

**THE BEATING OF
SPECIALIST
SEAN BAKER
IN GUANTANAMO BAY,
CUBA: A REPORT OF
FINDINGS AND A
REQUEST FOR RELIEF**

December 2, 2004

Prepared by:



T. Bruce Simpson, Jr.
Attorney at law
Legal Counsel for Sean D. Baker, Sr.

McBRAYER, McGINNIS, LESLIE & KIRKLAND
201 East Main Street, Suite 1000
Lexington, KY 40507
Phone: (859) 231-8780
Fax: (859) 255-9777
bsimpson@mmlk.com

TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION.....	1
II. BRIEF BACKGROUND ON SEAN BAKER.....	3
III. SEAN BAKER'S BEATING ON JANUARY 24, 2003 AND HIS LIFE AFTERWARD.....	7
IV. THE INFORMATION PROVIDED THE IRF TEAM ON JANUARY 24, 2003 CREATED AN UNNECESSARILY HOSTILE ENVIRONMENT. IT WAS A PRELUDE TO CATASTROPHE	23
V. THE REQUIRED INVESTIGATIONS WERE NEVER INITIATED, AND THE "LINE OF DUTY INVESTIGATION" WAS POORLY DONE	27
VI. OTHER FAILURES OF THE LINE OF DUTY INVESTIGATION.....	35
VII. THE COMMANDING OFFICERS AT GUANTANAMO BAY, CUBA, FAILED TO COMPLY WITH MANDATORY ARMY REGULATIONS REGARDING THE KINDS OF INVESTIGATIONS WHICH SHOULD HAVE BEEN INSTITUTED	36
VIII. THE TORTOISE PACE OF THE CRIMINAL INVESTIGATION.....	43
IX. EVEN AFTER HIS BEATING, THE UNITED STATES ARMY CONTINUED TO VIOLATE SEAN BAKER'S FEDERAL RIGHTS	46
X. SUMMARY STATEMENT AND REQUEST FOR RELIEF	52

EXHIBITS

	<u>Exhibit No.</u>
Report of Medical Examination, dated January 11, 2002.....	1
Letter of T. Bruce Simpson, Jr., to Special Agent Christopher Fernholz, Criminal Investigation Command, dated September 3, 2004	2
Letter of T. Bruce Simpson, Jr., to Robert Schuyler, General Crimes Team Chief, Criminal Investigation Command, dated August 27, 2004.....	3
Physical Evaluation Board Proceedings, dated September 29, 2003.....	4
Affidavit of Dr. Robert P. Granacher, Jr., dated August 31, 2004, and Dr. Granacher's Curriculum Vitae	5
Affidavit of Sean D. Baker, Sr., dated June 22, 2004.....	6
Sworn Statement of Sean Douglas Baker, Sr., dated January 24, 2003.....	7
Sworn Statements of Shaw Timothy Locke, dated January 24, 2003, and February 5, 2003.....	8
Sworn Statements of Terry Brian Grant, dated January 24, 2003, and February 5, 2003.....	9
Sworn Statements of Tony K. Moss, dated January 24, 2003, and February 5, 2003.....	10
Sworn Statements of Eric Duane Messner, dated January 24, 2003, and February 6, 2003.....	11
Sworn Statements of Eric Clayton Speese, dated January 24, 2003, and February 5, 2003.....	12
Sworn Statement of Joseph Paul Fry, dated January 24, 2003	13
Sworn Statements of Scott David Sinclair, dated January 24, 2003, and February 5, 2003.....	14
Affidavit of Michael Riley, dated September 9, 2004	15
<i>Boston Globe</i> , "Guantanamo cell tapes are turned over," dated June 14, 2003.....	16
Statement of Medical Examination and Duty Status, dated January 24, 2003	17

Sworn Statement of Shawn Patrick Bateman, dated February 24, 2004	18
Statement of SPC Shaun Bateman, dated February 23, 2004	19
Sworn Statement of Bruce Leonard Barringer, Jr., dated February 24, 2004.....	20
Statement of SPC Bruce Barringer, dated February 23, 2004	21
Sworn Statement of Shane Alfaro, dated February 23, 2004.....	22
Sworn Statement of Eric William Hand, dated February 22, 2004	23
Recommendation for Award, dated May 27, 2003	24
100% Disability Award Letter from Department of Veterans Affairs, dated June 15, 2004.....	25
100% Disability Award Letter from Social Security Administration, dated August 30, 2004	26
Memorandum Authorizing Investigation into Beating of Sean Baker, Dated February 1, 2003.....	27
Letter from T. Bruce Simpson, Jr., to Special Agents David Frost and Ben Shuck, Criminal Investigation Command, dated July 7, 2004.....	28
AR 600-8-4, § 2-2 (“Reasons for conducting line of duty investigations”).....	29
AR 600-8-4, § 3-8 (“Investigation”)	30
Line of Duty Investigation, dated February 6, 2003	31
AR 600-8-4, § 3-11 (“Actions by final approving authority”).....	32
AR 385-40, § 1-1 (“Purpose”)	33
AR 385-40, § 1-4 (“Responsibilities”).....	34
AR 385-40, § 1-5 (“Policy”)	35
AR 385-40, § 2-2 (“Accidents and incident classes”).....	36
AR 385-40, § 4-1 (“General”).....	37
AR 385-40, § 4-3 (“Class A and B accident investigations”).....	38

AR 385-40, § 4-5 (“Accident scene preservation”)	39
AR 385-40, § 1-8 (“Collateral investigations and reports”)	40
AR 350-28, § 4-4 (“Designing military exercises”).....	41
AR 350-28, § 4-8 (“Safety”)	42
DA PAM 385-1, § 1-4 (“The Unit Safety Program”)	43
AR 350-1, § 1-13 (“Integration of risk management and environmental considerations into training”).....	44
DA PAM 385-1, § 2-3 (“Operational safety”).....	45
Letter from T. Bruce Simpson, Jr., to Hon. R. Les Brownlee, Acting Secretary of the Army, dated August 16, 2004	46
<i>Lexington Herald-Leader</i> , “Soldier: Guantanamo MPs beat me,” dated May 26, 2004	47
<i>Lexington-Herald Leader</i> , “Army version of discharge changes,” dated June 8, 2004	48
Letter from T. Bruce Simpson, Jr., to Col. Kathryn Stone, U.S. Army Southern Command, Staff Judge Advocate’s Office, dated June 1, 2004	49
Letter from W. Craig Mullen, Major, USAF, U.S. Southern Command, Staff Judge Advocate’s Office, dated June 4, 2004	50
Letter from T. Bruce Simpson, Jr., to Maj. Laurie Arellano, U.S. Southern Command, Public Affairs Office, dated June 9, 2004	51
<i>THE WIRE</i> , “CG Sends” by JTF-Guantanamo Commander MG Geoffrey D. Miller, Dated January 24, 2003	52
<i>THE WIRE</i> , “From the Top” by MG Geoffrey D. Miller, dated May 9, 2003	53
<i>THE WIRE</i> , “Message from BG James E. Payne,” dated February 21, 2003.....	54
United States Army, “Message from the Secretary and Chief of Staff,” by Peter J. Schoomaker, General, United States Army, Chief of Staff; and R.L. Brownlee, Acting Secretary of the Army.....	55
“Oleoresin Capsicum,” by Spc. Tim Grooms, 29 th MPAD	56

Letter to Renee Wailani Baker, dated May 31, 2003, from Major General Geoffrey D. Miller	57
“Traumatic Brain Injury Affects Every American,” Defense and Veterans Brain Injury Center	58
Statement by SPC Keith Van Bowman, dated March 26, 2004.....	59
Letter from T. Bruce Simpson, Jr., to Hon. R. Les Brownlee, Acting Secretary of the Army, dated September 23, 2004.	60
Letter from T. Bruce Simpson, Jr., to Hon. R. Les Brownlee, Acting Secretary of the Army, dated October 7, 2004.....	61
Letter from T. Bruce Simpson, Jr., to Special Agent David Frost, Criminal Investigation Command, dated October 18, 2004	62
Letter from Col. Michael S. Child, Chief, Criminal Law Division, Office of the Judge Advocate General, dated October 25, 2004 To T. Bruce Simpson, Jr.	63
Letter from T. Bruce Simpson, Jr., to Col. Michael S. Child, Chief, Criminal Law Division, Office of the Judge Advocate General, dated November 1, 2004	64
Letter from T. Bruce Simpson, Jr., to Senator John Warner, Chairman, Senate Armed Services Committee, dated November 19, 2004	65
Letter from T. Bruce Simpson, Jr., to Senator Arlen Specter, Chairman, Senate Judiciary Committee, dated November 19, 2004	66

I. INTRODUCTION

This is a report about the beating of Specialist Sean Baker which took place in Guantanamo Bay, Cuba, on January 24, 2003. The purpose of this report is: (1) to document the facts surrounding his beating; (2) to document the failure of Army officers to conduct appropriate investigations of his assault, as mandated by federal law; (3) to document the Army's failure to institute appropriate disciplinary and/or criminal proceedings against those military officers and others responsible for: (a) the assault on Sean Baker; (b) the destruction of material evidence; (c) the failure to preserve material evidence; (d) the failure to adequately investigate Sean Baker's assault; and (e) the participation in the destruction of material evidence and/or covering it up; and (4) to document the breach of Sean Baker's privacy rights as safeguarded and protected by 5 U.S.C.A. §552a.

This report and request for relief was initially forwarded to R. Les Brownlee, Acting Secretary of the Army, on September 23, 2004 (Exhibit 60). Thus, the orientation of this report and the request for relief were specifically directed to Secretary Brownlee. Subsequently, additional evidence was discovered, and the report was amended to include this new evidence. The amended report was forwarded to Secretary Brownlee on October 7, 2004 (Exhibit 61). On October 18, 2004, undersigned counsel wrote the Criminal Investigation Command,

complaining about the slowness of the criminal investigation as to the beating of Sean Baker (Exhibit 62). As of this date, there has been no response to said letter. On October 29, 2004, undersigned counsel received a response from the Secretary of the Army via Col. Michael S. Child, Chief, Criminal Law Division, informing undersigned counsel that Sean Baker's requests for relief, as set forth on pages 57-60, were denied (Exhibit 63). Col. Child further stated that the criminal investigation was still ongoing. In response, undersigned counsel requested Col. Child's reconsideration of the Army's decision denying Sean Baker his requested relief (Exhibit 64).

