

COURT-MARTIAL RECORD

NAME FREDERICK, IVAN L., II SSG

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

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PANEL 4

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VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

(b)(6)-2 (b)(7)(C)-2

FREDERICK, Ivan L., II
(NAME: Last, First Middle Initial)
HHC, 16th MP Bde (ABN)
III Corps
(unit/Command Name)

[REDACTED]
(Social Security Number)

Staff Sergeant
(Rank)

US Army
(Branch of Service)

Victory Base, Iraq
(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

Headquarters, III Corps
(Unit/Command of Convening Authority)

TRIED AT

Baghdad and Victory Base, Iraq
(Place or Places of Trial)

ON

19 May, 21-22 Jun; 24 Aug;
20-21 Oct 04
(Date or Dates of Trial)

COMPANION CASES:

- SPC AMBUHL, Megan M., [REDACTED]
- SGT DAVIS, Javal S., [REDACTED]
- SPC GRANER, Charles A., Jr., [REDACTED]
- SPC HARMAN, Sabrina D., [REDACTED]
- SPC SIVITS, Jeremy C., [REDACTED]
- SPC CRUZ, Arman J., [REDACTED]
- PFC ENGLAND, Lynndie R., [REDACTED]

(b)(6)-2 (b)(7)(C)-2

Transcript R.200 through B.489

2005 SEP 20 A 9:19
JUDICIARY

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

1 do. But all that being said, you still think the trial needs these
2 live witnesses for someplace else.

3 CDC: Well, I do, and I do for several reasons. And if we do
4 apply at the moment, 1001(e), Article 46 provides for equal access to
5 witnesses and I believe the Hodge case changes the status of these
6 civilians from choosing not to be there to giving them a right not to
7 be there. In addition to that, Your Honor, these are essential
8 witnesses for venue purposes.

(b)(6)-4, (b)(7)(C)-4

9 MJ: But Mr. [REDACTED] they would also have a right not to be there
10 in Germany, true, or Kuwait?

11 CDC: They would, Your Honor, but they have told you specifically
12 the reason they're not going to Iraq is because of safety
13 considerations.

14 MJ: No, but my saying is, under your analysis, is that they
15 cannot be forced to be there. They cannot be forced to be there,
16 therefore you have a right to move the trial to someplace they can be
17 forced to be at.

18 CDC: No, I am saying that in their declarations, I want to
19 testify, but I will not go to Iraq.

20 MJ: That's their choice.

21 CDC: Of course, but also is the court's choice as to whether or
22 not that conveys the justice necessary for this accused. And I'm

1 respectfully submitting to you that it does not, and that in fact, it
2 is playing into a political as to rather than a justice centered
3 decision.

4 MJ: But Mr. (b)6-2, (b)(7)(C)-2 [REDACTED], let me ask you this, in your list here, you
5 have all sorts of people, not just the ones you're talking about.

6 Now, Mr. [REDACTED], is he going to show up?

7 CDC: No, he won't.

8 MJ: Anywhere?

9 CDC: The only way I'm going to get Mr. [REDACTED] is if you
10 move it to CONUS and is subpoenaed and testimonial immunity. But I
11 need him, he's a materiel witness.

12 MJ: Let me ask this, how about these two inmates? Will they
13 ever come to Kuwait?

14 CDC: No, they are not going to come to Kuwait, obviously.

15 MJ: Well, now are you telling me that you want this moved to
16 CONUS?

17 CDC: I want it moved anywhere the people who are coming to serve
18 justice don't have to worry about being dead to do it. That's where
19 I want it. And it's entirely up to the convening authority where
20 that happens. All you need to say is, "Convening authority, I don't
21 want it in Iraq." It's not, as I read the Rule, Your Honor,
22 respectfully, not your call as to----

1 MJ: You're right. I simply say where it can't be. And the
2 convening authority has got to make some----

3 CDC: Some adjustment based upon his view of the world.

4 MJ: And if I say, "Well, let's not do it in Iraq because I want
5 it in a more secure location," and then we decide to go to Kuwait,
6 but Kuwait secure, there's terrorists there. So then, we start on a
7 road trip, and unless you go to CONUS, of course, the people in the
8 World Trade Center probably thought that was safe that day, too.

9 CDC: I mean, we can reduce any argument to the absurd.

10 MJ: But you're the one that keeps changing the argument. You
11 say, "On one hand, I want [REDACTED] there, but he's not coming
12 anywhere without a subpoena." That limits it to CONUS, right?

(b)(6)-4;
(b)(7)(C)-4

13 CDC: Well, this is a very difficult setting that we're all in
14 here, Judge, because by keeping it in Iraq, you effectively have
15 denied materiel witnesses. Mr. [REDACTED] in my case for example,
16 we believe can provide very materiel information, and his credibility
17 is at issue. And therefore, the only place the trial can be is in
18 the United States.

19 MJ: So, now you're telling me to move it to the United States,
20 not Kuwait.

21 CDC: Your Honor....

22 MJ: You're suggesting.

1 CDC: I would never tell you anything.

2 MJ: Understand, but I'm saying----

3 CDC: I hope I haven't conveyed that.

4 MJ: No, I understand, but now basically what you're saying,
5 it's got to go to the United States where there's subpoena power.

6 CDC: Let me put it to you this way, Your Honor, the best place,
7 as is evidenced by the hoards this 32 in the England trial, to bring
8 people in, to meet the ends of justice is the United States, yes.

9 But, on a scale of 1 to 10, 10 being the United States....

10 MJ: And 1 being Iraq.

11 CDC: Or zero being Iraq.

12 MJ: Zero, okay.

13 CDC: Kuwait's at 6, Germany's at 8, the United States is at 10,
14 and there's a big gap between zero and 6, and the reason is, we'll
15 get the people there in a safe and secure environment. They won't
16 have to worry about bombs falling on their heads or rocket propelled
17 grenades or anything else, the logistics of getting in there. I
18 mean, I just can't wait for the first civilian to spiral into Baghdad
19 in a C-130 just to be a witness.

20 MJ: If you attend, you won't be the first.

21 CDC: I understand. I understand. I'm talking about civilian
22 witnesses in this trial.

1 MJ: They won't be the first, either.

2 CDC: And I understand that, and I can't account for other's
3 decisions, but I can tell you what my witnesses are going to do in
4 this trial, and we have to be fact specific with regard to this
5 trial.

6 MJ: But isn't there a certain amount of this though, is that if
7 other people can come in, that it is some indication of choice?

8 CDC: Your Honor, that's sui generis and the law, it just doesn't
9 work. Just because 10 guys weren't prosecuted and you were is not a
10 reason to have your conviction overturned.

11 MJ: But you're telling me is that I should move this trial
12 because these people are being forced not to come by the conditions
13 in Iraq. What you're telling me----

14 CDC: The words are important, judge----

15 MJ: What you're telling me, it's not their choice. It's like,
16 you equated your case and Vietnam, it's not their choice, that it
17 would be like that to somebody on their death bed to go to a trial,
18 which therefore, you're saying, by placing the trial in Baghdad, we
19 are affirmatively...let me rephrase that, the conditions are
20 affirmatively preventing them from coming in to testify on behalf of
21 Staff Sergeant Frederick.

22 CDC: That's correct.

1 MJ: At the end of the day, that's what you're----

2 CDC: And I'll tell you why, when you're talking about a mom or a
3 dad coming in, that's one thing. Parents do a lot of things for
4 their kids. But am I supposed to ask the warden of this prison to
5 zip into Iraq so that his family can be exposed to that? Or the
6 prison guard, do I tell him this meets the ends of justice, sir? I
7 know that you could be dead. Tell your wife and kids that you'll be
8 back in 5 days? I mean, what do I say to these people, Your Honor,
9 that they're making a bad choice? This isn't a choice. This is an
10 opposite choice. These are materiel and essential witnesses, and
11 I've watched you interact with witnesses. I know you ask questions,
12 and I know that you're probative. You're not going to get that
13 chance, Your Honor, with this entire cadre of witnesses. And
14 assuming we get Dr. ^{(b)(6)-4, (b)(7)(C)-4} [REDACTED] in this case, he will provide
15 insights that are not available anywhere else. And you need to hear
16 that this man is not some rogue. You need to hear that for his
17 entire life he's been a good and decent person, that he was corrupted
18 in a corrupt circumstance and is willing to admit it, that this takes
19 a form of courage. I'm not trying to elevate him to a higher status
20 than he deserves, but he does deserve to have these people who have
21 cared about him and loved him there to tell you these things in
22 something other than a deposition. There is no way you can take the

1 written word and convey the sense of a lifetime friend or an employer
2 who was aghast that this could have happened. It can't be done, and
3 it can't be done with this expert, either, who will explain to all of
4 us what the whole world has asked, how could this have happened with
5 a guy like Chip Frederick? And that inquiry is relevant, and it's
6 not going to come from a deposition in any meaningful way because
7 it's not interactive with you and you won't share that experience.
8 And judges are good at cutting to the chase, but they're not divorced
9 from emotion or from compassion or from understanding what witnesses
10 say. And I simply believe that the cadre of witnesses we've put
11 together with regard to this case are essential, materiel witnesses.
12 And that is the test under 1001(e) under the case law, the Thornton
13 case, I believe, or Sweeney, one of the two, for moving a trial. It
14 doesn't matter that there are 20 other witnesses that are coming.
15 The question becomes, is there a materiel, essential witness? And I
16 submit to you respectfully, Your Honor, that in this case, because it
17 is sentencing, that the material question you must ask yourself and
18 answer is, what does all this mean in terms of a sentence? And we
19 submit to you that these are essential witnesses within the meaning
20 of the Rule and that their absence would be a fatal flaw in the
21 proceedings, and therefore, we ask you to abate these proceedings in
22 Iraq and cause the convening authority to move them elsewhere. The

1 convening authority may choose Kuwait. I have no control over that.
2 He may choose CONUS. He may choose Germany. I don't know what he
3 would choose because that has not been propounded to him.

4 I'd just say this to you, Your Honor, this is a good system
5 of justice. I've believed in it for 37 years, and it works. And it
6 would be a tragedy if we did anything to make it appear that it
7 doesn't work. And I humbly suggest to you that the best way to do
8 that is balance the interests, the political interests against the
9 interests of the individual, move it out of Iraq, create the
10 transparency that you need, and have a fair sentencing proceeding.
11 And that is the position we have adopted for the reasons I have
12 indicated. Whether you do or don't apply 1001(e) is up to you
13 because here is what I believe. I believe that under the Rule, if
14 you don't have 1001(e), you were then left with broad discretion.
15 And that broad discretion has been summarized in United States versus
16 Combs, 20 M.J. 441 at page 442. And its, "Irrespective of 1001(e),
17 among the factors to be considered by the trial judge or whether the
18 testimony relates to disputed matter, whether the government is
19 willing to stipulate to the testimony as fact, whether there is other
20 live testimony available to appellant on the same subject, whether
21 the testimony is cumulative, whether there are practical difficulties
22 in producing the witnesses, whether the credibility of the witness is

1 significant, whether the request is timely." Well, as you know,
2 since May I've been asking for a change of venue, you have that
3 document before you with the convening authority.

4 We have no disagreement with what we're doing here. My
5 client has made a determination that he is, in fact, guilty of
6 certain charges and specifications. We simply ask, Your Honor, that
7 we go to a place that is consistent with American justice. Many with
8 M-16s in a courtroom in a convention center that has been jury-rigged
9 to look like a court with perils of death coming in and out. Your
10 Honor, I also have worn the uniform in this country a long time ago.
11 I'm very proud, I might add. But we cannot ask our citizens who are
12 civilians to go into a war zone and subject themselves to the pain
13 and penalty of death merely to discharge their responsibilities, and
14 I hope that you will take that into account as you rule on this
15 motion. I rule this motion as critically important, not only for the
16 near term, but also for the long term, and I want to thank you for
17 allowing me to take the time to talk with you.

18 MJ: Trial counsel, do you have anything to add?

19 ATC: No, Your Honor, other than what we stated before, that the
20 posture of 1001 allows for all kinds of forms of testimony, and the
21 government is more than willing to work with the court and with the
22 defense to provide alternative forms of testimony, whether that be in

1 the forms of written stipulations, depositions, or even possibly
2 VTCs. Thank you, Your Honor.

3 MJ: After listening to the defense position and reading the
4 brief, the court concludes that the motion for reconsideration in
5 essence is a repeat of the previous motion for appropriate relief,
6 and therefore denies the request to reconsider the court's original
7 ruling, meaning the court's original ruling denying the motion to
8 move the trial remains in effect.

9 Defense, do you have any further motions at this time?

10 CDC: We do, Your Honor. Actually, we have three in number. I
11 think we can dispose of the motion to compel discovery rather
12 quickly, since we actually have an agreement in that regard.

13 MJ: Rather than cutting another tree down, during an 802, we
14 discussed the outstanding discovery issues in this case. Correct me
15 if I'm wrong, trial counsel, but there's the Schlessinger, Church and
16 Fay investigations pending, which you will provide copies to the
17 defense not later than 10 September.

18 ATC: That's correct, Your Honor.

19 MJ: Defense, your understanding?

20 CDC: Yes, sir.

21 MJ: There's that issue about the classified server being
22 viewed. I believe the previous suspense date of that was 1 December.

1 ATC: That's correct, Your Honor.

2 MJ: But of course in this case, the potential trial date that
3 we talked about in the 802 was 20 October.

4 ATC: That's correct, Your Honor.

5 MJ: And you indicated at the 802 that keeping that trial date,
6 that it is within the realm of something that could happen, that
7 knowing that, that perhaps that will encourage a more expeditious
8 review of said material and that you can provide relevant said
9 material from that server to the defense not later than the 1st of
10 October rough and dirty?

11 ATC: That's correct. The government will do everything to
12 expedite the searching of that computer server.

13 MJ: We'll come back to the trial date issue.

14 Are those the outstanding discovery issues that we have
15 had?

16 CDC: As I see it, yes.

17 ATC: Yes, Your Honor.

18 MJ: And I'll note to--this is while we're on the subject of the
19 trial date, assuming the trial date stays 20 October in Baghdad, at
20 the 802, we discussed witness production. Mr. (b)(6)-4 (b)(7)(C)-4 anybody who is
21 a potentially, is a Reserve component soldier, that you want to have
22 as a witness at the trial, and of course, nobody knows whether

1 they're actually on active duty or if they've reverted to Reserve
2 status, you supply that list within one week of today to the
3 government. And at this point, I'm not going to require a summary of
4 their testimony. Government, any of those you're going to provide,
5 make sure they're on active duty in time to be ordered to appear in
6 Baghdad. If you're going to deny any, deny them within 24 hours.
7 Provide them the summary, defense, and then if you deny it again send
8 it to me. If both sides agree, I can decide about reasonable
9 availability based on email?

10 ATC: Yes, Your Honor.

11 CDC: Right, Your Honor.

12 MJ: And I'm just talking about this issue because of the
13 difficulty of ordering Reservists back on active duty.

14 ATC: That's correct, Your Honor.

15 MJ: All that being said, at the 802, we also discussed General
16 Karpinski, and defense, you indicated that you wanted General
17 Karpinski at the trial.

18 CDC: That's correct.

19 MJ: And government, you allege that currently General Karpinski
20 appears to be in her civilian status.

21 ATC: That's correct, Your Honor.

22 MJ: At least not in Title 10 status.

1 ATC: That's correct.

2 MJ: Is she National Guard?

3 ATC: No, I believe she's Reserve, Your Honor.

4 MJ: Okay, so you're on notice that she's to be produced, and
5 that means whatever it takes to make it happen to come.

6 ATC: October 20th, Your Honor.

7 MJ: And I would strongly suggest to the government that despite
8 representations that people may be willing to come, making them on
9 active duty and ordering them to come will ensure they're there, and
10 there may not be a last minute, perhaps, change of plans.

11 ATC: Yes, Your Honor.

12 MJ: So, General Karpinski is on your list now.

13 ATC: Yes, Your Honor.

14 MJ: Any other out-of-theater witnesses that are willing to
15 come, understanding the issue we just got done discussing, provide to
16 the government not later than 2 October, because that would be
17 assuming that the 1 October date means that you've provided that
18 information on the discovery issue on the server in such a time that
19 the 20 October date is still good. If for some reason the 20 October
20 date won't work because defense, you've not received the materials
21 that you need, I'll litigate that. Again, I can do that by email and
22 we can shuffle the trial date if necessary.

1 CDC: Your Honor, one small point that we haven't discussed.

2 MJ: Okay.

3 CDC: In light of your ruling, depositions will have to be worked
4 out with the government, as well, and we'll have to extenuate that
5 into the thought processes.

6 ATC: The government will have a representative in the United
7 States to facilitate that.

8 MJ: Well, it would seem to the court that...you're talking
9 about the video depositions?

10 CDC: Well, I think so, Your Honor. I want to convey more than
11 just the written word.

12 MJ: And the government has also offered to set up a VTC. I
13 thought I heard you say that, Captain  (b)(6)-2, (b)(7)(C)

14 ATC: That's correct, Your Honor.

15 MJ: So they would be available----

16 ATC: If that's amenable to the----

17 MJ: ----live in that sense.

18 CDC: I didn't know that the court would be amenable to a VTC.

19 MJ: For sentencing, when the defense doesn't object to it, I
20 don't have a problem with that. Quite frankly, I'm not sure whether
21 you need to object or not, but that's a separate issue which we
22 didn't get into.

1 CDC: No, no.

2 MJ: I'm assuming you'd prefer a VTC to----

3 CDC: I want this to be a coherent presentation, Your Honor.

4 MJ: I understand. And what I might suggest though, is
5 that...you have options. Obviously, you can do the deposition route
6 with a deposing officer, or you simply could have witnesses present a
7 videotape, CD tape, stand alone document of what they want the court
8 to consider without going through the cross-examination and that
9 type, because I consider that no different than, for example, an
10 email on sentencing. So, I've thrown that out to you that I don't
11 necessarily...you have all the options available, obviously.

12 CDC: Very well.

13 MJ: But I'm not sure a formal deposition with a deposing
14 officer is necessarily necessary, and perhaps, I'm not trying your
15 case for you, Mr. [REDACTED] but a CD or DVD of what they want the court
16 to consider as a stand alone document would also, obviously, be
17 acceptable.

(b)(6)-4; (b)(7)(E) 2

18 CDC: Right, fair enough. I understand, and we've been working
19 well together, there's no problem there.

20 MJ: Anything else on discovery?

21 ATC: No, Your Honor.

22 MJ: And we're all clear on the trial dates?

1 ATC: Yes, Your Honor.

2 MJ: Okay.

3 CDC: Moving, if I could, along, Your Honor?

4 MJ: And I also want to clarify, we got a little ahead of
5 ourselves because there's still outstanding stuff that could impact
6 on the trial dates, and if it does, we'll----

7 CDC: I understand. It's not fixed on concrete, I understand
8 that, Judge, and I understand it will be a nice Christmas, though.

9 Your Honor, I'm moving on now to the request for
10 testimonial immunity, and that would be the appellate exhibit next in
11 order, which is a motion for appropriate relief.

12 MJ: It will be Appellate Exhibit XXII.

13 CDC: Your Honor, we have requested the testimonial immunity of
14 the convening authority, and it was denied for Lieutenant Colonel

15 ^{(b)(6)-2, (b)(7)(C)-2} Major [REDACTED] ^{CRUZ} Specialist [REDACTED], ^{Krol} Specialist [REDACTED], Captain ^{(b)(6)-4;} [REDACTED] ^{(b)(7)(C)-4}
16 [REDACTED], Specialist [REDACTED] and [REDACTED]. Now, I understand

17 that's a little different drill because it has to go to the United
18 States attorney. We are withdrawing Specialist ^{(b)(6)-2; (b)(7)(C)-2} [REDACTED] from
19 consideration because we have found that the collateral testimony of
20 his suffices for our purposes in another proceeding.

21 MJ: And do I have any jurisdiction over [REDACTED] ^{b(6)2}

1 TC: No, Your Honor, however, the convening authority, if
2 they----

3 MJ: If he wanted to request the U.S. Attorney----

4 TC: Yes, sir, and in this event, the convening authority is not
5 going to recommend immunity and therefore is not required to forward
6 this to the Department of Justice. Your Honor, I also would provide
7 the government's denial----

8 MJ: I believe the denial was part of the brief, or am I
9 misreading?

10 TC: You may very well----

11 CDC: No, Your Honor, I think actually you got the SJA advice----

12 MJ: I got the SJA's and General Metz's denial, dated 17 August,
13 so let me just back up, just make sure we're all...and government,
14 you don't have any further paper on this issue?

15 TC: That's correct, Your Honor.

16 MJ: Paragraph 3 of the applicable law, where the Staff Judge
17 Advocate summarizes R.C.M. 704 Echo, does anybody disagree that
18 that's not the correct standard? Let me rephrase that, does
19 everybody agree that is the correct standard?

20 TC: Yes, sir.

21 MJ: Mr. [REDACTED] (b)(6)-4; (b)(7)(C)-4

22 CDC: Yes, that's right out of 704, that's the exact language.

(b)(6)-4, (b)(7)(C)-4

1 MJ: Okay, yeah, it appears to verbatim, okay.

2 CDC: The [REDACTED] matter is addressed in that paragraph, as
3 well, Your Honor. [Pause.] Is the government suggesting that you
4 can't order the convening authority to forward this document on to
5 the United States attorney?

6 MJ: Or are you suggesting that I can do that, but it's not the
7 convening authority's decision?

8 TC: Yes, sir, that's the accurate statement.

9 CDC: And I understand that part.

10 TC: Yes, sir.

11 CDC: It will be the United States attorney's decision.

12 TC: Right, yes, sir.

13 MJ: It's just a matter of whether they want to do it.

14 TC: Right, yes, sir.

15 MJ: Now, I do understand that part. Certainly, I can do
16 something with the military, but I'm not sure I can do much with Mr.

17 [REDACTED] (b)(6)-4, (b)(7)(C)-4

18 CDC: I don't think you can, frankly, but I do think the
19 procedure is for the convening authority to give a pre-advice to the
20 United States attorney, who in turn makes an independent justice
21 decision on the question of immunity. But that's what we're looking
22 for, Your Honor, in his case.

1 MJ: Let me just go through the...so the ones--you pulled some
2 out, but the ones you have, Colonel [REDACTED] Major [REDACTED]....

3 CDC: Yes. I've spoken personally with Major [REDACTED]

4 MJ: No, just let me know which ones are still here. (b)(6)2-(b)(7)(C)-2

5 CDC: Oh, okay.

6 MJ: Who, you said....

7 CDC: [REDACTED] I pulled off. I was able to get collateral evidence
8 that was sufficient. (b)(6)-2;(b)(7)(C)-2

9 MJ: And trial counsel, the only person that has been given
10 immunity in this case is Specialist Sivits?

11 TC: That's correct, Your Honor.

12 MJ: And that was after his guilty plea.

13 TC: That's correct, Your Honor.

14 MJ: Any issue that these listed witnesses, and now I'm looking
15 at paragraph 2 Alpha, I'm going to the SJA's piece of paper.

16 TC: Yes, sir.

17 MJ: 2 Alpha through 2 Echo will invoke? Any issue about that?

18 TC: Major [REDACTED] (b)(6)2-(b)(7)(C)-2 we don't believe he will invoke.

19 CDC: He told me he would.

20 MJ: Everybody else will invoke?

(b)(6)2-(b)(7)(C)-2

1 TC: Obviously, Specialist [REDACTED] has been taken off. But yes,
2 sir, I believe that's an accurate statement. Everyone else would
3 invoke, at best.

(b)(6)2-(b)(7)(C)-2

4 MJ: Okay, reading Colonel [REDACTED]--and I'm going to come back to
5 Colonel [REDACTED] but let me just go through each one. Now, you say
6 Major [REDACTED], trial counsel, one of the reasons you turned this down
7 was that what he says several other people can say.

8 TC: Yes, sir, and again----

(b)(6)2-(b)(7)(C)-2

9 MJ: Defense, what is Major [REDACTED] going to say?

10 CDC: Well, I believe he's going to talk about messages that he
11 would forward up to Brigade, the deplorable conditions that existed
12 at Abu Ghraib for his troops, that he was 70 percent manned, that the
13 food he was receiving was tainted, that people were working around
14 the clock, basically, and that all in all, it was a nightmare. And
15 he will testify specifically to the death of the one Iraqi that has
16 gained some notoriety. He will testify to the role of Lieutenant
17 Colonel [REDACTED] he was the XO of the battalion.

(b)(6)2-(b)(7)(C)-2

18 MJ: Any issue that he would say those things?

19 TC: I am not certain about Major [REDACTED] knowledge of or even
20 relevancy of an individual that died within the hard site. With
21 regard to the other facts, sir, the government is willing to

1 stipulate as fact that the food was bad, the manning was lacking,
2 those issues.

3 MJ: Who else is going to say this stuff? You have in here that
4 Colonel Tate says all sorts of people can say the same thing.

5 TC: Yes, sir.

6 MJ: And who are those people?

7 TC: Any one that was assigned to the battalion at that time.
8 There are a number of individuals, individuals that we've extended on
9 active duty. Members of the 372d MP Company would be able to say any
10 those things. In fact, they'd be more likely to have better
11 information since they were actually----

12 MJ: And where's your information of what Major [REDACTED] would
13 say?

14 CDC: In the conversation that I had with him.

15 MJ: But now he's talked to you, and now he wants to invoke.

16 CDC: That's what he told me.

17 TC: I'm sorry, Your Honor, I missed that last statement.

18 MJ: Well, he said apparently he talked to Mr. [REDACTED] and then
19 says, "I'm not going to talk to anybody else. I want a lawyer," or
20 something to that effect.

1 CDC: Fair comment, Your Honor, I don't know the exact words, but
2 that's the import. As the XO of the battalion, you see, Your Honor--
3 --

4 MJ: Whose XO was he?

5 CDC: Whose XO was he?

6 TC: Lieutenant Colonel [REDACTED] (b)(6)-2, (b)(7)(C) 2

7 CDC: [REDACTED] Yeah, right. He merely was a pivotal player
8 between himself, the 800th Brigade, the 205th Brigade, and he knows
9 about the ghost detainees and Lieutenant Colonel [REDACTED]'s role with
10 the ghost detainees. He will also testify that he protested the use
11 of ghost detainees vigorously. (b)(6)-4, (b)(7)(C) -4

12 MJ: What's the relevance of that? I mean, Mr. [REDACTED] let me
13 just back up a second. There appears to have been a lot of problems,
14 I'm using that term generically because there hasn't been decisions
15 or judgments, in this entire prison system of Abu Ghraib, other
16 places in Iraq and other places.

17 CDC: Fair enough.

18 MJ: But how are these other problems relevant to this case on
19 sentencing?

20 CDC: With regard to, what I'm talking about, what happened at
21 Abu Ghraib with him. He's going to lay a foundation for why these
22 men, for example, the ghost detainees at Abu Ghraib. What happened

1 here, Your Honor, basically, was because there were no rules and
2 because these younger people, or lower enlisted, "younger" is
3 inappropriate because some people were older. These lower enlisted
4 guys who were used to some form of discipline, began to see that
5 there were was nudity and men wandering around with women's panties
6 and men chained and handcuffed to cells and guys dying and being
7 rolled out the door with IVs in their arms and ghost detainees who
8 they were told not to talk about, it became pretty much a laissez-
9 faire environment. Now, I'm not suggesting that that necessarily
10 excuses conduct, but it was an incubator for it, and that's why I
11 want him to talk about it.

12 MJ: But he appears to have some culpability, true?

13 CDC: He was given a letter or...given a letter of reprimand, or
14 given a GOMOR or was recommended for a GOMOR.

15 TC: Your Honor, may I interject just very briefly?

16 MJ: Sure. (b)6-4, (b)(7)(C)-4

17 TC: Mr. [REDACTED] points out that this information doesn't excuse.
18 The standard is, it must be clearly exculpatory. The government is
19 not ready to concede that Major (b)6-2, (b)(7)(C)-2 [REDACTED] information is clearly
20 exculpatory.

21 MJ: Because we're talking about sentencing here again, right?

22 TC: Yes, sir.

1 MJ: So I mean, doesn't the term "exculpatory" somewhat----

2 TC: Yes, sir, what would be necessary for an appropriate
3 sentence.

4 CDC: I think "exculpatory" is broad enough to----

5 MJ: I think of "exculpatory" in terms of findings much more
6 than in mitigating and extenuating in terms of sentencing, okay.

7 Okay, and I know it's not the standard, but let me ask you
8 a practical question. What harm does it give to have Major 
9 come in here and testify? (b)(6)-2; (b)(7)(C)-2

10 TC: Sir, I'm certain----

11 MJ: And again, I understand, I know that's not the standard,
12 I'm just asking.

13 TC: No, I understand, sir.

14 MJ: It's a practical question, that's all.

15 TC: I don't know that it does us a great harm, unless there's
16 some incident that we aren't aware of. And believe me----

17 MJ: Of course, if you're not aware of it, it's hard to
18 prosecute.

19 TC: It is more difficult than you might imagine, sir, the
20 individuals who need the Fay report most are the defense counsel,
21 second to that is the prosecution. We expect to have that in the
22 next few days that might answer these questions. But to answer your

1 question, Your Honor, right now, I don't think there would be harm to
2 the government's interests. And we did----

3 MJ: And I know each case stands on its own. Colonel [REDACTED]
4 what's he going to say?

(b)6-2;(b)7(c)-2

5 CDC: Well, that's interesting, Your Honor. We believe that he
6 possesses significant amounts of information regarding the creation
7 of this environment, and I think that he can tell us, if he's
8 immunized, just how all this got started because he came on very
9 early on in the game. He was there just right along with the 72d
10 when the 72d was there, and we know that there was prolonged nudity
11 and panties and all that stuff before the 372d ever arrived on the
12 scene. So someone was planting the seeds for this and we believe
13 that Lieutenant Colonel [REDACTED] can provide significant information on
14 the point.

(b)6-2;(b)7(c)-2

15 TC: Yes, sir, if I may interject briefly.

16 MJ: Go ahead.

(b)6-2;(b)7(c)-2

17 TC: The defense proffer was that Colonel [REDACTED] was responsible
18 for creating an environment violative of the law. Obviously, we
19 would be interested in that, interested in that behavior and would
20 seek to hold Colonel [REDACTED] accountable.

(b)6-2;(b)7(c)-2

21 MJ: But you would agree with me, Major [REDACTED] and I understand
22 that we're at sentencing proceedings, so these people are not going

1 to come in there and say, for example, I'm going to use him for an
2 example, I don't know what he will say, but let me just throw this
3 out, that Colonel ^{(b)(6)-2; (b)(7)(c)-2} [REDACTED] comes in and says, "I told these guys to
4 soften them up for interrogation, and they took that and they did
5 this." Now, since he's pleading guilty somewhere along this line,
6 the obedience to order doesn't apply, because it has to be a
7 reasonable and honest standard that a soldier has to believe the
8 order, an average soldier...I'm paraphrasing here.

9 TC: Yes, sir.

10 MJ: And so, it's certainly not a--it could be, well, if one is
11 pleading guilty to it, it's not a defense, but it certainly would be
12 a mitigating factor.

13 TC: Yes, sir, I agree with that, sir, I concede that readily.
14 I guess the harm would be, the harm for immunizing any witness that
15 we are targeting for prosecution in that it does complicate the
16 prosecution of that individual, and the government has interest in
17 holding everyone responsible.

18 MJ: I understand that, and I know that the standard isn't what
19 harms the government.

20 TC: Yes, sir.

21 MJ: I mean, I understand what the standard is.

22 TC: Yes, sir.

1 MJ: But fundamentally, it comes down to that there still is an
2 overarching military due process that an accused gets a fair trial.

3 TC: Yes, sir.

4 MJ: And if the government has to have--if I'm weighing the
5 difficulty of immunization and subsequent prosecution of the
6 immunized witness versus one's ability to get a fair trial, both
7 those interests can be satisfied. They're not usually exclusive
8 unless you deny the immunity request.

9 TC: Well, if I could address another individual, but they would
10 be related to the point we're making, Specialist Cruz and Specialist
11 Krol. I expect that when I return to Iraq, shortly after that, there
12 will be charges preferred against those individuals.

13 MJ: Are they MPs, MI or something else?

14 TC: They are MI and we believe are co-conspirators along with
15 the accused and other co-accused in this case to abuse detainees.
16 Obviously, the court could order the immunization of those
17 individuals, but that would significantly complicate our----

18 MJ: Okay, let's talk about those two.

19 TC: And I say this for the larger point.

20 MJ: Just a second, I'm looking at...Mr. [REDACTED] (b)(6)-2; (b)(7)(c)-2
21 you indicated that Cruz and Krol participated in the abuse of
22 detainees?

1 CDC: Yes.

2 MJ: So their testimony would simply be as a fellow, well, maybe
3 not co-conspirator, but co-actor.

4 CDC: Well, actually, Your Honor, the principal point with regard
5 to those two men from our perspective comes from an interview we did
6 through our MPI with [REDACTED]. And [REDACTED] said....

7 MJ: Who's [REDACTED]?

8 DC: He is the individual who was with the 372d and is a
9 Reservist and is now off of active duty.

10 MJ: Okay, have you provided this to the government?

11 TC: Sir, we've provided that to the defense.

(b)(6)-2; (b)(7)c-2

12 MJ: Okay, I thought you said it was him.

13 TC: We gave them the initial statement.

14 MJ: Okay, what's [REDACTED] have to say?

15 CDC: Question, "Did MI or any other interrogator tell you these
16 practices were acceptable?" "Yes." "Who told you?" "The MI guy
17 that stated, 'We know what we are doing,' who I later know as
18 Specialist Cruz and Specialist Krol." Now why is that important?
19 That's important because "We know what we are doing," suggests that I
20 can go to the next level and find out who was involved with them. It
21 could've been unilateral action on their part, but the language
22 suggests that there was somebody above them.

(b)(6)-2; (b)(7)(C)-2

1 MJ: And how is [REDACTED] connected to your client?

2 CDC: Well, he just served. (b)(6)-2; (b)(7)(C)-2

3 MJ: No, I'm just saying is, [REDACTED] says, "I talked to Krol
4 and..."

5 CDC: Cruz.

6 MJ: "...Cruz, and they tell me this stuff," okay, so [REDACTED]
7 knows that.

(b)(6)-2; (b)(7)(C)-2

8 CDC: Yes.

9 MJ: Well, does [REDACTED] say in that statement that your client was
10 there or that information was related to your client?

11 CDC: No, the client was not there, but this information became
12 generally known amongst the 372d in conversation and the like.

13 MJ: Had it become generally known then, of course, then you
14 have other witnesses who are not criminally involved that would say
15 the same thing.

16 CDC: Well, I don't know that they would have the same kind of
17 information that Krol and Cruz would have----

18 MJ: You've got to tie it in with your client.

19 CDC: I do.

20 MJ: And what you're telling me is that your client didn't hear
21 this conversation.

22 CDC: No, my client specifically did not hear this conversation.

1 MJ: Okay, then there's nothing in the world that would prevent
2 you from calling (b)(6)-2; (b)(7)(C)-2 as a witness to relay the conversation on
3 sentencing, since the rules of evidence are relaxed.

4 CDC: The point is, Your Honor, that I believe Cruz and Krol can
5 point to the next higher level given the language that they employed.

6 MJ: At this point, you're speculating on that.

7 CDC: Well, of course, because they invoked. You know, there's
8 always the Gordian knot you have to cut in these settings.

9 MJ: I understand that, I understand that.

10 TC: Yes, sir, and following this reasoning, (b)(6)-4; (b)(7)(C)-4
11 also ask for the immunity of Charles Graner, (b)(6)-2, (b)(7)(C)-2, other
12 individuals involved. It's the government's position these are co-
13 conspirators.

14 CDC: Well, I think that, you know, that's not likely, Judge.

15 MJ: Not likely, but do you disagree with his analysis?

16 CDC: All things are possible, of course.

17 MJ: Well, let me just deal with...you don't dispute that Cruz
18 and Krol are...I mean, you say in--they participated in detainee
19 abuse?

20 CDC: Yes.

1 MJ: And going back to the real test here is, other than
2 Specialist Sivits, that's the only person who has been a given grant
3 of immunity, and that was post trial after his....

4 TC: Yes, sir.

5 MJ: Any evidence of government overreaching or discriminatory
6 use of immunity to obtain a tactical advantage?

7 CDC: Oh, no, I never even suggested that.

8 MJ: Well, then you don't even meet the standard then.

9 CDC: No, no----

10 MJ: Except by overall due process, what's barely the standard.

11 CDC: Right, exactly, but the standard is, I don't think they're
12 conjunctive, Your Honor. Those three criteria----

13 MJ: You don't think the word "and" means conjunctive?

14 CDC: No, I think it can be disjunctive, I think. I don't think
15 the government is using----

(b)(6)-4; (b)(7)C-4

16 MJ: Well, then Mr. [REDACTED] I'm only reading your brief, and
17 you're the one who put the "and" there.

18 TC: Your Honor, the case law is absolutely clear. All three
19 requirements must be met.

20 CDC: Well, there's nothing they've done with Sivits that would
21 suggest overreaching by them.

1 MJ: Okay, so what you're simply telling--if I understand this--
2 of course, we are again talking the sentence case here.

3 CDC: Yes.

4 MJ: Really, what you're telling me is, under the letter of the
5 Rule, that there's no showing the government did any of these three
6 things, and that the issue really comes down to a more generic due
7 process and fair trial that I articulated earlier.

8 CDC: Oh, right, exactly.

9 MJ: Which is something that may not even be the law, but
10 sounded good. Anyway....

11 CDC: Well, due process is a rather large net, Your Honor.

12 MJ: Okay, but it seems to the court that, okay, first of all,
13 through your own words, you've not met the standard.

14 CDC: No.

15 MJ: So it would strike to the court that there's no requirement
16 to order immunity in any of these cases on the literal reading of the
17 Rule, and specifically, I will not order immunity with Cruz and Krol.
18 And at this time for this case, I'm not going to order immunity in
19 any of these cases based on the evidence provided to me and the plain
20 reading of R.C.M. 704.

