to move his face while I had my foot on his neck. He wasn't as panicked as I thought he would be. He would have the water in his face. He would wait for the water to stop, when he'd turn his head and spit it out and take in a breath. He almost was in a rhythm or pattern to mitigate the effects of having the water poured in his face.

The general's hands were already bound when he was walking up the steps to the roof and doing PT. They were bound together with a zip-tie and remained that way for the entire time.

I don't remember what questions were being asked of the general.

The water session lasted 5 to 10 minutes. After that, he was forced to do more PT, rolled around a little more, and was forced to crawl. Then at one time at the end of the interrogation, the general was standing up, facing Chief Welshofer, who was sitting in a chair, and Chief Welshofer was asking him questions. At the time, there was an individual on each side of the general, who would tap the back of his elbows with a stick similar to a guard stick. That probably lasted 10 to 15 minutes. The hitting wasn't hard enough to cause any injury. It was more of an annoyance to distract and frustrate him. I think over time, the strikes would have been hard enough to bruise. The general did not give any targetable information. At the end of the interrogation, the general was taken back to his cage.

I am testifying under a grant of immunity. Prior to being given that grant of immunity, I entered into a pretrial agreement. Prior to that, I think I made two statements about the case. I never mentioned the events of the 25th because I felt by doing so, I might incriminate myself and put myself in a bad light and did not mention them until I received the grant of immunity.

The technique may seem extreme, but it isn't that extreme when compared to other techniques that I observed at the facility.

The next time the general was interrogated was around 8:30 on the morning of 26 November in the admin building where interrogations were conducted. It was the day after the rooftop interrogation. As I was walking by the interrogation room, Chief Welshofer asked me if I wanted to join the interrogation of the general, and I said yes but that I had to get a cup of coffee. He had to find a translator, so I got the coffee and

then went back to the room and waited for Chief Welshofer and the interpreter to arrive. When I arrived in the room, SPC Loper was there. He was the guard who had brought MG Mowhosh into the interrogation room.

The general could speak English very well. He would always say he loved Americans and loved us, and I would tell him that, no, we loved Iraqis and we loved him. And this bantering would go back and forth. And we did that for a few minutes before Chief Welshofer and SFC Sommer arrived. Chief Welshofer took charge of the interrogation. The general was not answering the questions. Chief Welshofer got up and got the sleeping bag. While the general was being put in the sleeping bag, I went to get more coffee, and when I came back to the room, the general was already in the sleeping bag. It had been placed over his head, and there was a white piece of electrical cord wrapped around his shoulders and coiled around his body down to around his knees. If you looked at the general from behind, the sleeping bag went maybe halfway around the back of his back. The bag did not meet in the back because it would not fit all around the general, who was a large man. When I went back into the room, the general was standing, and Chief Welshofer, SPC Loper, and SFC Sommer were in the process of lowering him to the ground. I assisted by grabbing the cord and helping to lower him to the ground. The cord was taut enough to do that.

The interrogation began, and I moved to the detainee's feet with SPC Loper. SFC Sommer was kneeling or on his knees at the detainee's head, and Chief Welshofer was straddling the detainee with one foot on either side of his body. Then he squatted down over the detainee. I couldn't really tell if he was placing his weight on the general's chest. I had seen this interrogation technique used before. I wasn't checking to see if there was weight on his chest. I did not see him put any weight on the general's chest. Chief Welshofer's butt was touching the general's chest, but I do not know the amount of weight being put on the detainee. I could not tell. I'm not exactly sure why he would squat down over him, but I know it allowed him to speak directly into the bag. It allowed him to tap on the general's face when he didn't like answers that he was getting, and it allowed him to pull his own body up in order to roll the general left and right as he desired through the interrogation. During the first part of the interrogation, Chief Welshofer used one hand two to four times for about 10 to 15 seconds on the detainee's lower face around where his mouth was and would push

on the bag while he was asking a question and then take his hand away and allow the detainee to answer the question. The detainee did answer every time until he became unresponsive, but it was not the answer we wanted to hear. I don't know how many questions had been asked, but at one point the general became unresponsive, answering nothing when a question was asked. For the first three or four times when there was no response, Chief Welshofer would tap the detainee on the forehead and say something like, "Hey, Abid, we're not going away. You can't ignore us." After there continued to be no response for probably 2 or 3 minutes, tensions did rise because we didn't know if the detainee was playing a possum game or if there was something wrong. During this time, Chief Welshofer was still straddling the general and poking the bag and trying to elicit a response. Then the general made a sound, and Chief Welshofer stood up and said something along the lines of, "I thought he was dead," or "I thought I had killed him." It was a tension-breaker.

After that, Chief Welshofer straddled the general and began asking him questions again, and the general began responding. There were perhaps three questions, and the general became unresponsive again. Chief Welshofer was not covering his mouth again. He had the general rolled over on his stomach, face down, when he became unresponsive the second time. After he became unresponsive, he was rolled over to his back. Chief Welshofer tapped him on the head a few times. When there was no response, Chief Welshofer pulled the sleeping bag off the general's face. The general's eyes were open. He was dead.

The second phase of questioning lasted probably 2 to 3 minutes. As soon as we knew there was a problem, Chief Welshofer sent SFC Sommer for the doctor. Chief and I took the general out of the bag, and Chief Welshofer began doing chest compressions.

Prosecution Exhibit 11 is the sleeping bag. The general was standing up when the lower end of the bag was placed over his head. The bag was wrapped around behind him as far as it would go, and the cord, Prosecution Exhibit 12, was coiled around his shoulders to secure the bag on the general. When the general was on the ground on his back, the zipper of the sleeping bag was on the ground.

Prosecution Exhibit 9 is a photo of the sleeping bag as it looked in the interrogation room. The walls in the picture look

like the walls in that room. The floor in the picture looks like the floor in that room. As far as I can tell, this is a picture of the room in which the general died.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I was facing murder charges myself based on this same incident. Only a couple of weeks ago, I struck a deal with the government. In that deal, it's my understanding that the murder charges against me will be dropped and I will receive nonjudicial punishment for dereliction of duty and cruelty and maltreatment. Additionally, I have been granted immunity to testify here today, meaning anything I say in this proceeding cannot be used against me in a subsequent prosecution.

SGT Lamb was also using this sleeping-bag technique. It was my understanding that MAJ Voss knew that. I had heard Chief Welshofer and SGT Lamb talking about using the sleeping-bag technique in her presence.

On 26 November, the general was able to speak. I had a discussion with him about a cookie when I was bantering back and forth with him about his loving us and our loving him. I had given him a cookie a day or two earlier, and I noticed the wrapper wasn't still in his pocket, so I asked him if he had eaten his cookie. He seemed coherent. He seemed to understand who I was and what we were talking about.

The general was capable of saying he was in distress and that he wanted to see a doctor. He would have been able to ask for help in English. A doctor and a physician's assistant were nearby, as well as medics. Nobody was keeping medical care from detainees. Medical care was available for detainees. On 26 November from the period that I saw MG Mowhosh until the point he died, at no time did he say anything in English or through the interpreter to indicate that he could not breathe, that he was in distress, or that he wanted medical care.

"Playing possum" means ignoring the interrogator's questions and pretending to be asleep or unconscious in order to avoid answering questions. Prior to the general's death, I had observed over 50 interrogations. Playing possum was a resistance technique used by some of the detainees who were

being interrogated. MG Mowhosh's unresponsiveness could have been his playing possum.

I am unaware of MG Mowhosh's having asked for medical care for anything at any time. I don't know if he received any medical care following his interrogation on 25 November.

I was not able to observe whether Chief Welshofer was also covering the general's nose when he was placing his hand on the lower part of the general's face in the sleeping bag. The covering only lasted 10 to 15 seconds. I can hold my breath that long.

During the sleeping-bag interrogation, at no time did I see Chief Welshofer strike or kick MG Mowhosh with any foreign object. When the general was put on the ground in the sleeping bag, it was a careful lowering.

The general became responsive again after the initial period of unresponsiveness. Tension had built up in the room, and there was some relief at the point when the general made a sound. I don't remember exactly what words Chief Welshofer said. When the general began to talk again, he didn't say that he couldn't breathe or that he needed help or medical care.

I had seen the sleeping-bag technique used by SGT Lamb three to six times and by Chief Welshofer approximately a dozen times. Chief Welshofer did not do anything in a more aggressive way on this particular occasion with the general than on any other occasion that I had observed him using the sleeping-bag technique. The cord wrapped around the general was tied in a way to secure the sleeping bag, since the general was a very large man. From the beginning of this interrogation on 26 November until it ended, it appeared to be a very controlled, careful interrogation of the general.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I did not hear Chief Welshofer tell SPC Loper to make sure the cord was wrapped tightly. I was not in the room when the general was actually put into the sleeping bag. I had not seen that particular cord because it was something new, but I had

seen a rope or cord used in the same way around the shoulders to keep a sleeping bag on an individual.

When Chief Welshofer stood up over the accused after the first period of unresponsiveness, he didn't say, "Thank goodness he started talking again." He said something along the lines of, "At least he's not dead," or "At least I didn't kill him." We had started to get worried during the time the general was unresponsive, so when he started reacting again, then Chief made a comment. But exactly what he said I don't remember. I personally didn't think the general was dead. He may have been in distress, but I would not have characterized my feelings as thinking that he was actually dead. As tensions were building, the thought had entered my mind, though. Chief Welshofer's words indicated he thought the same thing.

I had never before this instance witnessed an interrogation by Chief Welshofer of a detainee in a sleeping bag to the point they became unresponsive. The general's face was covered by the sleeping bag, so I could not tell what portion of his face was being covered with a hand. It appeared that the general's mouth was being covered. I could not tell if his nose was being covered. The pressure on his mouth could have cut off air to his nose.

The general did not request medical care, as far as I am aware, the day that he was being, in effect, carried back to his cage. He was in some sort of distress at that time. I don't know if he actually had any injuries from that interrogation, but he was definitely exhausted. He did not request medical care when he was being hit with a stick on the elbows.

Chief Welshofer covered the general's mouth for the approximate time it would take him to ask a question. When the interpreter was finished interpreting the question, Chief Welshofer would remove his hand. The only person who knew when the hand would be removed would be the accused himself. Chief Welshofer was not out of control or acting irrationally. He did not appear angry. His covering the mouth of the general was deliberate, not an accident.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I gave a statement on 28 November 2003, describing the events of this interrogation just a couple of days after the interrogation. My memory was very fresh at that time. The statement was written in my hand. I did not in that statement attribute any words to Chief Welshofer like the words I have today attributed to him. This is the first time that I have testified that that's what he said. I am aware that SGT Loper made a statement about what Chief Welshofer said because I became aware of what SGT Loper said about me in the course of the preparation of my defense. The first time I made a statement about what Chief Welshofer said was after I had been granted immunity and had entered into a pretrial agreement with the government.

The zipper on the sleeping bag was broken. The general was too large for the sleeping bag to fit all the way around him. The only way to effectively secure the sleeping bag was by tying it around him.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibits XXIII and XXIV)

I do not know what material the sleeping bag is made of. It looks like the old Army-style sleeping bags that we used to be issued before the modular ones.

The sleeping bag around the head of MG Mowhosh was not tight but was secured so that it would not fall off. When Chief Welshofer reached to pull it off his face, he didn't have to pull it out from under MG Mowhosh's head or strain to pull it. He just picked it up and was able to remove it.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

The portion of the sleeping bag covering the general's head never fell off by itself.

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

SGT Justin A. Lamb, U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

My current duty assignment and position is the senior interrogator for the 3d ACR. I've held that position for about 18 months. My MOS is 97-Echo, a human intelligence collector. I speak Arabic. My testing shows I speak a 2/2 for Arabic, but I am fluent in the Iraqi dialect. I have recently returned from Iraq. While in Iraq, I conducted interrogations in Arabic without an interpreter. I can tell the difference in many regional accents and can, in most cases, determine where someone is from by how they speak Arabic. I was trained as an interrogator at AIT in Fort Huachuca and attended the interrogator course and received on-the-job training and mentoring. The interrogation intelligence manual is Field Manual 34-52. That manual is the basis for Army interrogation. It is known as the bible of interrogation.

Prosecution Exhibit 17 contains chapters 1 and 3 of the field manual. I was in Al Qaim in November of 2003, working for the regiment. Chief Welshofer was the senior interrogator. There was a copy of the field manual in Al Qaim. We discussed the manual and interrogations often. The manual states at pages 1-7 and 1-8 that the Geneva Conventions cover interrogation techniques. It defines what a prisoner of war is on page 1-10, figure 1-3. It states that prisoners of war "are persons who have fallen into the power of the enemy who are members of the armed forces of a party to the conflict, militias, or volunteer corps forming part of such armed forces; members of other militias and volunteer corps, including those of organized resistance movements, belonging to a part of the conflict, and operating in or outside their territory, even if this territory is occupied, provided such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions by being commanded by a person"--

The defense counsel objected to the reading aloud of portions of the manual, in that it had been admitted into evidence and would be available for the members' review.

The military judge noted that although that was true, he would allow a little leeway.

(further testimony in substance on direct examination)

The field manual speaks to the types of individuals whom one would expect to interrogate. The top three listed are civilian internees, insurgents, and EPWs. The manual states that these individuals are covered by the Geneva Conventions.

Building rapport is one of the main things that you do with any interview, including interrogations. The field manual instructs that it is important to build rapport; i.e., how you interact with someone. There's positive and negative rapport. Positive rapport is trying to make someone your friend or trying to make someone think that you are there to help him. Negative rapport would be negative approaches, where an individual sees the interrogator as being in control. Physical punishment would not be used to build negative rapport because that is not allowed by the Geneva Conventions. I have learned that in my training. I believe it is explicit in the field manual that that is not allowed.

I am familiar with the interrogation methods used by Chief Welshofer. I observed him interrogate MG Mowhosh. We were sitting in a room with the general with a guard present. Mr. Welshofer, the general, and I were sitting on MRE boxes. The guard was standing by the door. For that interrogation, I was the interpreter, and it was a question-and-answer session. There were no physical threats made, no sleeping bag, no sticks, no water. It was face-to-face talking. It was a "futility" technique mixed with a "we know all" technique and a "pride and ego up." These are terms in the manual, which are specific techniques.

I did see Chief Welshofer slap a detainee. He used an open hand from his body to smack the detainee in the face. Chief Welshofer talked to me about the technique. He had been trained to run a SERE school in Hawaii at one point in his career. They were trained to use those techniques with the individuals going through the school. It's a startling or a control factor. It is meant to ensure that the detainee knows that the interrogator is in control. I guess I would consider the slap a form of physical punishment.

I came up with the sleeping-bag technique. The technique was to use a sleeping bag by putting it over a detainee and to secure it with a rope or wire to create a claustrophobic feeling in the detainee. A metal wall locker was used for the same purpose. The detainee was placed in it, the door was closed, and it was used to create a feeling of claustrophobia. The person in the full-sized wall locker would be standing up. The same was the case with the sleeping bag the majority of the time. Sometimes we would lay the detainee down. If we didn't feel that there was an immediate effect after placing a detainee in a sleeping bag while the individual was standing, then we laid the detainee down because it made the detainee feel more vulnerable and less in control. The hands were always zip-tied or handcuffed for security reasons. The interrogator had the opportunity to use removal of the handcuffs or zip-ties as an incentive during an interrogation. With the sleeping-bag technique, hands would be down because arms across the chest creates a feeling of security. Once in a while, water would be poured over the top of the sleeping bag.

Before using the sleeping-bag technique, Chief Welshofer and I tested it on each other. Then we started using it on detainees. The technique was never to be used in conjunction with sitting on the chest of the detainee or covering the mouth because that would be taking away air, which is a necessity. I would not be allowed to do that.

I don't know if I talked to MAJ Voss specifically about the sleeping-bag technique. I may have, but Mr. Welshofer did. When I talked about the technique, I did not mean it to include sitting on the chest of the detainee and covering his mouth.

I think I was in Al Qaim from late October to early November. I don't remember specific dates. I was involved in Operation Rifles Blitz. There was a point when the interrogation operations moved to Blacksmith Hotel. There was a meeting there among the interrogators in which various techniques were discussed. The sleeping-bag technique was brought up. Chief Welshofer said that he and I were the only two individuals authorized to use the technique because we had used it effectively in a manner that coincided with the rules. He did not have the time then to train others on the way we were using it, so he just made it off limits. The rules as I understood them would have prevented someone from sitting on the chest of someone who was in a sleeping bag or covering their mouth.

After conducting an interrogation, I would produce an interrogation summary the majority of the time. Sometimes summaries were not done for multiple interrogations within a 24- or 36-hour period of the same detainee. There might just be one final report which referenced all those interrogations.

I don't believe I talked to Chief Welshofer about the protections detainees should be receiving at Blacksmith Hotel. I had talked to him in general about detainee protections. We discussed the Geneva and Hague Conventions in conversations over periods of time. I consider myself relatively familiar with the Geneva and Hague Conventions. I would say Chief Welshofer's familiarity is equal to mine or better. We concluded that the detainees were due food, water, medical care, shelter, and to be safeguarded from the enemy. Their physical health should be safeguarded. They would be treated humanely. A test as to whether a treatment is lawful is whether such a technique would be wrong if used by the enemy against U.S. soldiers. We are not really trained to determine the lawfulness of a technique.

SERE school is Search, Evade, Rescue, Escape. It's a school designed by the military to train its soldiers how to try to escape if captured, how to resist interrogation. It's probably a large school about the Code of Conduct. I've never been to SERE school.

The court recessed at 1258 hours and reconvened at 1308 hours, 17 January 2006, all parties again present, including the members.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I am testifying under a grant of immunity. Anything I say here cannot be used against me in any disciplinary proceeding. I have not been charged with any misconduct.

Chief Welshofer did not sit down and come up with rules on how to use the sleeping bag. It was understood that only he and I would use the technique. We did not come up with a rule that you could not cover someone's mouth, for example. As interrogators, we were free to use the technique how we felt it was appropriate.

MG Mowhosh was a large man. He was too large to put in a wall locker to create a claustrophobic effect. The only way to create this claustrophobic technique with him was with the sleeping bag. The technique was used as a last resort after a detainee had been uncooperative with other techniques.

There are not guidelines as to the only ways certain techniques can be implemented. That is left to the creativity of the interrogator. If I felt the sleeping-bag technique violated the Geneva Conventions or violated the field manual, it was my duty to report that to someone in the chain of command.
Chief Welshofer never told me not to tell anyone that we were using the sleeping-bag technique. Chief Welshofer was a mentor to me as an interrogator. He never told me that he felt he was violating the rules but that we were going to continue to use the sleeping-bag technique because we needed to get actionable intelligence. When I used the technique, anyone who was present in the room observed me using it. MAJ Voss could have come in and observed any time she wanted to. If there were questions about how this technique was being used and whether it was being used improperly, it was really open for anybody in the chain of command to view and to evaluate.

The purpose of putting detainees in a wall locker was to create a feeling of claustrophobia. The purpose was not to punish them. When I saw the slap technique, it appeared to be designed as a way to maintain control over a detainee, not as punishment.

The idea of interrogations is to create stress. The idea behind the "fear up" technique is to create fear in the mind of the detainee.

MG Mowhosh was provided shelter, water, food and, if he asked for it, medical care.

I have never been through SERE training and have no personal knowledge of what goes on there. I do know that Chief Welshofer has served in that training as a part of the cadre.

I don't recall a date when Chief Welshofer was conducting the interrogation I talked about where everyone was sitting on MRE boxes. I would say it was probably somewhere in the middle of the time period from 10 to 26 November 2003 when MG Mowhosh was at Blacksmith Hotel. Days blend together when you're getting 3 to 4 hours' sleep a night. During Rifles Blitz it was cold and

damp. When you did get to go to sleep, you were sleeping in a sleeping bag that was damp all the way through. We got hot chow maybe a total of five times while we were there, eating MREs when we got a chance to eat. You went from doing a report to doing an interrogation. I'd say on average we were work 19 to 20 hours a day, 7 days a week. The information we were trying to get was to keep soldiers alive. Soldiers were dying during this period of time.

I was not trained to determine the lawfulness of a particular technique. If there was a question in that regard, it would be elevated to a JAG at some level.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

The purpose of an interrogation is to gain reliable intelligence that can be actionable, not to create stress for the sake of stress. The information gained from physically-abusive techniques can be unreliable, since, as the field manual states in regard to torture, people may give information they think you want to hear just to make the abuse stop.

The fear-up technique is described in the field manual as an exploitation of a source's pre-existing fear. Oftentimes, a detainee will identify it himself when the interrogator is just sitting and talking to him. Guards make observations. The capturing unit may have noted something.

Page 3-16 of Prosecution Exhibit 17 gives an example of an unjustified fear; i.e., torture or death in our hands if captured. The manual states that caution should be exercised in using the fear-up technique because it could be in violation of the Geneva Convention, Article 17. It states specifically, "This approach has the greatest potential to violate the Law of War. Great care must be taken to avoid threatening or coercing a source, which is in violation of the Geneva Convention, Article 17."

Chief Welshofer told me that he had discussed the slapping technique with the chain of command and that it had been approved. I don't remember specifically if he said the same thing about the sleeping-bag approach. Because it was something

new that we had come up with, I assumed that he had, but I don't remember specifically.

If the wall locker is unavailable, that does not mean you can resort to kicking and punching or just doing anything you want.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

If civilian interrogators had interrogated MG Mowhosh, kicked him, and used a rubber hose, based on the manual and my training, that would appear to violate the Army rules.

