

The Michael Behenna Story

By Carrie Fatigante

Dear Captain Poirier:

On Thursday afternoon when I heard Lt. Michael Behenna testify as to the circumstances of how the shots were fired I could not believe how close it was to the scenario I had described to you on Wednesday. I am sure that had I testified that I would have wanted to give my re-enactment so the jury could have had the option of considering how well the defendant's story fit the physical facts. This, of course, would not have been helpful to the prosecution case. However, I feel that it is quite important as possible exculpatory evidence so I hope that, in the interest of justice, you informed Mr. Zimmerman of my findings. It certainly appears like Brady material to me.

Respectfully,

Dr. Herbert MacDonnell

Dr. Herbert Leon MacDonnell, director of the Laboratory for Forensic Science in Corning, N.Y., knows of which he speaks. His expert forensic career spans five decades and includes such high-profile and complex cases as the assassinations of President John F. Kennedy, Sen. Robert F. Kennedy, Martin Luther King Jr., and the case against O.J. Simpson. Yet, Dr. MacDonnell's findings were kept secret by the United States Army in its case against Army 1st Lt. Michael Behenna, an Iraq War veteran.

Instead of presenting the factual evidence that corroborated Michael's self-defense claim and thereby implode the "revenge execution" premise of their case, Army Capts. Meghan Poirier, Jason Elbert and Erwin Roberts violated their own ethics code by hiding this evidence from both the defense team and the jury in order to achieve conviction in a politically-motivated prosecution.

Emboldened by the recent highly-publicized cases of the Pendleton 8, in which seven Marines and a Navy corpsman were charged with killing an Iraqi civilian, the Army prosecutors made broad accusations against Michael of a revenge-motivated premeditated execution.

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The Pendleton 8 case prompted many anti-war liberal politicians, such as Rep. John Murtha (D-Pa.) and then-Sen. Barack Obama (D-Ill.) to blanket all American troops as “murderers” and “terrorists” out to “kill innocent civilians.”

Specifically, Army prosecutors alleged Michael wanted revenge against known Al-Qaeda operative Ali Mansur for an IED attack on his platoon in April 2008. In that attack, Michael lost two men from his platoon: Sgt. Adam Kohlhaas, 26, and Spec. Steven Christofferson, 20. The prosecution team maintained that Michael deliberately planned to lead Mansur into a deserted culvert and murder him.

The sequence of events that brought Michael, his interpreter, Mansur and another soldier into that roadside culvert on the evening of May 16, 2008, can only be described as a failure of intelligence and lack of forward thinking by Army officials. It’s a set of events that Michael’s mother Vicki declares “a recipe for disaster.”

The resemblance of Michael to his mother is compelling and impossible to miss. Their jaws are firmly set and their eyes appear acute, as if even the smallest details are catalogued. Although I was not allowed to contact Michael because of the status of his case, I did meet the rest of his family one afternoon last August, and couldn’t help but note the intense loyalty to Michael and each other. Despite the somber reason for the meeting, the Behennas welcomed me to their table as a friend, sharing even the most difficult aspects of Michael’s case.

Vicki and Scott Behenna raised their three boys in Edmond, Okla., an affluent suburb of Oklahoma City.

Vicki is a federal prosecutor and Scott is a former Oklahoma State Bureau of Investigation agent who now serves as an intelligence analyst for the FBI. Law enforcement, justice, honesty and loyalty are running themes that extend to each member of the family.

Michael, now 26, joined the Army to defend his country after the attacks of 9/11. Middle son Brett is a 24-year-old law student at the University of Oklahoma and a legal intern at the Oklahoma Court of Criminal Appeals. The youngest, Curtis, is a 22-year-old pre-med senior at the University of Central Oklahoma. He is

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currently interning at the Veterans Hospital in Oklahoma City as a research assistant studying the effects of Post Traumatic Stress Disorder.

The younger boys are as commanding as their older brother, though in different ways.

Brett’s dark eyes seemed to search my motives immediately, and it became clear throughout the interview that he has taken over Michael’s role as protector of the family.

Curtis, who wears Michael’s dog tags every day, has sandy hair and a boyish smile that seems to spite the difficulties his family has endured.

“He is a gifted leader” said Vicki, when asked to describe Michael. “Not in a student council sort of way, but more of a finding someone in need and getting a group together to help them way.”

A perfect example, she says, is how, shortly after Michael arrived at the military prison at Fort Leavenworth, Kan., he met another soldier whose wife and young children were now without income because of the soldier’s conviction. Michael called home and implored Scott and Vicki to help this family, not just financially, but also in processing social security forms and aid requests. Even in prison, “Michael wants to help people,” Vicki smiles proudly.

Both his parents and brothers agree that Michael was the family protector and stood as a strong force of alliance with Brett and Curtis if they encountered trouble at school. Even so, Vicki says he was friendly with everyone, and had nicknames for those closest to him.

“It’s sort of his thing,” Vicki explained. “It’s his way of showing affection.”

“He had an amazing ability to get along with anyone,” Scott added. “His friends ran the gamut. And while serving in Iraq, he was known for his ability to build rapport with people of all different cultures. He always tried to learn the languages of the people he was dealing with.”

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Indeed, emails and correspondence from those who knew Michael before he was sent to prison confirm that this is a man respected for his intelligence and loved for his compassion.

