



DEPARTMENT OF THE ARMY  
HEADQUARTERS  
16<sup>th</sup> MILITARY POLICE BRIGADE (AIRBORNE)  
VICTORY BASE, IRAQ APO AE 09342

REPLY TO  
ATTENTION OF:

AFZA-AP-JA

12 May 2004

MEMORANDUM FOR Commander, U.S. Army Human Resources Command,  
ATTN: AHRC-ARE, 1 Reserve Way, St. Louis, Missouri 63132-5200

SUBJECT: Request for Certified Official Military Personnel File

1. Under the provisions of AR 600-8-104, paragraph 2-5, request **2 (two)** certified copies of the Performance, Service and Restricted Fiche of the Official Military Personnel File (OMPF) of the following soldiers:

- a. SSG [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- b. SGT [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- c. SPC [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- d. SPC [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- e. SPC [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- f. SPC [REDACTED] HHC, 16<sup>th</sup> MP BDE (ABN), Iraq
- g. PFC [REDACTED] HHC, 16<sup>th</sup> MP BDE  
(ABN)(REAR), FBNC

2. These soldiers are pending trial by court-martial; and the records requested will be used in presenting the Government's Case. Please forward **(2) two certified copies** of the complete OMPF to the following address:

16<sup>th</sup> MP BDE (ABN) ATTN: [REDACTED]  
VICTORY BASE, IRAQ  
APO AE 09342

3. The POC for this request is the undersigned at DNVT (302) 588- [REDACTED]  
[REDACTED]

[REDACTED]  
SGT, USA  
Paralegal

002374

DEPARTMENT OF THE ARMY  
U.S. ARMY HUMAN RESOURCES COMMAND  
200 STOVALL STREET  
ALEXANDRIA, VA 22332-0470

AHRC-PDZ-RC  
ORDERS A-10-410338

13 OCT 2004

AMBUHL MEGAN MARY

SPC  
WTEZAA

YOU ARE ORDERED TO ACTIVE DUTY IN THE GRADE OF RANK SHOWN ABOVE FOR THE PERIOD SHOWN IN ACTIVE DUTY COMMITMENT BELOW. YOU WILL PROCEED FROM YOUR CURRENT LOCATION IN TIME TO REPORT ON THE DATE SHOWN BELOW.

RPT TO: 16 MP BDE FWD WFP6A1 FT BRAGG NC 28310  
REPORT DATE/TIME: 12 SEP 2004 BETWEEN 0800 AND 1700 HRS.  
ASG TO: 16 MP BDE FWD WFP6A1 FT BRAGG NC 28310  
DUTY AT: VICTORY BASE IRAQ APO AE 09342  
ACTIVE DUTY COMMITMENT: 6 MONTHS  
PURPOSE: UCMJ PROCESSING. END DATE: 09 MAR 2005

ADDITIONAL INSTRUCTIONS: RELIEVED FROM RESERVE COMPONENT ASSIGNMENT ON THE DAY PRECEDING EFFECTIVE DATE OF ORDER. INDIVIDUAL WILL BE RETAINED ON ACTIVE DUTY IN HIS OR HER CURRENT GRADE AND IS INCLUDED IN THE ACTIVE ARMY END STRENGTH. ACCESSION INTO DJMS-AC WILL REFLECT A SVC COMP OF "R". SHIPMENT OF HHG AND TRAVEL OF DEP NOT APPLICABLE. SPECIAL EXCEPTION NOT TO ISSUE A DD FORM 214 TO SOLDIERS THAT ARE IN 12301, 12302 OR 12304 STATUS THAT REVERT TO R.C.M. 202 STATUS. A DD 214 WILL BE ISSUED UPON COMPLETION OF R.C.M. SERVICE. ALL PREVIOUS ACTIVE DUTY SERVICE PRIOR TO R.C.M. STATUS WILL BE ACCOUNTED FOR IN BLOCK 18 OF THE DD 214. EARLY RELEASE AUTHORIZED.

FOR ARMY USE: AUTHORITY: R.C.M. 202(C), AR 27-10 CH 21, AR 135-200 (7-4)  
ACCT CLAS: NONE

MDC: 1AE4 HOR: [REDACTED] PMOS/SSI: 31B1  
SEX: F PPN: N/A COMP: USAR RES GR: SPC  
DORRES: 29 JAN 2002 PEBD: 29 JAN 2002 SCTY CL: NONE

FORMAT: 460

BY ORDER OF THE SECRETARY OF THE ARMY:

\*\*\*\*\*  
\* AHRC \*  
\* OFFICIAL \*  
\*\*\*\*\*

[REDACTED]  
CWS, AG  
CHIEF, RC SPT SVC DIV

DISTRIBUTION: 1 SOLDIER  
1 16 MP BDE FWD FT BRAGG NC 28310  
1 372 MP CO COMBAT SUP 14418 MCMULLEN HWY SW CUMBERLAND MD 21502 5605

002375

**INVESTIGATING OFFICER'S REPORT**  
(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED]		b. GRADE O-4	c. ORGANIZATION HHC, 420th Engineer Brigade APO AE 09391	d. DATE OF REPORT 8 May 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) [REDACTED]		b. TITLE Brigade Commander	c. ORGANIZATION Headquarters, 16th MP Bde (Airborne) APO AE 09342	
3a. NAME OF ACCUSED (Last, First, MI) Ambuhl, Megan M.		b. GRADE E-4	c. SSN	d. ORGANIZATION HHC, 16th MP Bde (Airborne), Victory Base, Iraq, APO AE 09342
				e. DATE OF CHARGES 20 March 2004

*(Check appropriate answer)*

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X	
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]		
b. GRADE		
8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) [REDACTED]		
c. ORGANIZATION (If appropriate) [REDACTED]		
d. ADDRESS (If appropriate) 1101 15th ST, NW, Suite 202 Washington, D.C., 20005		
b. GRADE O-3		
c. ORGANIZATION (If appropriate) Trial Defense Counsel, Tikrit Branch Office (FOB Danger) Region IX		
d. ADDRESS (If appropriate)		

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

a. PLACE	b. DATE

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)

a. THE CHARGE(S) UNDER INVESTIGATION	YES	NO
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	E-5	302nd MI Battalion	X	
[REDACTED]	CW-2	CJTF-7	X	
[REDACTED]	E-9	418th MP Detachment	X	
[REDACTED]	E6	CID, Ft. Jackson, S.C.	X	
Please refer to the attached Enclosure #1 for additional witnesses				
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
Prosecution Exh 1-Sworn statement of SPC [REDACTED]			X	
Prosecution Exh 2-Sworn statement of SGT [REDACTED]			X	
Prosecution Exh 3-Sworn statement of SPC [REDACTED]			X	
Prosecution Exh 4A thru 4R -20 photos from CID CD			X	
Prosecution Exh 5-Sworn statement of PFC [REDACTED]			X	
Please refer to the attached Enclosure #2 for additional Exhibits from the Investigation				
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Enclosure #1 - Continuation of DD Form 457 Block 12a				
Enclosure #2 - Continuation of DD Form 457 Block 13a				
Enclosure #3 - Defense Counsel's Objections Prior to and During the ART 32 Investigation.				
Enclosure #4 - Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #5 - IO Concurrence on Request for Delay, U.S. v. SPC Ambuhl				
Enclosure #6 - Article 32 Request for Witnesses and Production of Evidence - United States v. SPC Megan M. Ambuhl				
Enclosure #7 - Second Request for Delay - United States v. SPC Megan M. Ambuhl				
Enclosure #8 - IO Recommendation on 2nd Defense Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #9 - Approval of 2nd Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #10 - IO Determination on Trial Counsel's response to Defense Request for Witnesses and Production of Evidence				
Enclosure #11 - Appointment as Article 32 Investigating Officer				
Enclosure #12 - Transcript of ART 32 Investigation US v. SPC Ambuhl				
Enclosure #13 -ART 32 Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl				
Block #14 above, Def did not present any grounds to show that the accused was not mentally responsible for the offenses.				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
[REDACTED]		O-4	HHC, 420th Engineer Brigade APO AE 09391	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]			9 MAY 2009	

**Enclosure #1 - CONTINUATION OF DD FORM 457, BLOCK 12a**

**The following witnesses were Available but invoked their rights**

1. [REDACTED] O-3 372<sup>nd</sup> MP CO - invoked at last 32
2. [REDACTED] E-8 372<sup>nd</sup> MP CO - invoked at last 32
3. [REDACTED] E-7 372<sup>nd</sup> MP CO - invoked at last 32

**The following witnesses were Declared reasonably unavailable**

**CID Agents:**

1. [REDACTED] SA 10<sup>th</sup> MP BN - Redeployed to the U.S.

**Chain of Command:**

1. [REDACTED] O-3 372<sup>nd</sup> MP CO - Redeployed to U.S.

**Additional Witnesses –**

1. [REDACTED] O-4 320<sup>th</sup> MP BN - Kuwait
2. [REDACTED] E-4 372<sup>nd</sup> MP CO – LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
3. [REDACTED] E-6 - LSA Anaconda -invoked at prior 32
4. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
5. [REDACTED] E-6 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
6. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
7. [REDACTED] E-4 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
8. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
9. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
10. [REDACTED] E-4 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
11. [REDACTED] E-6 372<sup>nd</sup> MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.

**Military Intelligence Witnesses:**

1. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
2. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
3. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
4. [REDACTED] O-6 205<sup>th</sup> MI BDE - Redeployed to U.S.

**Other Witnesses:**

1. [REDACTED] O-3 Former Interrogation OIC - Redeployed to U.S.

- 2. [REDACTED] O-3 205<sup>th</sup> MI BDE - Redeployed to U.S.
- 3. [REDACTED] O-3 Ft. Sam Houston - Redeployed to U.S.
- 4. [REDACTED] O-5 CJTF-7 - cannot locate
- 5. [REDACTED] O-4 Member of Australian forces - Redeployed to Australia

Co-Accused:

- 1. [REDACTED] E-3 372<sup>nd</sup> MP CO - Fort Bragg, awaiting court-martial

**The following witnesses are co-accused, have invoked their rights and are represented by counsel.**

- 1. [REDACTED] E-5 372<sup>nd</sup> MP CO
- 2. [REDACTED] E-6 372<sup>nd</sup> MP CO
- 3. [REDACTED] E-4 372<sup>nd</sup> MP CO
- 4. [REDACTED] E-4 372<sup>nd</sup> MP CO
- 5. [REDACTED] E-4 372<sup>nd</sup> MP CO

**The following witnesses were requested by Defense Counsel and were available. Defense Counsel decided during the Investigation to not call these witnesses and they were therefore deemed reasonably unavailable.**

- 1. [REDACTED] - Vigilant A, security detainee
- 2. [REDACTED] - Vigilant A, security detainee
- 3. [REDACTED] - Hard site, 6-B, criminal
- 4. [REDACTED] - Ganci 5, security detainee
- 5. [REDACTED] - Ganci 8, security detainee
- 6. [REDACTED] - Hard site 3-B, criminal
- 7. [REDACTED] - Ganci -1, security detainee
- 8. [REDACTED] - Hard site 4-B, criminal
- 9. [REDACTED] - Unknown, released
- 10. [REDACTED] - Unknown, released
- 11. [REDACTED] - Vigilant C, security detainee
- 12. [REDACTED] - Ganci 5, Unknown
- 13. [REDACTED] - Unknown, released
- 14. [REDACTED] - Ganci 8, security detainee

**Enclosure #2 - CONTINUATION OF DD FORM 457, BLOCK 13a**

Prosecution Exhibit #6 – Sworn statement of SPC [REDACTED]  
Prosecution Exhibit #7 – CD ROM of pictures and video clips  
Prosecution Exhibit #8 – Sworn statement of SPC [REDACTED]  
Prosecution Exhibits #9A thru 9O – Sworn statements of Detainees at the Prison  
Case File

Defense Exhibit A – ARTICLE 15-6 Investigation of the 800<sup>th</sup> MP Brigade  
Defense Exhibit B – Rebuttal of AR 15-6 for SFC [REDACTED]  
Defense Exhibit C – Rebuttal of AR 15-6 for 1SG [REDACTED]  
Defense Exhibit D – Rebuttal of AR 15-6 for CPT [REDACTED]  
Defense Exhibit E – Sworn statement of [REDACTED]

**Enclosure #3 – Defense Counsel’s Objections prior to and during the ART 32 Investigation.**

- The Defense objected to consideration by the IO of the following evidence. These were published in Defense Counsel’s memorandum of 10 April, 2004.
  - 1) Various Documents (From Detainee Medical Records, 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.
  - 2) Detainee Medical Records (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.
  - 3) Hard-cell Medical Log (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.
  - 4) Treatment Logs (From B Company, 109<sup>th</sup> Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.
  - 5) Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.
  - 6) Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.
  - 7) Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some

nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

- DC had the following objections during the investigation.
  - 1) Admittance of photos that do not apply specifically to the charges against SPC Ambuhl.
  - 2) Consideration of statements from the detainees that have been released.
  - 3) Consideration of the CD ROM and specifically those items not relative to the case against SPC Ambuhl.

## Article 32 Transcript

### U.S. v Ambuhl

The Article 32 Proceedings were called to order at 1002 hours, 1 May 2004, at Victory Base, Iraq.

#### PERSONS PRESENT

MAJ [REDACTED], Investigating Officer  
CPT [REDACTED], Government Counsel  
1LT [REDACTED], Assistant Government Counsel  
Mr. [REDACTED], Civilian Defense Counsel  
CPT [REDACTED], Military Defense Counsel  
SPC [REDACTED], Accused  
SFC [REDACTED], Recorder

#### PERSONS ABSENT

None

**The Government Counsel stated that sometime today, he would like for all parties to review each packet to ensure all contents were the same.**

**The Defense Counsel conducted a voire dire of the Investigating Officer, and made no objection to the Investigating Officer being detailed to the hearing.**

**Government Counsel stated that all parties understand that due to witness location and different ways testimony would be given, the proceedings may not run as normal.**

The Investigating officer stated that this was a formal investigation and that he had been detailed as the Article 32 Investigating Officer by order of Colonel [REDACTED] Commander, 16<sup>th</sup> Military Police Brigade (Airborne).