EXAMINATION BY THE COURT-MARTIAL

(questions by the military judge based upon Appellate Exhibit XXV)

It was Chief Welshofer's decision to make the sleeping-bag technique off limits to anyone but him and me.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

Nonetheless, it's my understanding that MAJ Voss knew about the sleeping-bag technique.

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

The court recessed at 1328 hours and reconvened at 1544 hours, 17 January 2006, all parties again present, including the members.

MAJ Jessica R. Voss, U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

My unit is the 201st MI Brigade, Fort Lewis, Washington. I am the battalion S-3 of the 502d MI Battalion. In the summer and fall of 2003, I was the company commander of 66th MI Company.

That is the separate MI company that serves the 3d ACR, attached to the 3d ACR. During the summer and fall of 2003, I was commanding the company across a battlefield of approximately 90,000 square kilometers with soldiers spread from Fallujah out to the Syrian/Jordanian border.

I was the accused's company commander. I supervised his interrogation activities. In checking on my soldiers, I would also observe the activities at the detention facility by talking to my soldiers there and observing interrogations, on occasion. I did watch the accused interrogate. I saw him slap a detainee probably in the June time frame. I was somewhat shocked and discussed it with him. He explained to me that that was a technique that he'd learned in the SERE course and that it was an open-handed slap versus a closed-fist, and it was used as a shock technique to grab the attention of the detainee. I did not authorize the technique. I told him that I didn't believe that that was authorized under the Geneva Conventions.

Prosecution Exhibit 23 for ID is an e-mail I received from Chief Welshofer. This resulted in our having a discussion. Something had been sent down from the C-2 folks from CJTF-7, saying that the gloves needed to come off in regards to the detainees. The e-mail, which was sent by CPT Ponce, asks for an interrogation-techniques wish-list. Chief Welshofer had responded to the e-mail, mentioning the SERE instructor techniques of open-handed slapping and back-handed blows to the midsection, close confinement of quarters, sleep deprivation, white noise, and the use of fear of dogs and snakes. I received this e-mail after the e-mail traffic had taken place, so I hadn't seen the original, since it was not sent to me. I saw the response from MAJ Hoepner. Chief Welshofer and I discussed what MAJ Hoepner said and discussed Chief Welshofer's techniques and the fact that that was not an acceptable approach with our detainees. I think that I was clear in my guidance.

Prosecution Exhibit 23 for ID was offered and received into evidence without objection as Prosecution Exhibit 23.

(further testimony on direct examination of MAJ Voss)

After this discussion, I came to know of the sleeping-bag technique. Chief Welshofer, in a discussion that we had, brought it up to me that that was a new technique that had already been used at least once without my knowledge. Because

of the location of the company headquarters, I did not necessarily see Chief Welshofer on a daily basis, but on one of the visits that I had with him, it came up as a subject. Chief Welshofer described the technique as using an Iraqi sleeping bag that was thin, had a broken zipper, and that they would place the detainee in the sleeping bag to induce claustrophobic fears. I did not see the sleeping bag. I wouldn't necessarily describe Prosecution Exhibit 11, the sleeping bag in which MG Mowhosh died, as thin, but I think it is as described to me. Some cord would be wrapped around the body to give it more of that fear factor. To my understanding, the detainee was to be lying down. The interrogator sitting on the chest of the detainee was not discussed with me as part of the technique. When the technique was discussed with me, I expressed my concern of making sure that the detainee was going to have enough room in the sleeping bag to breathe and that that should be monitored closely. Chief Welshofer did not mention that he would hold his hand over the mouth of the detainee while the detainee was in the sleeping bag. I approved the use of the sleeping-bag technique, but had I known that the technique would include sitting on the chest of the detainee and covering the detainee's mouth, I would not have approved that because putting a detainee in a claustrophobic environment does not include cutting off ability to breathe. Chief Welshofer agreed with me about that.

Chief Welshofer was the subject-matter expert on interrogation because he had 17 years' experience at that time as an interrogator. He told me that.

I sometimes reviewed interrogation summaries. I couldn't say for certain that I saw Prosecution Exhibit 24 for ID, an interrogation summary. It's possible that this was the only summary of Chief Welshofer's interrogations of MG Mowhosh.

I recall some of the verbiage in Prosecution Exhibit 25 for ID; i.e., "I took the gloves off," and the last sentence that says, "I take this as an admission of guilt."

Prosecution Exhibit 25 for ID was offered and received into evidence without objection as Prosecution Exhibit 25.

Prosecution Exhibit 23 was published to the panel.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

With respect to the slap technique, I do not recall Chief Welshofer telling me that this was a technique he had used on U.S. military personnel while he was part of the cadre at SERE training. I have not been through SERE training and am not familiar with it.

The military judge sustained an objection to a question which the prosecution argued was assuming facts not in evidence. The defense asked for an Article 39(a) session.

The court members departed the courtroom at 1613 hours, 17 January 2006, at which time the military judge held an Article 39(a) session.

The defense argued that they were merely testing the witness's knowledge on use of the slap technique by a working group established by the Secretary of Defense, a group which issued a report on 4 April 2003 in which they recommended the use of the slap technique on unlawful combatants.

The military judge sustained the objection, stating that the defense could question the witness as to her knowledge of the Geneva Conventions.

The defense maintained its position that cross-examination had a wide latitude designed to test the witness's knowledge and that the witness had expressed an opinion on the Geneva Conventions. The civilian defense counsel believed he was delving into a legitimate area of cross-examination.

The Article 39(a) session concluded, and the court members returned to the courtroom at 1617 hours, 17 January 2006.

(further testimony under questioning on cross-examination)

At the time, I did not have any knowledge of whether the slap technique was authorized or in violation of the Geneva Conventions with respect to unlawful combatants. I am not an authority on the Geneva Conventions, nor am I a subject-matter expert on interrogation practices in the Army. At the time I had the discussion with Chief Welshofer, I did not look up the Geneva Conventions, nor did I look up "unlawful combatants" and determine whether or not certain techniques were lawful.

I was not on the distro list for the original e-mail. Chief Welshofer gave me a closed copy. I recall the part of the e-mail in which Chief Welshofer proposed techniques used by SERE instructors. CPT Ponce's e-mail discussed what rules of engagement existed with respect to unlawful combatants. There was some confusion about what the rules were and how they applied in the circumstances in which we found ourselves in that time frame. That confusion is evinced by various memos issued by General Sanchez in terms of what techniques were authorized or were not authorized.

I am testifying under a grant of immunity. Anything I say here cannot be used against me. I received notice of intent to impose a general-officer reprimand with respect to MG Mowhosh and what happened to him. In response, I indicated that I was aware of the sleeping-bag technique and expressed that I believed it was in compliance with a memorandum issued on 10 September by General Sanchez and that it was an authorized stress position. I specifically quoted from that memo. I did express concerns that it be employed in a safe manner. As the commander, if I had had any questions about what the sleeping bag looked like, whether it was thin or thick, or anything like that, I was free to say that I wanted to see it demonstrated before it was used. If I had had any concerns about the legality of the technique, I could have consulted a judge advocate, and I did not do so.

I was not aware of a hand being placed over a detainee or a detainee being sat upon while in the sleeping bag.

Defense Exhibit A for ID is the 10 September 2003 memorandum from General Sanchez which I referred to in my rebuttal response to the letter of reprimand. My rebuttal is Defense Exhibit B for ID.

Defense Exhibit A for ID was offered and admitted into evidence without objection as Defense Exhibit A.

(further testimony on cross-examination of MAJ Voss)

Based on the 10 September 2003 memo, I believed that the sleeping-bag technique was a stress position and an authorized technique.

My military records do not reflect a letter of reprimand. It was set aside. At this point, my career is on track.

It was my understanding that the sleeping-bag technique was being used by SGT Lamb as well as Chief Welshofer. I never observed the technique in use.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

In my rebuttal response to the letter of reprimand, I noted in Defense Exhibit B for ID that the technique was never used as a tool to prevent breathing. I wanted the effect of the technique to solely be claustrophobia. Had I been informed that the technique was being used to prevent breathing, I would not have authorized it because it would risk having a detainee pass out or die. This had been a concern of mine when we initially talked about it. Mr. Welshofer assured me that the detainee would be checked regularly for breathing to make sure that there was enough air space between the sleeping bag and the detainee's mouth to ensure that there was proper ventilation.

I do not believe that I was unclear in my guidance to Chief Welshofer not to use the slapping technique. He was my subordinate. It was interesting to hear that he had used it at the SERE school, but I didn't feel that we needed to use it at our facility. We were not in a school environment but in a combat zone.

Some of our detainees were eventually released. I did have a concern that if detainees were slapped around, it could have a negative effect on the local populace. It could cause them to not like us and volunteer to fight against us.

My concerns about breathing were related predominantly to the sleeping bag itself, rather than the cord, because the way I understood the cord to be wrapped around the body, it was just a scare tactic, if you will. The zipper of the sleeping bag was broken, so it was not possible to close the bag all the way without the cord.

Having a sheet over my head could cause the sheet to become damp. It could become more difficult to breathe the longer a sheet is held in place.

When I responded to the proposed letter of reprimand, I said that I thought it would be authorized to put a detainee in a sleeping bag and monitor his breathing, allowing enough space between the face and the fabric, and loosely tie the 550 cord around the sleeping bag and detainee, solely as a claustrophobic technique, not as an oxygen-depriving technique.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I did not coordinate my response to my letter of reprimand with Chief Welshofer in preparing his response to his letter of reprimand.

I included in my response that at no time did I perceive any violations of CJTF-7 policy with respect to the technique. I felt that the technique allowed for a legal practice of interrogation and exploited an identified weakness without harming the detainee and said that the technique was only used as a last resort. To my personal knowledge, the technique had not been used in a way to endanger someone's life.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXVI)

I stated that I was disgusted by Chief Welshofer's slapping a detainee in June of 2003. I ordered it stopped from that point on. To my knowledge, he acknowledged my order.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I did not report that event because I felt it was something that I needed to handle at the lowest level. I thought I had handled it.

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

MAJ Anne B. Rossignol, M.D., U.S. Army, was called as a witness by the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the trial counsel)

I am from 4th Squadron, 3d ACR, Fort Carson. I've been a flight surgeon for about 3½ years. I graduated from medical school in 1999, and I finished my residency in 2002.

In November of 2003, I was employed in the capacity of flight surgeon with the 3d ACR.

A court member, MAJ Sliman, informed the court that he believed he knew the witness when she lived across the street from him about 3 years earlier.

The members and witness departed the courtroom at 1641 hours, 17 January 2006, at which time the military judge held an Article 39(a) session. It was decided that individual *voir dire* would be conducted with MAJ Sliman in regard to the issue.

MAJ Sliman returned to the courtroom and was questioned by the military judge. MAJ Sliman told the court that he hadn't known the witness for very long, only approximately a month before she had moved from the neighborhood. He assured the court that his knowledge of her would not cause him to give her testimony any more or less weight than that of any other witness or impact his ability to sit as a fair and impartial member on the case.

Neither side had any further individual *voir dire* of MAJ Sliman, who returned to the deliberation room.

There was no challenge by either side of MAJ Sliman.

The Article 39(a) session was concluded, and the witness and members returned to the courtroom at 1645 hours, 17 January 2006.

(further testimony on direct examination of MAJ Rossignol)

For approximately 2 weeks in November 2003, I worked at Support Squadron as the physician overseeing care of detainees as well as soldiers assigned to the unit running the detention center in Al Qaim, Blacksmith Hotel. As the detainees came into the site,

they were interviewed and asked if they had any medical problems or took medications or if they had any current medical concerns. The physician's assistant and I were always on hand, and we would see if there was anything we could help them with. Each day, we had a team that would go into each of the areas where the detainees were held, and we would ask if anybody had any medical problems. We would visit each one with a medical question or problem.

I am familiar with MG Mowhosh. He was in the camp while we were there, and I cared for him on the day that he died. I don't remember exactly the first time I saw him, but we'd been there for several days when he came in. I remember him because people pointed out that he was a general. He often spent some time in the area where we had our medical tent.

To my knowledge, MG Mowhosh did not request medical attention when he in-processed.

The day the general died, I was on duty in the tent on the right, closest to the red container-like object, on Prosecution Exhibit 7. These tents are about in the center of Prosecution Exhibit 7. The tent to the left of mine is where the in-processing of detainees was done.

I was by myself in my tent on the day the general died. SFC Sommer came in and said there was a detainee I needed to see. I got my aid bag. It felt like it took a long time to get to the detainee, but I would say it was probably 3 or 4 minutes. On the way, I asked what the problem was, and I was told that the general had collapsed. I asked if he was breathing, and SFC Sommer said he didn't know, so we really started to pick up the pace then. When we got there, MG Mowhosh was lying on the floor, and Chief Welshofer was doing chest compressions. I did a quick assessment. I asked what had happened, and Chief Welshofer said he had been interrogating him and he'd collapsed. I checked his vital signs. He was not breathing, and he had no pulse, so at that point it's appropriate to call a code. I asked if I should proceed with the code, and Chief Welshofer told me I should proceed. We initiated rescue breathing and chest compressions, and we summoned medics to bring aid bags and the PA, CPT Marlow, to bring equipment to start an airway. We proceeded with the code for approximately 45 minutes. We did all we could to try to establish an airway. We were able to apply oxygen, and we continued chest compressions and reassessed

frequently. We never got a pulse or any spontaneous breaths. We tried to gain I.V. access, and we were not successful. One of our NCOs was trying to get a medevac as we were doing the code, which they were unable to get due to weather. So, approximately 45 minutes later, we called the code. My notes said that we started the code at approximately 0911, and we finished the code at approximately 0950.

When I arrived on the scene, I was aware that the general had been undergoing an interrogation when he collapsed. I was not aware when I arrived or while I was treating the general that he had been in a sleeping bag or that he had been wrapped in an electrical cord when he had become unresponsive.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

My primary concern was not to conduct an investigation but to provide medical care. "Collapsed" can mean a lot of things. I asked if the general was breathing, and SFC Sommer said he didn't think so, so I suspected he was not conscious.

I am not aware of any circumstance at this location during this time frame when detainees' access to medical care was impeded. Detainees were aware that there was medical care available to them if they needed it. Every day we walked to each of the detainee sites. I went with one or two medics. Some of the MPs would come along to help, and the guards in the area would help. We would ask who needed medical care, and the detainees would stand up or raise their hands, and usually most of them did.

The general was in Army custody from 10 November to 26 November, approximately 16 days. I am not aware of any occasion where he requested medical care or treatment or stated that he had any medical condition. We kept little notes just between myself and the PA but no permanent medical records. Oftentimes, we would write what medications we used. All the detainees wore a little gown, and in their left pocket was where they had their medications. Often, they came into the detainee site with their medications, and they'd keep their note in there. Every day, they'd pull it out and show it to us.

MG Mowhosh was noticeably overweight, particularly for that population. I would have guessed he was probably 270 pounds and in his early 60's.

If the general had stated he had some medical condition, I probably would have documented that. The only note that I had was the note that I wrote about the day of his death.

I am not aware of the general's receiving any medical treatment after the 24th of November. I was not called on the 24th or 25th of November to examine him. If he had wanted medical treatment for any injuries he might have sustained, all he had to do was request it.

I was not specifically aware that MG Mowhosh was conversant in English. He did not speak to me, but I know that he spoke to some other people, so I assumed he was.

From the time the general arrived at the facility, I probably saw him almost every day just in passing.

REDIRECT EXAMINATION

(under questioning by the trial counsel)

On the 24th of November, I did not interact with MG Mowhosh. I don't recall specifically which days I saw him walking. I know I saw him walking on a lot of days that I was there. I don't recall which days, though.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I don't know what MG Mowhosh said about his medical condition at the time he in-processed. I was not in the tent in which he in-processed. As far as I know, every detainee that came in that had a medical condition was sent to us, but I can't say if he was asked or not.

I don't specifically recall saying at Chief Williams' Article 32 investigation that MG Mowhosh had denied having any medical conditions. As far as I know, he didn't. I believe that's what I said at the Article 32. If I could be more clear, it is my understanding that anybody who said that they had a medical

problem was sent to me, and if they were not sent to me, it meant that they didn't say they had a medical problem. So, I probably jumped to a conclusion there.

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

The court recessed at 1703 hours and reconvened at 1731 hours, 17 January 2006, all parties again present, including the members.

SA Curtis E. Ryan, a civilian, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the trial counsel)

I work at the Indianapolis Resident Agency, CID, Indianapolis, Indiana. I'm a CID special agent. I became an agent 23 April 1999. I am currently employed as a civilian, having assumed that position 15 November 2004. As a CID agent, my job is the same as it was when I was a CID agent in the military.

I deployed from October 2003 until March 2004 with the 87th MP Detachment, CID, Fort Bragg. I was attached to the 82d Airborne Division when I investigated the death of MG Mowhosh. The death was originally reported to us by the division headquarters. We were informed that he had died during an interrogation on 26 November 2003. Shortly after the initial report of the death, we received an e-mail with attached photographs, including two or three pictures of the general's remains. Looking at them, you could see bruises visible all over the torso. The bruises were all shapes and sizes.

The general died geographically distant from us, so the first thing we did was arrange transportation. On 27 November 2003, we moved by air to Al Asad Air Base, or FOB Rifles Base. There we examined the general's remains. Photographs were taken at that time.

After that, we briefed the chain of command as to the results of the examination. We learned that the general had died somewhere else, so we arranged transportation to that location.

Prosecution Exhibit 21 is a map of a portion of western Iraq near Al Qaim. Blacksmith Hotel and Tiger Base are on the exhibit. It is an accurate reflection of the approximately 6 miles between the two. We traveled to Tiger Base by helicopter on the night of 27 November 2003. We met with the regimental chain of command and arranged vehicle transportation to Blacksmith Hotel for the morning of 28 November 2003.

When we first arrived, we were met by Mr. Welshofer, who gave us a tour of Blacksmith Hotel and a briefing on how the detention facility worked. When we got to interrogation room 6, we learned that Mr. Welshofer was interrogating the general when he died, so we told him that it would be better if we had a different point of contact. At that time, a lieutenant was designated as our POC.

I recognize Prosecution Exhibit 2 as a photograph I took of the building that the TOC and interrogation room 6 were located in. Interrogation room 6 is on the back side of that building at about the mid-point. In this photograph, the TOC is at the end of the building closest to the right side of the photo.

I recognize Prosecution Exhibit 3 as a picture I took of the same side of the building but taken from the opposite end. Rooms after the TOC toward the other side of the building were all empty. They were used for interrogations. I cannot see the entrance to interrogation room 6 from this photograph. There is a truck on the far right side toward the middle of the photograph. It was on a dirt road that led to the detention facility, and that road divided that building from the pens where the detainees were housed, which would be to the right of that truck.

Prosecution Exhibit 4 is a photograph of the outside entryway to interrogation room 6. There was a doorway inside the interrogation room, but it was covered with a piece of plywood. Interrogation room 6 is the room we were told MG Mowhosh died in.

Prosecution Exhibit 5 is a photograph of the interior of interrogation room 6 that I took while standing in the doorway. The boxes in the photo are MRE boxes. I did not move anything before I took the photograph. That's how we found the room on 28 November.

Prosecution Exhibit 6 is a picture I took of the interior of interrogation room 6. It shows the covered doorway. There was a light stand and that sleeping bag and electrical wire. This depicts the room as I found it when I entered.

We also made notes, documenting our observations of the room and the building. After that, I first talked to Mr. Welshofer. After that, I spoke to SPC Loper. I did not conduct any canvass interviews.

Prosecution Exhibit 7 is a photograph of the detainee holding pens taken from the roof of the building that housed the TOC and interrogation room 6. The shipping containers in the photograph were used as a place for the detainees to sleep on a cold night. Just to the left of those red boxes about halfway up the photograph in the middle, the people standing are some detainees and some soldiers. In that area of the photograph are the detainee pens.

Prosecution Exhibit 8 is another picture of the detainee pens that I took from a slightly different perspective. I think the truck in the middle of the photograph is soldiers dropping off detainees to be in-processed.

Prosecution Exhibit 22 is a rough sketch I made just to give the layout of the building with interrogation room 6 in relation to holding pens, as if I were standing on the roof above the TOC.

I interviewed SPC Loper. He had been identified to me as the guard who escorted MG Mowhosh to the interrogation the morning of 26 November. The first time I learned of the use of the sleeping bag in the interrogation of MG Mowhosh was while I was interviewing him. I then collected the sleeping bag and electrical wire from interrogation room 6 as evidence.

Prosecution Exhibit 11 is the sleeping bag that I found in interrogation room 6. I know that it is the sleeping bag from that room because I marked my initials and the time and date that I collected it as evidence on the foot of the sleeping bag. It is in substantially the same condition it was when I retrieved it.

Prosecution Exhibit 12 is the electrical wire that was underneath the sleeping bag in interrogation room 6. It is in substantially the same condition it was when I retrieved it.

Prosecution Exhibit 10 is a photograph that I took prior to collecting the sleeping bag and the electrical wire. This photograph was made after we moved the sleeping bag and spread it out to take a better picture of it before collecting it as evidence. The sleeping bag was on top of the electrical cord.

The sleeping bag now is very dry and dusty and dirty. When I retrieved it, parts of it were damp. It was dirty.

Collecting the sleeping bag was my last substantial activity for the 28th. Shortly after that, we left Blacksmith Hotel and returned to FOB Tiger.