Although he was an Army first lieutenant, the Behennas disclosed that he rarely wore his bars, because he didn't like to advertise his rank when establishing accord.

“He is a very relatable guy,” says Curtis. “He had friends who lived in wealthy gated communities and he had friends who lived in trailer parks.”

Brett describes Michael as “the least prejudicial and most open-minded person I know. He has an insatiable interest and incredible respect for people of different cultures. The idea that Michael would engage in any kind of angry revenge killing is the total opposite of his personality.”

What is perhaps the most telling of Michael's traits, at least in regard to his criminal case, is his unwavering loyalty to those he loves and for whom he feels responsible.

Early events in his life taught Michael not to take people for granted. He was so dedicated to spending time with his family that in high school he instituted a family game night ritual and wouldn't take no for an answer when other family members might have wanted to bow out.

And Michael has been no stranger to loss and betrayal.

Like millions of other 11 year old boys, Michael played baseball and especially liked his coach, Mike Weaver, an attorney for the Department of Housing and Urban Development located in the Alfred P. Murrah Federal Building in Oklahoma City. But on April 19, 1995, Timothy McVeigh bombed the Murrah building, killing 168 people, including Weaver.

When I asked Vicki how Michael dealt with such a horrific loss at this young age, she answered candidly.

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“He never picked up a baseball bat again. He wouldn’t even look at one. And his healing process was prolonged because of my position on the case. He couldn’t escape what had happened.”

Vicki was an integral part of the federal government’s prosecution team that ultimately secured the death penalty for McVeigh, who was executed for the bombing in 2001.

According to a NewsOK.com report, Michael was so affected by the OKC bombing that he scrawled Weaver’s initials on his notebooks for years. Looking at the picture of Michael in his baseball uniform with the happy smile and bright eyes, Brett told me, “The innocent boy in this picture ceased to exist.”

Shortly after the bombing, Vicki’s father began molesting Michael, who undoubtedly would have been vulnerable to such a psychological and physical attack. Despite his own emotional repercussions, Michael’s courage and protective nature allowed him to disclose the abuse two years later so that his brothers, who were nearing the age in which Michael’s abuse began, could be spared.

“Michael’s life hasn’t been easy,” Vicki says, showing a glimpse of the anger she still feels about Michael’s abuse. “Nothing has been handed to him, but he’s worked hard to move past these things.”

Vicki said Michael spent his high school years undergoing counseling to deal with the events of his young life.

After graduating from Edmond Memorial High School in 2002, Michael discovered the ROTC program at UCO and finally felt he had found a purpose for his interest in history and languages.

He finished his bachelor’s degree so that he could enter the Army as an officer. However, this plan was almost preempted, because Michael wanted to quit school in his freshman year and, instead, enlist immediately to help defend his country. Michael understood more than most the devastating effects of the 9/11 terror attacks, and he empathized with the victims and the families left behind.

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Vicki and Scott eventually convinced Michael that finishing his degree and then enlisting was the right path to follow. After basic and officer training, Michael completed Ranger training, which Vicki describes as “unbelievable,” including 12-hour road marches performed on little sleep and minimal food rations.

Despite his success with the Rangers, Michael opted out of the special forces and requested a combat assignment. He was deployed to Iraq as a second lieutenant and leader of the 18-member Delta Company, 5th platoon of the Army’s 101st Airborne Infantry Division in Sept. 2007.

Once in Iraq, Michael’s platoon was stationed at Forward Operating Base Summerall near the regions of Baiji, Abu Toma and Salaam Village.

Michael worked hard to establish respect, trust and rapport with the Iraqi people -- from the children in the streets to Sheik Hamad, the high profile leader of Abu Toma. Often, when children would see the 5th Platoon, they would run up to the MRAPs (Mine Resistant Ambush Protected vehicles) asking for Lt. Behenna, knowing Michael would give them food, gifts and affection. Some children even earned nicknames from Michael.

In court testimony, Michael described the importance of Sheik Hamad.

“He is respected by all people. He’s somebody that you want to have a relationship with, because he controls most of the people in that area. That’s one of the first things I did was sought out Sheik Hamad.”

The Sheik is considered the “king” of that area, and Hamad was an enemy of the insurgents. Michael was so well respected that Sheik Hamad often invited him to dinner at his home.

Besides providing Michael with meals, the Sheik also worked closely with him in his daily operations, including the implementation of a water purification system for the village and offering the use of his home as a secure meeting place for intelligence gathering. In addition, Hamad gave Michael a working cell phone so villagers could contact him in case they had problems with insurgents.

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“I would hand my number out freely to the local people,” Michael testified. “If they had some kind of problem, they would contact me. Me and my platoon are in charge of that area so I would hand my cell phone out.”

And, as Michael’s interpreter “Harry” testified, it was Sheik Hamad who would definitively confirm Ali Mansur’s location in Albu Toma once Michael decided to detain him for questioning.

In February 2008, Michael’s platoon was on standard patrol in Albu Toma, registering mortars on the battalion net (a radio communication device) when FOB Summerall contacted Michael to inform him of a “complex attack” set to target his platoon near the local Iraqi Police Station in Delta Company’s area of operation.