21 CDC: If I could suggest, Your Honor, that the inability to have
22 these four men now, [REDACTED] and [REDACTED] come

1 forward, is a significant intrusion into our ability to demonstrate
2 the tactical circumstances at the prison during that time.

3 MJ: Mr. ^{(b)6-4; 7(b)C-4} [REDACTED] first of all, ^{(b)6)2; 6)7(C) 2} [REDACTED] is somewhat a moot
4 point. Since he's beyond the subpoena power of the court, even if he
5 got immunity, and if a guy's not going to cooperate to give a
6 statement, do you think he's going to then, "Oh, now I've got
7 immunity, now I'm going to fly to Iraq and...."

8 CDC: No, Your Honor, but we can subpoena him to depose and see
9 if that would go and do that in the United States.

10 MJ: But you agree with me, though, is you just said, you don't
11 meet the requirement of the Rule. So what authority do I have
12 except....

13 CDC: Well, I understand, Your Honor, that the Sivits matter has
14 not caused any overreaching in any case in my mind because he's such
15 a nominal player. But in truth, the requirements of due process and
16 the ends of justice are best met with the fullest possible
17 disclosure. Now, the government has told us that they intend to
18 prosecute all these people, all well and good.

19 MJ: Actually, the government said, as I recall, they intend to
20 prosecute Krol and Cruz. They appear to be next on the list.

21 TC: Yes, sir.

22 MJ: And there's a possibility of ^{(b)6)2 + (b)7(C)-2} [REDACTED]

1 TC: Yes, sir.

2 MJ: Based on the Fay report.

3 TC: Yes, sir.

4 MJ: Well, let me ask you this, Major (b)(6)2; (b)(7)(c) -2 is a lot of this
5 outstanding prosecution is predicated on the fact when the Fay report
6 comes out?

7 TC: Yes, sir.

8 MJ: And again, separate issue, but if an individual is no
9 longer going to be subject to prosecution, then you would agree with
10 me for these offenses, the only prosecutorial authority for military
11 is the military.

12 TC: Yes, sir, I believe----

13 MJ: I mean, I'm not sure of any extraterritorial, territorial----

14 TC: No, sir, I think that's the correct state of the law.

15 MJ: So, if at the time the Fay comes out and these people are
16 no longer suspects, then perhaps, although it's not really a formal
17 grant of immunity, the issue becomes moot.

18 TC: Yes, sir.

19 MJ: And therefore, the implication becomes moot and the
20 government represents----

21 CDC: Well, I wonder, Your Honor, if the government could provide
22 a no-target letter to these men.

1 MJ: Well, that's kind of what I--the problem is, of course,
2 well, maybe not of course, is that different GCMCA's own these people,
3 although any GCMCA may impart immunity if, for example, well, Colonel
4 [REDACTED] you think is still in Iraq, right, Major [REDACTED] (b)(6)2;(b)(7)(D)-2

5 TC: I do, sir.

6 MJ: But some of these other people may belong to other
7 jurisdictions. I understand what you're saying, but a no-target
8 letter would be basically a grant of immunity because we're not going
9 to do anything to you anyway, the same effect, but technically, I
10 think that's the only rule that would apply.

11 TC: Yes, sir.

12 CDC: Well, justice is bound by no-target letters.

13 MJ: Well, I know, but I'm kind of bound by what the President
14 and the Congress tell me I can do.

15 CDC: I'm with you on that entirely. I'm just trying to come up
16 with a way that it works, that's all.

17 MJ: What I'm saying though, but that may also moot their
18 invocation.

19 TC: Yes, sir.

20 MJ: By that, I mean, they may be ordered to testify by me
21 because they don't have grounds to invoke. All that being said,
22 that's a separate issue, because again, I don't find the requirements

1 of the Rule being met compelling me to order immunity for any of
2 these people in this case. Now, of course, as you're aware, Mr.
3 [REDACTED] ^{(b)(6)-4, (b)(7)(C)-4} there's other cases, there's other facts in those cases. And
4 of course, whatever comes out of those cases, the government's,
5 that's relevant to your case, the government must turn over to you.
6 I'm not saying that solves the problem, but different cases may have
7 different rulings. I merely put that out that, something to tell you
8 which you already know. But this time, I'm not going to order
9 immunity basically because of the self-admitted failure to meet the
10 requirements of the Rule.

11 Okay?

12 CDC: Very well.

13 MJ: Anything else?

14 CDC: The expert witness motion, Your Honor.

15 MJ: That's marked as Appellate Exhibit XXIII.

16 Trial counsel, do you have a....

17 TC: Sir, again, we have the Staff Judge Advocate's advice and
18 CG action that may be attached to----

19 MJ: Before you give that to me, no, they already gave it to me.

20 TC: Yes, sir.

21 MJ: Now, on General Metz's denial of 17 August, he indicates
22 that he will provide a suitable replacement.

1 TC: Yes, sir.

2 MJ: Has such a suitable replacement, at least in the
3 government's opinion, identified and provided to the defense?

4 TC: Sir, what we have at this point is actually two categories
5 of witnesses that the defense may choose from, and from that point,
6 we will identify an individual. And if I may, just very briefly----

7 MJ: As I understand the Rule of this, Mr. [REDACTED] if the
8 government proffers an adequate substitute, you first have to
9 consider the...and again, decide whether or not it is an adequate
10 substitute.

11 CDC: Right, and we would submit to you, Your Honor, with no
12 intent to be facetious, but quite honestly, if there were someone as
13 qualified as [REDACTED] [REDACTED] in the United States Army
14 with regard to prison abuse, there's a real chance we wouldn't be
15 here today. He is the foremost authority in the world on this
16 subject. He is unparalleled in his knowledge of this area, in his
17 study of this area. We have provided you two things with regard to
18 him, one, his curriculum vitae. And secondly, a document which he
19 wrote responding to certain inquiries so that you could get a flavor
20 for proffered testimony from him. Some of it is irrelevant. Much of
21 it gives you the sense of how valuable he will be to you in
22 understanding the psychological factors that gave rise to this

1 horrible circumstance at Abu Ghraib. Basically, he can explain to
2 you how thoroughly decent people can, with the right ingredients
3 become the ferally corrupted. And his testimony is of tremendous
4 significance for the court to have a background in this area, and
5 there is no one who possesses his depth of understanding. He's been
6 teaching and working and studying for 46 years in this area. He is
7 the go-to guy. There isn't anybody else who equals him in this area.

8 MJ: Trial counsel, what do you say?

(b)(6)-4, (b)(7)(C)-4

9 TC: Sir, there is no doubt that [REDACTED] testimony will
10 be helpful. However, that is not the legal test. The test is
11 whether his testimony would be necessary. And, there are three
12 prongs to that, Your Honor. We concede that the defense has
13 explained to us or has satisfied what this particular expert might
14 accomplish for the accused, but we don't concede that the expert
15 assistance is needed. We don't concede that the expert assistance,
16 that the defense is unable to present the same type of evidence on
17 their own with the assistance of other professionals.

18 MJ: Mr. [REDACTED]? (b)(6)-4, (b)(7)(C)-4

19 CDC: Well, the evidence is needed, Judge.

20 MJ: No, I hear what you're saying. I'm just asking you, can he
21 add much more than what you provided in your brief?

1 CDC: Oh, yes, he can provide a lot more than we provided in our
2 brief, a lot more.

3 TC: Your Honor, I would also highlight the fact that this
4 denial of an expert was based upon basically a half page document by
5 the defense which had very little information.

6 MJ: Do you want to take it back and ask the convening authority
7 again?

8 TC: Sir, we can certainly do that. I think the recommendation
9 will be the same.

10 MJ: So, an observation, not a request.

11 TC: Yes, sir, I believe that's right.

12 MJ: Got it.

13 TC: But when you look at the CG's advice, that was based on
14 that request, not the motion.

15 CDC: Perhaps we were slightly anticipatory. He, Your Honor,
16 will be able to particularize his testimony to the Chip Frederick
17 circumstances and to give you insights as to the conduct of Staff
18 Sergeant Frederick on an individualized rather than a generic basis,
19 as well.

20 MJ: Now, he's not willing to go to Iraq, true?

21 CDC: No, regrettably, he will not be in Iraq.

1 MJ: So, he will not be able to see the prison or personally
2 talk to your client?

3 CDC: Well, he can personally talk to my client.

4 MJ: Not in person.

5 CDC: Not in person, no, not in person. But he isn't rendering a
6 psychiatric or psychological opinion with respect----

7 MJ: Well, I'm just trying to figure out, what's the 5 days of
8 preparation, other than just reading stuff he apparently has already
9 read.

10 CDC: That's out the window if he's not going somewhere to be
11 with us, so on and so forth. We're going to do this by way of VTC or
12 whatever. I think the 5 days is too much.

13 MJ: Now, I know this isn't a grounds for denying an expert
14 witness, by that, I mean, the cost.

15 CDC: Right.

16 MJ: That's not the legal standard, but I suspect it somehow
17 plays sometimes by the convening authority. I'm not saying that
18 General Metz considered that. But are you saying that this is, and
19 we're talking about a one-day deposition here?

20 CDC: Oh, yes, but we're talking a couple days of preparation,
21 and there's a lot to read. He's a thorough man. And I think we can

1 reduce this to 3 days very realistically, because we can go to
2 California.

3 MJ: And \$5,000 day.

4 CDC: Your Honor....

5 MJ: I'm just saying, is that's what he----

6 CDC: I hate to think of what it cost to get everybody here out
7 of Iraq, many, many [REDACTED] (b)(6)-4; (b)(7)(C)-4

8 MJ: Again, that's not typically--legally relevant, so I'm not
9 going to pursue how much it cost to sit around and read papers. But,
10 at this point, it would appear to the court that the trial counsel
11 has offered you a substitute which you've yet to consider, so don't I
12 have to wait until you do that?

13 CDC: I know I do, but I'm simply suggesting that I think that
14 you can shortcut----

15 MJ: There's no adequate substitute in the entire world to one
16 guy?

17 CDC: There's no adequate substitute in the United States Army
18 for this guy.

19 MJ: How do you know that?

20 CDC: Because...well....

21 MJ: The government says there is.

22 CDC: Well, the government, respectfully, is wrong.

1 MJ: But they say it every time.

2 CDC: Of course, I mean, I expect them to say that. I mean,
3 that's standard operating procedure. The Army goes to (b)(6)-(b)(7)(C)-4
4 for advice, Your Honor. And I don't want to get involved with who he
5 talks to and what he talks to, but the Army, I can say this with
6 great certainty, the Army goes to (b)(6)-(b)(7)(C)-4 for advice.

7 MJ: Trial counsel, do you have an adequate substitute?

8 TC: Yes, sir, I believe we do.

9 MJ: Who's that?

10 TC: Sir, we can get one of two, again, categories of people, if
11 I may. We can get a psychiatrist or psychologist with about 8 years
12 of experience, not clinical, but a practitioner.

13 MJ: In Iraq.

14 TC: In theater, a psychiatrist or psychologist, generally. Or,
15 we can get a comparable individual with forensic experience.

16 MJ: What's their background in the psychology of prison
17 environment?

18 TC: Sir, we are not going to have a prison psychologist.

19 MJ: Isn't that what they're asking for?

20 TC: That's what they're asking for, sir, but I don't believe
21 that's----

1 MJ: And I know you guys have not conceded necessity and
2 relevance, I understand that. And so, you're simply offering a
3 substitute without conceding----

4 TC: A mental health professional who can identify the stressors
5 on a particular individual in a stressful environment and testify
6 accordingly, using the information--b-

7 MJ: But you concede though, that we're talking about a
8 specialized subcategory of psychology here.

9 TC: I concede that the defense is requesting that, yes, sir. I
10 don't concede that that's necessary for----

11 MJ: Oh, I understand that, I understand what you're saying.

12 TC: Yes, sir.

13 MJ: And Mr. [REDACTED] *(b)(6)-4; (b)(7)(C)-4* you are amending your request to 3 days?

14 CDC: Yes, based upon what's going on here, I think 3 days is now
15 adequate.

16 MJ: I mean, unfortunately, what you end up with though, is that
17 if we say 3 days today, it's 3 days. Do you understand what I'm
18 saying? What I'm saying is, that the convening authority, first of
19 all----

20 CDC: Some of that was travel time---

21 MJ: ----you understand, it's not my money.

22 CDC: I understand, but some of it was travel time, Your Honor.

1 MJ: But whenever these are, anytime, approved, the convening
2 authority approves at a certain rate, and not higher. Otherwise, you
3 have an antideficiency violation. You know all this.

4 CDC: I know all this, but it's okay.

5 MJ: But just so, that I think I know this, I want to make
6 sure----

7 CDC: I had travel time in there, you know, I had....

8 MJ: So you simply----

9 CDC: I've eliminated him going anywhere.

10 MJ: So he can sit down before a camera in Palo Alto and talk
11 all he wants and then put it on a disk and then mail it to you, and
12 that would--you wouldn't even need, necessarily a deposition. That
13 would meet your requirements.

14 CDC: I would like a give and take. I would like a give and
15 take. I would prefer that.

16 MJ: Government, what's your position?

17 TC: Yes, sir, well, obviously, we'd want to cross-examine this
18 witness.

19 MJ: You're going to send somebody out to Palo Alto?

20 TC: Absolutely, sir. I'm sure Captain [REDACTED] would be happy
21 to.

b6-2; (b)(7)(C)-2

1 CDC: We might be able to do it at the Presidio, Judge, of
2 Monterey, that is.

3 MJ: I direct the production of this witness. You'll do the
4 mechanics, trial counsel, of setting up a deposition?

5 TC: Yes, sir, we will.

6 MJ: You were saying, just so there's no confusion about the
7 money here, Mr. [REDACTED] 3 days. ^{(b)(6)-4; (b)(7)(C)-4}

8 CDC: Three days is fine with me, and based upon what I've been
9 told, that will give him time----

10 MJ: Again, technically, it's a produce or abate order, but you
11 understand where I'm going here, Major [REDACTED] ^{(b)(6)-2; (b)(7)(C)-2}

12 TC: Yes, sir, I do.

13 MJ: I direct that the government produce this witness in the
14 context of the motion, i.e. make him available for a deposition. And
15 pursuant to the defense representation, that would be 3 days at his
16 proffered rate. And, whether you choose to depose him or whatever
17 way you choose to present the testimony, that's up to you. But if
18 you're going to do a deposition, the convening authority will direct
19 a deposing officer.

20 TC: All right, sir, so you have ordered the employment of this
21 expert----

22 MJ: Well, it's a produce or abate, technically, but yes.

1 TC: Yes, sir.

2 MJ: But understand, we're talking about the rate of 3 days
3 here, just because I know you deal with the money issue.

4 TC: Yes, sir.

5 MJ: And what I'm hearing from the defense, they're modifying
6 the request to the convening authority to 3 days at the \$5,000 a day
7 rate, which would be, if the convening authority approved it, flat
8 out, that's what he would approve and he could approve no more.

9 TC: Yes, sir, and I apologize....

10 MJ: No, go ahead.

11 TC: This individual is to be detailed to the defense team, or
12 is just as an expert----

13 MJ: Well, the problem is, is that you want him as a witness.

14 CDC: No, we asked him as a defense expert witness, Your Honor.
15 It was the convening authority that converted it to a consultant.

16 MJ: Okay, he's talking about as a witness, which means is that
17 once he gets done with his material, then he can be interviewed by
18 the government prior to the deposition, and then take the deposition.

19 TC: Yes, sir, I just want to make sure----

20 CDC: No, absolutely clear on that point.

21 MJ: You're treating him as an expert witness.

22 CDC: No, we jumped right over the consultancy.

1 TC: And we did that out of an abundance of caution is why we've
2 treated it that way.

3 MJ: Okay, I understand that.

4 CDC: We appreciated the caution.

5 MJ: But now, understand, just so there's no lack of clarity
6 here, if he's employed as an expert witness and he bases some of his
7 opinion on things that came from your client, that's discoverable by
8 the defense--or by the government.

9 CDC: No, I understand the rules.

10 MJ: I know, we all do, but it's easier if we make sure we all
11 do, because that may change.

12 CDC: Okay, very well.

13 MJ: Okay, good. Anything else?

14 CDC: Nothing further from the defense.

15 MJ: But one outstanding issue that I don't think has relevance
16 to this case, is that dealt with an issue we discussed in the 802

17 that certain third parties who have employed private contractors,

18 which I think include your Mr. ^{(b)(6)-4, (b)(7)(C)-4} [REDACTED], and I'm sure I'm

19 mispronouncing his name. And again, we talked about at the 802 that

20 there is a third party pleading from ^{(b)(6)-4, (b)(7)(C)-4} [REDACTED], and [REDACTED]

21 [REDACTED] dealing with a motion to quash any subpoenas dealing with

(b)6-4, (b)7(C)-4

1 these people. But as indicated at the 802, Mr. [REDACTED] you indicate
2 this is a non-issue in this case.

3 CDC: In this case, it's a non-issue.

4 MJ: Okay, therefore, it would appear to the court no reason to
5 make those a part of the record or to rule on it since it's a non-
6 issue and you don't intend to pursue that in any way, shape or form.

7 CDC: No.

8 MJ: Any other matters to take up before the court?

9 CDC: Our sole concern is Mr. [REDACTED] (b)6-4, (b)7(C)-4

10 MJ: But I believe I've addressed that with the other ruling,
11 and then consequently, this ruling becomes somewhat moot.

12 CDC: It's mooted.

13 TC: Sir, nothing further, Your Honor.

14 CDC: Nothing from the defense.

15 MJ: The court is in recess.

16 [Court recessed at 1521, 24 August 2004.]

17 [END OF PAGE.]

1 [Court was called to order at 0912, 20 October 2004.]

2 MJ: The court is called to order. All parties are again
3 present that were present when the court recessed.

4 Defense, is the accused prepared to make a forum election
5 at this time?

6 DC: Yes, Your Honor, judge alone. There is a judge alone
7 request in front of Sergeant Frederick.

8 MJ: Sergeant Frederick, I know it's been a while since I went
9 over your forum rights with you. So before I have you elect forum, I
10 want to go over them with you again.

11 You have the right to be tried by a court composed of at
12 least five officer members. Also, if you requested, you could be
13 tried by a court consisting of at least one-third enlisted members,
14 but none of those enlisted members could come from your company and
15 no member of the court would be junior in rank to you.

16 Do you understand what I've said so far?

17 ACC: Yes, Your Honor.

18 MJ: Now if you're tried by court members, the members will vote
19 by secret, written ballot and two-thirds of the members must agree
20 before you could be found guilty of any offense. If you are found
21 guilty, then two-thirds must also agree in voting on a sentence. And

1 if that sentence included confinement for more than 10 years, then
2 three-fourths would have to agree.

3 You also have the right to request a trial by military
4 judge alone. And if approved, there will be no court members, and
5 the judge alone will decide whether you are guilty or not guilty, and
6 if found guilty, the judge alone will determine your sentence. Do
7 you understand the choices that you have?

8 ACC: Yes, Your Honor.

9 MJ: Do you understand the differences between trial before
10 members and trial before military judge alone?

11 ACC: Yes, Your Honor.

12 MJ: By what type of court do you wish to be tried by?

13 ACC: By judge alone, Your Honor.

14 MJ: I have before me what's been marked as Appellate Exhibit
15 XXIV, request for trial by military judge alone.

16 Is that your signature on this document, Sergeant
17 Frederick?

18 ACC: Yes, Your Honor.

19 MJ: At the time you signed this request, did you know that I
20 would be the military judge in your case?

21 ACC: Yes, Your Honor.

22 MJ: My name was typed in up there?

1 ACC: Yes, Your Honor.

2 MJ: Now, if I approve your request by me, you understand you
3 give up the right to be tried by a court composed of members?

4 ACC: Yes, Your Honor.

5 MJ: Now, is your request a voluntary one?

6 ACC: Yes, Your Honor.

7 MJ: Do you still wish to be tried by me alone?

8 ACC: Yes, Your Honor.

9 MJ: Defense, is the request for trial by military judge alone
10 part of a pretrial agreement?

11 DC: It is, Your Honor.

12 MJ: Sergeant Frederick, we will talk in greater depth about
13 your pretrial agreement later in this trial, but I want to go over
14 this provision with you now. Your pretrial agreement states that you
15 agree to waive, that is, give up trial by members and select trial by
16 military judge alone. Is that correct?

17 ACC: Yes, Your Honor.

18 MJ: Do you understand the difference between trial before
19 members and trial before military judge alone as I explained those
20 differences to you earlier?

21 ACC: Yes, Your Honor.

1 MJ: Did you understand these differences between the various
2 types of trial when you signed your pretrial agreement?

3 ACC: Yes, Your Honor.

4 MJ: Did you understand that you were giving up trial with
5 members when you signed your pretrial agreement?

6 ACC: Yes, Your Honor.

7 MJ: And was that waiver a free and voluntary act on your part?

8 ACC: Yes, Your Honor.

9 MJ: The request for trial by military judge alone is approved.
10 The court is assembled.

11 Defense, do you have any motions at this time?

12 DC: Yes, Your Honor, motion for appropriate relief, Article 13
13 credit.

14 MJ: In an 802, actually, kind of an email 802 between counsel,
15 it was indicated that rather than litigate this issue, that both
16 sides agreed to stipulate and that the accused receives 20 days
17 credit off any adjudged period of confinement for an alleged
18 violation of Article 13. Is that correct, defense?

19 DC: Yes, Your Honor.

20 MJ: Government?

21 TC: That's right, sir.

1 MJ: And both sides have agreed rather than to litigate the
2 motion, to stipulate to the credit with the understanding from the
3 government, you're not conceding Article 13 was violated, but you are
4 saying, "We're going to give 20 days credit." Is that correct, Major
5 [REDACTED] (b)(6)-2; (b)(7)C-2

6 TC: That's exactly right, sir.

7 CDC: That's my understanding, as well, Your Honor.

8 MJ: Now Sergeant Frederick, under Article 13 of the Uniform
9 Code of Military Justice, pretrial punishment, which is what we're
10 talking about in your case, is prohibited. And if you were subjected
11 to pretrial punishment in violation of Article 13, you could receive
12 sentence credit. Now, we're not near the sentencing portion of this
13 trial, so there may be no adjudged period of confinement to get
14 credit for. But, if there was, the usual remedy is confinement
15 credit. It can be day-for-day for each day of illegal pretrial
16 punishment. It can be more than that. Do you understand that?

17 ACC: Yes, Your Honor.

18 MJ: But in order to get the credit, both sides will litigate it
19 and there would have to be a finding by the judge, in this case me,
20 that Article 13 was violated, and if violated, you would receive a
21 certain amount of credit. Do you understand that?

22 ACC: Yes, Your Honor.

1 MJ: Now, if you litigated the issue and I found a violation of
2 Article 13, you could get more than 20 days credit. Or even with a
3 violation of Article 13, you could get less than 20 days credit. Do
4 you understand that?

5 ACC: Yes, Your Honor.

6 MJ: And if you litigated it and lost altogether, you get zero
7 credit. Do you understand that?

8 ACC: Yes, Your Honor.

9 MJ: But both sides don't want to litigate this issue, so
10 there's no decision for me to make of whether Article 13 was violated
11 or whether you receive any credit if it was violated. Do you
12 understand that?

13 ACC: Yes, sir.

14 MJ: So rather than litigate it, your counsel discussed it with
15 the prosecutor and decided to give you--both sides to give you 20
16 days credit. Do you understand that?

17 ACC: Yes, sir.

18 MJ: Basically what it means is, they're saying you get a sure
19 20 days credit as opposed to potentially more or potentially less if
20 litigated. Do you understand that?

21 ACC: Yes, sir.

22 MJ: Have you discussed this issue with your counsel?

1 ACC: Yes, Your Honor.

2 MJ: And it's your desire to take the certain 20 days rather
3 than litigate the Article 13 issue?

4 ACC: Yes, Your Honor.

5 MJ: Now, counsel, is the 20 days to come off the adjudged
6 sentence or the approved sentence? What is the understanding of the
7 parties?

8 TC: Sir, off the approved sentence.

9 DC: I agree, Your Honor.

10 MJ: And again, we're not even to sentencing, but because there
11 is a pretrial agreement in this case, there's usually a sentence
12 limitation, there will be what's called the adjudged sentence, which
13 is the sentence that I will give you, and then there's also the
14 approved sentence, which is the maximum the convening authority could
15 approve. Now, that could be less or more than the adjudged sentence,
16 and I'll explain this in greater detail when we get to the pretrial
17 agreement. But what it simply means is that the lesser of the
18 adjudged sentence and the pretrial agreement sentence is the most the
19 convening authority can approve, and the 20 days will come off the
20 approved sentence. So basically, what it means is, regardless of the
21 adjudged sentence, you will get credit for the 20 days if confinement
22 is adjudged. And again, understanding, we're talking about something

1 that's going to be happening a long time--well, at least tomorrow.
2 So there's no decision of whether or not you're even going to get any
3 confinement. So don't take what I'm saying as a preconceived notion
4 or idea that I'm going to give you confinement. Do you understand
5 that?

6 ACC: Yes, Your Honor.

7 MJ: But if you do get confinement, the 20 days will come off
8 the lesser of the approved sentence or the adjudged sentence. Do you
9 understand that?

10 ACC: Yes, Your Honor.

11 MJ: Okay, the accused will be credited with 20 days confinement
12 credit against any period off his approved sentence.

13 Defense, do you have any other motions prior to entry of
14 plea?

15 DC: No, Your Honor.

16 MJ: Is the accused prepared to enter a plea?

17 DC: Yes, Your Honor.

18 MJ: Accused and counsel, please rise. [All stood.]

19 [END OF PAGE.]

1 Staff Sergeant Ivan L. Frederick II, I now ask you, how do
2 you plead? Your defense counsel will speak for you.

3 DC: To Specification 1 of Charge I: Not guilty.

4 To Specification 2 of Charge I: Guilty, excepting the
5 words "did place naked detainees in a human pyramid and". To the
6 excepted words: Not guilty.

7 To Charge I: Guilty.

8 To the Specification of Charge II and Charge II: Guilty.

9 To Specification 1 of Charge III: Guilty, excepting the
10 words "be told" and substituting the word "believe". To the excepted
11 words: Not guilty. To the substituted word: Guilty.

12 To Specification 3 of Charge III: Guilty, excepting the
13 words "and then placing one in a position so that the detainee's face
14 was directly in front of the genitals of another detainee to simulate
15 fellatio and photographing the detainees during these acts". To the
16 excepted words: Not guilty.

17 To Specification 4 of Charge III: Guilty.

18 To Specification 5 of Charge III: Not guilty.

19 To Charge III: Guilty.

20 To Specification 1 of Charge IV: Not guilty.

21 To Specification 2 of Charge IV: Not guilty.

1 To Specification 3 of Charge IV: Not guilty, but guilty of
2 the lesser included offense of assault consummated by a battery,
3 excepting the words "striking him with a means or force likely to
4 produce death or grievous bodily harm, to wit: by punching and with
5 enough force to cause the detainee to have difficulty breathing and
6 require medical attention" and substituting therefore the words
7 "unlawfully striking a detainee in the chest with a closed fist." To
8 the excepted words: Not guilty. To the substituted words: Guilty.

9 To Charge IV: Guilty.

10 To the Specification of Charge V and Charge V: Guilty.

11 MJ: Please be seated. [All resumed their seats.]

12 At an 802, we indicated to counsel that Specification 5
13 actually has been mis-numbered as Specification 6. That's just a
14 typographical error, and you can make a pen and ink correction on the
15 charge sheet, so we have five charges, not six.

16 TC: Yes, sir. The Charge V was amended--Charge VI was amended
17 to reflect Charge V.

18 MJ: Because there really is no--it's just a sequence problem.

19 TC: Yes, sir.

20 MJ: Go ahead, Major [REDACTED] (b)(6)2; (b)(7)(C)-2

21 TC: And I'm certain that defense counsel said this, but he was
22 moving very quickly. I want to make sure that the court had a plea

1 on Specification 2 of Charge III, just to make sure we didn't miss
2 that, that they did, in fact, enter a plea for Specification 2 of
3 Charge III.

4 DC: Your Honor, I do believe I did, but I can enter it again.

5 MJ: It never hurts to repeat.

6 DC: **To Specification 2 of Charge III: Guilty, excepting the**
7 **words "placing naked detainees in a human pyramid and". To the**
8 **excepted words: Not guilty.**

9 TC: Thank you, sir.

10 MJ: At an 802, counsel indicated they wish to make an amendment
11 in two specifications, Specification 1 of Charge III, that you
12 indicated the date would be amended from 8 November 2003 to 4
13 November 2003. Is that correct, Major [REDACTED]? (b)(6)-2, (b)(7)(C)-2

14 TC: Yes, sir.

15 MJ: Any objection to the amendment?

16 DC: No, Your Honor.

17 MJ: And defense, you've not been misled about the 4-day change?

18 DC: No, Your Honor.

19 MJ: Request to amend Specification 1 of Charge III is granted.

20 Similarly, trial counsel, you indicated you wish to amend
21 Specification 4 of Charge III, changing the day from 8 November to 28
22 November?

1 TC: Yes, sir.

2 MJ: Any objection?

3 DC: No, Your Honor.

4 MJ: And similarly, defense, you've not been misled?

5 DC: No, Your Honor.

6 MJ: You prepared to defend against those dates?

7 DC: Yes, Your Honor.

8 MJ: The motion to amend Specification 4 of Charge III is
9 granted.

10 Trial counsel, if the accused is provident as pled, does
11 the government intend to go forward with any charge or specification
12 not encompassed by the accused's guilty plea?

13 TC: No, Your Honor.

14 MJ: Sergeant Frederick, your counsel has entered a plea of
15 guilty for you to several charges and their specifications. Your
16 plea of guilty will not be accepted unless you understand its meaning
17 and effect. I'm going to discuss your plea of guilty with you. If
18 at any time you have any questions, feel free to stop and ask them.
19 Do you understand that?

20 ACC: Yes, Your Honor.

21 MJ: A plea of guilty is equivalent to a conviction and is the
22 strongest form of proof known to the law. On your plea alone and

1 without receiving any evidence, this court can find you guilty of the
2 offenses to which you've pled guilty. Your plea will not be accepted
3 unless you realize that by your plea, you admit every act or omission
4 and element of the offenses to which you've pled guilty, and that
5 you're pleading guilty because you actually are, in fact, guilty. If
6 you do not believe that you are guilty, then you should not, for any
7 reason, plead guilty.

8 Do you understand what I've said so far?

9 ACC: Yes, Your Honor.

10 MJ: Now, by pleading guilty, you give up three important
11 rights, but you give up these rights solely with respect to the
12 offenses which you have pled guilty. First, the right against self-
13 incrimination; that is, the right to say nothing at all.

14 Second, the right to a trial of the facts by this court;
15 that is, your right to have this court-martial decide whether or not
16 you're guilty based upon evidence the prosecution would present and
17 on any evidence you may introduce.

18 Third, the right to be confronted by and to cross-examine
19 any witness called against you.

20 Do you have any questions about any of these rights?

21 ACC: No, Your Honor.

1 MJ: Do you understand that by pleading guilty, you no longer
2 have these rights?

3 ACC: Yes, Your Honor.

4 MJ: By pleading guilty, you no longer have these rights. You
5 understand that?

6 ACC: Yes, Your Honor.

7 MJ: If you continue with your guilty plea, you will be placed
8 under oath, and I will question you to determine whether you are, in
9 fact, guilty. Anything you tell me may be used against you in the
10 sentencing portion of the trial. Do you understand this?

11 ACC: Yes, Your Honor.

12 MJ: If you tell me anything that is untrue, your statements may
13 be used against you later for charges of perjury or making false
14 statements. Do you understand this?

15 ACC: Yes, Your Honor.

16 MJ: Trial counsel, place the accused under oath. [The trial
17 counsel did as directed and the accused was sworn.]

18 Trial counsel, there is a stipulation of fact?

19 TC: Yes, Your Honor.

20 MJ: It's been marked as Prosecution Exhibit 1 for
21 identification. Does the accused have a copy in front of him?

22 DC: Yes, Your Honor, with addendum.

1 MJ: Sergeant Frederick, I have before me what's marked as
2 Prosecution Exhibit 1 for identification, a stipulation of fact. Did
3 you sign this stipulation?

4 ACC: Yes, Your Honor.

5 MJ: That is your signature on page 11?

6 ACC: Yes, Your Honor.

7 MJ: Before we do anything else, I want to go through what I
8 have to make sure it's the same thing that you have, okay?

9 ACC: Yes, Your Honor.

10 MJ: What I have is an 11-page narrative with signatures of
11 yourself, Captain [REDACTED], Captain [REDACTED] apparently signing for Mr.

12 [REDACTED] ^{(b)(6)-(4), (b)(7)(C)-4}, and also Captain [REDACTED] ^{(b)(6)-2, (b)(7)(C)-2}

13 Trial counsel, who is Captain [REDACTED]?

14 TC: Sir, he is the Chief of Justice.

15 MJ: So he's signing for the government?

16 TC: Yes, Your Honor.

17 MJ: Attached to it are 13 attachments. The first one is a
18 photograph of naked detainees. The second one is the rear version of
19 similar photograph. The third attachment is Private England and a
20 detainee, apparently, masturbating. The fourth one is a picture of
21 naked detainees with hoods over their heads, apparently, committing
22 fellatio or simulating fellatio. Attachment 5 is a picture of PFC

1 England and a detainee. Six is a picture of a detainee holding a box
2 with a hood over his head. Seven is a photograph of a detainee
3 standing on--I'm assuming the same detainee standing on a box with
4 wires attached to his hands. Eight is another one of the same. Nine
5 is a side version of the detainee, of the same detainee standing on
6 the box. Ten is a picture of two detainees that were naked with
7 hoods over their heads and another detainee on the side with the word
8 "R-A-P-E-I-S-T" written on his buttocks. Eleven is a picture of you
9 sitting on a detainee who's wrapped in padding. And twelve is a
10 picture of a detainee handcuffed in his cell. And thirteen is a
11 video clip which is not attached to this document. I'm being handed
12 a CD which apparently is the video?

13 TC: Yes, sir, and that image has been loaded onto the laptop in
14 front of you. It's an attachment to the exhibit.

15 MJ: Is that what you have, Sergeant Frederick?

16 ACC: Yes, Your Honor.

17 MJ: So it's those twelve photographs and the video clip?

18 TC: Yes, Your Honor.

19 MJ: And those documents with the narrative constitute the
20 entire stipulation of fact?

21 DC: Your Honor, there's an addendum as well to the stipulation
22 of fact, dated 20 October, that should also be included.

1 MJ: Oh, I'm sorry, yes, okay. That was after the signatures.
2 There's another stipulation of fact, dated 20 October 2004. This
3 would be--you have the 11 pages where the signatures are and then the
4 next page is that document.

5 DC: Yes, sir.

6 MJ: So those two stipulations of fact, 12 photographs and one
7 CD constitute the entire stipulation of fact?

8 TC: Yes, Your Honor.

9 MJ: Did you sign this stipulation?

10 ACC: Yes, Your Honor.

11 MJ: Did you read the document thoroughly before you signed it?

12 ACC: Yes, Your Honor.

13 MJ: Do both counsel agree to this stipulation, and for the
14 government, that Captain ^{(b)(6)2-(b)(7)(C)-2} [REDACTED] signature appears on the document?

15 TC: Yes, sir.

16 DC: Yes, Your Honor.

17 MJ: Sergeant Frederick, a stipulation of fact is an agreement
18 among the trial counsel, your defense counsel and you, that the
19 contents of the stipulation are true, and if entered into evidence,
20 are the uncontradicted facts in this case. No one can be forced to
21 enter into a stipulation, so you should enter into it only if you
22 truly want to do so. Do you understand that?

1 ACC: Yes, Your Honor.

2 MJ: Are you voluntarily entering into this stipulation because
3 you believe it is in your best interest to do so?

4 ACC: Yes, Your Honor.

5 MJ: If I admit this stipulation into evidence, it will be used
6 in two ways. First, I will use it to determine if you are, in fact,
7 guilty of the offenses to which you've pled guilty. And second, I
8 will use it to determine an appropriate sentence for you.

9 Do you understand and agree to these uses of the
10 stipulation?

11 ACC: Yes, Your Honor.

12 MJ: Do both counsel also agree to these uses?

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

15 MJ: Now Sergeant Frederick, a stipulation of fact ordinarily
16 cannot be contradicted. If it should be contradicted after I have
17 accepted your guilty plea, I will reopen this inquiry. You should,
18 therefore, let me know if there's anything whatsoever you disagree
19 with or feel is untrue. Do you understand that?

20 ACC: Yes, Your Honor.

21 MJ: At this time, I want you to read your copy of the
22 stipulation silently to yourself as I read it to myself.

1 [The accused did as directed.]

2 MJ: Have you finished reading the stipulation of fact, Sergeant
3 Frederick?

4 ACC: Yes, Your Honor.

5 MJ: Is everything in the stipulation true?

6 ACC: Yes, Your Honor.

7 MJ: Is there anything in the stipulation that you do not wish
8 to admit is true?

9 ACC: No, Your Honor.

10 MJ: Do you agree, under oath, that the matters contained in the
11 stipulation are true and correct to the best of your knowledge and
12 belief?

13 ACC: Yes, Your Honor.

14 MJ: Now on my copy, there's a couple of pen and ink
15 corrections. I want to make sure that yours is the same. In
16 paragraph 2, they've changed your age to 38.

17 ACC: Yes, Your Honor.

18 MJ: Paragraph 20, they've changed the date from 8 November to 4
19 November.

20 ACC: Yes, Your Honor.

21 MJ: And paragraph 28, they changed 8 November to 28 November.

22 ACC: Yes, Your Honor.

1 MJ: And those are the only pen and ink corrections that you
2 have on this document, correct?

3 ACC: Yes, Your Honor.

4 MJ: And as I said, now with all the pen and ink corrections and
5 everything else, do you agree under oath the matters contained in the
6 stipulation are true and correct to the best of your knowledge and
7 belief?

