent Conner, were you aware that General Mowhosh had been beaten 2 days prior to the date of his death?

A. I knew that during his incarceration that there had been some blunt-force trauma. I can't say that I was told it was 2 days, but I was told that "during his incarceration," and that included the days before his death.

Q. Okay. And you testified yesterday that the bruises, while they didn't--while the bruise that you saw may not have caused his death, they were a marker of significant violence surrounding his death. I believe those were your exact words?

A. Without having them read back to me, that is the general statement, yes.

Q. Sounds like your words; right? We're not quoting you on that. I'm just--

A. Yes.

Q. I'm reading from my notes, as well, so . . .

A. Yes.

Q. What impact upon the body does a severe beating, such as the one the evidence of which you witnessed, have on the body in terms of its overall strength? Does that make sense?

A. It depends on the amount of force that is used to cause the bruising. Bruises may be very mild, such as those that everyone has had as they've bumped their knee; or they may be severe; that is, they may fracture underlying bones. They may cause injury to abdominal organs.

Q. Well, speaking of the injuries the evidence of which you saw on General Mowhosh, what impact would injuries such as he had have on his overall health?

A. The bruises would have been painful. They would have made him very uncomfortable. There were no lethal injuries in and of themselves caused by the bruising.

Q. Would they weaken one's immune system? When I say "immune system" I don't mean their immunodeficiency system. I mean their ability to withstand other trauma.

A. I can't say with medical certainty that that is the case, but it would logically make sense that if someone is detained and is significantly bruised, that they would be more susceptible to other trauma.

Q. And would they be more susceptible to death occurring from a subsequent trauma?

A. It depends on the subsequent trauma.

Q. Subsequent trauma of having a sleeping bag put over your head.

A. Again, the bruises were more indicators of markers and not actually causing his death or contributing to his death.

Q. Would one be more likely to die by having--well, let me withdraw that question. Let me ask you this question. Did you ever see the sleeping bag that was allegedly used in this case?

A. I saw photos of the sleeping bag.

Q. And what were you told about the type of sleeping bag that it was?

A. I was told that it was a sleeping bag--

Q. Okay, were you aware that--

A. --that had been placed over his head, chest, and abdomen and secured.

Q. Were you aware that it was a sleeping bag that had mesh screening that allowed one to breathe?

A. I was never told the actual composition of the sleeping bag.

Q. Were you told by Special Agent O'Conner that one of the people who allegedly put the sleeping bag on him stated that he checked the sleeping bag to make sure that the person's airways were unrestricted?

A. I was not told that, no.

Q. When you were told that somebody sat on his chest, did Special Agent O'Conner--or Conner; excuse me--explain this as a--you know, the sitting on one's chest that we did when we were kids and we were wrestling or a jumping up and down and squatting on somebody's chest, or how did he describe the sitting on the chest?

A. I was told that individuals would sit on his chest, abdomen, or back. And it was described to me as putting him in, quote, stress positions and that the detainees would be asked questions while someone was sitting on their chest.

Q. Were you ever told how many people allegedly sat on his chest?

A. No, I was not.

Q. Was it your understanding it was more than one?

A. That was my belief.

Q. Were you ever told how long these individuals sat on his chest for?

A. In terms of minutes, no.

Q. Okay. Would it make a difference if it were 1 minute, as opposed to 20 minutes?

~~SECRET~~

Page 170 of 285 pages

A. It depends. If the airway is otherwise unobstructed, then, yes, it would make a difference. Someone may be able to breathe for 1 minute with someone sitting on their chest; and, again, after 20 minutes, they may not be able to.

Q. Now, you testified that General Mowhosh had numerous rib fractures; correct?

A. I don't think I said "numerous." I think I said he had rib fractures.

Q. Okay. How many ribs were fractured?

A. He had fractures of the left ribs, numbers 3 through 7. That's a total of five rib fractures.

Q. Were the ribs removed from the body?

A. No, they were not.

Q. Now, you said that some of those rib fractures were consistent with CPR; is that correct?

A. I don't believe I said that. Fractures on the front of the chest around the chest plate are consistent with CPR. However, most of his rib fractures were on the sides and back, sort of up under the arm area. And those are not consistent with CPR.

Q. My question was some of them, not all of them. Some of them are consistent with CPR?

A. One or two, at most.

Q. Okay. Is it possible to tell whether or not the one or two ribs that were fractured or--excuse me; that are consistent with CPR, whether those fractures occurred pre- or postmortem?

A. When I dissected the tissue around it, there was hemorrhage surrounding the rib fractures, so it was--most likely happened premortem.

Q. Can you rule out postmortem?

A. Yes, I can rule out postmortem.

Page 170 of 285 pages

~~SECRET~~

00000000

~~SECRET~~

Page 171 of 285 pages

Q. Okay, thank you. Now, explain to me the rib fractures that are not consistent with CPR, which ribs they were and what it is that you observed.

A. On the third through sixth ribs on the back and left side; that is, kind of up under the left arm, there were nondisplaced fractures. And dissection in that area showed a significant amount of hemorrhage surrounding these fractures, indicating that the heart was still beating at the time that these fractures occurred.

Q. Okay. Is it possible--let me ask you this. Are the rib fractures that we are now talking about consistent with the bruising that you saw?

A. Yes, he had bruising on his chest and back in that general area.

Q. So, is it possible that whatever it is that caused those bruises also caused the rib fractures?

A. That is possible.

Q. Now, are you aware that numerous attempts were made to tube General Mowhosh while he was in distress?

A. I'm sorry. To intubate?

Q. Yes.

TC (MAJ DOLAN): Object. I think that misstates what evidence there will be on when the tubing was performed.

CDC: I believe the doctor in general--Captain Marlow in her report says that numerous attempts were made to intubate him.

TC (MAJ DOLAN): True. But not while he was in distress, while he was dead.

CDC: I don't believe that's what the evidence showed. I've got two questions along those lines.

IO: Well, I don't have the evidence in front of me except for it was mentioned yesterday that there was some attempts to intubate or tube.

Page 171 of 285 pages

~~SECRET~~

1234567890
1234567890
1234567890

CDC: And we don't know whether he was alive or dead at the time.

TC (MAJ DOLAN): Well, I'm obviously arguing facts out of evidence, but I think we'll find that they arrived to a body that was and remained nonresponsive and tubing didn't help that.

IO: What's your specific question?

CDC: My specific question is, "Can improper tubing lead to asphyxiation?" I think that's a fair question.

IO: Well . . .

CDC: I mean, Captain Ayers, we're exploring alternative possibilities.

TC (MAJ DOLAN): I don't object to that question.

IO: Okay. Understanding there may be--

TC (MAJ DOLAN): But to assume distress, I believe, is inappropriate as part of the question.

IO: Okay.

[further questions by the civilian defense counsel:]

Q. Doctor, can improper tubing lead to asphyxiation?

A. By "tubing" I'm assuming--

Q. Intubation.

A. --you're referring to intubation.

Q. Yes, sir. I'm sorry. I keep using lay persons' terms. Can improper intubation attempts lead to asphyxiation?

A. Yes, it can.

Q. What evidence, if any, did you see of asphyxiation as a possible result of improper intubation?

SECRET

Page 173 of 285 pages

A. I did not see any evidence of that. When someone is improperly intubated, typically they will have injuries within the larynx; that is, the voice box, as well as the back of the mouth or the teeth.

Q. Doctor, I probably just have a couple of more questions for you, and then it's going to be, unfortunately for you, at least three or four more lawyers that are going to want to talk to you.

A. Okay.

Q. I hate to do that to you first thing in the morning, but . . . One second. We're switching tapes here. [pause] I may have asked you this already, Doctor. I'm going over some older notes. Did Mr. Mowhosh have congestive heart failure?

A. He did not have congestive heart failure in the sense that there was no report of symptoms of heart failure that I was relayed, and he did not have swelling in the legs that is typical for people with congestive heart failure.

Q. Which leads me sort of to my next question. What evidence of the prior medical history of Mr. Mowhosh did you have when you performed the autopsy?

A. I did not get a medical record on him. I was told that at the time of his incarceration that he apparently walked up to the--and turned himself in. Other than that, I have no medical records on him.

Q. Okay. And is it fair to say that a medical history that indicated that he had congestive heart failure would have at least been helpful to you in conducting your autopsy?

A. If that were the case, sure. We try to look at all of the circumstances and all records surrounding every data, if possible.

Q. And, similarly, a medical record that showed he did not have congestive heart failure would have been similarly helpful to you; correct?

A. Yes, that is correct.

Page 173 of 285 pages

CDC: Doctor, that's all the questions that I have. And, like I said, there's going to be a few other people here that are going to have questions for you, I would assume.

Questions by the defense counsel, Captain Bunch:

Q. Sir, my name is Captain Bunch. I represent Specialist Loper. I just have a few questions about your educational background and, actually, your Army history. Sir, how long have you been in the Army?

A. I've been in the Army for 8 years.

Q. And can you just give a brief history of your educational background.

A. I'm sorry, you're going to have to speak up.

Q. Can you give a brief summary of your educational background, sir.

A. My educational background involves college, medical school, an internship, 2 years as a general medical officer, 4 years of an anatomic pathology and clinical pathology residency, and 1 year of a forensic pathology fellowship.

Q. And can you tell us where you--where was your medical degree obtained from?

A. My medical degree was obtained from Louisiana State University Health Science Center in Shreveport, Louisiana.

Q. And can you explain where you did your internship, specifically.

A. My internship was done at the hospital where I went to med school at. My internship was in internal medicine.

Q. And where have you been previously stationed, sir?

A. I have been stationed at Red River Army Depot in Texarkana, Texas. I have been stationed at Fort Sam Houston in San Antonio, Texas. I have been stationed in Albuquerque, New Mexico. And I am currently stationed in Rockville, Maryland.

Q. How long was your internship for, sir?

A. My internship, as all internships, are 1 year.

Q. Can you give dates in terms of the dates you were in medical college or dates of the internship, along those lines?

A. How many days I was in internship?

Q. I guess it might be easier, sir--do you have a CV that you can fax?

A. Yes, I can fax you a CV, but I'll have to do it when I return to my office.

DC (CPT BUNCH): Okay, that might be easier, sir. Thank you. I don't have any other questions.

Questions by the defense counsel, CPT Melito:

Q. Good morning, sir. This is Captain Melito.

A. Good morning.

Q. Sir, did you have a chance to talk to the prosecutors last night?

A. I'm sorry?

Q. Did you talk to the prosecutors last night?

A. Yes, I did.

Q. What did you talk about?

A. I gave testimony, and I talked to him before the hearing in regards to setting up the arrangements for giving my testimony. As well, we exchanged e-mails.

Q. Did you talk about anything substantive relating to the case between the time that we hung up with you last night and your testimony this morning?

A. No, I did not.

Q. Okay. Sir, just to get a couple more--I guess a little bit more detail into your educational background, where did you attend undergrad, sir?

A. Undergraduate was Louisiana State University in Shreveport, Louisiana.

Q. Do you recall where you finished within your class?

TQ (MAJ DOLAN): Objection.

A. Actually, I did not complete college. I finished early. I did 3 years and was accepted early to medical school.

[further questions by the defense counsel, CPT Melito:]

Q. Okay, and where did you go to medical school?

A. Louisiana State University Health Science Center in Shreveport.

Q. And do you recall your ranking that you finished in medical school?

A. I do not, but it was within the top one-third.

Q. Okay, sir. Now, sir, just for a frame of reference, how big a soldier are you, sir?

What's your height and weight, sir?

A. How big of a so--

Q. Yes, sir.

A. Height and weight?

Q. Yes, sir.

A. I am five nine and approximately 180.

Q. Sir, can punches cause rib breaking or kicks cause breaking of ribs?

A. I'm sorry. You're breaking up.

Q. If someone were to get punched, can they break a rib from that?

A. Absolutely.

Q. If someone were to be kicked, can they break a rib from that?

A. Absolutely.

Q. If someone were hit with a heavy rubber hose, like a radiator hose of some fashion, could that cause breaking of ribs?

A. It would be unlikely.

Q. Why is that, sir?

A. The hose is flexible and, depending on its weight, probably does not have enough mass to cause fracture in the underlying ribs. If someone were hit with a more solid object, it would be more likely.

Q. Okay, so, if they were hit with a pipe or something of that nature?

A. Yes, absolutely.

Q. Okay. Now, if someone were hit with, let's say, a very, very stiff rubber hose, much more solid than a garden hose, could that break ribs?

A. Possible, depending on the amount of force that was used.

Q. Okay.

A. I cannot exclude it.

Q. All right. Sir, if a man who is 200 pounds sat on your chest, is it reasonable to believe that you might become asphyxiated within, say, 5 minutes?

A. No studies have been done on the amount of time that it takes to cause asphyxia, so I cannot tell you exactly how long it would take. I don't know the answer to that.

Q. Okay. Would you think that in your sort of everyday understanding of life and experience--I don't know if you had brothers and used to wrestle when you were younger, but if someone sat on your chest, would you expect that person to die?

A. Again, it depends on for how long, how big the person was, and if there was anything else that would be interfering with respiration or breathing.

Q. Okay. Let's say there's nothing interfering with respiration or breathing. Is it reasonable to believe that a man of similar height and weight sitting on you would cause asphyxiation?

A. Again, it depends on how long. And how long it takes I can't tell you. You can't do those kinds of studies.

UNCLASSIFIED

Q. Okay. Now, you said you were able to rule out most of the rib fractures as being postmortem. What pathological signs led you to believe that?

A. As I said previously, there was a significant amount of hemorrhage surrounding the rib fractures, and that requires the heart to actually still be beating at the time that the fractures were induced. Therefore, they could not have been caused after death because there would be no bleeding around them.

Q. Okay. Now, sir, are you familiar with the term "dog pile" or "pig pile"?

A. Yes, I am.

Q. If there was a dog pile or a pig pile of, let's say, two 180-pound men, can that break ribs?

A. Yes, that's possible, depending on if someone were to have a knee in the ribs, particularly; or if during the dog pile, if they jumped onto the person, then that would be possible to break ribs.

Q. Okay. And, likewise, does the possibility of rib fracture increase the more people you pile on that person?

A. Yes, as the weight increases on the person's chest, the more likely you are to get rib fractures.

Q. Is it also more likely--let's say that there was one or two people on top of a prone individual. Is it more likely that rib fracture could occur from a kick or a punch at that point?

A. Yes. I would say it would be more likely that the rib fractures would have been caused by blunt-force trauma due to a kick or a punch.

Q. Did anyone ever inform you that there was a pig pile upon the general?

A. I was told there was an incident where multiple people had to restrain him.

Q. But nothing about a pig p--

A. No.

Q. I'm sorry, sir.

A. No, the terms "dog pile" or a "pig pile" were never used. I was just told that multiple people had to be used to restrain him.

Q. Okay, when you were told multiple people were used to restrain him, what image did that conjure in your mind?

A. What I typically see on television: someone holding the legs, someone holding the arms, someone potentially with a knee into the back of the neck.

Q. Okay, so, you didn't--I guess at that time when you were informed about him being restrained, you didn't think of the image of, say, a pig pile or a dog pile.

A. No, not particularly.

Q. Okay. What medical--I guess in the minutes preceding the incident where someone sat upon the general's chest, would it have been helpful to know if he was suffering from labored breathing?

A. Yes, it would.

Q. What effect--I guess I'm asking what sort of--or how would that be taken into consideration by you if the man was walking and had labored breathing prior to someone sitting on his chest?

A. It means that he had some type of respiratory difficulty, and that would be made worse by someone sitting on his chest.

Q. If you were to--based upon General Mowhosh's condition postmortem, if I told you he had labored breathing before he was sat upon, what sources could you say that that labored breathing came from?

A. Labored breathing could very likely be due to broken ribs. That would make it extremely painful to take in a breath. And if he had anything obstructing the airway or had had anything, prior to walking around, obstructing the airway.

Q. Were there any signs of some sort of maybe pathogen or disease that would have led you to believe he might have--or would have led you to believe that the labored breathing--if I told you that was a hypothe--excuse me. Let me try this again, sir. If the gentleman, Major General Mowhosh, had labored breathing before someone sat upon his chest, were there any postmortem signs of like a pneumonia or any sort of chemical thing that might have caused labored breathing?

A. No. There was no evidence of pneumonia.

Q. Was there any evidence--

A. There was no evidence of a chemical substance.

Q. Was there any evidence of a disease that would have contributed to him maybe being observed having labored breathing?

A. The only thing that would contribute to that would be his enlarged heart.

Q. What are various possibilities of how an enlarged heart can develop?

A. Various possibilities, someone can get an infection; that is, a myocarditis, that can then cause the heart to enlarge. Someone could have high blood pressure for years. That can cause the heart to enlarge. You can actually get enlargement of the heart with cocaine use, with obesity, with alcohol use, and exposure to certain medications. The other possibility is if they have blockage in the blood vessels supplying blood to the heart.

Q. Was there any blockage in the blood vessels with Major General Mowhosh?

A. Absolutely none.

Q. Was there any evidence of alcohol in his system?

A. There was no alcohol within his system.

Q. How about the medications that you just alluded to? Any evidence of medications in his system?

A. There were no medications that we typically screen for. And if you want a list of those, I can give you a list.

Q. Yeah, I would appreciate that, sir. Do you have that in a--

A. Those include amphetamine, anti-depressants, antihistamines, barbiturates, benzoylbielizakines, cannaboids, propane, detromethorphan, lidacane, narcotic analgesics, opiates, _____ cyclidine, _____ methyozines, sympathetic, syntho_____ medicamines, and thorapamil.

Q. Thank you, sir. Did you see any evidence or receive any evidence about Major General Mowhosh having high blood pressure?

A. I did not. I did not receive any evidence that he had had high blood pressure.

Q. Is there any way to observe that in the body?

A. There are changes that are seen with high blood pressure over time; that being, like I said, enlargement of the heart. The kidneys, many times, will have little dents on the surface of someone with longstanding hypertension. And there was not pitting of the kidneys seen at autopsy.

Q. And what was the first attribute you said might be a symptom of high blood pressure or, rather, a result of high blood pressure?

A. An enlarged heart.

Q. That was present?

A. That was present.

Q. Okay, now, the pitting of the kidney--

A. However, I cannot say it was due solely--or due to hypertension.

Q. Okay.

A. Because there are many causes for an enlarged heart.

Q. Now, you talked about a long-term hypertension causing pitting on the kidneys.

A. Yes.

Q. How about a short-term hypertension? Would that necessarily cause the same?

A. Depending on how long, no. Short-term hypertension that is occurring within the last couple of weeks, no, it would most likely not leave any pitting on the kidneys.