This Iraqi Police Station overlooks Salaam Village, an area Michael described as “a known insurgent place.” The message listed several names of suspected perpetrators including Ali Mansur. Michael testified that he recognized Mansur’s name from previous intelligence reports, including an official Draft Intelligence Information Report from Army intelligence officers and reports from local people identifying Mansur as a confirmed member of two separate insurgent cells.

Michael also had received reports that Ali would stand on top of the police station with a cell phone and inform insurgents when coalition forces were moving into the area. As they often did in order to avoid just such an attack, Michael and his platoon found another route out of the area.

Despite this communication from official intelligence officers, no formal report was made regarding this attempted attack.

A few weeks later, Michael answered a call to his cell phone, asking the caller to identify himself. He testified that he knows enough Arabic to understand that the man called himself Ali.

Ali threatened Michael personally, as well as the rest of the 5th Platoon, and told him, “If you ever come back to Albu Toma, something bad is going to happen to your platoon.”

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Witnesses report that Michael smirked at the threat, prompting military prosecutors to later argue that he didn't view Ali Mansur as a real and imminent danger to his men. However, Michael knew how dangerous Ali was as evidenced by the fact that he later phoned Mansur and offered him the chance to turn himself in and provide information in exchange for leniency.

But Ali only repeated the threats. According to Vicki, Michael was incredibly frustrated that formal reports weren't made on either these new phone threats or the imbedded IED in February.

On April 21, 2008, Mansur made good on his promise.

On desert patrol near Salaam Village in a three-MRAP convoy, Michael rode in the middle truck. The caravan intersected a dusty road, and the first two trucks crossed without incident. But when the third vehicle crossed, Michael described in court what happened next.

“I just heard a thud, which we've heard this thud before. We know that sound. We know what it is. We know it's an IED. We know. And I remember looking in my side mirror, and all I could see was smoke and dust. So, immediately, I got out of my truck and went back to that last truck.”

When Michael checked the rearview mirror after the blast, he saw the last truck rolling over and over amidst plumes of black smoke. To put the power of the blast in perspective, one door on an MRAP weighs over 700 pounds. To send one of these heavily armored vehicles hurling would require a massive amount of explosives.

Michael immediately ordered the halt of the other trucks and, as one platoon member recounted for Vicki, he'd “never seen anyone [Michael] run that far that fast.”

Scott explains that operating procedure in attacks is for the platoon leader to stay clear of the scene, since their duties are to organize rescue operations. But Michael could only concentrate on giving aid to those that might be hurt -- or worse. Michael detailed the scene in court:

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“As I was running back to the truck, the dust and the smoke was dropping and I saw [pause] just [pause] just bodies. I saw several bodies laying there. I recognized and noticed my soldiers were laying there, my interpreter. Well, [pause] you know as the leader on the ground, I had to make the decision, you know, evaluate the situation that just happened.

“There’s bodies laying on the ground and I’ve got to send up a medevac report. I had to go around and see all of the casualties and I had to relay that message to my gunner, which my gunner was Private Bradford and he’s the one that actually sent in the medevac.

“I spent most of my time [pause]—I spent most of my time trying to give aid to my soldier. (Specialist Kohlhaas) [But also] the CLC (Concerned Local Citizens) members, one of them, his gut was cut open and he had some kind of metal stuck in there, stuck in his stomach. I mean, it was just, people were screaming. [Christofferson] was the furthest one to the west.

“I saw Christofferson, and he was [pause]—I knew he was dead by the time I saw him. He was cut in half. He was cut completely in half. We put the guys on the stretchers and put them on the two birds that showed up. After that, the QRF (Quick Reaction Force) responded down to that area, and they were picking up all of the stuff left behind, you know, the clothing, equipment.”

Smoke and blood were mixed with the desert sand, and the smell of diesel penetrated Michael’s senses, burning his nose and eyes. Bodies were everywhere, and Michael began shouting orders over the radio requesting medics and rescue helicopters. Two of Michael’s soldiers and two Iraqi citizens were killed, and several others were gravely wounded.

Michael was close to both of the soldiers killed. Sgt. Adam Kohlhaas, of Perryville, Mo., was Michael’s daily workout partner. Michael found Kohlhaas unconscious but with no outward injuries. Once he realized he wasn’t breathing, he performed CPR for many minutes but failed to resuscitate him. After Kohlhaas’ death, Michael stopped working out, refusing to even enter the gym.

Spec. Steven Christofferson, of Cudahy, Wisc., was a young soldier for whom Michael had served as a mentor. The two reportedly had endless discussions

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about Christofferson’s future in the military. Christofferson expressed interest in transitioning from the enlistment ranks to the officer levels, and often sought Michael’s advice.

Michael nicknamed him “Padawan,” a Jedi term meaning pupil or apprentice, and would tease Christofferson about wanting to move from the “dark” side of grunt troops to the “light” side of officers. He also impressed upon Christofferson the importance of earning a degree and learning different languages, specifically Arabic, and offered Christofferson his Arabic phrase book. The two were so close, in fact, that when Michael advanced from second to first lieutenant, he gave Christofferson his gold lieutenant’s bars.

After the attack area was cleared of bodies and mutilated equipment, Michael surveyed the scene one last time. Lying in the sand, partially burned and reeking of fuel, was the Arabic phrase book he’d given to Christofferson. Michael quietly placed the book in his pocket, and Vicki says it remains one of Michael’s most important possessions. “It still smells like diesel.”