8 ACC: Yes, Your Honor.

9 MJ: Defense, do you have any objection to Prosecution Exhibit 1
10 for identification?

11 DC: No, Your Honor.

12 MJ: Prosecution Exhibit 1 for identification is admitted,
13 subject to my acceptance of the accused's guilty plea.

14 Sergeant Frederick, at this time, I'm going to explain to
15 you the elements of the offenses to which you have pled guilty. By
16 "elements," I mean those facts which the government would have to
17 prove beyond a reasonable doubt before you could be found guilty if
18 you had pled not guilty. As I list each element for you, ask
19 yourself two things, first, is the element true; and second, whether
20 you wish to admit that it's true. After I finish listing the
21 elements for you, be prepared to talk to me about the facts regarding
22 the offenses.

1 Do you have a copy of the charge sheet there?

2 ACC: Yes, Your Honor.

3 MJ: Now I want to begin with Charge II. In the Specification
4 of Charge II, you have pled guilty to willful dereliction of duty, in
5 violation of Article 92 of the Uniform Code of Military Justice. As
6 alleged and pled, this offense has the following three elements:

7 One, that you had certain prescribed duties, that is,
8 protect the detainees from abuse, cruelty and maltreatment.

9 Two, that you actually knew of the assigned duty.

10 And three, that at or near the Baghdad Central Correctional
11 Facility, Abu Ghraib, Iraq, from on or about 8 November 2003 to on or
12 about 1 December 2003, you were derelict in the performance of that
13 duty by willfully failing to protect detainees from abuse, cruelty
14 and maltreatment. Now, a duty may be imposed by regulation, lawful
15 order or custom of the service. A person is derelict in the
16 performance of his duty when he willfully fails to perform them.
17 "Dereliction" is defined as a failure in duty, a shortcoming or
18 delinquency. "Willfully" means intentionally. It refers to the
19 doing of an act knowingly and purposefully specifically intending the
20 natural and probably consequence of the act. Now, abuse, cruelty and
21 maltreatment refer to the treatment that, when viewed objectively
22 under all the circumstances, is abusive or otherwise unwarranted,

1 unjustified and unnecessary for any lawful purpose and that results
2 in physical or mental harm or suffering or reasonably could have
3 caused physical or mental harm or suffering.

4 Now defense, I took that definition of abuse, cruelty and
5 maltreatment from Article 93, the maltreatment. Do you agree that
6 that's an accurate statement of the law as it relates to this
7 offense?

8 DC: Yes, Your Honor.

9 MJ: Trial counsel, do you concur?

10 TC: Yes, Your Honor.

11 MJ: Now look at Charge III. In the four specifications of
12 Charge III, you have pled guilty to four separate instances of
13 maltreatment of subordinates, in violation of Article 93 of the
14 Uniform Code of Military Justice. As alleged and pled, these
15 offenses have the following elements. Now, the first element is the
16 same for each specification. It is:

17 That the unnamed detainees were subject to your orders.

18 Now, the second element is different for each
19 specification. In Specification 1 of Charge II, the second element
20 is, that at or near Baghdad Central Correctional Facility, Abu
21 Ghraib, Iraq, on or about 4 November 2003, you maltreated the
22 detainee by participating in and allowing the placing of wires on the

1 detainees hands while he stood on a Meals Ready to Eat box with his
2 head covered and allowed the detainee to believe he would be
3 electrocuted if he fell off the box and allowing the detainee to be
4 photographed.

5 For Specification 2 of Charge II, the second element is:
6 that at or near Baghdad Central Correctional Facility, Abu Ghraib,
7 Iraq, on or about 8 November 2003, you maltreated several detainees
8 by photographing the pyramid of naked detainees.

9 For Specification 3 of Charge II, the second element is:
10 that at or near Baghdad Central Correctional Facility, Abu Ghraib,
11 Iraq, on or about 8 November 2003, you maltreated a detainee by
12 posing for a photograph sitting on top of a detainee who was bound by
13 padded material between two medical litters--I'm sorry, that's
14 Specification 4. Specification 3 is that at or near Baghdad Central
15 Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003,
16 you maltreated several detainees by ordering the detainees to strip
17 and ordering the detainees to masturbate in front of the other
18 detainees and soldiers. And Specification 4 occurred on 28 November
19 2003.

20 Now, "subject to the orders of" includes persons under the
21 direct or immediate command of the accused and all persons who by
22 reason of some duty are required to obey the lawful orders of the

1 accused, even if those persons are not in the accused's direct chain
2 of command. Now, the maltreatment must be real, although it does not
3 have to be physical. The imposition of necessary or proper duties
4 on a soldier and the requirement that those duties be performed does
5 not establish this offense even though the duties are hard, difficult
6 or hazardous. "Maltreated" refers to treatment that when viewed
7 objectively under all the circumstances is abusive or otherwise
8 unwarranted, unjustified and unnecessary for any lawful purpose and
9 that results in physical or mental harm or suffering or reasonably
10 could have caused physical or mental harm or suffering. Assault or
11 improper punishment may constitute this offense.

12 Now, I want you to turn to the conspiracy specification in
13 Charge I. In Specification 2 of Charge I, you have pled guilty to
14 conspiracy to maltreat subordinates, in violation of Article 81 of
15 the Uniform Code of Military Justice. As alleged and pled, this
16 offense has the following two elements:

17 First, that at or near Baghdad Central Correctional
18 Facility, Abu Ghraib, Iraq, on or about 8 November 2003, you entered
19 into an agreement with Sergeant Javal S. Davis, Corporal Charles A.
20 Graner, Specialist Jeremy C. Sivits, Specialist Sabrina D. Harman,
21 Specialist Megan M. Ambuhl, and PFC Lynndie R. England, to commit

1 maltreatment of subordinates, an offense under the Uniform Code of
2 Military Justice.

3 Two, that while the agreement continued to exist and while
4 you remained a party to the agreement, you performed the overt act
5 alleged, that is, you photographed the pyramid of naked detainees for
6 the purpose of bringing about the object of the agreement.

7 Now, the elements of the offense which you are charged with
8 conspiracy to commit, namely, maltreatment of subordinates, or as I
9 told you earlier for Charge III, proof that the offense of
10 maltreatment of subordinates actually occurred is not required.
11 However, it must be proved beyond a reasonable doubt that the
12 agreement included every element of the offense of maltreatment of
13 subordinates. Now, the agreement in a conspiracy does not have to be
14 in any particular form or expressed in formal words. It is
15 sufficient if the minds of the parties reach a common understanding
16 to accomplish the object of the conspiracy, and this may be proved by
17 the conduct of the parties. The agreement does not have to express
18 the manner in which the conspiracy is to be carried out or what part
19 each conspirator is to play. The overt act required for this offense
20 does not have to be a criminal act, but it must be a clear indication
21 that the conspiracy is being carried out. The overt act may be done
22 either at the time of or following the agreement. The overt act must

1 clearly be independent of the agreement itself, that is, it must be
2 more than merely the act of entering into the agreement or an act
3 necessary to reach the agreement.

4 Now turn to Charge IV. In Specification 3 of Charge IV,
5 you have pled guilty to the lesser included offense of assault
6 consummated by a battery, in violation of Article 128 of the Uniform
7 Code of Military Justice. As alleged and pled, this offense has the
8 following three elements:

9 One, that at or near Baghdad Central Correctional Facility,
10 Abu Ghraib, Iraq, on or about 8 November 2003, you did bodily harm to
11 a detainee.

12 Two, that you did so by striking him in the chest with a
13 closed fist.

14 And three, that the bodily harm was done with unlawful
15 force or violence.

16 An assault is an attempt or offer with unlawful force or
17 violence to do bodily harm to another. An assault in which bodily
18 harm is inflicted is called a battery. A "battery" is an unlawful
19 and intentional application of force or violence to another. The act
20 must be done without legal justification or authorization or excuse
21 and without the lawful consent of the victim. "Bodily harm" means

1 any physical injury to or offensive touching of another person,
2 however slight.

3 In the Specification of Charge V, you've pled guilty to
4 indecent acts, in violation of Article 134 of the Uniform Code of
5 Military Justice. As alleged and pled, this offense has the
6 following three elements:

7 That at or near Baghdad Central Correctional Facility, Abu
8 Ghraib, Iraq, on or about 8 November 2003, you committed a certain
9 act with detainees, Corporal Graner, Specialist Ambuhl and PFC
10 England by observing a group of detainees masturbating or attempting
11 to masturbate while they were located in a public order of the
12 Baghdad Central Correctional Facility while other soldiers were
13 photographed or watched the detainees' actions.

14 Two, that the act was indecent.

15 And three, that under the circumstances, your conduct was
16 to the prejudice of good order and discipline in the armed forces or
17 was of a nature to bring discredit upon the armed forces. "Conduct
18 prejudicial to good order and discipline" is conduct which causes a
19 reasonably direct and obvious injury to good order and discipline.
20 "Service discrediting conduct" is conduct which tends to harm the
21 reputation of the service or lower it in public esteem. "Indecent
22 acts" signifies that form of immorality relating to sexual impurity

1 which is not only grossly vulgar and obscene and repugnant to common
2 propriety, but tends to excite lust and deprave the morals with
3 respect to sexual relations.

4 Now, Sergeant Frederick, do you understand the elements and
5 definitions as I've read them to you and as they apply to each
6 specification?

7 ACC: Yes, Your Honor.

8 MJ: Do you have any questions about any of them?

9 ACC: No, Your Honor.

10 MJ: Do you understand that your plea of guilty admits that
11 these elements accurately describe what you did?

12 ACC: Yes, Your Honor.

13 MJ: Do you believe and admit that the elements and definitions
14 taken together correctly describe what you did?

15 ACC: Yes, Your Honor.

16 MJ: Is there any issue from either side that I did not cover
17 every element?

18 TC: No, Your Honor.

19 DC: No, Your Honor.

20 MJ: Okay, Sergeant Frederick, at this time, I want to talk
21 about what happened. I want to begin is, you're a Reserve component
22 soldier?

1 ACC: Yes, Your Honor.

2 MJ: National Guard?

3 ACC: Yes, Your Honor.

4 MJ: What's your home unit?

5 ACC: 372d Military Police Company.

6 MJ: And you were activated to support Operation Iraqi Freedom?

7 ACC: Yes, Your Honor.

8 MJ: And when did you get your activation orders?

9 ACC: Approximately 21 February 2003.

10 MJ: And how long were they for. Do you recall?

11 ACC: 365 days, initially.

12 MJ: And eventually, you deployed to Southwest Asia and made

13 your way to Iraq?

14 ACC: Yes, Your Honor.

15 MJ: And as a National Guard soldier, you're, what's normally in

16 Title 32 status when you're working for the state. Do you understand

17 that?

18 ACC: Yes, Your Honor.

19 MJ: But when you get activated or federalized, that puts you in

20 what's called Title 10 status?

21 ACC: Yes, Your Honor.

1 MJ: And that just refers to the various federal statutes
2 involved.

3 ACC: Yes, Your Honor.

4 MJ: And so when you were activated, did that put you in Title
5 10 status?

6 ACC: Yes, Your Honor.

7 MJ: Now, you indicated your activation, you thought, was----

8 ACC: Your Honor, I can add more clarification.

9 MJ: I'm sorry, go ahead.

10 ACC: I was in the Maryland National Guard for my first 7 years,
11 and in 1995, I joined the U.S. Army Reserves. So I'm currently in
12 the Reserves.

13 MJ: Okay, you're a Reserve soldier who used to be a National
14 Guard soldier.

15 ACC: Yes, Your Honor.

16 MJ: A Reserve component soldier.

17 ACC: Yes, Your Honor.

18 MJ: And then when you were activated on the 21st of February,
19 you came into an active status under Title 10. Is that correct?

20 ACC: Yes, Your Honor.

21 MJ: And you indicated you were activated for 365 days?

22 ACC: Yes, Your Honor.

1 MJ: Which would have, rough and dirty, put you off active duty
2 20 February 2004.

3 ACC: Yes, Your Honor.

4 MJ: Now between 21 February 2003 and 20 February 2004, were you
5 extended?

6 ACC: Yes, Your Honor.

7 MJ: And do you know how long you were extended for?

8 ACC: Not exactly, Your Honor.

9 MJ: But you've been extended ever since?

10 ACC: Yes, Your Honor.

11 MJ: And defense, I'm assuming there's no issue the accused is
12 subject to the trial at this time as an active duty soldier, or an
13 activated soldier?

14 DC: No issue, sir.

15 MJ: Sergeant Frederick, I now want to go to what happened at
16 the prison at Abu Ghraib. When did you first arrive at the facility?

17 ACC: Approximately 9, 10 October 2003.

18 MJ: And what was your unit's mission at that time?

19 ACC: Part of our unit was doing escort missions outside the
20 gate. The other part was at one of the Ganci Camps or the Vigilant
21 Camp and the other one was running the hard site.

22 MJ: And then specifically, what was your job?

1 ACC: I was the NCOIC of the hard site.

2 MJ: When you say the "hard site," what did that constitute?

3 ACC: That means the hard structure building.

4 MJ: Yeah, I understand that part, but I'm saying, how big was
5 it, for example? Was it a multi-story building?

6 ACC: Yes, Your Honor, two stories.

7 MJ: Two stories, and when you say it's a prison, were these
8 where cells were?

9 ACC: Yes, Your Honor.

10 MJ: So it was two tiers of cells?

11 ACC: Two tiers, approximately four wings were open at the time.

12 MJ: And were you in charge of the entire hard site?

13 ACC: Yes, Your Honor.

14 MJ: Now, were you the nightshift guy?

15 ACC: Yes, Your Honor.

16 MJ: So the nightshift, you were the NCOIC of the entire hard
17 site?

18 ACC: Yes, Your Honor.

19 MJ: And as that, and you are a military policeman?

20 ACC: Yes, Your Honor.

21 MJ: And as the NCOIC and a military policeman, what was your
22 responsibility to the detainees?

1 ACC: To protect them, to keep them--enforce good conduct in my
2 soldiers and protect the detainees from maltreatment and cruelty and
3 unusual punishment.

4 MJ: Okay, now, the individuals you were taking care of you were
5 referring to as detainees. Who were these people?

6 ACC: They were Iraqi citizens, civilian internees, military
7 intelligence holds to common criminals.

8 MJ: And they're all falling under the general rubric of
9 detainees?

10 ACC: Yes, Your Honor.

11 MJ: You said that could be a security detainee....

12 ACC: Females, males and juveniles, sir.

13 MJ: But the overall category is detainees, and there's security
14 detainees? What are those?

15 ACC: Those are the ones that are usually called military
16 intelligence holds that have intelligence value.

17 MJ: Okay, and then there's also the, for want of a better term,
18 the common criminal detainee?

19 ACC: Yes, Your Honor.

20 MJ: And these are people who committed some kind of criminal
21 offense?

22 ACC: Yes, Your Honor.

1 MJ: Or allegedly.

2 ACC: Yes, Your Honor.

3 MJ: Was there any other category?

4 ACC: There was juveniles and there was females, also.

5 MJ: But they would fall generically under one of the other two
6 categories?

7 ACC: Yes, Your Honor.

8 MJ: But all the detainees, regardless of their age, sex or
9 category as a security or criminal detainee, when they were in your
10 hard site, were they subject to your orders?

11 ACC: Yes, Your Honor.

12 MJ: And why do you say that?

13 ACC: Because I was put in charge, the NCOIC of the hard site,
14 the nightshift.

15 MJ: And in your civilian capacity, you're a correctional guard?

16 ACC: Correctional officer, yes, sir.

17 MJ: Was this similar kind of duties?

18 ACC: Negative, sir.

19 MJ: What was the difference between what you do as a civilian
20 and what you did at Abu Ghraib?

21 ACC: It's different atmosphere, different detainees, just
22 completely different.

1 MJ: Were your duties as a correctional officer in the civilian
2 capacity to maintain order and discipline in the facility similar to
3 your duties there at Abu Ghraib?

4 ACC: Yes, Your Honor.

5 MJ: Although the conditions, the people, perhaps the mortars
6 were different.

7 ACC: Yes, they are similar jobs, just different environments.

8 MJ: So you were experienced with corrections is what I'm trying
9 to establish.

10 ACC: Yes, Your Honor.

11 MJ: And as a correctional officer, you had that training and
12 plus, I'm assuming you received some type of military training as a
13 military policeman?

14 ACC: As a military policeman, yes, Your Honor.

15 MJ: But when you went over there, you assumed duties as NCOIC
16 of the nightshift, although--well, let me go back. As a 95 Bravo,
17 military policeman, what kind of training did you receive?

18 ACC: Mostly law and order, convoy patrols and security, traffic
19 control points, security of convoys, things of that nature.

20 MJ: Now, as a correctional officer in the military, is that
21 different than a 95 Bravo?

22 ACC: Yes, Your Honor.

1 MJ: The guys that work at Leavenworth and things like that?
2 ACC: Yes, Your Honor.
3 MJ: And what is that, do you know the MOS?
4 ACC: It's a 31 Echo, Your Honor.
5 MJ: So you never really were trained as a military correctional
6 officer.
7 ACC: Negative.
8 MJ: But when you assumed duties as the NCOIC, you said, in
9 about mid-October?
10 ACC: Yes, Your Honor.
11 MJ: Did you understand what your duties were?
12 ACC: Yes, Your Honor.
13 MJ: Was it particularly complicated to understand your general
14 duties of taking care of the detainees?
15 ACC: No, Your Honor.
16 MJ: Now, I kind of want to go about what happened, and I want
17 to do it in chronological order. And it would appear the first issue
18 came up on the 4th of November?
19 ACC: Yes, Your Honor.
20 MJ: Now, as we go through this, and we're going to use the term
21 "detainee" or "detainees," rather than going through it each time,

1 all these guys that we talked about as detainees were subject to your
2 orders, right?

3 ACC: Yes, Your Honor.

4 MJ: In the correctional facility, you call them prisoners or
5 inmates, here they're called detainees. But, you could tell them
6 what to do?

7 ACC: Yes, Your Honor.

8 MJ: You basically controlled whatever they had to do?

9 ACC: Yes, Your Honor.

10 MJ: In your own words, tell me what happened on the 4th of
11 November 2003 with the detainee and the Meals Ready to Eat box and
12 the wires.

13 ACC: When I first got to the institution at approximately 1530
14 hours to get my shift brief, and I got my brief and I went down, the
15 first thing I do when I take over shift is make rounds to all of the
16 wings. And I started with 1 Alpha and 1 Bravo and went down there to
17 make a security check. I looked in the shower and seen this detainee
18 standing there holding a box. So, I asked Corporal Graner what was
19 going on. He said that a CID agent ^{(b)(6)-1, (b)(7)(C)-1} [REDACTED] wanted him stressed out as
20 much as possible because he needed him to talk tomorrow.

21 MJ: Okay, now who is Corporal Graner?

1 ACC: Corporal Graner was the NCOIC of 1 Alpha. He was a
2 subordinate of mine.

3 MJ: Okay, he worked for you. You had 1 Alpha and 1 Bravo, so
4 there were two tiers?

5 ACC: Yes, Your Honor.

6 MJ: And he was in charge of 1 Alpha?

7 ACC: Yes, Your Honor.

8 MJ: And who was in charge of 1 Bravo?

9 ACC: Specialist Ambuhl.

10 MJ: So Graner came up and told you that a CID agent wanted this
11 guy stressed out?

12 ACC: Yes, Your Honor.

13 MJ: What happened next?

14 ACC: I in turn looked over on 1 Bravo side and I seen Agent
15 ~~(b)(1)-(b)(7)(C)-1~~ over there. So I asked him, I went over and talked to him and
16 I asked him what was going on with this particular detainee, and he
17 told me that he had some valuable intelligence about the remains of
18 four American soldiers and who possibly killed them. So I said,
19 "Well, what do you want done to him?" He said, "I really don't give
20 a fuck, just as long as you don't kill him." So then I went over and
21 I just stood there and looked at him for a while. I seen these wires
22 hanging from the wall inside the shower. I walked by them many

1 times, so I just took one and wrapped it around his finger. Sergeant
2 Davis put one on his other hand, and I think Sabrina----

3 MJ: Who is Sergeant Davis?

4 ACC: Sergeant Davis worked in 3 Alpha and 3 Bravo. Specialist
5 Harman put one on his toe, I believe, and I just stood there. After
6 that, I just walked away after the wires were removed.

7 MJ: Now, this CID Agent ^{(b)(6), (b)(7)(C)-1} [REDACTED] what was he to you, duty-wise?

8 ACC: He was nothing. I guess he was just in charge of that
9 certain detainee.

10 MJ: And he said he wanted him stressed out, "Do whatever the
11 fuck you want as long as you don't kill him"?

12 ACC: Exactly, sir.

13 MJ: So you were just obeying his orders when you did this.

14 [Accused conferred with his counsel.] Sergeant Frederick, I'm asking
15 you, are you just obeying his orders when you did this?

16 ACC: Yes, Your Honor.

17 MJ: Defense?

18 ACC: There was no lawful order from the agent. I just acted on
19 my own.

20 MJ: Now Sergeant Frederick, did or did not the CID agent tell
21 you to do "whatever the fuck you wanted, just don't kill him"?

22 ACC: He didn't tell me specifically what to do.

1 MJ: I didn't ask you that, Sergeant Frederick. You told me
2 earlier that he said what I've just said a second ago. Did he or did
3 he not tell you that?

4 ACC: Yes, Your Honor. He told me that, but he didn't tell me
5 specifically what to do.

6 MJ: But as long as you didn't kill him, the detainee, you were
7 within the range of the stuff he told you to do, true?

8 ACC: He didn't order me to do anything.

9 MJ: You just told me...okay. Now, let's go back. ^{(b)(6)-1; (b)(7)(C)} [REDACTED] was a
10 CID agent?

11 ACC: Yes, Your Honor.

12 MJ: And what was his rank?

13 ACC: He was an E5, I believe.

14 MJ: An E5, okay. Had you ever saw him before?

15 ACC: No.

16 MJ: How did you know who he was?

17 ACC: Because he had "US" on his collar.

18 MJ: And therefore, you knew he was a CID agent?

19 ACC: Yes, Your Honor.

20 MJ: Now, when he said that to you, he was an E5 and you were an
21 E6.

22 ACC: Yes, Your Honor.

1 MJ: Did he have any command relationship over you at all?
2 ACC: No, Your Honor.
3 MJ: What do you think his role was in the prison to begin with?
4 What was he doing there?
5 ACC: He was in charge of that particular detainee because he was
6 a CID hold was what his status was on his record.
7 MJ: And did you assume that Sergeant [REDACTED] was the guy who was
8 going to interrogate this detainee? (46)1-(6)(7)(C)-1
9 ACC: Yes, Your Honor.
10 MJ: So when he told you to do that though, you didn't take it
11 as an order.
12 ACC: No, Your Honor.
13 MJ: What did you take it as?
14 ACC: An opportunity just to scare him to help out his
15 interrogation.
16 MJ: And is that what you did?
17 ACC: Yes, sir.
18 MJ: So you did this thing with the wires and the hood and
19 everything to help out the interrogation.
20 ACC: Yes, Your Honor...no, Your Honor.
21 MJ: Well, that was a "yes" and a "no." Tell me, which is it?
22 ACC: No, Your Honor.

1 MJ: "No, Your Honor" what? You've confused me now. You told
2 me that Sergeant ^{(b)(6)-1 (b)(7)(C)-1} [REDACTED] was not telling you, but he told you, perhaps
3 not as an order. Is that what you're saying?

4 ACC: He didn't order me to do anything.

5 MJ: But he told you. He said to you what?

6 ACC: He said, "I don't care what the fuck you do, just don't
7 kill him."

8 MJ: And you took that, and then you did what you said you did,
9 correct?

10 ACC: Yes, but I did it on my own.

11 MJ: But didn't you just tell me you did it on your own to help
12 out in the interrogation?

13 ACC: That's what I thought I was doing.

14 MJ: So you didn't take it as an order from Sergeant [REDACTED] but
15 you knew that Sergeant [REDACTED] wanted to interrogate this guy the next
16 day. ^{(b)(6)-1-(b)(7)(C)-1}

17 ACC: Yes, Your Honor.

18 MJ: And you were trying to set the conditions for that
19 interrogation?

20 ACC: Yes, Your Honor.

21 MJ: By scaring the guy.

22 ACC: Yes, Your Honor.

1 MJ: To help in the interrogation.

2 ACC: Yes, Your Honor.

3 MJ: Did you think what you were doing with him was right?

4 ACC: No, Your Honor.

5 MJ: Now Sergeant Frederick, I want to make this clear, is it's
6 important that you tell me exactly what happened and what you were
7 thinking then. And my question to you is, you thought you were
8 helping them. Why wouldn't that be the right thing to do?

9 ACC: I was wrong about what I did, and I should not have done
10 it.

11 MJ: Now, going back to the 4th of November 2003, after [REDACTED] ^{(b)(6)(D) - (b)(7)(C)}
12 told you or said what he said to you, then you just told me that you
13 were trying to help [REDACTED] by doing this. Isn't that right? ⁻¹

14 ACC: Yes, Your Honor.

15 MJ: To set conditions, for want of a better term, for the
16 interrogation the next day, correct?

17 ACC: Yes, Your Honor.

18 MJ: Did you think it was wrong at the time you did it?

19 ACC: Yes, I did, Your Honor.

20 MJ: Well, why would it be wrong if you were doing what he said
21 and you were trying to help him out and you weren't killing the guy?

1 All you were doing was scaring the guy. Why was it wrong at the
2 time?

3 ACC: I knew it was wrong at the time because I knew it was a
4 form of abuse.

5 MJ: Well, let me ask you this, did you receive any training of
6 how to treat these prisoners?

7 ACC: I didn't receive any training in this.

8 MJ: And prior to this incident, what were the MP's roles with
9 the interrogators? How did you interface with them? Do you
10 understand what I'm saying?

11 ACC: Not really, Your Honor.

12 MJ: Let me back up. You took over as the NCOIC of the hard
13 site mid-October, correct?

14 ACC: Yes, Your Honor.

15 MJ: And during that period of time, did they bring in a number
16 of detainees, or I'm assuming there were some there when you got
17 there?

18 ACC: Yes, Your Honor.

19 MJ: And detainees were coming and going?

20 ACC: Yes, Your Honor.

21 MJ: And then were these detainees being interrogated by others
22 while you were there?

1 ACC: Yes, Your Honor.

2 MJ: What was your role as the NCOIC, and more generally, the MP
3 mission as far as how you worked with the interrogators?

4 ACC: They would tell us what conditions to set for them, whether
5 they keep their clothes, give them cigarettes, things like that, what
6 kind of foods they ate.

7 MJ: Okay, now, did they tell you by specific detainee?

8 ACC: Yes, yes, Your Honor.

9 MJ: So a guy would come in. Now, were these interrogators
10 civilian, military, or some you just don't know what they were?

11 ACC: Exactly, some I didn't know.

12 MJ: And some were military?

13 ACC: Yes, Your Honor.

14 MJ: And some were unidentified in the sense, they could have
15 been military, they could've been something else?

16 ACC: Yes, Your Honor.

17 MJ: I suspect there were all sorts of people floating in and
18 out?

19 ACC: Yes, Your Honor.

20 MJ: And so they would tell you as the NCOIC of the nightshift
21 that detainee one, "We want him to eat MREs instead of hot food," or
22 something like that?

1 ACC: Yes, Your Honor.

2 MJ: And you took this as your role as an MP to set conditions
3 for a subsequent interrogation?

4 ACC: Yes, Your Honor.

5 MJ: So were you, prior to 4 November, used to people coming in
6 you didn't know very well, say, "Set this condition for this
7 detainee, this condition for that detainee"?

8 ACC: Yes, Your Honor.

9 MJ: Now, at any time....

10 ACC: Yes, but nobody ever told me to do "what the fuck I wanted
11 to do."

12 MJ: Okay, that's what I was about to ask you. At any time,
13 were you ever told to do anything like, for example in Specification
14 1 of Charge III of....

15 ACC: No, Your Honor.

16 MJ: ...putting the detainee on the box.

17 ACC: No, Your Honor.

18 MJ: So when you were told to set conditions for the detainee
19 by, generic, I'm going to put these as intelligence folks, and that
20 just covers anybody who may have played an intelligence role there in
21 terms of interrogation, CID, civilians, mystery people or whomever,

1 those people. When they told you to set conditions, did they always
2 tell you what conditions they wanted you to set?

3 ACC: Yes, Your Honor.

4 MJ: And the example you gave earlier was a food change?

5 ACC: Yes, Your Honor.

6 MJ: Was sleep deprivation one of them, too?

7 ACC: Sleep deprivation, loud music.

8 MJ: And so, you were used to getting certain types of direction
9 from people you didn't know very well, or at all for that matter, to
10 set conditions for individual detainees?

11 ACC: Yes, Your Honor.

12 MJ: At any time, did any of these people ever tell you to, for
13 example, strip the detainees?

14 ACC: No, Your Honor.

15 MJ: Now, at any time--let's go back to Specification 4. At any
16 time, did they say anything about putting a hood on a detainee's
17 head--well, were detainees regularly hooded?

18 ACC: Yes, Your Honor, when they came to us they were hooded.

19 MJ: Okay, and after they were in there--were they in individual
20 cells or group cells or a combination?

21 ACC: One Alpha was individual cells.

1 MJ: So the detainees would come in hooded and be put in an
2 individual cell. Is that correct?
3 ACC: Yes, Your Honor.
4 MJ: And then their hoods would be taken off.
5 ACC: Yes, Your Honor.
6 MJ: And then when they were moved outside of the facility, were
7 the hoods put back on?
8 ACC: Yes, Your Honor.
9 MJ: And that was a security issue so they couldn't identify
10 stuff?
11 ACC: Yes, Your Honor.
12 MJ: But inside the facility, were their hoods always off?
13 ACC: Yes, Your Honor.
14 MJ: Except the transit time where it may have been put on when
15 they were leaving or it was still on when they came in.
16 ACC: Yes, Your Honor.
17 MJ: So this one detainee on the 4th of November is standing
18 there holding a box?
19 ACC: Yes, Your Honor.
20 MJ: What was the box?
21 ACC: It was an MRE box.
22 MJ: And what was he doing when you first came in and saw him?

1 ACC: Standing holding the box.

2 MJ: Who else was there?

3 ACC: I believe Corporal Graner was and Specialist Ambuhl.

4 MJ: And this Sergeant [REDACTED]?

5 ACC: Yes, Your Honor. (b)(6)1-(b)(7)(C)1

6 MJ: And Sergeant [REDACTED] came up and told you or said what he

7 said?

8 ACC: Yes, Your Honor.

9 MJ: Now, had anybody ever given you, on these prior occasions,

10 said things like when they're setting conditions, give kind of a

11 blanket, "I don't care what you do, just don't kill him?"

12 ACC: [No verbal response.]

13 MJ: Do you understand my question?

14 ACC: Yes, Your Honor. Nobody told me specifically what to do,

15 but on the 25th of October, I seen military intelligence soldiers

16 involved in some activity that was sexual.

17 MJ: Okay, specifically, what did you see?

18 ACC: I saw them handcuffing nude detainees together that was

19 accused of a rape, throwing a football at them.

20 MJ: And who was doing this?

21 ACC: The two military intelligence soldiers, one was Specialist

22 Cruz. I'm not sure who the other one was.

1 MJ: Were you on duty at the time?

2 ACC: Yes, Your Honor.

3 MJ: And when you saw this, what did you do?

4 ACC: I stood and watched for a few minutes and then I left.

5 MJ: Because the MI people were involved, did you believe this
6 was an authorized interrogation technique? You raised the issue of
7 what happened in October. Do you believe that was an authorized
8 interrogation technique?

9 ACC: I didn't have any idea what was authorized by the MI
10 soldiers.

(b)(1)-(b)(7)(C) 1

11 MJ: So when [REDACTED] told you, "Just don't kill him," and you've
12 seen in previous instances where the MI folks were physically
13 handling the detainees, why would you think what you did with the
14 hood and the wires and anything, because you weren't even--I mean,
15 this wasn't hurting the guy, was it?

16 ACC: Negative, Your Honor.

17 MJ: You're just scaring him.

18 ACC: I just wanted to scare him.

19 MJ: Now at the time, do you think that scaring him like this
20 was wrong?

1 ACC: [Accused conferred with his counsel.] I never saw the MI
2 soldiers doing things that to make the detainees believe that they
3 were about to be killed by electricity or anything like that.

4 MJ: Sergeant Frederick, I want to make something very clear,
5 okay? I understand the charges you're facing today, okay?

6 ACC: Yes, Your Honor.

7 MJ: And I know this has been a long process for you. And I
8 would suspect that your offer to plead guilty is, you want to get
9 this over with with your pretrial agreement. So I understand all
10 that pressure is on you. But all that being put to the side, as I
11 told you before, you only can plead guilty if you believe you are
12 guilty, and nothing else matters. Do you understand that?

13 ACC: Yes, Your Honor.

14 MJ: And I understand, like I said, I understand the pressures
15 on you, and they've been there for a while. But you can't plead
16 guilty unless you believe you are guilty. And to tell you the truth
17 is, I'm not sure you think you are guilty of this offense, because
18 you're telling me that you thought you were helping them. You'd seen
19 MI folks on prior occasions physically mishandle detainees, and all
20 you were doing was scaring this guy to help the interrogation the
21 next day. And are you telling me you knew at the time this was wrong
22 when all you were doing was just scaring this guy when you say other

1 MI folks, you said, mishandle detainees. So are you telling me you
2 knew when you did this with the others, put the hood over his head,
3 put him on the box with the wires, you knew that was wrong even
4 though all you were doing was just trying to scare him?

5 ACC: Yes, Your Honor.

6 MJ: And if you knew it was wrong, why did you do it?

7 ACC: I just wasn't thinking, Your Honor.

8 MJ: Well, you had to be thinking of something to do this to
9 this guy. I mean, this takes a little effort, doesn't it?

10 ACC: Yes, Your Honor.

11 MJ: Now, go through with me exactly...you walked in, step-by-
12 step, you saw the guy holding the box.

13 ACC: Yes, Your Honor. (b)(6); (b)(7)(C) -1

14 MJ: And then [REDACTED] told you what [REDACTED] told you.

15 ACC: Yes, Your Honor.

16 MJ: What happened next?

17 ACC: That's when the wires were placed on him.

18 MJ: Who put the wires on him?

19 ACC: I put one on. Sergeant Davis put one on. Specialist
20 Harman put one on.

21 MJ: And Davis and Harman both worked for you?

22 ACC: Yes, Your Honor.

1 MJ: Then what happened?

2 ACC: Then the wires were removed and I left and went back and
3 finished my security rounds.

4 MJ: What about standing on the box? When did that happen?

5 ACC: That was while he was standing on the box.

6 MJ: You told me you walked in, you saw him holding a box of
7 MREs.

8 ACC: Yes, Your Honor.

9 MJ: I want to go from that point to when you left, exactly
10 everything that happened with this detainee and who did what.

11 ACC: While I was coming--went over and talked to Agent (b)(6), (b)(7)(C), I
12 guess somebody put him on the box.

13 MJ: Okay.

14 ACC: When I came back around, that's when we put the wires on
15 him.

16 MJ: Okay.

17 ACC: And then the wires came off and I left.

18 MJ: And when were the photos taken?

19 ACC: While I was still there.

20 MJ: Who took the photos?

21 ACC: I took one. Specialist Harman took one.

22 MJ: Why did you take photos?

1 ACC: No reason, Your Honor.

2 MJ: Sergeant Frederick, people do things for some reason. Why
3 did you take the photos?

4 ACC: Just to take back home.

5 MJ: I mean, were you going to use them to show other detainees
6 that if they don't cooperate what will happen to them?

7 ACC: No, Your Honor.

8 MJ: And all your previous dealings with the MI folks or any
9 intelligence folks, was taking photographs of the detainees designed
10 to use as an interrogation technique with other detainees?

11 ACC: Not to my knowledge, Your Honor.

12 MJ: Okay, so all these photos, and there's 12 in here and then
13 there's the CD, the DVD, were designed just for personal photos?

14 ACC: Yes, Your Honor.

15 MJ: Now, when you did all this, you said, I'm talking about on
16 the 4th of November, you don't think that just scaring this detainee
17 was helping out the interrogation?

18 ACC: No, Your Honor.

19 MJ: You didn't think it would help out the....

20 ACC: I knew at the time that it wasn't right to do that to the
21 detainee.

1 MJ: Now, Sergeant Frederick, are you telling me that today, on
2 the 20th of October 2004, because you knew on 4 November 2003 it was
3 wrong?

4 ACC: Yes, Your Honor.

5 MJ: You're not telling me that just because you want your
6 pretrial agreement.

7 ACC: No, Your Honor.

8 MJ: So when all these wires were being put on this guy, you
9 knew it was wrong?

10 ACC: Yes, Your Honor.

(b)(6) (b)(7)(C) -1

11 MJ: Despite what Agent ██████ said, you knew you were not
12 authorized to treat a detainee this way?

13 ACC: Yes, Your Honor.

14 MJ: No doubt in your mind.

15 ACC: Yes, Your Honor.

16 MJ: Now, with the detainee on the box with the wires attached
17 to him, what do you think he was thinking at the time?

18 ACC: I guess he thought he was going to be electrocuted or
19 shocked.

20 MJ: If he fell off the box?

21 ACC: Yes, Your Honor.

22 MJ: And then who took all the photographs?

1 ACC: I took one and Specialist Harman took one.

2 MJ: And do you believe all this activity, putting him on the
3 box, telling him he's going to be electrocuted and photographing him
4 in this pose was abusive to this detainee?

5 ACC: Yes, Your Honor.

6 MJ: And again, Sergeant Frederick, you're telling me is at the
7 time, despite what (b)(6) + (b)(7)(C) - 1 aid, and despite earlier, you were allowed
8 to set certain conditions and despite earlier seeing what the MI
9 folks had done, you knew at the time that it was wrong to treat this
10 detainee this way?