The investigating officer informed the accused that his sole function as the Article 32 investigating officer was to determine thoroughly and impartially all of the relevant facts of the case, to weigh and evaluate those facts, and to determine the truth of the matters stated in the charges.

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence, examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

**The Investigating Officer advised the accused of her right to counsel.**

**The Accused stated the she would be represented by Mr. [REDACTED]**

The Investigating Officer instructed Mr. [REDACTED] to fill out items on DD Form 457, Investigating Officer's Report.

The Defense Counsel waived the reading of the charges.

**The Investigating Officer notified the accused of her rights during the Article 32 Investigation.**

The accused stated that she understood her rights.

**The Investigating Officer stated that the following witnesses would be present:**

CW2 [REDACTED] IMIR, CJTF-7  
SGM [REDACTED] 418<sup>th</sup> MP Det, (CLD)  
CPT [REDACTED] 372d MP CO  
1SG [REDACTED] 372d MP CO  
SFC [REDACTED] 372d MP CO

Telephonic testimony:

SGT [REDACTED] A CO, 302d MI BN, Germany  
SA [REDACTED] CID  
PFC [REDACTED] HHC, 16<sup>th</sup> MP BDE(ABN) (REAR), Fort Bragg, NC

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

Prosecution Exhibit 1: Sworn Statements of SPC [REDACTED]  
Prosecution Exhibit 2: Sworn Statements of SGT [REDACTED]  
Prosecution Exhibit 3: Sworn Statements of SPC [REDACTED]  
Prosecution Exhibit 4A – 4R: 18 photos; with objection; Defense Counsel objected to photos not pertaining to SPC Ambuhl

The Assistant Government Counsel stated that the witnesses from the 372d MP CO, located at LSA Anaconda would probably not be here due to convoy difficulty.

The Government Counsel made an Opening Statement.

The Defense Counsel reserved his Opening Statement.

SFC [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

CPT [REDACTED], 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

1SG [REDACTED], 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

SGT [REDACTED] A CO, 302d MI BN, Germany, was called as a witness, sworn, and testified telephonically in substance as follows:

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I was deployed to Abu Ghraib Prison Iraq at the end of September 2003 until February 2004; I left when my Battalion redeployed. I was the Systems Administrator and Trojan Spirit Operator for what was called the ICE Intelligence Center for the Interrogators. I was assigned to a MI Bn from Camp Victory, and worked with the interrogators that worked at Abu Ghraib. I worked in the center where the interrogators prepared their reports and collected data and kept information.

The MI personnel had to interact with MPs in order to do their interrogations. The MPs would provide security, or be told by individual interrogators from MI to alter diets or sleep of detainees. The Interrogation teams were usually made up of a civilian interrogator or interpreter. They would give direction to the MPs.

I may know SPC Ambuhl, but I don't recognize the name right now.

I do not know how Tier 1A and 1B is set up. I visited it once, and I was told that the real bad guys were there in individual cells.

I actually sat in on one interrogation with SPO [REDACTED] an interrogator from Victory Base. I was to interrogate a General, and I provided security.

To help with the interrogations, MP guards would play loud music, alter detainees' diets when feeding MRE's and taking out certain items. They would alter detainees' sleep,

use dogs to intimidate, pour water over them and put them in the back of HMMWVs and drive around.

Physical Training that was authorized would be push-ups, overhead arm clap, instruction like from a Drill Sergeant to a Recruit.

I have not seen photos of abuse at Abu. My Chain of Command has not asked me if I have seen any photos, nor have they told me to delete photos from hard drives. I have only heard of incidents from interrogators.

I heard of the incident involving SPC [REDACTED]. I was told that he was too aggressive, and was relieved. I do not know of any UCMJ action. He was placed in a more analytical role at the ICE. SPC [REDACTED] was also relieved because she had a detainee stripped naked and made him walk back to his cell naked in the view of all the other prisoners. This happened in November or December 2003.

My Bde Cdr, moved into the ICE; he was a LTC, and seemed pretty involved with everything that went on until he was replaced by a MAJ [REDACTED].

I would say that MI was in control of prison operations. The OPTEMPO was high. I was the system administrator, and there were many requests for new accounts to be added to the network. More and more personnel and prisoners would arrive.

I would say that there was pressure for the interrogators to produce info from the detainees. It was an overwhelming amount of detainees in the facility. There was no deadline to get detainees out of interrogations.

I recall my statement to CID when I talked of a conversation with SPC [REDACTED]. I was sitting at the DFAC and heard him and his peers talking about what the MPs did to the detainees. Things like beating them up and using them as practice dummies and knocking them out.

I had just returned from leave, so this discussion was in December 2003.

Someone from the Nevada National Guard, an older female soldier, told me of some stuff that she saw going on. She documented it, and her chain of command reprimed her because of it. She was afraid of her chain of command. She sent the documentation to her relatives.

I spoke with a SPC [REDACTED] about the MPs using dogs on the detainees. She said how fearful the detainees were of the dogs. She described how a MP pretended to be a dog to scare the detainees. I don't know what happened to SPC [REDACTED] because she witnessed the incident. She is in the same unit as SPC [REDACTED] and SPC [REDACTED]. They are all in a Reserve Unit. She did take pictures of the facilities, but I do not know of her taking pictures of any detainees.

I did not report the abuse that I heard from others. I knew that some of the stuff was authorized, and did not need to be reported.

I talked to one woman about it only being a matter of time before the abuse got out and an investigation initiated. I spoke to at least everyone that I knew about how the place was poorly run. It was very unorganized. The response I got that it was a lot worse under Sadaam. LTC [REDACTED] had that statement after the Red Cross visited the prison and saw the conditions. The Red Cross criticized the food, from what I remember.

I remember soldiers from my BN visiting from Camp Victory being trained on how to interrogate and secure prisoners. They were also trained on how to better use their approaches.

I know that the detainees received blankets and clothing if the interrogators wanted them to have it. SPC Slagel had mentioned to me that they made them wear women's panties, and if they cooperated, some would get an extra blanket.

SPC [REDACTED] was known to bang on the table, yell, scream, and maybe assaulted detainees during interrogations in the booth. This was to not be discussed. It was kept "hush hush" by the individual interrogators.

To my knowledge, the only thing that happened after the incidents was the team getting together to make reports after the interrogation. Nothing was said about not banging on tables. Nothing was put out about not stripping detainees naked after the SPC [REDACTED] incident. She was relieved because she made a detainee walk to his cell naked in front of other detainees.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

I don't know what training was given to the MPs of the 372d MP CO. The only time I saw MPs was while waking through the facility, or at chow.

SPC [REDACTED] also told me of two inmates that supposedly raped a child, and the MPs punished them by making them get into all sorts of sexual positions.

I am vaguely familiar with interrogation techniques. I know the IROE. Putting inmates in sexual positions naked would not be appropriate. I wouldn't do it if someone ordered me to do something like that; not even a CPT.

The different things I was told, I wondered if it was a joke for the guards. I wouldn't be surprised if the freed innocent prisoners retaliated against the prison after being treated this way, by helping to pinpoint locations in the prison for the mortar attacks.

The MPs were directed by the MI personnel to play loud music, vary diets, limit MREs, deprive sleep, and PT exhaustion.

People got in trouble for being too aggressive. Physical violence would be over the limit of the IROE. It would not be authorized.

I would not hit someone to get them to soften up. Others shouldn't either. That would not be a legal order. Putting a leash around someone's neck, pretending to drag them and taking a picture would not be authorized.

Taking pictures was forbidden. Personnel were placing pictures on the database, and I was told to remove the pictures from the database. These were pictures of soldiers throughout the facility just walking around. It was totally inappropriate to take pictures of detainees. It is inappropriate to take pictures of detainees naked in a pyramid. You would not do this to soften them up. I don't know of anything that would allow MPs to have detainees masturbate to soften up for an interrogation. This would not be allowed. Pictures of this masturbation would be illegal also. Pictures of a detainee with his face next to another detainee's genital area masturbating would also be unauthorized. This is not a technique used to soften someone up. I have never heard of any of these techniques used by MI.

#### **QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])**

I didn't report the stuff that I heard, because I thought some of the things I heard was authorized. The dietary and sleep stuff was common knowledge within the ICE. MPs using dogs to scare detainees, I think was approved by our IROE.

Dragging detainees with at leash, making detainees masturbate, and piling them naked in pyramids and taking pictures of it is not authorized.

It was confusing the way the place was run. It was an important mission run by Reservists who did not know what they were doing. They were just on their own. It was a shocking experience.

#### **QUESTIONS BY THE DEFENSE COUNSEL (Mr. [REDACTED])**

I don't know if the MI personnel received efficiency reports; I got an NCOER, and I counseled my soldiers. I guess the people above me were counseled on their performance.

The goal of the interrogators was to get information, make diagrams of the info and piece together theories or hypotheses of terrorist events that was going on.

It was important to get the information to prevent terrorist activity, and find perpetrators of terrorist activity.

We would get attacked at the prison. There was pressure to get results by effectively interrogating the prisoners. If there were no results, then the supervisors would be concerned. The goal was to get results.

General Sanchez opened more facilities, and made things better. The place was getting cleaned up. This was an incentive to get more information from the prisoners.

**QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

Goals would not justify committing a crime; it would be definitely possible for maybe the civilian interrogators to overlook that. They were not under any authority.

General Sanchez never ordered anyone to commit crimes to get information. The Brigade, Battalion, Company, and MI Commanders, never told anyone to commit crimes to get information.

The facility in general, had no real authority base, other than LTC [REDACTED]. There were no clear-cut guidelines.

There is no justification to have detainees masturbate, piled in pyramids naked, or be pulled by leashes. The conditions might lead some people to act inappropriately. The people who act inappropriately should be punished.

I know that there is a separate facility for women and children. There are more than terrorists and security detainees at the prison. Some people were living there. The raids would round up people that were just in the area and probably innocent. If a prisoner was being kept for robbing an Iraqi bank, I wouldn't know about it.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1149, 1 May 2004.**

**The Article 32 proceeding reconvened at 1203, 1 May 2004, with all parties present.**

**CW2 [REDACTED] IMIR, CJTF-7, was called as a witness, sworn, and testified in substance as follows:**

I organize and process reporting by Iraqi information collectors. I am a 351E, Interrogations Technician. Prior to my current job, I was at the JIDC at Abu Ghraib from September 2003 until January 2004. I was reassigned when my unit left. I was asked to stay.

I am familiar with the layout of the prison. The largest camp is Ganci; it holds security detainees primarily, next is Vigilant, it holds detainees of informational interest; and then there is the Hard Site; it holds detainees of MI interest, females and juveniles, problematic detainees from the other camps, like rioters, or crazy detainees.

Tier 1A and 1B holds persons of MI interest. I do not know anything about what type of training the MP guards would have received at Tier 1A and 1B.

In January 2004, we ceased to bring problematic detainees into the Hard Site, because they created a chaotic environment. The FOB Commander ordered this change. They were troublemakers. I recall one who would rip up his mattress and relieve himself right on the floor of his cell; another would sling their feces at the guards.

I don't know if the MP guards received any special type of training.

I worked in the Operations section of the JIDC. We accounted for the detainees, and answered questions from CJTF-7. We tracked requirements and assessments of the detainees. Leaders would gather the information from the sections, The ICE NCOIC was SFC [REDACTED] and the OIC was CPT [REDACTED]. I don't recall seeing any suspense dates. We were short staffed; we requested for more personnel, and we got more personnel.

I think there was interaction with MPs and MI personnel. SPC [REDACTED] was a liaison, and would attend the FOB BUB daily. The personnel from each section would disseminate the info obtained from the BUB.

I know SPC Ambuhl; she worked in Tier 1, and she is here today. I don't remember when I first met her, but I had a almost daily professional interaction with her. She would provide updates on who was present or not. I don't know how long she worked at the prison. She observed juvenile and female detainees. She had interaction with them; she helped move them from cell to interrogation wing.

I don't know if she received any training on how to interrogating prisoners. We did have a conversation about supplies and Iraqi food for the detainees. We once talked about rewarding detainees that helped clean and do tasks, with cigarettes, because they loved to smoke.

I was the "old Operations expert", everyone would just ask me stuff.

I remember a discussion with her about problem detainees; it was about reducing the environment that caused them to misbehave. Some of the detainees were cooperative and others were not.

There were a few approved interrogation techniques; for example, prod and go down – when you speak down to someone to get them to cooperate.

I do not know of any SPC [REDACTED] know SPC [REDACTED] he was an analyst that worked in the ICE shop. I understand that he was removed because of a situation when a detainee was stripped naked.

SPC [REDACTED] was also involved in this same incident and was moved to my section after she was relieved from her duties. I asked her why she was moved, but I did not ask her what she did. I do not know if SPC [REDACTED] or SPC [REDACTED] received any UCMJ.

We had mandatory IROE training and implemented a mandatory sign out procedure. All MI personnel attended this training.

I heard about a riot at Ganci. I do not know of any punishment after they were moved to the hard site. I hope that they were segregated and silenced.

Embarrassment of the Arab culture would be contrary to producing results, in my opinion. Some of our most effective means to communicate is to just develop a rapport. I do not know if the MPs were trained on the Arab culture.

SPC Ambuhl would help move the prisoners from their cells to the interrogation wing or where we picked them up. The interrogator would ask for the prisoners they needed. SPC Ambuhl would cross-reference and tell which cell the prisoner was in, and she would facilitate the move.

Sleep deprivation would be documented in an interrogation plan. It is a separate book from other files.