Q. Can repeated trauma lead to high blood pressure or hypertension?

A. I am not aware of trauma causing hypertension, *per se*. The stress caused by trauma will cause the blood pressure to rise, the difference being that after the stress is relieved, the blood pressure would return back to normal.

Q. Can mental stress cause hypertension?

A. It can cause an elevated blood pressure, yes.

Q. Can mental stress, in concert with poor nutrition, cause hypertension?

A. I'm not aware of poor nutrition, *per se*, causing hypertension.

Q. How about an individual who is under repeated stress and undergoing sleep deprivation? Can that cause hypertension?

A. Yes, that would cause elevated blood pressure.

DC (CPT MELITO): Thank you, sir. I think there may be some other folks for you.

IO: Sir, hold on one second. I get a chance.

Questions by the investigating officer:

Q. Sir, this is Captain Ayers, the investigating officer. I want to go back to the rib fractures. You said that they were under his left arm. Would those have been caused by more of a strike or a blow rather than some kind of compression, such as someone sitting on his chest?

A. The more likely cause would be a strike or a blow.

Q. Okay. And you said in your report it's noted that the general was approximately 6 foot and 250 pounds. When you observed him, did he appear to be an obese or a very obese man?

A. He was obese, yes.

IO: Okay, thank you.
All-right, government counsel.

Questions by TC (MAJ DOLAN):

Q. Major Smith, Major Dolan. Can you hear me?

A. Yes.

Q. What is burking?

A. What?

Q. Did you hear my question?

A. No, I did not.

Q. I'm sorry. What is burking?

A. What is burking?

Q. Yes.

A. Is that the question?

Q. Yes, it is the question.

A. Burking is a term that was used to describe a technique used by individuals, I believe in England in the 1800's time frame. I'm not sure of the exact time. But it was a technique where they--these individuals would sit on someone's chest and place their hand over the mouth of the individual to kill them, and then they would turn the bodies in to the local scientists.

Q. Okay, what reason would someone--why would that particular technique be of use to folks who want to sell bodies to medical institutions?

A. Well, it is less likely to leave marks indicating that it--

Q. Major Smith--

A. --was a homicide.

Q. --hang on one second.

A. That is, there might not be any significant--

Q. Hang on one second.

A. -- _____ to the body.

CDC: I just want to pose a relevance objection. I don't know how what happened in the 1800's, Greek or Roman times, is relevant to what happened in November in Baghdad.

IO: I've tried to give the parties some leeway, so I'll go ahead and let Major Dolan ask his questions. And understand that everything I judge, of course, I judge as far as relevancy. And, specifically--

CDC: Just noting my objection for the record.

IO: Sure. Go ahead.

[further questions by the TC, MAJ Dolan:]

Q. Are you there, Major Smith?

A. Yes, I am.

Q. What typical signs of trauma, if any, result from burking?

A. There may be no findings whatsoever. If the person is able to struggle; that is, they are not restrained either physically or chemically, you may find injuries around the mouth or where the hand was placed over the mouth and nose.

Q. Are your findings consistent with--is your examination of Major General Mowhosh consistent with burking?

A. That is a potential cause. He has elements of burking involved in his death.

Q. You talked about more than one person sitting on his chest. Was it your understanding that more than one person at a time would sit on his chest or individuals would sit on his chest?

A. I can't recall if it was explained to me one or multiple at the same time.

Q. The bruising on his back left side that are consistent with rib-breaking, would that be consistent with--

A. Yes.

Q. Would those bruises and those fractures be consistent with a box having been thrown at the general in that location? A cardboard box?

A. Sure. Any--a cardboard box?

Q. Yeah, you know, the kind of box that--

A. One that was filled with something?

Q. Exactly.

A. Something heavy?

Q. Like a box of MREs.

A. I'm sorry?

Q. Like a box of MREs. Have you ever picked up a full box of MREs?

A. Yes, I have.

Q. Okay--

A. If it was thrown with significant force, it could possibly cause rib fractures.

TC (MAJ DOLAN): That's all I have.

IO: Mr. Cassara?

CDC: Yes, just a couple.

Questions by the civilian defense counsel:

Q. Dr. Smith, this is Mr. Cassara again. I want to go back to this issue of burking. It's my understanding that this is something that occurred in the 1800's, to the best of your knowledge?

A. Yes.

~~CONFIDENTIAL~~

Page 186 of 285 pages

Q. Assuming that none of the accused in this case were alive in the 1800's, is there any medical data within the last 20 to 30 years which shows a similar finding that you can point me to?

A. I'm not aware of any studies that have been done in the last 20 to 30 years on burking in particular.

Q. And I would assume that there's no studies on asphyxiation because the subjects would have to die in order to complete those studies; correct?

A. That's correct.

Q. Okay. Now, I just want to go over a couple of last-minute things. You talked earlier--one second, Doctor. [pause] You talked earlier about the four things that generally contributed to your finding of asphyxiation in this case as being the fact that he was restrained, that a sleeping bag was put on--oh, excuse me. Excuse me. Withdraw that. That your findings were a facial suffusion, pulmonary edema, the bruising on his chest, abdomen, and arm, and the rib fractures were your four significant findings in this case. Is that correct?

A. Yes.

Q. Okay. We've talked a lot about--

A. As well as the enlarged heart.

Q. Right. We've talked a lot about the rib fractures and the bruising. Tell me what are some other causes besides asphyxiation of facial suffusion.

A. As mentioned earlier, superior vena cava syndrome, severe heart failure, anything that--a tumor or mass obstructing the blood flow out of the neck.

Q. And what are some other causes, outside of asphyxiation, that can cause pulmonary edema?

A. There are numerous causes, one of them being heart failure, drug overdoses, exposure to noxious inhalants, infection, central nervous system damage. The list is extensive.

Page 186 of 285 pages

~~CONFIDENTIAL~~

UNCLASSIFIED

Q. Now, a couple, three more questions, Doctor. Can a failure--you talked about the taking of drugs which can cause an enlarged heart. Do you remember that testimony?

A. Yes.

Q. Can the failure to take a prescription medicine also cause an enlarged heart?

A. Sure. If someone had high blood pressure and did not take their medication, over time that could cause an enlarged heart.

Q. And about how much time would we have to be talking about?

A. We're talking in the range of no more than, you know, months to, more likely than not, years.

Q. Okay.

A. Sorry; no less than months and, more likely, more than years.

Q. Understood. Now, one last question about the particular hemorrhaging--petechia hemorrhaging; excuse me. Would you normally expect in a healthy male, if somebody sat on their chest, would you normally expect that person to suffer petechia hemorrhaging or evidence of petechia in an autopsy? If one's sole cause of death was having their chest sat upon, would you expect to see evidence of hemorrhaging or petechia?

A. Depending on the size of the person. If you're talking about an average-sized person, no, I wouldn't necessarily expect to see petechia at all.

Q. Okay. And why is that?

A. Because the pressure that's exerted on the chest does not necessarily impede blood flow. Petechia are due to blood flow and drainage problems. Someone sitting on your chest over time will cause the respiratory muscles to leak until they fail.

Q. And I realize again that we don't have any scientific studies that tell us how long it takes for someone to die, but in an otherwise healthy male, how long would you ex--are we

talking, you know, 30 seconds or 5 minutes from one having a constant pressure upon their chest in order for one to die?

A. I think I can say more than seconds. We're talking, more likely than not, within the minutes time frame.

CDC: Okay. Thank you, Doctor.

IO: Anybody else?

CDC: Captain Bunch has some more questions for you. Thank you, Doctor.

Questions by the defense counsel, CPT Bunch:

Q. Sir, you said you'd performed over 500 autopsies?

A. That's correct.

Q. How many of those dealt with asphyxiation, or how many of those did you determine that asphyxiation was the cause of death?

A. I can't give you a number. I've done numerous hangings, strangulations, positional asphyxias, *et cetera*, so I can't give you a number.

Q. Can you say whether that was the majority?

A. I've done many autopsies that have involved asphyxiation, but I cannot give you an exact number.

Q. Have you had any cases such as this one, where the circumstances involved someone sitting on somebody?

A. No, I have not had ones that involved someone sitting on someone.

Q. Or anything similar?

A. I've had cases that were similar, where somebody was in a position where they could not breathe; they were wedged between something or they were crushed under something.

Q. In terms of--and we talked a lot about what could cause fractured ribs. It's my understanding that Major [sic] Mowhosh had been doing PT prior to interrogation, where he was

carrying very large rocks and had fallen a number of times on those rocks. Could that have caused any of the rib fractures?

A. I'm sorry. What did you say after "PT"?

Q. A form of PT that they were using prior to interrogation was he having to be carrying a large rock. If he happened to fall a number of times on that large rock, could that cause the rib fractures?

A. Yes, if he were to fall on that side with a large rock, that could cause rib fractures.

Q. Can you say specifically where the rib fracture is on the rib? Does that question make any sense?

A. Can I tell you where specifically on the rib?

Q. Further to the left, further to the right? If it makes a difference.

A. It was more on the side, on the left side, approximately where, if you were to put your arms straight down beside your body, approximately where your armpit is.

Q. Is it your understanding that the general's face was covered at the same time that someone was sitting on his chest?

A. Yes.

Q. If that's not the case and someone was--his face was not covered at the same time as someone was sitting on his chest, would that change your opinion at all?

A. It would change it from smothering to just chest compression.

DC (CPT BUNCH): Thank you, sir.

Questions by the defense counsel, CPT Melito:

Q. Sir, was there any--this is Captain Melito again, by the way, sir. Sir, was there any evidence that Major General Mowhosh was a smoker?

A. He did not have typical findings seen with someone who has been smoking for a long time; that is, he did not have emphysema. He did have microscopic sections of his lungs--

he had what we refer to as anthracosis; that is, pigments around the blood vessels. That can be seen with smoking. It can also be seen in many people that live in a polluted or urban environment.

Q. How does that affect the lungs' ability to intake oxygen?

A. None.

Q. How does that affect the heart?

A. None. The anthracosis itself is just a marker.

Q. Okay. Thank you, sir. Is alcohol a mild cardio irritant?

A. Yes, it is.

Q. How long can alcohol have an irritating effect on the heart?

A. You can't determine that.

Q. Okay, so, if an individual drank a beer--

A. If someone were--

Q. I'm sorry, sir. Go ahead.

A. If someone were to drink alcohol for a long time, it could affect their heart for years and years if it caused it to be enlarged. But for someone to drink, say, a beer? Any amount of time that the alcohol was within their system would be--it would be an irritant.

Q. Okay, so, a chronic drinker is more likely to have irritation to the heart than a casual or social drinker?

A. Yes.

Q. And, likewise, a casual or social drinker is more likely to have their heart irritated by alcohol than someone who abstains.

A. Yes. If there's no alcohol, then it can't cause irritation, by definition.

Q. Okay. If someone were to, let's say, drink three to four times a week a couple of drinks, a man such as General Mowhosh, and they stopped drinking on November 10th--or,

excuse me; November 1st--how long would you expect to see irritation of the heart if they were a regular drinker?

A. Again, it can occur for years and years if the damage was significant.

DC (CPT MELITO): Okay. Thank you, sir.

TC (MAJ DOLAN): No.

Questions by the civilian defense counsel:

Q. Doctor, this is Mr. Cassara again. I just have two or three quick follow-ups. Doctor, how many autopsies have you done prior to this one that were part of a CID investigation?

A. It would be over 100, probably somewhere in the 120, 130. That's just an estimate, but it would be over 100. All of the cases of the soldiers being killed in Iraq for some time were being investigated by CID. As well, I've done cases Stateside that have involved suicides, accidents, *et cetera*, that involved either CID, OSI, or MCIS investigations.

Q. Now, you said yesterday that you consulted with your colleagues back at AF__ regarding your findings in this case. I'm just trying to sort of track--

A. Yes, I did.

Q. I'm trying to track the time line here. Did you finalize your autopsy report while in Rockville or in Baghdad?

A. My final autopsy report was completed when I returned to the U.S.

Q. So, the consultation--

A. Approximately 16 days after the autopsy.

Q. And, so, the consultation that you did with your colleagues, was that in person or over the phone?

A. It was in person.

Q. Did you all sit around one big table, or did you meet with them individually?

How--

A. Yes, we did.

Q. --did that go?

A. We sat around one big table and looked at pictures and discussed the case. And when that was completed, I submitted the completed autopsy report to another pathologist to check for factual errors.

CDC: Thank you. That's all the questions I have, Doctor.

IO: Permanent or temporary excusal?

CDC: Temporary.

DC (CPT MELITO): Could we get his commercial phone number before we--

TC (MAJ DOLAN): I've got it.

[The witness was temporarily excused and was duly warned, and the telephone connection was terminated.]

[recess]

IO: All right, we're back from our recess. All parties present prior to recess are again present. We have Captain Brian Baldrate on a secured line. We're going to have Captain Davison swear him in. And Captain Baldrate is already aware of the parties in the room. [CPT Brian Baldrate, U.S. Army, was called telephonically as a witness at the Article 32 investigation, was sworn, and testified as follows:]

ATC: Okay, Captain Baldrate, it's Captain Melito.

Questions by the defense counsel, CPT Melito:

Q. Hey, Captain Baldrate.

A. Okay, before I get started, I should just clarify for the record. I just want to let you know as the investigating officer that, you know, I understand I've agreed to safeguard

information, classified information. However, I haven't seen the classification review done in this case nor the protective order. I've talked to the trial counsel about it, Captain Davison, and he informed me that both of those things are done and there's been no claim to executive privilege. Therefore, I can basically answer any questions that anyone asks of me because we're on a classified line and because defense has signed a protective order and has been given access to all the classified information.

IO: All right, Brian--

A. So, I guess I just want to make sure. Is that right? In other words, my assumption is that I can answer any question that's asked of me, regardless of the classification level, unless somebody there in that hearing tells me otherwise?

IO: All right, Captain Baldrate, stop being a lawyer for a minute. We are in a closed session of this Article 32. We do have [REDACTED] here also observing the 32. You can speak freely about anything, classified or unclassified information.

WITNESS: Okay.

Questions by the defense counsel, CPT Melito:

Q. Captain Baldrate, that's for your diatribe. How you doing?

A. Sure. I'm fine, thank you. How are you?

Q. Good, thanks. All right, tell us about the investigation that went on regarding Major General Mowhosh, if you could, please.

A. Sure. Generally speaking, as you may or may not be aware, somewhere around the 10th of November 2003, General Mowhosh turned himself in to the 3d ACR forces. At the time, forces were out performing operations out in western Iraq in the Al Qaim vicinity area. During that time he was held by the regiment as suspected of being involved in coalition attacks for several weeks. In any event, he was interrogated multiple times over the course of roughly 2 weeks. From what I understand--and this is--just so you're clear, I wasn't there for all of these

events. But from what I--from what subsequent information indicated is around the 26th of November he died during interrogation, and during that interrogation when we went out to the area, Lieutenant Herber and some other folks who--Lieutenant Herber is another JAG officer, and he worked for me out there. They--after he died, we noticed some problems with the general. He had bruises and injuries and other things. And based on that, I kind of informed higher headquarters, and we started an investigation somewhere on the night of the 26th or 27th into what happened out there. _____ happened at ____ 82d Airborne Division. Lieutenant Colonel Hayers, who then engaged and requested some CID support. And based on that, we had several CID agents come out to the area. I think it was Agent Hughes and--gosh, the other names escape me right now. It's been awhile. But CID came out to the area, and they kind of commenced the investigation, and they actually--the first thing they did is immediately brought the body back to Al Asad Air Base, which is where the headquarters of the regiment was stationed at that time, and brought General Mowhosh's body back to Casualty Affairs, and they went there and viewed the body and photographed it and several other things, which indicated that an autopsy would probably be advisable at that point. And they also went out the next day, I think, on the 27th. We sent them out to the temporary detention facility, known as the Blacksmith Hotel, just starting the _____ and trying to determine what happened.

Q. Just the CID agents you mentioned a moment ago, does the names P.J. Conner and Ryan sound familiar?

A. Special Agent Ryan _____. The other one was Special Agent Hughes, I believe it was.

Q. Okay. Who were the people who transported the body up for the autopsy?

A. Okay, I believe that Special Agent Ryan, Special Agent Hughes, and Special Agent Conner were the three agents that were out there in some capacity. The body was physically transferred by--I believe it was our Casualty Affairs officer, essentially by a Black

~~SECRET~~

Page 195 of 285 pages

Hawk helicopter from Baghdad from Al Asad Air Base. And I believe it was our--I don't know the exact _____, so 4/3 were the ones flying it, but I don't remember who either prepared the body and went with the body. I don't know.

Q. Just to back up a little bit, Captain Baldrate, did you or Lieutenant Herber ever personally interview Chief Welshofer, Sergeant First Class Sommer, Chief Williams, or Specialist Loper?

A. Did we personally interview them?

Q. Yes.

A. Is that the question? Okay. I'm just having a little echo _____. I did not personally interview any of those individuals, no.

Q. Okay. Did you--either one of you, are you aware of Lieutenant Herber or did you personally hear any of those four people speak?

A. Those four what?

Q. Did you hear any of those four people speak or tell anything about their involvement in the death of General Mowhosh?

A. Absolute--I did not hear anyone speak about those specific instances. And my understanding is Lieutenant Herber never spoke to any of them either. The way we did it, which is kind of standard procedure, in other words, is when the CID came out there, they were talking to us and coordinating with us and then went out and did their job. And then they would kind of report back to us with some information and let us know what they were doing, and we would make suggestions as we saw fit.

Q. Did you ever see Chief Welshofer shortly after General Mowhosh's death?

A. I did see Chief Welshofer several times after General Mowhosh's death, all within a relatively short period of time, yes, I would say.

Q. Did you notice any bite marks on his hands or wrists?

Page 195 of 285 pages

~~SECRET~~

~~SECRET~~

Page 196 of 285 pages

A. Did I have any or Chief Welshofer?

Q. Yes. Did you notice that?

A. I did not notice bite marks on his wrists. No, I did not. No. Never saw. Never was asked. Never talked about that, no.

Q. Okay. Let's talk about the autopsy. You were present; correct?

A. I was present at the autopsy in Baghdad, yes.

Q. Who else was there?

A. The NEDCO examiner was there. He had flown in from _____, I believe Armed Forces Institute of Pathology, I believe it is. He was there. There was a Special Agent Conner who was there, who is also a CID agent, who is also, I believe, a forensic specialist. And then there were two other CID agents there, and I do not remember their names.

Q. Okay.

A. I believe Agent Hughes was there, and I believe there's another agent that was in and out there.

Q. Do you recall what date--

A. I don't remember.

Q. I'm sorry. Could you repeat that last part?

A. Yeah, and I don't remember the names of the other agents who were there. There were also two folks that were in the scene, soldiers that actually kind of--you know, and the soldier dealing with mortuary affairs stuff were around.