11 ACC: Yes, Your Honor.

12 MJ: No doubt in your mind.

13 ACC: No doubt, Your Honor.

14 MJ: Okay, now let's go to the 8th of November. I want to start
15 with the conspiracy specification. First of all, we've talked about
16 some of these people, and I want to get a duty relationship with you
17 and them. You were the NCOIC of the hard site, correct?

18 ACC: Yes, Your Honor.

19 MJ: Who was Specialist--now Sergeant Davis, you told me he
20 worked somewhere else?

21 ACC: 3 Alpha and 3 Bravo, Your Honor.

22 MJ: And what was 3 Alpha and 3 Bravo?

1 ACC: Common criminals.

2 MJ: Was that in the hard site, also?

3 ACC: Yes, Your Honor.

4 MJ: And so he was the NCOIC of 3 Alpha and 3 Bravo.

5 ACC: Yes, Your Honor.

6 MJ: Were you his immediate supervisor?

7 ACC: Yes, Your Honor.

8 MJ: Corporal Graner, you said, was in charge....

9 ACC: 1 Alpha.

10 ACC: 1 Alpha, again, under you?

11 ACC: Yes, Your Honor.

12 MJ: And Harman, what was her role here?

13 ACC: She was a runner.

14 MJ: A runner.

15 ACC: Yes, Your Honor.

16 MJ: She worked for you?

17 ACC: Yes, Your Honor.

18 MJ: How about Ambuhl?

19 ACC: She was in 1 Bravo, Your Honor.

20 MJ: She was the NCOIC--well, she's a specialist, the NCOIC of 1

21 Bravo?

22 ACC: Yes, Your Honor.

1 MJ: So you had Graner and Ambuhl in charge of 1 Alpha and 1
2 Bravo and you were in charge of both of them.

3 ACC: Yes, Your Honor.

4 MJ: And then Davis, somewhere else, was in charge of that. And
5 Specialist Harman was a soldier assisting you, I guess, for want of a
6 better term.

7 ACC: Yes, she worked wherever I needed her to.

8 MJ: And who was Private England?

9 ACC: She was the administration clerk.

10 MJ: And on the 8th of November, did you know who Specialist
11 Sivits was?

12 ACC: Yes, Your Honor.

13 MJ: Now who was Specialist Sivits?

14 ACC: He was the mechanic in our company.

15 MJ: Is he an MP?

16 ACC: No, Your Honor.

17 MJ: But he's a guy you know.

18 ACC: Yes, Your Honor.

19 MJ: And although, did he work for you?

20 ACC: No, Your Honor.

21 MJ: But he was an E4 at the time?

22 ACC: Yes, Your Honor.

1 MJ: And you were an E6 at the time?

2 ACC: Yes, Your Honor.

3 MJ: Now, the seven of you on the 8th of November, were you all
4 at the prison together at Abu Ghraib?

5 ACC: Yes, Your Honor.

6 MJ: Now some time on the 8th of November, whether through words
7 or actions, did the seven of you, that's the six I just talked about
8 and you, decide you were going to abuse the detainees?

9 ACC: In a nonverbal agreement.

10 MJ: Tell me how that came about.

11 ACC: Nonverbal agreement?

12 MJ: Yeah.

13 ACC: We were just all present in 1 Alpha and just took it from
14 there.

15 MJ: And when you say "took it from there," when you--now how
16 did you--and again, Sergeant Frederick, tell me again from the start.
17 On 8 November before you got to 1 Alpha, where were you? Do you
18 remember?

19 ACC: I was in my office or in our company TOC.

20 MJ: And did you happen to run into Sivits somewhere?

21 ACC: Yes, at the company TOC.

22 MJ: Now, that's before anything happened?

1 ACC: Yes, Your Honor.

2 MJ: Now, did you and Sivits then go to 1 Alpha together?

3 ACC: Yes, Your Honor.

4 MJ: And what did you tell Sivits the reason why?

5 ACC: I told him we received seven detainees that were involved
6 in a riot earlier that evening.

7 MJ: Let me go back to a question on the 4 November incident.
8 That detainee, was he a security detainee or common criminal?

9 ACC: He was a CID hold, Your Honor.

10 MJ: Could that be either category, though?

11 ACC: Yes, Your Honor.

12 MJ: So you don't know whether he was a security detainee or a
13 criminal detainee?

14 ACC: On his...it said "CID hold."

15 MJ: But I'm saying, a CID hold, does that tell you which of the
16 other two categories he is?

17 ACC: Yes, Your Honor, military intelligence hold.

18 MJ: Okay, so the CID slash--would necessarily mean a security
19 detainee.

20 ACC: Yes, Your Honor.

1 MJ: Now on the 8th of November, these guys were, for want of a
2 better term, in the common criminal category for rioting somewhere
3 else?

4 ACC: Yes, Your Honor.

5 MJ: Do you know if any of these were security holds at the
6 time?

7 ACC: Not right offhand. I was just told that Camp Ganci was
8 full of--they were all security detainees from my understanding.

9 MJ: But they were brought to your facility because they were
10 rioting somewhere else?

11 ACC: Yes, Your Honor.

12 MJ: Now, was it common practice that when detainees, regardless
13 of their category in another part of the camp act up or cause
14 problems, they're brought to your tier?

15 ACC: Yes, Your Honor.

16 MJ: And is that for security reasons?

17 ACC: Yes, Your Honor.

18 MJ: And to stop the mess wherever it is?

19 ACC: Yes, Your Honor.

20 MJ: So they're not brought in for interrogation, they're
21 brought in, for want of a better term, intra-prison misconduct.

22 ACC: Yes, Your Honor.

1 MJ: Now, I've never worked in a prison, but it would be like in
2 the prison movies where they send a guy down to solitary confinement
3 for hitting a guard?

4 ACC: Yes, Your Honor.

5 MJ: So when they were brought that day, it was unrelated to why
6 they were in the facility to begin with.

7 ACC: Yes, Your Honor.

8 MJ: Simply because they had--your information was they had
9 rioted somewhere else, they wanted them out of there and put in their
10 cells.

11 ACC: Yes, Your Honor.

12 MJ: So in your mind, were these people brought back--were these
13 people brought on the 8th of November to be interrogated or for
14 intelligence value or simply to segregate them because of prison
15 misconduct?

16 ACC: To segregate them for the misconduct.

17 MJ: So you get this report that you've got these guys, you said
18 seven?

19 ACC: Yes, Your Honor.

20 MJ: Were coming over for a rioting somewhere else.

21 ACC: Yes, Your Honor.

1 MJ: And so you take Sivits with you and you go over to the
2 facility.

3 ACC: Yes, Your Honor. I was told also by the escorting officers
4 that they had injured a female soldier during the riot.

5 MJ: During the riot, okay.

6 ACC: Yes, they threw a rock and hit her in the face.

7 MJ: Okay, so you go over there and you see these seven guys
8 there. Is that right?

9 ACC: Yes, Your Honor.

10 MJ: When you walked in there, what were they wearing?

11 ACC: They were wearing civilian clothes.

12 MJ: Were they hooded?

13 ACC: Yes, Your Honor.

14 MJ: Were they zip-tied?

15 ACC: Yes, Your Honor.

16 MJ: Behind their back?

17 ACC: Yes, Your Honor.

18 MJ: And when you got there with Sivits, who else was there?

19 ACC: Sergeant Davis, Specialist Ambuhl, PFC England, Specialist
20 Harman.

21 MJ: Was Graner there?

22 ACC: Yes, Your Honor.

1 MJ: So you and Sivits come up and there was Davis, Graner,
2 Harman, Ambuhl, was England there, too?

3 ACC: Yes, Your Honor.

4 MJ: So there was at least you seven there, seven detainees.
5 Was anybody else there, military--or U.S. forces, and I'm using that
6 term to cover anybody who's a non-detainee.

7 ACC: Sergeant First Class [REDACTED] (b)(6)-2; (b)(7)(C)-2

8 MJ: And who is Sergeant [REDACTED]

9 ACC: He was the NCOIC, my NCOIC.

10 MJ: He was your immediate supervisor.

11 ACC: Yes.

12 MJ: And as the E6, you were in charge of all these people?

13 ACC: Yes, Your Honor.

14 MJ: Although Sivits didn't work for you, were you responsible,
15 I mean, since he's subject to your orders, you being a staff sergeant
16 and him being a specialist, correct?

17 ACC: Yes, Your Honor.

18 MJ: And why did you bring Sivits with you?

19 ACC: He was working generator duty that night and he was tired
20 in the company TOC and getting bored. So I told him to come and help
21 me. He asked me if he could come and help me escort the detainees,
22 and I said, if he wanted to.

1 MJ: And when you say "escort the detainees," I thought the
2 detainees were already there.

3 ACC: They were in the holding cell up near the office.

4 MJ: Is that a larger cell?

5 ACC: Yes, Your Honor.

6 MJ: And then, normally, how do they process from the holding
7 cell into the other cells?

8 ACC: We escort them down wherever they go.

9 MJ: Okay, pick another day. A detainee had a problem in
10 another part of the installation, was brought to your holding cell.
11 Walk me through your normal procedure of how you're supposed to treat
12 these guys when they come in in those circumstances.

13 ACC: We'd have them in a holding cell, escort him to
14 his...wherever there's space available. He goes to 1 Alpha or 1
15 Bravo or into common criminals.

16 MJ: Now, is 1 Alpha and 1 Bravo, is that segregated by--which
17 classification are we talking about here?

18 ACC: Yes, Your Honor, it's individual cells.

19 MJ: No, but what I mean by that, is 1 Bravo for security and 1
20 Alpha for common criminals, or is it just what's available?

21 ACC: Both the same.

22 MJ: So space available.

1 ACC: Yes, Your Honor.

2 MJ: You got a cell available, okay. So the average guy comes
3 in, now, the average prison misconduct guy is what I'm talking about,
4 when they come into this holding cell, are they hooded and zip-tied
5 at that point?

6 ACC: Yes, Your Honor.

7 MJ: And then they're walked down to where there are spaces for
8 them and put in a cell.

9 ACC: No, before we do that, we perform a complete strip search
10 of them.

11 MJ: They're in a holding cell, and do you take their hood and
12 unzip tie them at that point?

13 ACC: Yes, Your Honor, unless they go to 1 Alpha or 1 Bravo and
14 we did it all down there. We do the strip search and take the flex
15 cuffs off.

16 MJ: In this case on the 8th of November, where were these seven
17 guys when you first saw them?

18 ACC: In the holding cell.

19 MJ: Is the holding cell collocated with 1 Alpha and 1 Bravo?

20 ACC: No, at the opposite end.

21 MJ: Okay, and how do you go from the holding cell into the
22 tiers?

1 ACC: Walk down the hallway and turn left and walk down another
2 hallway.

3 MJ: And how long a walk does that take?

4 ACC: Approximately 2 minutes.

5 MJ: When you saw them in the holding cell then, that's the
6 first time you saw these seven guys?

7 ACC: Yes, Your Honor.

8 MJ: And at that time, were they still zip tied and hooded?

9 ACC: Yes, Your Honor.

10 MJ: What happened next with these seven guys on the 8th of
11 November?

12 ACC: We all escorted them down to 1 Alpha.

13 MJ: But I thought you were supposed to check them out in the
14 holding cell before you moved them.

15 ACC: Strip search?

16 MJ: Yeah.

17 ACC: The people that we took down to 1 Alpha or 1 Bravo, we did
18 all the strip searching and everything down there. The common
19 criminals, we did right there in the holding cell.

20 MJ: But these guys fall in the common criminal category,
21 correct?

22 ACC: They were going to 1 Alpha and 1 Bravo.

1 MJ: Oh, okay, so what you're saying, if you're going to 1 Alpha
2 or 1 Bravo, you do the strip search there as opposed to everybody
3 else, you do at the holding cells.

4 ACC: Yes, Your Honor.

5 MJ: Now, who took these guys down from the holding cell to
6 the--did you go to 1 Alpha or 1 Bravo?

7 ACC: 1 Alpha, Your Honor.

8 MJ: Who took them from the holding cell to 1 Alpha?

9 ACC: Myself, Specialist Sivits, Sergeant Davis, Staff Sergeant
10 [REDACTED] and I think Sergeant First Class [REDACTED] (b)(6)-2; (b)(7)(C)-2

11 MJ: So you get down to 1 Alpha with these guys. What happens
12 next?

13 ACC: They were all throwed [sic] in a pile, and that's when
14 Sergeant Davis began jumping on the pile.

15 MJ: They come in there. What happens to Sergeants [REDACTED] and
16 [REDACTED] (b)(6)-2, (b)(7)(C)-2

17 ACC: Sergeant [REDACTED] went up to the top tier, and Sergeant
18 [REDACTED] left, I believe.

19 MJ: And [REDACTED] was your boss?

20 ACC: Yes, Your Honor.

1 MJ: These guys come in. Now, when you say the top tier, is
2 this an open tier situation where the guy on the top tier can see
3 down to where you are?

4 ACC: Yes, Your Honor.

5 MJ: And Sergeant First Class (b)(6)(b)(7)(C)-2 is up there?

6 ACC: Yes, Your Honor.

7 MJ: How did these guys get in a pile?

8 ACC: I didn't see that part, sir. I was still walking my last
9 two down.

10 MJ: And what kind of pile are we talking about there?

11 ACC: They were just laying in a pile on the floor.

12 MJ: Were they clothed?

13 ACC: Yes, Your Honor.

14 MJ: Were they still zip tied?

15 ACC: Yes, Your Honor.

16 MJ: Still hooded?

17 ACC: Yes, Your Honor.

18 MJ: What happened next while they were in a pile?

19 ACC: That's when we stood them up, or Sergeant Davis ran across
20 the--took a couple steps and jumped on them in the middle of the
21 pile.

1 MJ: Was that the first mistreatment of these detainees that you
2 observed at that time?

3 ACC: Yes, Your Honor.

4 MJ: What did you do when Sergeant Davis did that?

5 ACC: Nothing. I should have stopped it right there.

6 MJ: And why did Sergeant Davis do that, do you know?

7 ACC: I have no idea, sir.

8 MJ: Was he laughing?

9 ACC: Sort of, sir.

10 MJ: So he jumped in this pile, and you see that--and that's the
11 first instance of abuse that you see?

12 ACC: Yes, Your Honor.

13 MJ: And we're going to get to the dereliction charge in a
14 minute. But as the NCOIC and as a military policeman, quite frankly,
15 just as a soldier, was it your responsibility to stop it?

16 ACC: Yes, Your Honor.

17 MJ: Did you stop it?

18 ACC: No, Your Honor.

19 MJ: Did you make a conscious decision not to stop it?

20 ACC: No, Your Honor.

21 MJ: No, I'm saying, you could have stopped it, right?

22 ACC: I could have, but I didn't.

1 MJ: Chose not to. In fact, you chose to join in?
2 ACC: Yes, Your Honor.
3 MJ: What happened next? Sergeant Davis jumps on these guys in
4 a pile, what happens next?
5 ACC: One of them stood up and that's when we started strip
6 searching them. We stood them up one at a time.
7 MJ: Now you told me earlier though, strip searching was
8 authorized.
9 ACC: Yes, Your Honor.
10 MJ: And when you strip search somebody, after you see that they
11 have nothing on them and you've completed it, what are you supposed
12 to do next?
13 ACC: After we strip search them?
14 MJ: You've got a naked detainee. A naked detainee has been
15 searched. What is the next thing you do with that naked detainee,
16 you're supposed to do?
17 ACC: Give him clothes, a jumpsuit.
18 MJ: Now you said, after Davis jumps on the pile, what happened
19 next, you started strip searching them?
20 ACC: Yes, we stood them up and we began taking the flex cuffs
21 off.
22 MJ: And did you do them all at one time?

1 ACC: Not one at a time--or yes, one at a time.

2 MJ: But at this point, that's in accordance with your SOP with
3 detainees.

4 ACC: Yes, Your Honor.

5 MJ: Now you have three females there, Sergeant Frederick?

6 ACC: Yes, Your Honor. I'd like to say, we didn't have no SOP.
7 That was just....

8 MJ: You used the people you had, if it had to be females with
9 males, that's the way it went.

10 ACC: Yes, mostly males went on males. Females did females.

11 MJ: But in this case, you had some females there who were
12 seeing these guys naked?

13 ACC: Yes, Your Honor.

14 MJ: So, Davis jumps on them, then you start doing your
15 authorized strip search.

16 ACC: Yes, Your Honor.

17 MJ: What happened next?

18 ACC: That's when I was going to strip search, I stood him up and
19 I punched him in the chest.

20 MJ: Why'd you do that?

21 ACC: I was just angry because they told me he was the
22 ringleader. He hit a female soldier in the face with a rock.

1 MJ: And you meant to punch him in the chest?

2 ACC: Yes, Your Honor.

3 MJ: Now, you were angry, you said, because of what he had
4 done--what he had done earlier, correct?

5 ACC: Yes, Your Honor.

6 MJ: And the conditions at that time at the prison, was there a
7 lot of abuse of guards by prisoners?

8 ACC: Not to my knowledge, sir.

9 MJ: So you were angry at this guy throwing a rock at a female
10 soldier, so you hit him. When did you first find out about the rock
11 throwing incident?

12 ACC: When the escorting officers and soldiers brought him up to
13 the hard site facility.

14 MJ: And the time from when you first heard about it to when you
15 actually punched the guy, about how much time elapsed?

16 ACC: Probably 30 minutes, because I went over to the TOC to get
17 things straight.

18 MJ: And although you were upset, angry, mad at what he had done
19 to a fellow soldier, did that justify your hitting him?

20 ACC: No, Your Honor.

21 MJ: Why do you say that?

1 ACC: Because I don't have no legal justification to hit anybody
2 unless I'm being assaulted first.

3 MJ: And did this guy do anything to you?

4 ACC: No, Your Honor.

5 MJ: At the time you hit him, was he naked?

6 ACC: No, Your Honor.

7 MJ: He was still clothed?

8 ACC: Yes, Your Honor.

9 MJ: Still zip tied?

10 ACC: No, Your Honor.

11 MJ: He wasn't zip tied. Was his hood still on his head or hood
12 taken off?

13 ACC: The hood was on, Your Honor.

14 MJ: So he had his hands free, because the process was beginning
15 at this point with him?

16 ACC: Yes, Your Honor.

17 MJ: And this was the guy you said you were in charge of.

18 ACC: Yes, Your Honor.

19 MJ: So the hands were free but the hood was still on, and
20 that's when you hit him in the chest.

21 ACC: Yes, Your Honor.

22 MJ: What did he do after you hit him in the chest?

1 ACC: He kind of slumped down and sat down on his knees and he
2 made a motion with his hands for an inhaler. So, we retrieved an
3 inhaler and he took a few puffs off of it and he was fine. And I
4 called for medical personnel to help.

5 MJ: Did a medic come?

6 ACC: Yes, Your Honor.

7 MJ: And what happened with the medic?

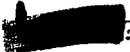
8 ACC: She said he was fine, that he had had--had faked seizure--
9 or breathing problems a lot of times.

10 MJ: Okay. And at this point, then the medic left?

11 ACC: Yes, Your Honor.

12 MJ: Was anything going on when the medic was there, as far as
13 mistreating the detainee?

14 ACC: Not that I know of, Your Honor.

15 MJ: Now, whatever happened to Sergeant First Class ? You
16 said he was on the top tier.

17 ACC: He was still on the top tier.

18 MJ: Did he see you slug this guy?

19 ACC: I don't believe so, Your Honor.

20 MJ: Did he see Davis jump on the pile?

21 ACC: Yes, Your Honor.

22 MJ: And what did he do when he saw Davis jump on the pile?

1 ACC: He told Sergeant Davis that was enough.

2 MJ: So your boss, the senior noncommissioned officer, as soon
3 as he saw Davis do that, he said, "Enough"?

4 ACC: Yes, Your Honor, after he stomped on their hands.

5 MJ: I'm sorry?

6 ACC: After Sergeant Davis stomped on their feet and hands a
7 couple times and he jumped on them a couple times, jumped on the pile
8 and he told Sergeant Davis that was enough. (b)(6)-2, (b)(7)(C)-2

9 MJ: Did you think that when Sergeant [REDACTED] said that was
10 enough, that was, "What you've done so far is okay, don't do
11 anymore," or "This is a no-go from the start."

12 ACC: This is a no-go from the start, Your Honor.

13 MJ: And you knew that from your training, too.

14 ACC: Yes, Your Honor.

15 MJ: So, Davis does what he does, then you slug the detainee.

16 Is that about the sequence of the mistreatment?

17 ACC: Yes, Your Honor.

18 MJ: What happened next?

19 ACC: We began a strip search. We had all of them strip searched
20 and Corporal Graner put them in a pyramid.

21 MJ: Now, up to the point, ignoring what Davis had done and
22 ignoring...well, putting aside what Davis had done and putting aside

1 what you did with hitting that detainee, you were supposed to strip
2 search them to see if they had any contraband or anything like that,
3 correct?

4 ACC: Yes, Your Honor.

5 MJ: And when you get done with that, you put clothes on him and
6 put them in the cell. That's what you're supposed to do.

7 ACC: Yes, Your Honor.

8 MJ: Instead of that, Graner puts them in a pile?

9 ACC: Yes, Your Honor.

10 MJ: And this is the pyramid pile of naked detainees that we've
11 seen the pictures of?

12 ACC: Yes, Your Honor.

13 MJ: As he's doing that, what are you doing?

14 ACC: I'm sorry....

15 MJ: Are you stopping him?

16 ACC: No, Your Honor.

17 MJ: Encouraging him?

18 ACC: No, Your Honor.

19 MJ: But doing nothing to stop him.

20 ACC: No, Your Honor.

21 MJ: At that point, were you in your mind, agreeing with this
22 mistreatment of the detainees?

1 ACC: Yes, Your Honor.

2 MJ: And at that point, it was you and Davis and Graner that
3 were part of this nonverbal agreement?

4 ACC: Yes, Your Honor.

5 MJ: What happened next after that?

6 ACC: After that, that's when they stood them against the wall
7 and I told one of them to masturbate and he did.

8 MJ: Okay.

9 ACC: I grabbed a hold of his arm by the elbow, put it on his
10 genitals and moved it back and forth, gave him the hand motion.

11 MJ: And at the time, who was all there? Was Graner, Ambuhl and
12 England there?

13 ACC: Ambuhl was upstairs in the office. England was there.

14 MJ: Graner was still there?

15 ACC: Graner was still there.

16 MJ: Okay, you had him put his hand on his penis and masturbate?

17 ACC: Yes, Your Honor.

18 MJ: And this was in the public corridor?

19 ACC: Yes, Your Honor.

20 MJ: Were the other detainees still hooded at this time or un-
21 hooded?

22 ACC: They were still hooded.

1 MJ: So was the guy you were having masturbate hooded or un-
2 hooded?
3 ACC: He was hooded.
4 MJ: Otherwise totally naked?
5 ACC: Yes, Your Honor.
6 MJ: So, who could see this guy as you're having him masturbate?
7 ACC: Just myself, Graner, England and Sergeant Davis came back
8 down later.
9 MJ: And they saw you do this?
10 ACC: Yes, Your Honor.
11 MJ: Did Ambuhl play any role whatsoever in this incident?
12 ACC: No, Your Honor.
13 MJ: Did she see you do it?
14 ACC: Not to my knowledge, no.
15 MJ: Now, by making this--now, did anybody take pictures of
16 this?
17 ACC: Yes, Your Honor.
18 MJ: Who was that?
19 ACC: England took one, Harman took one, I took one. I believe
20 Sivits took one, Davis took one.

1 MJ: Now, do you believe your act by having him masturbate in
2 public with people taking pictures and female soldiers present that
3 all this taking in total was indecent?

4 ACC: Yes, Your Honor.

5 MJ: Why do you say that?

6 ACC: Because it's against my morals.

7 MJ: But do you believe that this is a form of immorality which
8 is grossly vulgar?

9 ACC: Yes, Your Honor.

10 MJ: Did you have any reason to do this to this guy?

11 ACC: No, Your Honor.

12 MJ: Why did you do it?

13 ACC: Just to humiliate him.

14 MJ: At this point, that's where you're at, the series of events
15 that occurred. There was no--was there anybody like Sergeant [REDACTED]
16 or anybody to tell you to do this to these guys?

(b)(6)-1;
(b)(7)(C)-1

17 ACC: No, Your Honor.

18 MJ: In your own mind, were you in any way setting conditions
19 for interrogation?

20 ACC: No, Your Honor.

21 MJ: These guys weren't even going to be interrogated you told
22 me, right?

1 ACC: Not to my knowledge.

2 MJ: I mean, if anything, interrogated about the riot maybe, but
3 not as a security detainee.

4 ACC: I was told that they had--from my impression, they were
5 going to be interrogated because they had information about escapes
6 that happened a day or two before.

7 MJ: But do you believe when you were treating them this way
8 that this in any way was setting conditions----

9 ACC: No, Your Honor.

10 MJ: You knew it was wrong at the time?

11 ACC: Yes, Your Honor.

12 MJ: And by having this guy masturbate in a public corridor in
13 front of soldiers and having him photographed, do you believe that
14 conduct is prejudice to good order and discipline?

15 ACC: Yes, Your Honor.

16 MJ: Why do you say that?

17 ACC: Because it's just not of the values. It's immoral.

18 MJ: And as the NCOIC, what was your job with regards to
19 standards?

20 ACC: To enforce good order and discipline, myself and my----

21 MJ: And do you think this conduct brings discredit upon the
22 armed forces?

1 ACC: Yes, sir.

2 MJ: Why do you say that?

3 ACC: Because it makes the Army look bad, makes the U.S. look
4 bad.

5 MJ: Okay, now, we've talked about Davis. We've talked about
6 Graner. What was Sivits doing during this scenario?

7 ACC: Sivits had left before that----

8 MJ: No, but I want to back up. I got a little ahead of myself
9 because you mentioned the masturbation incident. I want to back up
10 to the point you and Sivits walked in, and you said the first thing
11 you saw was Davis jumping on the pile and stomping on hands.

12 ACC: Yes, Your Honor.

13 MJ: And instead of stopping it, you started joining in.

14 ACC: Yes, Your Honor.

15 MJ: What was Sivits doing when he was still there?

16 ACC: He was laughing at the pyramid and he was taking the
17 handcuffs off of--yeah, the flex cuffs off of one detainee.

18 MJ: Do you think by his actions he was joining in with your
19 guys in maltreating these guys?

20 ACC: Yes, Your Honor.

21 MJ: How about Harman? What about Harman? What did she do?

1 ACC: She wrote on the guy's leg that he was a rapist and she
2 took a picture.

3 MJ: Do you believe those acts of her were both maltreatment and
4 showed that she was part of....

5 ACC: Yes, Your Honor. Her and Specialist Ambuhl had left during
6 this whole situation.

7 MJ: But at one point, they participated?

8 ACC: They were there, yes. They had left the sexual scene
9 incident.

10 MJ: But had they left--was the first thing the pyramid of naked
11 detainees?

12 ACC: Yes, Your Honor.

13 MJ: And there were photographs taken of that?

14 ACC: Yes, Your Honor.

15 MJ: At the time those photographs were taken, were all these
16 people still there?

17 ACC: All but Ambuhl, I believe.

18 MJ: Where did Ambuhl go?

19 ACC: She was upstairs in the office.

20 MJ: Did she participate in this at all?

21 ACC: No, Your Honor.

22 MJ: How about England? What was her role?

1 ACC: She was just laughing and doing whatever Specialist Graner
2 would tell her to.

3 MJ: What's the relationship between Graner and England?

4 ACC: They were a couple, boyfriend and girlfriend.

5 MJ: When you say telling her what to do, in the terms of a
6 military sense or just because of their personal relationship?

7 ACC: A little bit of both, Your Honor.

8 MJ: And so she was laughing and joking as this was going on,
9 too?

10 ACC: Yes, Your Honor.

11 MJ: Was she encouraging everybody else to do this by that
12 action?

13 ACC: No, Your Honor.

14 MJ: But I'm saying, by laughing and joking, was she a military
15 police person, also?

16 ACC: No, she's an admin clerk.

17 MJ: Did she participate in this maltreatment?

18 ACC: Yes, sir.

19 MJ: What did she do?

20 ACC: She stood and watched and had a photo taken with a couple
21 of the detainees.

1 MJ: And so the actions of all these people, did anybody say,
2 "Let's go abuse these detainees?"
3 ACC: No, Your Honor.
4 MJ: But once Davis started the abuse, did all these, except for
5 Ambuhl, five other people join in to the agreement?
6 ACC: Yes, Your Honor.
7 MJ: And by doing that, do you believe there was an agreement by
8 action to maltreat these detainees?
9 ACC: Yes, Your Honor.
10 MJ: And again, these are detainees subject to orders of all
11 these people, correct?
12 ACC: Yes, Your Honor.
13 MJ: And even Specialist Sivits, the generator operator or
14 mechanic, he could tell these detainees what to do?
15 ACC: Yes, Your Honor.
16 MJ: Okay, did you photograph the pyramid of naked detainees?
17 ACC: One from the front.
18 MJ: And do you believe that by doing that that was a form of
19 maltreatment?
20 ACC: Yes, Your Honor.
21 MJ: Why do you say that?
22 ACC: Because we're not allowed to take photos of detainees.

1 MJ: Do you think the detainees, knowing their photos were
2 taken, would cause them to suffer harm?

3 ACC: Yes, Your Honor.

4 MJ: At least emotional, psychological harm?

5 ACC: Yes, Your Honor.

6 MJ: Why do you say that?

7 ACC: Because that's just immoral. They would look down upon the
8 Army.

9 MJ: Now, did you have any lawful purpose in treating the
10 detainees this way on the 8th of November?

11 ACC: No, Your Honor.

12 MJ: No setting conditions for an interrogation?

13 ACC: No, Your Honor.

14 MJ: Any MI, CID, anybody tell you to do this?

15 ACC: No, Your Honor.

16 MJ: Once Davis started, it just seemed like a good idea.

17 ACC: Yes, Your Honor.

18 MJ: Although you may have been upset with what they'd done
19 before, do you believe that their conduct in the other parts of the
20 prison justified your actions on the 8th of November?

21 ACC: No, Your Honor.

1 MJ: Now, did you tell the detainees to masturbate in front of
2 other detainees?

3 ACC: Yes, Your Honor.

4 MJ: In your own words, tell me how that happened.

5 ACC: I just grabbed a hold of one--three of them were standing
6 up. I grabbed a hold of his arm by the elbow and I stuck it on his
7 penis and moved it back and forth. I lifted his hood and gave him a
8 hand gesture and he just continued to do it.

9 MJ: Did you tell other detainees to do the same thing?

10 ACC: Two others.

11 MJ: And were their hoods still on at the time when they were
12 doing this?

13 ACC: Yes, Your Honor.

14 MJ: Were there other soldiers there? All these other people--
15 well, who was still there at that point?

16 ACC: Myself, Specialist Graner, Specialist England, and Sergeant
17 Davis came back down.

18 MJ: You mean Private England?

19 ACC: Yes, Your Honor.

20 MJ: I just want to make sure we're talking about the same
21 person, okay. But earlier, when you ordered them to strip, was

1 that--you told me that part, at least, was SOP with nude detainees
2 being inprocessed to your tier, correct?

3 ACC: Yes, Your Honor, even though we didn't have an SOP, that
4 was....

5 MJ: That was the practice, though.

6 ACC: Yes, Your Honor.

7 MJ: And do you believe it was wrong to tell them to strip to
8 look for weapons?

9 ACC: No, Your Honor.

10 MJ: Okay, now let's go forward to the 28th of November. Were
11 you still the NCOIC there of the hard site?

12 ACC: Yes, Your Honor.

13 MJ: I'm talking about 2003 now.

14 CDC: Your Honor, if I could have a moment. [Accused conferred
15 with his counsel.]

16 ACC: Your Honor?

17 MJ: Yeah.

18 ACC: After I left the masturbation scene is when I left the area
19 to go and get some jumpsuits for the detainees.

20 MJ: Okay.

21 ACC: I went back to my office, so I was not there for the
22 simulated fellatio scenes, but I did see it when I came back down

1 with the jumpsuits and that's when I decided to put them in their
2 cells.

3 MJ: Okay, when you got back, that's when the simulated fellatio
4 scenes were going on?

5 ACC: Yes, Your Honor.

6 MJ: Did you stop them?

7 ACC: Yes, Your Honor.

8 MJ: What did you say?

9 ACC: I didn't say anything. I just went and got Specialist
10 Graner and put them in their--started taking them to their cells.

11 MJ: Okay, now tell me what happened on the 28th of November
12 2003.

13 ACC: That's when I posed for a photograph squatting on top of a
14 detainee.

15 MJ: Back up here, Sergeant Frederick. Who was this detainee on
16 the 28th of November 2003?

17 ACC: This detainee was a clearly mental detainee.

18 MJ: Mental as in not hitting on all eight?

19 ACC: He wasn't hitting on any, sir.

20 MJ: Okay. So, was he there for his own protection?

21 ACC: Yes, Your Honor.

22 MJ: To keep an eye on him?

1 ACC: Yes, Your Honor, to keep him from getting shot again.

2 MJ: How did he get shot before?

3 ACC: He was standing by the fence sitting at one of the other
4 camps and he didn't understand English so they had to take the time
5 to go get an interpreter because they told him to move and he didn't
6 move so they shot non-lethal rounds. That was what was told to me.

7 MJ: Okay, and when did you first meet this guy?

8 ACC: Probably around the middle of....

9 MJ: Of November?

10 ACC: Yes, Your Honor.

11 MJ: And he was put in your area until they could figure out
12 what to do with him?

13 ACC: Yes, Your Honor.

14 MJ: I'm assuming there wasn't much mental health facilities in
15 this prison?

16 ACC: No, Your Honor. And I immediately told him after the first
17 couple days and witnessed things that he had done, I told him that he
18 needs to be removed, that we had no means necessary to control this
19 inmate.

20 MJ: When you say "things he had done," what are the things he
21 had done?

1 ACC: He had broken seven sets of handcuffs. I couldn't keep him
2 in jumpsuits because there was not enough to go around.

3 MJ: How did he break the handcuffs?

4 ACC: I have no idea, Your Honor. He broke them and came out of
5 them and tried to escape a couple times.

6 MJ: When you say he broke them, he broke the chain in between?

7 ACC: No, he bent the bars themselves, somehow.

8 MJ: As an aside, is that----

9 ACC: I called him--I nicknamed him the Iraqi Houdini.

10 MJ: Okay. It's not one of these Army bought items that's
11 really cheap?

12 ACC: No, Your Honor.

13 MJ: Just one guy had figured it out.

14 ACC: Yes, Your Honor.

15 MJ: He had other problems, but this thing he could solve.

16 ACC: Yes, Your Honor.

17 MJ: So, on the 28th of November, this was a difficult to
18 control individual I suspect.

19 ACC: Yes, Your Honor, very difficult.

20 MJ: And as a general rule, you just left him in a cell and left
21 him alone?

1 ACC: Yes, Your Honor. We checked on him every once in a while.
2 Several times, I couldn't keep a jumpsuit on him because there's not
3 enough to go around. There's no washing facility. He would defecate
4 on his bed, in his jumpsuit. He would [phone rings in courtroom]...

5 MJ: Just a second. [Pause.] So on the 28th of November, did he
6 somehow get bound between two litters?

7 ACC: Yes, Your Honor.

8 MJ: Okay, how did that come about?

9 ACC: I had exhausted all means necessary to keep him from
10 inserting certain objects in his rectum and escaping. And I had
11 asked and asked several times my superiors and my chain of command,
12 we need some way to control him, and no means was ever given to me.

13 MJ: Okay.

14 ACC: So this was like the last resort. Specialist Graner said
15 that they used this sort of thing in the Department of Corrections in
16 Pennsylvania. And I said, "Well, it's worth a try."

17 MJ: Had you ever seen it in your experience as a corrections
18 officer?

19 ACC: Not exactly that way, but similar.

20 MJ: So what did you guys do to him?

21 ACC: We took one of the mattresses, cut a hole in it and draped
22 it over him, put a waist chain around his waist, flex cuffed his

1 elbows to the waist chain, and then put him between two litters and
2 secured it with a nylon strap. And he came out of that within 30
3 minutes.

4 MJ: And you put him in this condition basically for his own
5 self protection?

6 ACC: Yes, Your Honor.

7 MJ: So at this point, what you're doing is you're trying to
8 take care of this guy.

9 ACC: Yes, Your Honor.

10 MJ: Protect him from himself.

11 ACC: Yes, Your Honor.

12 MJ: And Graner said, "Here's an idea," was it Graner or Davis?
13 I'm sorry.

14 ACC: Graner, sir.

15 MJ: Graner said, "Here's an idea," and as the NCOIC, "Well,
16 we've gotta make do with what we got," and that's what you chose to
17 do.

18 ACC: Yes, Your Honor, that's the only thing we could do.

19 MJ: So up to this point, what you did to him, in your own mind
20 at the time, was okay?

21 ACC: Yes, Your Honor.

1 MJ: Unusual, but it's a field environment, you've got to kind
2 of make field expedient solutions to tough problems.

3 ACC: Yes, Your Honor.

4 MJ: Where did you go wrong?

5 ACC: When I took the photograph squatting over the top of him.

6 MJ: Was he lying on the ground in his cell?

7 ACC: No, he was in between the cells.

8 MJ: Out in the open area between the cells?

9 ACC: Yes, Your Honor.

10 MJ: And that's where you'd....

11 ACC: That's where we put everything on him.

12 MJ: And at that time, instead of just putting him back in the
13 cell, hopefully where he wouldn't hurt himself, you did what?