In the weeks following the attack, when Michael was informing families of the deaths of his soldiers, filing appropriate reports and paperwork, and securing the needs of his troops, psychiatrist Dr. Pablo Stewart testified that he was operating under Acute Stress Disorder. ASD is similar to PTSD, except that symptoms are onset shortly after a traumatic event. According to CounsellingResource.com, symptoms of ASD include the following:

The traumatic event is persistently re-experienced in at least one of the following ways: recurrent images, thoughts, dreams, illusions, flashback episodes, or a sense of reliving the experience; or distress on exposure to reminders of the traumatic event.

Victim exhibits marked avoidance of stimuli that arouse recollections of the trauma (e.g., thoughts, feelings, conversations, activities, places, people).

Victim exhibits marked symptoms of anxiety or increased arousal (e.g., difficulty sleeping, irritability, poor concentration, hypervigilance, exaggerated startle response, motor restlessness).

The disturbance causes clinically-significant distress or impairment in social, occupational or other important areas of functioning or impairs the

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individual's ability to pursue some necessary task, such as obtaining necessary assistance or mobilizing personal resources by telling family members about the traumatic experience.

Soldiers reported that Michael wasn't sleeping, that he was suffering near constant flashbacks, and that he immediately quit working out, because he said it was too distressing to go to the gym without his workout partner.

Vicki confirms that Michael told her on numerous occasions he refused to sleep, because visions of the attack kept looping in his mind when he did. She remembers he was also markedly withdrawn and concerned about the future welfare of his troops.

While the events of the April 21 attack could certainly warrant the onset of these behaviors on their own, Dr. Stewart testified that the earlier traumas Michael experienced from the OKC bombing and molestation amplified Michael's response to the attack.

Michael still suffers nightmares from the screams of the dying and wounded victims, confided Vicki.

Very little was presented about Michael's stress disorder during the trial, especially the implications of Acute or Post-Traumatic Stress Disorders in decision making. Also notable was the failure of the Army to recognize Michael's impairment or offer any coping mechanisms to alleviate symptoms.

Critics argue that “feel good” psychological programs have no place in deadly combat operations, but such programs are markedly different than calls from veterans to recognize the effects of traumatic combat incidents and their affect on the outcome of future missions. Combat soldiers see and do things so abnormal from their daily lives that many are simply caught off guard by their reactions.

PTSD and other stress disorders are so prevalent for Iraq veterans that, during the first five months of 2009, 15 soldiers committed suicide at Ft. Campbell, Ky. Despite this disturbing trend, Michael's stress reaction received only a cursory acknowledgment during testimony argued to the jury.

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On May 5, 2008, Michael read an intel report identifying Ali Mansur as a member of the Al-Qaeda cell responsible for the April 21 IED attack. (Military prosecution later blocked this document from being submitted to the jury as determination of Michael’s understanding of Mansur as a known terrorist threat. The judge denied its admission based on relevance.)

Michael immediately set out to detain Mansur for interrogation at Command Operating Base Speicher, the specified location for intelligence operations. Michael visited with Sheik Hamad, who confirmed Ali Mansur’s status as a “bad guy” and told Michael and Harry where Mansur could be found.

The 5th Platoon soon reached Mansur’s home, where Ali was found hiding in a small room and possessing an illegal RPK machine gun.

SSgt. Hal Warner found Mansur, physically tackled him and then brought him to a back bedroom for questioning with Michael. Warner’s takedown was forcible enough to break a table as he and Ali fell to the floor.

Michael and Harry questioned Mansur as Warner searched the back room for more illegal weapons and other evidence. Warner soon discovered Mansur’s passport confirming two trips to Syria, where insurgents are known to receive training and funds for terror attacks.

Mansur lied repeatedly about traveling to Syria until after Michael struck Ali’s back with his helmet. Only then did he admit he had been across the Iraqi border, but he was still unwilling to give additional information.

Prosecutors claimed Michael’s Kevlar helmet left a large abrasion on Mansur’s back, proving Michael was unnecessarily rough with the detainee; however, subsequent cross examination by defense attorney Jack Zimmerman of Houston, revealed that it was actually Warner’s rough tackle that caused the injury. Michael testified that Mansur’s lies and subsequent confessions to the Syrian trips indicated he likely had serious knowledge of connections to terrorist financing.

Once Mansur reached COB Speicher, the intelligence chain of command went MIA. Mansur was interrogated four times by four different intelligence officers,

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and each time he was only asked about possession of illegal weapons and current employment. Incredibly, he was never asked about the IED attack, the threatening phone call, the attempted February attack, or even his trips to Syria. After ten days, Mansur was ordered released and sent back to FOB Summerall for the appropriate processing.

Brett said Michael was upset about the incompetent questioning, faulting communication failures between the different branches. Michael knew an entire intelligence file existed for Mansur, including a classified report -- a modified declassified copy of which I personally read -- that confirmed Mansur as a member of Al-Qaeda responsible for transporting and implanting IEDs in the April 21 attack. Yet this information never made it to Speicher.

It was not until Mansur was sent back to FOB Summerall for release on May 15, and only after Michael implored his Commander to let him sit in on one final interrogation, that Mansur finally gave names and cell phone numbers of other terrorists associated with his cell.