Q. Okay, thank you. What date did the autopsy take place, to your recollection?

A. I don't know the exact date. I believe it was a couple days after the incident, so we're around between the 28th and perhaps the 1st of December, somewhere in there, the 28th of November to the 1st of December, around that time frame.

Page 196 of 285 pages

~~SECRET~~

Q. All right. Were you present when the CID agents were talking to the medical examiner, Major Smith?

A. I was present. Well, I was present for the autopsy itself, and during the autopsy, there was discussions. I don't know if I was present the entire time they talked to him. I don't know what briefings they did or didn't give him beforehand or afterwards, but I was present during the autopsy, and during the autopsy we certainly discussed.

Q. Okay. Was the doctor interacting, and could you tell by his answers that he was able to hear the CID agents?

A. I mean, they freely talked to one another, and myself included, during the autopsy. Absolutely. In other words, I asked a lot of questions 'cause I had been to only one other autopsy in my life, so I was asking many questions about different things, what different physical evidence may or may not mean. CID agents were also both asking questions, and, you know, there was certainly interaction and discussion, and especially Agent Conner, myself, and the other CID agents and the doctor. Certainly.

Q. Okay. What information, to your recollection, was given to the doctor by either yourself through questions or statements or the CID agents through their questions or statements to the doctor?

A. Sure. I think all of the--I mean, all of the questions, of course, were geared toward--or statements generally were geared toward trying to figure out, you know, what happened and what were causes of death. So, for example, when he indicated there were broken ribs, you know, questions were asked, and he'd try to show, you know, whether a rib did in fact, you know, puncture a vital organ or not. So, there were questions along those type of things; similarly, questions were asked of him about whether injuries were consistent or inconsistent with a _____ and questions along those lines. So, I think that was kind of a dialogue, of course, trying to identify different things that may or may not have caused death. So, you know,

I remember conversations where--if you know, again, I asked specifically, you know, whether an injury could have, you know, punctured a kidney or liver or things like that. I remember one of the CID agents asking him, you know, if, you know, if somebody's wind was blocked and they couldn't breathe, could that have been the cause of death, and those types of discussions.

Q. Okay. More specifically, I'd like to focus you on the injuries or, rather, the sources of injuries that you and the other CID agents may have pointed out to the doctor. Can you tell us about what sort of assaults or actions towards Major General Mowhosh were relayed to the doctor?

A. Okay. As far as physical injuries, I didn't hear anyone relate anything other than all of us kind of, you know--the doctor, of course, was well-versed in this stuff and identified all the physical injuries. In other words, we talked about some bruises, whether those looked like the butt of a rifle while other bruises looked like they might have been from an ___ or from different other things. The questions that I think the CID agents asked initially about was they had told the doctor that, you know, there were some issues of asphyxiation, and, you know, so a lot of the questions I asked were geared toward, you know, Was there evidence of asphyxiation? Was there a rope mark around the neck or anything in the mouth that, you know, could be determined to have fabric or anything in the mouth? And CID also was asking questions; in other words, if, you know, someone's windpipe was blocked, was--you know, or their mouth was covered, were those things, you know, visible on the body? And that was the source of the information, I guess, was information that he was in _____ sleeping bag and different questions about, you know, whether his mouth was covered and, you know, if that would show something and whether that was consistent with the cause of death.

Q. Okay, now, the doctor has already described some information he received from the agents during the autopsy. Did you guys discuss previous beatings with the doctor?

A. I did not. One of the issues when this case first came out is because of the involvement of ~~CONFIDENTIAL~~ other forces, there was a lot of concern about what we should do _____. So, one of the biggest problems we had--actually, the statements very early on, I believe the day after the initial statements were taken, they were kind of held, and we stopped cir ____, I guess, is the long and short answer. So, I actually didn't have a copy of the statements of Chief Welshofer or Sergeant Sommers or any of those folks at all. So, that was one of my kind of concerns or questions _____. I actually didn't have the actual statements. So, my only information at that time was, you know, how the CID agents characterized the statements from folks. So, that's kind of where I was as far as how much information I knew. Of course, subsequently, I've seen all--I've seen at least some of the statements from those folks. But at the time of the autopsy, I had not seen them, and I am unaware of whether the doctor had seen them when he started the preliminary autopsy.

Q. Do you recall if the CID agents were holding the statements when they spoke to the doctor or if they had recently reviewed the statements prior to speaking to the doctor?

A. I am unaware of whether the agents who were talking had actually seen the statements. In other words, I don't know if Agent Conner had seen the statements. I don't know if the other agent who was there--there was an Agent Hughes who was in the room and--or Agent Ryan, and those are the two guys that took the statements. So, I don't know if Agent Conner _____ actually saw the statements or, again, they were--you know, basically had been, you know, _____ they were told, "Hey, here's basically what happened." I mean, the sense I got of this preliminary autopsy is the doctor kind of came in with--you know, he obviously had been briefed on the case, that he had been given information that obviously the general had been beaten, one; and, two, that he had died while in a sleeping bag and with some type of, you know, some type of device over his head. And, so, the only--of course, the only information we were able to investigate early on was the _____ part of the sleeping bag stuff.

Most of the evidence, at least when we did the canvass--CID did the initial canvass about the beatings, appeared to come from other government agencies that we didn't have access to investigate.

Q. Okay. So, is it fair to say the CID agents and yourself that early on in the investigation did not relay information about the beatings by [REDACTED] to the doctor?

A. I think it's fair to say that we--well, anyway, we all knew there were some beatings that were done, and we indicated that we knew there were other folks involved, but we didn't think it was the _____ and caretaker folks. And that was about the extent of it because that's all the knowledge we had. In fact, that was why early on, what I recommended that we do was we tried to get a field investigative unit or other higher-level agencies involved in the investigation because it seemed to be important to get that information as quickly as possible as far as, you know, the extent and nature and types of beatings. So, that was not the focus of that autopsy at that time 'cause we didn't have--we had very little of that information.

Q. Okay. So, is it fair to say that the information that you and the other CID agents relayed to the doctor did not go into detail about the kind of beating he suffered?

A. I think it's fair to say we had no knowledge of it, other than the physical evidence on the bo __, at that point being perhaps some _____, some statements from soldiers that said they had heard [REDACTED] you know, abusing _____. But, yes, we didn't go into any specifics about it because we didn't have any eyewitnesses to the abuse at that time, nor did we have anyone who would have kind of examined that part of it.

Q. How many times did you guys, in the course of your conversation with the doctor, suggest that he was beaten by [REDACTED]?

A. How many times did we suggest it?

Q. Yes.

A. That the beatings were caused by that?

~~SECRET~~

Page 201 of 285 pages

Q. No, that the bruises were caused by the beatings, or how many times did you emphasize he was beaten by--and then various people?

A. I couldn't give you an exact _____. Now, I think we talked about it on different occasions. The doctor obviously saw he had been beaten, and most of the questions were more around, you know, "What do you think could have caused the death?" and so, that was a lot of it. I don't know that we emphasized it a lot. I mean, he saw the bruises, and _____. The bruises were pretty obvious, so that the harder questions, I think, and the reason the focus was more on asphyxiation is because that didn't seem to have as much physical evidence there. I think _____ most of the evidence, based on that, was obviously based on other data which would be the statements. In other words, there was no physical evidence that I was aware of. I just remember what the doctor was explaining to me of the other stuff. The bruises were all obviously there.

Q. Is it fair to say they--

A. They were actually fatal _____

Q. Okay. Is it fair to say that the majority of your conversation and the conversation of the CID agents with the doctor dealt with questions of asphyxia?

A. I think it's fair to say that there was much more discussion on that part. I mean, it certainly looked--because that was the _____ yes. In other words, the physical stuff he certainly talked about, and he looked at all the different bruises extensively to try to determine if there was, you know, some type of failing. Most of the questioning and discussion was about different types of scenarios of asphyxiation, of course; you know, in other words, Could he be asphyxiated with nothing--you know, with no--you know, what type of things would be shown? Would the eye vessels be popped, or things like that? Sure, there was more discussion about that. Absolutely.

Page 201 of 285 pages

~~SECRET~~

UNCLASSIFIED

Q. Okay. During your discussions with the doctor, did he give you some sort of preliminary diagnosis or preliminary guess as to what might have killed the general?

A. You know, I know the official preliminary report that came out said it was pending. You know, absolutely, pending--I think it was history and the toxicology and everything else. But, yeah, I mean, certainly, the assessment was that it was, you know, probably--at least at that time, it seemed that he said it obviously could be many things. He was grossly obese, and his heart was very big and the bruises and the asphyxia, and he kind of said, "Well, based on, you know, it could all be related, or it could be, you know, one or the other," and he really didn't have a strong sense of what it would be, although I think--yeah, I don't think he had a strong sense of exactly what it'd be, other than he thought it was probably all of the above, and it really depended on the external facts of what else--you know, what else he could find to be true because nothing was clearly--there was no physical, clear evidence of asphyxia other than the evidence that seemed to be more in default, especially since the other stuff wasn't clear. Again, I'm not a pathologist.

Q. Okay, so, he left you with the impression there was more of a default judgment?

A. That if it would be asphyxia, yes. In other words, that it was a combination, probably, of all these different events; you know, whether it was sleep deprivation or--he indicated no specific injury that seemed to be the fatal blow. He also indicated the guy had a very enlarged heart, and he indicated, of course, that, you know, asphyxia could have--in other words, suffocating someone could precipitate death, as well, obviously. You know, and I think he referred to--talked a lot about Burke syndrome, which I was unaware about, and Agent Conner talked to me quite a bit about it, which is, I guess, a notion like with little kids, if you're able to cover their mouth, you know, people can die, and there's no physical evidence there at all because you can just stop their breathing, and it doesn't actually show any physical evidence. And, so, we talked quite a bit about that same type of scenario, whether you could, you know,

suffocate somebody or asphyxiate them, I guess, and there would be no physical evidence, 'cause that seemed to be _____ questions, so _____ I think it's _____ syndrome.

Q. Okay. How many autopsies were done, to your knowledge?

A. To my knowledge, I believe it's the only one. After that autopsy was done, at that point they took a bunch of--you know, a bunch of samples from General Mowhosh and sent those back to the States and sent them back to the lab, and then General Mowhosh was sewn back up by Mortuary Affairs and turned over to the Iraqi, the local Iraqis. So, I believe there's only one autopsy done other than--there was that one done there. And, of course, at the time, we were trying to figure out what to do with our soldiers, so we were trying to get an initial assessment _____. We weren't sure. It was a mixture of all different stuff, and then--I know that was the preliminary autopsy, and then they sent it back to the States, waiting for the results of the final autopsy. So, I don't know if there was ever anything else _____ General Mowhosh. I think that was the only time, although I assume they went back and analyzed the lab samples that they collected for their final report.

Q. What happened to General Mowhosh's body?

A. I believe General Mowhosh's remains were turned over to the Iraqis, and I assume that they were buried somewhere in Iraq, although I don't know, other than I do remember coordinating with the regiment, coordinating to get the remains back to his _____

Q. Back to his family?

A. Yes.

Q. Did any of his family members or anybody that you interacted with or maybe even if you heard it secondhand--did anybody express an intent on what was going to be done with the body; let's say burial versus cremation, mausoleum versus something else?

~~SECRET~~

Page 204 of 285 pages

A. I have no specific knowledge _____, no, although, I mean, a common practice in Iraq is burial. I mean, _____ burial is the common practice. In fact, I had to exhume a body in Iraq for a different case that had been buried for several months. So, that was the common practice. But I do not know any specific information on what General Mowhosh's family _____ his body _____ do with it.

Q. Okay. Do you know where his family was from, just in the course of your education of this case?

A. His family--they were certainly from western Iraq. We had relatives--in fact, three of his sons were in detention that we were--well, who knows now? They were certainly in detention for--when General Mowhosh died, three of his sons were still in detention from U.S. and coalition forces. And his wife was in western Iraq, somewhere around the Al Qaim area, which is over toward the Syrian border. I couldn't give you exacts, of course. But I believe in his report, those are reflected. I mean, there was a village _____ his family, I guess, _____ say because we had three of his sons in custody. And someone in the government, you know, in the regiment, actually, had pretty good access to probably _____ location, although I don't have it, other than the Al Qaim vicinity.

Q. Okay. What person would either possess that information or sort of be the records custodian for where his family was located or from?

A. I believe the initial intake information from the _____ on General Mowhosh would have that information, I would assume. I would also think that there is a Captain _____ who is the intelligence officer for the 1st Squadron, who is basically involved in the--or anyone, really, in the 1st Squadron. The 1st Squadron commander over there, their _____ or their intelligence officer. They were in charge of the western frontier there in that area of Al Qaim, and they actually had a pretty detailed folder on him. And they would be the guys best able to answer that.

Page 204 of 285 pages

~~SECRET~~

Q. Okay. Who in Mortuary Affairs, maybe what officer or senior NCO, was responsible for the transport of the body back to the family?

A. Okay. Mortuary Affairs is _____ from their regiment and the National Guard detachment that was given to us, and I don't recall their exact location. The best one to contact for that would be they were under the Support Squadron, which is commanded by Lieutenant Colonel Kristin French, and their Operations Officer was a Major Jamie Bahss. And they were kind of the ones who physically controlled the Mortuary Affairs section, which is just really four folks from a National Guard unit. I don't remember where they were from right now.

DC (CPT MELITO): Okay, thanks, Brian.

WITNESS: Sure.

IO: Anyone else have questions for Captain Baldrate?

Questions by the defense counsel, CPT Kageliery:

Q. Captain Baldrate, this is Captain Kageliery. Can you hear me all right?

A. I can hear you, just barely. Who is this, again? I'm sorry. And who do you-- what's your job, if you don't mind?

Q. My name is Captain Kageliery, and I represent CW2 Williams.

A. Okay. Great. Thanks.

Q. I just want to clarify a couple of questions that Captain Melito asked you. You mentioned that the bruises initially were believed to be caused by a rifle butt or an asp; is that correct?

A. Yes, that is correct.

Q. And is that what Major Smith told you?

A. Yes. Major Smith and, I think--Major Smith was certainly _____ as well as kind of folks were _____. The other folks, myself included, although I was the least knowledgeable in the room by far, Agent Conner were just speculating. They pointed out a

~~SECRET~~

Page 206 of 285 pages

bruise, for example, and said, "Look at this _____. It's about the size and shape of a rifle butt." So, it was Agent Conner and Dr. Smith who were indicating _____ a bruise 'cause I would ask questions like, you know, "What could have caused that type of thing? What would cause that type of bruising," those type of questions. "Could they be caused postmortem?" all those type of _____ "No, this looks like it's a rifle butt. This looks like it might be an asp or some, you know, thin, sharp object," *et cetera*.

Q. Okay. So, I'm just trying to picture this. You're all standing around the body, and Special Agent Conner and Major Smith are having a conversation while they're looking at a particular bruise?

A. Yes. And then they'd go kind of head-to-toe. They'd do, of course, a thorough _____, and so they'd kind of go through and identify and measure and mark each thing, and they would orally say out things, and when they were in the process, you know, I'd ask questions. I'd say, you know, "What does that bruise consistent with?" or they would do it themselves, as well. So, that's exactly how it was. We were sitting around the body. They were going through their normal process, and as they were identifying and marking things, I would ask, you know, clarification questions so I could understand.

Q. Could you, just for everybody in the room, to make sure everybody understands what it is, what is an asp?

A. Okay, an asp, as far as I'm aware, is a military police tool, a long, thin, narrow, almost like a wand, that can be used.

Q. So, it's like an--

A. So, _____ It was one of the _____ questions I asked of the guys there, if any of them had an asp, because I kind of wanted to see to get a, you know, close-up comparison with _____ bruise. It's a long--it's a wand, basically, that police can use for control. control purposes.

Page 206 of 285 pages

~~SECRET~~

UNCLASSIFIED

Q. Okay. You were coming in--I was having a hard time understanding you. I just want to make sure I heard what you said. You said it's a--you think it's like a long, thin baton-type instrument?

A. That's correct; often used by military police.

Q. And the other scenario that was discussed was a rifle butt, like--

A. That's right.

Q. Like a rifle butt from an M-16, say, for example?

A. For example, yes. So, a big, long solid bruise versus, you know, thin bruises.

There were several different ones _____ you're aware. I'm sorry. If I could back up with you real quick.

Q. Sure.

A. Just for Captain Melito's question, I do recall now that, actually, the Mortuary Affairs guys--so Captain Melito can _____ that--it was out of Fort Lee, Virginia, is who the folks were; it's the 54th Quartermasters Company, and I believe it's a Sergeant McCoy is the guy. As I started thinking through, I remembered that name. So, I know it was out of Fort Lee, Virginia. So, just to back up. And I'm sorry about that.

Q. He was one of the Mortuary Affairs guys that was in the room?

A. He was the Mortuary Affairs guy, absolutely. And it's from the 54th Quartermasters at Fort Lee, Virginia. And his name is Sergeant McCoy.

Q. E-5 sergeant or staff sergeant?

A. I think he was a staff sergeant, but I'm not positive.

Q. Okay, one more follow-up question. Do you know whether or not the body was embalmed?

A. I do not know for sure, although my understanding is, again, that the Iraqi practice that it was not common to embalm the bodies. And on that other autopsy we performed of an

~~SECRET~~

UNCLASSIFIED

Iraqi who had been buried for several months, there was no embalming procedures used, no. They're usually wrapped in cloths. I mean, the one experience I had with a body _____ from the Iraqi pathologist, who had done that autopsy was that it was the common practice to wrap them in cloths but not to actually use embalming procedures.

DC (CPT KAGELIERY): Okay. I don't think I have any more questions for you right now. One of the other attorneys might.

WITNESS: Okay. Thank you.

DC (CPT KAGELIERY): Thanks.

Questions by the defense counsel, CPT Bunch:

Q. Hi, Captain Baldrate. It's Captain Bunch.

A. Hi, Captain Bunch. How are you?

Q. Good. I represent Specialist Loper. I just have a couple questions for you regarding the bruises. When you were present, were the doctors talking about the bruises and what they were associating those particular bruises with? For example, did they associate the bruise from the rifle--where was the bruise located from the rifle butt? Do you know that?

A. I could not say with accuracy. I do not remember. I believe it was in the chest area, although I know there were extensive pictures taken and _____ diagram, but _____ I don't know if--hopefully, it's--and you guys have all that. I can't remember off the top of my head.

Q. Okay. Do you--

A. I mean, _____ because I was very interested _____ identify cause of death. I don't remember exactly where they were, though. No.