I never had any problems with SPC Ambuhl.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

The Hard Site has problematic detainees in 1A and 1B. The rest of the Hard Site houses Iraqi corrections prisoners, such as robbers, and thieves. The CPA is in charge of the rest of the hard site, 2A, 2B, and so on. 1A and 1B contained security detainees for MI, females, and juveniles.

Ganci contained people possibly gathered from raids. There are many camps in Ganci. No one from Ganci has any interrogation value. Someone removed from a riot would not be interrogated. If detainees in Ganci could not be controlled, then they would be moved.

Our priority was to get information to stop the IED attacks, terrorist activity, and crimes against the Coalition.

Every detainee was inprocessed and assessed. After the screening, they were determined to be of value or not value to MI. These reports went to CJTF-7.

I am a trained interrogator. I finished my training in 1990; and I have been an interrogator for 14 years. MPs would do the sleep management plan, it was requested of MI. General Sanchez would have to approve speaking to someone about something that would make them upset. An MP could not just do this on his own.

I am familiar with the Geneva Conventions. We treated them the same as POWs; we treated them with dignity and respect. Anything outside of that required approval.

No MPs attended our training. MPs did not attend our Geneva training. The IROE is classified and located at the JIDC.

The worst criminals were to be treated with dignity and respect.

I never saw SPC Ambuhl treat anyone without dignity and respect. She would help us with the female detainees. She was nice and pleasant. She knew the difference between right and wrong, and what dignity and respect was. I saw her treat people with dignity and respect. I assume she was a guard; she took direction from the Shift NCO, SGT [REDACTED], CPL [REDACTED] or SSG [REDACTED].

There is nothing in the IROE that allows stripping detainees naked. There are times when they are naked for strip-searching. Detainees being piled in a pyramid naked, or being forced to masturbate has no MI or military purpose.

I've seen a handful of photos of the pyramid. That type of interrogation "plan" would not have made it to General Sanchez for approval; it would not have made it past me.

Forcing detainees to masturbate kneeling in front of one another would be outside of the bounds. Placing a leash around a detainee's neck would be out of bounds.

All of these acts would be criminal offenses. If I were ordered to do these acts, I would not carry them out. Embarrassment as a technique would be contradictory to achieving results.

**Government Counsel shows the witness Prosecution Exhibit 4A.**

This looks like 1A or 1B. I recognize the metal doors. SPC Ambuhl is in this picture. I have seen the other female around, but I do not know her name. I do not recognize the detainee on the "leash". This scene serves no military purpose; it is inappropriate. Interrogators would not tell MPs to do this. I have never seen SPC Ambuhl do anything like this.

**QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])**

The rest of the Hard Site Tiers housed, as I understood it, Iraqi criminals; some I thought were actually sentenced and serving prison terms.

## QUESTIONS BY THE DEFENSE COUNSEL (Mr. Volzer)

A "unclassified" description of the general requirements would be: who's attacking us-, what are some imminent attacks-, where is the WMD-, what do you know about terrorist activity-?

Reports were generated from the information obtained from the detainees interrogated. CJTF-7 developed the reporting requirement.

1 to 2 people would interview or interrogate a detainee, depends on the detainee.

You could not "fear up" or belittle someone without approval. MI would tell the MPs to make the detainees more receptive. It depended on the environment; a detainee may be moved to another area, monitored for interaction, told to keep quiet and not interact with others, with proper documentation, put on dietary management, and possibly be given cigarettes.

These were effective techniques were used by MI and required approval. Removing a blanket or other item required approval.

Saying MI personnel are aggressive is an unfair statement. Some are, and some are not. I am a former grunt. 11B and 11C grunts are aggressive too.

The interrogation techniques used are taught.

MI does not own the detainees. The sleep management procedure was directed by MI to the MPs to supervise and report at the end of the day.

After someone is interrogated, doesn't mean they could leave the prison. There may be more interest in keeping them.

Yelling was not authorized. We had a few that were loud with the detainees.

I saw the special reaction team at the Vigilant camp once. Sometimes handling a situation quietly works better and is more effective. If one technique is working, we continue to scrutinize that technique. Its not one of those "not broke don't fix it" scenarios. We do continue to develop rapport.

There was a sign in sheet in the beginning; it is kept with the NCOIC of each tier. The detainee interrogation plans are classified and kept in the ICE log. Detainee files are secret.

## QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])

To prod and go down is a technique, such as getting a captured officer, making them tired, and calling them a coward.

You exploit how they were captured and use it to your advantage. An example of fear up would be, "okay, as long as you don't cooperate, you will just stay in here". Approval is need for these two techniques.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1315, 1 May 2004.**

**The Article 32 proceeding reconvened at 1412, 1 May 2004, with all parties present.**

**SGM [REDACTED], 418<sup>th</sup> MP Det (CLD), was called as a witness, sworn, and testified in substance as follows:**

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I first arrived to Iraq 1 February 2004. My mission was to work a BLD/CLD versus a EPW mission. CLD is Camp Liaison Detachment; BLD is Brigade. The 16<sup>th</sup> MP BDE (ABN) gave us our mission. We replaced the 381<sup>st</sup> BLD. There were no EPWs, except for a handful at Camp Bucca. We took on the detainee operations role.

The definition of detainee and EPW is in the Geneva Convention, Article 4.

Our mission falls under the 16<sup>th</sup> MP BDE (ABN). I have not aware of allegations of abuse and mistreatment of detainees. I have heard of the rumors.

I don't know what training was given in the past; I am aware that training is going on now. There are 30 corrections personnel from Fort Knox, Fort Leavenworth here to train soldiers at the prison. There is training on the Arab culture, ROE, and the Geneva Conventions.

I visit the prison often. I am aware of the prison breakdown; 1A and 1B houses MI holds, females and juveniles. Juveniles were moved recently. The Hard Site is fairly secure. Normally, females would be separated. We use the Geneva Convention as a guideline.

Changes are going on in Ganci and Vigilant to make conditions safer for the detainees. The 16<sup>th</sup> MP BDE (ABN) is refining policies, and SOPs.

I do not know of the officer involvement prior; but COL [REDACTED] frequently visits the prison.

We have MPs and MI personnel in the inprocessing center at the prison. I do not know of any cross over training. When we made our assessment, we noted that the nutrition and sanitation conditions were not within the Geneva Convention.

I do not know if the Geneva Conventions was followed before the 16<sup>th</sup> MP BDE (ABN) arrived. It is being followed now. There are weigh ins, and the meals are nutritional.

The Geneva Convention recommends that female detainees be guarded and searched by female MPs.

When a detainee arrives, they are assessed and inprocessed within 72 hours. I do not know of any SOPs being left behind or given to the 372d MP CO.

We at the BLD look at the prison from a Geneva Convention standpoint. We ensure that prisoners are treated properly, and that environmental conditions are correct.

The 372d MP CO was previously at Mosul. I am not aware of anyone else performing the prison mission before them.

We brought our regulations and documentation with us. I have walked throughout the compound and had casual conversations with the soldiers. We have a big switch of OIF1 and OIF 2 personnel.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1435, 1 May 2004.**

**The Article 32 proceeding reconvened at 1459, 1 May 2004, with all parties present.**

**SA [REDACTED] U. S. Army CID, Fort Jackson, SC, was called as a witness, sworn, and testified telephonically in substance as follows:**

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I first became involved in the detainee abuse case when we received a anonymous letter and cd-rom containing pictures. In the preliminary stage of the investigation, I was the case manager. I left in February 2004. Our CID detachment was located at Abu Ghraib; we were three agents conducting interviews of prisoners. We also had three translators.

In order to find out who the detainees were that were abuse, we obtained logs of the prisoners that were in the isolation wing at the time of 7November and a couple of other days.

Initially, the person who came forward with the letter and cd-rom provided the names of the main persons involved. This was SPC [REDACTED] he went through the pictures with us and identified the military personnel involved. He identified the majority of the personnel, and knew who they were. Others, he did not know. We interviewed every single MI and military personnel that worked in the prison; we sent numerous requests for assistance to other CID offices worldwide to interview all other persons that were ever at the prison and identified in the photographs. I have no idea of any UCMJ action. The case is still open. I interviewed several hundred people, but I cannot remember a SPC [REDACTED]

I believe SPC [REDACTED] came forward because he knew this stuff was wrong, and that CPL [REDACTED] would go back to work in the isolation wing and continue the abuse. He wanted the abuse to stop. He received the pictures approximately one week before he came forward. He was weighing his conscience, and decided to do the right thing.

I think several people suspected abuse but did not report it. I don't know the status of any UCMJ against anyone. CID does not recommend what action be taken against subjects of our investigations. We just gather facts; the chain of command decides what to do. We briefed the Company and Battalion commanders about our progress during the investigation.

I remember my interview with SGT [REDACTED] he was interviewed twice. He lied in his first statement, and told the truth in his second statement; admitting to stepping, stomping, and jumping on the detainees.

After talking with the detainees and personnel, the names of the main perpetrators of the abuse were CPL [REDACTED] SSG [REDACTED] and SGT [REDACTED]. The ones taking pictures were SPC Ambuhl, PFC [REDACTED] and another I cannot recall. These names are based on the interviews, and who was there.

I recall the detainees mentioning SPC Ambuhl; they would refer to her as Miss Megan. I can't recall if she helped a detainee by giving him an inhaler.

When I interviewed a detainee, I explained why I was there, and just gave them a pen and a sworn statement form in Arabic or English; and they would write what they knew about the incidents. Their statements were later translated. If something wasn't clear, we had follow up questions. If they did not know someone's name, they were told to just describe that person using as much detail as possible.

I remember SGT [REDACTED] but not his statement. I remember SSG [REDACTED] once being a suspect; I thought he observed the abuse; he was later cleared of any wrongdoing. This was all based on our interviews of the personnel that were there.

SFC [REDACTED] as I remember was not involved. It became apparent through the course of the investigation, that the nightshift-- SPC Ambuhl, CPL [REDACTED] SSG [REDACTED] PFC [REDACTED]

██████████ and on occasion SPC ██████████ would do these acts after SFC ██████████ had left; and after the chain of command had changed shifts and gone home. It became clear to me that they knew that SFC ██████████ would not tolerate these acts. There was one incident when SFC ██████████ was on the upper tier and saw an incident and ordered them to stop immediately; I believe he observed SGT ██████████ stepping on a detainee. They were shocked at how angry he was when he told them to stop. I don't believe that SFC ██████████ reported that incident.

I have no recollection of SGT ██████████ again, I spoke with several hundred personnel.

SPC ██████████ was identified as one of the people in the photos, but I don't recall his statement. He never came forward to report any misconduct to the CID office. SPC ██████████ and SPC ██████████ were MI soldiers identified in one of the photographs.

I am not sure of any UCMJ action pending on anyone; I left Iraq in February 2004, and until very recently, I did not know of anyone pending any UCMJ action. I turned the investigation over to SA ██████████ I don't know if he did any follow up interviews. We gave the 15-6 Investigation Staff a copy of our case file; we also provided the photos and statements we gathered.

I do not recall a SGT ██████████ again, I spoke with hundreds of personnel. Our main purpose was to identify the personnel in the photos; we also wanted to find out if MI told the MPs to do these acts. If so, we wanted to know who told them; that's why we interviewed everyone. No one said do this to that person, or anything specific. Our second purpose was to have the most thorough investigation that we could. We wanted to talk with each and every person mentioned in the interviews.

Most of the interrogators did not wear nametags. You knew who they were, if you knew them. We would figure out who was working, and interview all the handlers, interrogators, and guards.

I do not recall if there are any civilians involved in the investigation; several people were interviewed.

I remember ██████████ We listed someone as a subject if there was reasonable belief that they committed a crime. The investigative file is a working document, and the status of personnel involved may change. Like when SSG ██████████ was listed as a subject, and later taken off of the status report.

There are numerous things involved when determining if someone is derelict in their duty; if they inform their chain of command, then they are not derelict in my mind, and the way the UCMJ puts it, as I know.

No one reported any abuse up until January 15, 2004, to CID; however, there was one individual who reported the abuse to his chain of command—his NCOIC.

The NCOIC then went to SSG [REDACTED] to report the abuse; and because SSG [REDACTED] was the perpetrator in this incident, it did not go anywhere. The individual that reported it did the right thing.

Had SPC Ambuhl reported the abuse to SFC [REDACTED] she would not be a subject of the investigation. It would be different if she had reported it to SSG [REDACTED]. I am not a lawyer. This was an ongoing incident. The NCOIC that reported the incident to SSG [REDACTED] I believe, did not report it to anyone else. When he reported to SSG [REDACTED] he did not know that SSG [REDACTED] was the perpetrator.

I do not recall interviewing SPC [REDACTED] or SPC [REDACTED]. The investigation is still open, and pending a few requests for assistance. You can add and remove subjects as credible information becomes known.

I worked at Abu from October 2003 to February 2004; I would visit the Hard Site at least once or twice a week. We would interview suspects of crimes against U.S. Forces, or individuals who knew of deaths of U.S. Forces. On occasion, I visited with CPT [REDACTED] in tier 1a and 1B. I had no involvement with the Red Cross.

I heard of a deceased individual that was being stored at the facility, but I don't know the specifics. Our focus was Iraqis committing crimes against U.S. soldiers.

Based on our proximity and the amount of time, the 12<sup>th</sup> CID came over to help with the investigation. There were a lot of people to be interviewed. They were initially investigating hostile fire incidents. It was a higher priority to work the logistics of this case.

I had no interaction with SPC Ambuhl; I would see her when I went to the Hard Site. I did not see her commit any abuse. I only went there during the day in the morning; the alleged abuse happened in the evening or nighttime.

I never saw the detainees do any PT. I believe a SPC [REDACTED] or someone else hung a detainee in handcuffs for over six hours. I don't recall SPC Ambuhl letting the detainee down.

I don't recall if I interviewed PFC [REDACTED]. I read every document when I was there, but I cannot remember any statements that she made. I do not remember if she changed her stories; she may have. There were a lot of people and documents in this case.