I learned of an incident that had occurred with the general on 24 November from SPC Loper. There was also mention of it from the chain of command.

There was no cross-examination of the witness on the testimony presented to that point.

The court recessed at 1758 hours, 17 January 2006, to go into a closed session, which are pages 83 and 84 of the record of trial.

The court reconvened for an open session at 1837 hours, 17 January 2006, all parties again present, including the members.

The military judge announced that the court was adjourned until the following morning.

The court adjourned at 1837 hours, 17 January 2006 and reconvened at 1058 hours, 18 January 2006, all parties again present except the members.

The military judge's order closing part of the proceedings had been marked as Appellate Exhibit XVIII and released. He stated that his order was in accordance with guidance established by the Army Court of Criminal Appeals in the case of *Denver Post Corporation versus United States and Ayers* and also guidance provided by the Court of Military Appeals in the case of *United States versus Grunden*, 2 MJ 116. He stated that he was fully cognizant of the 6th Amendment right to a public trial and had considered that right in issuing his ruling and order. He stated that he was also aware of the standing of the press to object to closing proceedings under *ABC, Incorporated versus Powell* at 47 MJ 363 and other cases.

The military judge heard argument from Steven D. Zansberg, Esq., a representative of *The Denver Post Corporation*, the Colorado Springs *Gazette*, and the Associated Press, in regard to the closure of portions of the proceedings and reconsideration of the 5 January 2006 closure order in light of information that was already in the public domain.

The civilian defense counsel also made argument in regard to having the trial in an open forum and suggested that witness testimony be bifurcated, if necessary, in order to allow as much of the proceedings to be open as possible.

The court recessed at 1132 hours, 18 January 2006, to go into a closed session, which are pages 86 and 87 of the record of trial.

The court reconvened for an open session at 1421 hours, 18 January 2006, all parties again present except the members.

The military judge altered his original order closing portions of the proceedings and made the following findings, conclusions, and orders:

> There was reference to an Article 32 investigation in the case in Mr. Zansberg's argument. The Article 32 investigation in this case was waived. The Article 32 investigation the court understood as referenced in Mr. Zansberg's argument occurred in companion cases but involved the issues addressed here.
>
> There was a proper classification review in the case. The materials were properly classified by a security specialist, who held proper classification authority.
>
> The classifications were not made in an arbitrary or capricious manner; they were legitimately and appropriately made.
>
> While some information related to the case might be in the public realm, not all of it was, and it did remain classified.
>
> The names of the witnesses whose identity was classified were not read to the members at the beginning of the proceedings. Other witnesses' names had been read.
>
> The military judge had engaged in the balancing dictated in *United States versus Grunden*. A new classification review had been provided to the court and marked as Appellate Exhibit XXVII. While the new classification had unclassified certain information, it was on classified matters relevant to the reconsideration of his order on 5 January 2006. He did consider Appellate Exhibit XXVII.
>
> The military judge was convinced from all the evidence and circumstances that the government had established a compelling interest to close portions of the proceeding. He found that there was a reasonable danger that presentation of the classified matters before the public would expose military matters which, in the interest of national security, should not be divulged.
>
> Upon reviewing again a deposition taken from a witness whose identity was classified and upon discussion with counsel in the closed Article 39(a) session, the military judge had determined

that it was possible to bifurcate the testimony of one of the witnesses whose identity was classified.

The military judge ordered that the proceedings for that witness would initially be closed to take classified testimony and then opened for the remainder of his testimony. Because the identity of the witness had properly been classified and remained classified, when the session was opened to the public, a screen would be set up to prevent his identity from being disclosed.

The military judge had reconsidered his ruling relating to the other witness whose identity was classified and determined that based upon information provided at the initial November hearing as well as the current proceedings, his identity remained classified and that he would testify on entirely classified matters.

Additionally, based upon proffers made during the Article 39(a) session, the testimony of Chief Sonnek would not be closed, and he would testify completely in a public forum.

The military judge had been informed that the parties at that point did not anticipate SSG Dodds would testify in the case, consequently mooting the military judge's earlier order pertaining to him.

The military judge adhered to his original ruling and order of 5 January 2006 except to the extent that he had reconsidered closing in its entirety the testimony of one witness whose identity was classified and to permit some of the testimony to occur behind a closed screen, as had been suggested by the civilian defense counsel as well as Mr. Zansberg in argument. The testimony of the other witness whose identity was classified would be taken in a closed session, and the testimony of Chief Sonnek would be open.

Regarding the request for access to exhibits not involving classified matters, the military judge had reviewed the request and the case site, *United States versus Scott*, 48 MJ 663, and did not believe that he was the proper authority to release the exhibits. He believed Army regulations placed authority in another individual and encouraged the media to work with the Fort Carson Public Affairs Office to achieve the release. The military judge encouraged their release if applicable regulatory requirements were met.

Recognizing that he had not granted all of Mr. Zansberg's requests, the military judge had considered his request for a continuance or a stay in the proceedings and made the following findings:

> Charges had been originally preferred in the case in October 2004 and referred in May 2005. The accused had been arraigned in June of 2005. The case had been docketed for this period for 3 months. There had been a proceeding addressing closed proceedings on 16 November 2005. It should have been clear to all interested parties that part of the proceedings would be closed. It was at this point almost the midpoint of the trial. Significant evidence had already been presented. Significant effort and detailed logistics and coordination had been exercised in getting the case ready for trial at the current time. Witnesses with otherwise busy schedules had come from all over the country for the proceedings.
>
> The military judge stated that he was convinced that granting a stay or a continuance in the proceedings would not serve the ends of justice.

The request for a continuance was denied.

The Article 39(a) session was concluded, and the members returned to the courtroom at 1431 hours, 18 January 2006.

The military judge informed the members that the delay in the proceedings was not the fault of either counsel and that it should not be held against any of the parties. He explained that the delay had been due to an appropriate request that he reconsider his ruling in regard to closure of parts of the proceedings and that he had made a ruling modifying his earlier ruling in certain respects.

Mr. Gerald M. Pratt, a civilian, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I am from a small town outside of i.e., I am a chemical engineer for the Naval Nuclear

Propulsion Program for the Naval Reactors facility in I'm in the Utah Army National Guard.

I was deployed to Iraq in the fall of 2003 with the 3d ACR on Operation Rifles Blitz. I worked for Chief Welshofer. I was the interrogation operations NCOIC. It was my job to ensure that the interrogations went smoothly, to ensure that interrogators had booths in which to interrogate and translators to translate the interrogations. We had sign-out rosters for the interrogators to see which interrogation rooms were available. I assigned a detainee to interrogate.

There was one instance where I sent an interrogator to a booth to interrogate a detainee, and he returned to me and told me that he couldn't because there was already an interrogation taking place there. I went to that booth and noticed Chief Welshofer interrogating a detainee. I talked with him after his interrogation was completed and told him that he needed to sign out his detainee before he took a booth.

The members departed the courtroom at 1437 hours, 18 January 2006, at which time the military judge held an Article 39(a) session in regard to an objection by the defense.

The defense requested a proffer as to the government's line of questioning.

The prosecution stated that Section III notice had been provided to the defense. Among items attributed to Mr. Welshofer through Mr. Pratt was the statement, "Chief does what Chief wants," which the government planned to elicit from the witness.

The defense had no objection.

The Article 39(a) session was concluded, and the members returned to the courtroom at 1438 hours, 18 January 2006.

(further testimony on direct examination of Mr. Pratt)

I was talking to Mr. Welshofer about problems with the sign-out log. I told him, "You need to tell me when you're going to take a booth," and he responded, "Chief does what Chief wants to do."

I was involved in Operation Rifles Blitz. I was moved to Al Qaim, Tiger Base, between the 15th and 17th of November. From

Tiger Base, we moved to the Blacksmith Hotel. At Al Qaim, I was the interrogation operations NCOIC. Everybody who arrived at Blacksmith was new to Blacksmith.

I recall a meeting at the beginning of Rifles Blitz at Blacksmith Hotel that involved the interrogators. All the interrogators and military translators were there. The accused was there. I was there. Chief Welshofer talked about the sleeping-bag technique. He told us that it was a dangerous technique. He gave us an example of a detainee that he had been interrogating, who lost consciousness and stopped breathing. Chief told us that it scared him to death and that he and SGT Lamb were the only ones that he was going to authorize to use the sleeping bag.

During the Blacksmith Hotel time, I did see Chief Welshofer using the sleeping-bag technique three times that I recall. One time involved someone named Kaleed. "Kaleed" was his real name, his first name. Chief Welshofer took over the interrogation from another interrogator, and he began by asking a question. The detainee responded, and Chief Welshofer slapped the detainee. The same thing happened again, at which point he got the sleeping bag. Chief Welshofer put the detainee into the sleeping bag head-first. The detainee was standing there, and Chief threw the sleeping bag over the top of his head. The zipper was broken, so the bag wouldn't zip up. In order to secure the sleeping bag around the detainee, Chief got a big cord and wrapped the detainee and tied the cord at the bottom. Chief Welshofer picked him up and then threw him to the ground and body-slammed him. It looked to me like something I saw in All Star Wrestling. He slammed the weight of his body onto the detainee's chest. He landed on the detainee with his butt and what appeared to be the full weight of his body. Then inside the sleeping bag, the detainee, though he was handcuffed, somehow or another was able to pinch Chief Welshofer, who was on top of him. The people in the room thought it was funny. I believe that was the night of the 24th.

During this time, there was one Iraqi general at Blacksmith Hotel. I saw him the evening before he died. Chief Welshofer wanted to allow the general to see his son. Chief and I went out to the cage where the general was sitting, and Chief told the general, "If you want to see your son, you have 15 seconds to get up and go see him," and then Chief walked away. The general was unresponsive, and the guard and I stood over the

general, and I told him, "Sir, get up." I said, "You can see your son. Get up," and he couldn't get up. He made a hunched sound and muffled moan. The guard helped him up. I told him to put his shoes on, and he couldn't do it because his feet were too swollen. The guard and I escorted him outside of the cage itself, and then the guard left, and I was going to take him outside of the holding pens. It was a very long walk. He had to catch his breath every few steps. He was walking extremely slowly, and he basically couldn't move. It appeared to me that he was having an extremely difficult time moving.

I took the general to where his son was being held, about 200 meters away from the general's pen. If I recollect correctly, I believe it took 15 to 20 minutes to get that far.

On Prosecution Exhibit 22, the general was in the farthest holding pen, the top right triangle. The guard departed us at the gap between the two sets of rectangles on the top of Prosecution Exhibit 22. Then we walked a very slow walk through here, down the gap towards the words "dirt road." I took him across the dirt road and through the back yard of the buildings. If I'm not mistaken, I believe we went through the buildings. There was a door that went straight through the buildings. And then I met Chief Welshofer in the front of interrogation room 6.

Everybody in the pens, the guards and the detainees, were watching me and the general walk very slowly down the dirt road.

Chief Welshofer saw the general walking and breathing this way. Chief was watching us as we approached him, and he told the general, "If you tell your son how we've been treating you, I will cut off the conversation." He told the general that twice. Then Chief allowed the general into interrogation room 6 to see his son. I was not the one to return the general to his pen.

Prior to the general meeting with his son, I had seen Chief Welshofer and Mr. Williams interrogating the general. I would say there was a total of 10 people in the room. That was approximately 2 or 3 days before the general's death.

Prosecution Exhibit 11 is the sleeping bag in which the general died. It appears to be the same one in which Kaleed was interrogated. After the general died, CID took the sleeping bag. After that, Chief Welshofer procured another one. A detainee came in with a sleeping bag, and Chief got it.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I never saw Chief Welshofer hit MG Mowhosh. The general never complained about his physical condition to me or my interrogators.

The detainee who pinched Chief Welshofer was nicknamed "Kaleed the Claw" because of the pinch. The detainee was not in the sleeping bag before Chief Welshofer picked up the interrogation. Other people present at that interrogation were SFC Sommer, SGT Higgins, and SPC Joiner. We all thought the pinch was pretty funny and laughed. SFC Sommer gave the detainee the nickname. Kaleed was disruptive during the interrogation, and Chief Welshofer was having difficulty maintaining control over him. This interrogation took place on the evening of 24 November 2003. I recorded it in my journal as such.

There were other detainees that were being interrogated that same night along with Kaleed, his two brothers. It is not possible that I have confused some of these interrogations.

I don't remember the date, but SA Curtis Ryan did interview me. August/September 2004 sounds about right. I recall describing some of these events during that interview. I did not at that time distinguish between the detainee upon whom Chief Welshofer slammed his body weight and the detainee who pinched Chief Welshofer as being two different detainees. The interviewers must have taken their notes incorrectly. I told the two investigators exactly what I just testified to. I can't account for how they took their notes.

I made a handwritten statement on 30 December 2003, which was prior to the interview you just described. That would have been closer in time to the events in question. I don't recall the exact content of the statement I made to CID at that time. I was placed under oath, and I signed it. In that statement, I did not describe Chief Welshofer's throwing Kaleed down nor body-slamming him. I didn't even describe the pinching incident in the statement.

At the meeting of interrogators at Rifles Blitz, Chief Welshofer said only he and SGT Lamb would be allowed to use the sleeping

bag and that a prior loss of consciousness on the part of a detainee had scared him. The idea behind interrogations is to get information, not to kill detainees.

Even on the night before the general died, Chief Welshofer was making it possible for the general to see his son. The general did not ask for medical assistance, despite how he was walking.

Chief Welshofer put me in for a Commendation Medal.

I wrote to the President of the United States, saying that I knew where weapons of mass destruction were located but it appeared that no one in the Army was seriously looking for them. I did not go to the IG before I wrote the President. I also wrote to all my other elected officials.

I am writing a book about my experiences in Iraq. If it's successful, I stand to make money on that.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I had what I thought to be credible information about weapons of mass destruction.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXIX)

During the 24-26 November 2003 time period, there were approximately 450 detainees at Blacksmith Hotel.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

During the general's walk from his pen to interrogation room 6, I would say every single one of the detainees watched that walk. It would have been obvious to anyone seeing the general take that walk that he was injured. Chief Welshofer saw him walking that way.

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

Special Agent William Hughes, U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the trial counsel)

I am assigned to the 87th Military Police Detachment, CID, Fort Bragg, North Carolina. I've been in the Army about 14½ years. I've been a special agent for CID for about 4½ years. Prior to that, I was a military policeman for about 10 years.

In my duties as a special agent, I deployed to Ar Ramadi, Iraq, in September 2003 until about March 2004, attached to the 82d Airborne as a CID agent. I am currently deployed.

While I was deployed, I investigated the death of MG Mowhosh. My office was notified by the 82d Provost Marshal's office of the death of a detainee. The report was followed up with some photographs of a dead detainee with multiple bruises on his body. At that time we coordinated with the Provost Marshal's office for transportation to where the body was. I viewed the body.

Prosecution Exhibit 15 is a photograph of MG Mowhosh. When I inspected his body on the night I arrived, his body looked substantially the way it does in this photo.

Prosecution Exhibit 14 is a photograph of the back side of the general. The general's body looked substantially the way it does in this photo.

While we were viewing the general's body, we photographed the entire body with and without scale. We fingerprinted him. After that, we briefed the deputy commander, and then we coordinated for transportation to the death scene.

We arrived at the death scene the next day. When we initially arrived, the first person we were in contact with was Mr. Welshofer, who showed us interrogation room 6, which he

identified as the room in which the general had died during interrogation. He told us that he was involved in the interrogation when the general died and that his lawyer had informed him not to talk to anybody. Then we told him it would be best if we talked to somebody else.

The members departed the courtroom at 1515 hours, 18 January 2006, at which time the military judge held an Article 39(a) session.

The trial counsel apologized to the court, saying that she had given the witness instructions.

The defense asked for a recess to consider his response to the witness's testimony regarding the accused's right to counsel.

The court recessed at 1516 hours and reconvened at 1530 hours, 18 January 2006, all parties again present except the members and the witness.

The defense made an RCM 915 motion for a mistrial and requested to *voir dire* the witness.

Special Agent William Hughes, U.S. Army, was recalled as a witness during the Article 39(a) session, was reminded that he was still under oath, and testified in substance as follows:

(under questioning on *voir dire* by the civilian defense counsel)

I've been a military special agent for 4½ years. Prior to being an agent, I had been a military policeman for about 10 years.

I understand what the 5th Amendment is, right to counsel, right to remain silent, and Article 31 rights. I've testified in a law enforcement capacity at courts-martial maybe six times and for Articles 32 a couple dozen times. I have never previously on the record in the presence of members commented on an accused's right to remain silent or exercise of his right to remain silent or right to counsel. I have dealt with suppression motions where there was an issue related to rights advice. I understand that these are important constitutional rights. I understand that the problem with referring to them in a court-martial is that they may cause an inference of guilt if court members hear a reference to the exercise of those rights. I knew that before I testified today. In preparing for my testimony today, I don't recall being told not to comment on

that. Based on my experience and level of training, I don't feel that I had to be told not to comment on that. I understand the significance of commenting on someone's exercise of their right to counsel or their right to remain silent.

(under questioning on *voir dire* by the assistant trial counsel)

When I made the comment, I was trying to orient the members to where I was in my investigation. I was going over it in my head, and it was just the logical progression of what I was thinking about, and I just said it. I was absolutely not trying to imply guilt. It was a mistake.

I do not know Mr. Welshofer. I have no feeling about him one way or the other.

The witness departed the courtroom.

The defense believed case law looked at the issue of whether the disclosure had been intentional or in some collusion with the prosecution. Defense did not believe that to be the case but argued that regardless of the intent of the witness, the problem was the impact on the court members and that individual *voir dire* of the members as to what they heard would only accentuate the problem. Additionally, the defense believed a curative instruction would exacerbate the problem.

The defense asked for a recess to research case law on point.

The court cited *United States versus Garret* at 24 MJ 413 and *United States versus Sidwell* at 51 MJ 262 for possible review by the defense.

The court recessed at 1542 hours and reconvened at 1608 hours, 18 January 2006, all parties again present except the members.

The defense distinguished the cited cases, noting that *Garret* involved a question by trial counsel and the judge had interjected before the witness could respond and that in *Sidwell* the defense had offered an alternative remedy of a curative instruction as well as striking the witness's testimony.

The defense also argued that the appellate courts had repeatedly addressed the fact that self-serving statements to claims of good

faith on the part of a witness, trial counsel, or investigator should not be accepted.

The defense argued that in this case, a mistrial was an appropriate and called-for remedy.

The prosecution pointed out similarities in the case at hand to *Sidwell*. The question was whether the error of constitutional magnitude prevented the trial from going forward, and the prosecution argued that the military judge would be required to conduct a "harmless error" analysis to determine if any prejudice resulted. The government believed the error could be cured with a curative instruction, as it had been in *Sidwell* and *Garret*. Bad faith was an area for consideration. The prosecution believed the witness's comment to be a mistake that could be cured with a curative instruction and the striking of the witness's testimony. The prosecution argued that a mistrial should be a very last resort when no other remedy would be appropriate.

The court closed at 1615 hours for deliberation on the motion and opened at 1653 hours, 18 January 2006, all parties again present except the members.

The military judge made the following findings, conclusions, and ruling:

> The comment made by SA Hughes was essentially that the accused said he had a lawyer, who told him to remain silent. This was an inadmissible and inappropriate comment upon the accused's right to remain silent.
>
> SA Hughes gave this testimony, responding to a general question regarding the agent's activities at the Blacksmith Hotel. The agent seemed to be restating an event involving a spontaneous statement by the accused, not in an interview setting. The comment appeared to catch the government by surprise.
>
> SA Hughes' demeanor on the stand appeared unremarkable when he was first testifying. On *voir dire* by counsel, SA Hughes described his experience. He'd been a CID special agent for 4 years, and in that time he'd testified in about six courts-martial. On *voir dire* he appeared professional but embarrassed and chagrined. He explained that in mentally going over the events of November 2003 at the Blacksmith Hotel, he had not

intended to mention that fact that he did mention. He appeared credible.

The military judge stated that he had seen absolutely no spite or malice on the part of SA Hughes or the government. SA Hughes' reference had been an inadvertent and isolated comment, not a planned or malicious attempt to bring inadmissible matters before the members.

The military judge believed the error to be of constitutional magnitude but that, considering the circumstances of the case, it had been an isolated reference to a singular invocation of rights, which had been harmless. It had been extremely brief and had provided no details.

The military judge did not believe that, under the circumstances, a mistrial was manifestly necessary in the interest of justice.

The motion for a mistrial was denied. However, the military judge stated that he would exclude in its entirety the testimony of SA Hughes and would instruct the members in that regard and proposed a curative instruction, which he read aloud.

The military judge asked the defense if they affirmatively requested that the curative instruction not be given. The defense asked that the instruction be given.

The Article 39(a) session was concluded, and the court members entered the courtroom at 1658 hours, 18 January 2006.

The military judge informed the court members that he had excluded the testimony of SA Hughes and that they were to disregard his testimony in its entirety.

The military judge gave the court members the following curative instruction:

"Members, you may have heard that the accused may have exercised his right to remain silent and/or right to counsel.

"It is improper for this particular testimony to have been brought before you. Under our military justice system, service members have certain constitutional and legal rights that must be honored. When suspected or accused of a criminal offense, a

service member has an absolute right to remain silent and certain rights to counsel. That the accused may have exercised his rights in this case must not be held against him in any way. You must not draw any inference adverse to the accused because he may have exercised such rights. And the exercise of such rights must not enter into your deliberations in any way. You must disregard the testimony that the accused may have invoked his rights."