Thus, as of December 2, 2004, almost two years after the beating of Sean Baker, no one has been disciplined or prosecuted for the numerous violations of military law that took place on January 24, 2003, and the dates subsequent thereto. The United States Army has denied Sean Baker his request to be reinstated into the Army and has also objected to his request to present his claim to the United States Court of Federal Claims. The within report and request for relief were forwarded to the Chairperson of the United States Senate Committee on Armed Services and the Chairperson of the United States Senate Committee on the Judiciary on November 19, 2004 (Exhibits 65 and 66). It is now up to the United States Congress to facilitate for Sean Baker the relief he seeks.

II. BRIEF BACKGROUND ON SEAN BAKER

Sean Baker has obtained three separate Honorable Discharges for his service with the United States Armed Forces. He initially served with the United States Air Force in 1984, enlisting with his parents' permission at age 17. He has an Honorable Discharge from that service. Sean also served during the first Gulf War as a military police officer. His tour of duty there included wartime operations in Saudi Arabia, Kuwait and Iraq. Following his Honorable Discharge from that duty, Sean returned home to Georgetown, Kentucky, where he resumed his civilian life as an auto mechanic. He has been married to his wife, Rene, for 19 years, and they have a 14-year-old son, Sean Jr.

On September 11, 2001, Sean responded to the horrific terrorist attack against our country by calling a local Army recruiter that day to enlist in the Kentucky National Guard. However, it took a couple of months to obtain all of the requisite paperwork from his prior military service before the Kentucky National Guard could accept his enlistment. Finally, after all the necessary documentation from his prior service was obtained, Sean entered the Kentucky National Guard in January 2002. He entered as an Army specialist (E-4), military police. He was 35 years old. He felt then, as he does now, that he wanted to play an active role in protecting and serving his country. He has always taken a great deal of pride in

serving in the United States military. He still considers himself a soldier. He still wants to be a soldier.

In January 2002, Sean was assigned to the 940th Military Police Company, Kentucky National Guard Unit in Lexington, Kentucky. Later in 2002, the 438th Military Police Unit out of Murray, Kentucky, was activated but was short-staffed. Inquiries were made from the 438th to other National Guard units in Kentucky, requesting volunteers for active duty. It was uncertain at this point in time where the Murray, Kentucky, unit would ultimately be deployed, but the initial orders were for Afghanistan. Immediately upon being notified that the Murray unit needed more troops, Sean volunteered. Interviews with his fellow soldiers confirm that Sean Baker was usually the first soldier in his platoon to volunteer for any assignment. He was well-liked by his peers, his platoon sergeant, SFC Michael Riley, and his First Sergeant, Ron England.

The 438th Military Police unit ultimately was deployed to Camp Delta, Guantanamo Bay, Cuba, and arrived there on or about November 23, 2002. Sean commenced his duties as a military police officer, being primarily responsible for escorting detainees to and from interrogation, as well as other security work associated with this prison. It is significant to note that at the time Sean enlisted in

the Armed Forces for the third time in January 2002, he was in excellent health. (Exhibit 1, Sean Baker's military physical assessment as of January 2002.)

Prior to the beating on January 24, 2003, Sean had never experienced a seizure, had no history of any significant medical treatment (except for an appendectomy at age twelve), and he was not on any prescription medications. Sean Baker's medical records can be supplied upon request. The Criminal Investigation Command has been supplied, pursuant to their request on August 31, 2004, with all of his medical records from 1984 up to the date of his beating (Exhibit 2). The Criminal Investigation Command was given the option of being forwarded all of the medical records that undersigned counsel had obtained post-January 24, 2003, but this offer was declined (Exhibit 3). Mr. Robert Schuyler, General Crimes Team Chief for the Criminal Investigation Command, reported he had requested such records from Walter Reed Army Hospital. However, as of August 31, 2004, nearly three months after the CID opened its belated investigation, his office had still not received these records (Exhibit 2).

In a subsequent telephone conversation, Special Agent Chris Fernholz, on September 17, 2004, also of the Fort Knox, Kentucky, Criminal Investigation Command, informed undersigned counsel that he had been out of his office for three days and did not know if the medical records from Walter Reed had yet

arrived. It is mystifying why they would not want all of the records already obtained, especially in light of the length of time that their investigation had already taken (over three months).

Due to the beating he sustained on January 24, 2003, Sean Baker now suffers from the consequences of a traumatic brain injury, including weekly and sometimes daily seizures, and a personality mood disorder. Between January 24, 2003, and May 3, 2004, Sean was hospitalized in seven different hospitals for a total of 68 days. He is now taking nine prescription medications, three of which are for seizure control. Sean was medically retired from the Army on April 4, 2004, seven months after the Army's Physical Evaluation Board determined the disability he sustained on January 24, 2003, "prevents satisfactory performance of duty in [his] grade and specialty." (Exhibit 4).

The quality of Sean's life was radically and forever changed in the early morning hours of January 24, 2003, at Guantanamo Bay, Cuba. The injuries he sustained from that beating were severe. His damages are permanent (Exhibit 5). Crimes were committed. Critical evidence was destroyed. Mandatory investigations were not performed. Several military officers failed to conform their conduct to numerous and express provisions of federal law.

As of this date, not one person has been disciplined or criminally prosecuted for the assault on Sean Baker, nor has anyone been disciplined or prosecuted for the destruction of material evidence or covering it up. Similarly, no officer has been disciplined for the blatant failure to appropriately investigate the beating of Specialist Baker. It was not until June 17, 2004 (17 months after the Sean Baker assault) that anyone from the United States Government, in any kind of official investigative capacity, asked Sean Baker a single question about the events of January 24, 2003 (Exhibit 6).

III. SEAN BAKER'S BEATING ON JANUARY 24, 2003 AND HIS LIFE AFTERWARD

At approximately 2 a.m. on January 24, 2003, Sean Baker was on duty with the escort team for the 438th Military Police Unit in Camp 1, Guantanamo Bay, Cuba (Exhibits 6 and 7). Second Lieutenant Shaw T. Locke of the 303rd Military Police unit out of Jackson, Michigan, stationed in Camp 2, Guantanamo Bay, Cuba, telephoned the 438th escort team and requested a volunteer for a training exercise. At that time, Second Lieutenant Locke did not explain to the non-commissioned officer he talked to over the phone the nature of the training exercise.

When this non-commissioned officer of the 438th MP Company asked for a volunteer, Sean Baker responded and walked to Camp 2 and reported to Second Lieutenant Locke. Sergeant First Class Terry Grant of the 303rd M.P. unit is also

believed to have been present with Second Lieutenant Locke. Sergeant Grant was then serving as Sergeant of the Guard. Second Lieutenant Locke proceeded to explain to Sean that he was going to play the role of an uncooperative detainee for the purpose of a forced cell extraction training exercise to be performed by an Internal Reaction Force (IRF) (Exhibits 6-7).

Sean was ordered to put on an orange jumpsuit, the same uniform worn by the detainees housed at Camp Delta. This was the first time that any member of the United States Army at Camp Delta had donned an orange jumpsuit for the purpose of participating in an IRF training exercise. Although Sean had some apprehensions about performing this role, especially while dressed in an orange jumpsuit, Second Lieutenant Locke reassured him that, "Everything's going to be fine, Specialist Baker. You will be fine." (Exhibit 6).

Sean put on the orange jumpsuit and walked down the prison causeway to Cell 27, Oscar Block, Camp 2. This was a segregation or isolation cell block reserved only for the detainees who had previously acted out by throwing urine or feces on other MPs or who had refused to comply with an order, or who had otherwise been unruly, uncooperative, or violent. Very simply, at the time, these cells housed the "baddest of the bad guys" at Guantanamo Bay, Cuba.

This was the first “training exercise” for an IRF team in a segregation block. This was the first time that an IRF team had not been informed that the extraction was, in fact, “training” (Exhibits 6, 8, 14). It was also the first time that an IRF exercise had been performed in the physical presence of an actual detainee (Exhibits 6, 14). At the time Sean Baker was assaulted, there was an actual detainee in a segregation cell across the causeway from Sean Baker’s cell (Exhibits 6-7). This factor further amplified the clear understanding and perception held by the IRF team that the forced cell extraction of this detainee (Sean Baker) was not a drill but was instead a real-time mission. There is also no dispute that none of the IRF members knew who Sean Baker was beforehand and it was a dark cell.

Prior to entering the cell, Sean asked Second Lieutenant Locke if he was going to tell the IRF team that he was a U.S. soldier, and Second Lieutenant Locke again assured him, “Yes, Specialist Baker, you will be fine.” Second Lieutenant Locke further instructed Sean to make noise in the cell while hiding under the bunk and to resist all verbal orders, but to comply when the IRF team entered the cell and allow them to apply the “three-piece suit” (shackles and handcuffs) (Exhibits 6-7). Second Lieutenant Locke also explained to Sean that the code word to index the exercise was “Red” and that if he felt threatened or hurt, he was to say the word “Red,” and the exercise would be terminated (Exhibits 7-9). All members of the

IRF team knew that if they heard the code word, "Red," they were to stop the extraction (Exhibits 6-14).

As instructed, Sean went into the segregation cell, crawled under the bunk and lay on the steel floor, facing the wall. These segregation cells were constructed of solid steel floors, walls and ceilings. It was a dark cell, illuminated only by the faintest glimmer of a low-wattage bulb in the upper corner of the cell. It was not possible to see in or out of these segregation cells except for a tiny viewing hole and a "bean hole" where food was given to the detainees and where they were cuffed (Exhibit 7). In non-segregation cells where previous IRF training exercises had been conducted, the cells were well lit and the IRF team could see inside the cell through the steel bars. They could also see that the mock detainee was a U.S. soldier wearing a tee shirt and his BDU trousers (Exhibits 6, 15).

When Sean Baker entered this dark segregation cell, he lay under the bunk for approximately 20 minutes. He then heard an interpreter speaking to him through the bean hole in a language which he believed to be Arabic. He had heard it previously at Camp Delta. Then, the interpreter momentarily moved away from the cell, and Sean heard an OC (pepper spray) canister being shaken, and the individual who was using the can, believed to be Sergeant Grant, made a verbal hissing sound, as if he were actually spraying OC on Sean Baker (Exhibit 6).

This particular form of OC (oleoresin capsicum) is extremely noxious and quickly stuns and incapacitates most human beings (Exhibit 56). Subsequently, the individual acting like he was spraying the OC canister yelled to Sean, "This is the last time! Come to the front of the cell!" The interpreter was then called back to the front of Sean's cell. He began speaking to Sean again in what he believed was Arabic. This time, the detainee across the causeway began to scream and yell. The military police in the causeway ordered him to shut up. The interpreter gave his final warning statement to Sean by whispering to him through the "bean hole" in English, saying, "Man, they are going to fuck you up. They are going to fuck you up." (Exhibit 6).