Q. Okay. The bruises on the rest of the body--were the doctors talking about where those bruises may have originated from or from what? What kind of instrument--

A. Were they talking about that?

~~SECRET~~

UNCLASSIFIED

Q. Right. Did you hear the doctors talking about that?

A. Yes.

Q. The bruises--okay, the bruises on the legs. Let's start there. Did they indicate how they thought those bruises were created, by what kind of object or by a person or--

A. I mean, yeah. I'm sure they did. I mean, in other words, it was very obvious to the doctor that this guy was beaten was several objects. Some he said--you know, I think on the legs and arms and back all seemed to be with some type of asp or some type of a long, straight object. And, of course, he talked about the _____ and varying color from, you know, very dark, like purplish to some in red. So, he talked about that, and then he also talked about other ones that were broader, I think around the chest area, which were more like a butt of a rifle.

Q. Okay. Were those the only two objects that they talked about, either a long, round instrument or the butt of a rifle? Did you hear them talking about anything else?

A. _____ talked about--I believe we talked about _____ there were some mark _____, and then there were--gosh, _____ there's a big _____ kind of on the back side _____ chest, and there was a lot of questions, Was that pooling of blood from after he died, or was it caused by bruises or kicks, things like that to the body, kicks to the ribs? And I believe we talked about, you know, _____ kick in the ribs, as well, 'cause the sides _____. He had some broken ribs.

Q. Okay. And, I'm sorry, I didn't catch the--you talk really, really fast, so I didn't catch the last part of that. So, any of the bruises, did they indicate whether or not they were made by someone punching or kicking? I think that that was the last part of your answer.

A. It was. I believe there was indications that on the ribs, that the ribs had been either punched or kicked. 'Cause I had asked the question of whether--there was significant bruising in that area, and I asked the question _____ blood can be pooled in that direction, and that's why there's big bruising in the area. But there was also a--I believe it was a

couple of fractured ribs, and they indicated that he'd probably been, you know, kicked or punched or something like that, as well. But there was several bruises.

Q. Okay. Did they talk about the bruises on the rib area--did they talk about whether or not there was perhaps an instrument that was used to cause those bruises, either the butt of a rifle or the longer, circular object?

A. They talked about the butt of a rifle _____. I do not remember if that was actually on the ribs itself or not. But I believe there was--I mean, there were some cracked ribs, and the idea was that _____ significant force there from something like a ____ or the butt of a rifle 'cause that's what I asked him. I said, "What would it require to, you know, have someone break their ribs and have cracked ribs?" is what they called them, so . . .

Q. Okay.

A. Yes, I don't remember whether it was the rifle or _____ but they talked about, you know, some type of significant force on the ribs.

DC (CPT BUNCH): Okay. Thanks, Captain Baldrate.

IO: Anyone else?

ATC: Yes.

Questions by the assistant trial counsel, CPT Davison:

Q. Captain Baldrate, this is Captain Davison again.

A. Hey, Captain Davison.

Q. Were you privy to every conversation that CID had with the medical examiner's office?

A. Absolutely not. As I said, I was privy to no other conversations other than whatever ones they had when I was physically there.

Q. Okay.

A. Which was the autopsy and the only time that I ever met the doctor.

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Q. And what's your medical training?

A. Excuse me?

Q. What's your medical training?

A. My medical training? Is that the question?

Q. Yes.

A. I have absolutely no medical training, no formal medical training at all.

Q. Okay.

A. Other than as a prosecutor interested in these type of cases and my wife is a physician, no medical training at all.

Q. Okay.

A. 'Cause that's why most of my questions were geared at basically trying to _____ cause of death because, you know, we were investigating kind of at that time. So, it was mainly I was there _____ learning mode, not an observing mode, absolutely. I was not. I was learning from the doctor and from Agent Conner.

ATC: Okay, hold on one second. I think somebody else has questions.

Questions by the defense counsel, CPT Kageliery:

Q. This is Captain Kageliery again.

A. Okay.

Q. Captain Bunch asked you a couple questions, and one of the answers you gave her was, "Well, I assume you guys have an _____, the diagram drawn by the medical examiner." Did you actually see a diagram? I'm just trying to verify that there is a diagram.

A. To the best of my ability, as we were going around the body doing that stuff, they were physically, yeah, drawing a specific diagram as the process was going on, as best as I can remember.

Q. That was Major Smith that was drawing the diagram?

~~SECRET~~

UNCLASSIFIED

~~SECRET~~

Page 212 of 285 pages

A. Yes, it was a Major Smith, _____ I'm trying to think back now. It's been a while. But, yeah, I'm pretty positive that he was the one who--you know, that _____ picture and draw the body.

Q. You said--just for clarification, is it--

A. Photographs.

Q. --you're almost positive, or you're pretty positive that it was Major Smith that was drawing the diagram? Is that what you said?

A. To the best of my ability, I believe it was him, although--yes, to the best of my ability--it's been a long time. I just can't remember. But I do indeed think it was him or--you know, I mean, he has an assistant there with him. I don't remember who exactly did the drawing. Dr. Smith had _____ the body quite a bit, so it wouldn't surprise me if he had someone else doing the markings.

Q. Okay, but you--

A. He said they had pretty--_____ procedure _____

Q. But you know that there was a diagram drawn by somebody?

A. To the best of my memory, they _____ You know, if they saw something on the body, they'd draw it on their kind of sketch, and they'd photograph it. I was impressed by the way they were preserving the evidence, I guess. It was my impression that they actually were marking a diagram _____.

DC (CPT KAGELIERY): Okay, thank you.

IO: All right. Temporary or permanent excusal?

TC (MAJ DOLAN): Permanent.

[all defense counsel concurred]

[The witness was permanently excused and was duly warned, and the telephone connection was terminated.]

Page 212 of 285 pages

~~SECRET~~

UNCLASSIFIED

TC: We've got a Sergeant Fisher out there.

ATC: We've got Voigt standing by.

DC (CPT MELITO): Can we take a quick comfort break?

IO: Wait a minute before we do anything. We have a live witness here.

TC: We've got a few.

IO: A few, all right. And we have somebody--do we have somebody standing by on the telephone?

TC: Yes.

IO: Who do we have standing by?

TC: Sergeant Voigt.

IO: Is she on a secured line, as well?

TC: Yes. She had to travel 30 minutes to get there.

IO: Where is she located?

DC (CPT BUNCH): Minnesota.

IO: Minnesota?

DC (CPT BUNCH): Mm-hmm.

IO: Okay.

ATC: Fargo.

IO: All right, do they have secured lines in Minnesota? All right, if she's standing by, let's go ahead and take Sergeant Voigt. Let's recess in place. Please, nobody leave. We're going to come right back. Just recess in place. If you gotta use the latrine, do so, but get right back here, and let's hear from Sergeant Voigt.

[recess]

IO: All right, we've been in a recess. All parties present prior to recess are again present.

We have Sergeant First Class Julie Voigt on the secured line, and Captain Davison has already explained to her who's in the room. He's now going to swear her to her testimony.

[SFC Julie A. Voigt, U.S. Army, was called telephonically as a witness at the Article 32 investigation, was sworn, and testified as follows:]

Questions by the assistant trial counsel, CPT Davison:

Q. Can you please state your whole name.

A. Julie Ann Voigt.

Q. Okay, and your current duty assignment.

A. I'm actually not sure if I'm assigned to Bravo Company, 155th MI Battalion, or Charlie Company, 378th MI Battalion. We're in transition right now.

ATC: Okay. Here's Mr. Cassara. He's going to ask you some questions.

Questions by the civilian defense counsel, Mr. Cassara:

Q. Sergeant Voigt, this is attorney, Bill Carrara. We spoke previously. I'm the attorney for Jeff Williams. How you doing?

A. Good. It's very good to be able to understand you.

Q. Can you hear me better this way?

A. Slightly.

Q. Okay, tell me when you cannot hear me or cannot understand me, and I'll try and repeat the question, okay?

A. Okay, sir.

Q. Sergeant Voigt, are you currently on active duty?

A. I am not.

Q. What is your current association with the U.S. Army?

A. I'm currently in the Army Reserves.

Q. And how long have you been in the Army Reserves or active Army, total?

A. Just over 21 years, sir.

Q. And you are an E-7?

A. Yes, that is correct, sir.

Q. Sergeant Voigt, what is your MOS?

A. I have many MOSes, but the one I was in Iraq for was 97-Echo.

Q. Hold, please.

[A tape was changed.]

Q. What is the job description of a 97-Echo?

A. Interrogator, sir.

Q. And in general terms, what were you doing in Iraq? And, just so you know-- obviously, you do know--we're on a secure line, so you can tell me anything at this point. What were you doing in Iraq?

A. We were questioning detainees to obtain valid field intelligence.

Q. And during what period of time were you in Iraq?

A. From 20 April 2003 until 26 February 2004.

Q. Where were you on November 26th, 2003?

A. On November 26th, I was in Baghdad at Camp Victory.

Q. So, you were not involved in Operation Rifles Blitz; is that correct?

A. No, it started like a day or two after I left Al Asad, sir.

Q. Okay. How long were you at Al Asad?

A. I was at Al Asad from when the detention facility moved there around June 6th until November 12th of 2003.

Q. And am I correct that Al Asad was the detention facility that was used prior to moving to Al Qaim?

A. Yes, that is correct, sir.

Q. Thank you. During your time at Al Asad, did you get to know my client, Jeff Williams, Chief Jeff Williams?

A. Somewhat, yes, sir.

Q. Okay. Would you say that you saw him regularly or that you saw him infrequently?

A. Regularly probably about every 2 weeks, from June through probably September; and then when the regiment moved up to Al Asad, it was more often, maybe probably two, maybe three times a week, sir.

Q. Did he come up to the detention facility frequently?

A. Maybe once a week, sir.

Q. Okay. Did you know Chief Welshofer?

A. Yes, I do, sir.

Q. How well do you know--how often did you interact with Chief Welshofer?

A. I was in Iraq with him from the 22nd of April till the 12th of November. We weren't always co-located, but I think he came up to the detention facility permanently around-- must have been sometime in July.

Q. And how often did you interact with Chief Welshofer?

A. On a daily basis, sir.

Q. So, it's fair to say that you interacted with him more frequently than Chief Williams?

A. Oh, absolutely, sir.

Q. Chief Williams wasn't frequently involved in interrogations; is that correct?

A. No, he was not an interrogator, sir, so he didn't participate in the interrogations. He would occasionally come up to see how we were doing, ask about supplies, or just pass the time of day.

Q. Fair to say that he would pop his head in the door for a couple of minutes and then leave, on occasion?

A. Correct, sir.

Q. Okay. As an analyst, how did Chief Williams' job differ from yours?

A. He would take the raw data that we and other elements of the 66th gathered and try to put it together to come up with locations of--enemy locations or future plans, anything of that nature.

Q. As an analyst, would you expect Chief Williams to be versed in the techniques of interrogation?

A. Maybe the most rudimentary techniques, but, no, I wouldn't say he would be versed in the practices.

Q. And certainly not schooled in interrogation; correct?

A. Correct, sir.

Q. From whom did you take your information as to what were permissible interrogation techniques?

A. Mostly from the 97-Echo school.

Q. In theater, I mean. I'm--

A. Sergeant Smith, who was my teacher on the Geneva Convention--

Q. I mean in theater, Sergeant Voigt. I'm sorry. In theater, who did you take--

A. Welshofer.

Q. Chief Welshofer. Did he sort of set the agenda for all of the 97-Echos in theater or at least assigned to the regiment?

~~SECRET~~

UNCLASSIFIED

A. I think for the regiment he was the interrogator in charge, yes, sir.

Q. So, if you--hypothetically speaking, if you had a question as to whether something was a permissible interrogation technique, who would you ask?

A. I would have asked Chief Welshofer. Or Chief Manwaring when he was there, also.

Q. Okay. Now, are you aware of the technique of putting someone in a sleeping bag as part of an interrogation?

A. It was used while I was at Al Asad approximately three or four times, I would say.

Q. Now, I'm not going to ask you about anything that you may or may not have done. Please understand that. Were you aware of whether Chief Welshofer, on other occasions besides the one that resulted in the death of General Mowhosh, used the sleeping-bag technique?

A. I'm really not sure. He may have, or it may have been--I'm really not sure.

Q. But you are aware that at least--

A. I believe he was--

Q. Please continue.

A. I believe he was aware of the technique or that it had been used. I'm not sure if he used it.

Q. But are you fairly confident that it was used, at least by somebody, in theater while you were there?

A. Yes.

Q. And--

A. I know at least--

Q. Go ahead. I'm sorry.

A. --absolutely for certain, one occasion.

Q. On at least one other occasion?

UNCLASSIFIED

~~SECRET~~

Page 219 of 285 pages

A. Yes.

Q. And, looking back at it--again, not asking about what you may have particularly done--as an interrogator, do you feel that the use of the sleeping bag under certain circumstances can be appropriate?

A. Yeah, and a sleeping bag is not inherently a weapon. It's to take somebody out of their comfort zone. And I don't feel it was an inappropriate use.

Q. Are you aware of the technique of tying a cord around someone's torso?

A. No. No, that I'm not aware of, sir.

IO: Okay. Anybody else?

[affirmative responses]

CDC: I have no further questions for you. Trial counsel does.

Questions by the assistant trial counsel, CPT Davison:

Q. Sergeant First Class Voigt, can you hear me okay?

A. Yes, sir, I can.

Q. Okay. You talked about the sleeping-bag technique. How as it used?

A. The sleeping bag was just placed over a detainee's head and probably to about waist level, just to make it dark and, like I said, to take them out of their comfort zone.

Q. Okay, and the person was sitting up?

A. Kneeling, sir.

Q. They were on their knees?

A. Yes, sir.

Q. Okay, so, sitting up on their knees.

A. Or standing.

Q. Or standing.

A. Yeah. Or sitting; I know that.

Page 219 of 285 pages

~~SECRET~~

UNCLASSIFIED

Q. Okay. So, either sitting, kneeling on their knees, or standing?

A. Yes, sir.

Q. And you said that you had not heard the use of electrical cord. If someone took the sleeping-bag technique down to about their knees, wrapped him in an electrical cord, laid them on the floor, and sat on their chest, would that have been an approved technique?

A. I'm not really sure if it would have been approved. I didn't have that situation. If the person was being combative, to get them to hold still, possibly. I'm not sure, sir.

Q. Okay. I mean, would it surprise you that someone was doing that, using that technique?

A. Somewhat, yes, sir.

Q. Okay. Mr. Cassara mentioned CW3 Welshofer, and you said that you knew him; is that correct?

A. Yes, sir.

Q. Isn't it true that you witnessed him slap a detainee on one occasion?

CDC: I'm going to object. Chief Welshofer's 32 is next week.

A. Yes, sir, I believe that is correct.

IO: Yeah, what--it's not really relevant here. It would certainly be relevant next week.

CDC: We'll just ask you not to consider it, then.

[further questions by the assistant trial counsel:]

Q. Did you have any interaction with CW2 Williams during your interrogations?

A. None that I can recall, sir.

Q. Okay, so, it's safe to say you don't know how he would act during an interrogation because you haven't interrogated anyone with CW2 Williams in the room with you.

A. That's correct, sir.

Q. Did you ever personally meet Major General Mowhosh?

~~SECRET~~

Page 221 of 285 pages

A. No, I did not, sir. He was in custody before I left Al Asad, but he was up at Tiger Base, and, no, I never saw him, sir.

ATC: I want to go into what happened with the slapping. It goes to her bias. I mean, she looks to CW3 Welshofer. I mean, she said that she looked up to him. I mean, he was her leader, her commander.

IO: It may be relevant, and defense may want me to consider this.

CDC: I don't mind if you ask her questions about how she felt about Chief Welshofer. I just don't know--and it may be a minor point, but I don't know how the fact that he may or may not have slapped somebody has any impact. But, it's okay.

IO: Well, the relationship between Chief Welshofer and other interrogators and other personnel in the facility may be important for me to consider.

CDC: But if she--let us assume for a second that she is horrendously biased in front of Chief Welshofer--and Chief Welshofer, again, it's not his 32 we're doing today.

TC: I guess the question, then, is, What is the relevance of this witness's testimony at all? To show that certain interrogation techniques were lawful. So--

IO: I'll review my notes, but I don't see a reason why we--to not call her. I mean, she's fine in that standpoint. Go ahead and ask your questions, and I'll just take it one question at a time whether to stop you. Go ahead.

[further questions by the assistant trial counsel:]

Q. Sergeant First Class Voigt, can you tell me about the time that you saw Chief Welshofer slap one of the detainees.

A. I don't remember the exact circumstances. I know he had tried other techniques first and--

ATC: Hold on one second, okay?

Page 221 of 285 pages

~~SECRET~~

CDC: Are we running into a situation where, if she had an obligation to report that, that maybe there's an Article 31 issue?

IO: That's true, also. Let's not have her--let's just not go into this line of questioning. The relevance is somewhat weak, and that's possible, too, that we would be needing to read her Article 31 rights. Can we go on to another line of questioning?

ATC: That's it.

IO: Okay. Mr. Cassara?

CDC: Yeah, I just have a quick follow-up, and then I believe Captain Melito or Captain Bunch does.

IO: Okay.

Questions by the civilian defense counsel, Mr. Cassara:

Q. Sergeant Voigt, it's Mr. Cassara again, and then you're going to have to talk to a couple other lawyers. Sergeant Voigt, you said that you don't know how Chief Williams would act during an interrogation; is that correct?

A. That is correct.

Q. And that's because he didn't take part in many interrogations at all, did he?

A. No, he didn't.

Q. In fact, you don't know how I would act during an interrogation, do you?

A. No, I don't, sir.

Q. 'Cause you've never seen me do an interrogation either, have you?

A. What was that?

TC: She's witnessing one right now.

CDC: Okay, thank you.

Questions by the defense counsel, CPT Melito:

Q. Sergeant Voigt, this is Captain Melito. How you doing?

A. Good, sir.

Q. Sergeant Voigt, is it acceptable to have someone put in the prone position in order to interrogate them?

A. I know the rules have changed quite a bit since I was there, but that was acceptable when we were interrogating. We usually have them in the prone position but on their knees.

Q. But it was an acceptable form at that time?

A. It happened one or twice, and usually it was when the detainee was being combative.

Q. Okay. Is it improper to restrain a combative detainee?

A. No, because your personal safety comes first, sir.

Q. Earlier, when Captain Davison was talking to you, you expressed some uncertainty as to whether the interrogation procedure of using a sleeping bag and then being bound by an electrical cord was proper. Who would you have turned to to find out if that procedure was proper?

A. Probably Chief Welshofer, sir.

Q. You mentioned that you've served in a bunch of different MOS positions. How long have you been a 97-Echo?

A. That was my first real experience with 97-Echo. I was awarded the MOS in 2000 or 2001; I think 2001. Yeah, it must have been 2001.