The military judge was assured by all court members that they would follow the instruction.

CW2 Todd Sonnek, U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I am currently assigned to Operational Detachment Alpha as the XO. I had those same duties in November 2003 at or near Al Qaim, Iraq.

On 24 November 2003, I was at the Blacksmith Hotel near Al Qaim, Iraq, with my folks, some civilians, and some Iraqis, interrogating detainees. When I was finished, I walked out of the room and encountered Chief Welshofer. He wanted to interview MG Mowhosh with a fear-up technique. He brought me and the civilians and Iraqis into the room with the general to scare him with the crowd of people. He wanted the Iraqis to ask the questions. He gave them the questions to ask. The crowd of us entered the room. This was Chief Welshofer's interrogation. The Iraqis began asking questions, and the general wasn't answering. The Iraqis slapped the general, and the general didn't answer. This went on for a short period of time. The general made a sudden movement and struck out. I pushed him to the ground. I could not see what was going on behind me, but a melee ensued with confusion, all aimed at restraining the general. From start to finish, this was Chief Welshofer's interrogation.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

Chief Welshofer was not personally conducting the interrogation. The Iraqis were. Chief Welshofer had no supervisory or operational control over the Iraqis. MG Mowhosh broke the zip-ties that were constraining him at one point in the process of trying to strike out. Foam insulation was used to strike the general. He was struck with objects other than hands. I really can't recall the specifics. It is possible that he may have been kicked. Chief Welshofer never struck the general. This melee lasted 2 to 3 minutes, tops. When it was over, the general got up and walked out of the room of his own accord. He did not have to be carried out by anyone.

Outside the room at the time of the interrogation, the 3d ACR commander had arrived with a TV camera crew and journalists. I pointed this out to investigators and suggested that if the general was unable to walk, they should try to locate those cameras and that film. The general walked back to the holding area for the detainees with escorts and without assistance.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

Chief Welshofer was the highest-ranking person in the room. Next in rank would probably have been me.

The Iraqis asked the questions, acceding to his direction to do so. He had that measure of control over them.

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

COL David Teeples, U.S. Army, was called as a witness by the defense on the merits, out of order with the government's concurrence, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the civilian defense counsel)

I am currently the executive assistant to the Chairman of the Joint Chiefs of Staff.

In 2003 I was the commander of the 3d ACR, which was serving in Iraq. The Al Anbar Province, which is the western-most province, was assigned to the 3d ACR, including the cities of Fallujah, Ramadi, Hit, Hadithah, and Al Qaim.

Originally, when we were given the mission to secure Al Anbar, we were told to secure the border crossing points with Syria and with Jordan and also to secure the Jordanian highway, which runs from Baghdad to Amman. We were working directly for CJTF-7 from about April until September.

In September, the 82d came into Al Anbar Province with two brigades, one aviation brigade and one ground infantry brigade. At that time we were then put under the operational control of the 82d, and we were responsible for everything west of Ramadi. The 82d took control of the Ramadi/Fallujah area. So, our mission basically was only shifted to the west. We still had the responsibility of the Syrian, Jordanian, and Saudi Arabian borders in the province of Al Anbar.

We encountered hostilities in all areas of Al Anbar but, in particular, in the Al Qaim region. Al Qaim is the region on the Syrian border made up of five small communities, which we found to be kind of a hub of a criminal organization which perpetrated a lot of different insurgency and foreign-fighter type conflicts that we had in that area.

The 3d ACR has the 66th MI Company, and that was the company that was working for the regiment at that time.

September through December 2003, the regimental headquarters, my location, was in Al Asad Air Field. Then later, in November, when we executed a mission called Rifles Blitz, I moved the regimental TAC out to the 1st Squadron FOB near Al Qaim.

During Rifles Blitz, the 66th MI Company took care of our ACE and collected intelligence, both SIGINT and HUMINT, and analyzed it and helped us to receive actionable intelligence that we could use in acquiring locations of high-value targets, and that was what we were after.

I know Chief Lewis Welshofer. I really got to know him through the course of our deployment in Iraq through intel summaries, through briefings that he would give in our ACE. I also know

that he was involved in interrogations and providing information on detainees that we had.

I remember only one time actually watching him interrogate a detainee, and that interrogation was simply Chief Welshofer sitting in a chair on one side of the room and the detainee sitting in a chair on the other side of the room with an interpreter in the room.

I received some kind of a formal briefing from our intel folks at least twice a week. Oftentimes, Chief Welshofer would be one of the main briefers. So, I had many times that I was able to listen to him, and I was impressed with the way that he briefed, the way that he explained the intelligence that was gathered, the things that were needed, and how he was using some of that information to help us develop the situation that we had in western Iraq.

Rifles Blitz was a rather large operation. There was a battalion from the 101st Airborne which came to help us with Rifles Blitz, and we amassed two and a half squadrons in the area of Al Qaim. We also put together a temporary detention facility, and that was used to bring in any detainees that we recovered from Operation Rifles Blitz. Our goal was to break the organized crime ring and the insertion of foreign fighters in that location. The MI company and the intelligence community was essential to us because we had probably over 350 detainees that we brought in in a 10-day period during Rifles Blitz. That was more than we had ever taken in any one operation. So, the constraint basically was we didn't have a lot of interrogators. I don't know exactly the number we had working interrogations, but I know that it was not enough to handle 350 detainees.

I had access to interrogation summaries of some of those interrogations. I not only was briefed by Chief Welshofer's chain of command on his performance of duty, but I observed his reports. In every instance, his performance was noted as high-quality and professional, and oftentimes we gained valuable intelligence through his interrogations.

I am not trained in conducting interrogations. I did not see any memorandums put out by General Sanchez in regard to interrogation techniques. In that time period, if General Sanchez were to send out a memorandum to commanders, he would have sent it out to the commander of the 82d, and I may or may

not have been issued a copy. If memos had been sent out to military intelligence channels, then it's unlikely that I would have seen them.

I was familiar with an interrogation technique called "close confinement" to create a claustrophobic effect that might stimulate the detainee into giving information that he otherwise wouldn't give. I don't remember references to that technique being in interrogation summaries.

The members departed the courtroom at 1722 hours, 18 January 2006, at which time the military judge held an Article 39(a) session.

The prosecution stated that they believed the witness was going to mention a rebuttal to a reprimand in the testimony he was about to give. The defense stated that they did not intend to bring that out and that the direction of the testimony would be in regard to the witness's awareness of close confinement as a general interrogation technique but no awareness of the sleeping-bag technique.

The military judge cautioned the witness not to mention in his testimony anything having to do with a reprimand or a rebuttal thereto.

The Article 39(a) session was concluded, and the court members returned to the courtroom at 1725 hours, 18 January 2006.

(further testimony on direct examination of COL Teeples)

My understanding was that close confinement of a detainee would create a claustrophobic effect that would produce fear and apparently motivate him to give up information on which he was being questioned. My understanding was that it was a permissible technique. I was not aware of using a sleeping bag to implement this type of technique.

Based on the contact that I had with Chief Welshofer while he was under my command, I was able to form an opinion as to his military character. I would say that my opinion of Chief Welshofer is that he is a quiet professional, who is up-front and does what is right.

CROSS-EXAMINATION

(under questioning by the assistant trial counsel)

In order to assess a course of action, I expect and trust that I will get honest information from my subordinates. In order to make a decision on a course of action, it is very important that the information I am given is accurate and truthful. If I were delivered information that was inaccurate or if information was withheld, I would have to assess how significant and relevant that information would have been in my decision-making.

I guess any kind of a fear is going to be something that may make a person talk. A fear of asphyxiation would not fall under a fear of claustrophobia. I was never asked to analyze anything like that.

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

The court recessed at 1731 hours, 18 January 2006, to go into a closed session, which are pages 107-117 of the record of trial.

The court reconvened for an open session at 2008 hours, 18 January 2006, all parties again present, including the members.

Since the identity of the following witness was classified, an opaque curtain had been placed completely around the spectator section of the courtroom.

The military judge announced that the witness had previously been sworn and so reminded the witness.

DIRECT EXAMINATION

(under further questioning by the assistant trial counsel)

My understanding is that these memos, Prosecution Exhibit 26, dated 14 September 2003, and Prosecution Exhibit 27, dated 12 October, comprised the rules of engagement for debriefing or interrogating detainees. They were signed by LTG Ricardo Sanchez, the commanding general of CJTF-7. My understanding is that the 12 October memo superseded the 14 September memo.

I discussed these memos with Chief Welshofer. I asked him if he had a copy of those memos and if he was aware of them. I was looking specifically for a copy of the memos. He said that he was aware of the memos but that he was pretty sure that they were breaking those rules every day. Those were his words.

Paragraph CC on the fifth page of Prosecution Exhibit 26 references the interrogation technique of stress positions. The memo requires the authority of the commanding general to use stress positions.

The superseding memo from 12 October 2003, Prosecution Exhibit 27, does not reference stress positions. If a particular technique is not referenced in Prosecution Exhibit 27, one needs prior authority from the commanding general to use that technique.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I recognize Defense Exhibit A only from its having been shown to me earlier today. It appears to be a 10 September 2003 memo

from LTG Sanchez, governing rules of interrogation. It's not signed, but it has LTG Sanchez's signature block at the bottom.

In Defense Exhibit A, there is authorization to use stress positions in the attachment in paragraph DD. Paragraph 2c does not require LTG Sanchez' approval.

I was previously interviewed about what happened on the day that I discussed this with Chief Welshofer. In that interview, there are no notes that indicate that I ever identified the date of the rules of engagement that I discussed with Chief Welshofer. In my mind, I was only considering one set of rules of engagement or interrogation because I believed that the September rules had been superseded by the October rules. At no time did I pull out any rules on the 25th of November 2003. I did not go rule-by-rule over the rules with Chief Welshofer. In my personal observations, I never saw any rules being violated. Whatever Chief Welshofer may have told me, I did not report that to his chain of command.

The defense counsel asked the witness whether he had reported it to anyone in the CIA and abruptly stopped his cross-examination and apologized. The military judge asked him to continue with his cross-examination.

(further testimony on cross-examination)

I did write a report. There was never any attempt by me to determine what rules, if any, were being broken. With respect to whatever Chief Welshofer told me, it could have just been a flippant remark. I had no personal, direct knowledge that any specific rules were being violated.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I was not ambiguous in my request for this memo. First I described briefly what the memorandum was that I was looking for and explained the reason why I was looking for it and asked if he had a copy of it so that I would be able to share it with our people. I don't know if I specifically mentioned the date, but I know I was referring only to that October memo, so it seems to me that I would have. The September memorandum was not the memo I was looking for. I felt that I made it very clear which memo

I was referring to. Chief Welshofer stated that he was aware of the memo and made an immediate remark that was tied into that. While it could have been a flippant remark, I was alarmed by it. I subsequently filed a report. I have no oversight over the military. I would have no reason to report this to the military.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

Whether I had a duty to report the remark or not, the fact remains I did not report it to the chain of command even though I was alarmed by it.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibits XXXII and XXXIII)

When I spoke to Chief Welshofer in November, I feel certain it must have been in the singular, as to a memo, since I was only looking for a specific memo.

It seems to me that if the 12 October 2003 memo defined the rules of engagement, then no prior memo would be relevant, as I understood it was the current memo that was to be followed by the U.S. military at that time.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

The 12 October 2003 memo requires prior approval by the commanding general, LTC Sanchez, of any technique not included in the memo. Stress positions are not on the 12 October memo. So, if someone wanted to use the stress position, it seems to me that he would be required to get prior approval by LTC Sanchez.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I've testified about three different memos: 10 September, 14 September, and 12 October, all 2003. They are all different.

The differences take a little work to identify which interrogation techniques are authorized by which memo.

On 25 November 2003 when I talked to Chief Welshofer, I was requesting a memo. I was asking for him to give me a copy of the memo. I didn't have a copy of it. Chief Welshofer did not give me a copy. At no time did I have any dated memo to look at to make sure we were talking about the same memo.

In a prior interview, detailed notes were taken of what I told the interviewers. It is reported that I said to Chief Welshofer, "Do you have the CJTF rules of conduct for engagement?" without reference to date. I am not absolutely sure right now whether or not I used a date on that occasion.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXXIV)

I had seen the 12 October 2003 memo before I asked Chief Welshofer for a copy of his.

There was a side-bar session at the military judge's bench in regard to safeguarding the security of the witness as he departed the courtroom. The military judge was assured by the security officer present in the courtroom that safeguards were in place and would be followed.

The military judge directed that all spectators remain in the gallery of the courtroom for a period of 3 minutes after excusal of the witness.

The witness was permanently excused, was duly warned, and departed the courtroom with the court security officer.

The court adjourned for the evening at 2030 hours, 18 January 2006.

The court reconvened in open session at 0912 hours, 19 January 2006, all parties again present, including the members.

MAJ Jessica R. Voss, U.S. Army, was recalled as a witness by the prosecution on the merits, was reminded she was still under oath, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I remember seeing Defense Exhibit Alpha, which is the 10 September 2003 memo that I discussed with Chief Welshofer. I believe the first time that I saw this was via e-mail from Chief Welshofer.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

It was not unusual to receive orders of this nature over the SIPRNet that were unsigned. I had received other orders over the Internet unsigned. Defense Exhibit Alpha appears to be an authentic document based on similar documents I received in the Army.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I have no reason to doubt that this memo, Defense Exhibit Alpha, was possessed by the accused.

The witness was temporarily excused, was reminded of her earlier warning, and departed the courtroom.

Mr. David B. Hodgkinson, a civilian, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I live in [redacted]. I currently work for the United States Department of State as a senior advisor on international justice. I was on active duty for 6 years, and I currently serve in the Military Intelligence Readiness Command. It's a reserve command. It's consolidated the reserve intelligence community. I'm a legal advisor to them. In my military capacity, I was a trial counsel, I served as a legal assistance officer, and I served as an international trainer on international law dealing with Geneva Conventions.

Specifically, with Geneva Conventions, my last three years in the military I served in Newport, Rhode Island, where there's the Defense Institute of International Legal Studies. It's a joint DoD command that is charged with working with foreign countries on international law, specifically the Geneva Conventions, humanitarian law, and justice-sector issues. My portfolio was 20 countries worldwide from Asia, Africa, Europe, and Latin America. We would work with them on the meaning of Geneva Conventions, our obligations as high-contracting parties to these conventions, what it meant operationally, with foreign militaries and with foreign civilian officials.

When I left active duty, I joined the Department of Justice. In that capacity I worked also in international programs with Southeast Europe and Central Europe. I worked with Serbia and with Bosnia, Herzegovina, and with Kosovo, dealing with setting up the capacity for them to address war-crimes violations committed by their own citizens in their countries so they could handle it through a justice mechanism. By "war crimes," I am referring to violations of the Geneva Conventions and other conventions, also, such as the Hague Conventions or the Convention Against Genocide. I worked in that capacity for 2 years.

From there I went to the Department of State. In this capacity, also, I was contracted by the Naval War College as an adjunct faculty member in international law and also by the National Defense University for their counterterrorism fellowship program, which is a program with international students at the National Defense University. I had two adjunct professorships. Both professorships entailed my giving instruction on the Geneva Conventions.

I started with the Department of State in December 2002. Within 2 months of being there, DoD requested that I be detailed to

them to work on a project in planning for the war in Iraq, dealing with justice-sector issues. So, I worked under Undersecretary Feith on developing a justice-sector strategy and also specifically developing a transitional justice-sector strategy, which is working with the Iraqis and setting up the Iraq Special Tribunal, which involved using the Geneva Conventions and the violations that could be alleged against Saddam Hussein and his regime for violations to his own people, such as crimes against humanity, but also again Iran and against Kuwait.

I deployed to Iraq in May 2003 and stayed until around March of 2004. There I was working for Ambassador Bremmer as part of the coalition provisional authority. Originally, I was assigned to an organization called ORHA, the Office of Reconstruction and Humanitarian Assistance. It was led by an individual named Jay Garner. In that capacity I worked on Geneva Conventions issues with the Iraqis in setting up the Iraq special tribunal on the ground and other justice-sector matters with the Iraqis.

The prosecution offered Mr. Hodgkinson as an expert in the Geneva Conventions and their applications in the Iraq theater. He was so accepted without objection.

(further testimony under questioning on direct examination)

I believe the United States joined the Geneva Conventions to alleviate the suffering and ravages of war to both civilian and military personnel involved in war theaters. One of the primary purposes of doing this was the government's hope that high-contracting parties would abide by their obligations as they signed on to the Geneva Conventions. It was a very popular convention to sign onto because everyone found it mutually beneficial. What I mean by that is the issue of reciprocity. For instance, the hope is that if we capture enemy individuals, whether civilian or military, and bring them into our custody, that they'll be afforded the protections of the Geneva Conventions; that is, humane treatment, the right to be treated properly. The idea of reciprocity is that if we're treating our prisoners of war well, if soldiers or civilians from the U.S. are captured by the enemy, that the enemy will treat them well, also. An example of this is in Vietnam, for instance, when we decided to afford Geneva Conventions protections to the Viet Cong, who actually were operating outside of the conventions, since they were not wearing distinctive insignia. As a result

of our treating the Viet Cong with prisoner-of-war status, it is estimated that the lives of many U.S. personnel were saved because the reciprocity was afforded, in many cases, to us by the Vietnamese government. The principle of reciprocity is protection of our own.

If we are violating the Geneva Conventions, commanders have found that those troops become undisciplined, and it's very hard to control them because they're violating the law outside of the framework of a disciplined unit. We've also found, in addition, that we will lose international support if we are violating Geneva Conventions.

I've sat in the gallery and have observed most of the testimony in this trial. Based on what I've heard, I believe that MG Mowhosh was entitled to protections under the Geneva Conventions because the U.S. has applied Geneva Conventions in the Iraq theater. It is considered an international armed conflict in which Geneva Conventions are applicable because both the U.S. and Iraq were high-contracting parties to the conventions, and therefore Geneva Conventions III and IV are applicable. Geneva Convention III is prisoner of war; Geneva Convention IV is the protection of civilians.

If there were any doubt as to MG Mowhosh's protected status, there should be what's called an Article 5 tribunal, where the individual goes through a process; i.e., a hearing of sorts, to determine whether or not he's actually entitled to prisoner-of-war status.

There is no evidence of such a hearing for MG Mowhosh. So, in the absence of such a hearing, there would have to be clear evidence or absence of any doubt that he was somebody who was entitled to the Geneva Conventions. If not, then he would be entitled to certain baseline protections under Geneva Convention III. But, if captured, generally, then name, rank, serial number, unit, and where you're from are the only permissible questions for Geneva Convention III status. My assessment of this is that probably MG Mowhosh didn't fit clearly under Geneva Convention III; he probably fits better under Geneva Convention IV, the protection of civilians.

As a civilian, he would be entitled to a screening process to determine whether or not he's an individual who should be interned or not; "security internee" is a term that's used. If

he is in compliance with the rules of a civilian, such as he's not an imperative threat to the security of the state--and in this case, Iraq was under occupational authority, so the state was, in essence, the U.S. Government; we were in control of Iraq under international law. So, if he was a threat, doing any activities that would threaten the U.S. Government's occupational authority, then he may lose some of the higher protections. But, generally, he would be entitled to protection against physical and mental coercion, protection against brutality, torture, or any activities that would endanger the life of an individual. In Iraq, the baseline, no matter what, would be a baseline standard of humanity, of humane treatment.

I have reviewed Field Manual 34-15, Prosecution Exhibit 17. It goes comprehensively into Geneva Conventions. Appendix D, for instance, is a whole appendix that discusses the applicability of Geneva Conventions III and IV. You mentioned earlier that the manual discusses that the fear-up technique needs to be used with caution because it can violate Geneva Conventions. Section 1 is actually the most explicit area in this manual. It includes four to six pages that go into the Geneva Conventions; first of all, the U.S. policy on why we have the Geneva Conventions. It discusses the issues of reciprocity and the issue of international support and why that's important. It also goes into detail about the specific protections outlined in Geneva Conventions III and IV. I mentioned these earlier; i.e., no mental or physical coercion, no brutality, no torture, and that people must be treated humanely.

In a nutshell, the duty of U.S. soldiers in their treatment of detainees is to comply with the Geneva Conventions and the provisions therein but, at a minimum, under any circumstances, to treat individuals humanely, with humane treatment.

The claustrophobia technique I think is a close call on the issue of whether or not it violated the Geneva Conventions. I would have to personally see that. But one of the key things here that is a concern to me is the fact that in the claustrophobia technique, from what I heard, there wasn't a routine of checking on the individual to see if the individual's life was in danger.