14 ACC: We just left him there on the floor where we could observe
15 him.

16 MJ: Okay, so you left him in the middle for a reason to observe
17 him.

18 ACC: Yes, Your Honor.

19 MJ: But I'm saying is, how did you get on top of him?

20 ACC: When I was tightening down the last strap.

21 MJ: And when you say you squatted on him, what do you mean?

22 ACC: I didn't put my entire weight on him.

1 MJ: And why did you do that?

2 ACC: Just took a picture after I was done tightening the last
3 strap.

4 MJ: Who took the picture?

5 ACC: Specialist Graner.

6 MJ: Did you tell Graner to take the picture?

7 ACC: Yes.

8 MJ: And why did you want him to take a picture?

9 ACC: Basically, that one was to show what I had to do to finally
10 control him.

11 MJ: So what did you do that was wrong?

12 ACC: When I had the photograph taken.

13 MJ: Why? Why is that wrong?

14 ACC: Because I guess it could be used as a war trophy or....

15 MJ: Now, you use all sorts of things for all sorts of reasons.
16 But what you're telling me is you put him in this position for his
17 own safety, right?

18 ACC: Yes, Your Honor.

19 MJ: And you had Graner take a picture, was it Graner? I'm
20 sorry....

21 ACC: Yes, Your Honor.

1 MJ: You had Graner take a picture of you over him to show what
2 you needed to do to take care of this kid, or this guy, true?
3 ACC: Yes, Your Honor.
4 MJ: And the fact that it may be misused in some other ways
5 where you don't have the context of it, it seems to me that the
6 picture was taken as some kind of a training aid for others.
7 ACC: It was just wrong to pose with the detainee between----
8 MJ: Why?
9 ACC: Because I could've done the same thing without me in the
10 picture.
11 MJ: And you think by you being in the picture somehow made it
12 wrong?
13 ACC: Yes, Your Honor.
14 MJ: How does that maltreat the detainee? What difference was
15 it to him whether you were in the picture or not?
16 ACC: With me squatting over the top of him.
17 MJ: Why would that cause him problems?
18 ACC: It's very humiliating to be seen by the Arab nation.
19 MJ: Did he know you were on top of him?
20 ACC: Yes, Your Honor.
21 MJ: He wasn't hooded or anything like that?
22 ACC: No, Your Honor.

1 MJ: Did he know his picture was being taken?
2 ACC: Yes, Your Honor.
3 MJ: It was a flash?
4 ACC: Yes, Your Honor.
5 MJ: So in that entire context, do you believe that that was
6 maltreating the detainee?
7 ACC: Just the picture taking.
8 MJ: The picture taking part of it is what I'm talking about.
9 ACC: Yes, Your Honor.
10 MJ: Because if you wanted to do it just for a training
11 technique, you were telling me you could have simply had him take a
12 picture of him without you on top of him.
13 ACC: Yes, Your Honor.
14 MJ: And at the time you did that, did you know it would hurt
15 the detainee psychologically by having your picture taken in that
16 position on top of him?
17 ACC: Yes, Your Honor.
18 MJ: You knew it was wrong?
19 ACC: Yes, Your Honor.
20 MJ: Why did you do it?
21 ACC: Just to humiliate--not to humiliate him, just to take a
22 picture just to show what we had to finally do to try to control him.

1 Where I went wrong was I was in the picture squatting over the top of
2 him.

3 MJ: Okay, and my question is, you wanted to show how you had to
4 handle this guy because of all the difficulties.

5 ACC: Yes, Your Honor.

6 MJ: And that's why you wanted to take a picture of this.

7 ACC: Yes, Your Honor.

8 MJ: But what you're telling me is, that was okay, what was
9 wrong was you being in the picture when this was going on.

10 ACC: I was not supposed to be taking photographs of detainees.

11 MJ: At all.

12 ACC: At all.

13 MJ: But, why was it....

14 ACC: I could've taken a picture of just him without me in the
15 picture.

16 MJ: I understand that, and--well, first of all, where was the
17 picture going?

18 ACC: I was going to show it to my chain of command.

19 MJ: And why do you think that by his picture being taken with
20 you on top was wrong?

21 ACC: Because it would make the Arab nation...it serves to demean
22 him individually.

1 MJ: Do you think he took this demeaning?
2 ACC: Yes, Your Honor.
3 MJ: By you being on top and him being photographed?
4 ACC: Yes, Your Honor.
5 MJ: No doubt in your mind of that?
6 ACC: No, Your Honor.
7 MJ: Did you know it was wrong at the time?
8 ACC: Yes, Your Honor.
9 MJ: Now during the course of all of these events, there's a lot
10 of photographs taken, right?
11 ACC: This night?
12 MJ: Well, this night and the two other instances.
13 ACC: Yes, Your Honor.
14 MJ: Because I have three instances we've talked about.
15 ACC: Yes, Your Honor.
16 MJ: 4 November, 8 November, 28 November.
17 ACC: Yes, Your Honor.
18 MJ: And all these pictures were being taken.
19 ACC: Yes, Your Honor.
20 MJ: Some by you, some by Graner, and some by other people.
21 ACC: Yes, Your Honor.

1 MJ: In your mind, what were these pictures going to be used
2 for?

3 ACC: Just to take home.

4 MJ: Was there any official purpose for doing this?

5 ACC: No, Your Honor.

6 MJ: Were they going to be given to the MI folks to show to
7 other detainees to get them to talk?

8 ACC: No, Your Honor.

9 MJ: I think you just told me, you weren't supposed to take
10 pictures of these guys at all.

11 ACC: Yes, Your Honor.

12 MJ: You understood that?

13 ACC: Yes, Your Honor.

14 MJ: But you took them anyway.

15 ACC: Yes, Your Honor.

16 MJ: So you knew it was wrong to take these pictures?

17 ACC: Yes, Your Honor.

18 MJ: Did you know it was wrong for other people to take these
19 pictures?

20 ACC: Yes, Your Honor.

21 MJ: Now, when did you come to the correctional facility?

22 ACC: Approximately the 9th or 10th--around the 12th of October.

1 MJ: Now, from 20 October '03 to on or about 1 December '03,
2 were you working in the facility?
3 ACC: Yes, Your Honor.
4 MJ: And you were the NCOIC of the hard site?
5 ACC: Yes, Your Honor.
6 MJ: During that period of time, did you see and participate in
7 the abuse of detainees?
8 ACC: Yes, Your Honor.
9 MJ: What we've already talked about.
10 ACC: Yes, Your Honor.
11 MJ: And your job as a military policeman and the senior NCO of
12 the nightshift, did you have a responsibility--let me rephrase that,
13 did you have a duty to prevent the abuse of these detainees?
14 ACC: Yes, Your Honor.
15 MJ: Did you know you had that duty?
16 ACC: Yes, Your Honor.
17 MJ: On the 20th of October, did you know your duty included to
18 make sure the detainees weren't abused?
19 ACC: Yes, Your Honor.
20 MJ: And after the 20th of October, did you see abuse?
21 ACC: Yes, Your Honor.
22 MJ: Did you participate in abuse?

1 ACC: Yes, Your Honor.

2 MJ: Did you ever willfully fail to protect the detainees from
3 abuse?

4 ACC: Yes, Your Honor.

5 MJ: At least those three occasions we talked about.

6 ACC: Yes, Your Honor.

7 MJ: And did you also fail to protect them from other people
8 abusing them as well as yourself?

9 ACC: Yes, Your Honor.

10 MJ: And did you do that on purpose?

11 ACC: Yes, Your Honor.

12 MJ: Now during any time during all this period of time, did you
13 ever report how these detainees were being treated to others?

14 ACC: No, Your Honor.

15 MJ: Did the issue of how the detainees were being abused ever
16 come up?

17 ACC: No, Your Honor.

18 MJ: Prior to Specialist [REDACTED] mentioning this, was this ever
19 discussed outside the people involved?

20 ACC: No, Your Honor.

21 MJ: Prior to October or prior to any of these instances, did
22 you ever get any briefing or anything to indicate that because of the

1 problems getting intelligence from detainees that they could be
2 treated harshly?

3 ACC: No, Your Honor.

4 MJ: At any time, did any of these detainees ever assault any of
5 you or your guards?

6 ACC: No, Your Honor.

7 MJ: Did they ever do anything to warrant physically handling
8 them?

9 ACC: No, Your Honor.

10 MJ: On the 4th of November, the guy on the box, did he do
11 everything you told him to do?

12 ACC: Yes, Your Honor.

13 MJ: Totally cooperative?

14 ACC: Yes, Your Honor.

15 MJ: On the 8th of November with the seven detainees, now again,
16 they allegedly rioted somewhere else, but when you had them in your
17 custody, did they fully cooperate with everything you guys told them
18 to do?

19 ACC: Yes, Your Honor.

20 MJ: Including telling them to masturbate, for example?

21 ACC: Yes, Your Honor.

1 MJ: So there's no issue that these guys weren't causing you
2 trouble.

3 ACC: No, Your Honor.

4 MJ: Now, and on the 28th of November, again, you had problems
5 with who you referred to as Houdini, but when he was between those
6 litters, was he cooperating with you?

7 ACC: Yes, Your Honor.

8 MJ: Did you have to hold him down with your body to make sure
9 he didn't move?

10 ACC: No, Your Honor.

11 MJ: And other than that time with Sergeant [REDACTED] -move back,
12 you told me earlier that sometimes the intelligence folks slash
13 interrogator folks would say, tell you guys to set conditions for
14 subsequent interrogations. Is that correct?

15 ACC: Yes, Your Honor.

16 MJ: And you told me, except for the time with [REDACTED] it
17 usually was very specific, one guy, detainee one, sleep deprivation.
18 Detainee two....

19 ACC: Yes, Your Honor.

20 MJ: And other than the time with [REDACTED] when he says, "I don't
21 care what you do, just don't kill him," did you ever receive
22 directions from anybody that were that general that [REDACTED] told you?

1 ACC: Yes, Your Honor.

2 MJ: From whom?

3 ACC: Mr. [REDACTED] (b)(6)-3; (b)(7)(C)-3

4 MJ: Who's Mr. [REDACTED]

5 ACC: He was with [REDACTED] an interrogator.

6 MJ: And what was his relationship to you?

7 ACC: He was there the night of the shooting.

8 MJ: I'm sorry, which night?

9 ACC: He was there the night a detainee received a weapon, a

10 Syrian, a detainee, there was a shootout within 1 Bravo.

11 MJ: Okay.

12 ACC: And he was interrogating Iraqi police.

13 MJ: And about when did that event occur?

14 ACC: That was 2 days before Thanksgiving 2003.

15 MJ: So that was after the first two instances and before the

16 third instance with the Houdini?

17 ACC: Yes, Your Honor.

18 MJ: And what happened on that day?

19 ACC: He was talking to the IP, the Iraqi Police about who

20 brought the weapon in and trying to find out who the Saddam loyalists

21 were of the Iraqi Police. And he asked me, he would tell the

22 detainees, "If you don't answer my questions, I'm going to bring

1 Sergeant Frederick back in here," and he would ask me to show him
2 pressure points and things of that nature.

3 MJ: Now, so he said, "I'll bring Sergeant Frederick back here
4 to..." do what to the detainees?

5 ACC: To intimidate them.

6 MJ: To intimidate the detainees.

7 ACC: Yes, Your Honor.

8 MJ: Did you actually touch a detainee?

9 ACC: Yes, Your Honor.

10 MJ: What did you do?

11 ACC: I showed him a couple pressure points.

12 MJ: What do you mean by that?

13 ACC: I put just a little bit of force in a pressure point.

14 MJ: But Mr.-----

15 ACC: While he-----

16 MJ: Go ahead, I'm sorry.

17 ACC: While he asked him a question, if they didn't answer right
18 away, I hit him with a pressure point.

19 MJ: And when you say you hit him with a pressure point, what
20 did you do?

21 ACC: I would use the pressure point up under the cheek bone,
22 under the chin, behind the ear.

1 MJ: Is that where you kind of push with your finger?
2 ACC: Yes, Your Honor.
3 MJ: That causes some kind of pain?
4 ACC: Yes, Your Honor.
5 MJ: Where did you learn about pressure points?
6 ACC: From people in the military, the training at our civilian
7 side, corrections. (b)(6)-3; (b)(7)(C)-3
8 MJ: So at that time with Mr. [REDACTED], he specifically brought
9 you in on this one occasion to physically inflict pain on these
10 detainees?
11 ACC: Yes, Your Honor.
12 MJ: Now....
13 ACC: And there were other times, also.
14 MJ: Other times of what?
15 ACC: With other people. (b)(6)-3; (b)(7)(C)-3
16 MJ: Was there ever a time where the other intelligence
17 people...and I'm not sure what the relationship is, [REDACTED] as everybody
18 else, you said there was other times before this that you had to
19 physically inflict pain on detainees because somebody told you to do
20 it?

(b)(6)2; (b)(7)(C)-2

1 ACC: Yes, Specialist [REDACTED] she would ask us to take their
2 cigarettes away, take the clothes, PT them, not physical abuse, but
3 just....

4 MJ: Okay, but now who is this person?

5 ACC: She's military intelligence.

6 MJ: What's her name?

7 ACC: Specialist [REDACTED] (b)(6)-2; (b)(7)(C)-2

8 MJ: But I'm just trying to clarify, what you've told me with
9 (b)(6)-2; (b)(7)(C)-2 (b)(6)-3; (b)(7)(C)-3
[REDACTED] and [REDACTED] is, they said, "We want you to do this to this
10 individual detainee and here's what we want you to do," correct?

11 ACC: Yes, Your Honor.

12 MJ: You said (b)(6)2-(b)(7)(C)-2 [REDACTED] says, "Take away their cigarettes. Take
13 away their clothes."

14 ACC: Yes, Your Honor, "Give them PT until they're tired."

15 MJ: But each time, except again (b)(6)1-(b)(7)(C)1 [REDACTED], I want to put him to
16 the side, but each time somebody, whether it was a (b)(6)-3; (b)(7)(C)-3 [REDACTED] employee or
17 Specialist (b)(6)-2; (b)(7)(C)-2 [REDACTED] or whomever, when they told you to do something to
18 a detainee, did they specify what to do?

19 ACC: Yes, Your Honor.

20 MJ: Okay, so it was take cigarettes away, PT, and in (b)(6)-3; (b)(7)(C)-3 [REDACTED]
21 case, pressure points.

22 ACC: Yes, Your Honor.

(b)(6)-1; (b)(7)(C)-1

1 MJ: And except for [REDACTED], and we've talked about this, "Just
2 don't kill him."

3 ACC: Yes, Your Honor.

4 MJ: And you talked about, you knew that, but you still knew it
5 was wrong what you did.

6 ACC: Yes, Your Honor.

7 MJ: Did you ever receive direction from anybody else...

8 ACC: Yes, Your Honor.

9 MJ: Excuse me, let me finish my question...that was not
10 specific. By that I mean is, you told me [REDACTED] and [REDACTED] told
11 you to do certain things to set conditions for interrogation, true?

(b)(6)-2; (b)(7)(C)-2

(b)(6)-3; (b)(7)(C)-3

12 ACC: Yes, Your Honor.

13 MJ: And they said, take cigarettes away, intimidate with
14 pressure points, and I'm trying to get in is, and you said other
15 people will tell you other things, true?

16 ACC: Yes, Your Honor.

17 MJ: And these were MI people, contractors?

18 ACC: Contractors.

19 MJ: And it could be somebody from a number of other potential
20 government agencies that nobody knows really where they come from,
21 true?

22 ACC: Yes, Your Honor.

1 MJ: And you cooperated with them in doing what they told, but
2 did they ever tell you to do anything like you did on the 8th of
3 November?

4 ACC: No, Your Honor.

5 MJ: On the 4th of November?

6 ACC: No, Your Honor.

7 MJ: Or the 28th of November?

8 ACC: No, Your Honor.

9 MJ: Now, I want to back up something, is you came in there in
10 mid-October, approximately.

11 ACC: Yes, Your Honor.

12 MJ: And what were you told about your relationship with
13 interrogators, intelligence people?

14 ACC: I was told military intelligence runs 1 Alpha and 1 Bravo,
15 that that is their section.

16 MJ: And you're supposed to cooperate with them?

17 ACC: Yes, Your Honor.

18 MJ: And knowing all that, do you think what you did on those
19 dates that we've talked about, the 4th, the 8th and the 28th was okay
20 because it was consistent with that military intelligence mission?

21 ACC: No, Your Honor.

1 MJ: Now Sergeant Frederick, I generally limit the inquiry to
2 the facts surrounding the offenses, but there's a thing in the
3 stipulation of fact I've got to go over with you because it does
4 raise a potential defense. Not that it's been raised here today, and
5 it's something you may have said a long time ago, but I want to go
6 over it with you, and that deals with what you told *CBS News*. Now,
7 according to the stipulation of fact, you told them on 6 May 2004
8 that the command was responsible for the problems at the facility,
9 that you had no support and no training whatsoever and you had
10 basically, the command wouldn't provide you rules and regulations.
11 Do you see that in paragraph 37 of the stipulation of fact?

12 ACC: Yes, Your Honor.

13 MJ: Now that's not necessarily inconsistent with your guilty
14 plea, and so I'm not saying it is. But I want to make sure that it's
15 explained--you explain to me. Now, do you still stand by those words
16 that you told on *60 Minutes*?

17 ACC: I do stand by those comments.

18 MJ: Okay, now again, I'm not saying they're inconsistent with
19 your guilty plea, but I want you to give me the context of those
20 comments with what you've just told me. And again, ignoring the part
21 about what you're going to plead because every soldier has got a
22 moral and legal right to plead not guilty, so I don't take that for

1 anything. But just I'm trying--give me the context of where you see
2 the command responsibility stops and your culpability starts. Do you
3 understand what I'm saying?

4 ACC: It's just that I had no support. When I would bring
5 certain things up to my chain of command, they would tell me to do
6 what military intelligence said. They wouldn't offer me any type of
7 rules and regulations, where I could find them, how I could find the
8 AR 190-8. I had no way--I didn't realize that that even existed
9 until after January 2004. They provided me with nothing. When I
10 first actually took the right seat ride with the 72d Military Police
11 Company, that's one of the first things I asked was for rules,
12 regulations, SOPs, ARs, FMs, anything. Nothing could be provided----

13 MJ: Now when you say the "right seat ride," I know what you
14 mean, but people reading this may not know it, and that's the....

15 ACC: Relief in place.

16 MJ: And that's where you go with people who preceded you and
17 they show you how they've done things.

18 ACC: Yes, Your Honor.

19 MJ: And you ask them for SOPs, regs, and things like that and
20 got nothing from them.

21 ACC: Yes, Your Honor.

1 MJ: You asked your command for regulations, guidance, what are
2 you supposed to do, and all you got was, "Cooperate with the MI
3 folks."

4 ACC: Yes, and that they was working on it, they don't exist.
5 Don't worry about anything. Everything's okay.

6 MJ: Okay, now who were these people higher up in your chain of
7 command that you personally brought this to?

8 ACC: I brought this to First Sergeant [REDACTED] Sergeant First
9 Class [REDACTED], Captain [REDACTED] Captain [REDACTED], Lieutenant Colonel (b)6-2j
10 [REDACTED] Major [REDACTED], anybody that I thought could have some (b)7C-2
11 information where I could get help to do this job.

12 MJ: And all you got was, "Check is in the mail. It may be
13 coming," but you weren't holding your breath for it to come is what
14 you're telling me.

15 ACC: Exactly, sir.

16 MJ: And was that true of some resources, too?

17 ACC: Yes, Your Honor.

18 MJ: All that being said, not having rules and regulations, do
19 you feel your chain of command just wasn't supporting you?

20 ACC: Yes, Your Honor.

21 MJ: All that being said....

22 ACC: It still doesn't give me the right to--for my actions.

1 MJ: You may have been frustrated with your chain of command,
2 but...and you've anticipated my question, and again, I just want to
3 put it in the context, and you may have had a very unsupportive chain
4 of command, and you're telling me you thought you did.

5 ACC: Yes, Your Honor.

6 MJ: All that being said, does that in any way excuse your
7 actions on the 4th, 8th and 28th of November?

8 ACC: No, Your Honor.

9 MJ: You knew they were wrong at the time? ;

10 ACC: Yes, Your Honor.

11 MJ: You know they're wrong now.

12 ACC: Yes, Your Honor.

13 MJ: Does either side believe any further inquiry is required?

14 TC: No, Your Honor.

15 DC: No, Your Honor.

16 MJ: I tell you what, before we continue, we're going to take a
17 comfort break. The court is in recess.

18 [Court recessed at 1133, 20 October 2004, and reconvened at 1147,
19 20 October 2004.]

20 MJ: Court is called to order. All parties are again present
21 that were present when the court recessed.

1 Trial counsel, what do you calculate to be the maximum
2 punishment authorized in this case based solely on the accused's
3 guilty plea?

4 TC: Sir, confinement not to exceed 11 years, total forfeiture
5 of all pay and allowances, reduction to the grade of E1 and a
6 dishonorable discharge.

7 MJ: Defense, do you agree?

8 DC: Yes, Your Honor.

9 MJ: Sergeant Frederick, the maximum punishment authorized in
10 this case is total forfeiture of all pay and allowances, reduction to
11 the grade of private E1, confinement for 11 years, a dishonorable
12 discharge, and a fine may also be adjudged. Do you understand that?

13 ACC: Yes, Your Honor.

14 MJ: Do you understand that based on your guilty plea alone,
15 this court could sentence you to the maximum punishment which I just
16 stated?

17 ACC: Yes, Your Honor.

18 MJ: There is a pretrial agreement, trial counsel?

19 TC: Yes, Your Honor.

20 MJ: Mark the offer as XXV and the quantum as Appellate Exhibit
21 XXVI. Defense, ensure the accused has copies of both.

1 Sergeant Frederick, I have before me what's been marked as
2 Appellate Exhibit XXV, which is the offer portion of your pretrial
3 agreement. You should have both this document and also Appellate
4 Exhibit XXVI, the quantum portion. Did you sign this pretrial
5 agreement?

6 ACC: Yes, Your Honor.

7 MJ: Did you read it thoroughly before you signed it?

8 ACC: Yes, Your Honor.

9 MJ: Do you understand the contents of your pretrial agreement?

10 ACC: Yes, Your Honor.

11 MJ: Did anyone force you in any way to enter into this
12 agreement?

13 ACC: No, Your Honor.

14 MJ: Does this agreement contain all the understandings or
15 agreements that you have in this case?

16 ACC: Yes, Your Honor.

17 MJ: Has anyone made any promises to you that are not written
18 into this agreement in an attempt to get you to plead guilty?

19 ACC: No, Your Honor.

20 MJ: Counsel, are Appellate Exhibits XXV and XXVI the full and
21 complete agreement in this case and are you satisfied there are no
22 other agreements?

1 TC: Yes, sir.

2 DC: Yes, Your Honor.

3 MJ: Sergeant Frederick, basically, a pretrial agreement means
4 you agree to plead guilty, and in return, the convening authority
5 agrees to take some favorable action in your case, usually in the
6 form of limiting a sentence that he will approve. Do you understand
7 that?

8 ACC: Yes, Your Honor.

9 MJ: At this time, I'm going to go over the conditions of your
10 agreement with you as the law requires. Let's look at Appellate
11 Exhibit XXV together.

12 The first paragraph says you've talked it over with your
13 counsel, that you understand you have a legal and moral right to
14 plead not guilty and you've chosen to plead guilty as you have.

15 Do you have any questions about that first paragraph? It's
16 relatively straightforward, although the plea is a little (b)(6)-2; (b)(7)(C)-2
17 complicated. It's simply, that's the plea that Captain [REDACTED] entered
18 on your behalf. Any questions about that?

19 ACC: No, Your Honor.

20 MJ: Now I do notice that if you go down to where it says
21 Specification 1 of Charge III, guilty, excepting the words "be told"
22 and substituting there the word "believe." And it says, "To the

(b)(6)-2; (b)(7)(C)-2

1 excepted words: Not guilty." What it does not say, but Captain
2 [REDACTED] did say, was "To the substituted word: Guilty." Do you
3 understand that?

4 ACC: Yes, Your Honor.

5 MJ: One moment. [Pause.] But quite frankly, I believe that
6 was probably a typographical error, and because when you substitute
7 words, it naturally infers you're going to be pleading guilty to
8 those. Would that be a fair assessment here, Captain [REDACTED] (b)(6)-2;

9 DC: Yes, Your Honor. (b)(7)(C)-2

10 MJ: So other than that, it's in accordance with your plea, and
11 that goes all the way down through all of paragraph 1.

12 Now paragraph 2 says you offer to plead as stated above,
13 provided the convening authority does a couple of things. First,
14 take action as set forth in Appendix A, which I've now labeled as
15 Appellate Exhibit XXVI, and also, to direct the trial counsel to
16 offer no additional evidence on the specifications of the charges
17 which you're pleading not guilty or any specifications of the charges
18 which you're pleading not guilty or any evidence on the language
19 which you've excepted pursuant to your plea. What that means is, is
20 that if your plea is provident and I enter findings, I will find you
21 not guilty of the parts of the charged offenses not encompassed by
22 your guilty plea. Do you understand that?

1 ACC: Yes, Your Honor.

2 MJ: And basically, the only agreement you have with the
3 convening authority is what's in Appendix A or Appellate Exhibit
4 XXVI.

5 Let's go over 3, paragraph 3. Paragraph 3 Alpha talks
6 about the stipulation of fact, which we've talked about how it can be
7 used. Any questions about how the stipulation of fact can be used?

8 ACC: No, Your Honor.

9 MJ: Now, if your plea is not accepted, the offer to stipulate
10 is null and void, which of course is a lawyer using three words when
11 one would work, meaning it's been cancelled. Do you understand that?

12 ACC: Yes, Your Honor.

13 MJ: But since it's been accepted, the stipulation of fact, the
14 offer to stipulate has been executed and actually you've entered into
15 such a stipulation, okay?

16 ACC: Yes, Your Honor.

17 MJ: Now 3 Bravo talks about things you need to do in other
18 cases. What it is is that first of all, you upon receipt of a grant
19 of testimonial immunity from the convening authority...what that
20 means is that anything you tell about this case to the other side,
21 the other defense counsel, to CID, anybody that interviews you after

1 this case, that can't be used against you. That's what testimonial
2 immunity means. Do you understand that?

3 ACC: Yes, Your Honor.

4 MJ: It's not transactional use immunity, meaning that you can't
5 be prosecuted for your role in these offenses. And actually at this
6 point in time, you'd be convicted. But if for some reason there's a
7 retrial, there is nothing in this provision that would prevent the
8 government retrying you of the parts of the specifications that you
9 were convicted. Do you understand that?

10 ACC: Yes, Your Honor.

11 MJ: Is that the understanding of both parties of testimonial
12 immunity?

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

15 MJ: Okay, and in doing this, you are to cooperate fully with
16 the trial counsel in the investigation and prosecution of Sergeant
17 Davis, Corporal Graner, Specialist Harman, Specialist Ambuhl, and PFC
18 England and any other soldier or civilian charged with misconduct at
19 the Baghdad Central Correctional Facility at Abu Ghraib.

20 Now what this of course means is any other soldier or
21 civilian that you know anything about. Do you understand that?

22 ACC: Yes, Your Honor.

1 MJ: And when you say "cooperate fully" that means you subject
2 yourself to pretrial interviews by law enforcement, trial counsel,
3 and I'd also assume the defense counsel in these other cases. Is
4 that the understanding of both parties?

5 TC: Yes, sir.

6 DC: Yes, Your Honor.

7 MJ: Again, subsequent to the granting of the testimonial
8 immunity. And then, they talk about what "cooperate fully" really
9 means. In the first part of that, it's full disclosure of all
10 information known to you relating to the maltreatment at Abu Ghraib.
11 Second, the identification of individuals in photographs on a compact
12 disk entitled "CPU Exam" in the CID Abu file.

13 I'm assuming that both sides know what the "CPU Exam"
14 compact disk means?

15 TC: Yes, Your Honor.

16 DC: Defense does, Your Honor.

17 MJ: And do you know what that means, Sergeant Frederick?

18 ACC: Yes, Your Honor.

19 MJ: I'm just saying is that, I don't have that. It's not part
20 of this case, but apparently it's a relatively identifiable item that
21 CID has with pictures on it. So you guys know what you're talking
22 about, even if I don't.

1 ACC: Yes, Your Honor.

2 MJ: The other one talks about you personally identifying at 32
3 investigations, courts-martial and evidentiary hearings regarding all
4 those other people we talked about before. And so, "cooperate fully"
5 means interviewing, being interviewed by law enforcement, trial
6 counsel, defense counsel, and testifying when called on to do so in
7 any type of hearing relating to any of these companion cases. Do you
8 understand that?

9 ACC: Yes, Your Honor.

10 MJ: Paragraph 4 says that before or during trial of any
11 specifications amended, consolidated or dismissed with your consent
12 and the mutual consent of trial counsel, this agreement will remain
13 in effect. Now defense, I've seen no motion or anything before me to
14 indicate there is an issue as far as amending a specification or
15 consolidating. Since the time for motions is passed, would it be
16 fair to assume you don't intend to....

17 DC: That's right, Your Honor.

18 MJ: So this is boilerplate that doesn't apply to this case?

19 DC: That's right, Your Honor.

20 MJ: What that is, Sergeant Frederick, is this is standard
21 language that goes in the stipulation of fact, it just doesn't apply
22 to your case. Do you understand that?

1 ACC: Yes, Your Honor.

2 MJ: In paragraph 5, we now talk about what will cancel the
3 agreement. One, failure to enter into a stipulation of fact, and
4 you've done that and so that's not been triggered. If it does, if it
5 does, we get a problem with the stipulation of fact later on, I'll
6 come back and revisit this provision. Five Bravo talks about
7 withdrawal for any reason from this agreement prior to the exception
8 of the plea of guilty by the military judge.

9 Do you want to withdraw from the pretrial agreement,
10 Sergeant Frederick?

11 ACC: No, Your Honor.

12 MJ: Now, I'm not even sure at this point the government would
13 be permitted to withdraw, but since they're sitting there and saying
14 nothing, I assume they don't want to withdraw, too.

15 Paragraph 5 Charlie, is your failure to plead guilty, but
16 you've done that, so again, that's been--that event has come and
17 gone.

18 But paragraph 5 Delta I need to talk to you about. What
19 this is, the refusal of the judge to accept your plea of guilty or
20 the changing of your plea of guilty by the judge during the trial.
21 What this means, Sergeant Frederick, is that if you tell me anything
22 or present evidence on any point from here on to when the case is

1 finally--when I adjudge a sentence, so from now until sentence is
2 announced that is inconsistent with your guilty plea, I will have to
3 reopen the inquiry. And if I do that and can't resolve the
4 inconsistency, I will have to enter a plea of not guilty on your
5 behalf. That means this case returns to the arraignment stage where
6 I asked you, "How do you plead?" It will go forward from that point
7 forward as a not guilty plea. You can revisit forum and other stuff.
8 If that happens, you lose your pretrial agreement and the stipulation
9 of fact is also canceled. Do you understand that?

10 ACC: Yes, Your Honor.

11 MJ: And again, this rule applies from this point until the
12 sentence is announced. So if something comes up that is inconsistent
13 with your plea of guilty, again, we're talking about "inconsistent
14 with your plea of guilty" means raises a defense of some kind, not,
15 you want to explain what happened. That's extenuation and
16 mitigation; that's permitted. But if something comes up that is
17 inconsistent with your guilty plea, I will have to stop and talk to
18 you about it. If I can't resolve it, it goes back as a not guilty
19 case. Do you understand that?

20 ACC: Yes, Your Honor.

21 MJ: Any questions about your pretrial agreement?

22 ACC: No, Your Honor.

1 MJ: Now, I'm not going to look at Appellate Exhibit XXVI, the
2 quantum portion, until after I announce the sentence in your case.
3 But I want you to look at it now and tell me whether that document
4 correctly states what you and the convening authority agreed to, and
5 read it silently to yourself. [Accused complied.] Is that what you
6 and the convening authority agreed to?

7 ACC: Yes, Your Honor.

8 MJ: Now, Sergeant Frederick, you're going to get the benefit of
9 whichever is less, the sentence of the court or that contained in
10 your pretrial agreement. If the sentence adjudged by this court is
11 greater than the one provided in the pretrial agreement, the
12 convening authority must reduce the sentence to one no more severe
13 than the one in your pretrial agreement. On the other hand, if the
14 sentence of this court is greater than the one in your pretrial
15 agreement, the convening authority cannot increase--excuse me, if the
16 sentence of the court is less than the one in your agreement, the
17 convening authority cannot increase the sentence adjudged. Do you
18 understand that?

19 ACC: Yes, Your Honor.

20 MJ: Sergeant Frederick, when is your ETS?

21 ACC: My ETS is...according to this, it's 09 March 2005.

1 MJ: You said, "According to this..." what is "this"? [REDACTED]
2 [REDACTED] (b)(6)2-(b)(7)(C)-2
3 DC: Your Honor, given to me this morning by the government,
4 he's been extended on active duty an additional 6 months past his ETS
5 date.
6 MJ: What is his current ETS date?
7 DC: His current ETS date is 9 March 2005.
8 MJ: Is that with the extension or without the extension?
9 DC: That's with the extension, Your Honor.
10 MJ: Are you past your ETS date now?
11 ACC: Yes, Your Honor.
12 MJ: How many years of service do you have for retirement?
13 ACC: I have 20 years, 8 months, Your Honor.
14 MJ: So after this deployment is over, you could ETS, although
15 you don't meet your retirement until what, age 60?
16 ACC: I believe so, sir.
17 MJ: And you're not 60 years old.
18 ACC: No, sir.
19 MJ: Okay, I want to go over this one provision with you,
20 because quite frankly, I'm not quite sure in your situation whether
21 it's triggered or not, but it might be. And again, this deals with
22 if you're in confinement on the day of your ETS. Again, there's no

1 decision on whether or not you're going to get confinement. Do you
2 understand that?

3 ACC: Yes, Your Honor.

4 MJ: You might, you might not. We haven't even got to that
5 point. But if you're in confinement on the date you reach your ETS,
6 you will automatically go by operation of law into a no-pay-due
7 status. Do you understand that?

8 ACC: Yes, Your Honor.

9 MJ: And do you understand this, is that right now, Captain
10 (b)(6)-2 (b)(7)(E)-2 indicates that's next March. Okay, you understand that?

11 ACC: Yes, Your Honor.

12 MJ: And so, if in March you're in jail, no matter what the
13 pretrial agreement says on another page, you go to a no-pay-due
14 status.

15 ACC: Yes, Your Honor.

16 MJ: Now, have you had enough time to discuss this pretrial
17 agreement with your defense counsel?

18 ACC: Yes, Your Honor.

19 MJ: Are you satisfied with their advice concerning this
20 pretrial agreement?

21 ACC: Yes, Your Honor.

22 MJ: Did you enter into the agreement of your own free will?

1 ACC: Yes, Your Honor.

2 MJ: Has anyone tried to force you to make this pretrial
3 agreement?

4 ACC: No, Your Honor.

5 MJ: Do you have any questions about your pretrial agreement?

6 ACC: No, Your Honor.

7 MJ: Do you fully understand the terms of the pretrial agreement
8 and how they affect your case?

9 ACC: Yes, Your Honor.

10 MJ: Now Sergeant Frederick, are you pleading guilty not only
11 because you hope to receive a lighter sentence, but also because you
12 are convinced that you are, in fact, guilty?

13 ACC: Yes, Your Honor.

14 MJ: Do counsel for both sides agree with the court's
15 interpretation of the pretrial agreement?

16 TC: Yes, sir.

17 DC: Yes, Your Honor.

18 MJ: Defense counsel, have you had enough time and opportunity
19 to discuss this case with Sergeant Frederick?

20 DC: Yes, Your Honor.

21 MJ: And Sergeant Frederick, have you had enough time and
22 opportunity to discuss your case with your defense counsel?

1 ACC: Yes, I have, Your Honor.

2 MJ: And have you consulted fully with both of them and received
3 the full benefit of their advice?

4 ACC: Yes, Your Honor.

5 MJ: Are you satisfied that your defense counsel's advice is in
6 your best interest?

7 ACC: Yes, Your Honor.

8 MJ: And are you satisfied with your defense counsel?

9 ACC: Yes, Your Honor.

10 MJ: Are you pleading guilty voluntarily and of your own free
11 will?

12 ACC: My own free will.

13 MJ: Do you have any questions as to the meaning and effect of a
14 plea of guilty?

15 ACC: No, Your Honor.

16 MJ: Do you fully understand the meaning and effect of your plea
17 of guilty?

18 ACC: Yes, Your Honor.

19 MJ: Do you understand that even though you believe you are
20 guilty, you have the legal and moral right to plead not guilty and to
21 place the burden upon the government of proving your guilt beyond a
22 reasonable doubt?

1 ACC: Yes, Your Honor.

2 MJ: Take one last moment now and consult again with your
3 defense counsel and tell me whether you still wish to plead guilty.

4 [Accused conferred with his counsel.]

5 Do you still wish to plead guilty?

6 ACC: Yes, Your Honor.

7 MJ: Sergeant Frederick, I find your plea of guilty is made
8 voluntarily and with full knowledge of its meaning and effect. I
9 further find that you have knowingly, intelligently and consciously
10 waived your rights against self-incrimination, to a trial of the
11 facts by a court-martial and to be confronted by the witnesses
12 against you. Accordingly, your plea is provident and is accepted.
13 However, I advise you that you may request to withdraw your guilty
14 plea at any time before the sentence is announced and if you have a
15 good reason for your request, I will grant it. Do you understand
16 that?

17 ACC: Yes, Your Honor.

18 MJ: Accused and counsel, please rise. [The accused and his
19 counsel stood.]

20 [END OF PAGE.]

1 Staff Sergeant Ivan L. Frederick II, in accordance with
2 your plea of guilty, this court finds you:

3 Of Specification 1 of Charge I: Not guilty.

4 Of Specification 2 of Charge I: Guilty, excepting the
5 words "did place naked detainees in a human pyramid and". Of the
6 excepted words: Not guilty.