Mansur was also again caught lying about his Syrian passport. Afterwards, expecting Mansur to be sent back to COB Speicher, Michael inquired about the next step, but Scott says he was promptly informed, “It doesn’t matter. We have orders to release him, and he’s being released.”

Adding insult to injury, Michael himself is ordered to release Mansur back to the area of Abu Toma. Vicki shakes her head and says, “It wasn’t necessarily out of the ordinary for them to have Michael release Mansur (and other detainees), but it was certainly bad judgment after everything he’d been through.”

The next day, Delta Company 5th Platoon departed for duty with two detainees in tow ordered for release. The caravan had four trucks that day and the detainees were blindfolded and zip-tied in the back of the last truck of the pack. Detainees are bound this way so they cannot inform other terrorists about the inside of U.S. military vehicles.

The first detainee was dropped off in his designated area a few hours earlier than Mansur, and much is made in court testimony about the fact that Michael made a

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stop in Albu Toma to speak with Sheik Hamad about a water purification system, but did not release Mansur at this time.

Michael readily admitted in his own testimony that he did not release Mansur at that time, because he intended to question him further.

“My intent on May 16th was to question Ali myself,” Michael said. “I knew he had information about the April 21st attack. I knew he knew who the cell leaders were in Salaam Village and operating in Salaam Village. Those questions weren’t asked during any of the interrogations that were done.”

Later he explained further, “Ali, he’s involved in the cell, the cell, especially out in Salaam Village. I wanted to get the cell leaders, the bigger fish, out in Salaam Village, so I wanted to use Ali as a source.”

Michael was concerned about the future safety of his troops, which he says he felt like were “sitting ducks.”

Michael intended to scare Mansur into giving him the information, planning to take him to a remote area to question him at gunpoint even though he knew it wasn’t an authorized procedure for a platoon leader. He also admitted that pointing his weapon at Mansur as a scare tactic was a “bad decision,” explaining, “Sir, it is a bad decision to point a weapon at anybody. The reason I did it was, at the time, I was thinking, ‘this guy’s not telling me the information.’”

Warner claimed that Michael’s actions that day were completely out of the ordinary, though Harry’s testimony disputes this. In fact, much of Warner’s testimony reads like a “CYA” manual and, even in transcript form, smacks of coaching.

Warner also admitted on the stand that he wasn’t happy with his assignment to Michael’s platoon. And, since Warner was almost ten years older than Michael, he felt his job was to “train” his platoon leader, because he felt his experience gave him the upper hand.

Warner did not assume his position with the platoon until after the April 21 attack, meaning he was not present for the incident leading up to the interrogation in the culvert.

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When the convoy finally stopped to release Mansur, they were located just outside of Abu Toma near some railroad tracks and a CLC checkpoint which Michael said is where he planned to direct him once he was through questioning him.

It was dusk when Mansur was retrieved from the last truck. A dust storm had blown through and visibility conditions were poor as Michael and Harry began walking Mansur toward the two consecutive roadside tunnels.

Warner claimed Michael ordered him to accompany the three men into the culvert, but other witnesses deny this and Warner admitted he had to run to catch up with them in the tunnel. Harry also denied that Michael ordered Warner to pack a thermite grenade in his ammunition vest -- one that Warner boasted he always had packed with several grenades and at least 300 rounds of ammunition.

When asked to describe what he wore into the culvert that evening, Warner listed everything but the kitchen sink:

“I was wearing my IBA, body armor—various numerous pouches to hold magazines, grenades---and sundry items. I would carry multiple kinds of smoke, two fragmentation grenades, and I usually carried a thermite. I carry rifle ammunition. I carried approximately 300 rounds of rifle on me, marking gear for LZs, first aid pouches, compasses, Garmin, a lot of stuff.”

During cross examination, Warner admitted this is “a really heavy load” to carry on your body, not including a helmet and an M-4 rifle, to which he testified, “I do not let it out of my hands.”

This assertion will make Warner’s later claims of speed and agility seem implausible when he tells of how he was relieving himself as he performed lookout on the berm of the culvert, and then ran 35 meters (just over 114 feet) on sand in just under two seconds to witness Michael shoot the second shot of a “controlled pair” from a Glock pistol. [Note: A controlled pair is a technique the Army trains its soldiers to use which places approximately one second between trigger pulls.]

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Warner also confessed under cross that he'd made two false statements prior to his testimony, one of which was written by the military prosecution team. His court testimony, which he now claimed was the truth, was secured only after he closed a plea agreement granting him immunity from more serious charges and securing a sentence of 17 months confinement at a military base instead of prison time at Ft. Leavenworth.

Mansur was stopped near the end of the second culvert, and Michael and Warner stripped Mansur of his clothes, a practice Harry said is done to humiliate Muslim men who culturally object to being nude in front of other males. Michael testified that he had Mansur's street clothes -- those he was wearing when he was detained on May 5 -- in a utility pocket of his uniform, intending to return them to Ali before he released him.

After stripping him, Michael used his knife to remove Mansur's zip-ties and accidentally cut Mansur's hand, a cut Harry described as only a little larger than a paper cut. Despite the small wound, Michael had Harry finish removing the zip-ties so that Michael did not cause further injury.