Sean next heard the IRF team assembling outside his cell door. At that time, though somewhat anxious, he still believed this was just a training exercise and that the IRF team also knew it was training and further knew that he was a U.S. soldier. Suddenly, the door to his cell was abruptly thrown open and IRF team members immediately and aggressively descended upon Sean Baker. They pounced on him. Initially, Sean tried to be compliant, but the IRF team was all over him, snatching, grabbing and pulling him out from under the bunk, turning him onto his stomach, and painfully and awkwardly twisting his legs up toward his back, all of which made it extremely difficult for him to breathe. He began to resist (Exhibit 6).

The IRF team forcibly bent Sean Baker's arms behind his back. In addition, a heavy individual put his knee and full body weight on Sean's back and grabbed him around the throat with his hand and began to choke Sean while also applying a disabling pressure point technique to his throat. Sean Baker has identified this person as Specialist Scott David Sinclair. Within a few moments after the IRF team burst through the cell door, Sean Baker was gasping for air (Exhibit 6).

Sean grunted out the code word "Red!" and turned his head toward the IRF team, but they kept applying unrelenting physical force and pressure and continued to make it very difficult for him to breathe. Sean panicked and tried to struggle free. He again groaned, "Red!" and this time, the individual on his back, who was also choking him, slammed his head down against the steel floor. Sean said the code word "Red!" two or three more times, but the only response of the IRF team was to continue twisting his legs up toward his back, bending his arms backwards into an unnatural position, trying to cuff and shackle him and choke him. Now, Sean Baker was in fear for his life (Exhibit 6).

After about the third time Sean uttered the code word "Red!" his head was again slammed down against the steel floor. Sean Baker finally gasped, "I'm a U.S. soldier! I'm a U.S. soldier!" and his head was smashed against the steel floor again. He again said, "I'm a U.S. soldier!" and he heard one member of the IRF

team say, "Whoa! Whoa! Whoa!" This IRF team member apparently realized that the "detainee" was, in fact, a U.S. soldier (Exhibit 6).

Also, at about this same time, Sean's orange jumpsuit had apparently become uncovered enough so that his Army BDU trousers could be seen. During this entire "training exercise," Sean Baker wore heavy-duty, fully-laced, high-top Army jump boots. Detainees never wore heavy-duty, fully-laced, high-top Army jump boots. Detainees always wore lightweight rubber flip-flops (Exhibit 6).

As the IRF team was leaving the cell, the individual who had been choking Sean and slamming his head down against the steel floor kicked him in the side. Again, Sean Baker has identified this person to be Specialist Scott David Sinclair of the 303rd M.P. unit (Exhibits 6-7).

Sean struggled to his feet. His head was bleeding and a knot was beginning to swell over his right eye. He turned immediately to Specialist Sinclair, who had been on his back choking him and slamming his head down on the floor, and said, "I want this man right here!" He then pointed to Specialist Sinclair as the IRF member who had used excessive force and assaulted him by slamming his head (Exhibits 7, 14). Sean then stumbled out into the causeway of Oscar block, and

two medics rushed towards him. A guard dog was also nearby and immediately began barking viciously at him because he was wearing an orange jumpsuit.

Sean heard someone yell out, "Cut that suit off of him! Cut that suit off of him!" and someone started cutting off the orange jumpsuit with scissors from the medics' kit. Sean heard someone else shout, "Clean that man up! Clean that man up! I want him cleaned up before he gets out of here!" The medics cleaned up Sean's blood, put a temporary bandage on his forehead, and escorted him down to where the IRF team had assembled for an AAR (After Action Review). At this point the IRF members, Second Lieutenant Locke and Sergeant Terry Grant, apparently filled out their sworn statements (Form DA 2823) as to what had happened (Exhibits 8-14). Second Lieutenant Locke served as the person administering the "oath" on each of the sworn statements given by the men serving under him. The medics told Sean that he should go to the Guantanamo Naval Hospital. Sean insisted on going back to his unit first. He proceeded to stagger back to his unit, vomiting a couple of times. His head was hurting tremendously (Exhibit 6).

When he arrived at his unit and opened the door, everyone inside leapt to their feet, demanding to know what had happened. His squad leader, Staff Sergeant David Howe, and his team leader, Sergeant David Harrison, took Sean into an adjacent room. Staff Sergeant Howe then went to Camp 2 to check on what had happened,

and Sean requested that he get the videotape of the "training exercise."

Videotapes of cell extractions by IRF's were required procedure at Guantanamo Bay, Cuba. The U.S. Army has hundreds of hours of these cell extractions on tape (Exhibit 16). There is no dispute that the extraction of Sean Baker was videotaped (Exhibits 6-15). A "Sergeant Taylor" videotaped Sean Baker's extraction (Exhibits 11, 12, 14).

A few minutes later, Staff Sergeant Howe returned to the 438th but reported that there was nothing on the videotape. Staff Sergeant Howe then brought Sean a sworn statement form (DA Form 2823), which he asked Sean to fill out. At the time, Sean was quite ill but managed to fill out the form as best he could. Sean was then escorted by Sergeants Howe and Harrison to a nearby first-aid type medical facility near Camp 1, where he completed the rest of his sworn statement (Exhibit 6).

Sean Baker was first observed by a physician's assistant or a nurse, who indicated that Sean was too seriously injured to be treated there and directed that Staff Sergeant Howe and Sergeant Harrison transport Sean to the Naval Hospital. Subsequently, Staff Sergeant Howe and Sergeant Harrison transported Sean by military vehicle to the Guantanamo Naval Hospital. During the ride they had to

stop because Sean had to vomit. This is also where he had his first major seizure (Exhibit 6).

Sean Baker remained at the Guantanamo Hospital for three days. At some point during his hospitalization at Guantanamo, Major General Miller and Brigadier General Payne visited Sean Baker. At that time, they were the senior officers in command at Guantanamo Bay, Cuba. They asked him how he was doing, assured him that there would be a complete and thorough investigation, and that they would get to the bottom of what happened and those involved would be held accountable. Sean never heard from either Major General Miller or Brigadier General Payne again, nor was he ever interviewed by anyone in connection with his beating until June 17, 2004, 17 months later, and then only after his assault had been published by the news media (Exhibit 6).

The initial medical report (DA Form 2173) completed on Sean Baker at Guantanamo Naval Hospital stated that he had sustained a closed head injury with neurological deficits, right sided with slow resolution. This report, dated January 24, 2003 and signed by Lt. Bobby J. Riddle, also stated, "36 year old active duty United States Army male was involved in 'IRF' drill in which patient was assaulted sustaining closed head injury, nausea, right sided weakness and difficulty remembering." (Emphasis added) (Exhibit 17).

After three days at Guantanamo Naval Hospital, Sean Baker was forced to be transported by Medivac to Portsmouth, Virginia, Naval Hospital, for further medical treatment which the Guantanamo Bay Naval Hospital could not provide. He remained there for four days. He was discharged from Portsmouth Naval Hospital on January 30, 2003. However, the Army did not provide him with any transportation (air or ground) for his (militarily ordered) two-week convalescent leave home to Georgetown, Kentucky.

Following his release from the Portsmouth, Virginia, Naval Hospital, he was taken to a bus station where he was forced to use his own credit card to pay for his bus fare home. He was heavily medicated, alone, with little money and a brown bag containing his prescription medications. After a circuitous bus route, he arrived in Lexington, Kentucky, 22 hours later. Following his two-week convalescent leave, he returned to Portsmouth, Virginia via another lengthy and circuitous bus trip, and was then flown to Guantanamo Bay, Cuba (Exhibit 6). He arrived at Camp Delta on February 18, 2003.

Sean tried to resume his duties for approximately the next two and a half months but experienced continual seizures, headaches, and other severe and debilitating consequential effects of his traumatic brain injury. Between February 19, 2003, and April 9, 2003, Sean Baker was treated as an outpatient on six different

occasions at Guantanamo Naval Hospital. He became very frustrated at not being able to perform his duties as an M.P. Sometimes he tried to hide the seizures from his fellow soldiers (Exhibit 15).

Finally, unable to perform his mission because of the traumatic brain injury, Sean Baker had to be re-hospitalized at Guantanamo Naval Hospital for three days (May 5-7, 2003). Realizing that he could not be adequately treated there, the physicians at Guantanamo Bay Naval Base again had to Medivac him to another hospital to better treat his injuries. This time he was transported to Walter Reed Army Hospital in Washington, D.C., where he remained for 47 days. Sean Baker was subsequently released from Walter Reed Army Hospital and reassigned to something called a "medical hold" unit in Fort Dix, New Jersey, on June 23, 2003 (Exhibit 6).

Upon his arrival at Fort Dix, Sean Baker was assigned to a burial detail. He performed these duties from June 2003 until he was medically retired and honorably discharged on April 4, 2004. While at Fort Dix, he continued to experience seizures, headaches and the other substantial consequences of his traumatic brain injury. These seizures were witnessed numerous times by his fellow troops (Exhibits 18- 23 and 59). He also acquired a bleeding ulcer.

During all times while he was stationed at Fort Dix, Sean wanted to resume his duties as a military police officer and he definitely wanted to be out of the “medical hold” unit. However, the authorities there refused to let him leave. He remained in this Fort Dix “medical hold” unit for ten months.

On September 29, 2003, the Army’s Physical Evaluation Board determined that Sean Baker had sustained a:

[m]ood disorder due to traumatic brain injury [TBI] with mixed-mood incongruent psychotic features and cognitive disorder not otherwise specified, manifested by dysnomia, with memory and cognitive deficits and subtle dysmetria. TBI was due to soldier playing role of detainee who was non-cooperative and was being extracted from detention cell in Guantanamo Bay, Cuba (LOD) during a training exercise.

He was further diagnosed as having a “[c]omplex partial seizure disorder due to TBI” (Exhibit 4).

Due to the failure of the Army to appropriately reissue his deployment orders, Sean Baker did not receive any of his military pay for two and a half months between November 1, 2003, and January 15, 2004. He was forced to borrow money from the Army’s emergency relief fund in order to support his wife and son.