7 Of Charge I: Guilty. That was Specification 2.

8 Of the Specification of Charge II and Charge II: Guilty.

9 Of Specification 1 of Charge III: Guilty, excepting the
10 words "be told" and substituting the word "believe". Of the excepted
11 words: Not guilty. Of the substituted words: Guilty.

12 Of Specification 2 of Charge III: Guilty, excepting the
13 words "place naked detainees in a human pyramid and". Of the
14 excepted words: Not guilty.

15 Of Specification 3 of Charge III: Guilty, excepting the
16 words "and then placing one in a position so the detainee's face was
17 directly in front of the genitals of another detainee to simulate
18 fellatio and photographing the detainees during these acts." Of the
19 excepted words: Not guilty.

20 Of Specification 4 of Charge III: Guilty.

21 Of Specification 5 of Charge III: Not guilty.

22 Of Charge III: Guilty.

1 Of Specification 1 of Charge IV: Not guilty.
2 Of Specification 2 of Charge IV: Not guilty.
3 Of Specification 3 of Charge IV: Not guilty, but guilty of
4 the lesser included offense of assault consummated by a battery,
5 excepting the words "striking him with a means or force likely to
6 produce death or grievous bodily harm, to wit: by punching." And the
7 words, "with enough force to cause a detainee to have difficulty
8 breathing and require medical attention" and substituting therefore
9 the words "unlawfully strike a detainee in the chest with a closed
10 fist. Of the excepted words: Not guilty. Of the substituted words:
11 Guilty.

12 Of Charge IV: Guilty.

13 Of the Specification of Charge V and Charge V: Guilty.

14 Please be seated.

15 That was kind of a complicated findings. Trial counsel, do
16 you believe I covered it in accordance with the plea?

17 TC: Yes, sir, I do.

18 MJ: Sergeant Frederick, at this time, we're entering the
19 sentencing phase of the trial where you have the right to present
20 matters in extenuation and mitigation, that is, matters about the
21 offenses or yourself which you want me to consider in deciding your
22 sentence.

1 In addition to the testimony of witnesses and the offering
2 of documentary evidence, you may yourself testify under oath as to
3 these matters or you may remain silent, in which case, I will not
4 draw any adverse inference from your silence.

5 On the other hand, you may make an unsworn statement.
6 Because the statement is unsworn, you cannot be cross-examined on it.
7 However, the government may offer evidence to rebut any statement of
8 fact contained in an unsworn statement.

9 An unsworn statement may be made orally, in writing, or
10 both. It may be made by you, by your counsel on your behalf, or by
11 both.

12 Do you understand these rights?

13 ACC: Yes, Your Honor.

14 MJ: Defense counsel, is the personal data on the front page of
15 the charge sheet correct?

16 DC: Yes, Your Honor, as corrected.

17 MJ: Other than the Article 13 issue previously discussed, has
18 the accused been under any form of pretrial restraint, other than the
19 normal limitation on one's freedom in Iraq?

20 DC: No, Your Honor.

21 MJ: Trial counsel, I understand you wish to present a live
22 witness and then we'll take a lunch break.

1 TC: Yes, sir, that's correct.

2 MJ: Proceed.

3 TC: Sir, at this time, the government would call Mr.

4 [REDACTED] ... (b)(6)-4; (b)(7)(C)-4

5 MJ: I'm going to ask counsel to question the witnesses from the

6 counsel table, since that's where the microphones are.

7 [REDACTED] was called to perform the duties of interpreter and was

8 sworn by the trial counsel. (b)(6)-4; (b)(7)(C)-4

9 TC: And your name is Mr. [REDACTED]

10 INTERPRETER: [REDACTED]

11 TC: And you are from New York.

12 INTERPRETER: That's right. (b)(6)-4; (b)(7)(C)-4

13 TC: Your Honor, I'd offer Mr. [REDACTED] as an interpreter for

14 this court.

15 MJ: Defense counsel, do you have any issue as to this

16 interpreter's ability to interpret?

17 DC: No, Your Honor.

18 MJ: You'll stipulate to his qualifications as a translator,

19 then?

20 DC: Yes, Your Honor.

21 MJ: Okay, he'll be so accepted. Go ahead.

(b)(6)-4; (b)(7)(C)-4

1 [REDACTED], Iraqi Local National, was called as a witness
2 for the prosecution, was sworn, and testified as follows through an
3 interpreter:

4 MJ: I've got to ask you, when you interpret this, everything is
5 in the first person. If he says, "I saw a blue car," your
6 interpretation is not "He said he saw a blue car," but "I saw a blue
7 car." You got it?

8 INTERPRETER: I got it.

9 MJ: You've probably done this before. Go ahead and have a
10 seat. And can you turn that one mike toward you? Go ahead, Major

11 [REDACTED] (b)(6)2; (b)(7)(C)-2

12 TC: Yes, sir.

13 DIRECT EXAMINATION

14 Questions by the trial counsel [Major [REDACTED]]: (b)(6)2; (b)(7)(C)-2

15 Q. Your name is [REDACTED]?

16 A. My name is [REDACTED]

17 Q. You are from Baghdad, Iraq?

18 A. Yes, I am.

19 Q. Where were you in November of 2003?

20 A. I was in camp.

21 Q. This was a U.S. Army military camp?

22 A. Yes, it was.

> (b)(6)-4; (b)(7)(C)-4

1 Q. At Abu Ghraib?

2 A. Yes, it was.

3 Q. Near Baghdad, Iraq?

4 A. Yes.

5 Q. At this camp, is there a place called the old Abu Ghraib
6 Prison nearby?

7 A. Yes.

8 Q. Is it a building with cells?

9 A. Yes.

10 Q. Did you ever go to this building?

11 A. I am right now in this building.

12 Q. Did you ever go to the old Abu Ghraib Prison?

13 A. Yes.

14 Q. How did you go?

15 A. There was a problem and I was taken there.

16 Q. How did you actually move to the prison?

17 A. There was six people with me, and they took us in a car.

18 Q. What happened next?

19 A. They put wire ties behind our back and they put us in a
20 small room.

21 TC: The witness placed his hands behind his back and then in
22 front of him outstretched.

1 Q. Then what happened?

2 A. Then they put bags over my head--our heads.

3 TC: The witness simulated placing a bag over his head.

4 Q. What happened next?

5 A. Then they took us one by one from our collars to a
6 different room.

7 TC: The witness grabbed his collar with his right hand.

8 Q. When you got to this room, what happened?

9 A. They threw us altogether, one on top of each other. I fell
10 to the ground on my knees and on my shoulder.

11 TC: The witness demonstrated a pushing motion and then touched
12 his shoulder.

13 Q. Were you injured by this action?

14 A. Yes, on my hands and my knees.

15 TC: Again, the witness placed his hand on his shoulder and
16 knee.

17 Q. Were you afraid at this point?

18 A. Yes, I was.

19 Q. Were you crying?

20 A. Yes, I was.

21 Q. Were the other men crying?

22 A. Yes, they were.

1 Q. Were there any screams?

2 A. Yes, there was.

3 Q. Do you know what the soldiers were saying?

4 A. No, I do not know.

5 Q. Was there any laughter from the soldiers?

6 A. Yes, there was.

7 Q. What happened to you next?

8 A. Someone stepped on my head and my legs.

9 TC: The witness touched the side of his head and his right
10 knee.

11 Q. How hard did this individual stand on your head?

12 A. He put his whole weight on my head and then on my knee, and
13 I was screaming and crying.

14 TC: Again, the witness placed his hand on the right side of his
15 head and his right knee.

16 Q. Did anyone step on your hands or your toes?

17 A. Yes, they stood over my legs.

18 Q. What happened next?

19 A. We were taken one by one and our bags over our heads were
20 removed and our clothes were requested to be removed. My
21 acquaintance, they ripped his clothes off.

1 TC: The witness simulated removing a bag from his head and then
2 movement towards his leg with his knee.

3 WIT: They also took the tie wraps off and we took our own
4 clothes off.

5 TC: Again, the witness made a motion as if to remove something
6 from his head.

7 Q. Were you ever punched or kicked at this point?

8 A. They then put the bags over our heads and someone held me
9 from behind, twisting my hand while another person came and thrust
10 a punch to my chest.

11 TC: The witness simulated his hands on his head again, his
12 hands behind his back and then his right fist to his chest.

13 Q. How hard were you struck with this punch?

14 A. It was a strong punch, and I fell down and I lost my
15 breath, then I simulated that I needed help because I was out of
16 breath.

17 TC: The witness placed his hand to his chest again and then
18 motioned as if holding an inhaler on his face.

19 Q. Why did you simulate that you needed an inhaler?

20 A. I was afraid of being hit again and I wanted to see who was
21 hitting me.

22 Q. What happened next?

1 A. The bag was removed over my head, from my head, and an
2 inhaler was given to me. A female doctor came to me and started to
3 examine me.

4 TC: The witness mimicked pulling a bag off his head, placed his
5 hand on his chest and then placed his hand as if an inhaler was in
6 front of his face.

7 Q. Were the men around you still crying and screaming?

8 A. Yes, they were.

9 Q. What happened next?

10 A. They faced me towards the wall with an inhalant in my hand,
11 and I started to observe what was going on with my eyes.

12 TC: The witness made a motion with both hands as if placing an
13 object, and then pointed to his right eye.

14 Q. What did he see next?

15 A. I noticed that one of my acquaintances was placed standing,
16 or was placed in front of another fellow who was underneath and they
17 were--he was being forced to masturbate on top of the other person.

18 TC: The witness simulated masturbation with his hand in front
19 of his groin.

20 Q. How exactly did they force this man to masturbate?

21 A. They hit him a few times and they took his hand and put it
22 over his groin area and motioned to masturbate.

1 TC: The witness used his left hand to place it on his right
2 hand as if forcing the act.

3 Q. Did they make him complete the act of masturbation?

4 A. Yes. He was--I noticed that he wasn't able to complete the
5 masturbation.

6 Q. Did they force anyone to complete the act of masturbation?

7 A. Yes.

8 Q. Did they force this other detainee to masturbate and
9 complete the act on another detainee?

10 A. The other person did not complete. When I was looking,
11 they came and put a bag over my head and then I didn't see.

12 TC: The witness simulated placing a bag over his head and
13 pointing to his eyes.

14 Q. Did they make Mr. (b)(6)-4; (b)(7)(C)-4 masturbate, as well?

15 A. They grabbed me and placed one of my acquaintances under me
16 and placed my right hand on my privates and pushed me to masturbate
17 over my acquaintance.

18 TC: The witness ensured a placing motion of both hands
19 outstretched in front of him. He placed on his left hand on his
20 right wrist to simulate forced masturbation.

21 Q. How did this make you feel?

1 A. I felt--I was crying and I wished I would kill myself at
2 that point.

3 TC: The witness drew his left hand across his face.

4 Q. What happened next?

5 A. [Pause.]

6 Q. Sir, do you believe you can continue?

7 A. Yes.

8 Q. We will finish quickly. Were any individuals ever placed
9 on top of one another?

10 A. Yes.

11 Q. I'm going to hand you what's been marked as Attachment 2 to
12 Prosecution Exhibit 1. Do you recognize yourself in this photograph?

13 A. Yes.

14 Q. How do you recognize yourself?

15 A. I have a scar.

16 TC: The witness reached back to his right hip.

17 MJ: I'll just note for the record that at an 802, counsel
18 indicated that this scar is unrelated to the incident and is simply a
19 means of identification.

20 TC: Yes, sir.

21 MJ: Go ahead.

22 Q. And is that you on top of this stack of individuals?

1 A. Yes.

2 TC: I'm retrieving Attachment 2 to Prosecution Exhibit 1.

3 Q. After this incident with the pyramid, what happened next?

4 A. Someone hit my head with two hands on my ears, slamming
5 them.

6 Q. And then what?

7 A. I continued to cry and scream.

8 TC: The witness on a previous question indicated with his hands
9 to both sides of his head that he was struck. And with this
10 question, drew his hands across the front of his face.

11 Q. What happened next?

12 A. Then they took us to cells one at a time.

13 Q. And then what happened when you were in the cell?

14 A. They took us one by one to the cell that was flooded with
15 water, and they told us to sleep naked with a bag over our head in
16 the flooded cells.

17 Q. Was it cold?

18 A. Yes.

19 Q. Was there anything to cover you?

20 A. There was nothing there.

21 Q. Was he bound to the bed in any way?

22 A. Not at that point.

1 Q. At some other point, was he bound?

2 A. The next morning shift, they bound us.

3 Q. They released him or....

4 A. The morning shift, they gave me a bed and clothes. At
5 night, they took it away.

6 Q. How many days did this last?

7 A. Two days.

8 Q. Were you ever mistreated after this?

9 A. They tied me to the bed, the bed grid, one hand over the
10 other for 2 or 3 hours at a time.

11 TC: The witness placed his left hand in front of him.

12 Q. Was this in the next day or two after this incident?

13 A. During the 2 days this happened.

14 Q. Because of this incident, have you changed your mind about
15 how you think about Americans?

16 A. I don't have anything against Americans.

17 Q. Did this incident make you angry in general?

18 A. No.

19 Q. And how did it feel to humiliated this way in front of
20 others, particularly women?

21 A. I felt humiliated, and I have nothing to kill myself with.

22 Q. Does he still feel this way?

1 A. Yes.

2 TC: Thank you.

3 MJ: Defense, do you have any questions for this witness?

4 CDC: We do, Your Honor, thank you very much.

5 MJ: Proceed.

6 **CROSS-EXAMINATION**

7 **Questions by the defense [Mr. ██████████ (b)(6)-4(b)(7)(c)-4**

8 Q. Mr. ██████████ you were placed in prison because you stole a
9 car? (b)(6)-4;(b)(7)(c)-4

10 TC: Objection, relevance.

11 MJ: Overruled.

12 WIT: No.

13 Q. Why were you placed in prison?

14 A. I don't know. I was sleeping in my home.

15 Q. Who arrested you?

16 A. The Iraqi Police.

17 Q. The Iraqi Police?

18 A. Yes.

19 Q. And did the Iraqi Police tell you why you were being
20 arrested?

21 A. I don't know.

22 Q. He did not know why he was being arrested?

1 A. I don't know. I was sleeping and they came and took me.
2 Q. Where did they take you?
3 A. To the Central Precinct.
4 Q. And did the Central Precinct tell him why he was being
5 arrested?
6 A. They said, "We suspect--we have a suspicion about you."
7 Q. With regard to what?
8 A. For a robbery. I don't know what the robbery is.
9 Q. Has he ever served in the Iraqi Army?
10 TC: Objection, relevance.
11 MJ: Mr. ██████████ ^{(b)(6)-4, (b)(7)(C)-4} what's the relevance of that?
12 CDC: I'm just trying to determine exactly what his role was in
13 Iraqi society, Your Honor.
14 MJ: I'll give you a little leeway. But I mean, we don't need
15 his whole history, do we?
16 CDC: No, very brief, Your Honor.
17 MJ: The objection is overruled. You may answer the question.
18 WIT: No.
19 Q. Why not?
20 TC: Objection. What's the relevance of the job he didn't hold
21 have?
22 MJ: I'll give you a little leeway.

1 CDC: I'm not going too far.

2 MJ: What he hasn't done I'm not sure is too relevant. I'll
3 overrule it. Answer the question. Why wasn't he in the Iraqi Army?

4 WIT: I was working.

5 Q. The precinct, did the precinct send him to the prison?

6 A. Yes.

7 Q. And when did he arrive at the prison?

8 A. I don't know exactly.

9 Q. Would it have been October of 2003?

10 A. Yes.

11 Q. And was he angry because he was placed in prison?

12 A. No.

13 Q. Did he believe he had been placed in prison unjustly?

14 A. They put me unjustly there.

15 Q. And that did not make him angry? That did not make you
16 angry?

17 A. No.

18 Q. While you were in prison, you became involved in a fight.
19 Is that correct?

20 TC: Objection, Your Honor, if we could just specify when this
21 is, if this is covering the entire period of time or identified
22 events.

1 CDC: Well, I was going to ask--Judge, I'm going to get there.
2 MJ: I'm assuming you're going to ask about the fight that got
3 him transferred.
4 CDC: Sure, of course.
5 MJ: Okay, what was the answer? Was he involved in a fight?
6 WIT: A fight amongst ourselves.
7 Q. And did--a fight amongst yourselves, when did this occur?
8 A. I don't know exactly.
9 Q. Was it soon after he got there?
10 A. You mean after they sent me to the torture?
11 Q. After they sent him to the prison, did this fight occur
12 shortly after that?
13 A. No.
14 Q. Why was he taken from the prison to the old prison?
15 A. There was a fight and I was taken there.
16 Q. And what did he do during the fight?
17 A. It was one tent and we had a fight about the food.
18 Q. Did the Americans come, American guards come to stop the
19 fight?
20 A. No.
21 Q. No Americans came to stop the fight?
22 A. No, no American came. We stopped by ourselves.

1 Q. And then was he removed to the other location where the
2 abuse occurred?

3 A. Yes.

4 Q. And does he know why he was removed to there?

5 A. I don't know.

6 Q. He doesn't know. Does he think that perhaps it was because
7 of the fight?

8 A. Yes, because of the fight.

9 Q. So he did see some Americans that night who took him?

10 A. Yes.

11 Q. Does he know if any Americans were hurt that night because
12 of the fight?

13 A. No Americans were hurt. It wasn't a fight with Americans.

14 Q. And did he hurt any Americans that night?

15 A. No.

16 CDC: Nothing further, Your Honor, thank you.

17 MJ: Trial counsel, anything further?

18 TC: No, Your Honor.

19 [The witness was excused and withdrew from the courtroom.]

20 MJ: Trial counsel, that was your only live witness?

21 TC: Yes, sir.

1 MJ: I'm going to let you go, but I want to do a couple things
2 before we do that. With regards to findings, it would seem to the
3 court that Specialist Megan M. Ambuhl played no role in the
4 conspiracy and therefore should be deleted from that specification?

5 TC: I agree, Your Honor.

6 MJ: I'm assuming there's no objection to amend the
7 specification?

8 CDC: No, that's correct.

9 MJ: And the other thing, just to clarify, to make clear that on
10 Specification 3 of Charge III, the maltreatment that the court
11 believes the accused was provident to was ordering the detainees to
12 masturbate in front of other detainees. The ordering of the
13 detainees to strip was not maltreatment, but does put the
14 specification in context and therefore is kind of an additional fact
15 only, but the court is not considering that maltreatment, since that
16 appeared to be the SOP. That was just to clarify the court's
17 findings. There will be no amendment of the specification.

18 TC: Yes, sir.

19 MJ: Let's go ahead and take lunch and then we'll come back.
20 The court's in recess.

21 [Court recessed at 1242, 20 October 2004, and reconvened at 1338,
22 20 October 2004.]

1 MJ: The court is called to order. All parties are again
2 present that were present when the court recessed.

3 Trial counsel, do you have any documentary evidence to
4 present on sentencing?

5 TC: Yes, sir. We have four documents, first, the 2-1 and ERB.

6 MJ: Defense, have you had an opportunity to review Prosecution
7 Exhibit 2 for identification, which appears to be the accused's
8 personnel records?

9 DC: Yes, Your Honor.

10 MJ: And you've made some pen and ink corrections?

11 DC: Yes, Your Honor.

12 MJ: Trial counsel, any objection to the pen and ink
13 corrections?

14 TC: No, sir.

15 MJ: Defense counsel, any objection to Prosecution Exhibit 2 for
16 identification with the pen and ink corrections?

17 DC: No objection, Your Honor.

18 MJ: Prosecution Exhibit 2 for identification is admitted.

19 TC: Sir, the next exhibit is a collection of Buckingham Prison
20 training records of the accused.

21 MJ: Any objection?

22 DC: None from the defense, Your Honor.

1 MJ: Prosecution Exhibit 3 for identification is admitted.
2 TC: The next document is PLDC training records of the accused.
3 MJ: Any objection to Prosecution Exhibit 4 for identification?
4 DC: No, Your Honor.
5 MJ: Prosecution Exhibit 2, 3 and 4 are all admitted.
6 Any other documentary evidence, trial counsel?
7 TC: Yes, sir. Finally, there is a one-page, it should just be
8 a one-page excerpt from the [REDACTED] report, the [REDACTED] 15-6. (b)(6)S;(b)(7)(C)-S
9 MJ: That's marked Prosecution Exhibit 5 for identification.
10 Any objection?
11 DC: No, Your Honor.
12 MJ: Prosecution Exhibit 5 for identification is admitted.
13 TC: Sir, that is all the documentary evidence the government
14 has.
15 MJ: Does the government have any further live testimony you
16 wish to present?
17 TC: No, Your Honor.
18 MJ: The government rests?
19 TC: Yes, sir.
20 MJ: Defense?
21 CDC: Thank you, Judge. At this juncture, I think we'll call
22 Staff Sergeant Frederick for an unsworn statement.

1 MJ: Proceed.

2 [The accused took the stand for an unsworn statement.]

3 **UNSWORN STATEMENT**

4 **Questions by the defense [Mr. ██████████: (b)(6)-4; (b)(7)(c)-4**

5 Q. Staff Sergeant, I wonder if you could explain to the judge
6 where you grew up.

7 A. I grew up in a small rural area in western Maryland.

8 Q. And where was that?

9 A. In Oakland, Maryland.

10 Q. How long did you live there?

11 A. I lived there for 30 years.

12 Q. How old are you now?

13 A. 38.

14 Q. Did you graduate from high school?

15 A. Yes, sir.

16 Q. Tell us a little bit about your military experience after
17 high school. When did you join the service?

18 A. I joined my senior year in high school and left for basic
19 training after I graduated from high school.

20 Q. And you've been in either the National Guard or a Reservist
21 since then?

22 A. Yes, sir.

1 Q. How many times have you served on prolonged active duty?

2 A. This is the second time.

3 Q. When was the first time?

4 A. The first time was Operation Noble Eagle and from
5 September----

6 MJ: Just a second, Mr. [REDACTED] [CW4 [REDACTED] crawls across floor.]

7 Mr. [REDACTED], what's going on?

8 CW4 [REDACTED]: They can't hear it in the back, sir. Somebody did
9 something.

10 MJ: The court will be in recess.

11 [Court recessed at 1247, 20 October 2004, and reconvened at 1250,
12 20 October 2004.]

13 MJ: Court is called to order. All parties are again present
14 that were present when the court recessed. Mr. [REDACTED]?

15 CDC: Thank you, Judge.

16 UNSWORN STATEMENT [Continued]

17 Questions by the defense [Mr. [REDACTED]]

18 Q. You were saying that you spent two tours on prolonged
19 active duty. When was the first one?

20 A. The first time was after the strikes on American territory
21 in September 2001.

22 Q. And what did you do?

1 A. I did Homeland Security at the U.S. Army War College in
2 Carlisle, Pennsylvania.

3 Q. And what period of time was that?

4 A. That was from September 2001 until August 2002.

5 Q. And then when were you called up for----

6 A. February 2003.

7 Q. And you've been here ever since?

8 A. Yes, sir.

9 Q. Your civilian employment after you left high school, what
10 was it?

11 A. My very first job was working in a marina on a recreation
12 lake where I grew up.

13 Q. And then?

14 A. Then I went to--had several other seasonal jobs and then I
15 worked at Bausch and Lomb making Ray Ban sunglasses for 7 years.
16 Then I went to school for a couple years and did some odd jobs. Then
17 I was hired in 1996 at the Virginia Department of Corrections.

18 Q. So you didn't start corrections work until 1996, is that
19 correct?

20 A. Yes, sir.

21 Q. And where did you do that?

22 A. In Buckingham, Virginia.

1 Q. Can you tell us a little bit about Buckingham, Virginia?
2 A. Buckingham, Virginia is a very small town.
3 Q. Rural?
4 A. Very rural, country.
5 Q. What sorts of things does one do in Buckingham, Virginia?
6 A. Hunt, fish, that's about it.
7 Q. Friends there?
8 A. Yes, sir.
9 Q. And as I understand it, you met your wife there. Is that
10 right?
11 A. Yes, sir.
12 Q. How did you meet her?
13 A. I met her, she was a training officer.
14 Q. Where?
15 A. At Buckingham Correctional Center.
16 Q. And when did you marry her?
17 A. We married in 1999.
18 Q. In 1999.
19 A. Yes, sir.
20 Q. Now, is that your first marriage?
21 A. Yes, sir.
22 Q. And did you bring any children into the marriage?

1 A. No, sir.

2 Q. Did she bring any children?

3 A. Yes, sir.

4 Q. How many?

5 A. Two.

6 Q. And how old are they now?

7 A. The oldest one is 19, the youngest one is 14.

8 Q. And the 19-year old is where?

9 A. She's going off to college, but still living at home.

10 Q. And the 14-year old?

11 A. She's in her freshman year of high school.

12 Q. What sorts of things did you do in Buckingham?

13 A. Hunt, fish, go to ballgames with my daughters, any kind of

14 school activities, things of that nature, cookouts.

15 Q. This prison that you worked at, does Virginia stratify

16 prisons in terms of the types of inmates that go to....

17 A. No, sir.

18 Q. What level of prison were you at?

19 A. I worked at a level three prison.

20 Q. What does that mean?

21 A. That means it's a medium security.

22 Q. Medium security.

1 A. Yes, sir.

2 Q. And what kinds of men, I presume it's all men?

3 A. Yes, sir.

4 Q. What kinds of men find themselves going to Buckingham
5 Prison? What were some of the offenses they would be convicted of?

6 A. For all kinds of offenses, murder, drugs, kidnapping,
7 sexual events, sexual molestation, any kind.

8 Q. And you've been there now for 7 years, is that correct?

9 A. Yes, sir.

10 Q. So you started out at the lowest level?

11 A. Yes, sir.

12 Q. Did you receive training in correctional facilities?

13 A. Yes, sir.

14 Q. And did that training include how to deal with inmates?

15 A. Yes, sir.

16 Q. Did it describe that you could not, in fact, abuse inmates?

17 A. Yes.

18 Q. And you learned that from this training.

19 A. Yes, sir.

20 Q. Tell us how structured the place was, in other words, the
21 rules and regulations. Were there lots of rules and regulations?

1 A. There's lots of rules and regulations that I have access to
2 throughout the facility. It's very well run. There's rules and
3 regulations for anything that can happen and will happen inside the
4 facility.

5 Q. Were you ever left to guess what your course of conduct was
6 to be or what course of action you should follow at that prison?

7 A. No, sir.

8 Q. And why not?

9 A. Because we go through training every year. We take a week-
10 long class every year to--recertification. And also, I have access
11 to, in five different locations throughout the facility, to view the
12 rules and regulations.

13 Q. Tell me this if you would, what about the manner in which
14 you're led. Do you have significant leadership at all times of the
15 day?

16 A. Yes, sir.

17 Q. And what do you mean by that?

18 A. I have a building supervisor, which is a sergeant. I have
19 a building commander, which is a lieutenant. And I have two watch
20 commanders, which are captains or lieutenants.

21 Q. Does that include when you are doing this at night?

22 A. Yes, sir.

1 Q. So if there's a problem you got, what SOP would you follow
2 at your prison?

3 A. I would go--if it was something I couldn't resolve myself,
4 I would speak to my immediate supervisor, the building sergeant.

5 Q. And if he weren't helpful?

6 A. I would go to the building lieutenant.

7 Q. If you did something to a prisoner at your prison, the sort
8 of things that you did here, would that prisoner have the capacity to
9 complain about you?

10 A. Yes, sir.

11 Q. And is that a significant deterrent at your prison?

12 A. Yes.

13 Q. In all the years that you have been a prison guard, have
14 you received any reprimands at all for your conduct towards
15 prisoners?

16 A. I've received one.

17 Q. And what was that for?

18 A. That was for failing to wear a uniform to work, a dress
19 uniform when I wore a utility uniform.

20 Q. But that has nothing to do with treatment of prisoners.

21 A. No, sir.

1 Q. In the 20 years you served in the military, other than
2 what's happening now, have you had any disciplinary action against
3 you?

4 A. I've had one negative counseling statement.

5 Q. And what was that about?

6 A. For being 5 minutes late to formation.

7 Q. And in 20 years of service, that's it?

8 A. Yes, sir.

9 Q. And 7 years of service to the prison.

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. The prison, when you enter the prison at Buckingham, what
14 are the procedures for an individual entering the prison?

15 A. As soon as you enter the front door, you are searched, pat
16 down searched, then you walk through a metal detector.

17 Q. Are the prisoners all identified when they come in by
18 number?

19 A. Yes, sir.

20 Q. That's what you're used to.

21 A. Yes, sir.

1 Q. Is it fair to say that you're used to a highly structured
2 environment in the prison?

3 A. Yes, sir.

4 Q. At Buckingham?

5 A. Yes, sir.

6 Q. Let's turn now to some of your National Guard service and
7 Reserve service. Have you ever received training to be a prison
8 guard in the military context?

9 A. No, sir.

10 Q. In fact, when you came to Iraq, what were your principal
11 responsibilities?

12 A. Law and order at the city of Al Hillah.

13 Q. And what sorts of things did you do?

14 A. There, I was in charge of the operations section of the
15 Headquarters Platoon. I ran the radios, the mission logs, things of
16 that nature, operated around the area there and within our compound.

17 Q. When was it that you first learned that you would be
18 leaving that duty assignment and going to Abu Ghraib?

19 A. Approximately the middle of September 2003.

20 Q. And what did your unit do to effect that? What did your
21 unit do to make it so?

1 A. We split the company into two sections. The first half
2 went to Kuwait for I think 7 days, and then they came up and went to
3 Abu Ghraib and the second half of the company went down to Kuwait,
4 and then they came up in the middle of October.

5 Q. And what was the purpose of going to Kuwait?

6 A. To get supplies, re-supply for the next mission.

7 Q. And when did you, in fact, get there?

8 A. I got there approximately 9, 10 October 2003.

9 Q. How were you selected to be the NCOIC of this prison
10 complex?

(b)(6)2-(b)(7)(C)-2

11 A. Captain [REDACTED] and Captain [REDACTED] the company commander,
12 knew that I had civilian corrections experience. So they, in turn,
13 told me, "We want you to show us how to run a facility, how it should
14 be run. We want your suggestions," things of that nature. "We want
15 you to be the NCOIC of the prison."

16 Q. Have you ever run a prison before?

17 A. No, sir.

18 Q. Did they inquire of you as to what your real knowledge of
19 prison management was?

20 A. No, sir.

1 Q. In other words, did they just assume that because you had
2 "prison" behind your name that you were going to be a fountain of
3 information on prisons?

4 A. Yes, sir.

5 Q. Did you discover rather quickly that Abu Ghraib was not
6 quite the same as Buckingham, Virginia?

7 A. Yes, sir, the very first night.

8 Q. What did you discover upon your arrival at Abu Ghraib about
9 nudity amongst the detainees?

10 A. While I was doing the right seat ride, the relief in place
11 with the 72d Military Police Company, the NCOIC of the nightshift, I
12 was going around with him, and he took us through 1 Alpha and 1 Bravo
13 on a little tour and showed me where everything was. And I noticed
14 that detainees were naked in their cells, handcuffed to the doors
15 wearing female's underclothes, and I asked him what the deal was
16 behind that. And he told me that the reason they cuff them to the
17 doors was military intelligence didn't want these detainees talking
18 amongst themselves. So for punishment, they would, when they were
19 caught talking, they would handcuff them to the doors. The nudity
20 thing was, he said it was to humiliate them, degrade them for
21 military intelligence purposes, that it was very embarrassing to be
22 seen--for an Arabic male to be seen by another male nude.

1 Q. So, the very outset of your coming to Abu Ghraib, you found
2 these circumstances to exist. Is that correct?

3 A. Yes, sir.

4 Q. Did that seem inconsistent with your view of prison
5 management?

6 A. Yes, sir.

7 Q. What, if anything, did you do or say to try and gain some
8 guidance with respect to those matters you've just described?

9 A. Once we got back up to the office, the very first night
10 that I was talking to him, I asked him if there was any SOPs, any
11 rules and regulations or ARs or FM, manuals. He said there wasn't,
12 that he would try to find me some, and that was the end of that. I
13 never did see it. I asked a couple times.

14 Q. Do you know what AR 190-8 is?

15 A. As of then, no, as of January 2004, yes.

16 Q. What is it?

17 A. It deals with civilian internees, detained persons.

18 Q. Did anyone in your unit ever provide, or did anyone,
19 period, ever provide you with a copy of AR 190-8?

20 A. No, sir.

21 Q. This document, as you know, is the document that is the
22 foundational document for running prisons. Is it not?

1 A. Yes, sir.

2 Q. And you never received it?

3 A. No, sir.

4 Q. You were never trained on it?

5 A. No, sir.

6 Q. You never saw it with any commander?

7 A. No, sir.

8 Q. Now, at your prison in Buckingham, do you have law
9 enforcement coming in to interrogate prisoners?

10 A. No, sir.

11 Q. Do you know what a ghost detainee is?

12 A. Yes, sir.

13 Q. What is it?

14 A. That is a detainee that's there physically, but he's not on
15 paper. He doesn't have a number. He's not registered within the
16 system.

17 Q. One of the procedures that was in place, however, was to
18 give each detainee a number. Isn't that correct?

19 A. Yes, sir.

20 Q. And so even within that system, that failure to give a
21 ghost detainee a number was a violation of even the few regulations
22 that existed at Abu Ghraib, was it not?

1 A. Yes, sir.

2 Q. What numbering system was employed? In other words, was
3 there a difference between two different sets of people?

4 A. I was told from military intelligence soldiers that the
5 five digit numbers were common criminals. Detainees with six digit
6 numbers were of military intelligence value.

7 Q. And as I understand it, Tier 1A and 1B were the six digit
8 numbered folks?

9 A. Yes, sir.

10 Q. And the five digit numbered people were elsewhere. Is that
11 correct?

12 A. Yes, sir.

13 Q. When you got to Abu Ghraib and had been there for a while,
14 can you describe for us what the living conditions were like?

15 A. It was very terrible. There was lots of mud, rain. We
16 didn't have no showers. We had cold water showers that was outside.
17 It was cold. The buildings were dirty, crawling with rats. Just,
18 you name it, pigeons, pigeon feces all over the floor.

19 Q. What were your facilities for feeding the troops at that
20 point in time?

21 A. In a military kitchen trailer.

22 Q. And you had the nightshift. Is that correct?

1 A. Yes, sir.

2 Q. Was there a midnight meal?

3 A. No, sir.

4 Q. So for the nightshift, when did you, in fact, eat?

5 A. My shift began at 1600 in the afternoon, and approximately
6 between 1700 and 1800 is when myself and my other soldiers ate.

7 Q. And what about breakfast and lunch?

8 A. Most of us were so exhausted after the shift would end at
9 04 in the morning that we'd go back and go to sleep, so we never ate
10 breakfast, and we was always asleep for lunch, or I was.

11 Q. So you and many others were one meal a day?

12 A. Yes, sir.

13 Q. And I mean, you're talking about a 12-hour shift, are you
14 not?

15 A. Yes, sir.

16 Q. And how long a period of time did you work 12 hours a day
17 continuously?

18 A. I worked approximately 10 straight day--30 straight days
19 before I took one off, just because I wanted to be there. And then,
20 we worked 10 days straight, take a day off, then we got a couple more
21 soldiers to relieve some others and we got it down to 7 days. And by

1 the end of December, we got it down to where you'd work 4 days and
2 take one off.

3 Q. But in the beginning, during the period of time when some
4 of these incidents occurred, you were working straight through?

5 A. Yes, sir.

6 Q. Tell us a little bit about force protection. What kind of
7 circumstances were you in from the perspective of attacks?

8 A. There was lots of mortar attacks, RPG attacks, gunfire
9 every night. There was multiple rockets flying overhead.

10 Q. Can you describe for us in your own words the level of
11 stress you were under while you were at Abu Ghraib?

12 A. Very high, the most I've ever had in my entire life.

13 Q. I want to shift a little bit now to the manner in which
14 things were conducted there. The dayshift ended at 1600?

15 A. Yes, sir.

16 Q. And the nightshift took over?

17 A. Yes, sir.

18 Q. Was your company properly staffed or was it understaffed?

19 A. No, sir, it was understaffed.

20 Q. Who above you spent time in that prison at night?

(b)(6)(2); (b)(7)(C)-2

1 A. Sergeant First Class [REDACTED] was [REDACTED] but he would only
2 stay until approximately midnight. And Captain [REDACTED], he would be
3 gone by 1700.

4 Q. So insofar as senior leadership is concerned, the kind that
5 you were used to at Buckingham, the buck stopped with you?

6 A. Yes, sir.

7 Q. On most nights or on most all nights there?

(b)(6)(2); (b)(7)(C)-2

8 A. Yes, sir. [REDACTED] didn't start staying later in
9 the evenings until the end of November, I believe.

10 Q. Now, you did have some assistance from the Iraqi Police.
11 Is that correct?

12 A. Yes, sir.

13 Q. Give me an assessment of the assistance the Iraqi Police
14 provided.

15 A. Not very much at all.

16 Q. And why do you say that?

17 A. They were very corrupt. They were lazy. They didn't do
18 what you'd tell them to do. You'd try to tell them the American way
19 to do things. They would do it for about 15 minutes and then they'd
20 go back out to playing cards and smoking in the hallway.

21 Q. When you say corrupt, tell us what that means in terms of
22 the safety of American troops.

1 A. When they came through the gate, they weren't--when they
2 came onto the facility, they were not patted down or searched for any
3 kind of contraband or anything.

4 Q. And what was the result, based upon your own observations?

5 A. There would be drugs, notes, maps of the facility, of Abu
6 Ghraib. There would be weapons, even clothes they would bring in to
7 help the prisoners escape, bring in firearms, ammunition, bayonets.

8 Q. For the prisoners.

9 A. Yes, sir.

10 Q. Now this circumstance came to a head, did it not, at one
11 point in time?

12 A. Yes, sir.

13 Q. And when was that?

14 A. Two days before Thanksgiving.

15 Q. Could you tell the judge what happened 2 days before
16 Thanksgiving?

17 A. A 9-millimeter pistol and eight or nine rounds of
18 ammunition, two bayonets were smuggled into the institution and given
19 to a Syrian detainee in 1 Alpha that has no access to Iraqi Police.