Once the ties were cut, Mansur was seated on a rock opposite Michael with approximately three feet between them, with Harry to the left of Michael and somewhat in between the two. (At some point during the questioning, Harry moves outside of the culvert, but exact timing was hard to determine through testimony.) Warner had already exited the tunnel to relieve himself, climbing on top of the berm to do so.

Harry and Michael both stated that Michael pulled his Glock 9 mm pistol from his waist, aimed it at Mansur and threatened to kill him if he didn't answer Michael's questions. Harry admitted this threat was not unusual and was actually common practice in questioning. He insisted he was not alarmed by this action and did not believe Michael planned to kill Mansur.

Actually, Harry was so comfortable with the procedure that on this day he added his own statements to the translation to Mansur, explaining, “It wasn't different from what Lieutenant Behenna said and what I translated, it's just I tried to make

it easier for Ali to understand. I told him, ‘You’d better talk. I mean why do you put yourself in this situation. He is going to kill you.’”

This adlib by Harry is a critical fact in the case, because Michael recognized that Harry had changed the language of his question and that Ali had also changed his answer.

Harry testified that Mansur said, “Okay, I will talk,” but that Lieutenant Behenna fired his weapon before he could translate Mansur’s response back to Michael. Michael explained that at this point his attention is focused on Harry and his translations.

“It was going back and forth with the information and Ali saying, ‘I don’t know,’” Michael explained. “The weapon’s pointed at him. Ali says something different that I didn’t recognize. As I had my head turned toward the left, I hear a sound of a piece of concrete hitting over my left shoulder. Immediately I turned toward my---to my right. You know my weapon’s like this [demonstrating.] Ali is getting up with his hands out toward my weapon. I stepped to the left and fired two shots.”

When Harry changed the language of the question, Mansur used this exchange to divert Michael’s attention and reach for his weapon. Michael insists he fired a controlled pair, but Harry and Warner both testified that the length between the shots was longer, though neither can pinpoint exactly and recorded testimony ultimately settled at between two and four seconds.

Warner testified that once he heard the first shot, he was able to zip up his pants while still holding his M-4 and then run a distance of at least 35 meters to the opening of the culvert quickly enough to see Michael fire the second shot.

Warner said he saw Mansur in a “semi-sitting” position, and this claim will be the crucial factor in the case against Michael. Again, even this testimony is questionable, because he then conceded, “I didn’t go all the way into the culvert, so I couldn’t see a lot of detail,” because of the poor visibility.

Warner testified he felt threatened by Michael because his Glock was pointed at him and he could see the hammer was cocked. He asserts this threat as the

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reason he followed Michael’s supposed order to “Throw it,” meaning the thermite grenade.

A major fault with this allegation is that a Glock pistol is a semi-automatic with an internal hammer, so Warner could not possibly have seen the hammer cocked.

Another problem is that Harry adamantly testified Michael never ordered Warner to throw the thermite grenade but he did see Warner “pull a grenade from his belt and...he just placed the grenade” under Mansur’s head and removed the safety pin. Harry said he remembered this specifically because, “I was afraid of the grenade.”

Michael also testified that he never ordered Warner to throw a grenade toward Mansur and said he doesn’t really remember when Warner reappeared in the culvert. Once Michael realized what had just happened, he recounted, “I started walking back to the first culvert. Sergeant Warner was walking the opposite direction back into the culvert I just came from. I didn’t see him place anything. The only reason I knew that it was an incendiary grenade [set off] is because of the flash it makes.”

Michael admitted to feeling panic after the shooting, saying, “I wasn’t thinking clearly. After those two shots happened, just that whole situation, I wasn’t thinking clearly at all. So I left the culvert.”

What happened next is hard to determine from the conflicting statements, especially regarding what was done with Mansur’s clothes, those cut off of Mansur and his street clothes that were in Michael’s pocket. Warner alleged that Michael ordered him to get rid of the clothes, but Harry charged that it was Warner who told Michael, “Just give [them] to me and I will take care of it.” Harry also said Michael did not speak when walking through the culverts back to the platoon.

After the shooting, other members of the platoon reported that they asked Michael if he killed Mansur and that Michael answered yes. They also testified along with Warner and Harry that Michael never asked them to lie about what had happened.

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The prosecution claimed Michael executed Mansur as he was seated, asserting that Michael’s weapon was aimed down toward his head. They argued to the jury that Michael’s first shot hit Mansur in the head and the subsequent shot hit under his arm. However, physical traces show that the opposite is true.

When Michael fired his gun, evidence confirms the first shot entered Mansur under his right arm, near his armpit, and the second one entered his right temple as he fell from the first shot.

Mansur’s left arm was crossed over his body as if he was reaching to the area of the first wound, and when he landed his arm lay in this position. The bullet trajectory was horizontal, confirmed by the bullets recovered at the scene.

Defense experts testified that this horizontal trajectory proves Mansur could not have been seated when he was shot as the prosecution claimed, because the trajectory would have been downward. Also, unless Mansur had his arm outstretched as Michael said, the bullet could not have entered under his arm, and instead would have hit his upper arm or his chest. The prosecution presented no direct or rebuttal witnesses to dispute these claims, for reasons revealed after Michael’s conviction.

Vicki said Michael’s phone calls to her after the April 21 attack were increasingly disturbing, and all he kept saying to her was, “I want to come home.”

Michael knew he was scheduled for leave soon and was desperate to be with his family. Two days after the incident in the culvert, Michael left for Oklahoma.