When Sean Baker processed out of the National Guard at Fort Dix, New Jersey, on April 4, 2004, he was advised that he would be entitled to 100 percent service

disability compensation because of the severity of his injury. When he arrived home in Georgetown, Kentucky, on April 4, 2004, despite the finding of the Physical Evaluation Board seven months earlier that he was disabled, there was no disability compensation awaiting Sean Baker. He was, at that time, unemployed, broke, on nine different prescription medications, and suffering from seizures and other traumatic brain injury maladies (Exhibit 6).

Sean Baker has served almost 11 years in the Armed Forces of the United States. For his exemplary service at Guantanamo Bay, Cuba, he received the Army Commendation Medal and the Kentucky Merit Ribbon (Exhibit 24). SFC Michael Riley, Sean Baker's platoon sergeant, recommended Sean Baker for the Kentucky Merit Ribbon. Sgt. Riley set forth three justifications:

(1) [Sean Baker] distinguished himself through outstanding service as an installation and facilities guard during Operation Enduring Freedom; (2) [Sean Baker] carried out his duties with regard to force protection and operations admirably; and (3) [Sean Baker] performed exceptionally in support of interrogation objectives.

This award for Sean Baker was approved by his company commander and his battalion commander. The citation was issued on December 6, 2003, and reads:

For exceptional and outstanding service while serving as an installation and facilities guard with the 438th Military Police Company in support of Operation Enduring Freedom. Specialist Baker's dedication to duty was key to his section's success in meeting the challenges they faced. Specialist Baker's professionalism reflects great credit upon himself, the 438th Military Police Company, the Kentucky National Guard and the United States Army.

Three weeks after he was medically retired from the Army, Sean Baker had to be hospitalized in the Veterans Hospital in Lexington, Kentucky. This was on April 26, 2004. He was hospitalized for six days. This was his seventh hospitalization in 15 months. Since then, he has kept regularly scheduled weekly appointments at the VA Hospital, Lexington. All of this treatment is directly related to the beating he sustained on January 24, 2003 (Exhibits 4-5).

In July and August of 2004, Sean Baker was examined by a nationally recognized board-certified forensic psychiatrist, Dr. Robert Granacher. Dr. Granacher specializes in the care and treatment of patients with traumatic brain injuries.

Dr. Granacher, whose affidavit and vitae are attached (Exhibit 5), reviewed all of Sean's medical records from both before and after the assault and also personally examined him. Dr. Granacher concluded that Sean Baker sustained a traumatic brain injury on January 24, 2003, and that his injuries are permanent (Exhibit 5).

Moreover, Dr. Granacher has concluded that Sean Baker sustained a traumatic brain injury on January 24, 2003, because someone (other than Sean Baker) pounded his forehead into the steel floor one or more times (Exhibit 5). This is criminal assault.

In June 2004, the Veterans Administration formally awarded Sean Baker a 100% service-connected disability based on his beating of January 24, 2003 (Exhibit 25).

Although he was "medically retired" by the Army on April 4, 2004, he did not receive his first disability payment until four months later on August 1, 2004, and that was only after numerous letters, emails, and phone calls to U.S. government officials. Sean Baker now receives \$2,386 per month for his 100 percent service-connected disability.

On September 15, 2004, Sean Baker received written confirmation from a representative of the Social Security Administration (SSA) that he had been determined to be 100 percent disabled according to SSA regulations and that he would be receiving an additional \$1,144 per month in disability benefits plus \$572 per month for his minor son Sean, Jr. (Exhibit 26).

Both of these disability programs offer some monetary relief. Sean must be periodically evaluated to determine whether he is 100 percent disabled. This is as it should be, but regulations for disability change and entitlement programs sometimes receive budget cuts.

It is possible that some or all of these disability payments could be reduced or eliminated. It is also possible, indeed it is hoped, that Sean Baker may at least partially recover from his injury. If he does, these disability payments may be terminated in whole or in part. In any case, Sean Baker does not want to be

disabled. Despite the conclusions of his physicians, the Veterans Administration and now the Social Security Administration, he very much wants to recover or overcome his disability. He has always worked. Yet, how employable is he likely to be? What employer will hire him? What kind of job, and at what rate of pay, could he hope to obtain, given his medical history since January 24, 2003?

To be sure, he can legally challenge any termination of his disability compensation in court and likewise challenge any wrongful refusal to hire him or any wrongful termination because of his medical history or condition. But, why should he have to bear that burden? He did not create this situation where he is dependent on disability payments. **Moreover, Sean Baker would terminate all of his disability compensation today if he could resume his duties as a military police officer or serve in some other meaningful and equally compensated position with the United States Army.** This is what he wants the most.

IV. THE INFORMATION PROVIDED THE IRF TEAM ON JANUARY 24, 2003 CREATED AN UNNECESSARILY HOSTILE ENVIRONMENT. IT WAS A PRELUDE TO CATASTROPHE.

Given the information imparted by Second Lieutenant Shaw T. Locke to the IRF members of the 303rd Military Police Unit team on January 24, 2003, it was inevitable that Sean Baker would be injured; it was only a question of how badly

he would be hurt. This is because, shortly before the extraction of mock detainee Sean Baker, the IRF team members were given the following information by Second Lieutenant Shaw T. Locke and/or made the following observations from the surrounding attendant circumstances:

1. That there was an unruly and uncooperative detainee in Oscar Block segregation cell No. 27, Camp 2, Guantanamo Bay, Cuba (Exhibits 8-14).
2. That this detainee **had assaulted an Army sergeant** (Sergeant Reeves) (Exhibit 10).
3. That the detainee in cell No. 27 **had been sprayed with OC (pepper spray)**, a noxious substance which stuns and incapacitates most human beings but obviously had failed to subdue this particular detainee (Exhibits 10-14).
4. **That the members of the IRF team did not know this was a training exercise and they did not know that Sean Baker was a U.S. soldier who was playing the role of a detainee dressed in an orange jumpsuit.** They all believed this was a real-time mission (Exhibits 10-14).
5. That the unruly detainee had been given an order to leave his cell but had refused (Exhibits 10-14).
6. That the detainee was heard banging on his cell shortly before the IRF team entered it (Exhibit 14).

7. That shortly before the IRF team entered Sean Baker's cell, its members observed an interpreter speaking in a foreign dialect to the detainee in Oscar Block Cell 27 (Exhibits 10, 13-14).

8. That this training exercise was conducted, for the first time, in the presence of an actual detainee across the causeway from Oscar Block Cell 27 (Exhibits 6, 7, 15).

9. That the entire exercise was videotaped by Sergeant Taylor, per Army protocol for IRF extraction exercises (Exhibits 10-12, 14).

10. **That even though Sean Baker began to yell, "I'm a U.S. soldier! I'm a U.S. soldier!" the Team Leader for the IRF team gave a sworn statement that neither he nor the other members of the IRF team believed him, and the assault continued** (Exhibit 10).

Given these above-referenced facts and circumstances and, in particular, the information given the IRF Team by Second Lieutenant Shaw T. Locke on January 24, 2003, it is not surprising that prior to this forced cell extraction, the IRF team members were quite probably excited, anxious, full of adrenalin, and perhaps even fearful for their own safety. After all, a forced cell extraction was about to take place in a darkened segregation cell at one of the world's most notorious prisons, a prison which housed what many people believed to be the most dangerous terrorists on earth.

These detainees were believed to be men who had killed American men and women in Afghanistan and perhaps had been involved in other terrorist atrocities around the world. Many, if not all, of these detainees were believed to be either members of Al-Qaeda or the Taliban, all sworn enemies of the United States.

Whether or not all of these detainees were actual members of such organizations matters little in the Sean Baker case, for there clearly was the distinct perception that they were among the worst terrorists in the world. Thus, in the very early morning hours of January 24, 2003, armed with the highly inflammatory, false and misleading information that had been loaded into their psyches by their platoon leader, these perceptions and fears of the IRF team became their operative reality.

By no means would these perceptions justify any excessive force against actual detainees. The IRF team should have been under better control. This unit had been in Cuba for only seven weeks. These were not experienced professional correctional officers: these were MPs. They had limited IRF training and experience by January 24, 2003 and most of it was role playing exercises at Fort Dix, New Jersey, or training instances where the IRF team knew the "detainee" was actually a U.S. soldier. The point is, it is quite probable that the perceptions of this IRF team, fueled by Second Lieutenant Locke's statements, played a significant role in Sean Baker's ultimate destiny.

By the time the IRF team threw open the door to Cell 27, Oscar Block, Guantanamo Bay, Cuba, on January 24, 2003, Second Lieutenant Shaw T. Locke had already created an extremely hostile environment. This hostile environment then exploded on Sean Baker. Second Lieutenant Locke's conduct and directives that morning constituted a reckless indifference to human life. As will be discussed in greater detail below, he specifically violated numerous and expressly mandatory Army regulations which precluded such a "training exercise," and his violation of these regulations was a substantial factor in causing the injuries and disability of Sean Baker.

The other troubling fact about the beating of Sean Baker is that it only stopped because one or more members of the IRF team finally heard the code word, "Red!" or finally believed what Sean Baker was yelling: "I'm a U.S. soldier! I'm a U.S. soldier!" What if "Red!" and "I'm a U.S. soldier!" had not been said? What if this had been an actual detainee in Cell 27 on January 24, 2003? How many more times would that detainee's head have been pounded against the steel floor?

V. THE REQUIRED INVESTIGATIONS WERE NEVER INITIATED, AND THE "LINE OF DUTY INVESTIGATION" WAS POORLY DONE.

Although it is not in dispute that Sean Baker was injured seriously enough on January 24, 2003, to have been hospitalized for three days at Guantanamo Naval

Hospital and subsequently had to be transferred to the Portsmouth, Virginia, Naval Hospital for four days of additional hospitalization, the military command at Guantanamo Bay, Cuba, failed to initiate any investigation into the beating of Sean Baker until seven days later on February 1, 2003 (Exhibit 27). Moreover, the type of investigation which was initiated was not in compliance with mandatory federal law and was, in any event, substantially lacking in focus, thoroughness and professionalism. Undersigned counsel, in a preliminary report to Special Agents Schuck and Frost, Fort Knox, Kentucky, Army Criminal Investigation Command, informed them of this shoddy investigation on July 7, 2004 (Exhibit 28).

It was not until February 1, 2003, that Colonel Adolf McQueen at Guantanamo Bay, Cuba, signed an order directing First Lieutenant Mark P. Pickard to perform a "line of duty investigation" pursuant to Army Regulation 600-8-1 (Exhibit 27).

However, the clear purpose of a "line of duty investigation" is to determine whether an injured soldier (in this case, Sean Baker) was himself guilty of misconduct or gross negligence which might otherwise disqualify him from receiving future medical and/or disability benefits because of the injury he sustained.