We do criminal record checks on our subjects. I believe PFC [REDACTED] received an Article 15 for an improper relationship with CPL [REDACTED]. I believe CPL [REDACTED] was admonished, and they were told to stay away from each other. I don't remember if CPL [REDACTED] was recommended to take anger management by his commander.

When I interviewed the detainees, I did not provide any names. I would not ask, for instance, "Did CPL [REDACTED] hit you?"—I would simply ask "Were you in the isolation

wing-- and what happened when you were there?" We wanted a clear and unbiased environment.

I don't know if they wore their BDU Tops while in the isolation wing. I don't know if they were told to not use their first names; or to even use fake names. The MI personnel I interviewed never told me they told the MPs what to do to the prisoners.

In some of the incidents, some of the detainees being abused were not actively scheduled for interrogation. They were rioters. This appeared to me as just retaliation against the rioters. The riots were in separate camps.

We interviewed all of the MI personnel. No one admitted to telling the MPs to soften up any detainees; if they had, they would have been violating the UCMJ and the Geneva Convention. No one ever admitted to "good job, keep doing what you are doing".

MI had their very specific interrogation plan. It detailed things they could and could not do. No one I interviewed said they were abused during an interrogation. I am not aware of any MI investigation.

There was absolutely no evidence that the MI or MP chain of command authorized any of this kind of maltreatment. These individuals were acting on their own. The photos I saw, and the totality of our interviews, show that certain individuals were just having fun at the expense of the prisoners. Taking pictures of sexual positions, the assaults, and things along that nature were done simply because they could. It all happened after hours. The fear instilled in the prisoners after these incidents may have been a benefit, but I don't know for sure. These individuals wanted to do this for fun.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

Benefiting the interrogators did not come out in our investigation. The abused individuals were not going to be interrogated. The rioters would have been in another camp if they had military intelligence value. It is clear to me that the abuse was retaliation after the riot.

I know I am here today to help clarify the allegations against SPC Ambuhl. My investigation determined that she was present and took pictures. She is in the pictures with PFC [REDACTED] holding a leash around a detainee's neck. She is described as being present by some of the detainees during the abuse.

I do not recall her present at the riot incident. Our investigation did not determine her committing any abuse; nor did it determine that she stopped the abuse or reported the abuse.

I don't remember a statement from [REDACTED]. If he described a tall white female with green eyes named Miss Megan, he would be talking about SPC Ambuhl. I did not give the detainees any names.

I told them to use the names if they knew them, and to describe what happened. "Miss Mya" would also be SPC Ambuhl. In the Arab dialect, they have a hard time pronouncing Megan, and end up saying Mya.

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

There was an amnesty period during the course of our investigation, ordered by the FOB Commander. We did not collect any of this evidence; none of it pertained to our investigation. We reviewed cds and media as requested by the chain of command. The commander had access to the amnesty boxes; it entirely a command function. The commander would have kept all the other contraband. We returned the stuff we reviewed to the chain of command to be destroyed.

The detainee statements were translated. [REDACTED] stated that all the guards were good except for SSG [REDACTED], CPL [REDACTED] and SGT [REDACTED], as I specifically recall. He also said that despite all the abuse, he realized that the majority of U.S. soldiers did not abuse detainees. He only pointed out SGT [REDACTED] and CPL [REDACTED] abusing him.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

**The Article 32 proceeding recessed at 1608, 1 May 2004.**

**The Article 32 proceeding reconvened at 1617, 1 May 2004, with all parties present.**

**PFC [REDACTED] HHC 16<sup>th</sup> MP BDE (ABN) (REAR), Fort Bragg, NC, SC, was called as a witness, sworn, and testified telephonically in substance as follows:**

**The witness was read her Article 31 rights; she acknowledged and understood them, and stated that she would participate in the proceedings without a lawyer. Upon discussion wit all parties present, the Defense Team decided that they did not wish to question PFC [REDACTED]**

**The Article 32 proceeding recessed at 1640, 1 May 2004.**

**The Article 32 proceeding reconvened at 1643, 1 May 2004, with all parties present.**

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

**Prosecution Exhibit 5: Sworn Statements of PFC [REDACTED]**

**Prosecution Exhibit 6: Sworn Statement of SPC [REDACTED]**

**The Article 32 proceeding recessed at 1643, 1 May 2004.**

**The Article 32 proceeding reconvened at 0713, 3 May 2004, with all parties present except for the Assistant Government Counsel.**

**The Government Counsel asked that the members of the 372d MP CO be declared unavailable since they could not make their convoy to Victory Base.**

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

**Prosecution Exhibit 7: CD Rom containing photos and video clips; with objection; the Defense objects to photos that do not pertain to SPC Ambuhl's charges.**

**Prosecution Exhibit 8: Sworn Statement of SPC [REDACTED]**

**Prosecution Exhibit 9A – 9O(oscar): Sworn Statement of detainees; with objection; the Defense objects to the statements of detainees that have been released.**

**THE GOVERNMENT RESTS**

**The following exhibits were presented by the Defense Counsel and admitted into evidence as follows:**

**Defense Exhibit A: 15-6 Investigation of 800<sup>th</sup> MP Bde**

**Defense Exhibit B: Rebuttal to 15-6, by SFC [REDACTED]**

**Defense Exhibit C: Rebuttal to 15-6 by 1SG [REDACTED]**

**Defense Exhibit D: Rebuttal to 15-6 by CPT [REDACTED]**

**Defense Exhibit E: Sworn Statement of CPT [REDACTED]**

**THE DEFENSE RESTS**

**The Government Counsel made a closing statement.**

**The Defense Counsel made a closing statement.**

**The Article 32 proceeding adjourned at 0814, 3 May 2004.**



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 420th ENGINEER BRIGADE  
Victory Base, IRAQ  
APO AE 09342



**Builders in Battle!**

REPLY TO  
ATTENTION OF

AFRC-CAR-EBA-LG

8 MAY 2004

MEMORANDUM FOR RECORD

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl

1. On 24 March 2004, I was appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the charges noted below against Specialist Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), Victory Base, Iraq APO AE 09342. The charges preferred were:
  - a. Charge I: ART 81 Conspiracy
  - b. Charge II: ART 92 Dereliction of Duty
  - c. Charge III: ART 93 Cruelty and Maltreatment
  - d. Charge IV: ART 134 Indecent Acts with Another
2. During the conduct of the investigation, there were two delays granted. Both were attributed to the defense. The first was a 15-day request to allow defense adequate time to prepare for the ART 32 investigation. The second delay was an 11-day request to allow for a civilian defense counsel to travel to Victory Base for the ART 32 investigation and to prepare for the investigation.
3. Upon completion of the investigation and consideration of all evidence presented during the investigation (as noted in block 13a of DD Form 457 and Enclosure #2), I have the following findings regarding the charges against Specialist Megan M. Ambuhl.
  - a. Charge I: Violation of UCMJ, Article 81, Conspiracy
    - i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire and enter into an agreement with SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] and PFC [REDACTED] to commit an offense under UCMJ, Maltreatment of subordinates, and did effect the object of the conspiracy when she participated in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck. (See PE 4A thru 4D, PE 5)
    - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl

- iii. Strengths-The Trial Counsel presented evidence to show that SPC Ambuhl entered into an agreement with the co-accused to maltreat a detainee and then performed the overt act by proceeding downstairs with the co-accused to pull the detainee from the cell, place a tie down strap around his neck and then participate in a picture with PFC [REDACTED] as she held the leash.
- b. Charge II: Violation of UCMJ, Article 92, Dereliction of Duty
- i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, who knew of her duties as a Military Police soldier at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do. (See PE 3, PE 4A thru 4D, PE 5)
  - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.
  - iii. Strengths-Trial counsel presented compelling evidence to show that SPC Ambuhl had a duty as an MP and as the NCOIC of 1B to oversee and protect those housed at BCCF. It is reasonable to expect that SPC Ambuhl would have known those duties by virtue of her MOS and of being a U.S. Soldier. Finally, she was willfully derelict in those duties when she did not protect those detainees under her control.
- c. Charge III: Violation of UCMJ, Article 93, Cruelty and Maltreatment
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.
  - ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
  - iii. Weaknesses-There is no contention that element 1 of this charge has been met. I do believe that Trial Counsel failed to present adequate evidence to meet the second element of this charge. SPC Ambuhl was present as the pyramid was built but aside from showing that she was present, Trial Counsel did not present evidence that SPC Ambuhl carried out any act of cruelty or maltreatment other than being present at the building of the pyramid.
- d. Charge IV: Violation of UCMJ, Article 134, Indecent Acts with Another
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, SSG [REDACTED] CPL [REDACTED] SPC [REDACTED] PFC [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States  
v. SPC Megan M. Ambuhl

in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

- ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
  - iii. Weaknesses-Of the three elements of this charge, I believe that Trial counsel failed to provide adequate evidence to show that elements #1 and #2 were met. SPC Ambuhl was present when the detainees were forced to masturbate but Trial counsel failed to provide evidence that she played any role, other than being present, in the perpetuation of the act itself. I do feel that element #3 was proven adequately as SPC Ambuhl being present was prejudice to good order and discipline and certainly brings discredit upon the armed forces.
4. After review of all evidence presented and completion of the Article 32 Investigation, it is my recommendation that Charges I and II against Specialist Megan Ambuhl be referred to a General Court Martial. I further recommend that Trial Counsel provide additional evidence to show that the elements listed above as not met, were indeed met if they intend to proceed with charges III and IV.
  5. POC for this memorandum is MAJ [REDACTED] at [REDACTED] or by phone at DNVN/DSN 559-[REDACTED]

[REDACTED]  
MAJ, EN  
Article 32 Investigating Officer



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

29 March 2004

MEMORANDUM FOR MAJ [REDACTED] Article 32 Investigating Officer, Headquarters, 420<sup>th</sup>  
Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Delay, United States v. SPC Megan M. Ambuhl

1. The defense requests a delay in the Article 32(b) hearing currently scheduled for 5 April 2004. The earliest available date for the defense to go forward with the Article 32 will be 20 April 2004. The defense requires this delay for the following reasons.

a. Defense counsel received the preferral packet on 26 March 2004. The packet contains several hundred pages of evidence and statements. The packet also contains a CD Rom with over 1,000 visual depictions. Counsel and SPC Ambuhl both must have ample time to conduct an even preliminary review of the evidence.

b. Defense counsel is located at FOB Danger in Tikrit and is reliant on military convoys or MILAIR to get to Victory Base. Defense counsel met with SPC Ambuhl on 26 March 2004 but requires at least two additional meetings with the client simply to prepare for the Article 32. These trips require significant advanced planning and coordination due to travel limitation in the Iraqi Theater.

c. The defense cannot reasonably be prepared to represent SPC Ambuhl at the Article 32 hearing by 5 April 2004. An unprepared counsel is tantamount to no counsel at all. U.S. v. Miro, 22 M.J. 509 (USACMR 1986). The delay is necessary for the defense counsel to reasonably prepare for the Article 32 hearing. Counsel needs time to interview witnesses, coordinate with civilian defense counsel, if any, and otherwise prepare for the hearing which includes 5 charged co-accused, several uncharged potential co-accused, voluminous documents and alleged victim statements in Farsi or Arabic.

d. SPC Ambuhl has considered hiring a civilian attorney. Granting the requested delay will allow the soldier to exercise her right to counsel and to explore avenues to hire a civilian attorney and ensure his or her presence for the Article 32(b) hearing.

e. Granting the requested delay will allow the government and the defense to explore a possible alternate disposition of this case.

f. Defense counsel is one of only two defense attorneys deployed to serve the entire 1<sup>st</sup> Infantry Division. In addition to representation of courts-martial clients, counsel is responsible for serving the needs of clients throughout a dozen geographically diverse FOBs in Iraq. Granting the requested delay will allow counsel to schedule coverage for these areas and to prioritize trial defense counsel requirements.