The sleeping-bag technique, as it was used with MG Mowhosh according to the testimony I heard, clearly crosses the line from being humane treatment to being inhumane treatment. The

difference is that in this case they were clearly endangering the individual's life. In this specific case, I heard one individual talk about the fact that the individual went "possum" or actually went more than "possum"; that they were very concerned about this individual's life; and that even after that, the individual was not checked on. They did not open the hood of the sleeping bag to make sure that this individual was going to be able to undergo any type of further interrogation. The use of harsher techniques is not justified if a detainee refuses to answer questions. The only incentive that the Geneva Convention provides in these cases is a denial of privileges. "Privileges" are above and beyond what the Geneva Conventions would afford. An incentive might be a special TV room with popcorn, something above and beyond what the Geneva Conventions call for. But you are not allowed to violate international law to get more information, such as violating the principle of humanity.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

In August through December of 2003, I was in Baghdad. I was not a legal advisor to the 3d ACR. I did not issue any guidance to COL Teeples or the 3d ACR on the opinions I've expressed today. COL Teeples and the 66th MI did not have the benefit of my opinions when they were working in the field in November of 2003. I am aware that the 66th MI Company would have a lawyer there with them to advise them on international law. I believe that would have been CPT Baldrate. He and I attended a military intelligence law course together, so I know him. I would hope that he would best know what legal opinions were being given to the 3d ACR on the Geneva Conventions and the status of the detainees. The opinions I've expressed here today were not expressed to the 3d ACR. I was unaware of these activities at the time I was in Baghdad.

I have not seen Prosecution Exhibit 23, which is e-mail traffic, before now. On page 3, it says, "As far as an ROE that addresses the treatment of enemy combatants, specifically, unprivileged belligerents, we are unaware of any but we will continue to research the issue for you."

I have seen the LTC Sanchez memorandums of 14 September and 12 October 2003.

Page 3 of Prosecution Exhibit 26 is interrogation techniques. In a number of places, there are brackets that address the Geneva Conventions. Those seem to indicate that there may be some dispute about how these techniques apply between various countries. So, it appears that the Sanchez memo was authorizing the use of techniques but, at the same time, saying that there are disagreements as to what techniques may or may not violate the Geneva Conventions. Primarily, the difference in techniques or difference in types of privileges deals with certain things such as, for instance, deprivation of athletic equipment or tobacco. These are the kinds of issues that currently are in dispute; for instance, providing recreational opportunities. These are mentioned in the Geneva Conventions, affording prisoners certain rights, and some of these aren't feasible in a combat environment; and, so, certain high-contracting parties do have disputes on these types of privileges or rights for certain detainees.

Article 17 of the Geneva Conventions is the one I mentioned about not being able to ask more questions than name, rank, Social Security number.

As far as the technique of "pride and ego down," it states that Article 17 of Geneva Conventions III provides, "Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind."

There techniques are not defined here, so there would have to be a dispute because it's not listed exactly what the technique of "pride and ego down" is in this document. The flexibility allowed is something that is left to the judgment of many individuals, so I would agree that it is a problem.

Page 6 of Prosecution Exhibit 26 lists general safeguards. The very last paragraph says, "While techniques are considered individually within this analysis, it must be understood that in practice, techniques are usually used in combination." So, that would be telling somebody who's trying to apply these techniques that these are not clear-cut rules. But the next sentence, "The cumulative effect of all techniques to be employed must be considered," is one of the factors I took into consideration. It appears that the individual who died underwent an interrogation a couple of days earlier that was quite significant and stressful on his body to the point where he

couldn't walk. So, the cumulative effect here would be the responsibility of an interrogator to know before an interrogation of this type, the sleeping-bag technique, was used. I don't think it's a normal practice to put lawyers in interrogation rooms, looking over the shoulders of interrogators. I do believe lawyers do show up at certain interrogations. To my knowledge, lawyers were not assigned to Al Qaim to watch and observe all the interrogations that were taking place there.

The members departed the courtroom at 0941 hours, 19 January 2006, at which time the military judge held an Article 39(a) session.

The defense argued that he should be allowed to ask a question concerning dispute within the administration as to whether certain techniques were applicable and when they were applicable, in that he was testing the expert's opinion, since there were varying opinions among lawyers as to how the Geneva Conventions applied in the Iraq situation.

The prosecution argued that what other lawyers agreed or disagreed on was not relevant. The opinion the expert had given had to do with the deprivation of air, whether the technique used on MG Mowhosh was allowed under the Geneva Conventions.

The defense argued that the expert witness had testified very broadly about the Geneva Conventions and how they applied. Although he had given an opinion based on the facts of the case, the defense wanted to establish that there were not clear-cut rules and that there were questions about whether or not people were lawful or unlawful combatants and what rights they were entitled to.

The military judge asked the defense to focus on the relevance of disputes within the administration to a fact in controversy in the case at hand.

The civilian defense counsel stated that he had the working group recommendations by Army lawyers as to techniques, and he wanted to ask the witness specifically about the slap technique.

The government argued that permissibility of the slap technique was not at issue but that it had been used in contravention to the accused's commander.

The defense argued that MAJ Voss had been asked whether she thought the slap technique violated the Geneva Conventions and she had stated she thought it did. The defense argued they should be allowed to cross-examine the expert about it. The defense wanted to know whether the government would argue that the slap technique was unlawful or not and whether he would be permitted to argue that it was a lawful technique. It was uncharged misconduct which the defense intended to address in closing argument.

The government's position was that the slap technique was unlawful to the extent that its use had been denied the accused by his commander, not that its use would be denied under the Geneva Conventions.

The defense wished to argue that MAJ Voss had been mistaken in her belief that the slap technique was unlawful under the Geneva Conventions.

Why MAJ Voss issued her order was irrelevant in the government's estimation.

The military judge stated that the focus seemed to be mistake of law and wanted to know how that was relevant at that point in the proceedings.

The civilian defense counsel stated that the government had presented evidence that MAJ Voss believed that the slap technique violated the Geneva Conventions. He believed he had a right to rebut and challenge that evidence. The government had put an expert on the stand to testify as to what techniques were lawful. The defense believed it had a right to cross-examine the expert in terms of various techniques and to show that there were legal disputes, which showed that what techniques were lawful was subject to interpretation. The defense wished to use the slap technique, since it had come up in the proceeding, as an illustration of that point.

The military judge still wished to hear how it was relevant.

The civilian defense counsel argued that it was relevant because the government was saying the use of the slap technique was unlawful. The slap technique was relevant to uncharged misconduct as well as charged misconduct under the Additional Charge.

The government argued that disputes among administration officials were irrelevant.

The defense argued that the expert witness was testifying as to the lawfulness of a technique and felt that it was entitled to cross-examine him on the lawfulness of techniques.

The military judge inquired as to the relevance of whether the expert knew there was a difference of opinion by administrative lawyers.

The civilian defense counsel argued that it was not his expert on the stand and that it appeared that the military judge wished to protect the administration and was therefore drawing lines and limits on the defense.

The military judge accepted the defense's zealous advocacy and respected it. He stated that he was attempting to apply the rules fairly.

The defense argued that it would be unfair if he were not able to bring out that the Secretary of Defense was authorizing use of certain techniques, based on lawyers' advice, including a slap technique, which the defense believed the government was going to say was unlawful in their closing argument. The defense felt it had a right to test the opinion of the expert and could do so by testing his opinion against what other lawyers had said who worked in the Department of Defense in terms of saying a slap technique could be used in the interrogation of unlawful combatants outside the U.S. The defense was in possession of an e-mail showing that there was a question at the time as to whether or not MG Mowhosh and some other detainees were unprivileged or unlawful combatants. The cross-examination was a very focused one, not a wide-ranging attack on the administration. The defense wanted to know if the expert was familiar with the working-group report on detainee interrogations, which was provided to the Secretary of Defense. The specific question the defense wanted to ask the expert witness was whether he was familiar with the working-group report on detainee interrogations and the global war on terrorism, dated April 4th, 2003, a report that was provided to the Secretary of Defense.

The military judge allowed the expert witness, who was still on the stand during the Article 39(a) session, to respond to the defense's questions. The witness stated that he was aware the group was established but was not familiar with the specifics of the working group's findings.

The civilian defense counsel then asked the expert witness if he was aware of the fact that one of the recommended techniques that was

believed to be lawful was a face-slap/stomach-slap technique, item 33 in that report.

The expert witness stated that he was not aware of the findings of the report.

The defense argued that the expert's answers showed that he was not fully aware of the fact that the techniques had been assessed by lawyers and that the techniques were being recommended for use, potentially, in Iraq.

The prosecution argued that the techniques had never been authorized for use.

The military judge noted that he was considering a 403 analysis as to whether the testimony would be confusing or misleading.

The defense argued that the evidence was very focused and was not confusing or misleading and that the government could conduct redirect examination.

The prosecution argued that the inner machinations of a working group were irrelevant to the expert witness's opinion.

The defense argued that the purpose of his questioning was to test the witness's opinion.

The military judge ruled that the defense would be allowed to ask the two questions as posed during the Article 39(a) session and that he would give the members a limiting instruction.

The Article 39(a) session was concluded, and the members returned to the courtroom at 0957 hours, 19 January 2006.

(further testimony on cross-examination of Mr. Hodgkinson)

> I'm aware that there was formed a Department of Defense working group on detainee interrogations and the global war on terrorism. I am not familiar with the report of that group, dated 4 April 2003, or its findings or if it was ever used. I was in Iraq at that time. I am not aware that technique number 33, the face-slap/stomach-slap technique, was considered legal and recommended to be used. Nothing like that ever came across my desk. I've never seen that.

The military judge instructed the members that they could consider the evidence in the last two questions of the defense solely for its tendency, if any, to test the opinion of the witness. They were not to consider the evidence to show that there was any authorization for the techniques described.

The members assured the military judge that they understood and would follow the instruction.

(further testimony on cross-examination of Mr. Hodgkinson)

With respect to the ultimate opinion that I gave in this case, that is based on only evidence I've heard presented in the government's case-in-chief. I have not heard the defense case. It is up to the members of the court to decide factually what happened in this case. My opinion is contingent on the facts of this case.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

In 2003 I was Iraq, so I was not able to work with Pentagon-level DoD on these issues at all. With the Combined Joint Task Force Bravo, I worked with the SJA office there at time on this issue, dealing with, specifically, rules for treatment of criminal detainees and also, to the extent possible, on humane treatment for all detainees. It is in that capacity that I came across the rules of interrogation contained in Prosecution Exhibits 26 and 27.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I have no idea what advice CPT Baldrate was giving to the 66th MI Company.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXXV)

Wrapping somebody in an environment just to be claustrophobic in itself is not necessarily a violation of humanity. There is no

clear definition of what "humanity" is, but the test that we use in the U.S. is whether that type of treatment, if performed on one of our soldiers or civilians in the hands of the enemy, would be acceptable to us.

In this case, in my opinion and in my experience in looking at the types of techniques that are used and in looking at what "humanity" is in traveling 20 countries worldwide and talking to other countries and what they feel standards of humanity are, in this case putting a hand over somebody's mouth, even if they weren't in a sleeping bag, would violate humane treatment because you're depriving them of a basic necessity to live, even for a brief period of time. On top of that, having someone in a sleeping bag, without being able to check on the endangerment to life in this case, compounds it. Additionally, previous treatment of the prisoner put him in probably poor condition. But I'm no medical expert, so I can't comment on that. But just from my impression of hearing the testimony, it sounds like he was in a condition where the interrogator should have taken extra precautions. That was clearly not done in this case.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

If it's a hand over a mouth and nose with the intent to keep the detainee from breathing, that would be wrong. But if it's just to put the hand over the mouth to keep them from talking and they're still able to breathe, that would not necessarily be wrong.

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

The court recessed at 1006 hours and reconvened at 1021 hours, 19 January 2006, all parties again present, including the members.

SPC Jerry L. Loper, Jr., U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

My unit is Rear Headquarters and Headquarters Troop, 3d ACR, Fort Carson, Colorado. I've been with the ACR 4½ years. My MOS is 63-Bravo, light-wheeled mechanic, and has been the entire time I've been in the military. I've been at Fort Carson 4½ years.

I deployed with the 3d ACR to Iraq from April 2003 until the end of May or early June of 2004. I worked as a mechanic until around August of 2003, when I was assigned as an EPW guard. I did not receive any training to become a guard. I was given only verbal instructions.

Prior to this trial, I entered into a pretrial agreement in this case. The convening authority has agreed to treat my case favorably, and, in exchange, I have agreed to testify truthfully in this case.

Mechanics were used as guards because they needed bodies. My duties were basically to escort the EPWs to use the bathroom, to break down MREs to remove certain items, to take detainees back and forth to the interrogation rooms, to make sure they didn't fall asleep when they weren't supposed to be sleeping and to make sure they were sleeping when they were supposed to be, and to make sure they didn't talk.

I sat in on perhaps 60 or 70 interrogations. The interrogator was in charge of the interrogations. My role was to protect the interrogator.

In mid- to late-November, I was located at Blacksmith Hotel near Al Qaim. While I was there, I learned that a detainee named MG Mowhosh had turned himself in. I had no interaction with him until about 24 November. I was told by the shift NCO to take his number down to the interrogation building, which I did. I don't see anyone in this courtroom today that I saw at the interrogation of the general on 24 November. I left the general at the interrogation room and waited outside the room. I heard loud thuds and screams. It sounded like he was being beaten. After about 30 minutes to an hour, he was brought out. I tried taking him back to the pen. By myself, it didn't work very well because he was a very large man, and he was physically unable to carry himself to the pen. His hands were severely swollen, and he couldn't walk. His breathing was labored, like he was out of breath. He wasn't able to walk. SFC Sommer ran up the hill and

helped me take him down, along with three other soldiers. It took five of us to get him back.

On 26 November 2003, I was told by the shift NCO to grab his number and take him to the interrogation building. By that time I already knew what his number was, so I called his name, and he just sat there. I had to physically help him up and physically help him to the interrogation room because he couldn't walk. His breathing was tired moans. He had difficulty breathing.

The general was in this pen, the rectangle second from the top on the right, which contains the words "holding pens" on Prosecution Exhibit 22. I took him down the middle of the pens. I'm pointing to the gaps between the two sets of rectangles. We crossed what's marked as a dirt road, and then there's like a slight hill after the dirt road. On top of the hill was this building that has "TOC" marked on the left. I brought the general up to the doorway, and that's when I met Chief Welshofer. I asked Chief where to take him, and Chief told me room 6. I took him through the hallway through the building and into room 6.

When I met Chief Welshofer, the general's walking and breathing were the same as when I'd retrieved him, except more severe by that time. In my opinion, it would have been pretty obvious to anyone who saw him that the general was having difficulty breathing.

I took the general to the interrogation room. Chief Welshofer popped his head in and said not to let him sit down or lean against a wall, so I told him he had to stand off the walls. Probably 5 or 10 minutes later, Chief Williams walked into the room and started holding a conversation with the general. Chief Williams sat and asked the general whether he'd liked the cookie that he had given him, and the general said he had liked it; it was the only thing he'd eaten in 3 days.

Chief Welshofer and SFC Sommer walked into the room. Chief Welshofer asked the general a couple of questions, and the general answered, "I don't know," in English. Chief Williams said, "If you don't answer, then you're not going to like what's coming." Chief Welshofer asked him a couple more questions, to which the general answered again, "I don't know," in English.

Chief Welshofer picked up the sleeping bag and placed it over the general's head, open end first, upside down. At that time I was just standing to the side. Chief Welshofer started to wrap the cord around, and then he asked me to finish wrapping the cord. I got down to his thighs, and I asked if he needed me to go lower, and he said yes, so I went lower. And then he told me to make sure it was tight, which I did.

We had tried spinning him around to make him dizzy. He was too large for us to do that. He was about the size of an NFL lineman. I would say he weighed 300, 350 pounds.

We all laid him on the ground on his back. Chief Welshofer sat on his chest in the sternum region. He started the interrogation, asking questions. The first question was something about whether he was part of some kind of regime, and he answered, "I don't know." The general continued to say that in response to questions, so Chief Welshofer placed his hand over the general's mouth while he was sitting on his chest. The bridge of Chief Welshofer's hand was underneath the general's nose, and Chief would hold his hand in that position throughout the question and then release his hand for a response. This lasted for 3 or 4 minutes. Chief Welshofer put his hand over the general's mouth two or three times while sitting on his chest. Chief Welshofer asked some more questions, and the general wasn't answering, so the chief took the sides of the sleeping bag and held the bag tight over the general's face. There were some oddball answers. This holding the sides of the sleeping bag down over the general lasted for another 3 or 4 minutes. Chief Welshofer started asking more questions, and then there were no responses at all. The general was just lying there, not moving, making sounds like passing gas.

Between the time it was first noticed the general was unresponsive and the time the accused stood up, 2 or 3 minutes had elapsed. When the accused stood up, he looked down at the general and just kind of looked at him for a few seconds and then kind of looked at us. After about 15 to 20 seconds, the general took a huge gasp of air like the gasp of air you might make after you'd been holding your breath under water for as long as you could and then came up and take a big breath of air. Chief looked around at us and said, "Thank God. I was worried that he stopped breathing."

After that, Chief told us to roll him over. Chief Welshofer sat back down on his back and continued the interrogation. During the questioning, the general's legs clinched three or four times, almost like he was being electrocuted. One of the other interpreters had walked in and looked around the room, and then he told me to leave. I went outside and talked to one of my friends and started smoking a cigarette. Then SFC Sommer came running out of the room, saying, "Where's the doc? Where's the doc?" and I pointed towards the pens, and he ran and got the doctor.

Prosecution Exhibit 11 is the sleeping bag that was used for interrogations. The sleeping bag was damp the day it was used.

Prosecution Exhibit 12 is the electrical cord that was tightly wrapped around the general's body.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I am testifying under a grant of immunity. The Army has not taken final action in my case. If I had not been facing these allegations, I would have already separated from the Army. The Army has held me on active duty an additional year and a half to testify in this proceeding. I would like to get out of the Army. I want to get this over with so I can do so.

I previously gave a sworn statement, dated 28 November 2003, regarding what I observed on 26 November 2003, which has been marked as Defense Exhibit D for Identification.

This is my sworn statement in my handwriting. I had the opportunity to read this before I signed it, and I was able to correct anything I wanted to before I signed it. It doesn't appear that the statement has been modified in any way by anyone else. There is nowhere in the statement where I say the sleeping bag was wet or damp or anything like that. I believe it does say in the statement that Chief Welshofer held the sleeping bag and pushed down over the general's face. That is on the second page, midway down, where it says, "Big Chief took both his hands and pushed down on the sleeping bag on both sides and held it there." At that point, he asked more questions, but the general was able to take a deep breath after that.

The words that I attribute to Chief Welshofer are, "Thank God. I was worried that he stopped breathing." If another witness testified that Chief Welshofer said words to the effect, "I thought he died," or "I thought I'd killed him," that is inconsistent with what I recall.

I said that the general's body clenched like electrocution. I did not say that in the statement. I made a comment about like coming up for air after being under water. I did not say that in the statement. I have added those descriptions in my testimony today.

I described the general's breathing on two different occasions. I described his breathing on 24 November, and I described it on 26 November. On 26 November when I brought him to the area where he was to be interrogated, I said he was breathing short and heavy. At neither time did I take him to the medical tent. At neither time did I tell Chief Welshofer that he needed medical attention or care. I did not go to the medical tent and say that I believed the general needed medical attention or care. At no point during Chief Welshofer's interrogation on 26 November did I indicate that someone should get medical care for the general.

I described a conversation that the general had with Chief Williams about the cookie. The general appeared to be coherent and able to carry on a conversation. He was speaking in English. At no point during the interrogation did the general say in English that he couldn't breath or he wanted to see a doctor. There was an interpreter present, so if he said it in his native tongue, then the interpreter could have provided that information. The interpreter never said that the general said anything like that.

I never saw Chief Welshofer hit the general. When the general was laid down in the sleeping bag, he was laid down carefully. He wasn't thrown to the ground.

The sleeping bag would have remained on the general without the cord tied around it. The general had the hood of the bag over his head. I don't know if the bag was torn. I didn't inspect the sleeping bag. The sleeping bag was open from the back of the general's neck all the way down because of the size of the general.

I do not know when final action is going to be taken in my case.

I was originally charged with murder in this case. I am no longer facing that charge.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I have never disobeyed any order given to me by Chief Welshofer.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXXVII)

I had seen the sleeping-bag technique used between seven and ten times. It had always involved using a cord.

The military judge stated that the rules of evidence prevented him from asking the question in Appellate Exhibit XXXVI as well as the first two questions of Appellate Exhibit XXXVII.

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

The court recessed at 1052 hours and reconvened at 1109 hours, 19 January 2006, all parties again present, including the members.

MAJ Michael E. Smith, M.D., U.S. Army, was called as a witness by the prosecution on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I have been the chief of Anatomic Pathology at Eisenhower Army Medical Center in Fort Gordon, Georgia, since July 2005. Prior to that, for 2 years I was a deputy medical examiner at the Office of the Armed Forces Medical Examiner in Rockville, Maryland.

I went to college and 4 years of medical school. I received a medical degree. I did a year of internship in internal

medicine. I did 2 years as a general medical officer. After that I did 4 years of anatomic and clinical pathology residency. At the termination of that, I did an extra year, a fellowship in forensic pathology. I am board certified in anatomic pathology, clinical pathology, and forensic pathology.

I've personally performed a little over 500 autopsies and have supervised around 70.

The prosecution offered the witness as an expert in the field of forensic pathology. He was so accepted with no objection.

(further testimony on direct examination)

In early December of 2003, I was deputy medical examiner at the office of the Armed Forces Medical Examiner. I was called to Baghdad because we were asked to investigate the death of what was considered a significant detainee. I went with a photographer and a CID agent from our office to Baghdad. When I arrived, I went to the autopsy suite, where the remains of the general were, and I did an autopsy. I determined the cause of death to be asphyxia due to smothering and chest compression. I determined the manner of death as homicide.