That is to say, the purpose of a "line of duty investigation" is not to fully assess, evaluate, document, make findings and corrective recommendations in connection

with an incident in which a soldier is seriously injured (c.f. AR 385-40). Rather, Army regulations governing “line of duty investigations” enumerate the following specific reasons for conducting this particular kind of inquiry. These listed reasons are:

1. Extension of enlistment;
2. Longevity and retirement multiplier;
3. Forfeiture of pay;
4. Disability retirement and severance pay;
5. Medical and dental care for soldiers on duty other than active duty for a period of more than 30 days; and
6. Benefits administered by the Department of Veterans Affairs.

(AR 600-8-4, 2-2.) (Exhibit 29).

These aforementioned reasons for conducting a “line of duty investigation” are hardly reflective of the serious issues which have always existed in the Sean Baker case and which required more extensive investigation, evidence collection and preservation, follow-up, and additional personnel. But, a more encompassing investigation never happened.

It is significant though, that in a “line of duty investigation,” the investigating officer is obligated, pursuant to Section 3-8 of AR 600-8-4, to include in his or her report the specific reasons for not interviewing the person whose line of duty status is being investigated or any witnesses whose testimony may be material

(Exhibit 30). In the instant matter, the investigating officer, Lieutenant Pickard, never interviewed Sean Baker and never took a statement from the videographer, Sergeant Taylor, both of whom were critical witnesses to what transpired on January 24, 2003. Yet, he never explained as required by this regulation why he did not conduct these two obviously important interviews.

Likewise, Captain Severn, Company Commander for the 303rd Military Police Company, never gave a statement, nor did the two medics who administered first aid to Sean Baker immediately after the assault. The interpreter, who talked to Sean Baker shortly before the IRF team burst into his cell, never gave a statement, nor did the dog handler who was restraining the barking guard dog after Sean Baker staggered from Cell 27. All of these people were present at the time of the beating.

Conspicuous by its absence in Lieutenant Pickard's one and one-half page report is any reference as to why all of the witnesses to Sean Baker's beating were not interviewed (Exhibit 31). Finally, Lieutenant Pickard never interviewed a single soldier with the 438th Military Police Company, Sean Baker's unit. He did not interview Sean Baker even after Sean returned to Guantanamo Bay from his hospitalization in Virginia and two-week convalescent leave. None of these facts are in dispute.

Section 3-8 of AR 600-8-4 required the appointing authority (Colonel McQueen) to check all "line of duty investigations" before they were forwarded through the chain of command. The purpose of this check, according to this regulation, is to determine whether all pertinent instructions have been followed. This regulation also required Colonel McQueen to forward this "line of duty investigation" to the Judge Advocate at Guantanamo Bay, Cuba, for legal review and opinion.

The Judge Advocate's review is supposed to determine whether the legal requirements for the "line of duty investigation" are in compliance and also to examine the investigation to see if potential claims may be involved. There is no evidence to indicate whether the "line of duty investigation" pertaining to Sean Baker was ever forwarded to the Judge Advocate's Office at Guantanamo Bay, Cuba, or, if it was, whether the Judge Advocate's Office ever bothered to determine whether the "legal requirements were in compliance" or whether the judge advocate ever "examined the investigation to see if potential claims might be involved." This is in spite of the fact that Lt. Pickard had stated in the conclusion to his report that: **"A number of errors contributed to the injury of SPC Baker. The first and most major was the IRF team not being briefed that this was a drill . . . It is reasonably foreseeable that an injury may be sustained from this type of training."** (Exhibit 31).

Surely, had the Judge Advocate's Office performed even a cursory review of the investigation, any reasonably competent attorney or paralegal should have quickly determined that the "line of duty investigation" which Lieutenant Pickard performed, as glaringly weak as it was, still pointed to substantial evidence of assault, dereliction of duty and, potentially, destruction of evidence, all of which are crimes requiring CID notification and investigation.

Sean Baker himself gave a sworn statement immediately after his beating that excessive force had been used and he immediately pointed to the individual who used it against him, Specialist Scott David Sinclair (Exhibit 6). Yet, nothing was done. There was no follow-up. There was no accident review board convened. No collateral investigation was conducted. No CID referral was made. No CID investigation was performed.

Finally, Section 3-11 of AR 600-8-4 ("Line of Duty Investigations") required the final approving authority at Guantanamo Bay, Cuba (Major General Miller) to have reviewed this investigation for completeness and accuracy and to have returned the report through review channels for corrective action, if necessary (Exhibit 32). Based upon this "line of duty investigation," one of the "corrective actions" that Major General Miller should have undertaken was the initiation of

the mandatory investigations required in such instances. (AR 385-40) This never happened.

Shockingly, Sean Baker's company commander, Captain Judith April Brown of the 438th MP Unit, told SFC Michael Riley, Sean Baker's platoon leader in August of 2003, after he and First Sergeant Ron England had pressed her for a more thorough investigation of Sean's assault, to: **“Forget about it and leave it alone. We don't want to ruin someone's career,” to which SFC Riley responded, “What about the career of Sean Baker?” Captain Brown did not respond further to SFC Riley's pleas (Exhibit 15).**

Sergeant Riley and First Sergeant Ron England of the 438th MP Unit had previously, in June or July 2003, made the same request for a more intensive investigation of the Sean Baker beating, to Command Sergeant Major Hissong. The Sergeant Major said he would look into it, but neither Sergeant Riley nor Sergeant England ever knew what, if anything was done in response to their complaint to the Sergeant Major (Exhibit 15). These two sergeants have never been talked to by any investigator, nor are they aware of any other investigation other than the “line of duty investigation” (Exhibit 15). The opportunity to timely investigate the Sean Baker assault was lost. It appears no one in a position of command authority at Guantanamo Bay, Cuba, wanted a thorough investigation.

Hospital in Washington, D.C. for 36 days. Sean Baker had not been in Guantanamo Bay, Cuba, since May 7, 2003.

VI. OTHER FAILURES OF THE LINE OF DUTY INVESTIGATION

Other failures of the “line of duty investigation” include the fact that **no investigative pictures** of Sean Baker were taken while he was at the hospital or at any time thereafter. Also, there is no reference in Lieutenant Pickard’s **one-and-a-half page** report that the IRF extraction was videotaped, nor is there any reference to what happened to the videotape. This is in spite of the sworn statements from the IRF team that the extraction of Sean Baker was videotaped (Exhibits 7, 10, 11, 12, 14 and 15).

Lieutenant Pickard did virtually nothing in his “line of duty investigation” to preserve any evidence or interview critical witnesses. It seems all he did was to talk to the same people who had already given sworn statements the night of the beating in the After Action Review. Not surprisingly then, the sworn statements he obtained mirrored the ones they had previously given two weeks earlier. Lieutenant Pickard did ask each of these seven people seven basically sophomoric questions about the incident. Two of the seven questions were: “What is your

name?” and “Do you have anything you wish to add?” This was a serious investigation?

VII. THE COMMANDING OFFICERS AT GUANTANAMO BAY, CUBA, FAILED TO COMPLY WITH MANDATORY ARMY REGULATIONS REGARDING THE KINDS OF INVESTIGATIONS WHICH SHOULD HAVE BEEN INSTITUTED.

At the outset, it must be unequivocally stated that what happened to Sean Baker on January 24, 2003, was either an “accident” or it was a “crime.” In any event, no one can deny that Sean Baker was seriously injured and was at all times pertinent hereto disabled, either temporarily or totally. Additionally, even the evidence obtained from the “line of duty investigation” at least created enough probable cause to have instituted other, more appropriate investigations. No such investigations were instituted. Those officers who had knowledge or who should have had knowledge of the pertinent facts surrounding Sean Baker’s beating had an affirmative obligation to institute the kinds of investigations required by Army regulations. They did nothing.

Section 1-1 of Army Regulation 385-40 provides, in pertinent part, as follows:

This regulation provides policies and procedures and assigns responsibilities for initial notification, investigating, reporting and submitting reports of Army accidents and incidents. For the purposes of this regulation, an Army accident is defined as an unplanned event, or series of events, that results in injury/illness to either Army or non-Army personnel and/or damage to Army

or non-Army property as a direct result of Army operations (caused by the Army) (Exhibit 33).

Section 1-4 of Army Regulation 385-40 required the commanding general at the time, Major General Miller, to:

ensure that accidents are investigated and analyzed to the extent needed to identify cause factors and deficiencies and to develop countermeasures to prevent similar accidents. In order to accomplish this, commanders will establish procedures for investigating, reporting, and analysis of accidents within their area of responsibility.

(Exhibit 34).

Major General Miller failed to comply with this mandatory requirement, as no such investigation pursuant to this regulation was ever instituted.

Section 1-5 of AR 385-40 further provides:

It is the policy of the Department of the Army that effective prevention programs will be instituted Army-wide to eliminate hazards and prevent reoccurrence of Army accidents. **Thus, all Army accidents will be investigated, reported, and analyzed in accordance with the requirements of this regulation and DA Pam [Department of Army Pamphlet] 385-40, Accident Investigation and Reporting.** The primary purpose of investigating and reporting Army accidents is prevention. (Emphasis added.)

(Exhibit 35).

Obviously, the Department of the Army had, long before the beating of Sean Baker, determined that it was critically important to conduct

appropriate investigations when serious injuries occurred. Certainly, no responsible Army officer would want this kind of injury to happen to another soldier. Yet, by not thoroughly investigating the Sean Baker case as required and by not reporting the findings, instituting corrective actions and disseminating these corrective measures to the officers in charge, the inherent risk still existed for other "Sean Bakers" to be injured. No learning from past mistakes can take place and even worse, history becomes more likely to be repeated.

Additionally, by intentionally not investigating the Sean Baker beating as required by federal law, Army standards of conduct were unnecessarily and unacceptably lowered. The repeated admonitions of Commanding General Miller and Brigadier General Payne, in their monthly messages to the Guantanamo Bay troops, via the base newsletter had to leave many of these troops with the distinct impression that their admonitions about "honor," "integrity," "doing the right thing" and "following army regulations" could be justifiably compromised "when some officer's career might be ruined."