Q. Hold on a second, okay?

A. Pardon, sir?

DC (CPT MELITO): Just stand by.

[pause]

[further questions by the defense counsel, CPT Melito:]

[REDACTED]

Q. What other MOSes have you held, Sergeant Voigt?

A. I have--I started out as a _____ specialist, or 76-Victor back then, but I believe it's a 92-Alpha now. And then I have 98-Golf, 98-Charlie, and 97-Lima.

Q. What's a 97-Lima?

A. Translator/interpreter in German, sir.

Q. Okay.

A. It's only a Reserve MOS, and it's going away.

DC (CPT MELITO): Okay, thank you.

Questions by the defense counsel, CPT Bunch:

Q. Sergeant Voigt, my name is Captain Bunch. I represent Specialist Loper. Do you know Sergeant Lamb?

A. Yes, ma'am, I do.

Q. Have you ever worked with Sergeant Lamb?

A. Yes, ma'am, I have.

Q. Have you ever seen him work as an interrogator?

A. Yes, ma'am, I have.

Q. Did he use the sleeping-bag technique when you were present?

A. On one occasion that I know of, ma'am.

Q. On only one occasion?

A. On one occasion that I know of, ma'am.

Q. Were you present?

CDC: Again, I don't think she should answer that.

A. I was in and out of the room. I think I had an interrogation going on or I attended one, and I just stopped by to see how he was doing, and then I was writing my report.

[REDACTED]
SECRET

~~SECRET~~

Page 225 of 285 pages

Q. Okay. Do you know if he used the black electrical cord to secure the detainee before using the sleeping bag?

A. Not that I'm aware of, ma'am.

Q. Do you know if he sat on the detainee's chest?

IO: Captain Bunch--

DC (CPT BUNCH): Here's why I'm asking.

ATC: I mean, she already said she didn't witness that, ever, and that she was surprised--

DC (CPT MELITO): She just said "once."

ATC: No, she had never seen anyone use the cord or laying in the prone position with someone sitting on their chest.

DC (CPT MELITO): She said she saw Sergeant Lamb in the sleeping bag.

ATC: No, she asked if she had seen--

IO: Okay, wait.

DC (CPT BUNCH): This is why I'm asking. My intention is to recall Sergeant Lamb because with regard to Specialist Loper, if it was his understanding that the sleeping bag, electrical cord, sitting on the chest was a widely-used and accepted technique, then he would have had no duty to intervene when Welshofer was doing the same thing. So, my intention is to recall Sergeant Lamb, request immunity for him, join the Article 32 for Welshofer so he can testify to what he did when Specialist Loper was present.

TC: Join the Article 32 with Mr. Welshofer?

DC (CPT BUNCH): Mm-hmm. I'm going to recall Sergeant Lamb, hopefully with immunity. It'll be my intention to request it and ask that he be present for Welshofer's 32.

IO: Okay. Well, let's take one thing at a time. Regarding--

DC (CPT BUNCH): But that's why I'm asking about Sergeant Lamb now.

IO: Okay. I understand from her testimony that she saw the sleeping bag--

Page 225 of 285 pages

~~SECRET~~

DC (CPT BUNCH): Right, used by Sergeant Lamb.

IO: --technique used at least one other occasion and by Sergeant Lamb.

TC: I think what we heard was that there are two different ways to use the sleeping bag. One is to have someone kneel or stand, place it over their head, waist level.

IO: Right.

TC: The other is what happened in this case, which this witness has no knowledge of.

DC (CPT BUNCH): Well, and that's what I'm exploring, sir, is trying to find out how much she knew about Sergeant Lamb's use of the technique.

TC: So, our objection was "asked and answered," then.

IO: Yeah, Captain Bunch, you know, I don't know what duties she may have had to report, but--

DC (CPT BUNCH): But it's relevant to Specialist Loper. I mean, if Sergeant Lamb's going to come in and invoke, that's fine. We already know that he is. But I need to know as much information as I can about Sergeant Lamb to get him in here in the first place. He wouldn't answer my questions yesterday about what kind of techniques he used in front of Specialist Loper. She apparently has some information. I'm using her knowledge as the basis to recall Sergeant Lamb, since he wouldn't answer my questions yesterday.

IO: But based upon what I've heard--

ATC: He's temporarily dismissed, so she can call him anyway.

IO: Right. And don't you have the basis to call him again?

DC (CPT BUNCH): He's not going to answer my questions. He's going to invoke.

TC: Well, let's find out.

DC (CPT BUNCH): So, in order for me to request immunity, I need to have a basis, and if she--

DC (CPT MELITO): Actually, having spoke to his attorney already, a lieutenant at Fort McCoy said that if anyone went into the substance of what Sergeant Lamb had done personally, then he would invoke. He's told me that on the phone, and we could get him on the phone.

IO: He's already done that once already.

DC (CPT BUNCH): But in order for me to request immunity, I need a basis. And if all the information I have is Sergeant Lamb's going to invoke and I don't know anything about the circumstances, they're not going to give me immunity. If Sergeant Voigt can say that she saw Sergeant Lamb use the sleeping-bag technique and now we're saying that it's an impermissible--

IO: But we already have that evidence that he used the sleeping bag one occasion.

DC (CPT BUNCH): That Sergeant Lamb did?

IO: Yes.

DC (CPT BUNCH): From Sergeant Voigt?

IO: Yes.

DC (CPT BUNCH): Okay. Well, can I go into further whether or not she saw the electrical cord? I understand what your objection is, "asked and answered."

IO: She already said no.

ATC: Yeah. She already said she had--

DC (CPT BUNCH): No, she said no, but she didn't say no with regard to Sergeant Lamb, and nobody asked her specifically about Sergeant Lamb.

IO: No, that's what I understand from her testimony. She didn't see it used, whether Sergeant Lamb or anyone else.

DC (CPT BUNCH): Okay. Well, for my purposes, it's important whether or not she saw Sergeant Lamb and in what context, if she saw him sitting on somebody's che--in the exact same way that Chief Welshofer used it.

IO: Can you ask--

DC (CPT MELITO): Let her explore the different permutations.

IO: How about you ask the questions, "Are you aware of these techniques being used?" for now? Can you do--

DC (CPT BUNCH): The reason I would like to be more specific is because when they referenced, "Did you ever see those sleeping-bag techniques?" she didn't specifically reference Sergeant Lamb. So, what she knows about--

IO: No, let's not--Captain Bunch, I really want to give you leeway, but I'm concerned about Sergeant Voigt and--

DC (CPT BUNCH): Well, then, let's read her--

IO: But I think I've already--

DC (CPT BUNCH): --her Article 31 rights. Let's get her to invoke. Let's get her attorney on the phone so I can get her immunity so I can get some of the questions answered. I mean, I'm not going to stop asking questions just because we might have to read her her Article 31 rights. I mean, that prevents me from getting any type of discovery from her. If she needs to consult with an attorney, let's have her consult with an attorney.

IO: All right, is there any other questions that anyone else would have before Captain Bunch would go into this--want to go into this line of questioning?

DC (CPT MELITO): Can she ask--actually, I'll shut up.

CDC: Can I consult with Captain Bunch very quickly?

IO: Yes.

[pause]

DC (CPT BUNCH): Okay, the next two questions will not require her Article 31 rights be read.

IO: Okay. Go ahead.

[further questions by the defense counsel, Captain Bunch:]

Q. Sergeant Voigt, are you still there?

A. Yes, I am, ma'am.

Q. Okay. Did you ever hear from Sergeant Lamb, either through the rumor mill or from himself, where he got the impression that that was an authorized technique? Did he ever talk about that?

A. No, ma'am. I believe it was kind of a spur-of-the-minute deal.

Q. Did you ever see Sergeant Lamb and Specialist Loper in the same room together, interacting?

A. I don't know who Specialist Loper is, ma'am.

Q. Okay.

A. If I saw a picture, I may recognize him, but the name does not ring a bell, ma'am.

Q. Okay. He would kind of stand out. He has red hair. Does that sound familiar? He knows you.

A. Oh, okay.

Q. He was an escort with red hair. Does that sound familiar to you?

A. Possibly. Kelly is the only one I can think of that has what I would call red hair, but--

Q. Okay. All right, that's fine.

A. Okay, now I need to see a picture because when I saw that name in the paper, I didn't know who he was.

DC (CPT BUNCH): Okay, that's fine. The next couple of questions I would assume would require her Article 31 rights to be read.

TC: I don't think questions require 31 rights. It's the answers to the questions that may give us reason to give 31 rights.

IO: Right. Ask her if she's spoken to an attorney.

~~SECRET~~

[further questions by the defense counsel, CPT Bunch:]

Q. Sergeant Voigt, have you spoken to an attorney regarding the Article 32 and your testimony here today?

A. No, I have not, ma'am.

TC: Before you do this, Captain Ayers, what is it that we're going to ask about that would lead a reasonable person to suspect this witness of having committed any wrongdoing?

DC (CPT BUNCH): Exactly the same thing that you charged Specialist Loper for. It was his duty to intervene--

TC: But the sleeping-bag technique of which she is aware of wholly dissimilar to the technique that's at issue here. That's what this witness had made clear to us.

DC (CPT BUNCH): I don't think you can say that, sir, because you haven't let me ask her how much she knows about how Sergeant Lamb used that technique.

TC: Well, those questions I don't find offensive. The witness has said pretty clearly, "Electrical cord? Never heard of it. Prone position? Don't think so." Sitting on a chest? We haven't asked her that yet, but I can imagine the answer.

IO: All right. Okay. I agree. But let's tread carefully on this witness's rights. Go ahead.

[further questions by the defense counsel, CPT Bunch:]

Q. Sergeant Voigt--

A. Yes, ma'am.

Q. --how long did you witness Sergeant Lamb using the sleeping-bag technique? How long were you in the room?

A. Probably less than 5 minutes, ma'am. Maybe a half minute to a minute.

Q. Did he put the sleeping bag--how did he use it?

~~SECRET~~

A. It was just placed over the detainees head, as far as I remember, to about his waist level, and the detainee didn't like it because it was dark.

Q. And did Sergeant Lamb ever place the detainee on the floor that you saw?

A. Not that--I didn't see, ma'am.

Q. Did you ever see Sergeant Lamb cover the mouth of the detainee?

A. No, ma'am, I've never seen Sergeant Lamb do that.

DC (CPT BUNCH): That's all I have. Thank you, Sergeant Voigt.

WITNESS: You're welcome, ma'am.

IO: Any other questions of Sergeant Voigt?

[no affirmative responses]

IO: Permanent or temporary excusal?

TC: Permanent.

[All defense counsel concurred.]

[The witness was permanently excused and was duly warned, and the telephone connection was terminated.]

TC: Can we call Captain Rossignol at this time? She's been in the room for about an hour.

IO: Okay, she's in person?

TC: She's in uniform, ready to go.

IO: Yes, we can, but hold on one second before we call her.

You know, in an attempt to keep going with telephonic witnesses, I didn't want to stop and do anything administrative, but let's take just a few moments to do some administrative things.

First, regarding Captain Brian Baldrate, I do know Captain Baldrate. He returned from Iraq last year, so I knew him for about a month or two before he went to the Graduate

Course at The Judge Advocate General School. I don't weigh his testimony any more than anyone else, and I want to make that clear on the record. And, also, we didn't get his unit of assignment. He is at the Graduate Course at The Judge Advocate General School in Charlottesville, Virginia. All right, Captain Balddrate had mentioned his interaction with a Lieutenant Colonel Ayers, another JAG officer. I am no relation to Colonel Ayers, and I've never had any interaction with him. We just have a similar last name. I think he spells his incorrectly, whereas I spell mine correctly.

All right, also, there was mention of the 82d Airborne commander as Major General Swanic. I know Major General Swanic. He was Brigadier General Swanic and the commander of Fort Carson and JRTC when I was the senior defense counsel at Fort Polk. I'm sorry, what did I say?

DC (CPT MELITO): Fort Carson.

IO: Oh, Fort Polk. Again, that doesn't sway me in any way regarding anything that he may be involved in in this case.

Mr. Cassara, I hope that you submit some examples of letters of reprimands and their rebuttals in this case.

CDC: I've got a file of stuff _____ I'd move to admit.

IO: Okay. And there was some information about statements from _____ personnel.

CDC: Part of the same thing.

IO: Okay, that I'm curious about.

CDC: We'll admit those, as well.

IO: Okay. That looks like all the administrative things that I had noticed for now. We do have Dr. Rossignol available; is that correct?

TC: Yes, she is.

~~SECRET~~

Page 233 of 285 pages

IO: Okay, let's go get her.

[CPT Ann B. Rossignol, U.S. Army, was called as a witness at the Article 32 investigation, was sworn, and testified as follows:]

Questions by the trial counsel, MAJ Dolan:

Q. Can you state your full name for the record.

A. Ann Buckley Rossignol.

Q. You are a captain?

A. Yes.

Q. With what unit?

A. The 3d ACR.

TC: Thank you.

IO: All right, who called this witness?

Questions by the defense counsel, CPT Kageliery:

Q. Captain Rossignol, my name is Captain Kageliery. I represent CW2 Williams along with Mr. Cassera. It's my understanding that you were in Iraq back in November of 2003; correct?

A. Yes.

Q. How long had you been in Iraq?

A. We arrived there mid-April 2003.

Q. And when did you leave?

A. March 2004.

Q. Now, at the relevant time in question, you were--and I'm talking November of '03--where were you located?

A. For about 2 weeks in November of '03, I was located up on the Syrian border.

Q. And what was the name of the location?

Page 233 of 285 pages

~~SECRET~~

A. I don't recall.

Q. Al Asad?

A. No, I was in Al Asad the rest of the time.

Q. Al Qaim?

A. Al Qaim, yes.

Q. Okay. And what were your duties?

A. I was the medical physician responsible for the acute care of the soldiers that were working and the prisoners there.

Q. Okay, so, you were at the detention facility located--

A. Yes.

Q. --at Al Qaim? And I want to direct your attention to the morning of 26 November 2003, the morning that General Mowhosh died. Where were you prior to being called to the interrogation room?

A. I was in the region where the prisoners were kept. Every day we'd go through and see the prisoners, and I was over there.

Q. Okay. And why don't you just tell us what happened that morning in relation to General Mowhosh.

A. I was working by myself over in the region where the prisoners were. Sergeant Sommer came and asked me to come see one of the prisoners. I said, "Do I need my aid bag?" He said, "Yes, bring your aid bag," and we walked directly to some of the buildings. On the way, I'd asked him what was going on, and he said the general had collapsed. And I said, "Is he breathing?" and he said he wasn't sure, and we picked up the pace. We went to a room, one of the interrogation rooms, and the general was on the floor with his head towards the door. And Mr. Welshofer was in the room doing chest compressions.

Q. I'm sorry, I had a hard time hearing you. You said Mr. Welshofer was doing chest compressions?

A. Yes.

Q. Did you attempt any medical procedures on the general?

A. Yes. My first initial impression was that he appeared to be lifeless, and I said, "I can assess him, and we can call the code, or we can try to resuscitate him, and they said, "Please try to resuscitate him." So, we began immediate CPR, secured an airway, began chest compressions. After a few minutes, the PA, who was up there working with me, Captain Marlow, arrived, and with two of us there, we were able to attempt intubation, and on the second attempt Captain Marlow was able to achieve intubation. We administered oxygen and continued resuscitation attempts. Checking every few minutes, we never had a pulse. There was no spontaneous breaths at any time. We began to try to get MedEvac, but apparently the weather was restrictive, so we continued resuscitation attempts for approximately 46 minutes before we decided that we would call the code.

Q. That 46 minutes of attempted resuscitation, that was--somebody was doing CPR that whole time?

A. Yes.

Q. Who was it that was actually performing the CPR after Chief Welshofer?

A. I did for a short period. Captain Marlow came; she participated. I was initially doing the rescue breathing, and one of my medics was doing the chest compressions, and then we'd alternate. It's very tiring to continue to do that, so we alternated.

Q. And who was the medic?

A. We had several medics involved: Sergeant Chaheen was one of the medics who was involved. Who else was there? Captain Marlow, like I said, Maria Marlow, participated.

DC (CPT KAGELIERY): One moment, please, sir.

[Handwritten signature]

[A tape was changed.]

IO: Go ahead.

[further questions by the defense counsel, CPT Kageliery:]

Q. It's my understanding that your initial impression or initial diagnosis was that the general died of a heart attack?

A. When I asked the history, I was told that he was being interrogated and he lost control of his urine and he collapsed.

Q. And, so, based on--when you say "the history," you mean the immediate history that morning?

A. Yes.

Q. And who were you talking to?

A. Mr. Welshofer, Chief.

Q. So, from those symptoms led you to believe it was a heart attack?

A. Yes. He was a very heavy-set older gentleman, so just common things being common, I suspected that he had some sort of heart condition.

Q. I'd like to just show you just two documents, so I'm just trying to figure out these two documents, if you don't mind. This was in the case file. Is that your handwriting?

A. No, that's not my handwriting.

Q. You were interviewed by CID on the 28th of November?

A. Yes.

Q. Okay. Which agent was that that you were talking to? Was the agent taking notes as he was talking to you?

A. Yes.

Q. Just take a quick look at that. I mean, is that a summary of your conversation with the CID agent, to the best of your recollection?

A. Yes.

Q. Thank you. And this next document, it says "Chronological Record of Medical Care," and then it looks like your signature block down there on the bottom.

A. That's correct.

Q. So, did you write that?

A. Yes.

IO: Captain Rossignol, you might have to speak up a little bit for everyone.

WITNESS: Okay.

[further questions by the defense counsel, CPT Kageliery:]

Q. One of the notes written by the CID agent during your interview with the CID stated something--or referred to the screening process. What sort of screening process did detainees go through once they arrived at the detention facility?

A. Every time detainees came in, we would have somebody, myself or the PA, in the area, and we would--the MPs would interview each detainee. And if they reported any medical history, if they took any medications, then they would--or if they had any complaints about pain or anything like that, they would be sent to the next tent, where myself or the PA was located, and we would evaluate whatever their complaints were.

Q. Okay, and, so, would you screen them, then, for interrogation to determine whether or not they could withstand interrogation, if they were healthy enough? Is that--

A. Not necessarily, no. We would try to help them with any complaints, or if they took any medications was really our role.

Q. But do you remember whether or not General Mowhosh had any medical conditions that you knew of when he came in, when he was screened?

A. He denied any medical conditions.

Q. He denied any?

A. Yes.

Q. Oh, just one or two more questions. Do you remember what time you arrived at the scene in the interrogation room?

A. The time I have documented was 0911.

Q. Okay. And General Mowhosh was still warm to the touch?

A. He was--yes.

DC (CPT KAGELIERY): Thank you.