Before conducting an autopsy, it is incumbent upon the medical examiner to obtain a history, just as if someone were to present at a hospital with a medical complaint, the physician would obtain a history. So, even prior to leaving for Baghdad, there was inquiry as to the circumstances surrounding the death. The information was relayed to me through CID agents.

I've sat through most of this trial. I've learned more facts from sitting through it. I am even more confident in my opinion now.

I prepared the autopsy examination report on Abid Mowhosh, Prosecution Exhibit 28 for Identification. I signed the report. The initials next to my signature indicate that the report was reviewed by another pathologist; in this case, the Chief Armed Forces Medical Examiner.

Prosecution Exhibit 28 for Identification was offered and received into evidence without objection as Prosecution Exhibit 28.

(further testimony on direct examination of Dr. Smith)

My report lists a number of final autopsy diagnoses. First among them was a history of smothering and chest and abdominal compressions. That was based on the circumstances surrounding the death that were relayed to me by the CID agents. It is customary to inquire of investigating agents about the circumstances surrounding a death. The forensic pathologist who basically just performs an autopsy on a body and never obtains a history of the circumstances surrounding that death will invariably miss cases of homicides or suicides. It is incumbent upon the medical examiner to obtain as much information as possible about the circumstances surrounding the death. In many cases, this information may change the manner of death from what appears to be a natural death to a homicide. It is routine practice in the forensic community to obtain circumstances surrounding a death.

My second final autopsy diagnosis has to do with blunt-force trauma. I determined there was blunt-force trauma based on my inspection of the body. Prosecution Exhibit 18 shows the trauma I'm talking about. As you can see, there are multiple bruises.

Prosecution Exhibit 16 shows several large bruises, or contusions. Prosecution Exhibit 13 also shows bruising. Those are contusions on the elbow area of the right arm. The contusion on the left arm is much larger and darker. Those contusions would be consistent with impacts due to blunt objects, such as a stick, a fist, or a foot. I cannot tell, based on the bruises, what caused them.

Aside from the contusions which were photographed, there was other blunt-force trauma. Examination of the internal body showed breaking of the left side of the rib cage. I documented that the left ribs 3 through 7 were broken, a total of five broken ribs.

Some of the rib fractures; that is, those that are more in the front of the chest, are relatively common with CPR, especially if it's performed aggressively, as it should be. Rib fractures that are on the side of the rib cage and more towards the back are not commonly seen with CPR. Those rib fractures also had a lot of hemorrhage, or bleeding, around them, indicating that the general was alive at the time those ribs were broken. With a rib fracture, breathing is very difficult and painful. Having multiple broken ribs and trying to take a good breath would be

extremely painful. It would also be extremely painful just to walk.

The injuries themselves would not have caused his death; that is, there was no tearing of the lining of the lung that would cause a collapsed lung. The ribs were not broken in two; rather, they had a crack through them.

I made a number of findings relating to the general's heart. The heart weighed 650 grams. That indicates that the heart is enlarged for some reason. There are many things that can cause an enlarged heart. Hypertension, or high blood pressure, can cause it. Alcoholics can get an enlarged heart. A person can get an infection of the heart and then later on develop enlargement. Or a person could have blockage of the arteries that supply blood to the heart, and the heart could actually get bigger. The heart muscle of the left ventricle; that is, the main pumping chamber of the heart, was a little thickened. It would be fair to say that the general had heart disease.

It is not uncommon for people with similar hearts to be unaware that they have heart disease. In fact, someone in this room may have an enlarged heart and not know it.

It is my opinion the general did not die of heart disease, based on the circumstances surrounding this death. I would question why the general did not die 30 minutes prior to this interrogation or 2 hours later if he died of heart disease. The circumstances support that there was a traumatic event; that is, someone sitting on his chest, intermittently covering at least his mouth, and interfering with respiration. For me to say that this person simply just died of heart disease, there would have to be no bruises, and the circumstances would have to be supportive; that is, there was no blunt-force trauma, and when the guards went to get him in his detention cell, he was just lying there. That would be more supportive of a natural-type death.

The general also had hepatitis B. That did not cause his death. Hepatitis B is extremely common. There may be multiple people in this room that have it or carry it. Hepatitis B can cause death. It can cause cirrhosis of the liver, and when someone gets cirrhosis of the liver, typically if they do not have a transplant, they will progress and can die. I did not find evidence of cirrhosis, and cirrhosis of the liver is basically a

scarring. There was no evidence of any significant scarring in the liver.

There are findings that are consistent with my finding of death by asphyxia and chest compression but are not specific for asphyxia; that is, his face was congested with blood. There are many things that can cause that. That does not specifically point to asphyxia. He had fluid in his lungs. Again, that is a nonspecific finding. That can be seen in a drug overdose. It can be seen in someone with heart disease. It can actually be seen in people that go up to high altitudes and exercise. So, again, it's a nonspecific finding but is supportive that there was a hypoxic or asphyxial event.

It would absolutely be possible to die of asphyxia due to smothering and chest compression and there be no forensic signs visible, especially if the person who was doing the asphyxiation was experienced and had practiced the technique. It would also be possible if the victim was somehow restrained, unable to fight back.

That method of death is called burking, and it relates back to the 1800's. There were two individuals, one named Burke, whose job was to dig up bodies and supply them to the local medical schools and scientists for examination. The story goes that he got tired of digging up bodies and found it easier to go out and find fresh victims. What Burke and his assistant would do would be to tackle someone to the ground, and while the assistant held the person down, Burke would sit on the chest and cover the mouth and nose with his hands until the person asphyxiated. It was a very good way to provide bodies to the local scientific community because it is documented that they left very little, if any, marks on the body when they did this.

I ruled this death a homicide. Given the circumstances and the findings of this case, there are no other manners of death I would have considered in this case.

There are, nonetheless, other manners of death. "Manners of death" is a term of art used in my profession. In most jurisdictions, there are five manners of death. One is "natural." The textbook definition of a natural death is one that is due exclusively to disease; that is, there is no trauma or violence involved, and you can document some disease process.

Another manner of death would be accident, which would be a death due to violent means that is not due to a purposeful act by another person. Natural disasters would be an example of accident. So would a car wreck where someone unintentionally bumped someone off the road and he died. If, however, it were shown that a person had been pushed off the road intentionally, that would change the manner of death from accident to homicide.

Suicide, a person's taking his own life, is another manner of death.

Homicide is another. That is defined as violent death at the hands of another person. That is what I found in this case. The technique that was practiced is an inherently lethal technique. The testimony has shown that there was concern that this could cause death and that's why it was restricted to use by two individuals, who apparently were practiced in this art. There was also, according to testimony, a period where there was concern that the general had actually died. The reason this convinces me that it was a homicide is, despite the fact there was concern that he had died, the interrogation and this technique was then continued. This implies a purposeful act, not something that was done willy-nilly. It was a purposeful act.

If the accused had fallen on the detainee and for some reason was unable to get up, then I would have to consider accident as being a potential manner of death.

The final manner of death is "undetermined," which means there is either insufficient circumstantial or physical evidence to arrive at a manner of death. An example of this would be if a set of bones with no evidence of trauma were found in the wilderness. It's a classification that you use when there's insufficient circumstantial or physical evidence to arrive at a manner of death.

I've personally conducted either nine or ten autopsies of Iraqi detainees.

Whether a homicide is justified or unjustified is not within the realm of the medical examiner.

I discussed this case with other medical examiners. Upon returning to the office in Rockville, I discussed it with five

or six other medical examiners in the office so that I could get their opinions to see if they had any other suggestions, tests that I could run, *et cetera*. It was a roundtable discussion, where I presented photos and the circumstances that I knew. All of the other medical examiners were in agreement with my findings.

The members departed the courtroom at 1135 hours, 19 January 2006, at which time the military judge held an Article 39(a) session.

The civilian defense counsel asked for a recess in order to research the issue of allowing into evidence the opinion of other experts through an expert witness on the stand.

The court recessed at 1137 hours and reconvened at 1213 hours, 19 January 2006, all parties again present except the members.

The military judge noted that during the recess he had been provided the case of *U.S. v. Nealy* at 25 MJ 105, a Court of Military Appeals case. He had considered that case as well as MRE 703 and other matters in complying with the defense's request to reconsider his ruling. He stated that in *Nealy* the Court of Military Appeals had said it was not error to admit like testimony. It did indicate that a limiting instruction was in order.

The testimony here concerned the opinions essentially of other forensic pathologists with whom Dr. Smith consulted. The testimony would be otherwise inadmissible, although it seemed reasonable to the military judge that a forensic pathologist would consult with other forensic pathologists in formulating his opinion. The evidence seemed to be offered for the purpose of assisting the panel in evaluating the opinion of Dr. Smith. Looking at this otherwise inadmissible evidence; i.e., opinions from other forensic pathologists, the military judge had to essentially do an MRE 403 balancing to determine whether the probative value of the evidence substantially outweighed its prejudicial effect. The military judge believed that the evidence was probative but that there was some danger of prejudice. He nevertheless believed the probative value outweighed the prejudicial effect. However, in an abundance of caution, the military judge would allow the government to continue their examination of the expert witness, focusing on routine of conferring with other professionals in formulating an opinion and whether, in that consultation, he had heard anything that changed his opinion. The military judge would disallow the opinions of other forensic pathologists. He would also give a limiting instruction

that the testimony offered should not be considered for a substantive purpose but should be considered when weighing the basis of Dr. Smith's opinion.

The Article 39(a) session was concluded, and the members returned to the courtroom at 1218 hours, 19 January 2006.

(further testimony on direct examination of Dr. Smith)

> It is routine business practice in difficult or potentially controversial cases for medical examiners, not just in my office but in many offices around the country, to have discussions of a case and to elicit opinions from other physicians. This is done not only in forensic pathology but in just about every field of medicine. I met with five or six other forensic pathologists to discuss this case. I reviewed with them the photographs, and I discussed with them the circumstances and my opinions of the case. As a result of this meeting, I reached my conclusion.

The military judge gave a limiting instruction to the court members, stating that the members could not use substantively the evidence that colleagues had agreed with Dr. Smith in his determination of homicide as a manner of death. They could use the testimony only in evaluating the basis of Dr. Smith's opinion.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

> An investigation is conducted on my behalf, but I am not an investigator, *per se*. In some respects, I might be considered a scientist. In fact, sometimes a pathologist may uncover evidence that contradicts what people are saying about what happened. So, when I receive information from sources that may or may not be reliable, I have to be very careful about using that information. I need to focus on all of the evidence that's in front of me. My focus is considered to be an objective one. I set up various hypotheses about what happened. In the process of performing my duties, I'm not only looking at evidence that confirms a certain hypothesis, but I am also looking for evidence that disproves a hypothesis. In some cases, there are no competing hypotheses. In this case, there are competing hypotheses.

I have examined and considered the results of the opinion of Dr. Wecht, the defense's expert. I understand that there is a competing hypothesis in this case. One of the challenges that the members of the court face is how to resolve these competing hypotheses. One possibility is natural heart failure. One hypothesis is homicide. In cases which to me are inconclusive as to the manner of death, I prefer the designation "undetermined." I used the example of bones in a forest where a manner of death might be undetermined, but there are examples where there is actually a body to examine and, after completion of an autopsy and an investigation, you're unable to arrive at a manner of death. Those are best designated as "undetermined."

I agree that the enlarged heart is a significant fact in this case. I agree that there is a lack of specific findings that support asphyxiation, as is the case with a lot of asphyxial deaths. I agree that it is within the realm of possibility that Dr. Wecht is correct when he says it was a natural cause. I disagree, but I would agree that it is within the realm of possibility. Reasonable, well-trained, experienced pathologists can disagree.

I am not familiar with the concept of confirmatory bias. I am familiar with the idea that sometimes a scientist or an expert may get so locked into a position that when new evidence is presented, the tendency is to use that only to confirm what has already been determined without adequately testing the falsity of one's own hypothesis. Some experts can fall into the trap of confirmatory bias. I did form an opinion in this case. I have not heard the accused's testimony.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

"Inconclusive" is not a term that I would use. I would use the term "undetermined." I think that's more generally accepted.

I don't believe that Dr. Wecht's report designated a manner of death. It would surprise me to learn that he considers the manner of death in this case an accident. Having listened to the testimony in this case, I'm convinced there was a purposeful act; that is, the general did not slip into the sleeping bag, and the accused did not fall on the general and was somehow

unable to get up. There was a purposeful chain of events by one individual that resulted in the death of another individual.

I testified that it was within the realm of possibility that Dr. Wecht was correct in his finding of heart disease. The general did have heart disease, but I excluded that as a cause of death to a reasonable degree of scientific certainty because the circumstances surrounding the death are supportive of an asphyxial event. It is true that the general had an enlarged heart. Many people that die do so of something other than what disease they may have. A person with brain cancer may die of a gunshot wound. Just because someone has a disease and dies does not mean that he therefore died of that disease. It is possible that the disease had some interaction with trauma. An example would be an elderly woman, who is frail, who is in a wreck. Her frail state may not allow her to survive, whereas a young, completely healthy person might have survived that incident.

RECROSS-EXAMINATION

(under questioning by the civilian defense counsel)

Essentially, though, in this case we have two differing opinions from two well-trained experts. A significant part of my determination relies on the circumstances surrounding the death. Ultimately, I am not the one who determines the circumstances surrounding the death. It's the fact finders.

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

The court recessed at 1233 hours and reconvened at 1313 hours, 19 January 2006, all parties again present.

MAJ Michael E. Smith, M.D., was recalled as a witness by the prosecution on the merits, was reminded that he was still under oath, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the assistant trial counsel)

I was asked about confirmatory bias by the defense counsel. I took it to mean a question as to whether I had an idea as to the

cause and manner of death in this case even before conducting my examination.

Prosecution Exhibit 29 for Identification is my preliminary autopsy report. I did this report immediately after completing the autopsy on MG Mowhosh. A preliminary report is made because many times investigative agencies, a command, *et cetera*, would like to know what the cause and manner of death are. It may help to guide their investigation. I did not feel I had enough information at that time to make a determination as to cause and manner of death, so in my preliminary report, I list a cause of death as "pending histology, toxicology, and investigation." The manner of death says "pending."

I came to the conclusion that the manner of death was homicide at the time of completion of the final autopsy report.

Prosecution Exhibit 29 for Identification was offered and received into evidence without objection as Prosecution Exhibit 29.

CROSS-EXAMINATION

(under questioning by the civilian defense counsel)

I didn't understand that you were asking about confirmatory bias since my final report.

The witness was temporarily excused, was reminded of his earlier warning, and departed the courtroom.

The government rested.

Cyril H. Wecht, M.D., a civilian, was called as a witness by the defense on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the civilian defense counsel)

I am from

I am a physician practicing in anatomic, clinical, and forensic pathology. I have a curriculum vitae that reflects my professional history, Defense Exhibit E for Identification.

Defense Exhibit E for Identification was offered into evidence and received over objection as to hearsay as Defense Exhibit E.

I graduated from the University of Pittsburgh in 1952. I went to the University of Buffalo School of Medicine for 2 years and then finished my third and fourth years at the University of Pittsburgh School of Medicine, graduating with an M.D. degree in 1956. I spent one year in a rotating internship at St. Francis General Hospital and Rehabilitation Institute in Pittsburgh. When I finished that in the summer of 1957, I immediately started a residency specialty training in anatomic and clinical pathology at the University Veterans Administration Hospital in Pittsburgh. I was there for 2 years from 1957 to 1959, when I was called into the service. I had been deferred through college and med school. I spent 2 years as a captain in the United States Air Force, and I was an associate pathologist at Maxwell AFB Hospital, Montgomery, Alabama, from 1959 to 1961. As soon as I got out of the service in the summer of 1961, I went to Baltimore, where I spent one year as an associate pathologist and research fellow in forensic pathology in the office of the Chief Medical Examiner in Maryland.

I had also gone to law school for 2 years from 1957 to 1959 at the University of Pittsburg, and then I did my third year at the University of Maryland when I was there in the medical examiner's office from 1961 to 1962. I received my law degree in the summer of 1962.

I am certified by the American Board of Pathology in anatomic, clinical, and forensic pathology.

I went back to Pittsburgh, which had been my home. So, for the past 43½ years, I've been practicing in those specialty fields in hospital work, private laboratories, governmental, and some private consultation, and I'm teaching and writing. I have medical licenses in Pennsylvania, California, and Maryland. I am dropping the California and Maryland licenses this year. I am certified by the American Board of Legal Medicine in legal medicine.

I am the past president of the American Academy of Forensic Sciences. I'm past president of the American College of Legal Medicine. I've been a vice president of the International Association of Forensic Sciences. I was vice president of the

International Academy of Legal Medicine and Social Medicine. I was secretary general and vice president in the past of the International Association of Accident and Traffic Medicine. Recently, I was elected as vice president of a newly-created board, the American Board of Disaster Medicine.

I have been either head of pathology or, in one instance, the associate head in many hospitals over the years from the time that I returned to Pittsburgh in 1962. For about 25 years, 1974 to 1999, I was chairman and chief pathologist in the Department of Pathology at St. Francis Central Hospital. That hospital was closed in 1999 by the parent hospital, which had run into some financial problems.

I had a private pathology laboratory from about 1965 to 1978, I think, and then I was consultant for some years to the lab that bought mine out. I was the chief resident pathologist for 4 years in the Allegheny County Coroner's Office. That's Pittsburgh and the surrounding communities. I was the coroner for 10 years, 1970 to 1980. Then I came again in 1996 as coroner for 9 years. Our system was changed effective 1 January 2006, and I'm the chief medical examiner now. It's a medical examiner system now.

I do consultations for private attorneys, civil cases, medical malpractice, personal injury, wrongful death, homicide cases; and then I do some Worker's Comp. In our area, we have retired coal miners. They have to have autopsies done for black lung benefits. I am the forensic pathologist for five other counties surrounding Allegheny. I do all of their autopsies for their coroners, and sometimes the district attorneys are the ones who make the requests. So, I do those autopsies for those officials, as well as autopsies for families for different reasons upon request.

A coroner and a chief medical examiner have the same ultimate responsibility. Most coroners are elected, and medical examiner systems are appointed. Either office is charged with the responsibility of investigating certain deaths to determine the cause and manner of death. I am currently a chief medical examiner, but I also have a private consulting practice. I am here in my capacity as a private consultant in forensic pathology. The Army is paying for my services.

I would estimate that I have done about 15,000 autopsies, and I've reviewed, supervised, or signed off on about 35,000 others. I have appeared and testified in courts around the world as a forensic pathologist probably 1,000 times over the years. Probably somewhere around half were criminal cases. I would say I've testified for the prosecution in probably about 75 percent of the cases. In my private consultation work, aside from those cases, I am called much more frequently by the defense, probably 90 percent of the time.

The witness was offered as an expert in forensic pathology. The prosecution requested to *voir dire* the witness.

(questions on *voir dire* by the assistant trial counsel)

The government did not select me to testify in this case. An initial consultation from my professional private office is $5,000.

The defense objected that the questions being asked were more in the nature of cross-examination than inquiry into the witness's qualifications as an expert.

The prosecution argued it should be allowed to inquire into the bias of the witness on *voir dire,* as bias was something that would allow for disqualification.

The military judge sustained the objection.

(further questions on *voir dire* by the assistant trial counsel)

My coroner's work for five counties is in my private capacity.

The defense again objected that the questioning was not related to the witness's qualifications. The military judge ruled that the prosecution could explore the line of questioning in cross-examination.

(further questions on *voir dire* by the assistant trial counsel)

The autopsies I've conducted have been entirely on human beings except for a couple of dogs as a favor for friends. I have only expressed thoughts once on a television program where they asked me to make some commentary about a body that had been reported from some Air Force base. I had been asked to comment on what I

thought about what was being shown on film, and I said it was not like any human that I'd ever seen before. The title of their program was *Alien Autopsy*. I don't believe that it was an alien. I stand by my statement that it was not like any human being I'd ever seen. I think that somebody may have put something together; I'm not sure.

The prosecution did not object to the qualification of Dr. Wecht as an expert, and he was so recognized.

(further testimony on direct examination of Dr. Wecht)

When I perform an autopsy, I am trying to determine cause and manner of death. The five manners of death are, in decreasing order of frequency of occurrence: natural, accident, suicide, homicide, undetermined. A physician in a hospital can only fill out a death certificate in a natural death.

We do obtain as much information as we can as to the circumstances surrounding a death. Determining reliability of the information we receive is a subjective interpretation of credibility. We factor many things in, and we are mindful always that we must be very careful as coroners and medical examiners in analyzing and weighing the validity and the objectivity of information that comes to us.

In this particular case, I did not conduct an autopsy. I formed my opinions based upon the autopsy findings from the Armed Forces Institute of Pathology and other information that was sent to me.

"Reasonable degree of medical certainty" is a term created by the courts. The definition is "more likely than not; probable versus possible." For instance, at the point where a surgeon decides to do an exploratory surgery, he has moved from a "possible" to a "probable" diagnosis. It is "more likely than not," but not necessarily by some huge margin.

In my opinion, MG Abid Mowhosh did not die as a result of positional, mechanical, or traumatic asphyxiation.

When I say the determination of underlying causes of death are dependent on evidentiary autopsy findings, it means that all the information that you get is important and should be considered, but the primary focus, the major component that goes into your

ultimate determination, must be the postmortem examination. Pathologists aren't brighter than other doctors; we just have an opportunity that other doctors don't have. We have the whole body there to look at and all the time in the world, and we can look at it microscopically, and so on. So, we come closest to being scientific. It's not an absolute science, but if we're at one end, then psychiatrists are at the other end and others in the middle. Information is important, but the body findings are the most important in arriving at the final, formal, official conclusions.