2. The requested delay is attributable to the defense. If I may be of further assistance in this matter, please contact me via email at [REDACTED] or by phone at DNVT: 553 [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
CPT, JA  
Trial Defense Counsel

002405

ENCLOSURE #4

AFZA-AP-IO

MEMORANDUM FOR Commander, 16<sup>th</sup> Military Police Brigade (Airborne),  
Victory Base, Iraq APO AE 09342

SUBJECT: Request for Delay

1. In the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), the Defense has submitted the attached request for delay until 20 April 2004.
2. The Article 32 was initially scheduled for 5 April 2004. Defense counsel received the case file on 26 March 2004, and is based FOB Danger in Tikrit. Defense needs more time to meet with its client and go over the entire case file.
3. SPC Ambuhl is also considering hiring a civilian attorney.
4. The Trial Counsel recommends approval of the delay as requested by defense.
5. I concur with both counsel and recommend that the request for delay be approved.
6. The POC for this memo is the undersigned at 559 [REDACTED]

Encl  
as

[REDACTED]  
MAJ, EN  
Investigating Officer

002406  
ENCLOSURE # 5



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

10 April 2004

MEMORANDUM FOR MAJ Charles Ransome, Article 32 Investigating Officer, Headquarters, 420<sup>th</sup> Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Article 32 Request for Witnesses and Production of Evidence – *United States v. SPC Megan M. Ambuhl*

1. The Defense requests that the following witnesses be produced at the Article 32 investigative hearing scheduled for 20 April 2004, IAW with Rules for Courts-Martial (R.C.M.) 405(f)(9) and 405(g):

a. CID Agents

i. Special Agent [REDACTED], 10<sup>th</sup> MP BN, Baghdad, Iraq, APO AE 09335. Agent [REDACTED] testimony is relevant because he interviewed numerous alleged victims and made several visits to the Abu Ghraib prison facility during the period of the alleged offenses. Agent [REDACTED] also interviewed several alleged co-conspirators.

ii. Special Agent [REDACTED], 10<sup>th</sup> MP BN, Baghdad, Iraq, APO AE 09335. Agent [REDACTED] testimony is relevant because she interviewed several of the alleged victims and actively investigated the allegations in this case.

b. Iraqi Detainees

The Defense requests a certified interpreter to translate the testimony of the Iraqi detainee witnesses. The testimony of these witnesses is extremely relevant. These individuals may have potentially exculpatory information. The Defense has limited if any access to them based on their current status. For that reason, the Defense requests that the government produce the listed detainees to testify at the Article 32(b) Investigation. IAW R.C.M. 405(g)(4)(A) the Defense objects to consideration of the Sworn Statements of the listed alleged victims and Iraqi detainees. Such statements may not be considered by the IO over the objection of the Defense. All alleged victims and detainees reside at Abu Ghraib Prison in Abu Ghraib, Iraq. They are as follows:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]
- vi. [REDACTED]

002407

ENCLOSURE #6

- vii. [REDACTED]
- viii. [REDACTED]
- ix. [REDACTED]
- x. [REDACTED]
- xi. [REDACTED]
- xii. [REDACTED]
- xiii. [REDACTED]
- xiv. [REDACTED]

c. Chain of Command – 372<sup>nd</sup> MP Company

i. CPT [REDACTED] former Company Commander  
(C [REDACTED]) CPT [REDACTED] can testify as to the training provided to his unit, specifically any training regarding detention facilities. CPT [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

ii. CPT [REDACTED] former Platoon Leader  
(C [REDACTED]) CPT [REDACTED] can testify as to the training given to reserve MPs, specifically the training regarding detention facilities and control of detainees. CPT [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iii. MSG [REDACTED] former Company 1SG  
(C [REDACTED]) As the senior enlisted member of the 372<sup>nd</sup> MP Company, 1SG [REDACTED] can testify as to the training given to his MPs. He can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iv. SFC [REDACTED] former Platoon Sergeant  
[REDACTED] SFC [REDACTED] supervised many of the co-accused at Abu Ghraib. He conducted spot-checks of the facility, specifically cell blocks 1a and 1b. SFC [REDACTED] witnessed at least one of the charges to which SPC Ambuhl is facing court-martial. He can provide exculpatory testimony for SPC Ambuhl. His testimony is highly relevant and critical to this case. If necessary, the defense requests immunity for this witness to testify.

d. Co-Accused – 372<sup>nd</sup> MP Company

- i. SGT [REDACTED]
- ii. PFC [REDACTED]
- iii. SSG [REDACTED]
- iv. CPL [REDACTED]
- v. SPC [REDACTED]
- vi. SPC [REDACTED]

e. Additional Witnesses – 372<sup>nd</sup> MP Company

i. MAJ [REDACTED] former S-3 for the 320<sup>th</sup> MP Battalion (Day [REDACTED]) As the S-3 MAJ [REDACTED] was responsible for drafting and disseminating ROE guidance. The ROE and any training received by the 372<sup>nd</sup> MPs are extremely relevant to Charge II.

ii. SPC [REDACTED] SPC [REDACTED] first reported the alleged offenses to CID. His credibility and motivation are highly relevant. Further, SPC [REDACTED] may provided exculpatory testimony regarding SPC Ambuhl.

iii. SSG [REDACTED]

iv. SGT [REDACTED] was the operations NCOIC of Abu Ghraib during the time frame of the charged offenses. He will testify that he never witnessed any abuse taking place at the prison.

v. SSG [REDACTED] was the Force Protection NCO of Abu Ghraib during the time frame of the charged offenses. He can testify as to the day-to-day operations of Abu Ghraib and what procedures were in place on cell blocks 1b for interacting with detainees.

vi. SGT [REDACTED] SGT [REDACTED] spent time at blocks 1a and 1b during October, November, and December 2003. SGT [REDACTED] worked at 1a on evenings when CPL [REDACTED] was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received.

vii. SPC [REDACTED] SPC [REDACTED] worked on the same block as SPC Ambuhl. She can testify as to the nature of detainees that were held on 1b and as to the types of training received by her reserved unit. She can testify as to the interaction between the MI representatives and the MP guards.

viii. SGT [REDACTED] worked at block 1a during October, November, and December 2003. He worked at 1a on evenings when CPL Graner was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

ix. SGT [REDACTED]

[REDACTED] SGT [REDACTED] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

x. SPC [REDACTED]

[REDACTED] SPC [REDACTED] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

xi. SSG [REDACTED]

[REDACTED] SSG [REDACTED] can testify as to the procedures used on the cell blocks and to training that he and his unit received. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

f. Military Intelligence Witnesses

i. SPC [REDACTED] 325<sup>th</sup> MI Battalion

ii. SPC [REDACTED] 325<sup>th</sup> MI Battalion

iii. SPC [REDACTED] 325<sup>th</sup> MI Battalion

iv. SGT [REDACTED] 302<sup>nd</sup> MI Battalion

[REDACTED] will testify that members of his chain of command told him to delete Abu Ghraib photos off of his computer hard drive prior to the CID investigation.

v. CW2 [REDACTED] formerly assigned to 325<sup>th</sup> MI Battalion

1) CW2 [REDACTED] was an MI Interrogator that worked daily at Abu Ghraib at blocks 1a and 1b. CW2 [REDACTED] will testify about authorized MI interrogation techniques. CW2 [REDACTED] can testify as to the interaction and coordination between the MI interrogators and the MP guards. CW2 [REDACTED] has been transferred to the CPA in Baghdad.

vi. COL [REDACTED] 205<sup>th</sup> MI Brigade

1) COL [REDACTED] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03. In command during the time of the alleged offenses, COL [REDACTED] knowledge of misconduct at Abu Ghraib and the chain-of-commands response to such allegations is highly relevant.

g. Other Witnesses

i. CPT [REDACTED] former Interrogation OIC, DNVT: 559-[REDACTED]  
) CPT [REDACTED], a Military Intelligence officer, is familiar with the Camp Vigilant SOP and can testify as to CJTF-7 policies regarding Interrogation Rules of Engagement for detainees at Abu Ghraib.

ii. CPT [REDACTED] 205<sup>th</sup> MI Brigade Operational Law, DNVT: 559-[REDACTED]  
[REDACTED] CPT [REDACTED] was the legal advisor for the MI Group who ran Abu Ghraib prison. CPT [REDACTED] can testify to the procedures put into place for dealing with detainees and the training that was taught to the members of the 372<sup>nd</sup> MP Company for their work at the facility. CPT [REDACTED] visited Abu Ghraib during the relevant time period and can testify to the conditions at the facility.

iii. CPT [REDACTED], Ft. Sam Houston  
[REDACTED] CPT [REDACTED] was one of several attorneys who provided advice on detainee operations and ROE at Abu Ghraib.

iv. SGM [REDACTED], 418<sup>th</sup> MP Detachment

iii. LTC [REDACTED], CJTF-7, BIAP, Baghdad, Iraq  
) LTC [REDACTED] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03.

iv. MAJ [REDACTED] CJTF-7  
LTC [REDACTED] tasked MAJ [REDACTED] to respond to inquiries by the ICRC during the fall of 2003. When called to testify he can explain the ICRC inquiries and testify as to his response on behalf of CJTF-7.

2. If the Government contends that any Defense requested witness is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). Your determination should be made after the Government explains *on the record* the specific efforts made to locate and contact the witnesses and after consultation with your legal advisor as to whether or not the witness is reasonably available. If deemed reasonably unavailable, the Defense requests that a specific factual reason be stated on the record.

3. The Defense requests that the following documents and evidence be produced to the Defense at the Article 32 hearing, IAW with R.C.M. 405(f)(10) and 405(g)(1)(B):

a. All copies of CID reports (including 28s), military police reports, or any other reports made by a law enforcement agency relevant to this investigation to include the Agent Activity Reports and the Agent Activity Summaries compiled by the following investigators:

- i. SA [REDACTED]
- ii. SA [REDACTED]
- iii. SA [REDACTED]
- iv. SA [REDACTED]
- v. SA [REDACTED]
- vi. SA [REDACTED]
- vii. SA [REDACTED]
- viii. SA [REDACTED]
- ix. SA [REDACTED]
- x. SA [REDACTED]

- xi. SA [REDACTED]
- xii. SA [REDACTED]
- xiii. SA [REDACTED]
- xiv. SA [REDACTED]
- xv. SA [REDACTED]
- xvi. SA [REDACTED]
- xvii. SA [REDACTED]
- xviii. SA [REDACTED]
- xix. SA [REDACTED]
- xx. SA [REDACTED]

b. All evidence seized from the crime scene or any related evidence be present or made available for inspection by the Defense and the Investigating Officer including but not limited to any evidence seized as a result of the CID searches conducted throughout this investigation;

c. Any and all ROE/RUF guidance established by 372<sup>nd</sup> MP Company from October 2003 to the present;

d. Any and all OPORDs that pertain to the Abu Ghraib mission to include the ROE/RUF card then in effect;

e. Training records for SPC Megan Ambul and the co-accused;

f. Complete medical records for the Iraqi detainees listed in paragraph 1b of this Memorandum;

g. Any and all unit level and/or IG complaints regarding the treatment of Abu Ghraib detainees lodged against any soldier assigned to the 372<sup>nd</sup> MP Company, the 800<sup>th</sup> MP Brigade, the 205<sup>th</sup> MI Company, the 325<sup>th</sup> MI Battalion, or the 20<sup>th</sup> MI Brigade;

h. A complete copy of the unit counseling files to include any records of nonjudicial punishment or administrative action for the following soldiers:

- i. SPC Megan M. Ambuhl
- ii. SGT [REDACTED]
- iii. SPC [REDACTED]
- iv. SPC [REDACTED]
- v. SGT [REDACTED]
- vi. SSG [REDACTED]
- vii. PFC [REDACTED]

- viii. SSG [REDACTED]
- ix. CPL [REDACTED]
- x. SPC [REDACTED]
- xi. SPC [REDACTED]
- xii. SGT [REDACTED]
- xiii. SPC [REDACTED]
- xiv. SPC [REDACTED]

i. Copies of any relief-in-place (RIP) schedules or training schedules between the 72<sup>nd</sup> MP Company (Las Vegas, Nevada) and the 372<sup>nd</sup> MP Company, to include any OPORDERs;

j. A copy of the final CID case file with exhibits, of case number 0005-04-CID149, as referenced in the AIR of SA [REDACTED] dated 22 Jan 04, regarding a K-9 incident at Abu Ghraib;

k. Copies of the two Working Papers referenced by BG Karpinski in her 24<sup>th</sup> Dec 03 letter to Ms. [REDACTED] ICRC Protection Coordinator;

l. Copies of the ICRC reports dated Oct 03 and Dec 03 obtained by CID from CW4 [REDACTED] as referenced in SA [REDACTED] AIR, dated 5 Feb 04;

m. Copies of the official detainee file (as referenced in para. 3-4 of the Camp Vigilant Operations Procedures SOP (draft)) of the detainees listed in para. 1b of this Memorandum. At a minimum, the defense requests the name, detainee sequence number, capture number, capture date and crime charged with or suspected of for the detainees listed in para. 1b of this Memorandum;

n. A copy of the "Behavior Modification Plan" as referenced in para. 3-12 of the SOP;

o. A copy of the draft of Chapter 4 as referenced on pages 9-10 of the SOP;

p. A copy of the parallel AR 15-6 Investigation concerning the charged offenses and the actions and conduct of the leadership of the 372<sup>nd</sup> MP Company and the 800<sup>th</sup> MP Brigade (to include, any documents maintained by the AR 15-6 Officer to include his or her appointment memorandum);

q. Copies of any Press Releases or PAO information disseminated by the command regarding the charges faced by SPC Ambuhl and her co-accused, to include documents drafted by the Office of the Staff Judge Advocate for release;

r. Copies of any administrative action, relief-for-cause documents, letters of reprimand, and OERs/NCOERs for the members of the commands of 372<sup>nd</sup> MP Company and 800<sup>th</sup> MP Battalion who were in command from October 2003 through March 2004;

s. Copies of any SIGACTS, FRAGOs, OPORDERs, or other similar documents related to the ICRC visits to Abu Ghraib from October to December 2003;

t. Copies of any documents obtained or produced by MAJ [REDACTED] as a result of his response by CJTF-7 to allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03;

u. Copies of all documents, including documents of UCMJ or administrative action, regarding 3 soldiers from the 519<sup>th</sup> who ordered a female detainee to strip as referenced by CPT [REDACTED] in the preferral packet;

v. Copies of all documents, including documents of UCMJ or administrative action, regarding the 'Spence Incident,' as referenced by CW2 [REDACTED] in the preferral packet;

w. Copies of all documents, including documents of UCMJ or administrative action, from the August 2003 incident where 2 or 3 soldiers were disciplined by LTC [REDACTED] after a CID investigation into abuse, as referenced by MAJ [REDACTED] JIDC, MI, Operations Officer, as referenced in the preferral packet;

x. Copies of all negative counselings, UCMJ records, and records of administrative action regarding the following soldiers from 4<sup>th</sup> Platoon, 372<sup>nd</sup> MP Company: SPC [REDACTED] SPC [REDACTED] SPC [REDACTED] SPC [REDACTED] SPC [REDACTED] and SSG [REDACTED]

y. Copies of all work schedules maintained by the 372<sup>nd</sup> MP Company or higher headquarters showing which soldiers were scheduled to work which shifts at cell blocks 1a and 1b during October, November and December 2003;

z. The Defense reserves the right to ask for additional evidence, as it becomes known during the Article 32 investigation.

4. If the Government contends that any Defense requested evidence relevant to this case is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M 405(g)(2). This determination should be made after the Government counsel explains on the record the specific efforts made to locate and produce the evidence and consultation with your legal advisor as to whether the evidence is reasonably available.