Vicki describes his behavior during this leave as troubling.

“He was so rattled by what had happened, and haunted by the cries of the victims, that he couldn’t function. Michael NEVER cries, yet we went shopping at a mall and he suddenly broke down so badly that we had to leave. He seemed to be suffering some sort of shock.”

Michael did not tell the family about Mansur’s shooting while he was home, but they would soon find out.

While Michael was in Oklahoma, and only after Mansur’s body was discovered, Warner suddenly developed a conscience and reported the shooting to commanding officers. This was when he made the first of at least two conflicting statements about his own culpability in the matter. By the time Michael returned from leave in early June, both Warner and Michael were under internal investigation.

Michael was charged with the premeditated murder of Ali Mansur on July 31, 2008. The charges received much press, which painted both Michael and Warner as just two more deviant soldiers in a long line of scandals from Abu Ghraib to the Pendleton 8. Michael’s conviction also received heavy coverage in the mainstream media, but the subsequent discovery of hidden exculpatory evidence did not.

When jury selection began in February 2009, Vicki was immediately alarmed. Military jury pools are preselected by an Army general. The general selects ten members, and then the attorneys *voir dire* down to a final panel of seven.

Zimmerman specifically requested that some of the selected members have direct combat experience in order to allow Michael a true jury of his peers. Only one of the original ten members selected would match this request, and he was not selected for the final jury.

When asked if she felt relatable combat officers were purposely kept off the jury, Vicki reluctantly replied, “The 101st is an infantry division. I’m just saying they’d have to work really hard to find that many officers in the 101st who HADN’T had direct combat experience.”

The court-martial commenced on Feb. 23.

Vicki says the disconnect between the experiences of the jury members and Michael was evident throughout the proceedings. One example stands out for Scott.

When Michael testified that his decision to question Mansur stemmed from his belief that Mansur’s activities were a threat to his men, one jury member asked him why he couldn’t have just “done some surveillance.” Scott said the look on

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Michael’s face was incredulous. “They didn’t understand that you don’t just park a van and have a stakeout with coffee and donuts over there. It doesn’t work that way.”

Prosecutors never presented any physical crime scene evidence; though they did take the time to secure immunity deals for at least two witnesses, including Warner, both of whom admitted to lying previously for self-preservation purposes, specifically in regard to the timing of Warner’s initial report of the May 16 shooting.

The first few days of testimony went well for the prosecution, save for the conflicting testimonies of Warner and Harry the interpreter. Intending to call their own expert to rebut the defense’s trajectory testimony, they were surely dismayed on Feb. 25 when the aforementioned Dr. MacDonnell presented the prosecution with conclusions that corroborated Michael’s claim that Mansur was standing with his arms outstretched when he was shot.

Michael was scheduled to testify the next day, and Dr. MacDonnell assumed he would go under oath as well. But Dr. MacDonnell was never called to the witness stand, and the defense team was not notified of the doctor’s findings.

After the close of proceedings that Thursday evening, Dr. MacDonnell approached Zimmerman with the statement, “I would have made a great witness for the defense. We’ll talk after the case.”

The following morning, Zimmerman approached the prosecution team asking why MacDonnell would be a good witness for him. The three Army captains denied any knowledge of what MacDonnell could have meant.

Closing arguments began and ended with the prosecution claiming that Michael callously executed “helpless, hopeless, harmless” Ali Mansur while he was seated on that rock. Again, this sitting position is essential to the prosecution’s case, because it is the only thing that negates Michael’s claim of self defense.

The prosecution never provided evidence to prove this claim, because they knew it was false.

As a federal prosecutor, Vicki said such actions are inherently unethical and all three attorneys should be disbarred for their direct collusion to make knowingly false accusations. As they closed their case to the jury, they explained their lack of expert evidence and testimony as unnecessary, because Michael’s case was so “unreasonable.”

Just before MacDonnell left the courthouse that Thursday afternoon, “he picks up his coat from the prosecution room and says to the three prosecutors, “The explanation that Lieutenant Behenna just testified to was the exact same scenario I told you yesterday. Lieutenant Behenna is telling the truth.” (Source: www.defendmichael.wordpress.com)

Michael was convicted on Friday, and the only concession the jury made to Michael’s self-defense claim was convicting him of unpremeditated murder versus the original charge of premeditation.

This same day, Dr. MacDonnell sent the following email to the prosecution team. The text of the e-mail appears below or can be viewed at <http://defendmichael.files.wordpress.com/2009/03/govexpertwitness.pdf>

Friday, February 27, 2009

4:07 p.m.

Dear Captain Poirier:

I came home to an incredible pile-up of work but I shall try to send an invoice to you within a few days. On that issue I should advice you that I may have exceeded what was appropriate because of staying two nights rather than one. My estimate for my total cost was based on one night there but I shall still try to keep the total within your budget even if I have to reduce the number of hours I spent here in preparation for my testimony.

On another issue I am somewhat concerned that I did not testify and have a chance to inform the court of the only logical explanation for this shooting. As I demonstrated to you and to the two other prosecutors, Dr. Berg, Sgt. McCaulley, and Sgt. Rogers?, from the evidence I feel that Ali Mansur had to have been shot in the chest when he was standing. As he dropped straight down he was shot again at the very instant that his head passed in front of the muzzle. Admittedly, this would be an amazing coincidence, however, it fits the facts and as I told you on Wednesday, it fits the facts and I can not think of a more logical explanation.