Army Regulation 385-40 specifically classifies Army accidents based upon the severity of the injury. The two most serious classifications, "Class A" and "Class B" accidents are defined in Section 2-2 (Exhibit 36). A "Class A" accident is

defined, for relevant purposes here, as an injury which results in a fatality or permanent total disability. A "Class B" accident is an injury which results in permanent partial disability. Beginning on January 24, 2003, Sean Baker became disabled; and while some persons may contend that he was only partially disabled at that time, it matters not, as these mandatory Army regulations require that all "Class A" and "Class B" accidents be investigated by a three-member, independent board (Sections 4-1 and 4-3, AR 385-40) (Exhibits 37-38).

Section 4-5 of AR 385-40 directs that a concerted effort be made to ensure that each group of investigators is able to collect the information and evidence required to properly conduct its investigation. Photos are required to be taken, and a sketch drawing of the accident scene in question is required to be made with sufficient detail and measurements (Exhibit 39). This was not done in the Sean Baker case. There are no photographs or drawings of any kind. There are, however, numerous witnesses who visited him at the hospital that will testify as to what they observed, and his medical records provide further documentation.

In addition to the mandatory Accident Investigation Board which was required to be established in the Sean Baker case, but which was not, Major General Miller was also required to initiate a Collateral Investigation for the purpose of obtaining and preserving all available evidence for use in litigation, claims, disciplinary

actions or adverse administrative actions (Section 1-8, 385-40) (Exhibit 40). No Collateral Investigation was ever initiated, much less performed. There was no referral for a criminal investigation.

Applicable Army regulations governing Army "exercises," are set out in AR 350-28. Section 4-4 (Exhibit 41) provides, in pertinent part, that military exercises should:

(h) avoid using troops as training aids, but stress using the maximum number of soldiers and units to meet training objective . . .

There is no dispute that Sean Baker was used as a training aid on January 24, 2003.

Also, Section 4-8 of AR 350-28 states that safety:

- a. Require[s] that commanders and supervisors at all levels -
 - (1) make the safety of military personnel and local civilians of paramount concern.
 - (2) give safety and protection of lives priority over exercise realism.
- b. Include in the exercise control plan procedures to reduce injuries and property damage for both the military and local inhabitants. Address all phases and operations of the exercise. Stress precautions to counter hazards presented in special operations such as river crossings and live firing exercises.
- c. Require that commanders and supervisors brief exercise participants on key aspects of personal and vehicle safety. (Emphasis added) (Exhibit 42).

There was an abundance of mandatory military regulations to direct the officers in charge at Guantanamo Bay, Cuba. Unfortunately, for Sean Baker, these mandatory directives were not followed.

Prior to the beating of Sean Baker, the Department of the Army published Pamphlet 385-1 to provide additional safety instructions to safety officers/non-commissioned officers in company level ground units. In other words, this particular directive was squarely aimed at units like the 303rd Military Police detachment. Pertinent provisions of this policy, as set forth in Section 1-4(b), provide as follows:

Performing to standards is one of the key steps in preventing accidents. However, each leader must be aware that written standards may not exist for every task. **High-risk tasks must be identified and reviewed to ensure that adequate standards exist and that unnecessary risks are eliminated. It is the leader's responsibility to ensure standards are enforced and unnecessary risks are not taken.** (Emphasis added.)

(Exhibit 43).

Section 1-13 of AR 350-1 requires leaders to integrate risk management practices that will not unnecessarily expose personnel and equipment to the risk of injury, illness and accident (Exhibit 44). This was yet another mandatory regulation not followed on January 24, 2003.

The Army policy which gives the guidance on accident investigations illustrates the importance of risk assessment and thoughtful decision making in training when it states: **“Historically, more casualties occur in combat due to accidents than from enemy action. Protecting the force regardless of whether it is during training, peacekeeping, or combat operations is critical to mission success.”**

(Emphasis added.) (Exhibit 45).

At the time Sean Baker sustained his traumatic brain injury on January 24, 2003, the United States Army was fully aware of the substantial prevalence of traumatic brain injuries (TBI) among its troops and the serious attendant consequences.

While being treated at Walter Reed Army Hospital in June 2003, Sean Baker was advised about the pervasive nature of traumatic brain injuries, and he was given a one-page pamphlet which discussed the impact that traumatic brain injuries have had on military personnel (Exhibit 58). This pamphlet points out that: **(1) “In peacetime, over 7,000 Americans with TBI are admitted to military and veterans hospitals each year”;** and **(2) “Each year an estimated \$30 million in military medical retirements is spent on consequence of TBI disability.”**

There were numerous mandatory regulations which were specifically designed to protect the “Sean Bakers” in the U.S. Army from the very type of harm that he suffered. These regulations were either intentionally violated or cavalierly

ignored, all to Sean Baker's detriment. It was also to the detriment of the Army. Surely, this is not the kind of conduct we expect, or want, of our leaders in the Armed Forces. Our troops are entitled to better protection.

VIII. THE TORTOISE PACE OF THE CRIMINAL INVESTIGATION

The Army's criminal investigation did not commence until 17 months had lapsed following Sean Baker's beating, and even though the Army has stated this is a "Tier 1 investigation" (the highest of priorities), it has now been six months since the investigation started, and nothing has been completed. Special Agent Atkins of the Fort Knox, Kentucky, Criminal Investigation Command contacted undersigned counsel on or about June 9, 2004, informing him that his unit had just instituted a criminal investigation into the beating of Sean Baker. Special Agent Atkins confirmed this was the first time that the Criminal Investigation Command had even heard of Sean Baker or what had happened to him in Guantanamo Bay, Cuba.

Subsequently, arrangements were made for two special agents to interview Sean Baker, which they did on June 17, 2004. The meeting lasted approximately three and one-half hours. Subsequent thereto, Sean Baker tendered a seven-page single-spaced statement pursuant to the request of the special agents who interviewed him, to wit: Special Agents Frost and Schuck. It was explained by Special Agents Frost and Schuck, that Michigan agents of the Criminal Investigation Command

would, that weekend (June 19 and 20), be interviewing the soldiers and officers serving with the Michigan 303rd Military Police Company who were involved in the January 24, 2003, assault.

However, when undersigned counsel contacted the Criminal Investigation Command on or about August 13, 2004, to inquire about the status of this criminal investigation, he was informed by Robert Schuyler, General Crimes Team Chief of the Criminal Investigation Command at Fort Knox, Kentucky, that the Guardsmen in the Michigan unit were going to be interviewed that weekend (August 14 and 15). Later, however, in August 2004, in a separate telephone conversation with Special Agent Christopher Fernholz of the same Fort Knox, Kentucky, Criminal Investigation Command, undersigned counsel was informed that a portion of the Michigan 303rd Military Police Company had been interviewed in July and a portion had been interviewed in August 2004.

Additionally, according to Special Agent Fernholz, the Criminal Investigation Command first interviewed Staff Sergeant David Howe of the Kentucky 438th Military Police Company (Sean Baker's former unit) on August 23, 2004. Special Agent Fernholz was still trying to interview Sergeant David Harrison of the 438th Military Police Company, Sean Baker's team leader, as of August 31, 2004. This

was nearly three months after the CID began what was supposed to be a top priority investigation.

On August 31, 2004, Special Agent Fernholz of the Criminal Investigation Command stated that he was still waiting on the medical records from Walter Reed Army Hospital. Undersigned counsel informed him that those records were in his possession and that he would be happy to transmit all of them to him at Fort Knox. This offer was rejected. Subsequently, Special Agent Fernholz did make a request to undersigned counsel for Sean Baker's medical records which preceded the date of his assault on January 24, 2003. These records were mailed to Special Agent Fernholz on or about September 3, 2004.

Requests have also been made to Special Agent Fernholz and his superior, Mr. Schuyler, for undersigned counsel to meet with them to discuss their findings, ascertain their next course of action, and find out how soon it will be before their investigation is completed (Exhibit 2). These requests have always been denied.

It is difficult to comprehend how a "Tier 1" investigation, which clearly ought to have considerable resources and personnel devoted to it, could still be "pending" as of December 2, 2004. The CID has also stated it would like another meeting with Sean Baker and another sworn statement from him. Although Sean Baker has

twice notified CID of his interest in talking with them further, there has been no follow-up by the CID.

Obviously, it is long past time for the investigation of Sean Baker case to conclude. There is no need for further delay. Initially, personnel within the Army chose not to investigate the Sean Baker beating. Now that they have finally decided to conduct an investigation, it is moving at the pace of a tortoise and is obviously not a priority for anyone.

As a result of the slow pace of this criminal investigation, undersigned counsel made a formal written request on August 17, 2004, to the Secretary of the Army to institute an Article 32 proceeding to determine if criminal charges should be brought against the individuals responsible for the beating of Sean Baker and those individuals who were involved in destroying evidence and/or covering up the destruction of this evidence (Exhibit 46).

IX. EVEN AFTER HIS BEATING, THE UNITED STATES ARMY CONTINUED TO VIOLATE SEAN BAKER'S FEDERAL RIGHTS.

Incredibly, after being beaten to the point of suffering from daily and weekly seizures, being "pharmacologically lobotomized" from taking nine different medications every day, being 100 percent disabled, and waiting four months for a disability payment, the "beating of Sean Baker" continued even after his "medical

retirement.” This is because an Army officer who was in charge of disseminating the Army's response to the news media accounts of the Sean Baker case proceeded to discredit him and violate his rights to privacy as protected by 5 U.S.C. § 552a.

During the last week of May 2004, a local television station, WLEX in Lexington, Kentucky, broke the story about Sean Baker. The source for this story was not Sean Baker. This has been confirmed by the reporter herself. In other words, Sean Baker did not invite the press coverage. It was foisted upon him when TV cameras and a reporter arrived at his doorstep in late May 2004. To be sure, he could have refrained from talking to anyone, but he elected to respond to this reporter's questions and the questions of three other reporters during the following three days.

Sean Baker certainly had ample justification to hold a press conference, although he never did. After all, at that time, he had been out of the Army for approximately seven weeks, and had yet to receive a penny in disability compensation. Most of us would have contacted the news media or our congressmen much sooner. Sean Baker never did. He has always been a reluctant advocate for himself. He is personally torn between his loyalty to the Army and the sense of betrayal he feels as a result of actions taken by some Army personnel.

Nevertheless, when the news media broke the story and published it in virtually every major newspaper in the country, the very first response by the “official spokesperson” for the Department of Army, to wit: Major Laurie Arrelano of the U.S. Southern Command in Miami, was that Sean Baker’s discharge was **unrelated** to his training injuries. She said “privacy laws” prevented her from disclosing the nature of the “medical consultation” that eventually led to Sean Baker’s discharge (Exhibit 47).