5. The Defense objects to consideration by the IO of the following evidence:

a. Various Documents (From Detainee Medical Records, 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

b. Detainee Medical Records (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

c. Hard-cell Medical Log (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

d. Treatment Logs (From B Company, 109<sup>th</sup> Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

e. Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

f. Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

g. Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

6. The Defense expresses the following additional concerns regarding the Article 32 pretrial investigation in this case:

a. Receipt of Legal Advice. The defense specifically requests that the IO make all determinations on questions of law after referring to R.C.M. 405, DA Pam 27-17, and based on advice from your legal advisor. As per DA Pam 27-17, para.1-2e, SPC Ambuhl and defense counsel are entitled to be informed of any legal advice received by the IO and the opportunity to reply to that legal advice. The Defense proposes that both parties be present during receipt of legal advice, that you restate the legal advice on the record, and that both parties be given the opportunity to respond to that advice before you make a determination on a question of law.

b. Marking Evidence. For record purposes, the Defense requests that you have the reporter mark each piece of evidence received and catalog the evidence. Please do not admit the “packet” as part of the record. This will prevent the parties and you from determining which evidence has been objected to and ruled upon.

c. Delivery of Report to Defense Counsel. The Defense requests that the convening authority direct delivery of your report to the Defense Counsel instead of SPC Ambuhl. See, R.C.M. 405(j)(3). To effect this delivery, I ask that you state my request in your report, and request that

the report be delivered with a personal certification and date annotation so that the Defense may comment on the report within five (5) days allocated UP R.C.M. 405 (j)(4). Defense counsel and SPC Ambuhl are located in different physical jurisdictions and service upon SPC Ambuhl can not be considered the same as service on Defense Counsel.

d. Verbatim Testimony. The Defense requests a verbatim transcript of the testimony presented during the Article 32 hearing. Alternatively, and IAW R.C.M. 405(h) and its applicable discussion, the Defense requests that each witness swear to the truth of his or her testimony, after it is reduced to writing.

7. If I may be of further assistance in this matter, please contact me via email at [REDACTED] or by DNVVT phone at: 553-[REDACTED] or 553-[REDACTED]

//original signed//

[REDACTED]  
CPT, JA  
Trial Defense Counsel

**REDACTED  
COPY**

002417

# COURT-MARTIAL RECORD

NAME AMBUHL, MEGAN M. SPC

SSN \_\_\_\_\_

ACTIONS CODED:

INITIAL \_\_\_\_\_

ACCA \_\_\_\_\_

FINAL \_\_\_\_\_

COMPANION(S):

ASSIGNED TO:

PANEL \_\_\_\_\_

~~EXAM. DIV.~~  \_\_\_\_\_

ACCA CLERK of COURT

## RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

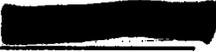
VOL II OF III VOL(S)

ARMY 20041130

VERBATIM<sup>1</sup>  
**RECORD OF TRIAL**<sup>2</sup>  
(and accompanying papers)

OF

AMBUHL, Megan M.  
(NAME: Last, First Middle Initial)  
HHC, 16th MP Bde (ABN)  
III Corps  
(unit/Command Name)

  
(Social Security Number)

Specialist  
(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

Victory Base, Iraq/Mannheim  
(Place or Places of Trial)

ON

11, 23 and 25 August 2004  
(Date or Dates of Trial)

COMPANION CASES:

SGT  
SSG  
SPC  
SPC  
SPC  
SPC  
PFC



Allied document through 59

US RMY JUDICIARY

2005 JAN - 5 P 2: 16

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CLERK OF COURT

002419

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

<sup>2</sup> See inside back cover for instructions as to preparation and arrangement.



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
LSA ANACONDA  
APO AE 09302-1344



**Builders in Battle!**

AFRC-CAR-EBA-LG

20 APR 04

MEMORANDUM FOR [REDACTED] Trial Defense Counsel, Tikrit Branch  
Office, Region IX

SUBJECT: 2<sup>nd</sup> Request for Delay, United States v. SPC Megan M. Ambuhl

1. I have reviewed Defense Counsel's 2<sup>nd</sup> request for a delay in the Article 32(b) investigation scheduled for 20 April 2004 with [REDACTED]. [REDACTED] has agreed to a delay from the scheduled date of 20 April 2004 to 1 May, 2004.
2. The Article 32(b) session in the case of U.S. vs Ambuhl will be rescheduled for 1 May 2004 at a time to be determined.
3. This delay is attributable to the defense.
4. POC for this memorandum is [REDACTED] at [REDACTED] y.mil or by phone at DNVT 302 559 [REDACTED]

[REDACTED]

Article 32 Investigating Officer

002420

ENCLOSURE #9



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
LSA ANACONDA  
APO AE 09302-1344



**Builders in Battle!**

AFRC-CAR-EBA-LG

19 APR 04

MEMORANDUM FOR Commander, 16<sup>th</sup> Military Police Brigade (Airborne), Victory Base, Iraq  
APO AE 09342

SUBJECT: 2<sup>nd</sup> Defense Request for Delay, United States v. SPC Megan M. Ambuhl

1. In the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), the Defense has submitted the attached 2<sup>nd</sup> request for delay in the ART 32 investigation to 20 May, 2004.
2. The Article 32 was initially scheduled for 5 April 2004. Defense Counsel was granted a request for delay to 20 April 2004.
3. SPC Ambuhl has retained a civilian attorney and is requesting this second delay to allow him to travel to Iraq to attend and prepare for the investigation.
4. Trial counsel recommends approval of a 7-10 day delay from 20 April or no later than 1 May 2004.
5. As the investigating officer, I recommend a 10 day delay as a reasonable delay and ask that you approve Defense Counsel's request for a 2<sup>nd</sup> delay for a period of 10 days.
6. POC for this memorandum is [REDACTED] at [REDACTED] or by phone at DNV 537 [REDACTED]

[REDACTED]  
Article 32 Investigating Officer

002421

ENCLOSURE #8



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

19 April 2004

MEMORANDUM FOR [REDACTED], Article 32 Investigating Officer, Headquarters, 420<sup>th</sup>  
Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Second Request for Delay -- United States v. SPC Megan M. Ambuhl

1. As previously requested by e-mail on 18 April 2004, the defense requests a delay in the Article 32(b) hearing currently scheduled for 20 April 2004. The defense requests a delay until approximately 20 May 2004, for the following reasons:

a. On 18 April 2004, Trial Defense Counsel was notified formally that SPC Ambuhl obtained civilian counsel [REDACTED]

b. [REDACTED] does not have a copy of the preferral packet or copies of any evidence in this case.

c. [REDACTED] maintains a law practice in Washington, D.C. and has not yet finalized the extensive coordination to travel to Iraq to represent SPC Ambuhl.

2. Further, the government has indicated that the majority of witnesses the defense has requested to testify at the Article 32 hearing are physically unavailable. Granting a delay will allow for continued efforts to produce the requested defense witnesses at the Article 32 hearing.

3. The requested delay is attributable to the defense. If I may be of further assistance in this matter, please contact me via email at [REDACTED] or by phone at DNVT: 553 [REDACTED]

//original signed//  
[REDACTED]

Trial Defense Counsel

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ENCLOSURE #7

**Enclosure #10 – IO Determination on Trial Counsel’s Response to Defense Request for Witnesses and Production of Evidence**

**[REDACTED]**  
Please review my comments noted below in Underlined, italicized font. These are based upon my determinations after consultation with the IO legal advisor, LTC Black.

**[REDACTED]**  
ART 32 Investigating Officer

**Black, non-italicized font is Trial Counsel’s response to the Defense Request for Witnesses and Production of Evidence.**

**Available**

1. **[REDACTED]** invoked at last 32 If the government contends they do not intend to grant this witness immunity, then it is the government’s prerogative. A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
2. **[REDACTED]** - invoked at last 32 If the government contends they do not intend to grant this witness immunity, then it is the government’s prerogative. A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
3. **[REDACTED]** invoked at last 32 If the government contends they do not intend to grant this witness immunity, then it is the government’s prerogative. A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
4. **[REDACTED]**
5. **[REDACTED]**

**Declare unavailable outside 100 miles This language applies to all witnesses outside of the 100 mile situs of the investigation: RCM 405 provides that a witness is “reasonably available” if they are within 100 miles of the situs of the investigation and their testimony and personal appearance of the witness outweighs the difficulty, expense, delay and effect on military operations of obtaining the witness.**

CID Agents:

1. **[REDACTED]** Redeployed to the U.S. I feel that this individual may provide valuable input to the investigation and as such, TC should take all means possible to contact this individual and have them present for the investigation.
2. **[REDACTED]** - Redeployed to the U.S. I feel that this individual may provide valuable input to the investigation and as such, TC should take all means possible to contact this individual and have them present for the investigation.

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ENCLOSURE #10

Chain of Command:

1. [REDACTED] Redeployed to U.S. If the government contends they do not intend to grant this witness immunity, then it is the government's prerogative. A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.

Additional Witnesses:

1. [REDACTED] - Kuwait It is my determination that this witness is not reasonably available.
2. [REDACTED] Kuwait/ Tallil DC stated that [REDACTED] may provide exculpatory testimony regarding SPC Ambuhl. Please identify what is the nature of this exculpatory evidence.
3. [REDACTED] - Kuwait/Tallil -invoked at prior 32
4. [REDACTED] - Kuwait/Tallil It is my determination that this witness is not reasonably available.
5. [REDACTED] - Kuwait/ Tallil It is my determination that this witness is not reasonably available.
6. [REDACTED] - Kuwait/ Tallil It is my determination that this witness is not reasonably available.
7. [REDACTED] - Kuwait/ Tallil It is my determination that this witness is not reasonably available.
8. [REDACTED] - Kuwait/ Tallil It is my determination that this witness is not reasonably available.
9. [REDACTED] - Kuwait / Tallil It is my determination that this witness is not reasonably available.
10. [REDACTED] - Kuwait /Tallil It is my determination that this witness is not reasonably available.
11. [REDACTED] - Kuwait / Tallil It is my determination that this witness is not reasonably available.

Military Intelligence Witnesses:

1. [REDACTED] Redeployed to U.S. No reason has been given why these witnesses are critical to the investigation.

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2. [REDACTED] Redeployed to U.S. No reason has been given why these witnesses are critical to the investigation.
3. [REDACTED] Redeployed to U.S. No reason has been given why these witnesses are critical to the investigation.
4. [REDACTED] - cannot locate, will continue to check
5. [REDACTED] Redeployed to U.S. It is my determination that this witness is not reasonably available.

Other Witnesses:

1. [REDACTED] Redeployed to U.S. It is my determination that this witness is not reasonably available.
2. [REDACTED] Redeployed to U.S. It is my determination that this witness is not reasonably available.
3. [REDACTED] - Redeployed to U.S. It is my determination that this witness is not reasonably available.
4. [REDACTED] - cannot locate, will continue to check
5. [REDACTED] - Redeployed to Australia

Co-Accused:

1. [REDACTED] - Fort Bragg, awaiting court-martial I feel that this individual may provide valuable input to the investigation and as such, TC should take all means possible to contact this individual and have them present for the investigation.

Unavailable, co-accused, invoked rights and represented

1. [REDACTED] A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
2. [REDACTED] A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
3. [REDACTED] A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.
4. [REDACTED] A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.

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5. [REDACTED] A letter or telephone correspondence from the DC of [REDACTED] should suffice as to [REDACTED] availability.

**Detainee victims**

For security reasons Detainees will not be brought to Victory Base. The government requests that they be declared unavailable. If the IO deems them necessary, we will have to arrange a portion of the hearing to take place at BCCF. [REDACTED] please make arrangements to either have the witnesses (Detainees 1-14 noted below) available to testify via phone conference or have a portion of the investigation at BCCF in order that we can here their testimony. [REDACTED] it is a correct statement that defense wants this done in lieu of use of their sworn statements?

1. [REDACTED] - Vigilant A, security detainee
2. [REDACTED] - Vigilant A, security detainee
3. [REDACTED] - Hard site, 6-B, criminal
4. [REDACTED] - Ganci 5, security detainee
5. [REDACTED] - Ganci 8, security detainee
6. [REDACTED] - Hard site 3-B, criminal
7. [REDACTED] - Ganci -1, security detainee
8. [REDACTED] - Hard site 4-B, criminal
9. [REDACTED] - Unknown, released
10. [REDACTED] - Unknown, released
11. [REDACTED] - Vigilant C, security detainee
12. [REDACTED] - Ganci 5, Unknown
13. [REDACTED] - Unknown, released
14. [REDACTED] - Ganci 8, security detainee

**Documents**

1. CID Reports - Already provided. Any further documents available at CID BCCF.

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2. Crime Scene Evidence - Already provided. Not aware of anything else at this time.
3. ROE RUF - Not aware of any.
4. OPORDs - Not sure what she is requesting or what time frame. Not aware of any Company OPORDs. CJTF-7 has thousands in total. They are classified and available on the SIPR / Tacweb.
5. Training Records - Not aware of any at this time. We will provide records as soon as they become available.
6. Detainees Medical Records - Already provided in CID file. Not aware of any others. If any they are available at BCCF.
7. IG Complaints - Not aware of any.
8. Counseling Files - Already provided Graner's and England's file. We will provide further records as they become available.
9. RIP Schedules - Not aware of any.
10. CID File 0005-04-CID149 - Available at CID BCCF.
11. Working Paper [REDACTED] - Will provide when available. [REDACTED], please clarify what "when available" means.
12. ICRC Reports - Already provided.
13. Official Detainee File - Not aware of any. If they exist, they will be available at BCCF.
14. Behavior Modification Plan - If not classified, will provide when available. [REDACTED], please clarify what "when available" means.
15. Chapter 4 - If not classified, will provide when available.
16. AR 15-6 - Already provided.
17. PAO - Not aware of any press releases or written PAO dissemination for release.
18. Admin. Actions - None complete at this time.
19. SIGACTS - Not aware of any.