The evidentiary autopsy findings that I think are pertinent and scientifically relevant in this case are a very markedly enlarged heart; 650 grams is around a two-thirds enlargement. There is a longstanding axiom in medicine that goes back decades, if not centuries: Big hearts kill. Big heart fail. And when you have a heart of that size, at any time you can develop a cardiac arrhythmia, abnormal beating of the heart, leading then to collapse. So, you have that positive finding of significance. If you get toxicology tests back negative, you sign that case as hypertensive or hypertrophic cardiomyopathy: "cardio," heart; "pathy," pathological, and hypertensive from longstanding high blood pressure or just hypertrophic, big. And that's a classical diagnosis and one that is well-known to lead to death. And then going with it, you see he's got significant pulmonary edema.

The mechanism of death in this case, in my opinion, was the overall stressful nature of the circumstances and environment which this gentleman was in. In my opinion, stress relates to fatal arrhythmia, and I've been consistent on this over the years. I believe that stress is a significant factor in leading to many cardiac deaths. When you have significant atherosclerosis with coronary artery luminal impingement, stress produces a demand for more blood, and you just can't handle it. You've got a big heart. Big hearts don't function effectively. You've got stress, and that can precipitate an arrhythmia. So, that is an opinion I have with regard to the relationship of real, significant stress and a diseased heart that is susceptible to that kind of environmental stress.

"Pathognomonic" means a finding which is limited to one particular entity to the exclusion of everything else in the world; it is "specific for," "unique for," to the exclusion of everything else. You need findings to make a diagnosis of

smothering or compression of the chest, but I wouldn't say "pathognomonic" because you can have some things that you find in cases of asphyxiation that you find with some disease processes and *vice versa*, so I would not use the word.

Based upon what I know about this case, the circumstances, the temporal component, the repetitious actions, if this were an asphyxial death, I would expect to find petechial hemorrhages in at least several topographical areas of the body. "Petechia" simply means pinpoint. Underneath the scalp, called the galeal tissues; on the eyeballs, conjunctival petechiae; sometimes even on the skin, the cheeks, forehead; on the mucosa of the gums; sometimes even on the chest wall externally and then internally on the external surfaces of the lungs, of the heart, of the pericardial sac in which the heart resides; on mediastinal soft tissues in the middle of the sternum, in the middle of your chest; around the soft tissues, the so-called strep muscles and soft tissues of the neck; not necessarily in every place but certainly in some I would expect to find those. If you have smothering, I would expect to find some evidence of pressure, at least some trauma, even of a small nature, on the lips; the gums; the frenula, the little mucosal attachment, one on the top and one on the bottom, upper and lower frenulum, from the inner side of the lips to the gums. Not one single pinpoint hemorrhage, not one minor contusion, was found by Dr. Smith.

There should be some evidence of trauma, no matter how minute, to represent the manifestations of a struggle, especially around the mouth. There is nothing more physiologically insulting to a human organism than the inability to breathe. This is not a voluntary thing. When you can't breathe, the brain takes over. It's not a matter of being tough or strong. It's not for you to say. The brain takes over because it is insulted, and it is the boss, and it says, "Hey, man, you better do something about this," and you move and you thrash, and you fight, and you struggle. And I see no evidence of that at all. None.

If ribs were broken and the general was in pain, laboring to the point of having difficulty walking, if Chief Welshofer sat on his chest, I would expect him to respond in some way in pain. To the extent that I am aware of some witness statements and what I've heard, I'm not aware of anybody having said that.

I think some of the rib fractures were due to CRP. There would be pain from the fractured ribs because you've got the

intercostal nerves there. He had been beaten up, so he had difficulty walking, and he's got this bad heart, too, and he's got fluid collecting in his lungs. You know, that doesn't make it easier to walk or do anything of a physical nature either. So, you put it all together, I can understand that he would have had trouble walking.

When you have this much pulmonary edema, fluid in the lungs, in my opinion, it fits in more likely with this big heart, which is not pumping regularly. I don't believe that that much pulmonary edema would have developed from smothering. And as to smothering, one can breathe either through the nose or through the mouth; you don't need both. You don't smother somebody by sporadically, intermittently covering their mouth for several seconds. That's not the way smothering works.

Burking came into the limelight recently because of a murder case in Las Vegas. Burke and Hare were a team. Burke would sit on the chest, and Hare would sit on the face, get somebody drunk and then incapacitate him. So, if somebody sits on the chest and somebody covers up the nose and the mouth, that's classic burking. And that's a different situation from what we have here. Burking is not something you're going to see evidence of, but I'm going by the evidence of where the hands were applied. All the things I've said about asphyxiation would be applicable to a burking scenario. I would expect petechiae in a burking situation. I didn't say you have to have these everywhere. What I said was I went through the topographical areas, and we don't have any of them. I had access to all the photographs of the body and the information I needed to form this conclusion.

Dr. Smith is a trained, experienced pathologist, as am I. I should have a hair on my head for every such case in which two doctors, both of whom are trained and experienced, come to different conclusions. Medicine is not an absolute science. Differences of opinion don't bother me. I'm not offended, and I don't think that I have to be right or that somebody else has to be wrong or that there aren't other possibilities to be considered. There are differences of opinion. That's why in our country you have judges and juries.

Where I have a very acceptable, not rare, not infrequent, but well-known, well-documented, much-discussed, much-described medical literature entity; namely, hypertrophic cardiomyopathy, with that and the negative findings that I have attempted to

enumerate, putting it all together, this is why I came to the opinion that I have expressed.

If I were the coroner or the medical examiner, I would probably list the manner of death as accident. I might list it as undetermined. Accident would apply because the overall stress of the situation, leading to heart failure, I cannot ignore. Therefore, I would consider this to be an accidental death. But if a medical examiner or coroner said, "Hey, we got to get more information, and, you know, I can't really be sure," I could go for "undetermined." I wouldn't have any problem with that.

The general's heart had been enlarged for years. Enlargement doesn't happen overnight. It's something that develops over years. He had a fatty liver. He was obese. He had hepatitis. He had had his gall bladder removed before. This was not a well man. The trauma suffered 2 days before he died by hands other than Chief Welshofer would have been stressful. Dr. Smith documented those. I agree with him that in and of themselves, they would not have caused his death. But multiple bruises like that are stressful. If I knew why he didn't die under that stress versus 2 days later, I would be receiving the Nobel Prize. God only knows why the guy with the bad heart did not die yesterday, last week, or last month. I guarantee you when you've got 90 percent occlusion of the left anterior descending coronary artery, the so-called "widow-maker," you had that for weeks and months and maybe years. What I do know in some cases, and what I believe in this case, is stress can be that precipitating factor which does push you over at that moment.

People can call you whatever they want to, especially in a courtroom. I can only tell you I have a consultation fee which I ask for when the case comes in, so I don't work on a contingency if I help or not. My fee is the same, and I believe it's consistent with what others charge. This is part of what I do for a living, and I'm not ashamed or embarrassed by it. I would not render a different opinion than what I believe based on being paid a significant fee. I rendered an opinion in this case consistent with the standards of my profession.

The members departed the courtroom at 1418 hours, 19 January 2006, at which time the military judge held an Article 39(a) session.

The defense objected to the government's request of a 30-minute recess before cross-examination in that the witness had a specific

flight booked and that the witness had been made available for interview by the government with the government's expert present before the defense expert testified.

The government noted that it had been generous in not objecting to a single request for a recess from the defense and did not feel that the witness's flight schedule should enter into the court's determination. The government's interview of the defense expert had not been sufficient time and had taken place during a 30-minute break.

The Article 39(a) session was concluded, and the members returned to the courtroom at 1420 hours, 19 January 2006, all parties again present, including the members.

The military judge announced that the court would be in recess for about 20 minutes.

The court recessed at 1421 hours and reconvened at 1445 hours, 19 January 2006, all parties again present except the members.

The military judge noted that Dr. Wecht seemed constrained in answering a question about the details of the stress felt by the victim, probably based upon his ruling on an objection. The military judge advised Dr. Wecht that he should not feel constrained in answering a question of like nature again. Any objections to questions would at that point be dealt with by the military judge.

The Article 39(a) session was concluded, and the court members returned to the courtroom at 1547 hours, 19 January 2006.

CROSS-EXAMINATION

(under questioning by the assistant trial counsel of Dr. Wecht)

I am reminded that I remain under oath.

I have a consultation fee of $5,000 for the initial consultation and $500 an hour after that. I was initially hired as a consultant. My trial testimony is $5,000 per day when I go away, plus reimbursement of necessary expenses. I do not collect the $5,000 per day to testify unless I do testify. Certainly, I would not testify unfavorably; I'm sure I wouldn't be called.

I've had some cases involving Tasers. I don't remember the names. I can think of three that come to mind. When I did the James Borden work, I don't remember if I found the Taser was not responsible for his death. If that's what it says in the report, then I have no problem with it. I just don't remember the case.

I had nothing to do with Taser's touting my findings as those of an independent medical expert. What they choose to do is their business. I don't work for Taser. I've had some discussions with them, and at one point about a year and a half ago, they considered me and my forensic epidemiologist doing a study, but it never came to fruition. I have consulted in a case with an attorney who had a case for Taser, but the consultation came from the attorney. I think that was in Illinois. I think that some of the money may have come from Taser, but the consultation came from the attorney who, I know in one case, did represent Taser.

I have a private practice, and I've been hired from my private practice for this case. In my private practice, I also do work as a coroner for the five Pennsylvania counties discussed earlier. The private practice is my private practice. Those autopsies are done at Carlow University, having nothing to do with the coroner's office. I have private offices, which you will see on the stationery, and autopsies are done at Carlow University. I've had a private office forever. I have not been using public facilities to do private work. I am now the medical examiner of Allegheny County, an appointed position. It used to be an elected position, and I was elected to that position. Now I've been appointed. My appointment came with the condition that if I am indicted, I will step down. There is no other appointed official in Allegheny County who has had to accept that condition, that I know of. The indictment at issue concerns my use of public facilities for private gain. My attorneys know more of the details, but that's what I understand to be the basis of the allegations.

As a medical examiner, I am a strong proponent of the inquest. I believe that the inquest as we have used it is very important. As I conduct an inquest, I effectively have jurisdiction over how the inquest is run. What we do is we get prominent attorneys, retired judges, who do it *pro bono*, and they sit as the hearing officers. My solicitor presents the case, and people are subpoenaed to give testimony about whatever is

pertinent to the case; i.e., circumstances surrounding the death. It's an investigation. The investigation of the circumstances surrounding a death is what an inquest is about, plus the medical and scientific findings. I believe that the medical and scientific findings are the most important. But, as I've already said, I have no hesitation in accepting the premise of the significance and relevance of information from other sources. It would be foolish to ignore statements and reports of an investigation into the circumstances of a death if the statements and reports come from credible and reliable sources.

I would not agree that in modern day in a burking situation there would be no evidentiary findings supporting the cause of death. Today I think if you look very, very carefully, you might find something in many cases. We don't deal with burking in modern-day forensic pathology.

If I had a case in which there was absolutely no physical evidence but I have the confession of Burke and Hare, I would call the death asphyxia, compression, or any combination thereof if I were living back in England in the first half of the 19th century. I don't know if I would make the same findings today. I would want to look very carefully because an explanation might well be a very high level of ethanol. So, if somebody had been inebriated to the point of being unconscious or near unconscious because of such a high level, then I could readily understand that, because such a person isn't aware of what's going on. If I have somebody that has no alcohol and no other central nervous system depressant drugs and I'm told that he was conscious and alert and alive and wasn't knocked on the head or something, I'm going to have a hard time accepting that case for the reasons that I said before. If I believed the confession, I would call the death homicide. I would be able to call the death a homicide, even absent any injury to the body, were I given enough information about the circumstances of death.

But in this case I believe the general accidentally died of a heart attack based upon stress. In Worker's Comp, this is a very common thing. A guy may lift 50-pound boxes and on a particular day the temperature was 10 degrees higher and he lifted 75-pound boxes and died of a heart attack. I would want to examine that case, but in such a situation, I can well understand that's the increased stress.

I've said in my report that effectively to make a conclusion, it must be confirmed by evidence on the body. I've also said in my report that I found the accused was dutifully executing his assignment when the death occurred. I was referring to his duty of interrogation. I cannot correlate findings on the body as to that. That, I readily admit, is a subjective interpretation. I put it in there in the sense that this is a military man interrogating an enemy of war, and that's what I meant by "dutifully." The phrase is a reference to what I construed to be the situation. I'm a lawyer, but I don't practice as one. I don't really know what the charges are in this case. I think it's a murder charge. I wasn't aware of a charge of dereliction of duty. My conclusion about the accused's execution of his duties is purely coincidence.

I wrote my report with information that the accused had been wrapped in that sleeping bag and cord. As I read through the materials, there were some variations, but I understand that he was in a sleeping bag and that his head was down at the foot part and that part of it was torn and that there was a cord tied around. I was aware of that. I know that several people said that the accused sat on his chest. I considered all of those things. I was told that the victim's mouth was covered 10 to 15 seconds four to six times over some period of time. That's my understanding. I don't think I knew a specific period of time that the victim had become unresponsive. I'm considering that you are now telling me that the victim was unresponsive for a period of 2 to 3 minutes and then let out a gasp as though he had been under water for some period of time; that he was then rolled over onto his stomach and that the accused then sat on his back; and that some time after that he had spasmodic leg jerks and then expired. You've described a classic kind of a cardiac death. That could be a cardiac death, absolutely. There's nothing that is pathognomonic about that set of facts and signs and symptoms relative to asphyxia.

If I imagine that the victim had been sitting on his veranda, drinking a cup of tea, I'm not saying he would have died that very morning. I've already said that I think that stress was a significant factor. Had he died while sipping tea on his veranda and American forces weren't in Iraq, I would call it a natural death. Being incarcerated, being interrogated, having been beaten, having had some ribs likely fractured, and the sleeping bag and cord were all stress factors. I think the whole scenario was a stressful situation. I would say that all

of the things you've attributed to the accused's having done to the victim, if they are documented and incontrovertible, would be part of an overall stressful situation. If people believed they took place, they would be part of the overall stressful environment and that the stress did precipitate the cardiac arrhythmia that was associated with the markedly enlarged heart. The specific acts of the accused, as you describe them, would have contributed to the death of the general.

"Pathognomonic" means specific to a particular entity. You don't need findings like that to find asphyxia because there are things that you can see with congestive heart failure and other conditions and *vice versa*, so therefore they would not be pathognomonic. I've explained that the general's heart problem led to cardiac arrhythmia. The mechanism of death in asphyxia is cerebral anoxia, and then ultimately the heart is knocked out. There may be a cardiac arrhythmia before you have cardiac standstill. There may be respiratory failure. That would be a variable. But the mechanism in asphyxia is, by definition, anoxia, no oxygen, and the brain pays the penalty. Since it is in control, then it knocks out cardiac and respiratory functions. Its insulting mechanism has been the deprivation of oxygen. Asphyxia could cause arrhythmia.

I found no evidence of a struggle on the body. I see Prosecution Exhibit 15. Those are the bruises from before. Those are not what I was talking about when I talked about the bruising anywhere on the face, particularly the lips, the gums, the frenula, the neck area, abrasive-type marks of the sliding effects of someone sitting on the face, the sliding effects of a hand held firmly over the neck. I was not referring to bruises. That's a different story, and the bruising did not enter into my differential diagnosis of asphyxia versus cardiac arrhythmia. If there was some padding between the hand and the mouth, whether there would be a bruise around the mouth would depend on the padding. I don't know of anybody who's conducted an experiment like that. I guess it's theoretically possible with a lot of soft padding that you might be able to accomplish pressing down without leaving any bruising.

I said there was a great deal of fluid in the lungs, and I felt that this was more typical of heart failure associated with this kind of a cardiac condition than with an acute asphyxial death.

I said that with this event, as it's been described to me, I would expect to find petechiae. I am familiar with the *Journal of Forensic Sciences*, a reputable medical journal. I am not familiar with an article written by Susan F. Ely, M.D., and Charles Hirsch, M.D., from 21 December 1999 in that journal. I would have to read the whole article before I could comment on their conclusion that conjunctival and facial petechiae are the produce of purely mechanical vascular phenomena unrelated to asphyxia or hypoxia. That is a contentious subject, and I disagree. I understand they are saying that they found, in a review of 5,000 autopsy reports over nearly a 2-year period, that conjunctival petechiae were observed most frequently in deaths due to natural causes. I understand they also found that asphyxial deaths in which facial and conjunctival petechiae are distinctly uncommon include those due to smothering. I find that a controversial statement because it's a question of a capillary permeability as a result of insult to the capillary walls from the diminished oxygen flow versus increased venous pressure because blood is being blocked from coming back to the heart and, hence, the pressure going backward; and the venous system increases, and that forces out the blood. I've explained how petechiae are formed, but you are asking whether they would be present in a death due to smothering, and I disagree with the article in the *Journal of Forensic Sciences* that asphyxial deaths in which facial and conjunctival petechiae are distinctly uncommon include those due to smoothing, without knowing more about the article and the presence or absence of petechiae in other areas of the body.

The journal article was marked as Prosecution Exhibit 30 for Identification and handed to the witness.

(further testimony on cross-examination of Dr. Wecht)

Yes, it's as you have represented. This is a peer-reviewed journal, which is a reputable journal.

I am not familiar with a book called *Asphyxia and Drowning: An Atlas, Causes of Death, Atlas Series*, which concludes that the extent of injury in smothering is variable and that in some cases there may be minimal or no external injuries and that pinpoint hemorrhages, petechiae, may occasionally be found on the face, especially the eyelid area, but may just as easily be absent. I don't disagree that they can be absent. I stated before and repeat that in this particular case you are talking

about the total absence of petechial hemorrhages in any part of the body. The more prolonged the asphyxiation, the more likely you are to see petechiae because there's more and more opportunity for the insult to occur to the capillaries, permitting the blood to escape, the few little red cells.

I don't know anything about the general's life before he was detained, but I would believe that it changed. A pretty significant change would be that he was brought out of a detention pen, brought into a room, wrapped in a sleeping bag, sat upon, had his mouth covered.

I recall signing off on an autopsy in my capacity as the coroner for Allegheny County on a Charles Dixon. I think we called his death a homicide with the mechanism of death being positional asphyxiation.

Prosecution Exhibit 31 for Identification, an autopsy report, was marked and handed to the witness.

(further testimony on direct examination of Dr. Wecht)

Positional asphyxia is a form of asphyxia. Charles Dixon had an enlarged heart, which weighed 640 grams. General Mowhosh had an enlarged heart, which weighed 650 grams. General Mowhosh had an enlarged liver, and so did Charles Dixon. Charles Dixon suffered some form of blunt-force trauma. So did General Mowhosh. General Mowhosh did not have a lacerated frenulum, nor did Mr. Dixon. General Mowhosh had pulmonary edema. His lungs, according to Prosecution Exhibit 28, the autopsy report on General Mowhosh, weighed 650 grams for the right lung and 700 grams for the left lung, a total of 1350 grams. Those lungs are heavy, too heavy to be associated with asphyxia in his case. Mr. Dixon's lungs weighed 1890 grams, 540 grams more. As I recall, we knew the circumstances of Mr. Dixon's death. There was no question about timing. I know that this process continued for several minutes, the melee with 12 or 13 police officers on top of him at a family gathering. It was several minutes. I don't remember how long. I didn't mention 12 or 13 police officers on Mr. Dixon's back in my report. That particular fact is absent. That came out of the inquest. The only trauma I noted in the report was that he was handcuffed from behind and laid on the ground after being arrested at a party. He weighed 330 pounds and died of positional asphyxia. The pathologist who did the autopsy said that due to edema, the

conjunctivae could not be evaluated, so he could not tell if there was petechiae present. He did find hemorrhage in one eye. Petechiae can exist in more that just the eyes. I took pains to explain that. They could appear in the chest, the face. Nothing prevented him from looking in the mouth or the chest or the face. There were no petechiae. I signed this report. I found the cause in Charles Dixon's death to be a homicide. But General Mowhosh was an accident.

REDIRECT EXAMINATION

(under questioning by the civilian defense counsel)

I would like to distinguish the General Mowhosh case from the Charles Dixon case. In the Dixon case, we had incontrovertible, unchallenged testimony as to what happened. This was an egregious case with racial overtones, and following an open inquest, the hearing officer who presided made his recommendation, and I concurred. Our office makes a recommendation, which is then passed over to the district attorney's office.

Each case is evaluated on its own basis, coupled with all the facts, and I stand by the ruling we made in Dixon. I have always stood by it. It was a highly-controversial case in our community, and I have set forth my reasons and rationale in the case of General Mowhosh.

Having been presented with hypotheticals in regard to the facts of this case, there is nothing that he presented to me that has caused me to change my opinion in the facts of this case. I've tried to give the basis and the rationale for my opinions, and I have expressed opinions with reasonable medical certainty.

RECROSS-EXAMINATION

(under questioning by the assistant trial counsel)

One of the measures of controversy involving the Dixon case is after this report, a civil suit was filed by the Dixon family. I filed a report for the attorney representing the Dixon family. The Dixon family received an $850,000 settlement in this homicide from a very conservative Republican federal judge appointed by President Bush, who never allowed his children to go to the Carnegie Museum to see dinosaurs. That's how

conservative he is. He is the judge who hammered out the settlement. I did not testify. There was no trial. That judge said that he wanted that case settled, and there was an $850,000 settlement for the Dixon family.