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“The Michael Behenna Story” by Carrie Fatigante

This scenario is consistent with the two shots being close together; consistent with their horizontal trajectory, consistent with the bloodstains on the floor, and consistent with the condition of the 9mm flattened out bullet which was tumbling after leaving Mansur’s head or body. I do not know where this bullet was recovered but I would expect after impact to the concrete wall it fell very close to that wall. The other bullet should have been close to the first and there should have been two impact points on the wall.

On Thursday afternoon when I heard Lt. Michael Behenna testify as to the circumstances of how the shots were fired I could not believe how close it was to the scenario I had described to you on Wednesday. I am sure that had I testified that I would have wanted to give my reenactment so the jury could have had the option of considering how well the defendant’s story fit the physical facts. This, of course, would not have been helpful to the prosecution case. However, I feel that it is quite important as possible exculpatory evidence so I hope that, in the interest of justice, you informed Mr. Zimmerman of my findings. It certainly appears like Brady material to me.

It was a pleasure meeting you and your team and I learned one thing; the military life is not for me. You guys are getting up about the time we go to bed.

Respectfully Submitted,

*Dr. Herbert Leon MacDonell, Director
LABORATORY OF FORENSIC SCIENCE*

Unable to ignore MacDonnell any longer, the prosecution turned over the information to the defense team. The judge then ordered both sides to file briefs relating to a possible mistrial based on a Brady violation, stemming from a 1963 Supreme Court ruling in *Brady v. Maryland* that ruled suppression by the prosecution of evidence favorable to a defendant violates due process and the accused’s right to a fair and impartial trial.

But on March 20, ruling in concert with the prosecution, Judge Col. Theodore Dixon denied Behenna’s request for a mistrial and upheld Michael’s conviction, claiming MacDonnell’s affidavit was not “credible.”

Michael was sentenced to 25 years in prison at the Ft. Leavenworth penitentiary. Another General has since reduced his sentence to 20 years but again denied a request for a new trial. The case is currently under appeal and review for clemency.

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When I randomly (and unscientifically) polled persons about their opinions of this case, most were outraged at what they called “liberal” policies implemented to gain favor with Iraqi people for the sake of humanity, regardless of the fact that these terrorists abide by no code of honor, save that of killing themselves in the process of killing as many westerners as possible.

Historically, civilian principles do not apply in war, but, increasingly, the U.S. government insists that our servicemen make combat decisions based on civilian legal issues, despite the fact that they are fighting an enemy that refuses to comply with the Geneva Conventions.

Earlier this year, the Obama Administration ordered U.S. civilian version of Miranda rights to be read to all war detainees, fatally constricting the ability of soldiers to gain needed intelligence to save further lives.

Throughout the Iraq and Afghanistan wars, soldiers have been faced with imminent life-threatening situations where they’ve had to make combat decisions based on whether they could later be sent to prison.

Today, Michael stands as one of many soldiers convicted of war crimes for actions they believed were protecting their troops and the interests of the United States.

Michael’s case has consumed the lives of Scott and Vicki. They travel each weekend from Oklahoma to Kansas to visit their son and, after work each weeknight, they answer hundreds of e-mails, letters and phone calls from supporters and respond to news media requests.

Countless blogs and internet radio shows have covered Michael’s case and local Oklahoma media outlets have featured Michael in print and video. The only mainstream media source to cover the prosecution’s Brady violation is the *Los Angeles Times*. Still, Vicki says the outpouring of public support helps strengthen their resolve to earn Michael a fair trial. And that’s all they are asking for -- a new trial.

They could demand a dismissal of charges outright, but the Behennas are asking only for an open and fair trial for Michael where all evidence is presented.

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Dr. MacDonnell has not forgotten Michael’s case either. Stargazette.com reported that, at a recent luncheon sponsored by the Auxiliary of Corning Hospital in New York, he highlighted six of his most important cases. Michael’s was one of them.

I asked Vicki how Michael is treated by guards and fellow prisoners at Ft. Leavenworth.

“They support him 100 percent,” she explained. “In fact, some of the guards that have been given orders for deployment have come to Michael asking him for advice.”

In a truly telling moment just after his conviction, Michael sat in a chair with his head in his hands as he waited to be escorted to prison. Vicki recalls that the guard assigned to cover Michael knelt before him, looked him in the eyes and said, “You are an honorable man. You will always be a soldier.” The guard then stood and saluted him.

As my conversation with the Behenna family came to a close, I asked Scott, “If there is one thing you wish to tell people about Michael, what would it be?” His answer befits only the finest of U.S. Soldiers.

“I want them to know Michael served his country with honor and courage,” he said. “There has been no evidence presented to taint that courage. Everything he did was oriented to protect his soldiers, the people of Iraq, and his country.”

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To read other more about Lieutenant Behenna’s case, visit <http://BobMcCarty.com> and click on the “Defend Michael” icon in the left sidebar of enter “Behenna” in the search box.

A clemency hearing for Lieutenant Behenna is set for Jan. 7, 2010.

To learn more about the case and a fund set up to help defray costs associated with Lieutenant Behenna’s legal defense, visit DefendMichael.wordpress.com.

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