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20. [REDACTED] Docs - Not aware of any.
21. UCMJ, 3 soldiers 519th - Not aware of this action. (We will check.)
22. UCMJ [REDACTED] - Not aware of this action. (We will check.)
23. UCMJ Abuse - Not aware of this action. (We will check.)
24. Negative Counseling - Not aware of any at this time. Will provide if available. [REDACTED]  
[REDACTED] please clarify what "when available" means.
25. Work Schedules - Not aware of any at this time. Will provide if available. [REDACTED]  
[REDACTED] please clarify what "when available" means.

Very respectfully,

[REDACTED]  
16th MP BDE (ABN)  
Trial Counsel  
302-588-[REDACTED]  
AIRBORNE!



DEPARTMENT OF THE ARMY  
Headquarters  
16<sup>th</sup> Military Police Brigade (Airborne)  
Victory Base, Iraq APO AE 09342

REPLY TO  
ATTENTION OF:

AFZA-AP-CO

24 March 2004

MEMORANDUM FOR [REDACTED] 420 Engineer Brigade, Victory Base,  
Iraq, APO AE 09342

SUBJECT: Appointment as Article 32 Investigating Officer

1. You have been appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the attached charges against Specialist Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), Victory Base, Iraq APO AE 09342. According to Article 32, UCMJ, and Rule 405, Manual for Court-Martial (2002), you are to:

- a. Conduct a thorough and impartial investigation into the truth of the allegation(s);
- b. Consider the correctness of the form of the charges; and
- c. Make recommendations as to the disposition of the charges in the interest of justice and discipline.

2. Prior to the commencement of the investigation, you must contact [REDACTED] at the Administrative Law Division, Combined Joint Task Force Seven, Victory Base, Iraq, at DSN 318-822 [REDACTED] and advise him that you have been detailed to conduct this investigation. He, or a Staff Judge Advocate designee, will brief you on your responsibilities and provide you with advice throughout the investigation. You will not contact the government representative or defense counsel for assistance in matters, other than routine administrative or clerical matters, regarding this investigation.

3. Your duties as an Article 32 investigating officer takes precedence over any of your other assigned duties. The following guidance pertains to delays:

- a. Schedule the hearing as soon as you receive notice of this appointment. The hearing date should be within seventy-two hours of receipt of this appointment letter. If the defense or the government cannot proceed on the selected date, obtain a request for delay, in writing, from the party requesting the delay. Requests for delay should be attached to the report of investigation.

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ENCLOSURE #11

AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

b. You have the authority to approve one reasonable delay requested by the defense or the government, up to a total of seven days. Any delays in excess of seven days must be approved by me. Requests for delay should be in writing and clearly state the supporting reasons and the dates covering the delay. Before granting a delay you must also consider matters submitted by the opposing counsel. Your decision to grant a delay should be in writing. It should state your reasons and the dates of the delay.

4. [REDACTED] Trial Counsel, 16<sup>th</sup> Mp Bde (Abn) DNV 588 [REDACTED] is appointed as the government representative and is authorized to participate in this investigation. You can contact Trial Defense Service at DNV 838 [REDACTED] to confirm the name of the detailed defense counsel. While these officers or their designees will attend the hearing and will question witnesses, it is your responsibility to conduct the investigation, not the government's representatives. Further, both of these parties play an adversarial role in the proceedings. You should therefore avoid discussing substantive matters pertaining to the case with either party outside formal sessions where all parties have opportunity to be present.

5. You should become familiar with the following reference materials/documents:

a. Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial, 2002 Edition

b. DA PAM 27-17, Procedural Guide for Article 32 Investigating Officer, (especially paragraphs 1-2, General Instructions, 2-3, informing the accused of the investigation and the right to counsel, and 2-4, consultation with counsel for the accused)

c. DD Form 458 (Charge Sheet) and allied documents

6. The Article 32 Investigating Officer Procedural Guide discusses in detail procedural aspects from appointment to submission of the final report. Included in Appendix B is a sample format for notification of the accused. A copy of the notification should be sent to the accused's unit commander to ensure that the unit commander is aware of the time and location of the hearing, thereby ensuring the presence of the accused at the hearing. If the accused is already represented by counsel, the written notice should be sent to that counsel. An information copy should also be provided to the appropriate trial counsel.

7. You are personally responsible for summarizing relevant testimony that is not already reduced to a written statement. [REDACTED] has been appointed as your administrative and paralegal assistant for this case and will act as the reporter. You can contact him at DNV 587 [REDACTED]. However, the Article 32 Investigation will be a summarized transcript and not verbatim.

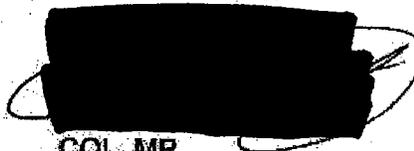
AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

8. The complete report of investigation, DD Form 457, Investigating Officer's Report, with enclosures, and a chronology of the investigation from receipt of file to submission of the report, will be forwarded with one (1) copy to this headquarters no later than seventy-two hours after completion of the investigation.

2 Encls

1. DD Form 458
2. Case File



COL, MP  
Commanding

### CHARGE SHEET

1. NAME OF ACCUSED (Last, First, MI) <b>AMBUHL, Megan M.</b>			2. SSN		3. GRADE OR RANK <b>SPC</b>	4. PAY GRADE <b>E-4</b>
6. UNIT OR ORGANIZATION <b>Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342</b>					6. CURRENT SERVICE	
					a. INITIAL DATE <b>28 Jan 02</b>	b. TERM <b>8 years</b>
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None		N/A	
<b>\$1,638.30</b>	<b>\$100.00</b>	<b>\$1,738.30</b>				

#### II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

**THE SPECIFICATION:** In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire with Staff Sergeant [REDACTED] Sergeant [REDACTED] Corporal [REDACTED], Specialist [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Specialist Ambuhl did participate in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 92

**THE SPECIFICATION:** In that Specialist Megan M. Ambuhl, U.S. Army, who knew, of her duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do.

(SEE CONTINUATION SHEET)

#### III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)		b. GRADE	c. ORGANIZATION OF ACCUSER
[REDACTED]		O-3	HHC, 16 <sup>th</sup> MP Bde (Abn) APO AE 09342
d. SIGNATURE OF ACCUSER			e. DATE
[REDACTED]			20 MAR '04

**AFFIDAVIT:** Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 28<sup>th</sup> day of MARCH, 2004 and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

\_\_\_\_\_  
Typed Name of Officer

HHC, XVIII Abn Corps  
Organization of Officer

O-3  
Grade

Trial Counsel  
Official Capacity to Administer Oath  
(See R.C.M. 307(b) - must be a commissioned officer)

\_\_\_\_\_  
Signature

12.

On 20 March 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

\_\_\_\_\_  
Typed Name of Immediate Commander

HHC, 16th MP Bde (Abn) APO AE 09342

Organization of Immediate Commander

O-3

\_\_\_\_\_  
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1845 hours, 21 March 2004 at Headquarters, 16<sup>th</sup> Military

Designation of Command or

Police Brigade (Airborne) APO AE 09342

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup> \_\_\_\_\_

\_\_\_\_\_  
Typed Name of Officer

Commanding

Official Capacity of Officer Signing

O-6

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE (YYYYMMDD)

Referred for trial to the \_\_\_\_\_ court-martial convened by \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, subject to the following instructions: <sup>2</sup>

By \_\_\_\_\_ of \_\_\_\_\_  
Command or Order

\_\_\_\_\_  
Typed Name of Officer

\_\_\_\_\_  
Official Capacity of Officer Signing

\_\_\_\_\_  
Grade

\_\_\_\_\_  
Signature

15.

On \_\_\_\_\_, I (caused to be) served a copy hereof on (each of) the above named accused.

\_\_\_\_\_  
Typed Name of Trial Counsel

\_\_\_\_\_  
Grade or Rank of Trial Counsel

\_\_\_\_\_  
Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.  
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

CONTINUATION SHEET DD Form 458, AMBUHL, Megan M., SPC,  
HHC, 16th MP Bde (Abn), III Corps, Victory Base, Iraq APO AE 09342

Item 10 (continued)

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 93

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 134

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, Staff Sergeant [REDACTED], Specialist [REDACTED] and Private First Class [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

002434

AFZA-AP-HHC

MEMORANDUM FOR RECORD

SUBJECT: Service of Preferral of Charges in the case of United States v. Specialist Megan M. Ambuhl

1. I hereby acknowledge that the charges against me were read and preferred on this 20<sup>th</sup> day of MARCH, at 2221 hours. Further, I hereby acknowledge receipt of said charge sheet(s) and allied papers.

2. I further understand that I have an appointment at Trial Defense Services, ph: (302) 838-[REDACTED] trailer B12, Camp Victory, Iraq, at \_\_\_\_\_.

*Spl. Megan Ambuhl*  
MEGAN M. AMBUHL  
SPC, USA

002435

**OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837**

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (7) (C), 5 U.S.C. 552(b) (7) (C):

Criminal Investigation Report

*Contents cannot be released outside the Department of the Army without the approval of the Commander, United States Army Criminal Investigation Command, Fort Belvoir, VA.*

002436

**OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837**

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAS [HAVE] BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION 6 and 7(C):

Article 15-6 Investigation of the 800<sup>th</sup> Military Police Brigade

002437

AFZA-AP-CO

21 Apr 04

MEMORANDUM FOR Investigating Officer, U.S. v SPC Ambuhl

SUBJECT: Decision on Second Request for Delay

1. I have reviewed the enclosed Defense Second Request for Delay in the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN).

2.  The request for delay is disapproved.

OR

3.  This second request for delay is approved, and the Article 32(b) session in the case of U.S. vs Ambuhl will be rescheduled for 1 May 2004.

Encl  
as

  
COL, MP  
Commanding

002438



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
LSA ANACONDA  
APO AE 09302-1344



**Builders in Battle!**

AFRC-CAR-EBA-LG

20 APR 04

MEMORANDUM FOR [REDACTED], Trial Defense Counsel, Tikrit Branch  
Office, Region IX

SUBJECT: 2<sup>nd</sup> Request for Delay, United States v. SPC Megan M. Ambuhl

1. I have reviewed Defense Counsel's 2<sup>nd</sup> request for a delay in the Article 32(b) investigation scheduled for 20 April 2004 with [REDACTED] [REDACTED] has agreed to a delay from the scheduled date of 20 April 2004 to 1 May, 2004.
2. The Article 32(b) session in the case of U.S. vs Ambuhl will be rescheduled for 1 May 2004 at a time to be determined.
3. This delay is attributable to the defense.
4. POC for this memorandum is [REDACTED] at [REDACTED] mil or by phone at DNVT 302 559 [REDACTED]

//Original Signed//

[REDACTED]  
Article 32 Investigating Officer

002439



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
LSA ANACONDA  
APO AE 09302-1344



**Builders in Battle!**

AFRC-CAR-EBA-LG

20 APR 04

MEMORANDUM FOR [REDACTED] Trial Defense Counsel, Tikrit Branch  
Office, Region IX

SUBJECT: Defense Request for Informal Meeting, United States v. SPC Megan M. Ambuhl

1. I have reviewed Defense Counsel's request for an informal meeting between Trial Counsel (TC), Defense Counsel (DC) and the Investigating Officer (IO). We have all agreed to meet 21 April 2004 at 1400 hours at the Camp Victory Courthouse. Additionally, DC has requested that SPC Ambuhl participate in the informal meeting and has also requested that the meeting be held "On the Record". I have discussed each request with [REDACTED] of CJTF7. This memorandum serves to provide my decision upon these two requests.
2. DC has requested that SPC Ambuhl attend the informal meeting. This is an informal meeting and as such, SPC Ambuhl is not entitled to attend. This meeting will be similar to an R.C.M. 802 and therefore only DC, TC and the IO are to be present.
3. DC has requested that the informal meeting be transcribed or placed "On the Record". I am prepared to hold this informal meeting as requested by DC although there will be no verbatim record of the meeting published and no transcription taken. It is acceptable for notes to be taken and I will publish my decisions formally in writing for the record on issues that are surfaced.
4. Please reply to my attention by 1200 hours on 21 April 2004 whether or not this is acceptable to DC. If this is not acceptable, we will postpone this meeting until the ART 32(b) Investigation scheduled for 1 May, 2004.
5. POC for this memorandum is [REDACTED] at [REDACTED] or by phone at DNVT 537-[REDACTED]

//Original Signed//

[REDACTED]  
Article 32 Investigating Officer

002440

[REDACTED] CJTF7-16th MP BDE SJA NCOIC

**From:** [REDACTED]@us.army.mil  
**Sent:** Tuesday, April 20, 2004 3:35 PM  
**To:** [REDACTED] CJTF7 16MP  
**Cc:** [REDACTED]@svg-law.com; Bostic, [REDACTED]@us.army.mil  
**Subject:** Re: RE: RE: Request for Delay



Card for [REDACTED]@us

I just got off the phone with [REDACTED]. He has agreed to a delay to 1 MAY 2004 for the ART 32 investigation. This is attributable to the defense. I will follow up with a memo stating this.

[REDACTED]  
MAJ, EN  
S-4, 420th EN Brigade  
DNVT  
"Let's Roll" 9-11-01

"The only thing necessary for the Triumph of evil is for good men to do nothing" - Edmund Burke (1729-1797)

----- Original Message -----

**From:** [REDACTED]@vcmain.hq.c5.army.mil  
**Date:** Tuesday, April 20, 2004 9:20 am  
**Subject:** RE: RE: Request for Delay

> Sir:  
>  
> Are you available at 1500 today at the courthouse? [REDACTED]  
> wants to go over some preliminaries as to availability of witnesses.

> VR  
> [REDACTED]  
> 16th MP BDE (ABN)  
> Trial Counsel  
> 302-588-[REDACTED]  
> AIRBORNE!