20 Q. And the Iraqi Police smuggled these things in?

21 A. Yes, sir.

1 Q. And the Syrian detainee ended up with a loaded
2 9-millimeter. Is that correct?

3 A. Yes, sir.

4 Q. Could you tell the military judge what your role was in
5 correcting that situation?

6 A. I was called down there and they advised me of the
7 situation, said that a detainee had acquired a weapon, somebody,
8 another detainee had told him. So at that time, Lieutenant Colonel
9 (b)(6)2; (b)(7)(C)-2 came down, which is from military intelligence. I advised him
10 of it. He said, "Okay, let's go and get this weapon." So, I grabbed
11 every handcuff I could because I didn't know which detainee it was, I
12 just knew it was on the top side on the top tier, and I handcuffed
13 and flex-cuffed every prisoner to the cell door with their hands
14 exposed to where I could see them. And then that's when the detainee
15 started shooting. The other NCOIC shot him with a non-lethal round
16 in the chest and he continued shooting. He shot him three more times
17 with non-lethal, and he was still shooting. A couple of us were shot
18 at at close range.

19 Q. "A couple of us," meaning yourself?

20 A. Yes, sir.

21 Q. Can you explain to the judge what happened when you were
22 the target?

1 A. I was trapped in a corner because he was down next to the
2 wall. There was no exit. And while I was standing there waiting for
3 him and hoping he would stick his arm out and try to shoot down the
4 walkway when I could grab the weapon, but then I figured he wasn't
5 going to come out so I snuck around to the other side. I had my 9-
6 millimeter drawn on him and as soon as he made eye contact with me,
7 he was standing there and just giving me this crazy look that I'll
8 never forget, and he fired and it hit right beside my head.

9 Q. And eventually he was subdued, is that correct?

10 A. Yes, sir.

11 Q. And what did you then all of you do with the Iraqi Police
12 that night?

13 A. That's when the military--I guess Colonel [REDACTED] got a hold
14 of some interrogators. They all came down and they gathered up every
15 one of the IPs that were there and stood them in a hallway, strip
16 searched them and started interrogating the Iraqi Police and it just
17 turned into a nightmare from there, total chaos.

18 Q. In other words, the police who were supposed to be
19 assisting in your protection who were never padded down, ended up
20 being detainees themselves. Is that correct?

21 A. Yes, sir.

22 Q. And were interrogated by our own military intelligence?

1 A. Yes, sir.

2 Q. When you say "It went crazy from there," what do you mean
3 by that?

4 A. It was just, there was people running everywhere,
5 screaming. Dogs were running. The Rapid Force was in there
6 searching--helped search the cells because we had had intel there
7 might be some more weapons and it was just total chaos. People were
8 running everywhere. The dogs were barking.

9 Q. Staff Sergeant, I'd like to talk to you about--we're going
10 to introduce eventually into evidence the Fay report, and there are
11 many mentions of you in the Fay report. I'd like to talk about some
12 of the incidents that are mentioned in the Fay report if I could.

13 MJ: Mr. (b)(6)-4; (b)(7)(C)-4 we're only talking about the unclassified
14 version of the Fay report here?

15 CDC: Absolutely.

16 MJ: Just to make it clear on the record.

17 CDC: Yes, of course, only the unclassified version.

18 MJ: Okay, go ahead.

19 Q. Let's discuss firstly, you've already testified that when
20 you got there you saw nudity in the various forms you've described.
21 Is that correct?

22 A. Yes, sir.

1 Q. Now, on October the 25th, 2003, could you describe for us
2 what you observed with respect to military intelligence and their
3 treatment of certain detainees? And if you'll address yourself to
4 the judge.

5 A. I observed them, when I went down to make another security
6 check in 1 Alpha, I observed them in placing some detainees in sexual
7 positions, handcuffing them together while they were nude.

8 Q. Now, was this the first time you had seen the use of sexual
9 positions as a technique?

10 A. Yes, sir.

11 Q. Is that the first time?

12 A. Yes, sir.

13 Q. And that was 25 October?

14 A. Yes, sir.

15 Q. You've seen the nudity being used, but not in a dynamic way
16 before, right?

17 A. Yes, sir.

18 Q. Now, did you report this to anybody?

19 A. No, sir.

20 Q. Let me ask you generally, because I think the testimony
21 will show eventually that very few people said anything. You had
22 this training. You've already told the judge that you were wrong,

1 but I think we need to know, if you saw these things and they
2 offended you, why would you not tell somebody?

3 A. I didn't think anybody cared what happened. I knew it was
4 wrong to do, but I just didn't think anybody cared what happened to
5 the detainees, as long as they didn't die.

6 Q. Were you afraid of anything?

7 A. Yes.

8 Q. Like what?

9 A. I was afraid of retaliation from other soldiers.

10 Q. And why would you be afraid of retaliation from other
11 soldiers?

12 A. Because there was a lot of high stress. We all walked
13 around with our weapons loaded with a round in the chamber.

14 Q. And you think that if you had said to a higher up, "So and
15 so has done this," that there would have been personal retaliation
16 against you?

17 A. I felt that sometimes, yes.

18 Q. Had you ever been placed in a leadership position like this
19 before?

20 A. No, sir.

21 Q. At any time in your life.

22 A. No, sir.

1 Q. And that October 25th incident, who was the moving force of
2 that incident? Was it the MI people or was it the MPs?

3 A. The military intelligence soldiers.

4 Q. Now, there came a time on November the 4th, I believe, when
5 a ghost detainee entered your facility. Is that correct?

6 A. Yes, sir.

7 Q. And he left dead. Is that right?

8 A. Yes, sir.

9 Q. Could you tell the military judge what you know about that
10 circumstance?

11 A. I came to work at approximately 1530 that afternoon, and
12 Sergeant [REDACTED] ^{(b)(6)-2, (b)(7)(C)-2} that works 1 Alpha came running up to me and said
13 that we had an OGA prisoner, a ghost detainee, didn't last 15 minutes
14 in here.

15 Q. I was like, "What happened?"

16 A. He said, "They killed him."

17 Q. I said, "Who?"

18 A. He said, "OGA." So I left to go with that, Captain
19 [REDACTED] ^{(b)(6)-2, (b)(7)(C)-2} he came by and I talked to him for a few minutes. He told
20 me about it, so I just couldn't believe it. So I got the key, found
21 the key to the shower. I said, "Well, where's the body?" He told me
22 the body was in the shower in 1 Bravo packed in ice in a body bag.

1 So later that night when things settled down for a few minutes, I
2 found a key, spare key, and went down because I just couldn't believe
3 there was a dead body in there. And sure enough, there it was.

4 Q. And what did you learn about how this body, which was
5 stored in a shower in a bag of ice, was removed from the prison the
6 next day?

7 A. When I came to work the next day, I asked Captain (b)(6)2,(b)(7)(C)-2
8 if the body had been removed. He said, "Yes," and he said, "The
9 medics should've got an Oscar award for the performance they did."
10 And I said, "Well, what do you mean?" He said, "They put the OGA
11 prisoner on a stretcher with an IV in his arm and took him down a
12 hallway acting like they was doing CPR on him." And he was real
13 impressed on how they performed their activity.

14 Q. So now you've seen nude people in cells. You're seeing
15 detainees in sexual positions at the behest of MI.

16 A. Yes, sir.

17 Q. You're seeing the OGA, those that come in on cat's paws,
18 just appear in the mist....

19 A. Yes, sir.

20 Q. Kill a man...

21 A. Yes, sir.

22 Q. And it's now November the 4th.

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. Now we come to November the 8th, and what happened on
5 November the 8th with these seven men who came to Tier 1A? What were
6 you told, specifically?

7 A. I was told that they were involved in a riot, that they
8 brought the ringleaders to the hard site. And the escorting officers
9 told me that they might have information about the possible escapes a
10 couple days before, and they were in possession of multiple weapons
11 and the ringleader had thrown a rock and hit a female soldier in the
12 face.

13 Q. That's what you knew.

14 A. Yes, sir.

15 Q. Did that make you angry?

16 A. Yes, sir.

17 Q. You struck this man who was in here today. Is that
18 correct?

19 A. Yes, sir.

20 Q. And you struck him in the chest.

21 A. Yes, sir.

22 Q. Why?

1 A. I was just angry.

2 Q. And I think that everybody would like to understand, but
3 before I say that, then this pyramiding action started?

4 A. Yes, sir.

5 Q. And who initiated that?

6 A. Specialist Graner.

7 Q. And why, again, why didn't you stop it?

8 A. I didn't think anybody cared anymore after the things that
9 I had seen. It just seemed like nobody cared what happened.

10 Q. Tell me about your relationship with Specialist Graner.
11 How did that work? What kind of guy is he and how do your
12 personalities mesh?

13 A. He kind of...we didn't really hang out a lot. We weren't
14 real good friends even though we stayed together in the same tent in
15 Al Hillah. But it was just somebody who I associate with, no close
16 friendship.

17 Q. Was he a dominant personality?

18 A. Yes.

19 Q. In what sense?

20 A. He could pretty much talk you into doing just about
21 anything he wanted.

1 Q. And were you concerned about coming up against him from a
2 leadership perspective?

3 A. In a way, yes.

4 Q. Why?

5 A. I was kind of--after some of the stories that I've heard
6 him talk about, I was a little bit afraid of him.

7 Q. But then something different happened. He may have done
8 the pyramid, but then you initiated the masturbation. Isn't that
9 correct?

10 A. Yes, sir.

11 Q. That was you. That wasn't Graner. That wasn't anybody
12 else, and nobody ordered you to do it. Is that correct?

13 A. Yes, sir.

14 Q. What happened?

15 A. I just went and grabbed their arm and placed it on their
16 genitals and moved it back and forth and told them to masturbate.

17 Q. And how long did this last?

18 A. From the time it started to the end, it was approximately 3
19 to 4 minutes.

20 Q. And did they all stop?

21 A. Yes, sir.

22 Q. All three of them?

1 A. Except for the one, he didn't want to stop, so I put him in
2 an isolation cell by himself.

3 Q. So one of the three who you showed to masturbate continued
4 to masturbate. Is that correct?

5 A. Yes, sir.

6 Q. And you put him in a separate cell?

7 A. Yes, sir.

8 Q. Did you then leave?

9 A. Yes, sir.

10 Q. Did you have any role in instructing these men to engage in
11 what appears to be simulated oral sex with each other?

12 A. No, sir.

13 Q. So this young man who testified today about that happening
14 to him, you weren't there for that?

15 A. No, sir.

16 Q. Now, there was another--there were three other people I'd
17 like to talk to you about. There was a (b)(6)-4, (b)(7)(C)-4 employee named [REDACTED].
18 Is that correct?

19 A. Yes, sir.

20 Q. And as I understand it, you and Mr. [REDACTED] were involved
21 on the night of the IP problem, the Iraqi Police problem. Is that
22 correct?

1 A. Yes, sir. (b)(6)-4 ; (b)(7)(c) -4

2 Q. Now, did [REDACTED] give you specific instructions to hit
3 pressure points on this man he was interviewing?

4 A. Yes, sir.

5 Q. And was the man he was interviewing an Iraqi policeman?

6 A. Yes, sir.

7 Q. So we have a [REDACTED] employee interrogating an Iraq policeman
8 who is paid by the United States? (b)(6) 4 ; (b)(7)(c) -4

9 A. Yes, sir.

10 Q. And you are being told by this [REDACTED] employee to apply
11 pressure points to him. Is that correct?

12 A. Yes, sir.

13 Q. And you did it.

14 A. Yes, sir.

15 Q. Did you also twist the man's handcuffs so that his wrists
16 were bent?

17 A. I twisted it a little bit and applied a little bit of
18 pressure.

19 MJ: Major [REDACTED] (b)(6) -2 ; (b)(7)(c) -2

20 TC: And I apologize, Your Honor.

21 MJ: Sure.

1 TC: Apparently there will be an EOD detonation in a few
2 moments. I don't know if you want to recess, Your Honor. Just so
3 that all the parties are aware.

4 MJ: I hear other explosions. Since we know it's coming, go
5 ahead, Mr. [REDACTED] (b)(6)-4, (b)(7)(C)-4

6 CDC: Thank you very much, Your Honor.

7 Q. Now, the second person I want to talk to you about is Mr.
8 [REDACTED] (b)(6)-4; (b)(7)(C)-4
Was he also a civilian contractor?

9 A. Yes, sir.

10 Q. How frequently would you see him?

11 A. I would see him two or three times a week, maybe four.

12 Q. What, if any instructions, did he give you?

13 A. He wanted--basically, he just said, "Treat them like shit.
14 Treat this one like shit. Put the dog on this guy as much as you
15 can, intimidate them."

16 Q. But the dogs didn't come until when?

17 A. Around the middle or the end of November, I believe.

18 Q. The dogs came.

19 A. Yes, sir.

20 Q. And what did [REDACTED] (b)(6)-4; (b)(7)(C)-4
21 tell you should be done with the
dogs?

22 A. To let them intimidate certain detainees.

1 Q. And did you?

2 A. Yes, sir.

3 Q. Now, you're not charged with that offense, but that did
4 happen, right?

5 A. Yes, sir.

(b)(6)4; (b)(7)(C)-7

6 Q. And you're not charged with the [REDACTED] offense, but that
7 did happen.

8 A. Yes, sir.

9 Q. And there was another MI person that you dealt with,
10 [REDACTED] correct?
(b)(6)-2; (b)(7)(C)-2

11 A. Yes, sir.

12 Q. She was a specialist, I think?

13 A. Yes, sir.

14 Q. Did she also provide you with instructions on how to treat
15 detainees?

16 A. Yes, sir.

17 Q. Can you give us some examples?

18 A. Just PT them rigorously until they get tired, worn out.

19 Take their cigarettes. Don't give them any cigarettes, things like
20 that.

21 Q. When you say "PT them vigorously," that sounds very polite.
22 Did you force them to exercise to the point of exhaustion?

1 A. Yes, and yell at them a lot, yell at them.

2 Q. And the point was?

3 A. To set the conditions for interrogations.

4 Q. Now, there were several things that I think that you did

5 while you were in that capacity as the nightshift NCOIC, and I would

6 like to ask you whether or not you engaged in the following

7 activities. Did you cause these detainees to be sleep deprived?

8 A. No, sir.

9 Q. Did you cause these detainees to eat different things?

10 A. No, sir.

11 Q. Did you put them in stress positions?

12 A. No, sir.

13 Q. You didn't do any of these things. Who did?

14 A. Specialist Graner did.

15 Q. So where did he get that information from?

16 A. He got that from the people who work in military

17 intelligence, soldiers.

18 Q. But you knew these things were happening.

19 A. Yes, sir.

20 Q. And you did not complain about it.

21 A. No, sir.

1 Q. Now, there was something called environmental manipulation
2 that was done, too, putting people in cold rooms or hot rooms. Is
3 that correct?

4 A. Yes, sir.

5 Q. Was that done?

6 A. Yes, sir.

7 Q. So you know all of these things were done.

8 A. Yes, sir.

9 Q. Sensory deprivation, correct?

10 A. Yes, sir.

11 Q. And who was doing these things, the MPs?

12 A. Yes, sir.

13 Q. And they weren't just creating these things out of whole
14 cloth, were they? They were getting instructions from somewhere. Is
15 that correct?

16 A. Yes, sir.

17 Q. And that would have been.... (b)(6)-4; (b)(7)(C)-4

18 A. From military intelligence soldiers and [REDACTED] employees.

19 Q. Did you ever really know who was in charge of that prison?

20 A. No, not at all, sir.

21 Q. And why not?

1 A. Because there was always a conflict between who was running
2 it, the MPs or MI.

3 Q. Did there come a time when it became clear that the MI was
4 running it?

5 A. Yes, sir.

6 Q. And when was that?

7 A. Right--a couple weeks after the right seat ride.

8 Q. And did you ever receive visits from your battalion-level
9 folks or your brigade-level folks to make sure you guys were okay
10 down there?

11 A. No, sir.

12 Q. Did you feel forgotten down there?

13 A. Yes, sir.

14 Q. Was there...let me ask you this. You knew what you did was
15 wrong.

16 A. Yes, sir.

17 Q. How did it come to pass that a young man from Buckingham,
18 Virginia, no history of anything, comes here today. What happened?

19 A. I have no idea. I just wasn't thinking. I just didn't
20 think anybody cared what happened--what we did.

21 Q. Did anyone ever tell you that from the moment you walked in
22 there, seeing those detainees nude for prolonged periods and

1 handcuffed to their cells in the nude, from that moment, the prison
2 was in violation of the Geneva Convention?

3 A. Yes, sir.

4 Q. You now know that.

5 A. Yes, sir.

6 Q. But you didn't know it then.

7 A. Yes, sir.

8 CDC: Your Honor, just one moment if I could. [Pause.] Nothing
9 further, Judge, thank you very much.

10 [The accused resumed his seat at counsel table.]

11 MJ: Before the defense continues, I need to clarify a couple
12 things with Sergeant Frederick.

13 Sergeant Frederick, as I told you earlier, if you told me
14 anything inconsistent with your guilty plea, I would reopen the
15 inquiry, and I'm not sure these are necessarily inconsistent with
16 them, but I want to go over them with you again and make sure there's
17 no confusion. Do you understand that?

18 ACC: Yes, Your Honor.

19 MJ: You said in your unsworn statement that you were afraid of
20 personal retaliation from other soldiers if you reported the
21 misconduct of others?

22 ACC: Yes, Your Honor.

1 MJ: Is that why you didn't report it?

2 ACC: That--yes, Your Honor.

3 MJ: Is that the only reason you didn't report it?

4 ACC: Yes, Your Honor.

5 MJ: Did that prevent you from stopping others from abusing
6 detainees?

7 ACC: No, sir.

8 MJ: I'm sorry?

9 ACC: No, sir.

10 MJ: Did you know that you had a duty to stop others?

11 ACC: Yes, sir.

12 MJ: Now, you say you were afraid to report it because other
13 people would--you were afraid of retaliation of them, but you weren't
14 afraid of them when you--you didn't stop it because you weren't
15 afraid of them? Do you understand what I'm saying? I don't quite
16 understand. You said on one hand, "I didn't report it because I was
17 afraid of personal retaliation. But on the other hand, I knew I
18 should've stopped it and I chose not to stop it," as opposed to not
19 stopping it because you were afraid of the people who were doing it.
20 Is that what you're telling me?

21 ACC: No, sir.

1 MJ: Do you understand what I'm saying? You were afraid to
2 report it, but you weren't afraid to stop it.

3 ACC: I just didn't have the courage to stop it when I knew what
4 was going on was wrong.

5 MJ: Yes, but I'm coming back to the--so you did have the
6 courage to stop them, then you told me earlier that you thought you
7 had a duty to stop them and you didn't do it, right?

8 ACC: Yes, sir.

9 MJ: And my question comes to you is, the reason you didn't stop
10 them, didn't do your duty was because you were afraid of them or you
11 simply chose not to do your duty?

12 ACC: I know my duty was to report it, but I chose not to.

13 MJ: But I'm not talking so much about the reporting part,
14 because you're not charged with failure to report. You're charged
15 with willful dereliction of duty by failure to stop it. And you told
16 me you were scared to report it because you were intimidated by the
17 other people. My question is, did this intimidation stop you from
18 doing your duty to stop the maltreatment?

19 ACC: There was no real intimidation, it was just the fear that I
20 had.

21 MJ: But did that fear prevent you from stopping it like it
22 prevented you from reporting it?

1 ACC: No.

2 MJ: You could've stopped it if you wanted to.

3 ACC: Yes, sir.

4 MJ: You weren't scared of all these guys so much that that
5 would prevent you from stopping it as you should have?

6 ACC: No, sir.

7 MJ: You also said a couple of times that it seemed like nobody
8 cared, and that's why you didn't stop it. When you said, "Nobody
9 cared," do you think that was, "Nobody cared and therefore we were
10 free to do whatever we wanted to do," or "Nobody cared," that means,
11 "Nobody was going to come down and look at us." Do you know what I'm
12 saying? It was a lack of interest by others, did that mean to you
13 that it meant it was okay to abuse the detainees?

14 ACC: I knew that it wasn't okay to abuse them.

15 MJ: And the fact that you weren't getting support from your
16 chain of command didn't excuse your conduct?

17 ACC: No, sir.

18 MJ: Now, you also said specifically that you're a little bit
19 afraid of Graner.

20 ACC: Yes, sir.

1 MJ: Did that prevent you from stopping him from doing the
2 maltreatment?

3 ACC: No, sir.

4 MJ: And then when you were with him and the others on that, I
5 believe it was on the 8th of November, did you join in voluntarily or
6 were you sort of intimidated and joined by Graner?

7 ACC: Voluntarily. (b)(6)-4; (b)(7)(C)-4

8 MJ: And when [REDACTED] said, "Treat them like shit," when did
9 he tell you that?

10 ACC: When did he, sir?

11 MJ: Yeah.

12 ACC: It had to be around the middle of November, I believe.

13 MJ: Okay, so after the first two incidences?

14 ACC: Yes, sir.

15 MJ: In any way, do you take that comment, "Treat them like
16 shit," as guidance to you to do what you did to the Houdini detainee?

17 ACC: No, sir.

18 MJ: Okay, I believe that clears up the issues I had.

19 Defense?

20 CDC: Thank you.

21 MJ: Just, let me, in an abundance of caution, trial counsel, do
22 you see any other issues in the unsworn statement?

1 TC: No, sir, I believe the issue of duress that was raised has
2 been covered, as well as the other issues.

3 DC: Your Honor, at this time, the defense wishes to introduce a
4 number of documents into evidence. We're going to have to hold off
5 on one of the stipulations of expected testimony. We'll offer at
6 this time stipulation of expected testimony of Captain [REDACTED]

7 MJ: How many stipulations of expected testimony do you have, (b)(6)2-
8 Captain [REDACTED] (b)(7)(C)-2

9 DC: Sir, at this time, we have two, with a third one pending
10 approval.

11 MJ: Make the first two Defense Exhibits Alpha and Bravo.
12 [Reporter did as directed.]

13 For the record, Defense Exhibit Alpha is Captain [REDACTED] and
14 Defense Exhibit Bravo is Major General Miller's. Go ahead, next?

15 DC: Stipulation of expected testimony from Sergeant [REDACTED]
16 [REDACTED] (b)(6)2-(b)(7)(C)-2

17 MJ: That will be Charlie.

18 DC: Your Honor, an email chain from a CW3 [REDACTED] 3d Armored
19 Cavalry Regiment.

20 MJ: That will be Delta.

21 DC: Your Honor, interrogator notes from 14 November 2003.

22 MJ: I'm assuming none of these are classified documents.

1 ATC: That's correct, Your Honor.

2 DC: Actually, Your Honor, Defense Exhibit Bravo....

3 ATC: That's correct.

4 MJ: That's correct that nothing is a classified document.

5 ATC: Nothing is classified. All these documents are

6 unclassified.

7 MJ: Okay. Next? (b)(6)2-(b)(7)(C)-2

8 DC: A personal letter dated 30 October 2003.

9 MJ: Captain [REDACTED] is there some way I'm supposed to--how do I

10 know who this letter is from or to whom? Is it explanatory inside of

11 it? There's no signature. There's no name on it, and there's

12 apparently a nickname as an addressee.

13 DC: Yes, Your Honor, it's a letter from Staff Sergeant

14 Frederick to his wife.

15 MJ: Okay. (b)(6)-4; (b)(7)(C)-4

16 DC: Next, a psychology consultation report, [REDACTED]

17 MJ: Okay. That's Golf. Next?

18 DC: Resume from [REDACTED] (b)(6)-4 (b)(7)(C)-4

19 MJ: Are you going to tie in some reason why I have the resume

20 of Mr. [REDACTED]

21 DC: [REDACTED] live testimony via VTC.

22 [Document was marked as Defense Exhibit H for identification.]

1 MJ: Okay.

2 DC: Similarly, a resume from [REDACTED].

3 MJ: That will be India. (b)(6)-4; (b)(7)(C)-4

4 DC: Vitae from [REDACTED]

5 MJ: His CV?

6 DC: Yes, sir.

7 MJ: That will be Juliet. Next?

8 DC: AR 15-6 investigation of the Abu Ghraib detention facility

9 by Major General George Fay, unclassified version.

10 MJ: That will be Lima. [Exhibit was marked as Defense Exhibit

11 K for identification.] I'm sorry, the Fay report was Kilo. [REDACTED]

12 was Juliet. Okay, go ahead. (b)(6)-4
(b)(7)(C)-4

13 DC: Your Honor, a good soldier book of Staff Sergeant Frederick

14 along with a copy for the record.

15 MJ: That will be Lima. The original documents in Defense

16 Exhibit Lima may be returned to the accused and copies may be

17 substituted in the record of trial.

18 Anything else?

19 CDC: No, Your Honor. (b)(6)-2; (b)(7)(C)-2

20 MJ: Captain [REDACTED] you indicated there were three stipulations

21 of expected testimony?

22 DC: Yes, Your Honor.

1 MJ: And trial counsel, the one you're waiting for, trial
2 counsel, you got while you were doing the other stuff?

3 DC: Yes, Your Honor.

4 MJ: Sergeant Frederick, I need to go over these documents with
5 you. Defense Exhibits Alpha, Bravo and Charlie are stipulations of
6 expected testimony. Did you read these documents thoroughly before
7 you signed them?

8 ACC: Yes, sir.

9 MJ: Do you understand the contents of the stipulations?

10 ACC: Yes, sir.

11 MJ: Do you agree with the contents of the stipulations?

12 ACC: Yes, sir.

13 MJ: Before signing these stipulations, did your defense counsel
14 explain the stipulations to you?

15 ACC: Yes, sir.

16 MJ: Now, you understand you have the absolute right to refuse
17 to stipulate to the contents of these documents?

18 ACC: Yes, sir.

19 MJ: You should enter into these stipulations only if you
20 believe it's in your best interest to do so. Do you understand that?

21 ACC: Yes, Your Honor.

1 MJ: I want to ensure you understand how these stipulations are
2 to be used. When counsel for sides and you agree to a stipulation of
3 expected testimony, you're agreeing that if, in Defense Exhibit Alpha
4 for identification, Captain ^{(b)(6)2; (b)(7)(C)-2} [REDACTED] and Defense Exhibit Bravo
5 for identification, Major General Miller, and Defense Exhibit Charlie
6 for identification is Sergeant ^{(b)(6)2; (b)(7)(C)-2} [REDACTED] were present in court
7 and testifying under oath, they would testify substantially as set
8 forth in these stipulations. The stipulations do not admit the truth
9 of the person's testimony. The stipulation can be contradicted,
10 attacked or explained in the same way as if the person was testifying
11 in person. Do you understand that?

12 ACC: Yes, sir.

13 MJ: Now knowing what I just told you and what your defense
14 counsel earlier told you about these stipulations, do you still
15 desire to enter into the stipulations?

16 ACC: Yes, sir.

17 MJ: Do counsel concur on the contents of the stipulations?

18 ATC: Yes, Your Honor.

19 DC: Yes, Your Honor.

20 MJ: Trial counsel, do you have any objection to the
21 stipulations?

1 ATC: Yes, Your Honor, to Defense Exhibit Charlie, Sergeant
2 (b)(6)2;(b)(7)(C)-2 [REDACTED] The government objects on the grounds of relevance.
3 We believe it's irrelevant. It describes the situation on October
4 25th that we heard during the unsworn statement, but we do not
5 believe it has any relevance to the actual sentencing for the crimes
6 that the accused has pled guilty to today.

7 MJ: Since it has, in the government's view, very little
8 relevance, then if I admitted it, the government will suffer no
9 prejudice.

10 ATC: Yes, Your Honor, I mean, in that sense, there would be
11 little prejudice that the government would suffer. But at the same
12 time, we object on relevance. We find it to be irrelevant.

13 MJ: Let me read it. [Pause.] Defense, what's the relevance of
14 this document?

15 CDC: It is this, Your Honor. We're going to admit the Fay
16 report. There is a section of the Fay report regarding this
17 particular incident which we believe needs to be supplemented by this
18 statement from (b)(6)2;(b)(7)(C)-2 [REDACTED] And the reason I say that is because the Fay
19 report glosses over the involvement of MI rather significantly. And
20 this statement from (b)(6)2;(b)(7)(C)-2 [REDACTED] clarifies that MI was, in fact, the leading
21 proponent of the activities of that night that Staff Sergeant
22 Frederick observed. He was not a direct and significant participant,

1 but he did observe these activities. And I think that taken in
2 context of the Fay report, you'll find that to be a good
3 counterweight and allow you to make judgments on the facts as are
4 represented by both sides.

5 MJ: Okay, of course you're putting the Fay report in, so you
6 want me to balance out the exhibit that you're putting in yourself.

7 CDC: I understand.

8 MJ: Okay, just understand----

9 CDC: The Fay report normally is a doctrine of completeness, and
10 has to come in in its entirety.

11 MJ: And the fact that the MI people committed misconduct is
12 somehow extenuating of the misconduct of your client?

13 CDC: I think there's a way--there are two ways to do this case,
14 Judge. We can do it as though this man is operating in isolation or
15 you can do it with the reality that is, that he is part of a
16 corporate texture, a corporate fabric. So the answer is
17 unequivocally yes, what the MI did certainly did have an impact on
18 what every person did at Abu Ghraib during that period of time had an
19 impact upon the other. So I say to you quite candidly, absolutely
20 what was done by the MI had a direct bearing upon misconduct, albeit
21 criminal, it was nonetheless a direct bearing.

1 MJ: And of course, and this document is, there was some command
2 action taken against Corporal Graner for his involvement.

3 CDC: Well, one is not certain about that from that document.

4 MJ: Well, how much do you want me to believe or not believe?

5 The document says is that Lieutenant [REDACTED]--that Sergeant [REDACTED] (b)(6)2-
6 reported this to Lieutenant [REDACTED] and approximately one week later, (b)(7)(F)2
7 Corporal Graner received a written counseling statement from Captain
8 [REDACTED] for use of excessive force.

9 CDC: Right.

10 MJ: So, now why shouldn't I believe that part of the document?

11 CDC: Well, you can believe that. Of course you can believe
12 that, I'm sorry.

13 MJ: That's not what you were referring to.

14 CDC: If you're referring to that, of course you can believe it.

15 MJ: Okay.

16 CDC: But I'm talking about the MI folks.

17 MJ: The objection is overruled. Defense Exhibit Alpha, Bravo
18 and Charlie are admitted. One moment, please. [Pause.] Now, with
19 regards to Defense Exhibit Bravo for identification, it would appear
20 that the list of six techniques were authorized, but none of these
21 six techniques include anything that the accused has pled guilty to,
22 true?

1 CDC: True.

2 MJ: Okay, I'm just saying, they're very general terms.

3 CDC: Right, Your Honor.

4 MJ: Stress positions, one could argue what stress positions
5 are, given what happened in this case. But the defense isn't saying
6 that any of these things that General Miller observed as happening,
7 that when he took over he stopped, any of these things are included
8 through another euphemism or another name of what the accused has
9 pled guilty to.

10 CDC: That's correct. We're not trying to go into that door
11 there, Judge.

12 MJ: Okay, understand.

13 Any objection to Defense Exhibit Delta for identification?

14 ATC: Yes, Your Honor.

15 MJ: Grounds?

16 ATC: Similar to the statement for Sergeant [REDACTED] We believe
17 that the defense is trying to cloud the issue here by throwing any
18 statement by MI that might seem to go over the line as some type of
19 extenuation and mitigation for their client. This particular email,
20 their client is not on the recipient line. There's no evidence he's
21 ever received this email. There's no evidence that he ever knew of

(b)(6)2; (b)(7)(C)-2

1 this email, but somehow it's relevant for extenuation and mitigation.
2 There's no evidence whatsoever linking the accused to this email.

3 MJ: Defense, how do you respond to that?

4 CDC: Well, here's how I respond, Judge. This email which was
5 sent on the 14th of August and which we show you in one of the
6 stipulations, was received by the principal MI operative at Abu
7 Ghraib. It says, "The gloves are coming off, gentlemen, regarding
8 these detainees. Colonel [REDACTED] ^{(b)(6)2; (b)(7)(C)-2} has made it clear that we want these
9 individuals broke. Casualties are mounting and we need to start
10 gathering info to help protect our fellow soldiers."

11 MJ: Okay, and that's written by a captain.

12 CDC: Yes, it's written by a captain.

13 MJ: He sends an email to a list of people here who are--most of
14 which have some type of a euphemism for a name. And then how is it
15 relevant to this case?

16 CDC: Well, I'm telling you, Your Honor, if you'll look at
17 Exhibit Alpha, I believe it's Alpha, Carolyn [REDACTED] testimony, ^{(b)(6)2;}
18 Captain [REDACTED] was at Abu Ghraib, was the principal, as you will, ^{(b)(7)(C)-2}
19 discover from reading the Fay report, the principal MI person there.
20 She received this document in August along with all of the other MI
21 personnel. This is a message to MI saying, "Look, fellas, let's get

1 a little down and dirty with this situation." And there's no other
2 way to interpret this document.

3 MJ: I'm not disagreeing with your interpretation. I might take
4 issue that a captain has that kind of power in this Army that he----

5 CDC: That's why he used Colonel [REDACTED] name who was the C2, or
6 the J2. (b)(6)2-(b)(7)(C)-2

7 MJ: I understand that, but still, it's not sent by the colonel.
8 But be all that as it may, what is the relevance of this case?

9 CDC: The relevance to this case is, that this is a tone-setting
10 document. On August the 14th, the MI community is being told exactly
11 this, "Let's take the gloves off. Let's break these detainees." The
12 whole situation, Your Honor, that existed within this theater of
13 operation, once the United States discovered that this was going to
14 be a long haul circumstance was a ginning up of activities to try and
15 gain intelligence. About that, there can be no doubt. And there's
16 also no doubt that corners were cut. And this memo, this email is
17 yet one example of the manner in which it was done. And there just
18 simply can't be any argument that the position was, "We've got a
19 problem here, and the way we're going to solve it is by taking the
20 gloves off and breaking these detainees because we're not getting
21 enough information."

22 MJ: Well, that was one captain's words.

(b)(6)z;(b)(7)(C)-2

1 CDC: In the name of Colonel [REDACTED] out of Headquarters of CJTF.
2 I mean, what am I supposed to do with this document, just throw it
3 away and say, "It doesn't matter"? First of all, it invokes Colonel
4 [REDACTED] ^{(b)(6)z;(b)(7)(C)-2} name.

5 MJ: [REDACTED] ^{(b)(6)-4;(b)(7)(C)-4}, I'm not telling you what to do with any
6 document. I'm simply asking you to tell me what the relevance is.
7 And what you're telling me the relevance of this document is similar
8 to the relevance of Sergeant [REDACTED] and similar to the relevance to
9 Captain [REDACTED] ^{(b)(6)-2;(b)(7)(C)-2} that you believe this shows the atmosphere of the MI
10 community at the time at Abu Ghraib and what they were doing to get
11 intelligence, and as such, for want of a better term, a corrupt
12 corporate atmosphere throughout the facilities. I mean, I know I'm
13 putting words in your mouth, but is that kind of where we're going
14 with all this?

15 CDC: The point is, that I think it set the tone for the way
16 people thought the command wanted things done. This is coming out of
17 headquarters. It may be signed by a captain promotable, but he
18 invokes [REDACTED] ^{(b)(6)-2;(b)(7)(C)-2} name, Colonel [REDACTED] name, and he at the same time
19 indicates clearly where it's coming from. So when it's read in the
20 field, I don't think anybody says, "Oh, gosh, that's just from a
21 captain."

(b)(6)-4; (b)(7)(C)-4

1 MJ: Okay. No, Mr. [REDACTED] I'm sorry. I think people all the
2 time say, "It's just from a captain," but maybe that's because I'm a
3 colonel and that's what I do when I get these types of things. But
4 go ahead. I understand your point, and what I'm simply saying, this
5 is sentencing, so I'm going to give you leeway. This is the
6 corporate culture, for want of a better term, the atmosphere. And
7 then how it ties in will be what relevance or weight I want to give
8 it to will be at my discretion.

9 CDC: Absolutely. But I think it demonstrates a mindset.

10 MJ: Defense Exhibit Delta for identification is admitted. The
11 objection is overruled.

12 Any objection to Defense Exhibit Echo for identification?

13 ATC: Yes, Your Honor, the same objection as the last two
14 exhibits. This is yet one more case of taking some MI misconduct and
15 throwing it up, having no connection with the accused, but trying to
16 come around as extenuation and mitigation.

17 MJ: The objection is overruled. Defense Exhibit Echo is
18 admitted.

19 Any objection to Defense Exhibit F for identification?

20 ATC: No, Your Honor.

21 MJ: It is admitted.

22 Now, H, I and J are CVs of witnesses?

1 ATC: That's correct, Your Honor.

2 MJ: Any objection to those?

3 ATC: No, Your Honor.

4 MJ: H, I and J are admitted.

5 And I skipped over G. [Pause.] Any objection to Defense
6 Exhibit Golf for identification?

7 ATC: No, Your Honor.

8 MJ: It is admitted. Any objection to Defense Exhibit K for
9 identification, the Fay report?

10 ATC: No, Your Honor.

11 MJ: Defense counsel, would you have any objection to me reading
12 this over the night break?

13 CDC: Absolutely not.

14 MJ: I'll stop right now and read it.

15 CDC: No, no, no, it's rather lengthy. I thank you for doing it
16 at that time.

17 MJ: I'll read every page. Defense Exhibit K for identification
18 is admitted.

19 Any objection to Defense Exhibit Lima for identification?

20 ATC: No, Your Honor.

(b)(6)-4 (b)(7)(C)-4

1 MJ: Similarly, Mr. [REDACTED] would you mind if I--again, I want to
2 read this whole thing, and I'll stop right now and read the whole
3 thing.