I received a phone call from you, requesting the autopsy report on Charles Dixon. Your subpoena asked for any cases that I could remember for the last 5 years. I remembered that one. That's why I sent it to you. I responded to your request in my private capacity. The report was faxed to you from the Allegheny County Coroner's Office, my public office. I used the fax of the coroner's office to fax this to you in order to oblige you as soon as I could, as a courtesy to you, since I was not in my private office when I received your request.

EXAMINATION BY THE COURT-MARTIAL

(under questioning by the military judge based upon Appellate Exhibit XXXVIII)

A person suffering an arrhythmia, if he remains conscious enough, may complain of chest pain. Most of the time there will be no complaint. The heart will start beating irregularly, and then as the brain is deprived of oxygen, in 15 to 20 seconds one may become unconscious. He may feel light-headed, faint, but there is nothing of a definitive nature. "Signs" are things that we can see, feel, touch, measure. "Symptoms" are things that are expressed by the person. So, I was responding in respect to symptoms. There are no signs.

With trained med techs who get there before there is brain death; i.e., in less than 4 or 5 minutes, sometimes you can save a person. Other times, you cannot. If somebody has cardio respiratory failure, in a man like the general, with a bad heart and his age, in probably more than 4 minutes you'd have brain death, and he would not be salvageable.

REDIRECT EXAMINATION

(under questioning by the assistant trial counsel)

An arrhythmia can happen to a normal, healthy person and also to someone who was in Charles Dixon's condition or General Mowhosh's. It's an "electrical" event, in quotation marks. It's the special cells in the heart that send the impulse down

that are responsible for the normal beating of the heart. The only real way to positively confirm that an arrhythmia has occurred is with measurements done on a live body.

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

The court recessed at 1541 hours and reconvened at 1642 hours, 19 January 2006, all parties again present, including the members.

CW3 Lewis E. Welshofer, Jr., U.S. Army, the accused, was called as a witness by the defense on his own behalf on the merits, was sworn, and testified in substance as follows:

DIRECT EXAMINATION

(under questioning by the civilian defense counsel)

I joined the military in 1986 and went to AIT in Missouri. I attended the Defense Language Institute in California for a year, where I learned to speak Russian. I spent 12 weeks in Fort Huachuca, Arizona, learning to become an interrogator, then proceeded on multiple assignments: Germany, Hawaii, the 3d ACR the first time, Germany, Italy, 3d ACR a second time.

I was assigned to a unit in Germany from 1988 to 1991 and Hawaii from 1991 to 1994. I became a warrant officer between the Hawaii assignment and the first 3d ACR assignment. That was 1994 to 1997. I spent one year in Germany in Augsburg, 1997 to 1998. I spent 3 years in Vicenza, Italy, 1998 to 2001. And I've been assigned to the 3d ACR since 2001.

I have served in no other career field than interrogation. The basic training was about 12 weeks. The Language Institute for the Russian course was approximately 52 weeks. The instruction at Fort Huachuca was approximately 12 weeks. I think we had a break in the middle for Christmas vacation. I have attended a couple of civilian courses. One was called the Reid Technique of Interviewing, and another one was called the Laboratory for Scientific Interrogation. Those are civilian courses. I served as a SERE cadre. "SERE" stands for Survival, Escape, Resistance, and Evasion. Basically, what we do is train U.S. soldiers on how to conduct themselves to survive in captivity, should they ever become captured. I was part of the cadre for the course in Hawaii for approximately 18 months.

The first combat deployment I had was right after 9/11. I deployed to Afghanistan as part of an MI battalion out of Fort Gordon, Georgia. I was there for approximately 3 months. Subsequent to that was the deployment to Iraq from March of 2003 until approximately March of 2004.

Before I deployed to Iraq, I was not given any specific training tailored to the environment that I found there in the summer and fall of 2003. All interrogators are taught basic questioning skills, approach skills, and report-writing skills. I am familiar with Defense Exhibit A, the 10 September 2003 memorandum. The 10 September memo took a fairly large step forward in what approach techniques we were authorized to use. There are 14 techniques that are taught at the school, but the memorandum allowed for probably four or five additional techniques. There was no preparation from the school at all for what I encountered in Iraq. The situation in Iraq was completely different from anything else that we encountered at the school, which prepared us for the Cold War. The doctrine was based on an enemy basically from 60 years ago. There was no training at the school that simulated capturing insurgents in a Southwest Asia type environment. At the school, we received, I'm sure, just a basic block of instruction on the Geneva Conventions and how it pertained to our MOS. They did not give us scenarios at the school that were anything like what we actually experienced in Al Qaim. When I deployed to Iraq, I had not received any kind of special briefings about a potential insurgency or a situation where, once the U.S. had taken over the country of Iraq, that I would be interrogating insurgents or people of that sort.

The 3d ACR had to cover everything basically from Fallujah all the way out to the western border of Iraq. The regiment is only a little over 5,000 soldiers, and we're talking a 90,000-square-kilometer area, so it's not hard to understand that we were spread pretty thin. Fallujah at the time was just beginning to emerge as a hot zone. In Ramadi we had instances of IEDs, RPG attacks, things of that nature. At the time, we didn't have a full grasp of just how many foreign fighters had come in through the border and had begun to populate the Al Qaim area all the way down to Ramadi.

I was the CI HUMINT section OIC. I had, by MTOE, two interrogators under me, although one slot was unfilled, and I

had five counterintelligence agents who also worked for me. As a result of necessity, we combined the two MOSes into one MOS to form tactical HUMINT teams and then task-organized those teams out to the ground maneuver squadrons. In terms of chain of command, I had an NCOIC who worked for me. My rating scheme went to the ACE chief, the Analysis and Control Element chief, to the company commander as an intermediate rater and the squadron commander as my senior rater.

When we deployed, I only had one interrogator with me, and he is an Arabic linguist, so I put him on a tactical HUMINT team. He did not initially conduct interrogations. In Kuwait before we crossed the border, we did receive a two-person augmentation team of strictly interrogators. One was a CW3, and one was an E-7, but neither of them had any interrogation experience.

From a leadership perspective, I did get augmented up to 12 additional tactical HUMINT teams. But those teams were task-organized out to the squadrons. Their mission was to go outside the wire and conduct elicitation, source operations, in order to elicit information. Altogether, there were probably 40 individuals that I had supervisory control over for that. From strictly an interrogation standpoint, I took the two augmentees that we had and basically handed them the interrogation cage mission. And then I just tried to provide supervisory control as much as I could, having to wear the dual hat of managing all the tactical HUMINT teams and the interrogation operations. When we hit the ground at Rifles Blitz, SGT Lamb and I were the only two interrogators assigned to the regiment who were familiar with regimental operations. For Rifles Blitz we got five or six additional interrogators from various units across corps. They were attached to us strictly for Rifles Blitz. They were under my supervision.

Mr. Pratt was working as part of a tactical HUMINT team, THT-59. His THT for the Rifles Blitz operation was assigned to work with 3d Squadron, 3d ACR, conducting THT operations. SGT Pratt was then sliced out of the THT-59 and sent to work for me at the EPW cage.

In August we got a memo that came down from CJTF-7, the C2X. I believe CPT Ponce sent that e-mail out. It was a very substantial, significant e-mail. It basically said that as far as they knew, there was no ROE for interrogation operations at that time. They were still struggling with who was considered a

detainee; i.e., the definition of who it was that we were picking up and who it was that was attacking us. The memo also said that the G-2 at the time was tired of taking casualties and that the gloves were coming off. They asked for, basically, an interrogation-techniques wish-list. They recognized that the techniques that we had learned at school were ineffective and that in order to get the information that we needed to combat the insurgency, we were going to have to think outside of the box. The e-mail was the first guidance that we had received. It pretty much made a clear impression in my mind what the intent was behind future operations. There were no specific rules of engagement in terms of what techniques I could employ or not employ as an interrogator. All the e-mail asked for was a wish-list. It did not provide any clear guidance on what we were allowed to do. Other than the memo saying that they considered detainees "unprivileged belligerents," we received no guidance, no definition on what to call them.

The defense asked for a brief recess to locate an exhibit.

The court recessed at 1704 hours and reconvened at 1706 hours, 19 January 2006, all parties again present, including the members.

(further testimony on direct examination of CW3 Welshofer)

Defense Exhibit A is the 10 September 2003 memo from LTG Sanchez. That is the only guidance that I saw in theater with respect to authorized or unauthorized interrogation techniques. Prosecution Exhibit 26 is a memo dated 14 September 2003. Up to 26 November 2003, I had never seen that memo. I saw it for the first time probably some time in the summer of 2004 after we redeployed from Iraq. Prosecution Exhibit 27 is the 12 October 2003 memo, which superseded the 14 September memorandum. Prior to 26 November 2003, I had never seen the October memo from LTG Sanchez. The first time I saw the October memo was approximately the same time I saw the September memo, the summer of 2004. Prosecution Exhibits 26 and 27 have signatures on them, and they appear to be copies of the original memos. Defense Exhibit A, the 10 September 2003 memo, is not signed. I cannot explain why it is unsigned. It would have come to me over the secure Internet. I would probably not have received a signed copy. It would require Adobe Acrobat, and I'm not even sure I had that.

The 10 September memo authorized the use of stress positions as an interrogation technique without prior approval of LTG Sanchez.

I had the 10 September memorandum before Rifles Blitz. I don't believe the memo addressed the slap technique. I did use the slap technique, which is a control mechanism that we utilized at the SERE course that we ran in Hawaii. The technique is actually designed to grab somebody's attention, not inflict any kind of pain or harm on a person. Imagine a line that runs from your shoulders to the detainee's shoulders. The technique involves an open-handed facial slap in which the hand does not go outside that imaginary line from your shoulders to the detainee's shoulders. You can either use the open-handed facial slap or a back-handed, open-hand body blow to about the torso. We utilized both. I was not taught how to use the slap technique in school. I did use it at the SERE course in Hawaii. We had rave reviews about the course. Based on my experience working at the SERE course in Hawaii, we saw that the slap technique and a few other techniques were effective when teaching U.S. soldiers how to stand up under the duress of captivity. From that experience, I felt that I could use the technique in Iraq and that it would be successful. People that came through the SERE course were, for the most part, hardened infantry types, Marine Corps types. Since it worked on them, it made sense to me that it would work on other people.

Stress positions were not addressed at school. I don't know where the phrase originated. I don't recall having seen the term prior to the 10 September memo. Outside of some descriptive words that appeared after it, I wouldn't know where to look to find out what it meant.

"Close confinement" is what we called a technique in Hawaii. I never saw that term related to stress positions.

The court president, LTC Powell, informed the court that he had attended the SERE Air Force course.

The members departed the courtroom at 1719 hours, 19 January 2006, at which time the military judge held an Article 39(a) session.

The military judge wished to conduct individual *voir dire* of LTC Powell.

(questions on individual *voir dire* of LTC Powell by the military judge)

I attended a SERE course at Fairchild AFB run by the Air Force. I do not believe my experiences at that course will in any way impact my ability to sit fairly as a panel member in this case.

Neither side wished to conduct individual *voir dire* of LTC Powell, and he returned to the deliberation room.

There was no challenge of LTC Powell by either side.

The Article 39(a) session was concluded, and the court members returned to the courtroom at 1722 hours, 19 January 2006.

(further testimony on direct examination of CW3 Welshofer)

At the SERE course, we built small, wooden boxes. During the resistance training portion of the block of instruction, each student was put into a box periodically and in the evenings as part of close confinement. The boxes were designed to accommodate one person per box. They were probably 2½ feet by 2½ feet so that one could not sit or lie down or find a position to rest.

I don't believe the 10 September memorandum authorized close confinement, just stress positions.

SGT Lamb testified as to the use of a sleeping bag. I identified the sleeping-bag technique as a suitable replacement for close confinement. I related close confinement to the stress position portion of the 10 September memorandum. The 10 September memo did not describe physically how to employ the techniques mentioned. Experience and good judgment guided how a technique was to be carried out.

The fear-up (harsh) is a technique that's in the field manual that you are given at the school. I received training in that technique. I had a frame of reference for what that referred to. I had no frame of reference for "stress positions" from school.

When SGT Lamb first brought up this technique of the sleeping bag, I had to refer back to the experience that I had in Hawaii at the SERE school. The technique fairly replicated the idea of

close confinement. In Hawaii, we were using techniques on people who were being trained for situations in which they were captured by an enemy. We were not told that those techniques were authorized for interrogation. Ultimately, with respect to the sleeping bag, I made an assessment of the sleeping bag. I felt that it fairly replicated the idea of close confinement and judged it to be an acceptable form of stress. We presented it to the company commander, MAJ Voss, as an acceptable form of close confinement, and she concurred. She was concerned about the ability to breathe of the person inside the bag. I explained to her that the bag was fairly porous and provided better air flow than the hoods that detainees wore for hours when they were brought into the detention facility and that the bag was in no way restrictive of their breathing. SGT Lamb and I tested the sleeping bag before we used the technique on a detainee.

In regard to the slap technique, I recall just explaining to MAJ Voss what the parameters were in the SERE course when we used the slap technique; i.e., the imaginary line from shoulder to shoulder, the distances involved, and purpose behind it as control, not punishment or physical harm. I told her that I would be the only one authorized to use that technique, and she concurred with that use. I do not recall a conversation with her in which she told me not to use the slap technique. I'm saying that she did not give me an order not to use that technique. I used the technique in places where it could be observed. I did not avoid using it when MAJ Voss was around. She and others observed me using it. I never used the slap technique purely for the purpose of inflicting pain or punishing a detainee. The technique was used for only one reason, to establish and maintain control.

I used the sleeping-bag technique 12 to 24 times over the course of the deployment. In light of the guidance that I received from MAJ Voss about the use of the technique, I never used it in a manner contrary to her guidance. In using the technique, I learned that it could be effective. The idea was to induce a claustrophobic reaction, and that is the only purpose for which I used it. Reactions from the detainees varied. There were times when the person in the sleeping bag had absolutely no problems with the bag and it was completely ineffective. For others, the bag was very effective. The person inside the bag did not like being in it.

There was never an instance where a detainee experienced an inability to breathe inside the bag. I recall the testimony about a meeting in which I stated that someone had become unconscious during use of the sleeping-bag technique. I recall a meeting, but I do not recall making that comment.

From approximately 10 November to 26 November, I typically was putting in 18 or more hours of work every day, 7 days a week, with no days off. I would estimate that I personally interrogated 20 to 30 detainees during that time frame. The Rifles Blitz operation only lasted approximately 10 days, from the 19th until about the 29th. During that 10-day operation, I probably did 20 to 30 interrogations total. Typically, an interrogation lasted 2 hours or more. Interrogation summaries were written after interrogations. The experience was very fatiguing. We'd already been interrogating since April or May, so we were into 6 or 7 months' worth of 18-hour days, 7 days a week.

I first encountered MG Mowhosh 10 November 2003. He turned himself in to FOB Tiger, which was 1/3 Squadron's operating base.

The members departed the courtroom at 1747 hours, 19 January 2006, at which time the military judge held an Article 39(a) session.

The military judge noted that at an RCM 802 session, counsel for both sides and he had discussed this aspect of the testimony, and the military judge had given the civilian defense counsel permission to lead the witness.

The Article 39(a) session was concluded, and the members returned to the courtroom at 1748 hours, 19 January 2006.

(further testimony on direct examination of the accused)

MG Mowhosh was moved to Blacksmith Hotel at the onset of the Operation Rifles Blitz, which began approximately 19 November. I happened to be at FOB Tiger on 10 November, so on that day was my first interrogation of him, which lasted probably an hour and a half to 2 hours. I employed the technique of direct questioning.

The next time I interrogated MG Mowhosh was 17 November for roughly 2 hours. I employed the techniques of direct

questioning and probably some "pride and ego down." I don't have full recollection of all the techniques. On the 17th, I did slap him. With the technique of "pride and ego down" you want to try to bring the detainee down a peg or two in terms of self-esteem. Every detainee is different from the previous one. Interrogation is an art; it's not a science.

On 17 November, the general had been in custody for a week. It was the second time I'd spoken with him. I brought him over from where he'd been staying in a small room by himself to an adjacent building and spent probably the first hour or so talking to him, asking him direct questions, running various approaches, including the "pride and ego down" approach. I was not really getting anywhere with him, so I put him on his knees, which is an authorized stress position, and I administered an open-handed slap to exert control. The general then bowed his head. Other detainees who were in the holding area had gathered at one side of the concertina wire where they could see into the interrogation room. After I slapped the general, I looked out at the holding area, and almost without exception, all of them had their heads down, as well. Up until that point, the general had kept denying that he was involved with the insurgency at all. We had been doing interrogations, and I had been using his name as a central figure in those interrogations with other detainees. Detainees recognized the significance of his name. I used the open-handed slap technique, based on my suspicion about what his involvement was, to demonstrate to him that I was in control. The added benefit to that just happened to be the people in the holding area visibly bowing their heads, which told me that they also understood his significance, as well. On 17 November I did not use the sleeping-bag technique with MG Mowhosh.

I believe the next time I interrogated MG Mowhosh was 21 November. That interrogation lasted a couple of hours. Every time you do an interrogation, you start with a direct approach because if the detainee answers your direct questions, then there's no need to run a different approach. I don't remember what other approaches I used. I did not use the sleeping-bag technique on that day. The general divulged that he was in fact the commander of what was called the Golden Division, which was part of the al-Quds army. So, we were gathering tidbits of information, although he continued to lie and try to hide information. The general made no mention at all about any medical problems. From 10 November to 26 November,

the general never expressed to me any desire to receive medical attention.

As of 21 November, the general had not had an opportunity to visit with any of his sons. I did talk to him about his sons and told him that they were in U.S. custody. I recognized that his youngest son was his favorite and, in an attempt to build rapport, talked about him. As of 21 November, we were still getting bits of information out of him. By the 21st, we had launched into Operation Rifles Blitz. We had 5,000 people running around in that area, and there was a requirement for tactical intelligence. My hope was that he would provide that.

The next occasion that I talked to the general was 24 November. I had brought him into the interrogation room with the intention of conducting an interrogation. I'd say maybe 5 minutes into the interrogation, when he continued to deny, deny, deny, I noticed other people in the hallway. I recognized the identify of some of them. I was not the sole person interrogating MG Mowhosh. If other individuals wanted to interrogate him, they didn't have to come through me to interrogate the general. I passed control of the interrogation over to these individuals in the hallway. It is not correct that I was in control of the interrogation and that the others were just assisting me. I did not feel I had any kind of command control over those people. On that occasion, I did not strike or assault MG Mowhosh in any way. When the general left the room, it was under his own power. I saw what looked like a straight piece of radiator hose, a little bit softer material but of the same diameter, as well as a piece of something like insulation that might go around a door, only it was thicker and hollow on the inside with a camouflage net pole down in one end of it. These devices were used to beat the general. There were also some kicks, some slaps. I don't recall seeing any closed-hand fists being thrown. It was my impression that this incident began going outside the normal interrogation process as a result of the general's recognizing one of the individuals there and that individual's recognizing the general. I don't speak Arabic, so I don't know if angry words were exchanged between them. There was an escalation of tension in the air. It particularly got worse with the visual recognition both ways of the parties involved. The interrogation ended when someone came into the room and announced that the regimental commander had landed and was coming into the area. I did not use the sleeping-bag technique on this occasion.

There was a rooftop interrogation of MG Mowhosh. To the best of my memory, that took place prior to the interrogation of 24 November, the day that the general was beaten, but after the interrogation of 21 November. I cannot verify the date of the rooftop interrogation. The rooftop interrogation lasted 30 to 45 minutes. When the general arrived for his interrogation, all the interrogation rooms were full, so there was no place to conduct the interrogation. On this occasion, I employed direct questioning. I don't recall what other techniques were used. We got into "fear up." I don't recall if I used the slap technique. Hitting of the general's elbows did happen. The general was standing in the middle of the rooftop area, one person on either side of him, and they would tap him on the back of the arm, above the elbow. I was the senior person on the roof. Mr. Williams is the one who introduced the elbow-hitting technique on the rooftop. I had not seen that technique before, and I had never used such a technique. I was in charge of the interview, but I didn't stop the technique because I likened it to the white-noise technique that we used in Hawaii. It was designed to be an annoyance, not something to inflict harm. Based on how I saw the technique being used, I didn't believe it was harming the general. I also poured water on the general on this occasion. That technique was fear-up (harsh). Water is a technique that we employed in Hawaii at the SERE course. The general lay on his back, and I poured a little water on his face intermittently. He was able to close his mouth and turn his face. This interrogation was terminated when it became obvious that the general was not going to give up any more information. The sleeping-bag technique was not used on this occasion.

On 25 November, I permitted the general to visit with his son. I think it's called "emotion," but we call it "love of family" as a technique. I brought the general's favorite son up, hoping that that might give him the desire to cooperate with us. They were only together for probably less than 5 minutes. I brought the general up from the holding area and had the youngest son in an interrogation room and put the two of them together. I had given the general some instructions that he was not to talk about his guilt or innocence of being in charge of the insurgency. I told him that if he went down that road, trying to proclaim his innocence, that I would have him removed from the room. Within 5 minutes, he said that he was innocent, so I removed him from the room.