Thus, the Army’s first response, rather than to accept responsibility that one of its own had been mistreated was instead to discredit him. Major Arrelano did not know then, nor any time subsequently, about the facts concerning the beating of Sean Baker. Undeterred, she proceeded in the face of her own ignorance, or perhaps at the direction of her superiors, to disclose information about the reasons for Sean Baker’s discharge, all of which were protected by 5 U.S.C. §552(a), the Federal Privacy Act of 1974.

Pertinent provisions of 5 U.S.C. §552(b) mandate that:

No agency shall disclose any record which is contained in any system of records by any means of communication to any person or to another agency except pursuant to a written request, by, or with, prior written consent of the individual to whom the record pertains, unless disclosure of the record would fall within exceptions specified in the statute. (Emphasis added.)

None of the statutory exceptions apply here. Thus, when Major Arrelano was giving her press conferences, she was acting in direct violation of Sean Baker's federal privacy rights.

Still later, Major Arrelano went one step further by emphatically declaring to the media that there were "other medical reasons" for his discharge (Exhibit 49). She, in fact, used the federal privacy law as both a "sword and a shield." She used it to discredit Sean Baker, and then hid behind the very same law by saying she could not comment further because of "federal privacy laws." This outrageous, illegal, and unprofessional conduct should also be investigated and appropriate disciplinary action instituted.

Unfortunately, Major Arrelano did not stop with her initial efforts to discredit Sean Baker. On June 8, 2004, in a published newspaper interview that was carried nationwide by the wire services, Major Arrelano finally conceded, at least in part, that Sean Baker's head injury, suffered while playing the role of a detainee, "contributed" to his discharge. However, Major Arrelano was quick to emphasize it was not the sole factor. Major Arrelano told the media, "It is one factor, but **I try to stress it is one of many. The injury he got on that date is not the only thing that caused his discharge.**" (Emphasis added.) She said that because of medical privacy laws, she could not discuss the other factors that led to Baker's

discharge. Baker, she said, was the only person who could authorize release of his medical records. She added, "Until he releases all of the medical records, it's hard to get the full story." (Emphasis added.) (Exhibit 48).

Ironically, on June 1, 2004, undersigned counsel's office contacted Major Arrelano to obtain all of the records about Sean Baker, including his medical records, but Major Arrelano said she could not speak with undersigned counsel's office and referred us to a Colonel Kathryn Stone, U.S. Army Southern Command, Office of the Staff Judge Advocate. Colonel Stone was contacted by letter via fax that same day June 1, 2004 (Exhibit 49).

In a letter received one week later from Major W. Craig Mullen, USAF, Office of the Staff Judge Advocate's office, answering on behalf of Colonel Stone, he stated that the U.S. Southern Command had no such records on Sean Baker. He instead forwarded undersigned counsel the names of five federal agencies to contact about such information (Exhibit 50). Thereafter, undersigned counsel instituted a flurry of requests for Sean Baker's medical records.

Thus, on June 7, 2004, while Major Arrelano was abusing federal privacy laws and blaming Sean Baker for not "clearing everything up by releasing his medical records," the United States Army had yet to provide him these very same records.

Moreover, the chief legal affairs officer for the Southern Command, the same command authority under which Major Arrelano was then serving, had already communicated in writing to undersigned counsel that their office did not even have these medical records or any records on Sean Baker (Exhibit 50).

Nevertheless, undersigned counsel wrote Major Arrelano on June 9, 2004 asking her to back up her insinuations and accusations against Sean Baker in writing (Exhibit 51). Neither Major Arrelano, nor any other officer in the United States Army has ever responded to undersigned counsel's request to substantiate these purported "other" reasons for Sean Baker's medical retirement. Of course, there will be no such response because his medical retirement is entirely related to the injuries sustained on January 24, 2003. The proof of this is compelling. The Army's Physical Evaluation Board has confirmed it. The Department of Veterans Affairs has confirmed it, Dr. Granacher has confirmed it, and now the United States Office of Social Security has confirmed it.

Sean Baker has served his country during three tours of military duty. He always volunteered. He was well liked by his fellow enlisted men and the non-commissioned officers who supervised him. His exemplary service at Guantanamo Bay, Cuba, earned him special recognition. Yet, he spent the last 10 months of his military career confined to something called a "medical hold" unit

while certain officers at Fort Dix, New Jersey, half-heartedly tried to figure out what to do with him. All he has ever wanted was to be a soldier: a soldier who was, before January 24, 2003, making a significant contribution to our nation's war on terrorism.

Your military leaders failed you in the Sean Baker matter. They clearly failed Sean Baker. They also failed those persons under their command. They did not abide by core Army values. As General Norman Schwarzkopf once remarked: **"The truth of the matter is that you always know the right thing to do. The hard part is doing it. Leadership is a combination of strategy and character. If you must be without one, be without strategy."** Respectfully, it is time for you to exert your leadership in the Sean Baker case.

X. SUMMARY STATEMENT AND REQUEST FOR RELIEF

Generally, attorneys in our country who have been called upon to represent citizens who have sustained catastrophic injuries due to the wrongful conduct of others at least have the opportunity to "open the doors to the courthouse," enter and present their case to a jury or a judge. There is usually a full blown evidentiary trial with cross examination of witnesses, legal objections and ultimately a final decision on the merits. However, because of an inequitable 54 year old legal doctrine often

referred to as the “Feres Doctrine,” the doors to the courthouse are closed to Sean Baker.

The Feres doctrine precludes military personnel from filing federal tort claims against the United States for injuries sustained in connection with active duty exercises, even if the injuries were brought about by the reckless acts of other military personnel. **Strangely, non-citizen federal prisoners at least have access to the federal courts to pursue their claims if they are beaten by federal prison guards.** However, soldiers like Sean Baker are left to sit outside pondering their fate on the courthouse steps.

Thus, unless this legal barrier is changed, the final few comments in this report may be the only “closing statement” ever given in the Sean Baker case.

Regrettably, this closing statement must be written. I would much prefer to verbally and personally deliver it to you, the Secretary of Defense, the President of the United States, and both houses of Congress. Because of the “Feres Doctrine,” this group of distinguished public servants must constitute, in a real practical sense, the “jury” and the “judge” in the Sean Baker controversy. Independently, each member of this group could provide a portion of the relief requested, but collectively, all of you could provide all of the relief requested.

Additionally, in most cases when seriously injured citizens are hurt via the bad conduct of other persons, it is typical trial strategy to present the court case in a manner most likely to appeal to the sympathies of the jury or even the judge. However, let there be no mistake; in this “case,” there will no plea for sympathy. Sean Baker does not want anyone’s sympathy and he will not seek it from you or anyone else in the United States Government. Accordingly, you will not see any evidence introduced from witnesses who, if asked, would convincingly establish the hardship and pain inflicted by the beating of January 24, 2003, on Sean Baker and his family in the past, the present, and the foreseeable future.

What we are asking you and these other governmental officials to do is to effectuate the kinds of U.S. Army values which have been espoused by Army leaders for more than 200 years. On the very day Sean Baker was beaten, Major General Miller, in his periodic written message published in the Guantanamo base newsletter, entitled the “WIRE,” said, **“The legacy of great leaders and great training is people who do what’s right when no one is looking. That is the standard of our JTF—take responsibility for living this in the unit every day.”** (Exhibit 52).

On May 9, 2003, two days after Sean Baker had again been transported by Medivac from Guantanamo Bay Naval Hospital to Walter Reed Army Hospital, Major General Miller issued another admonition in the "WIRE":

Integrity may be one of the Army values, but it's certainly not exclusive to soldiers. Integrity is an essential quality of any successful service member, regardless of branch. What troopers do when no one is looking is what truly defines their characters. Individual integrity also plays an important part in the overall success of our mission here...At the end of the day, when you look in the mirror, only you can decide what kind of person stares back. Be proud of who you are and what you do. By doing the right thing, you can take pride in yourself...

(Exhibit 53).

On February 21, 2003, Brigadier General James E. Payne, second in command at Guantanamo Bay, followed up on General Miller's "do the right thing" message by also writing a column for the "WIRE." This was written just after Sean Baker had returned to Guantanamo Bay following his emergency hospitalization at Portsmouth Virginia Naval Hospital and two week convalescent leave. General Payne wrote:

We have reached higher standards because everyone in the JTF takes responsibility for doing what's right. Never pass up on the opportunity to do right. In every instance: if you choose to pass it up you lower the standard. Taking responsibility for doing right is an attitude and approach toward business that makes us different. Whether it's extra training for tomorrow's mission, doing AARs on each event, insuring everyone wears reflective vests or belts during PT, coaching a subordinate or peer, following the SOP for your duty station or making sure your fellow troopers are prepared for success; everything we do must

be focused on doing “right.” Doing right is what professionalism means. As professionals, we must always focus on what “right” looks like in every situation. SOPS, field manuals, policies and regulations tell us what the right way to approach any requirement is. We all have the responsibility to know what right looks like and ensure others and ourselves work to that standard. . .Our commitment to a higher standard, to achieving success and greater results, is what sets us apart from others. (Emphasis added.)

(Exhibit 54).

The Army values reflected in the exhortations written by the generals at Guantanamo while Sean Baker was still under their command are unquestionably significant and important, but only if they are truly honored and incorporated into critical decision making. When it came time to implement these cherished values for Sean Baker, many officers in Guantanamo Bay, Cuba, looked the other way.

I know you too believe in the importance of these Army values. In your May 10, 2004 “Message to Soldiers,” you wrote: **“Integrity is non-negotiable. Everyone has leadership responsibilities when it comes to the Legal, Moral and Ethical. Discipline is doing what is right when no one is watching.”** (Exhibit 55). You now have a unique leadership opportunity to correct the mistakes of subordinate officers and others who chose not to “do the right thing” **when everyone was watching.**

What constitutes "doing the right thing" for Sean Baker? What kind of leadership responsibility is needed to fulfill "the non-negotiable terms of integrity"? And, finally, where should a responsible leader direct his or her efforts for that which is "legal, moral and ethical"? Please allow me to make the following requests of what would constitute "doing the right thing" for Sean Baker:

1. REINSTATE SEAN BAKER TO AN APPROPRIATELY AGREED UPON POSITION IN THE UNITED STATES ARMY OR NATIONAL GUARD WITH A PROMOTION TO STAFF SERGEANT (E-6). THE ARMY WOULD PAY HIM THE SAME COMPENSATION THAT HE IS RECEIVING NOW FOR HIS DISABILITY OR HIS E-6 SALARY, WHICHEVER IS GREATER. HE WOULD CONTINUE TO RECEIVE THE HIGHER RATE OF DISABILITY COMPENSATION, IF IT IS HIGHER, UNTIL SUCH TIME AS IT IS FULLY AND FINALLY DETERMINED THAT HE IS NO LONGER 100 PERCENT DISABLED. THEN, HE WOULD RECEIVE WHATEVER PARTIAL DISABILITY HE WOULD BE ENTITLED TO RECEIVE, IF ANY, PLUS HIS COMPENSATION AS A STAFF SERGEANT. HE WOULD BE TREATED FAIRLY AND EQUITABLY UPON HIS REINSTATEMENT AND BE ELIGIBLE FOR PROMOTION JUST LIKE EVERY OTHER NON-COMMISSIONED OFFICER. THE ARMY WOULD PROVIDE HIM ALL NECESSARY AND

REASONABLE SUPPORT AND ACCOMMODATIONS TAILORED TO HIS DISABILITIES SO THAT HE COULD PERFORM THIS AGREED UPON MISSION.