4 CDC: No, no, not at all. This evening will be fine.

5 MJ: I'll reserve ruling on admissibility of Defense Exhibit
6 Lima for identification until I've read it. So Defense Exhibit Alpha
7 through Kilo are admitted now, and Lima is just for identification,
8 to be admitted after I read it.

9 Defense?

10 DC: Your Honor, one last thing before the witnesses. Prior--in
11 email traffic with the court and the government, the defense
12 requested that you take judicial notice of Army Regulation 190-8.

13 MJ: Okay, and I think my response back to you was, do you want
14 me to read the whole thing or just parts of it?

15 DC: No, Your Honor, just the first 31 pages of the regulation.

16 MJ: And I'm sure you have a copy of the regulation there for me
17 to read.

18 DC: I do, Your Honor.

19 MJ: Since it's an Army regulation, there's no need to make it a
20 separate exhibit. It is Army Regulation 190-8, and you want me to
21 read the first 31 pages?

22 DC: Yes, Your Honor. I only have 31 pages in there.

1 MJ: Well, actually, I think you have 31 pages because the whole
2 reg is 31 pages long.

3 DC: And about 70 pages of forms, Your Honor.

4 MJ: Government, do you have any objection to me taking judicial
5 notice of Army Regulation 190-8?

6 ATC: No, Your Honor.

7 MJ: Captain [REDACTED] ^{(b)(6)-2; (b)(7)(C)-2} can I add this to my overnight reading list?

8 DC: Yes, Your Honor.

9 MJ: I will, okay. Your motion to take judicial notice of the
10 Army regulation is granted.

11 Would you like to proceed or would you like to take a short
12 recess?

13 CDC: If you don't mind, that would be terrific.

14 MJ: No, that's fine. As I understand, you have a number of
15 video teleconference witnesses?

16 CDC: I have, in fact, yes.

17 TC: ...the first witness, Your Honor, so we can set it up.

18 MJ: Well, that's what he's saying. We'll take a recess and why
19 don't we set up the VTC capability. And just to go on the record, is

20 Mr. [REDACTED] ^{(b)(6)-4; (b)(7)(C)-4} this is the way you wanted to present your case, with

21 VTCs. You actually probably wanted them in person, but these people
22 would not come in person.

1 CDC: Yes, I mean, I don't want to be argumentative.

2 MJ: We're not re-plowing old ground, but this was the
3 alternative.

4 CDC: No, no. Based on total judicial review of the issue, I can
5 now conclude that this is the way I want to proceed.

6 MJ: The court will be in recess.

7 [Court recessed at 1501, 20 October 2004, and reconvened at 1516,
8 20 October 2004.]

9 MJ: The court is called to order. All parties are again
10 present that were present when the court recessed.

11 Defense?

12 DC: Captain (b)(6)2-(b)(7)(C)-2 is our next witness, Your Honor.

13 **Captain [REDACTED], U.S. Army, was called as a witness for the**
14 **defense, was sworn, and testified via video teleconference as**
15 **follows:**

16 **DIRECT EXAMINATION**

17 **Questions by the trial counsel [Major [REDACTED]: (b)(6)-2 (b)(7)(C)-2**

18 Q. Would you please state your full name?

19 A. Captain [REDACTED]

20 Q. State your unit of assignment.

21 A. Company commander of 372d Military Police Company.

(b)(6)2;(b)(7)(2)(c)

1 Q. Captain [REDACTED] could you repeat your unit of assignment,
2 please?

3 A. Yes, sir, company commander, 372d Military Police Company.

4 **Questions by the defense [Mr. [REDACTED]:** (b)(6)-4;(b)(7)(C)-4

5 Q. Captain [REDACTED], this is [REDACTED], can you hear me?

6 A. Yes, sir. (b)(6)2;(b)(7)(C)-2

7 Q. Very well. Captain, I'm in a situation where I'm looking
8 in one direction and you're behind me. So I'll bow back and forth,
9 that's the reason for it. Captain, if you could describe to the
10 military judge what your duties were in February of 2003.

11 A. Yes, sir, I was the warden at Abu Ghraib Prison.

12 Q. It's 2003 I'm referring to.

13 A. Sir, you're talking January, 2003?

14 Q. Yes.

15 A. I was the company commander, and we were at Fort Lee,
16 Virginia preparing to mobilize.

17 Q. And your mobilization took you where into Iraq?

18 A. We first went to Kuwait, sir, and from Kuwait we went
19 forward into Al Hillah, Iraq.

20 Q. And what were the responsibilities of your company in Iraq
21 during that period of time?

1 A. Sir, we performed a law and order mission. We were TACON
2 to 1-4 Marines, and we also ran a police academy and we oversaw all
3 the local Iraqi police stations.

4 Q. At any time prior to your⁴ leaving for Iraq or during the
5 period of time that you were discharging the duties you just
6 described, did your unit receive training in prison management?

7 A. No, sir, we did not.

8 Q. When were you informed that you would be moving out to Abu
9 Ghraib Prison?

10 A. We were first notified probably the end of September.

11 Q. The end of September 2003.

12 A. The third week of September was when we were first
13 notified.

14 Q. What, if anything----

15 A. We were told that we would be going----

16 Q. What, if anything, did you do upon notification of your
17 reassignment to Abu Ghraib?

18 A. We had very little time to do any additional training at
19 that point. We were continuing a mission in Al Hillah, and we went
20 straight from Al Hillah up to Iraq up to Abu Ghraib at that point.

1 Q. Now when you got to Abu Ghraib, did you meet up with the
2 existing MP company that was doing your future responsibilities at
3 Abu Ghraib?

4 A. Yes, sir. We met up with the 72d Military Police Company
5 at that point, and we did a very short training period with them
6 before we relieved them.

7 Q. When you were doing this training program and your first
8 arrival at Abu Ghraib, did you discover prisoners in prolonged nude
9 positions and handcuffed to cells nude?

10 A. Yes, sir. When I first got there, there was some nudity,
11 and I can't say about the handcuffs.

12 Q. Did you ask about the nudity?

13 A. Yes, sir, I did.

14 Q. And what were you told?

15 A. I was told at that point that that was tactics used by the
16 military intelligence officers and that it was an acceptable
17 practice.

18 Q. Did you have any knowledge at that time of the specific
19 contents of AR 190-8?

20 A. No, sir, I was not an expert on the manual at that time.

1 Q. How is it that you decided to assign personnel to the
2 prison at Abu Ghraib? What processes did you employ to determine who
3 should take what jobs?

4 A. We had severe personnel shortages, and what I did was I
5 took those soldiers that had civilian correctional experience and I
6 disbursed them throughout the shifts so that we would have some kind
7 of experience and something we could build on.

8 Q. Did you inquire of Staff Sergeant Frederick as to exactly
9 what kinds of experiences he had had in the prison environment?

10 A. I had talked to him previously and I knew he had worked for
11 approximately 6 years in a correctional facility.

12 Q. Now, did you select him because of his leadership skills,
13 or was it more because of a default and the fact that no one else had
14 those kinds of skills that you thought were important?

15 A. More of a default, sir. I mean, I went with what I had,
16 and Sergeant Frederick was one of the few people that I had that had
17 correctional experience.

18 Q. I would like you to be candid with me if you would,
19 Captain, it's important. How did you assess at that juncture
20 Sergeant Frederick's leadership skills?

21 A. I would consider him an average leader, sir, not overly
22 strong, but I had enough confidence in him and with his prior work

1 performance that I felt highly enough of him that I assigned him the
2 nighttime supervisor.

3 Q. And did you also assign a gentleman named Graner to that
4 nighttime position?

5 A. Yes, sir, I did.

6 Q. Could you describe for us your view of Specialist Graner's
7 interaction with Staff Sergeant Frederick, if you know?

8 A. I really can't comment much on...I mean, I know they were
9 friends. They knew each other. I don't know much else other than
10 that.

11 Q. Fair enough. How would you describe Specialist Graner's
12 interaction with others, based upon your own observations?

13 A. Specialist Graner was actually a very persuasive person.
14 He had the ability, you know, he could walk down any road and people
15 would pretty much follow him.

16 Q. In your mind, was he a good choice to be in charge of
17 prisoners at Abu Ghraib in retrospect?

18 A. At that time, sir, I had no reason to think that he
19 wouldn't perform well. I had minor problems with him, as far as
20 discipline, but he gave me no indication that I'd have any major
21 problems or issues with him or his section.

1 Q. Did you do anything to look into the background of any of
2 these individuals to see what they really had done at their various
3 correctional facilities?

4 A. No, sir, I did not have time for that. I just came off
5 warden in December, and we mobilized in February. So, actually,
6 Specialist Graner came from a different unit, and he was inserted
7 into my unit prior to deployment. So I had no background knowledge
8 of him at that point, or most of my unit for that matter.

9 Q. Fair enough. Could you describe for us in your own words
10 those first 6 weeks from, let's say, October 1st through the middle
11 of November, the conditions that existed for you and your troops at
12 Abu Ghraib?

13 A. Yes, sir. The conditions were extremely bad, to say the
14 least.

15 Q. Could you provide me with some details?

16 A. There was no support as far as logistics. There was very
17 little support. There was mortar fire quite often. We were put in
18 an environment where it was overcrowded. The actual Iraqi inmates or
19 the correctional officers, themselves, were not to be trusted. There
20 was no recreational facilities as far as MWR. It was just, quite
21 honestly, sir, a very dangerous and a very hostile place.

22 Q. Did it place your troops under a great deal of stress?

1 A. A tremendous amount of stress. They often worked 20 or 30
2 days consecutive without a day off, because we had no help, not the
3 right amount of personnel to give proper days off. And with the
4 amount of inmates, it was extremely stressful.

5 Q. Did you come to interact with the MI personnel or the
6 civilian contractor personnel who were assigned to Abu Ghraib?

7 A. Yes, sir, I did.

8 Q. How would you describe the interplay between your MP
9 battalion and the 205th MI Brigade? Was it orderly? Was it
10 confused? And whatever that word you employ is, can you describe it
11 for us?

12 A. Sir, I didn't hear the last part of your question. But as
13 far as the relationship between the two battalions, it was very
14 confusing as far as who actually was in charge in the place. There
15 was some conflict whether the MI was in charge or whether the 320th
16 MP Battalion commander was in charge. And there was also other
17 agencies out there, to include like the CPA and FBI and other folks
18 out there. So, overall, the command atmosphere was extremely
19 confusing.

20 Q. Let me ask you if you were so understaffed that by the time
21 you got around to the nightshift, you were unable to staff it with
22 officers.

1 A. Yes, sir, that's correct.

2 Q. In other words, there were no officers to oversee the
3 nightshift. Isn't that correct?

4 A. Yes, sir, that is correct.

5 Q. So your reliance was really exclusively upon those NCOs who
6 were out there in the field pulling the nightshift. Is that correct?

7 A. Yes, sir, for the most part, that is accurate.

8 Q. Did you have any difficulty insofar as conflicts with MI
9 were concerned in the treatment of prisoners or in the manner of
10 interrogation or what your men were asked to do, men and women were
11 asked to do? I know that's a multiple question, but if you can
12 integrate an answer into it, I'd appreciate it.

13 A. For the most part, no, but there were a few isolated
14 incidents where I can think of one offhand where one of the inmates
15 was under a sleep deprivation plan, and the inmate himself became
16 under some type of panic attack or some type of stress attack. And
17 one of my soldiers turned the music off at that point, which was used
18 to keep the inmate awake. And at that point, one of the civilian
19 contractors there became very irate and upset that my soldier had
20 done that. And I felt that one of my MPs did the right thing at that
21 point, because if something would have happened to that inmate, they
22 would have certainly turned around and blamed my MPs for not doing

1 the right thing, or doing the proper thing in that situation. We did
2 have some conflict at that point, and from that point on is when we
3 started to demand that they put everything in writing as far as what
4 they expected out of my soldiers.

5 Q. Did you find it curious that civilians were ordering your
6 troops around?

7 A. Yes, sir. It was confusing, as I said before, as to who
8 actually was in charge, and actually even what agency they may have
9 been from. Because many times they wore civilian clothing and you
10 saw them around, but you really weren't sure who they worked for.
11 And with the MI folks there, they often covered their nametags and
12 things, so you weren't sure as to who was doing what. Many times,
13 you know, we had E4s, E5s and E6s there, and he may have had other
14 people with higher rank and they were often trying to order them
15 around or tell them to do things. So it was confusing as to who you
16 listened to at that point.

17 Q. Did your NCO cadre understand, to the best of your
18 knowledge, who was in charge over there? Were they happy to take
19 orders from people with no rank, no name?

20 A. Sir, I told them from day one that we took all the orders
21 from the 320th, who was our higher headquarters. However, it's a
22 nightshift and you have MI folks or OGA folks walking around and they

1 would ask people to do things, they were probably put under stress
2 and they may have been compliant at that point.

3 Q. With respect to the Iraqi police, you've already touched on
4 them for a moment, but were they part of the problem or part of the
5 solution?

6 A. Definitely part of the problem, sir. They often smuggled
7 weapons, drugs, notes, money. They couldn't be trusted. You would
8 train them and walk away, and they basically reverted back to their
9 old ways. They often regarded--or used bribes. They were very much
10 part of the problem.

11 Q. Do you recall the night that one of the detainees managed
12 to get his hands on a loaded weapon?

13 A. [No verbal response.]

14 Q. Can you hear me?

15 A. Yes, I can.

16 Q. Very well. Do you recall the night one of the detainees
17 obtained a loaded weapon?

18 A. Yes, sir, I do.

19 Q. And did the Iraqi police that night then become detainees
20 themselves?

21 A. Yes, sir, I believe we detained about...I can't remember
22 the exact number, roughly 20 of them?

1 Q. Was there ever a time when, in the period of October
2 through January 4th, that you were able to develop an SOP that was--
3 or anyone within the battalion, or from brigade, the 800th, to
4 provide you with guidelines that comported with AR 190-8?

5 A. Sir, we received no SOP from the brigade or from the
6 battalion level. From the company perspective, we were actually
7 attempting to write our own, but we never got it completed or
8 finalized or approved.

9 Q. Do you recall a time when the Red Cross came to Abu Ghraib?

10 A. Yes, sir, I do.

11 Q. And could you describe for the military judge what that was
12 like, what you were told to do and not to do?

13 A. At that point, I know that the military intelligence folks
14 were going around having a lot of the inmates, particularly those in
15 Tier 1, sign some paperwork at the last minute. And they also had
16 put some of the inmates off limits at that point. And of course, the
17 ICRC was very concerned about that, and they wanted to talk to those
18 people that were off limits, of course, but they were told they could
19 not.

20 Q. And did you also come to learn about ghost detainees?

1 A. Yes, sir. We had ghost detainees in there. When we
2 reported the numbers up, if I had 25 in Wing 1 and 5 ghost detainees,
3 I would report 25 and 5 in the reports that I submitted forward.

4 Q. Did you know when ghost detainees were coming onboard?

5 A. No, sir, they normally came in any time of the day, and
6 they did not go through the normal in-processing procedures that
7 other inmates went through. They just--may come through the back
8 door or were put in one of the cells. We were told by OGA folks, FBI
9 folks, Navy Seals, whoever brought them in, that they'd be back for
10 them later.

11 Q. Did these groups, the Seals, the FBI, the OGA, pretty much
12 have free run of the place?

13 A. Yes, sir, they had access whenever they needed to.

14 Q. And to whom did they answer?

15 A. I have no idea, sir.

16 Q. Did you ever, in the period of time from 1 October through
17 4 January, get staffing sufficient to do your job?

18 A. No, sir. I believe we were at a ratio of about 1 to 80,
19 one military police officer to about 80 inmates.

20 Q. Is it fair to say, Captain, that you were an unprepared,
21 untrained group who received little or no support and was expected to
22 do a job----

1 TC: Your Honor, because of the VTC and the technology, I've
2 allowed some leading here, but this is clearly suggesting an answer.

3 MJ: Objection sustained.

4 Q. I'm not going to ask you that question; I'll ask it another
5 way. If you had the ability to send your unit into Abu Ghraib again
6 for the first time, what are the things you would want to happen that
7 didn't?

8 A. I think at this point, sir, I would refuse the mission at
9 this point, knowing what I know now. We were not trained for IR. We
10 are a combat support unit, and the military wants to blame the
11 leadership for not training their people. Of course I'm not trained.
12 We're not trained as an IR unit, so how can you fight that? At this
13 point, I would flat out refuse.

14 CDC: I have nothing further for this witness, Your Honor.

15 MJ: Major [REDACTED] (S)(b)2-(b)(7)(C)-2

16 CROSS-EXAMINATION

17 Questions by the government [Major [REDACTED]]

18 Q. Captain [REDACTED], can you hear me okay?

19 A. Yes, sir.

20 Q. I'm going to talk about the big picture to begin with. You
21 had four platoons. Is that correct?

22 A. Sir, can you repeat that, please?

1 Q. Right, not counting Headquarters, you had four line
2 platoons at Abu Ghraib.

3 A. That's correct, sir.

4 Q. One platoon was on a PSD mission, protective service
5 mission at Al Hillah at the time you were at Abu Ghraib, correct?

6 A. Yes, sir.

7 Q. And another platoon ran Camp Vigilant. Is that right?

8 A. Yes, sir.

9 Q. Camp Vigilant was an outside camp within the confines of
10 BCCF, right?

11 A. That's correct.

12 Q. And it really consisted of tents and some concertina wire
13 and a few towers.

14 A. Yes, sir.

15 Q. And the majority of the detainees you were responsible for
16 were either at Camp Vigilant or at Camp Ganci, a camp run by another
17 unit. Is that right?

18 A. Camp Vigilant and the hard site--have anything to do with
19 Ganci.

20 Q. Right, let's talk about Camp Ganci just briefly. That's
21 another outside camp within BCCF, correct?

22 A. Sir, I only caught the last part of the question.

1 Q. Camp Ganci is another outside camp that's in the Baghdad
2 Central Confinement Facility?

3 A. Yes, sir, that was a whole another section of the prison.

4 Q. Sure, I understand that. And your unit was not responsible
5 for Camp Ganci.

6 A. Yes, sir, that's correct.

7 Q. So you had Camp Vigilant run by one platoon.

8 A. [No verbal response.]

9 Q. Captain [REDACTED] did you hear that last question?

10 A. No, sir. (b)(6)2; (b)(7)(C) -2

11 Q. You had one platoon that ran Camp Vigilant, correct?

12 A. Yes, that's correct.

13 Q. One that did the PSD mission.

14 A. Correct.

15 Q. And then Fourth Platoon was dedicated to the hard site,
16 right?

17 A. Yes, sir.

18 Q. And then Third Platoon, you used that to help with the hard
19 site and also to run escort missions when necessary.

20 A. Yes.

1 Q. So you were responsible for not only the hard site, but
2 Camp Vigilant as well as the LSA and just general operations to run
3 the company, correct?

4 A. Yes, sir.

5 Q. So a lot of the things that you were responsible for as the
6 company commander, many of those were at Camp Vigilant, correct?

7 A. Yes.

8 Q. You didn't seem to have any problems at Camp Vigilant. Is
9 that right?

10 A. I had absolutely no problems at Camp Vigilant. It was the
11 model or our....

12 Q. The platoon, Sergeant ^{(b)(6)2; (b)(7)(C)2} [REDACTED] I believe was the platoon
13 sergeant for that platoon. Is that right?

14 A. Yes, he was the NCOIC of Vigilant.

15 Q. And they did an outstanding job of running that camp. Fair
16 enough?

17 A. Very fair, sir, they did an excellent job.

18 Q. And they didn't have specific training to run that camp,
19 did they?

20 A. [No verbal response.] ^{(b)(6)-2; (b)(7)(C)-2}

21 Q. I'm sorry, Captain [REDACTED] can you answer that again,
22 please?

1 A. No, sir, they had the same training as the rest of the
2 unit.

3 Q. And with that training, they ran that camp very well.

4 A. Yes, sir, they did an excellent job.

5 Q. And speaking of training, just prior to this, you were at
6 Al Hillah, correct?

7 A. Yes, sir.

8 Q. And while at Al Hillah, you helped set up Iraqi police
9 academies.

10 A. Yes.

11 Q. And you did a great job in that mission, as well.

12 A. Yes, sir, I think so.

13 Q. But you weren't specifically trained to set up Iraqi police
14 academies, were you?

15 A. No, sir, we weren't.

16 Q. But you adapted to those circumstances.

17 A. Yes, sir.

(b)(6)-2, (b)(7)(C)-2

18 Q. Let me ask you this, Captain [REDACTED], does a staff sergeant
19 in the United States Army need to be trained not to punch a
20 defenseless detainee?

21 A. I don't think so, sir.

1 Q. And would a staff sergeant in the United States Army with
2 20 years of experience need to be trained not to force detainees to
3 masturbate publicly?

4 A. I wouldn't think so.

5 Q. Let's talk about the hard site now. You had a captain by
6 the name of [REDACTED] that you put in the hard site, right?

7 A. Yes, sir, he was there. (b)(6), (b)(7)(C) - 2

8 Q. And in your opinion, Captain [REDACTED] was a good officer.

9 A. Yes, sir, I thought highly of him, great moral, ethical
10 person.

11 Q. And Captain [REDACTED] was put in a hard site, among other
12 reasons, to supervise the hard site and make sure things went as they
13 should.

14 A. Yes, sir. (b)(6), (b)(7)(C) - 2

15 Q. And you expected Captain [REDACTED] to take care of the
16 people, meaning the detainees and the soldiers, in that hard site.

17 A. Yes, sir, that's correct.

18 Q. And to the best of your knowledge, he did the best he could
19 in doing so.

20 A. Yes, sir, he was only one guy. He could not work 24 hours
21 a day, but he did a very good job. He worked very long hours, but
22 unfortunately, he did have to sleep at some point.

(b)(6)2;(b)(7)(2)-2

1 Q. And that's true of yourself, as well, Captain [REDACTED] right?

2 At some point, you have to sleep, correct?

3 A. Unfortunately, sir, yes.

4 Q. And so, there's some point in the day when a leader has got
5 to be in the hard site making sure things are happening as they
6 should.

7 A. Sir, could you repeat part of that?

8 Q. Sure. There's some point in the day where you need a
9 leader in the hard site to make sure things are happening just as
10 they should. Is that right?

11 A. Yes, sir.

12 Q. And for part of that time, you had Staff Sergeant Frederick
13 there to do just that job.

14 A. Yes, sir, that's correct.

15 Q. Now occasionally, you would check on Sergeant Frederick and
16 the nightshift. Is that right?

17 A. Yes.

18 Q. And occasionally, Captain [REDACTED] would check on Sergeant
19 Frederick and the nightshift.

(b)(6)2;(b)(7)(2)-2

20 A. Yes, sir.

21 Q. Major [REDACTED] as well?

1 A. Yes, sir. The 320th staff was collocated with us, so they
2 were right there readily available, also.

3 Q. So there was adequate supervision of the hard site, at
4 least in your mind. Is that fair?

5 A. Yes, sir, I thought so.

6 Q. But at some point, as you said, there's got to be a time
7 when Sergeant Frederick alone had that responsibility to make sure
8 things are going as they should.

9 A. [No verbal response.]

10 Q. Captain ██████████ ^{(b)(6)-2; (b)(7)(C)-2} did you hear that last question?

11 A. Yes, sir. As an NCO, yes, there is a point where he would
12 be--that I would hold him responsible and I would expect him to do
13 things as if I were there. ^{(b)(6)-2; (b)(7)(C)-2}

14 Q. Now Captain ██████████, we talked about a gentleman named ██████████ ^{(b)(6)-4; (b)(7)}
15 ██████████, a tall civilian. Do you know who I'm talking ^{(b)(7)}
16 about? ^{(C)-4}

17 A. Yes, I do.

18 Q. Now, you once saw ██████████ push a detainee with his foot. Is
19 that right?

20 A. Yes.

21 Q. And you corrected that situation immediately, didn't you?

1 A. Yes, sir, I corrected him and then he responded back to me.
2 And at that point, I thought I had rectified that.

3 Q. And there was another occasion that you mentioned just a
4 few minutes ago in which ^{(b)(6);(b)(7)(C)-4} [REDACTED] apparently was--involved a detainee
5 that was the sleep management system and had a panic attack. Do you
6 remember that incident?

7 A. Yes, sir, I do.

8 Q. And Sergeant [REDACTED] I believe, a soldier of yours,
9 intervened, didn't he? ^{(b)(6);(b)(7)(C)-2}

10 A. Yes, he did.

11 Q. Sergeant [REDACTED] is an E5 that worked on the nightshift.
12 Is that right?

13 A. Yes, sir, he worked nightshift.

14 Q. And when he saw something happening that he thought was
15 inappropriate in terms of the safety of that detainee, Sergeant
16 ^{(b)(6);(b)(7)(C)-2} [REDACTED] intervened.

17 A. Yes, he did.

18 Q. Just as you would have intervened had you seen that.

19 A. Yes.

20 Q. And just as you would expect any noncommissioned officer in
21 the 372d MP Company to intervene.

22 A. Any soldier in the United States Army, sir.

1 Q. Thank you. Now, you also heard about potential abuse of
2 detainees, verbal abuse of detainees by another NCO of yours,
3 Sergeant Javal Davis. Is that correct?

4 A. That's correct.

5 Q. And when you heard about this, you looked into it to see
6 what you could determine actually happened, right?

7 A. Yes, sir.

8 Q. And out of an abundance of caution, you removed Sergeant
9 Davis from the hard site. Isn't that right?

10 A. Yes, sir, I was concerned that he was becoming too stressed
11 out at that point, and I don't want him to harm himself or any of the
12 detainees, so I removed him from the hard site.

13 Q. And you did that because you cared about Sergeant Davis,
14 one....

15 A. Of course.

16 Q. And you also cared about the detainees. Is that fair?

17 A. [No verbal response.]

18 Q. Captain ^{(b)(6)2, (b)(7)(C)-2} [REDACTED] you also were concerned about the detainees'
19 welfare.

20 A. Yes, sir, that was always a concern of mine.

21 Q. I want to cover something quickly here. Most of the
22 activity that occurred in the hard site, and by "activity," I mean

1 the inprocessing of new individuals, court dates, visits from VIPs.

2 That occurred during the dayshift. Is that correct?

3 A. Always during the dayshift.

4 Q. So the dayshift, it's fair to say, was very busy.

5 A. Yes.

6 Q. And generally, the nightshift, and forgive me for stating
7 the obvious, but generally, the nightshift is when the detainees,
8 themselves, slept.

9 A. Yes, sir, for the most part.

10 Q. Comparing the two, if you had a strong leader, you want to
11 put that stronger leader on the dayshift when things were happening.
12 Is that fair?

13 A. Very fair, yes.

14 Q. And in this case, you put Sergeant Frederick on the
15 nightshift when things were not nearly as active.

16 A. Yes, sir, that's correct.

17 Q. And you fully expected that he could perform that mission.

18 A. Yes, at that point, I had a lot of faith and trust in him
19 and I respected him, and that's why I put him there.

20 Q. I want to talk to you briefly about the conditions at Abu
21 Ghraib in October, November, December of 2003, okay?

22 A. Okay, sir.

1 Q. You had just come from Al Hillah to Abu Ghraib at that
2 time, right?

3 A. Yes, sir.

4 Q. And it's fair to say the conditions, the living conditions
5 were better at Abu Ghraib than Al Hillah.

6 A. Yes, it was a small step up as far as living conditions.
7 We went from living in an open bay scenario to where we each had
8 individual cells, which gave us some privacy. So, it was a step up
9 on that aspect.

10 Q. You also had electricity at Abu Ghraib, is that right? You
11 provided your own electricity there?

12 A. Yes, we did. It was intermittent, but we had it.

13 Q. And at some point, you had an MWR tent set up?

14 A. Not during that time period. It was later.

15 Q. And you mentioned you had sleeping areas within hard
16 buildings?

17 A. Yes, sir, we stayed actually in individual cells. But the
18 soldiers were happy because they at least had some sort of privacy at
19 that point.

20 Q. So that was a significant step up in terms of their living
21 arrangements.

22 A. Yes, that is true, yes.

1 Q. And also, better for your force protection in the sense
2 that, obviously, it's better to sleep under the cover of the hard
3 building than in the outside facility, right?

4 A. Yeah, definitely that was a good thing for morale.

5 Q. And unlike the guys at Camp Vigilant, your soldiers that
6 worked in the hard site had the benefit, too, of being indoors for
7 the majority of their shift.

8 A. Yes, sir, they were under concrete ceilings.

9 Q. Now Captain [REDACTED] ^{(b)(6)2; (b)(7)(C) - 2} I don't want to suggest to you that Abu
10 Ghraib, the conditions were difficult, weren't tough, but you would
11 agree with me that tough conditions don't justify physical and sexual
12 abuse of detainees. Is that fair?

13 A. Yes, sir, I agree with that.

14 Q. In fact, that's what we do as soldiers, isn't it, Captain
15 [REDACTED] ^{(b)(6)2; (b)(7)(C) - 2} When the conditions are tough, we maintain our integrity?

16 A. Yes, sir.

17 Q. And that's what you expect of a staff sergeant with 20
18 years of experience in the United States Army, that under difficult
19 conditions, he would maintain his integrity?

20 A. Yes, sir, I would.

21 Q. Captain [REDACTED] just a few more questions, and I appreciate
22 your patience. ^{(b)(6)2; (b)(7)(C) - 2}

1 When CID first came to tell you about these abuses, they
2 presented you with photos of your soldiers in these horrid
3 situations, right?

4 A. Yes.

5 Q. And when you saw them, you were very upset, weren't you?

6 A. Yes, sir.

(b)(6)2;(b)(7)(C)-2

7 Q. In fact, Captain [REDACTED] and I don't say this to humiliate
8 you at all, but just to state what happened, when CID presented you
9 with these photos, you were so upset that you openly wept.

10 A. Yes, sir.

(b)(6)2;(b)(7)(C)-2

11 Q. And you did that, Captain [REDACTED], because you felt betrayed
12 by these soldiers that you trusted.

13 A. Yes, sir, it still hurts today.

(b)(6)2;(b)(7)(C)-2

14 Q. Finally, Captain [REDACTED] I want to ask you about a statement
15 you made and ask you to comment upon it. Do you remember speaking to
16 CID shortly after these photos came to light?

17 A. Yes.

18 Q. You spoke to Agent [REDACTED] (b)(6)1;(b)(7)(C)-1

19 A. Sir, you're going to have to repeat that last part.

20 Q. You spoke with Special Agent [REDACTED] I believe, on the
21 18th?

22 A. Yes, sir, I spoke to him. I'm not sure of the date.

1 Q. That's fine. I want to ask you about a statement. Do you
2 remember making this statement? "This company deserves better. We
3 have worked extremely hard only to have a few soldiers tear down the
4 morale and all of our accomplishments." Do you remember that
5 statement?

6 A. Yes, sir.

7 Q. Do you still believe that to be true, Captain [REDACTED]

8 A. Absolutely, sir. (b)(6)2; (b)(7)(C)-2

9 TC: Captain [REDACTED], thank you for your service.

10 MJ: Mr. [REDACTED], do you have any further questions?

11 (b)(6)4; (b)(7)(C)-4 **REDIRECT EXAMINATION**

12 **Questions by the defense [REDACTED]:**

13 Q. Captain [REDACTED] the Camp Vigilant situation was somewhat
14 different than the hard site, was it not, in terms of the kinds of
15 persons who were incarcerated there? (b)(6)2; (b)(7)(C)-2

16 A. Yes, sir. Camp Vigilant was typically your ex-military
17 type of personnel, whereas the hard site had everything from civilian
18 to the high detainee--the HVDs to the psychological to the juveniles
19 to the females. It had everybody.

20 Q. It's fair to say, isn't it, that the hard site over which
21 Staff Sergeant Frederick presided was a more difficult mix of
22 detainee personnel than Camp Vigilant?

1 A. Yes, sir. One of the big differences was, Vigilant,
2 because they were military personnel, they have a structure and a
3 chain of command that was already in place. So they were a little
4 easier to control, whereas in the hard site, like I said, you have
5 all the mixture of all those different people and you know, with the
6 psychological people there, it was very, very difficult.

7 Q. Now, to follow up on a question by Major (b)(6)2;(b)(7)(C)-2
8 first saw these pictures presented to you by the CID, did you reach
9 the conclusion that this was just a few people doing this?

10 A. No, sir. I was only going off of what I saw in the
11 pictures. I only saw a few of my soldiers.

12 Q. Based upon what you've come to know over time, have you
13 come to see this as a broader question?

14 A. Yes, sir, it does appear there are other individuals or
15 agencies that are involved.

16 CDC: Nothing further. Thank you so very much.

17 TC: Sir, may I have just one quick question?

18 **RE-CROSS-EXAMINATION**

19 **Questions by the government [Major (b)(6)2;(b)(7)(C)-2**

20 Q. Captain (b)(6)2;(b)(7)(C)-2 just a couple quick questions for you. You
21 had a number of corrections officers, and by that, I mean civilian

1 corrections officers within your company, correct?

2 A. Yes.

(b)(6)2;(b)(7)(C)-2

3 Q. For example, Staff Sergeant [REDACTED] Specialist----

4 CDC: Your Honor, I object. This is not based upon my redirect.

5 MJ: I'll give some leeway. Go ahead.

6 Q. Captain [REDACTED] for example, Staff Sergeant [REDACTED] Specialist

7 Stevanus, other soldiers like that, correct?

(b)(6)2;(b)(7)(C)-2

8 A. Yes.

9 Q. And given the nature of the hard site, you elected to put
10 the majority of your civilian corrections officers into the hard site
11 to manage that facility, correct?

12 A. Sorry, I can't remember the exact breakdown. We tried to
13 divide it up as evenly as possible, or it might have been slightly
14 heavier towards the hard site, but I cannot give you the exact
15 numbers at this point.

16 Q. Fair enough. As far as you know, and to the best of your
17 knowledge, the other soldiers that you put in the hard site, for
18 example, Staff Sergeant [REDACTED] did that job the way they should have
19 with integrity without resorting to the physical and sexual violence
20 of Staff Sergeant Ivan Frederick. Is that fair?

(b)(6)2;(b)(7)(C)-2

21 A. Yes, sir, that's fair.

22 TC: Thank you.

(b)(6)-4; (b)(7)(C)-4

1 MJ: Mr. [REDACTED] anything further?

2 CDC: Nothing further, Judge. Thank you very much.

3 MJ: Is the next witness also at the same location?

4 CDC: Yes, exactly, Your Honor.

5 [The witness was excused.]

6 Chief Warrant Officer Two [REDACTED], U.S. Army, was called as a
7 witness for the defense, was sworn, and testified via video
8 teleconference as follows:

(b)(6)2; (b)(7)(C)-2

9 DIRECT EXAMINATION

10 Questions by the trial counsel [Captain [REDACTED]]

11 Q. Could you please state your name and rank for the record?

12 A. Chief Warrant Officer Two [REDACTED]

(b)(6)2; (b)(7)(C)-2

13 Q. And where do you reside, Chief [REDACTED]

14 A. Currently with Alpha Company, 519th Military Intelligence
15 Battalion, Fort Bragg, North Carolina.

16 ATC: Mr. Myers has some questions for you, Chief [REDACTED]

(b)(6)2; (b)(7)(C)-2

17 Questions by the defense [Mr. [REDACTED]]

(b)(6)-4; (b)(7)(C)-4

(b)(6)2; (b)(7)(C)-2

18 Q. Chief [REDACTED], [REDACTED] here. Can you describe for the
19 military judge your operational environment in Iraq when you were
20 there during 2003 as it related to the 205th MI Brigade?

21 A. Sir, I was, for the first half of the war, from March until
22 July, I was on the operational management team for tactical HUMINT

1 teams in a general support role throughout the northern portion of
2 Iraq. In late July, I took over as the tactical HUMINT operations
3 chief for the 519th Military Intelligence Battalion, and I was
4 responsible for four operational management teams, 13 tactical HUMINT
5 teams and a newly formed Saddam Fedayeen Interrogation Facility at
6 Abu Ghraib. I was mostly responsible for intelligence oversight and
7 technical control of all HUMINT and tactical--the operations for
8 those elements, sir.

9 Q. And what was your relationship to the 205th?

10 A. We were subordinate to the 205th. When the 519th deployed,
11 we were attached to the 205th MI Brigade out of Germany, and we were
12 subordinate to the 205th until our redeployment.

13 Q. Now, what were you supposed to do to support the 205th?

14 A. Our mission was to gather intelligence through
15 interrogations and HUMINT source operations, sir.

16 Q. Where were you physically located when the 205th was at Abu
17 Ghraib?

18 A. Sir, when the 205th, specifically, the 519th took over the
19 mission at Abu Ghraib, I was physically located at Camp Speicher,
20 just north of Tikrit.

21 Q. And did you still, or were you supposed to still have a
22 role at Abu Ghraib?

1 A. Me, personally, sir?

2 Q. Yes.

3 A. Yes, my role was all the interrogation reports and summary
4 interrogation reports and administrative documents regarding
5 interrogations would come through my office prior to--for my quality
6 control and oversight, and then I would forward those reports to the
7 205th MI Brigade, sir.

8 Q. And did you obtain cooperation from the 205th in
9 discharging your duties?

10 A. Not all the time, sir.

11 Q. Can you describe to us why not?

12 A. Sir, we had a lot of pressure from the 205th MI Brigade
13 specifically regarding Abu Ghraib to produce interrogation reports
14 for--intelligence information reports resulting from the
15 interrogations. When the mission began at Abu Ghraib, it was a
16 specific mission based on a list of 1,800 Saddam Fedayeen which--to
17 the division. When that operation began, of the 1,800, approximately
18 50 were captured, and they all went to Abu Ghraib. Abu Ghraib's
19 original mission was to support this list of 1,800. During the
20 course of the interrogations of these 50 detainees, it was determined
21 that many of these detainees didn't even realize that they were a
22 part of the Saddam Fedayeen, and therefore, the interrogations were