DC (CPT MELITO): Just a couple quick ones.

Questions by the defense counsel, CPT Melito:

Q. When General Mowhosh--you said he denied any complaints or anything like that. Was it obvious that you were a doctor at the time? How did he know you were a doctor?

A. They would say, "If you have any complaints, you can speak to a doctor."

Q. Okay. So, he was informed at some point that you were a doctor?

A. Yes.

Q. Were you wearing anything like a stethoscope or anything?

A. I occasionally had a stethoscope on; not all the time.

Q. Do you know if you had a stethoscope on with him?

A. I don't recall.

Q. Okay. Actually, was it like an SOP to say--by the MPs who did the initial screening, was it SOP for them to say, "Do you need to see a doctor? Do you have any physical complaints?"

A. That's what they did. We did not see every prisoner that came in. We only saw the ones that said they had a medical problem or they had a medical complaint or they wanted to see a doctor.

Q. Okay, so, somehow, that was the MPs' SOP to refer people to you.

~~SECRET~~

Page 239 of 285 pages

A. Yes.

DC (CPT MELITO): Okay.

IO: Captain Bunch?

DC (CPT BUNCH): No questions.

ATC: Yes.

Questions by the assistant trial counsel, CPT Davison:

Q. Captain Rossignol, what was described to you as what actually happened to the general?

A. I was told that he was being interrogated. I didn't ask any further details on the interrogation. They said he was--they were talking, and he lost bladder control and collapsed.

Q. Okay, what does "collapsed" mean to you?

A. To me, it means--it can mean a lot of things, but to me, it means that he lost consciousness.

Q. Okay.

A. And he fell to the floor.

Q. Was he ever conscious when you arrived on the scene?

A. No.

Q. When you started treating him? So, was he in fact dead from your arrival on, and then you were merely, you know, working the cardiac arrest?

A. My initial--just as I walked into the room, I suspected he was dead. And then when I did my initial assessment, checked for vital signs, checked for breathing, there was none. He had no pulse and no breathing.

Q. Who told you he collapsed, that he collapsed?

A. I believe it was Sergeant Sommer when he came to get me, on our way back to the . . .

Page 239 of 285 pages

~~SECRET~~

~~SECRET~~

Page 240 of 285 pages

Q. Okay. Are you aware that the forensic pathologist said in fact that the general did not have a heart attack and that the--

DC (?): Objection.

IO: Wait. No, no, no. She doesn't--

ATC: Well, I mean, she was asked if she thought she knew what caused him to--

IO: No. Don't ask that question, Captain Davison. That would not be fair to this witness to have to give an opinion about what the medical examiner said weeks later. No.

ATC: Well, I mean, she testified that she thought he had a heart attack. I'm just curious as--

IO: And that's fine. And I have that consideration. I'm also going to consider what the medical examiner gave. Don't ask that question.

ATC: Okay. That's it.

IO: Okay. Sorry about that, Captain Rossignol. I do have a couple questions for you.

Questions by the investigating officer:

Q. You indicated that the detainees were screened, and it was really for medical reasons; correct?

A. I don't know what all the other screening was that they went through. I know that each detainee was asked if they wanted to see a doctor or if they had any medical problems or if they took any medications. I don't know what the other screening involved.

Q. And were you present when that question was asked of the major general here?

A. We had two separate tents, and the MPs did the screening in one tent, and we were in the next tent. So, no, I was not.

Q. Oh, you were not present for that. All right. So, you're not aware of any bruises or any other--maybe marks that the general had on his body when he entered the facility?

A. No.

Page 240 of 285 pages

~~SECRET~~

~~SECRET~~

Page 241 of 285 pages

Q. Now, you had indicated that Sergeant First Class Sommer had said something along--Sergeant First Class Sommer was the one that came to get you?

A. Yes.

Q. And he had something about lost control of urine and collapsed.

A. Sergeant Sommer came and got me, and he told me that the prisoner had collapsed. And when I came to the room and asked what had happened, Chief Welshofer told me that the patient had lost his urine control and collapsed.

Q. Wait a second. Can you repeat that, please.

A. Yes. When Sergeant Sommer came to get me and we walked--we walked over to the room, he told me that the general had collapsed during interrogation.

Q. That was Sergeant Sommer.

A. Yes, and that was all he had said. I asked if he was breathing. He said he wasn't sure; he didn't think so.

Q. Then what did Chief Welshofer tell you?

A. Chief Welshofer told me that they were interrogating the patient and he had lost control of his urine and collapsed.

Q. And it was Chief Welshofer that was doing chest compressions when you entered the room?

A. Yes.

Q. Okay. Was Chief Williams in the room when you entered? Do you recall Chief Williams being there?

A. I don't recall.

Q. All right, how about Specialist Loper? Do you recall Specialist Loper being there?

A. No. I don't believe Specialist Loper was in the room.

Page 241 of 285 pages

~~SECRET~~

Q. You do not believe he was?

A. I do not believe he was in the room.

IO: All right, everyone hold on for a second.

[pause]

IO: Okay. Any other questions from counsel?

ATC: Yeah, just real quickly.

Questions by the assistant trial counsel, CPT Davison:

Q. Captain Rossignol, did you--was the patient, the general, was he in a sleeping bag when you entered the room?

A. No.

Q. Did you see a sleeping bag in the room?

A. I don't recall seeing a sleeping bag.

IO: Okay. Captain Melito?

Questions by the defense counsel, CPT Melito:

Q. Did Chief Welshofer ever discuss medical history of patients with you--or of detainees? Excuse me.

A. No. I don't recall discussing medical history of detainees with the chief.

Q. Did Chief Welshofer, by any chance, discuss sort of feasibility or the danger of interrogation techniques with you?

A. No.

Q. Do you recall where Sergeant Sommer was after you went into the room?

A. No, I do not.

Q. That's not to say he wasn't there, but you just don't recall?

A. I don't recall.

DC (CPT BUNCH): I have some questions.

IO: Go ahead.

Questions by the defense counsel, CPT Bunch:

Q. Captain Rossignol, you've worked with another PA, another captain, Captain Marlow; is that correct?

A. Yes.

Q. How often would you say that you would have to administer any kind of first aid on other prisoners?

A. Every day.

Q. And do you know what those injuries were from?

A. Occasionally, they had--they complained of all sorts of things, the same things soldiers complain of: "My knee hurts. My back hurts." We gave a lot of Motrin. Sometimes they would have a little bit of skin irritation from the zip-ties.

Q. Okay, let me direct you more specifically. Did any of the other prisoners complain of being beaten by an [REDACTED]?

A. I had one prisoner who complained of being beaten. I don't know who he complained of being beaten by.

Q. Did you administer any kind of first aid to any other prisoners who complained of being beaten or may not have complained but those injuries were similar to those that would have resulted from a beating?

A. Yes.

Q. Okay. Did Captain Marlow ever talk--to your knowledge, did Captain Marlow ever talk--well, let me ask, Did she talk to you about having to administer any type of first aid to prisoners who were beaten by [REDACTED]?

A. I spoke to her about the one that I took care of, but I don't know who--I don't know who administered the . . .

Q. And how long were you at Al Asad?

A. I was there for a year.

Q. Did General Mowhosh ever complain to you about being beaten?

A. No.

Q. Prior to the 26th of November, did you ever treat Major General Mowhosh?

A. No.

Q. How long were you at Al Qaim?

A. Fourteen days.

Q. Okay. And over those period of 14 days, how many prisoners did you treat for abuse or for--how many did you treat for those who may have suffered any kind of beating?

A. I took care of one that I was--that I was quite sure had received some physical abuse.

Q. What specifically was wrong with him?

A. I don't have an X-ray machine, so I can't tell you for sure. He had bruising on the back of his hands. He had very severe bruising over his entire back. He complained of feet pain, and he had bruising on the bottoms of his feet. And he had bruising over the tops of his feet, as well, and some bruising on his anterior _____

Q. Did you ever say or did you hear Captain Marlow ever say that you were frustrated with the injuries that the prisoners were suffering from?

A. We were frustrated? When I took this gentleman under my care, I administered some pain medication and some sedating medication, so I requested from the MPs that he not be interrogated because I knew that his mental status would be decreased by the medication that I was administering, and they complied. He never was interrogated again.

DC (CPT BUNCH): Thank you. I don't have anything further.

DC (CPT MELITO): I just have some follow-up based on that, Captain Ayers.

IO: Okay.

Questions by the defense counsel, CPT Melito:

Q. Did detainees or prisoners feign injuries or epilepsy or that sort of thing? Did you ever hear of reports about that?

A. I had one soldier--or, excuse me; one detainee--who I actually witnessed getting out of the back of a vehicle when he arrived at the camp. He tried to get out before somebody was assisting him, and his hands were tied, and he actually fell from the back of the truck due to his hurry. And a few minutes later with a translator--and I witnessed his injuries; I was standing right there, and he landed on his face and scratched up his face and hurt his nose. And a few minutes later, he told me with a translator that somebody had beaten him about the face and nose. So--and I believed that he'd received the injuries from falling from the truck.

Q. And, so, there were no apparent injuries prior to his fall.

A. No, I was standing right there, and I didn't see any. It's possible that he had some that I didn't notice because I wasn't really looking, but I actually saw him fall from the truck, and then he told me a few minutes later that somebody had beaten him and that's how he'd received the injuries.

Q. Did anyone feign injuries with you personally or Captain Marlow, to your knowledge?

A. She saw someone who had collapsed, and, you know, there's some tests, you know. He was unconscious, apparently, and when she went to evaluate him, you can stand them up, and if you kind of lean them and they stop themselves from falling, you know that they're conscious, and he didn't fall, so . . .

Q. So, he faked passing out.

A. So, yeah, we had one detainee do that. And that's hearsay; I mean, that's what Captain Marlow described--

Q. You heard it--

A. --to me. I was not--

Q. --from Captain Marlow.

A. --there.

DC (CPT MELITO): Okay. Thank you.

DC (CPT BUNCH): Actually, I have one more follow-up, Captain Ayers.

IO: Okay.

Questions by the defense counsel, CPT Bunch:

Q. If a prisoner had suffered some injuries as a result of a beating from whomever and they felt they needed medical attention, how would they have gotten in contact with you? Would they have had to rely on the guards, or did you routinely talk to the prisoners?

A. Every day we spoke to the prisoners.

Q. You talked to every single one of them?

A. We would go into each area where the prisoners were held, and we would ask if anybody had any complaints or wanted to see the doctor or the physician assistant, and they would almost all raise their hands. So, yes, we talked to almost all of them every day. And then if there were any specific concerns, the prisoners would either talk to the guards, or if the guards themselves were concerned, we were alerted.

Q. And how did you differentiate between the just daily ailments and those injuries that may have been result of beatings? If they said their back hurt, how did you distinguish that-- how did you decide if that was just because their back hurt as opposed to their back hurting because they were beaten?

A. There was no need for me to decide. I treated them the same no matter what. There was the one particular person that I was quite sure was beaten, had worked--he spoke English very well, and he had worked as a translator with me throughout the day and was

~~SECRET~~

Page 85 pages

removed, I believe for interrogation. I'm not even sure. And several hours later, I was called to see him. And he was fine when I saw him in the morning and was badly bruised when I saw him in the afternoon.

Q. Okay, so, is it fair to say that you can't say whether or not the injuries they were complaining of were a result of beatings versus just because they were older or not in good health?

A. That's fair to say.

DC (CPT BUNCH): I don't have anything else.

DC (CPT KAGELIERY): Just one quick follow-up.

Questions by the defense counsel, CPT Kageliery:

Q. You said that every day you or personnel who worked for you spoke with the prisoners. Did you talk to General Mowhosh the day prior to his death?

A. I did not.

Q. Do you know if one of your medics or maybe Captain Marlow spoke with him?

A. I know one day one of the medics spoke with him, but I don't know what day it was.

Q. And did the general complain of anything?

A. He spoke with him socially, and I knew it was a medic; he had a stethoscope with him, and he was in the area where the medics were. I don't know that. I don't know that he knew he was a medic. I suspect he did. I think my medic talked to him about that. But he never--the general never complained to us about anything.

Q. I'm sorry. Say that last thing again.

A. The general never complained to any of the medical personnel about anything.

Q. And who is the medic that you recall speaking with General Mowhosh?

Page 247 of 285 pages

A. I knew you were going to ask that, and his name has completely escaped me. He was the best medic we had out there, and I just can't think of his name. I can't think of it.

Q. You were the only doctor on site?

A. Yes.

Q. And then there was a physician's assistant and then several medics.

A. Yes.

Q. And that was it as far as medical personnel?

A. Yes.

DC (CPT KAGELIERY): Thank you.

IO: Captain Davison?

ATC: No, no further questions.

IO: Captain Melito? No? Nobody?

All right, permanent or temporary excusal?

[All defense counsel concurred with permanent excusal.]

IO: Government, permanent excusal?

TC: Yes.

[The witness was permanently excused, was duly warned, and left the hearing room.]

TC: We've got a Sergeant Fisher in the wings.

IO: Okay.

? Can we take a potty break?

IO: Yes, in just a moment. We have Sergeant Fisher waiting?

TC: Yes.

IO: Okay. This autopsy report has not been entered as an exhibit to be considered by

me.

TC: I'd request that you do consider it as whatever exhibit next in order and replace the one without the signature.

CDC: Absolutely. No objection.

IO: All right, where's Captain Melito?

TC: He just left.

IO: Ten-minute recess. Let's everybody be back, though, in time.

[recess]

IO: All right, we've ended our recess. All parties present prior to recess are again present. We have Sergeant First Class Carr on an unsecured line. Sergeant Carr has been told by Major Dolan, who is here present in the courtroom. Major Dolan, would you swear the witness. [SFC Timothy R. Carr, U.S. Army, was called telephonically as a witness at the Article 32 investigation, was sworn, and testified as follows:]

Questions by the trial counsel, MAJ Dolan:

Q. Okay, what's your rank and full name?

A. Sergeant First Class Timothy R. Carr.

Q. Thank you. What is your current unit of assignment?

A. It's HHC, Presidio, Monterey, Defense Language Institute, Monterey, California.

Q. You lucky dog.

A. Heh, heh.

TC: Thank you.

WITNESS: Yes, sir.

DC (CPT MELITO): Captain Ayers, I don't think I can talk to him on a non-secure line 'cause I was going to ask him who he saw and what he saw.

TC: When?

~~SECRET~~

Page 250 of 285 pages

IO: Well, do we have our--she's available. Just--I'm sure you'll raise your hand or jump in if--

? If he's about to answer a question, I don't know what's going to come out of his mouth.

DC (CPT MELITO): I think I know what would come out of his mouth. I can't ask him anything, not in this environment.

? Is there a secure line in the Monterey/San Francisco--

DC (CPT MELITO): He must be able to get to one.

TC: You know, absent any synopsis or any indication of what it was Captain Melito intended to ask, it was difficult to assume we would need anything other than this kind of connection. Knowing what the other counsel expected to get into, we were able to make the proper arrangements. We had no reason to make such arrangements in this case. Further, we thought he would invoke. So, I would ask that we simply drive on with the hearing.

IO: Yeah, I don't have any idea what he's going to testify to except for I think Sergeant Carr may have come in at the tail end of when Major General Mowhosh was--

DC (CPT MELITO): Then I don't have any questions, in that case.

? Before you let him leave, could we just get a ___ phone number?

TC: Well, his attorney's phone number?

IO: Yeah, he's represented by counsel.

TC: Surely, you wouldn't call him directly.

Questions by the trial counsel, MAJ Dolan:

Q. Hey, Captain Smith, are you there?

A. I am, sir.

TC: There's no questions because nobody wants to ask you any questions.

WITNESS: Myself or Sergeant Carr, sir?

Page 250 of 285 pages

~~SECRET~~

TC: Sergeant Carr.

CDC: That's not true. We do want to ask him questions over a secure line.

TC: About what happened on the 26th?

CDC: Yes.

TC: I don't think anything on the 26th implicates _____

CDC: Can we put him on hold so we can talk over this line?

TC: We're going to call you back, okay?

WITNESS: Okay, sir. We'll be here.

TC: Stand by.

[The telephone connection was terminated.]

CDC: Okay, we'll let you start, and then we'll talk about what we want to talk to him about.

DC (CPT MELITO): I was going to delve into what he knew about the [REDACTED] [REDACTED] being there and sort of springboard that into the events of that day. But my major concern was things that happened before the 26th, to be frank.

CDC: And my questioning of him was going to involve his knowledge--not his personal use but his knowledge of the use of sleeping-bag techniques, which I believe--I'm assuming are classified. I mean, is the use--well [REDACTED]

IO: Who requested this witness?

TC: Captain Melito.

DC (CPT MELITO): I did. To me, it seems to be a question of interrogation ROE.

IO: Did you ask for him, also, Mr. Cassara?

CDC: I did not because I was also under the assumption he was going to invoke.

TC: I mean, I was told specifically he was going to invoke, so, I had, really, no reason to make any arrangements other than a call to his lawyer. So, I'm a little surprised that he's now indicating he'll answer questions.

[REDACTED]

IO: All right, so, this'll be a statement of [REDACTED]

[REDACTED] was recalled as a witness at the Article 32 investigation and testified as follows:]

Questions by the trial counsel, MAJ Dolan:

Q. Are you the same [REDACTED] who testified yesterday?

A. Yes, I am.

TC: You're reminded, ma'am, you remain under oath.

A. Yes.

WITNESS: So, the question is, What would be classified and the discussions you would have.

CDC: Right. If I wanted to ask him if he was a w--

WITNESS: The question that Captain Melito had, the ones he wanted to ask about [REDACTED] that would be classified, clearly. The question that you had about techniques, as long as it didn't involve [REDACTED] would not be classified. The problem is when you get into that question, then the logical extension is, Did you ever--if the person says, "I never

~~SECRET~~

saw military or whoever using this technique," [REDACTED]

[REDACTED] That would be classified.

CDC: Okay. And my intention was not to do that. My intention was to ask--because whatever [REDACTED] that may not be of interest to me.

WITNESS: Okay. Is there some way you can ask that question to prevent it from coming out in his answer?

CDC: Well, I could simply ask him whether he saw [REDACTED] use the sleeping bag.

WITNESS: And specif--"I'm only talking [REDACTED] or something like that, I guess.

CDC: Well, the captain's concern--and I think it's a valid one--

DC (CPT MELITO): Is the Army ROE.

CDC: Is the Army ROE classified?

WITNESS: That's not in my purview. I don't know.

DC (CPT KAGELIERY): I can tell you ROE, whether it's interrogation ROE or whatever is always classified.

DC (CPT MELITO): Yeah. And this seems to be exactly that.