2. THE SECRETARY OF THE ARMY, THE SECRETARY OF DEFENSE AND THE PRESIDENT OF THE UNITED STATES SHALL UNEQUIVOCALLY SUPPORT AND URGE BOTH HOUSES OF CONGRESS TO ADOPT APPROPRIATE RESOLUTIONS WHICH WOULD HAVE THE EFFECT OF AUTHORIZING A CONGRESSIONAL REFERENCE CASE TO THE UNITED STATES COURT OF FEDERAL CLAIMS. SUCH SUPPORT WOULD INCLUDE TESTIFYING BEFORE APPROPRIATE COMMITTEES OF CONGRESS AND FILING WRITTEN CORROBORATIVE FILINGS IN SUPPORT THEREOF.
3. THE UNITED STATES ARMY SHALL IMMEDIATELY CONVENE AN ARTICLE 32 PROCEEDING PERTAINING TO THE BEATING OF SEAN BAKER FOR THE PURPOSE OF DETERMINING WHETHER ANY CRIMES WERE COMMITTED ON ABOUT JANUARY 24, 2003 AND SUBSEQUENT THERETO. SAID PROCEEDING SHALL INCLUDE BUT NOT BE LIMITED TO: A THOROUGH ASSESSMENT AS TO WHETHER ANY ASSAULT, BATTERY, CRIMINAL NEGLIGENCE OR OTHER CRIME WAS PERPETRATED AGAINST SEAN BAKER; WHETHER EVIDENCE RELEVANT TO THE EVENTS OF JANUARY

24, 2003 WAS DESTROYED AND/OR COVERED UP AFTER IT WAS DESTROYED AND ANY OTHER MATTER THAT THE APPROPRIATE PROSECUTORIAL AUTHORITIES DEEM RELEVANT AND NECESSARY TO INVESTIGATE AS REGARDS THE BEATING OF SEAN BAKER.

4. THE UNITED STATES ARMY SHALL IMMEDIATELY COMPLY WITH ALL MANDATORY ARMY REGULATIONS GOVERNING THE ASSAULT ON SEAN BAKER INCLUDING BUT NOT LIMITED TO THE CONVENING OF AN ACCIDENT INVESTIGATION BOARD AND A COLLATERAL INVESTIGATION.
5. THE UNITED STATES ARMY SHALL INVESTIGATE AND DETERMINE WHY AN ACCIDENT INVESTIGATION BOARD, A COLLATERAL INVESTIGATION AND A REFERRAL TO CID WAS NOT TIMELY PERFECTED RELATIVE TO THE BEATING OF SEAN BAKER ON JANUARY 24, 2003. THE UNITED STATES ARMY SHALL MAKE A REPORT OF SAID INVESTIGATION TO THE HOUSE AND SENATE ARMED SERVICES COMMITTEES IN PUBLIC SESSION.
6. THAT APPROPRIATE DISCIPLINARY ACTION AND CRIMINAL PROSECUTION BE TAKEN AGAINST THOSE PERSONS WHO FAILED TO COMPLY WITH THE UNIFORM CODE OF MILITARY JUSTICE, MANDATORY ARMY REGULATIONS, ARMY POLICIES, ARMY

DIRECTIVES, AND ARMY ORDERS AS REGARDS THE BEATING OF SEAN BAKER AND EVENTS RELATED THERETO. SUCH ACTION, IF ANY IS WARRANTED, SHALL BE INSTITUTED AGAINST THE RELEVANT INDIVIDUALS WITHIN SIX MONTHS OF THE FILING OF THIS REPORT. THE UNITED STATES ARMY SHALL REPORT IN A PUBLIC SESSION TO THE HOUSE AND SENATE ARMED SERVICES COMMITTEES ANY ACTION TAKEN AGAINST ANY INDIVIDUALS. LIKEWISE, IF NO CRIMINAL OR OTHER DISCIPLINARY ACTION IS TAKEN AGAINST ANY INDIVIDUAL FOR THE EVENTS SURROUNDING THE BEATING OF SEAN BAKER, THIS TOO SHALL BE REPORTED TO BOTH OF THE ARMED SERVICES COMMITTEES IN PUBLIC SESSION.

The above referenced requests for relief are both reasonable, necessary and long overdue. Sean Baker would be put back in the Army, where he so much wants to serve. Rather than sitting home taking his nine daily medications, he would be working, doing something constructive, being engaged in life, having something to look forward to, feeling better about himself and his future. The United States Government would get a direct benefit from his work. Obviously, this is something that would require a certain degree of creativity, imagination and

accommodation to his disability. But after all, is that not what “doing the right thing” is all about?

Indeed, rather than think of all the reasons this proposal cannot work, I suggest we explore all the reasons it can. The Army gets a soldier who very much wants to serve. At the same time, the Army receives a great deal of favorable recognition by demonstrating that “doing the right thing” means more than mere words used to fill in the gaps in a general’s monthly newsletter. This is a “win-win” solution.

Similarly, by instituting the appropriate investigations, and also taking necessary disciplinary actions and/or pursuing criminal prosecutions, Army personnel will be put on notice that mandatory regulations and policies must be followed and if they are not, there will be consequences, even if the consequences are late in coming. Army discipline will be enhanced and history will be less likely to repeat itself against another “Sean Baker.”

Truly, we are fortunate to live in the United States of America where wrongful government conduct can be legitimately challenged. This is, in many ways, the essence of what our Armed Forces fight for, to have this freedom to speak out, to challenge and to seek corrective action. This is a good thing. The purpose of this report is not to be punitive toward anyone, nor is it meant to be anti-Army.

Sean Baker, even in spite of everything he has been through, still holds the Army in high regard. To be sure, he has been seriously disappointed, and yes, even hurt, by what some members of the Army did to him or failed to do. Despite this, Sean still wants to return to the Army.

What this report is about, at least in part, is to document the need for accountability as to past wrongs so that future Army personnel will not have to experience what Sean Baker suffered. The Sean Baker case is something that should be learned from. Had these Army regulations been complied with, the beating of Sean Baker would never have occurred.

Most of the critical factual information that has been shared with you in this report is undisputed. However, I suspect that in the days ahead some personnel in the Michigan 303rd and even in the Kentucky 438th may offer statements that attempt to attack Sean Baker, to blame him for even opening this investigation. "After all," some of these men have told me, "Sean Baker has gotten his disability, what more does he want?"

On the other hand, the seminal facts in this case have already been established. The moving finger of history has already written about these facts in the form of: (1) sworn affidavits of January 24, 2003; (2) the "Line of Duty Investigation,"

which concluded that based upon all the relevant facts, it was “reasonably foreseeable that an injury may be sustained from this type of training”; (3) the fact that the videotape of the January 24, 2003, IRF exercise was destroyed or erased; (4) a sworn statement given by Sean Baker on January 24, 2003, that Scott David Sinclair smashed his head against the steel floor and used excessive force; (5) that no action was taken by officers at Guantanamo Bay, Cuba to comply with mandatory federal laws to properly investigate the Sean Baker beating despite twice being urged to do so by senior non-commissioned officers; (6) that Sean Baker sustained a traumatic brain injury on January 24, 2003, and that the probable cause for this injury was a reckless order by a platoon leader and an IRF team member who pounded Sean Baker’s head into the steel floor one or more times; (7) that Sean Baker was in excellent health when he reenlisted in the National Guard in January 2002 and was not taking any prescribed medications; and (8) that Sean Baker is now on nine different medications; that the Army’s Physical Evaluation Board determined he suffers from a traumatic brain injury and associated disorders, and that this diagnosis has been confirmed by a nationally recognized board-certified forensic psychiatrist, the Veterans Administration and the Social Security Administration.

After practicing law 21 years, I would expect, given the notoriety of this case, that you will hear some collateral and irrelevant, personal attacks on Sean Baker. But,

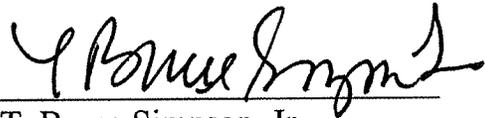
you will not hear any credible rebuttal evidence as to the critical facts set out herein. A famous author once said that, "Facts do not cease to exist because they have been ignored." My sense is Major General Miller perhaps recognized this maxim when he wrote one of his final monthly columns in the Guantanamo "WIRE" on October 31, 2003, nine months after he and Brigadier General Payne visited Sean Baker in the hospital and promised him a thorough investigation. Major General Miller wrote, "**The most valuable commodity leaders exchange is unvarnished truth. Do not gloss over problems, as they will not go away.**" (Exhibit 55).

The problems that Sean Baker has suffered from since January 24, 2003 have not gone away. He is reminded of them three times a day when he takes his medications and when he makes his weekly treks to the VA Hospital. He is also reminded of them when his body suddenly quivers and shakes so violently and uncontrollably that at times he urinates on himself. His future will always be compromised by a series of uncertain journeys through minefields of unexploded seizures. Sadly, then, in many ways, Sean Baker will always be a prisoner of Cell 27, Oscar Block, Guantanamo Bay, Cuba.

You can now provide the kind of leadership that Sean Baker has so desperately needed since the early morning hours of January 24, 2003. The relief requested for

Sean Baker should be granted. It is fair, equitable and in perfect harmony with core Army values.

Granting this relief is about “doing the right thing” and fulfilling the Army’s expressed commitment to “higher standards of professionalism.” Most importantly, it is about the United States Army taking care of “one of its own.” Sean Baker is a worthy soldier. He is entitled to nothing less.



T. Bruce Simpson, Jr.
Legal Counsel for
Sean D. Baker, Sr.