TC: I can--there are portions that are classified and portions that aren't. And if the question is, "Did you ever see anybody use this technique?" you're not asking an ROE question.

DC (CPT MELITO): That's a method of collection, though, sir.

TC: "Did you ever see this method used?" is not the same as saying, "And was it authorized? If so, by whom?" I mean, if you're going to ask those questions, it's different.

CDC: You know, if I can ask--his lawyer may not let me ask him that. You know, I can ask him those questions, and the answer's going to be yes or no. We'll go with the answer.

IO: All right. So, let's get Sergeant Carr back on the line.

~~SECRET~~

UNCLASSIFIED

[REDACTED] have a seat.

[The witness was excused.]

[SFC Carr, U.S. Army, was recalled telephonically at the Article 32 investigation.]

CPT SMITH: Trial Defense, Captain Smith.

TC: Hey, Captain Smith, Major Dolan again.

CPT SMITH: Hey, sir.

TC: We're going to try this again.

CPT SMITH: Okay, sir. I will put you back on speaker so that we can speak with Sergeant Carr.

TC: All right.

IO: Just identify Captain Smith for the record.

SFC Carr: Can you hear, sir?

TC: Yeah. Can you hear me?

SFC Carr: I can, yes, sir.

TC: Okay, Sergeant Carr, are you there?

SFC Carr: Yes, sir.

TC: Are you there with your attorney next to you, Captain Smith?

SFC Carr: Yes, sir.

TC: Okay, are you the same Sergeant Carr who was testifying just a minute ago?

SFC Carr: Yes, sir.

TC: You're reminded you remain under oath.

SFC Carr: Yes, sir.

Questions by the civilian defense counsel, Mr. Cassara:

Q. Sergeant Carr, this is attorney, Bill Cassara. I've spoken with your attorney a couple of times in the past, but obviously I've not spoken with you. What I would like to do is to

ask you a couple of questions. We have already decided that these questions are not classified. Obviously, before you answer, I'm--you know, I don't know if the two of you are sitting in the same room or how you're doing this, but don't answer without speaking to him. And if the captain or you wish to, you know, invoke your rights on your behalf, then please just let us know that. Okay?

A. Yes, sir.

Q. Okay. The question is, During the time that you were in Iraq, were you aware of an interrogation tech--well, you know what? Before I do that, I guess I got to find out--put your name and all that on the record.

TC: We already did.

CDC: Okay.

[further questions by the civilian defense counsel:]

Q. Okay. What is your MOS?

A. 98-Golf, sir.

Q. Okay, which is a linguist?

A. It's a voice intercept operator.

Q. Okay, and what were you working as in theater?

A. In theater I was used as a translator, sir.

Q. Okay. Now, during the time that you were in theater, did you ever see anyone use a technique of an interrogation that involved placing all or part of a detainee in a sleeping bag?

A. I heard of it, sir.

Q. Okay. Did you ever personally witness it?

A. Sir, I choose not to answer that question at this time.

Q. Understood. Were you present during any of the interrogation of General Mowhosh?

~~SECRET~~

Page 256 of 285 pages

A. Yes, sir.

Q. And approximately how much of the interrogation did you see?

A. Approximately 3 minutes, sir.

Q. Do you have any way of knowing whether this was the beginning or the end of the interrogation?

A. I was there in the beginning, sir.

Q. Okay.

A. And towards the middle, I believe, for a moment.

Q. Okay, so, you came in, left, and came then went back in?

A. Yes, sir.

CDC: Okay, that's all the questions I'm going to be able to ask you. Hold on one second.

[pause]

[further questions by the civilian defense counsel:]

Q. Okay, it's me, Mr. Cassara, again. Were you there when the general arrived in the interrogation?

A. I believe he was in the room before I arrived there, sir.

Q. Okay, do you recall who was in the room with him when you arrived?

A. I believe it was myself and Mr. Welshofer went in for the initial interrogation, sir.

Q. Do you recall how long you were there that first period of time?

A. That first period of time, sir, it was, like I said, 3 minutes, maybe; 4 minutes.

Q. Did anybody else join the interrogation while it was taking place?

A. [no response]

Q. Did you hear my question, Sergeant Carr?

A. Yes, sir.

Page 256 of 285 pages

Q. Okay.

A. Did you hear my answer?

Q. No, I did not.

A. I said no one else was in at that time, sir.

Q. Okay. And then for how long were you gone before you returned?

A. About 20 minutes.

Q. And when you returned, who was in the room?

A. I recall Chief Welshofer and Sergeant Sommer and the general in the room, sir.

Q. And how long did you stay the second time?

A. Maybe 5 seconds, sir.

Q. Okay. Nobody came while you were--you know, nobody entered the room in those 5 seconds, I take it?

A. No, sir.

Q. Okay. And is that the only time that you were present during the interrogation?

A. Yes, sir.

CDC: Okay. One second.

[pause]

DC (CPT KAGELIERY): Sergeant Lamb, I just have a couple of quick follow-up questions.

TC: Carr.

DC (CPT KAGELIERY): Carr. I'm sorry, Sergeant Carr.

Questions by the defense counsel, CPT Kageliery:

Q. When you poked your head in the room the second time, do you recall what position the general was in?

A. I believe he was on his back, sir.

~~SECRET~~

Page 258 of 285 pages

Q. Okay. Was he in a sleeping bag?

A. I observed he was in a sleeping bag from his feet up to his waist.

Q. Okay. Now, you said that you had heard about the sleeping-bag technique, and

I'm sure your lawyer is paying close attention to this question, and I ask you to do the same.

Without telling me anything you did or observed, from whom did you hear that the sleeping-bag technique was being used?

A. Sir, I don't recall. It was like a hearsay kind of thing, sir.

DC (CPT KAGELIERY): Okay. Fair enough. Okay, that's all the questions I have for you, Sergeant Carr. Somebody else might.

Questions by the trial counsel, MAJ Dolan:

Q. What did you hear--can you hear me?

A. --sir.

Q. This is Major Dolan again.

A. Can you say the question again, sir?

Q. Sure. What did you hear about a sleeping-bag technique?

A. I heard that one was placed over the head of a detainee 'cause a detainee said that he was scared of the dark.

Q. So, you heard about it happening one time?

A. Yes, sir.

Q. And it was to take advantage of a detainee's fear of the dark.

A. Yes, sir.

Q. Did you hear about it happening any other times?

A. No, sir.

Q. Did it involve anything more than slipping a sleeping bag over the head of a detainee?

Page 258 of 285 pages

~~SECRET~~

~~SECRET~~

Page 259 of 285 pages

A. That's all I heard, sir.

Q. Did it involve then securing that sleeping bag with a det cord, twine, anything else?

A. No, sir. I just heard it was placed over his head 'cause he had a fear of the dark.

Q. Did this sleeping-bag technique you heard of involve sitting on the chest of the detainee and covering his mouth?

A. No, sir.

TC: Nothing further. Thank you, Sergeant Carr.

DC (CPT BUNCH): I just have one question.

Questions by the defense counsel, CPT Bunch:

Q. Sergeant Carr, this is Captain Bunch, Specialist Loper's attorney. When you went in with Chief Welshofer, where was Specialist Loper?

A. He was on the outside of the room, ma'am.

Q. Okay, was he ever in the room with you and Chief Welshofer?

A. No, ma'am.

DC (CPT BUNCH): Okay, thank you.

IO: Captain Bunch, let me make sure I understand his testimony: that he never observed Specialist Loper in the room.

DC (CPT BUNCH): That's correct.

CDC: I have nothing further.

IO: Anybody else? No one? Permanent excusal?

TC: Yes.

[The witness was permanently excused and was duly warned, and the telephone connection was terminated.]

Page 259 of 285 pages

~~SECRET~~

~~SECRET~~

Page 260 of 285 pages

[SGT Jeremy M. Fisher, U.S. Army, was called as a witness at the Article 32 investigation, was sworn, and testified as follows:]

Questions by the trial counsel, MAJ Dolan:

Q. Will you state your full name and rank for the record, please.

A. Jeremy Michael Fisher, Sergeant.

TC: And you'll have to speak up a little. That mike doesn't amplify. It's just recording your voice for the tape recorder.

Q. What's your unit of assignment?

A. Maintenance Troop, Support Squadron, 3d ACR.

TC: Thank you.

Questions by the defense counsel, CPT Bunch:

Q. Sergeant Fisher, I just have some questions for you regarding your instructions to Specialist Loper. How long were you in Iraq, specifically Al Asad and Al Qaim?

A. For approximately 1 year.

Q. And do you know Specialist Loper?

A. Yes.

Q. How do you know him?

A. I was his team leader.

Q. For how long?

A. Approximately 3 to 4 months.

Q. And what were your duties in relation to Specialist Loper as his team leader?

A. During our shifts at the detainee site, I was in charge of overseeing the guards and the operations during the tenure of our shift.

Q. When you say "overseeing the guards," what specifically does that mean?

Page 260 of 285 pages

~~SECRET~~

~~SECRET~~

Page 261 of 285 pages

A. Making sure that they weren't doing anything they weren't supposed to, making sure they were alert and awake, keeping track of what the prisoners were doing, escorting, and things of that nature.

Q. Would you be considered Specialist Loper's first-line supervisor?

A. Yes.

Q. And it was only for those 3 or 4 months?

A. Yes.

Q. How much of that time was spent at Al Qaim versus Al Asad?

A. Two weeks.

Q. Two weeks was at Al Qaim?

A. Yes.

Q. Were you his first-line supervisor when--were you always his first-line supervisor, or do you know that he had someone before that, before he arrived at Al Qaim?

A. I believe there was brief period during his time at Al Asad that he was with another team, and then he was moved to my team.

Q. And what were his duties at Al Qaim and Al Asad?

A. Escorting prisoners to use the bathroom, escorting prisoners during the visits from the doctors, and escorts to the interrogation room.

Q. Is there a distinction between a guard and an escort?

A. Not a specific. There was a team leader, which was myself, and then two, three, four guards, depending on how many personnel we had at the time. And one--well, whoever was there, we'd pick one person, say, "Okay, you're going to take this detainee," and they would take them over to the interrogation.

Q. Do you know what Specialist Loper's MOS was?

A. I know he was a mechanic, but I don't know his specific MOS.

Page 261 of 285 pages

~~SECRET~~

Q. Who was responsible for explaining the escort's duties to them, what specifically they were responsible for?

A. It was the NCOIC of the DPW site, and then it was the--

Q. Who was that? Who was that?

A. It changed several times during the time I was out there.

Q. Who was the one when you and Loper were first together?

A. I believe it was Staff Sergeant Lott.

Q. How do you spell his last name?

A. L-O-T-T.

Q. Did you provide any instructions to Specialist Loper regarding his duties?

A. Yes.

Q. And what did you tell him?

A. Just we went over the standing op, the SOP for the site.

Q. Okay, let me stop you there. Is the SOP in writing?

A. I'm not aware of--I know it was at the time, but I'm not sure anybody has anything on record.

Q. When you were explaining to Specialist Loper what his duties were, was it you and he alone, or was it in a group?

A. I believe it was in a group.

Q. And did you speak from this written SOP, or did you just speak off the top of your head?

A. No, at the time when he first arrived at the site and we got him into the program, there was no written SOP.

Q. Okay, so, how did you know what to tell him?

A. 'Cause I'd been doing it for--at that time, I had been doing that for about 4 or 5 months.

Q. Okay, and who told you?

A. We were--it was kind of on-the-job training--slash--we were given some classes by MPs.

Q. So, what did you specifically tell Specialist Loper his duties were as an escort?

A. His duties were to--they, my personnel, would call over to us and request a detainee by their number. We would get that individual. They would walk them over to the room, and they would sit there with them to ensure that the detainee didn't get up and try and run or assault the interrogator.

Q. So, it's fair to say that his primary duty was to protect the interrogator.

A. Yes.

Q. And how was he instructed to respond if an interrogator's safety was compromised?

A. To use whatever force was necessary to resolve the situation.

Q. Was he given any kind of examples of what kind of force was authorized or reasonable?

A. At numerous times, we would go over the different tactics to use.

Q. And what kind of things did you tell him? What kind of tactics?

A. I can't really recall exactly--

Q. Were they given--

A. --what was--

Q. Oh, I'm sorry. Were they given any weapons of any sort for protection?

A. The escorts carried a baton.

Q. Were they told they could use the baton?

~~SECRET~~

Page 264 of 285 pages

A. Yes, if it was necessary.

Q. Were they given any kind of self-defense training, specifically for guard/escort?

A. Not that I recall.

Q. Have you ever seen Specialist Loper have to handle a prisoner who was acting unruly?

A. I don't recall any incidences.

Q. And this may seem like a dumb question, but if a prisoner was going at an interrogator, what kind of force would someone use? Would they thrown them on the ground? Would they start kicking and punching? I mean, what would they do?

A. Well, I would think that they would take the initiative to try and restrain the individual, not necessarily, you know, just attack them in a manner that you're trying to beat them up, or whatever, but, you know, the little bit of training that we did receive, it was, you know, to--like pressure points and joint-manipulation type of stuff to control the situation, not necessarily inflict harm on the individual.

Q. Okay, now, that training you received, was that passed down to Specialist Loper?

A. Yes.

Q. And how much training have you received of that type?

A. I can't really be specific. It's been a year since--

Q. Was it a day's worth, an hour's worth?

A. Probably a couple hours' worth.

Q. What was he told in regard to how he was to interact with the interrogators?

A. The main instructions were that you would--we escorted the detainees from the holding area to the interrogation rooms, and then after that it was up to the interrogators whether there was any involvement.

Q. So, the interrogators were actually telling escorts when--or what to do?

Page 264 of 285 pages

~~SECRET~~

A. Yes.

Q. And whose responsibility was it to deem what the interrogators told Specialist Loper to do, whether or not it was appropriate? Did that make sense? That was kind of long.

A. Not really.

Q. Okay. Whose responsibility--if the interrogator told Specialist Loper to do something that--to start kicking and punching him--if the interrogator asked him to start doing that, whose responsibility was it to determine whether or not what the interrogator asked Specialist Loper to do was appropriate or not?

A. That would be on Specialist Loper.

Q. And if it was a senior-ranking individual, Specialist Loper was to, again, on his own, determine what was appropriate?

A. As far as?

Q. If Specialist Loper felt that what he was asked to do was inappropriate, what would he have done?

A. Oh, then, he should have come and got somebody or stopped the situation, then.

DC (CPT BUNCH): Can I have a minute?

IO: Yes.

[pause]

[further questions by the defense counsel, CPT Bunch:]

Q. In terms of what the interrogators were permitted to do, who put out those SOPs or those rules, if you know?

A. As far as I'm aware, that came down from regiment. I mean, it came down above that, but they oversaw that as far as what was--their tactics and everything.

Q. Did it come down through Chief Welshofer?

A. Yes.

Q. Were the escorts ever briefed on the legal permissible techniques as opposed to the impermissible techniques?

A. There was a couple different times where there was situations where people voiced that they thought that they had seen something that was borderline or--they thought they had seen stuff that was questionable, so everybody, the whole guard force and the MI personnel all got together and discussed it and went over it. In other words, we were given a class on the tactics that the MI personnel were using so that we understood why they were doing what they were doing.

Q. Did you attend that class?

A. Yes.

Q. How long was that class?

A. Approximately an hour, hour and a half.

Q. And what were the permissible techniques on a--

A. They just went over kind of borderline. They do an initial talk-through with the prisoner to get an idea of the tactics that they're going to use, and then they had--I don't remember all the specifics. They had three or four different tactics they used, from, you know, sit down and have a calm discussion with them, to, you know, standing up, you know, yelling at them, and that kind of thing. So, there was different . . .

Q. Can you be more specific? I mean, that was an hour-long class. I mean, what techniques specifically were interrogators used [sic]? I'm assuming that that's what the class was on; is that what you said?

A. Yes. As much time has passed, I really can't recall the specifics.

Q. Who gave the class?

A. I don't--there was a chief warrant officer from the National Guard. I don't recall his name.

~~SECRET~~

Page 267 of 285 pages

Q. Any written material from that class?

A. No.

Q. Do you recall whether or not--was how much force they were allowed to use specified?

A. No. Not that I recall.

Q. Aside from that hour-and-a-half class, was there any other training regarding what interrogators were permitted to do?

A. No.

Q. How did they ensure the attendance of the escorts at that class?

A. Everybody that was not physically on a guard shift at that point was present at the class.

Q. And for those that were physically on guard shifts, what happened? Did they get a separate class?

A. I don't recall.

Q. Do recall Specialist Loper being there?

A. I don't recall.

Q. Is there a roster?

A. No.

Q. Anybody take attendance?

A. No.

Q. Is there any way to determine who was on guard shift that night or during that class?

A. I doubt it.

Q. How many classes were given?

A. Total or just for that specific incident?

Page 267 of 285 pages

~~SECRET~~

Q. For that specific--was that the only class--

A. That was the only one for that specific block of instruction.

Q. And do you remember the time frame?

A. I couldn't be specific on that.

Q. Do you know who would have any information regarding the class?

A. Not that I can think of. People that were there, but . . .

DC (CPT BUNCH): Can I have just a minute.

[pause]

DC (CPT BUNCH): I don't have any more questions.

Questions by the defense counsel, CPT Melito:

Q. Sergeant, is it fair to say that after that hour-block instruction, you were left with the impression that the interrogators knew what was lawful?

A. Yes.

Q. Is it fair to say that you were left with the impression that the interrogators knew the appropriateness of techniques?

A. Yes.

Q. Is it fair to say after you all voiced your concerns, that the interrogators were saying something to the effect of, "We know the limits. You can leave us alone now"?

A. Yes.

Q. Did you have any questions of their techniques after that fact?

A. No.

Q. So, you assumed after that or, rather, were left with the impression that their techniques were either lawful or coming down from higher?

A. Yes.

~~SECRET~~

Page 269 of 285 pages

- Q. And you were left with the impression that these legitimate techniques came through Chief Welshofer; correct?
- A. Yes.
- Q. Were you aware of any sleeping bags used for interrogation purposes?
- A. Yes.
- Q. Who did you observe do this?
- A. I never actually observed it being used.
- Q. Did you hear it secondhand?
- A. Yes.
- Q. Who did you hear this from?
- A. Escorts. I can't be specific. I only heard of it being used on one or two occasions.
- Q. Okay, and that happened after this hour-long block of instruction informing you what was legitimate?
- A. I'm not positive on that.
- Q. So, you're uncertain as to the time frame.
- A. Yes.
- Q. If you had--were you at FOB Tiger or at Blacksmith Hotel?
- A. I was at Blacksmith Hotel.
- Q. For how long?
- A. The duration.
- Q. Where was the training given?
- A. The training?
- Q. Yeah. Was it at the Blacksmith Hotel or on the grounds of?
- A. I don't--I don't recall. I worked at the facility on Al Asad, and I was removed from there and taken up there to work up there.

Page 269 of 285 pages

~~SECRET~~

~~SECRET~~

Page 270 of 285 pages

Q. Did you receive the hour block of instruction that you spoke about at Al Asad?

A. I received that at Al Asad.

Q. So, not Al Qaim.

A. No.

Q. Were the guards, to your knowledge, other than that one block of instruction, trained on proper interrogation techniques?

A. The guards that I brought with me from Al Asad were, but there was a number of personnel that were brought from the squadron from outside units that had never--that had--some of them had been up there briefly. The personnel at Al Asad were--they had a few people like myself that stayed out there, but a lot of the soldiers were rotated in and out, so there was a constant change of personnel there.

Q. Was this training--or were the soldiers that had received the training, did they receive it before Rifles Blitz?

A. I can't specify for the entire guard force.

Q. Okay, for the soldiers that you brought, did they receive training on proper interrogation techniques prior to Rifles Blitz?

A. No.

Q. Is it fair to say that most of your guards received on-the-job training?

A. Yes.

Q. I apologize if you've already said this, but how many detainees do you think you personally handled?

A. It was 2,137.

Q. Thank you. And, just out of curiosity, how do you know that?

A. I kept track. I was there from the beginning until I left in January. I went back to my unit.

Page 270 of 285 pages

~~SECRET~~

~~SECRET~~

Page 271 of 285 pages

Q. Did you have a log book of some sort that kept track of that?

A. Well, the overall--the MPs that worked at the detention facility kept a log book.

Q. Okay. Did you ever interact with Major General Mowhosh, by any chance?

A. Briefly. I had a shift in the pen at Blacksmith Hotel, and I stopped and seen him a couple times. We were talking with the guards that were there with him, but I didn't like--not any interrogation or anything, just there when he was in the pen. I seen him there. I was aware of his presence 'cause I was informed that he had medical conditions and we needed to keep an eye on him.

Q. How frequently did you interact with interrogators and linguists?

A. I would say it was very infrequently. Being the team leader, I stayed in the pen, and the guards were the escorts.

Q. Did you talk to your soldiers about the need to trust the interrogators' judgment after that one-hour block of instruction?

A. I'd say that it was--if they voiced concerns and depending on what it was that was brought up, we'd talk with them, and I'd also bring it up to the interrogators.

Q. Do you think--based upon sort of reading human faces and their reactions, do you think that most of your guards' concerns were laid after--or, rather, they had some sort of internal resolution after that one-hour block of instruction?

A. Yes.

Q. Were you personally left with the impression to trust the interrogators?

A. Yes.

Q. And to trust their methods?

A. Yes.

DC (CPT MELITO): Thank you.

Questions by the civilian defense counsel:

Page 271 of 285 pages

~~SECRET~~

Q. The gentleman who conducted this cross, was it Mr. Manwaring?

A. Yes.

CDC: Thank you.

TC: Is that it?

CDC: Yes, sir.

Questions by the trial counsel, MAJ Dolan:

Q. What kind of medical condition were you told the general had?

A. I can't be for certain, but I believe they said he had heart conditions. And one of the instructions that I relayed to my guards was that he was not to receive any kind of corrective training as far as like standing for long periods of time or anything like that. We were just supposed to leave him alone, keep him there, and keep an eye on him.

Q. How did you learn of this?

A. It was briefed to me by--I believe it was one of the MPs that was doing the in-processing.

Q. What did you do to ensure everybody who came into contact with the general knew this?

A. I personally passed that word along.

Q. To whom?

A. To the people on my shift.

Q. Was Specialist Loper on that shift?

A. Yes.

Q. Now, you knew that the general died.

IO: Wait a second.

[There was an interruption.]

~~SECRET~~

Page 273 of 285 pages

TC: Did you all hear that? There's been a motion to stay this hearing, but we're being instructed to drive on.

DC (CPT MELITO): A motion or an order, sir?

TC: It's a motion by *The Denver Post*.

IO: Wait, wait, wait. It's a motion. Let's continue. Let's finish this witness.

[further questions by the trial counsel, MAJ Dolan:]

Q. When do you think the general came into the Blacksmith Hotel?

A. I believe he was there for approximately 36 hours, but I can't be positive on that.

Q. If I told you he was there from 10 November to 26 November, would you agree or dis--

A. I would say that was false.

Q. Okay. Did you hear about the general dying?

A. Yes.

Q. This class you received--do you think you received that class before or after the general died?

A. It was several months prior to that.

Q. Several months prior.

A. Yes.

Q. Okay. What other sorts of briefings or information was passed out about the general's medical condition?

A. That was the only--I came on shift the night prior.

Q. How soon after his injury did this occur?

A. The briefing to me?

Q. Yeah.

Page 273 of 285 pages

~~SECRET~~

~~SECRET~~

Page 274 of 285 pages

A. When I came on--there was two 12-hour shifts. I came on, and when I checked in to let them know that I was there, I was briefed to make sure that my guys--that my personnel were aware that he was not to be--have any corrective training of any kind and that he had a medical condition and he needed to be monitored.

Q. You said you'd heard about a sleeping-bag technique.

A. Yes.

Q. What did you hear?

A. I'd heard that they were--the individual was placed inside the sleeping bag to give them a sense of like claustrophobic; it's dark, quiet in there. They're in an enclosed space.

Q. How, if at all, was the sleeping bag placed on them?

A. It was j--as far as I know, it was just slid over them.

Q. Sort of draped over them?

A. Yes.

Q. Would they be standing, sitting, lying down?

A. I can't be specific on that.

Q. Did you ever see it used?

A. No, I did not.

Q. And I know you've been asked this, but do you recall who you heard this from?

A. No.

Q. After receiving this class, were you given the impression that interrogators could inflict enough force on a detainee to stop him from breathing?

A. No.

Q. Would you think that was all right?

A. No.

Q. What would you think if you saw that happen?

Page 274 of 285 pages

~~SECRET~~

A. If I saw that happen, I would think that there was something wrong there.

Q. Why?

A. It just--that's not--I would not--I don't think that's part of the--what they're--the ultimate goal is.

TC: Would you think that's a--thank you. I have nothing further.

IO: Any other questions?

DC (CPT MELITO): Yeah, I do.

Questions by the defense counsel, CPT Melito:

Q. Sergeant, how many soldiers did you say you had?

A. At that specific time, I believe I had about a dozen.

Q. How frequently did they relay concerns to you about interrogative behavior?

A. During that 2-week period at Blacksmith Hotel, I never received anybody saying anything that they had--that they questioned anything that was going on.

Q. Is it fair to say through your speeches and personal interactions with your soldiers, that you were conveying an overall message to trust and rely on the interrogators?

A. Yes.

DC (CPT MELITO): Thank you.

IO: Anyone else? No? Temporary or permanent excusal?

TC: Permanent.

DC (CPT BUNCH): Temporary.

TC: Can that include a telephonic standby? I know these guys have somewhere to be.

IO: Yeah. I mean, that's fine.

TC: What's a good number to reach you at?

WITNESS: [REDACTED]

TC: Thank you.

SECRET

UNCLASSIFIED
DATE 08/14/01 BY [REDACTED]

[The witness was temporarily excused, was duly warned, and departed the hearing room.]
[SSG Billy Conley, U.S. Army, was called as a witness at the Article 32 hearing, was sworn, and testified as follows:]

Questions by the trial counsel:

Q. Can you state your rank and full name for the record, please.

A. Staff Sergeant Billy Conley.

Q. How do you spell your--I can read it, but how do you spell your last name, for the record?

A. C-O-N-L-E-Y.

Q. What's your current duty assignment?

A. I work for infantry, but I'm a 63-Bravo, light-wheeled vehicle mechanic.

TC: Thank you.

Questions by the defense counsel, CPT Bunch:

Q. Sergeant Conley, do you know Specialist Loper?

A. Yes, ma'am.

Q. How do you know him?

A. He works in the same platoon that I do, ma'am.

Q. Did you serve with him in Iraq?

A. Yes, ma'am.

Q. During what time frame?

A. The whole year we were in Iraq.

Q. How about Al Asad or Al Qaim?

A. I was in Al Asad the whole time with him.

Q. Were you his squad leader?

A. Yes.

Q. In Iraq?

A. Yes. And--well, I don't know. We all kind of fell underneath the platoon sergeant, so we just--we all worked underneath him, so . . .

Q. Did you have any supervisor responsibility over Specialist Loper?

A. Yes.

Q. Yes?

A. Yes, ma'am.

Q. During what time frame?

A. Pretty much since he came to Fort Carson. I've been the highest-ranking person in there, except for the platoon sergeant, the whole time he's been here.

Q. Okay. I'm sorry. In Iraq, you were his squad leader; is that correct?

A. Yes, ma'am.

Q. Okay, the entire year you were in Iraq?

A. Yes.

Q. Okay. And what were your responsibilities in terms of being a supervisor with regard to Specialist Loper?

A. To take care of him.

Q. Did you train him at all?

A. We went out--well, we did like small trainings and stuff while we were there. We had classes and stuff.

Q. What training did you specifically provide to Specialist Loper?

A. I couldn't tell you, ma'am. That was a long time ago.

Q. Did you train him--who was responsible for sending him out to Al Qaim to the DPW site?

A. Sergeant Flash.

Q. Were you responsible at all, or did you provide any kind of training or training on how to handle detainees?

A. The only training that I know that they got for detainees or whatever is before we even went to Iraq. They just taught--they just showed you how to detain them and search them for weapons and stuff like that. That was it.

Q. I'm sorry. Did you say that you were at the DPW site with Loper?

A. Negative.

Q. At no time?

A. No. The only time I ever went to the EPLD site that was on Al Asad. The only time I'd go out there to check on the soldiers that we had out there at the time, and we'd give them their mail and see if they needed anything.

Q. How many soldiers did you have working under you or that you were responsible for?

A. Over in Iraq?

Q. Yes.

A. About eight.

Q. Were any of those interrogators?

A. Negative.

Q. Did you ever train any of your soldiers on how to interact with interrogators?

A. Negative, 'cause I've never been trained on that.

Q. Were all the other soldiers that you were responsible for also guards or escorts?

A. The only ones that I know that--we rotated our whole platoon for the EPW site at Al Asad. The other EPW site, there was only two soldiers of ours that went out there, and that was Loper and Tedesco.

Q. What was your responsibility out there? Were you ever a guard or an escort?

~~SECRET~~

Page 279 of 285 pages

A. Negative.

Q. So, you were never trained on interaction with interrogators.

A. Negative, ma'am.

Q. What was your job?

A. I'm a vehicle mechanic. I fix the M Troop's vehicles. That's it. And pulled security on convoys.

Q. And that was the only things you did when you were in Iraq?

A. Yes, ma'am.

Q. Do you know a Specialist Tedesco?

A. Tedesco? Yes.

Q. Did he receive any training on how to handle detainees? Do you know?

A. Not that I know of, ma'am.

Q. I'm assuming--well, let me just ask you. Did you ever hear of any of the interrogation techniques that were being used?

A. Negative, ma'am. I know nothing about the EPW site. I tried to stay as far away from there as I could.

Q. Why is that?

A. 'Cause I've had to deal--I have had to do it when I was in Albania prior to Iraq, like Albania and Kosovo. And they asked me originally if I wanted to be the NCOIC for the EPW site. I didn't want nothing to do with it. There's just too many problems.

Q. What kind of problems?

A. I--I--I don't want nothing to do with it. I just--I want to do my job and that's it. I don't want nothing to do with EPWs.

Q. So, you've had previous experience with EPW.

A. Yes, ma'am.

Page 279 of 285 pages

~~SECRET~~

Q. What kind of problems did you see there?

A. I--I--I don't recall, ma'am.

Q. You don't recall, or you don't want to say?

A. I don't recall. If it happened a long time ago, I don't remember. If it's not important, it doesn't pertain to my job, it's--it goes in the reserve.

Q. But it was bad enough that you decided that's not something you want to do again.

A. I--I didn't have nothing to do with EPWs, ma'am.

IO: It's an unpleasant experience.

DC (CPT BUNCH): I don't have anything else of the sergeant.

IO: Anyone else?

[negative responses]

IO: All right, permanent excusal?

TC: Permanent.

DC (CPT BUNCH): Permanent.

[The witness was permanently excused, was duly warned, and departed the hearing room.]

ATC: Captain Ayers, we've scheduled for [REDACTED] to be available at 1300, so--

CDC: Can I ask to make a quick suggestion? Given the recent development, can we just find out who's left to be called?

TC: I've got Marlow and Pratt with Major Voss, as well.

CDC: Is that it?

TC: That's it.

IO: Well, wait a second.

TC: Oh, excuse me; Manwaring.

IO: Wait. There may have been discussions between counsel but not with me on the record. Special Agent Curtis Ryan is still on standby, basically.

DC (CPT MELITO): I'd like to talk to him.

IO: Okay. Major Michael Smith also temporarily excused. Major Jessica R. Voss.

CDC: She's going to invoke.

IO: And we know that she will invoke. So, she's not available. Is there any alternative to her in-person testimony or telephonic testimony that you'd like for me to consider?

DC (CPT BUNCH): I would ask how we know that she's going to invoke.

TC: Having spoken with her attorney.

IO: You know, I don't see any utility in actually calling her and having her invoke on line if someone has spoken to her attorney.

TC: We've attempted to secure her--one, at an interview, and, two, her testimony. And on both fronts, we're told she would invoke.

DC (CPT MELITO): Who is her attorney, sir, just for our reference?

IO: Well, I tell you what. I'll mark that we will not call Major Jessica R. Voss. But do not forget before we close this hearing that you can provide me a sworn statement, an unsworn statement--

DC (CPT MELITO): How about a letter of reprimand and rebuttal? She discusses this very issue.

TC: Captain O'Brien at Fort Lewis.

IO: All right, so, just know to provide me some kind of alternative, if you wish.

DC (CPT MELITO): Is that classified, sir, that rebuttal? That's not; right? That's in the packet of documents you gave us that wasn't; right?

ATC: It wasn't classified.

TC: No, it's not classified.

IO: Okay. Just to make sure everybody's clear, I'm going to mark her off our witness list. I'm going to find her not reasonably available, and you can still provide me, if you wish, alternatives to her testimony.

All right, Captain Marlow is going to be available at 1300?

CDC: Right.

? Did you say Sergeant Shaheen was still on the list?

TC: No.

? Good, because I told him we didn't need him.

IO: Okay, so do not intend to call Sergeant Sheehan. And then I have Sergeant Liam still temporary excusal and Sergeant Fisher still temporary excusal and Sergeant Pratt.

TC: Right. The people we haven't heard from yet, Sergeant Pratt, Mr. Manwaring, and Marlow, who's scheduled at 1300 with Mr. Manwaring and Sergeant Pratt to follow.

IO: Okay. And Sergeant Pratt's available to go this afternoon?

TC: He is.

IO: Okay.

TC: I'd ask that Sergeant Lamb be produced here at 1400, but, you know, if you don't want to talk to him, let me know.

DC (CPT BUNCH): Yeah, I do want to talk to him, sir.

TC: Okay. Which leaves Mr. Ryan.

ATC: Agent Ryan.

TC: Yeah, Agent Ryan and Major Smith, from my understanding.

IO: Okay.

TC: Obviously, Mr. Waring--Mr. Manwaring is here, ready to go. But rather than going, I'd rather take a lunch break so that we call Ms. Marlow at 1300.

IO: Yeah, I'd rather take a lunch break, too, and Chief (Retired)--Chief Warrant Officer Two (Retired) Manwaring can take a lunch, as well, and come back. That's not a problem.

Okay, two things before we wrap up, though. Autopsy. I understand Captain Melito does not have an objection to this, as well. With no objections, I'm going to include this as the next exhibit for my consideration, Exhibit 11.

All right, I have United States Code, Section--or Title 18, United States Code, Section 2340a and 2340. I think government counsel wanted me to consider this and have this as an exhibit; is that correct, Major Dolan?

TC: Pardon me? I didn't hear you.

IO: This United States Code exhibits, you want this as an exhibit?

TC: Yeah. I'll be asking you to consider that for additional charges under certain circumstances in argument.

IO: Okay. I can't foresee an objection to law, so that'll be Exhibit 12. Let's take a lunch recess. Be back here promptly at 1300.

[recess]

IO: All right, we had a lunch recess. All parties present prior to the recess are again present.

We are in open session now. We are no longer in closed session. Right before our recess, I received a petition from *The Denver Post* corporation, and this petition was sent to CAAF, United States Army Court of Criminal Appeals, asking for a motion to stay, and I want to mark that as the next exhibit. I do not for the record--14?

REPORTER: Thirteen, sir.

IO: This will be Exhibit 13. I don't imagine there are going to be any objections to this. However--

~~SECRET~~

Page 284 of 285 pages

ATC: That's not a complete motion.

IO: However, I do note that this does not have exhibits attached that are mentioned in the motion.

All right, the next exhibit is an order to stay these proceedings from the United States Army Court of Criminal Appeals, which we are doing and merely opening up this Article 31 investigation again to place this information on the record and then close this investigation--or close it for now, to be continued at a later date.

All right, any comments from government counsel?

TC: No.

IO: I mean, I can't foresee when we'll be able to reopen.

TC: As a party to the litigation, is it your plan to get with TCAP officials in order to present an argument in support of your decision?

IO: Yes. I mean, I haven't even gone that far to--what to address. But, yes, sure. Certainly respond to this.

CDC: And if I may, Captain Ayers, just as one who's got some experience in this area, my understanding is that your next step is to comment to the folks at GAD.

IO: Okay.

CDC: And that's probably who he--

TC: That's what I meant.

IO: Yeah, not TCAP but GAD.

CDC: Or ___ JAG, Crim Law.

TC: Well, I can tell you both are involved.

IO: Already involved.

TC: Yes.

Page 284 of 285 pages

~~SECRET~~

IO: Okay. All right, good to know, I suppose. Any other comments from anybody else?

ATC: Is this is going to affect next week's proceedings in--

IO: Well, yes, it could 'cause the order said "inves"--let me have that Exhibit 14 back. It certainly could.

TC: Well, it depends on the nature of next week's proceedings.

IO: It says--well, it does say "hearing now ongoing at Fort Carson" but it does say--

ATC: So, we could probably start again.

IO: --"involving the death of Iraqi Major General A___ Mowhosh." So, we'll have to--

TC: My reading of that is it does not relate to the 32 currently scheduled against--into CW3 Welshofer.

IO: Well, we'll have to address that. We'll address that off the record.

TC: Okay.

IO: All right, we are continuing this investigation till further notice.

[End of proceedings.]