> -----Original Message-----

> **From:** [REDACTED]@us.army.mil  
> **Sent:** Monday, April 19, 2004 7:31 PM  
> **To:** [REDACTED].mil  
> **Cc:** [REDACTED] CJTF7-OPS OSJA;  
> [REDACTED]  
> M CPT CJTF7 16MP; [REDACTED] CJTF7-16th MP BDE SJA NCOIC;  
> [REDACTED] R LTC CJTF7-OPLAW  
> **Subject:** Re: RE: Request for Delay

> [REDACTED]  
> please forward the attached memos to [REDACTED] for his  
> review/approval. If we cannot gain his approval in time for  
> tomorrow's investigation, we must  
> be prepared to proceed as originally scheduled.

002441

> [REDACTED]

> S-4, 420th EN Brigade  
> DNVT  
> "Let's Roll" 9-11-01

> "The only thing necessary for the Triumph of evil is for good men  
> to do  
> nothing" - Edmund Burke (1729-1797)

> ----- Original Message -----

> From: [REDACTED]  
> Date: Monday, April 19, 2004 2:53 pm  
> Subject: Re: RE: Request for Delay

> > Sir,

> > Thank you for your patience. A formal request is attached.  
> > Again, I have not yet heard from [REDACTED] but will inform the  
> > government as soon as I do. Thank you for your consideration of  
> > this request.

> > V/R,

> > [REDACTED]

> > CPT, JA  
> > Trial Defense Counsel  
> > Tikrit Branch Office (FOB Danger)  
> > Region IX  
> > DNVT: 553-[REDACTED] or 553-[REDACTED]  
> > E-mail:

> > ----- Original Message -----

> > From: [REDACTED]  
> > Date: Monday, April 19, 2004 5:34 pm  
> > Subject: Re: RE: Request for Delay

> > [REDACTED]

> > > I will keep my eyes open.

> > [REDACTED]

> > > MAJ, EN  
> > > S-4, 420th EN Brigade  
> > > DNVT 302 559-[REDACTED]

> > > ----- Original Message -----

> > > From: [REDACTED] M 1LT CJTF7-OPS OSJA"  
> > > <[REDACTED]> Date: Monday, April 19,  
> > > 2004  
> > > 1:49 pm  
> > > Subject: RE: Request for Delay

> > > > Sir,

> > > > I just spoke to [REDACTED]. She is having difficulty  
> > > accessing  
> > > her email  
> > > and she is currently meeting with her client. She requested

> > > > I  
> > > > notify you  
> > > > that she will be submitting a formal request for delay  
> > > > within  
> > > > the  
> > > > next hour.

> > > > The government does not object to a reasonable delay, so  
> > > > long

002442

> > as  
> > > the delay  
> > > is credited to the defense.  
> > >  
> > > v/r  
> > > [REDACTED]  
> > >  
> > > -----Original Message-----  
> > > From:  
> > [REDACTED]@us.army.mil]  
> > > Sent: Monday, April 19, 2004 07:54  
> > > To  
> > > Cc: [REDACTED]@svg-law.com; [REDACTED] CJTF7 16MP;  
> > > [REDACTED]  
> > > CJTF7-OPS OSJA; [REDACTED] CJTF7-16th MP BDE SJA  
> > > NCOIC; [REDACTED]  
> > > [REDACTED] CJTF7-OPLAW  
> > > Subject: Re: Request for Delay  
> > > [REDACTED]  
> > > please forward a formal request for delay by 1700 hours today  
> > > detailing the requested length of delay and the specific  
> > reasons  
> > > for the  
> > > delay. In the absence of a formal request, we will proceed  
> > with  
> > > the ART  
> > > 32 hearing tomorrow, 20 April, here at Camp Victory.  
> > >  
> > > [REDACTED], please  
> > > prepare to have SPC Ambuhl brought to Camp Victory for the  
> ART 32  
> > > Investigation tomorrow, 20 April.  
> > >  
> > > I am currently at Victory and can be reached at 537-  
> [REDACTED].> >  
> > > [REDACTED]  
> > > [REDACTED]  
> > > S-4, 420th EN Brigade  
> > > DNVT 302 559-[REDACTED]  
> > >  
> > > ----- Original Message -----  
> > > From  
> > > Date: Monday, April 19, 2004 9:46 am  
> > > Subject: Re: Request for Delay  
> > >  
> > > > Sir,  
> > > >  
> > > > I have e-mailed [REDACTED] but have not heard back from  
> him  
> > > yet.  
> > > >  
> > > > He does not have a copy of the packet and apparently, was  
> > just  
> > > > retained last week.  
> > > >  
> > > > Currently, I am working out of the TDS Victory office but  
> I  
> > do  
> > > > have limited access to e-mail.  
> > > >  
> > > > V/R,  
> > > > [REDACTED]  
> > > > [REDACTED]  
> > > > Trial Defense Counsel  
> > > > Tikrit Branch Office (FOE Danger)

> > > > Region IX  
> > > > DNV: 553- [REDACTED] or 553- [REDACTED]  
> > > > E-mail: [REDACTED]  
> > > >  
> > > > ----- Original Message -----  
> > > > From  
> > > > Date: Monday, April 19, 2004 9:21 am  
> > > > Subject: Re: Request for Delay  
> > > >  
> > > > [REDACTED], how much of a delay are you requesting?  
> > > > Additionally, [REDACTED] please provide a memorandum  
> (as  
> > > > opposed  
> > > > to an email) requesting the delay. Please forward the  
> > > > memorandum  
> > > > ASAP so that we can work this immediately.

> > > > [REDACTED]  
> > > > [REDACTED]  
> > > > S-4, 420th EN Brigade  
> > > > DNV 302 559- [REDACTED]  
> > > >  
> > > >

> > > > ----- Original Message -----  
> > > > From  
> > > > Date: Sunday, April 18, 2004 2:57 pm  
> > > > Subject: Request for Delay  
> > > >  
> > > > > Sir,  
> > > > >  
> > > > > Good evening. Please accept my personal apologies for  
> > the  
> > > > > lateness of this request.  
> > > > >  
> > > > > The defense requests a delay in the Art. 32 hearing  
> > > > scheduled  
> > > > > for  
> > > > > 20 April 2004 in the case of U.S. v. Ambuhl.  
> > > > >  
> > > > > I just received notice today that SPC Ambuhl has hired  
> > [REDACTED]  
> > > > > [REDACTED], a civilian attorney from Washington, D.C., to  
> > > > represent  
> > > > > her in the pending case. Both SPC Ambuhl and [REDACTED]  
> > [REDACTED]  
> > > > > desire  
> > > > > his presence at the Article 32 hearing.  
> > > > >  
> > > > > [REDACTED]'s e-mail address is in the "cc" line of  
> this  
> > e-  
> > > > > mail.  
> > > > > His further contact information is as follows: [REDACTED]  
> > [REDACTED]  
> > > > > [REDACTED], 1101 15th Street, NW,  
> > Suite  
> > > > 202,  
> > > > > Washington, D.C., 20005. His phone number is: (202)  
> 828-  
> > [REDACTED] > > >

> > > > > Thank you for your consideration of this request.  
> > > > >  
> > > > > V/R,  
> > > > >  
> > > > > [REDACTED]

002444



AFZA-AP-IO

MEMORANDUM FOR Commander, 16<sup>th</sup> Military Police Brigade (Airborne),  
Victory Base, Iraq APO AE 09342

SUBJECT: Request for Delay

1. In the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), the Defense has submitted the attached request for delay until 20 April 2004.
2. The Article 32 was initially scheduled for 5 April 2004. Defense counsel received the case file on 26 March 2004, and is based FOB Danger in Tikrit. Defense needs more time to meet with its client and go over the entire case file.
3. SPC Ambuhl is also considering hiring a civilian attorney.
4. The Trial Counsel recommends approval of the delay as requested by defense.
5. I concur with both counsel and recommend that the request for delay be approved.
6. The POC for this memo is the undersigned at 559-

Encl  
as



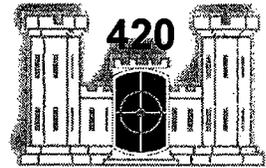
Investigating Officer

002446



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
LSA ANACONDA  
APO AE 09302-1344



**Builders in Battle!**

AFRC-CAR-EBA-LG

19 APR 04

MEMORANDUM FOR Commander, 16<sup>th</sup> Military Police Brigade (Airborne), Victory Base, Iraq  
APO AE 09342

SUBJECT: 2<sup>nd</sup> Defense Request for Delay, United States v. SPC Megan M. Ambuhl

1. In the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), the Defense has submitted the attached 2<sup>nd</sup> request for delay in the ART 32 investigation to 20 May, 2004.
2. The Article 32 was initially scheduled for 5 April 2004. Defense Counsel was granted a request for delay to 20 April 2004.
3. SPC Ambuhl has retained a civilian attorney and is requesting this second delay to allow him to travel to Iraq to attend and prepare for the investigation.
4. Trial counsel recommends approval of a 7-10 day delay from 20 April or no later than 1 May 2004.
5. As the investigating officer, I recommend a 10 day delay as a reasonable delay and ask that you approve Defense Counsel's request for a 2<sup>nd</sup> delay for a period of 10 days.
6. POC for this memorandum is [REDACTED] at [REDACTED] or by phone at DNVT 537 [REDACTED]

//original signed//

[REDACTED]

Article 32 Investigating Officer

002447



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

19 April 2004

MEMORANDUM FOR [REDACTED] Article 32 Investigating Officer, Headquarters, 420<sup>th</sup>  
Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Second Request for Delay -- United States v. SPC Megan M. Ambuhl

1. As previously requested by e-mail on 18 April 2004, the defense requests a delay in the Article 32(b) hearing currently scheduled for 20 April 2004. The defense requests a delay until approximately 20 May 2004, for the following reasons:

a. On 18 April 2004, Trial Defense Counsel was notified formally that SPC Ambuhl obtained civilian counsel, [REDACTED]

b. [REDACTED] does not have a copy of the preferral packet or copies of any evidence in this case.

c. [REDACTED] maintains a law practice in Washington, D.C. and has not yet finalized the extensive coordination to travel to Iraq to represent SPC Ambuhl.

2. Further, the government has indicated that the majority of witnesses the defense has requested to testify at the Article 32 hearing are physically unavailable. Granting a delay will allow for continued efforts to produce the requested defense witnesses at the Article 32 hearing.

3. The requested delay is attributable to the defense. If I may be of further assistance in this matter, please contact me via email at [REDACTED] phone at DNVT: 553 [REDACTED]

//original signed//

[REDACTED]  
Trial Defense Counsel

002449

[REDACTED] CPT CJTF7 16MP

**From:** [REDACTED] CJTF7 16MP  
**Sent:** Monday, April 19, 2004 6:40 PM  
**To:**  
**Cc:** [REDACTED] CJTF7-OPS OSJA; [REDACTED]@svg-law.com; [REDACTED]  
CJTF7 16MP; [REDACTED] CJTF7-16th MP BDE SJA NCOIC; [REDACTED]  
[REDACTED] CJTF7-OPLAW;  
**Subject:** RE: RE: Request for Delay

Sir:

The government will not object to a delay of 7-10 days and no later than 1 May 2004. The first request for a delay from 5 April until 20 April was requested to review the file and seek civilian counsel. That date was not met. 26 days, approximately 1 month, total delay should be adequate to review the file and obtain civilian counsel. If civilian counsel was retained on the 18th of April, 13 days should be sufficient time to get to Baghdad.

VR

[REDACTED]  
16th MP BDE (ABN)  
Trial Counsel  
302-588-[REDACTED]  
AIRBORNE!

-----Original Message-----

**From:** [mailto:j.  
**Sent:** Monday, April 19, 2004 5:53 PM  
**To:** [REDACTED]@us.army.mil  
**Cc:** [REDACTED] CJTF7-OPS OSJA; [REDACTED]  
[REDACTED] CJTF7 16MP; [REDACTED] CJTF7-16th MP BDE SJA NCOIC;  
[REDACTED] CJTF7-OPLAW  
**Subject:** Re: RE: Request for Delay

Sir,

Thank you for your patience. A formal request is attached. Again, I have not yet heard from [REDACTED] but will inform the government as soon as I do. Thank you for your consideration of this request.

V/R,

[REDACTED]  
CPT, JA  
Trial Defense Counsel  
Tikrit Branch Office (FOB Danger)  
Region IX  
DNVT: 553-[REDACTED] or 553-[REDACTED]  
E-mail

----- Original Message -----

**From:**  
**Date:** Monday, April 19, 2004 5:34 pm  
**Subject:** Re: RE: Request for Delay

> [REDACTED]  
> I will keep my eyes open.  
>

002449

> [REDACTED]  
> MAJ, EN  
> S-4, 420th EN Brigade  
> DNVF 302 559-[REDACTED]  
>  
>

> ----- Original Message -----

> From: [REDACTED] CJTF7-OPS OSJA"  
> [REDACTED] Monday, April 19, 2004  
> 1:49 pm  
> Subject: RE: Request for Delay

> > Sir,

> > I just spoke to [REDACTED] She is having difficulty  
> accessing  
> > her email  
> > and she is currently meeting with her client. She requested I  
> > notify you  
> > that she will be submitting a formal request for delay within  
> the  
> > next hour.  
> > The government does not object to a reasonable delay, so long as  
> > the delay  
> > is credited to the defense.

> > v/r

> > -----Original Message-----

> > From:  
> > Sent: Monday, April 19, 2004 07:54  
> > To: [REDACTED]  
> > Cc: [REDACTED]@svg-law.com; [REDACTED] CJTF7 16MP; [REDACTED]  
> > CJTF7-OPS OSJA; [REDACTED] CJTF7-16th MP BDE SJA  
> > NCOIC; [REDACTED]  
> > [REDACTED] CJTF7-OPLAW  
> > Subject: Re: Request for Delay

> > please forward a formal request for delay by 1700 hours today  
> > detailing the requested length of delay and the specific reasons  
> > for the  
> > delay. In the absence of a formal request, we will proceed with  
> > the ART  
> > 32 hearing tomorrow, 20 April, here at Camp Victory.

> > [REDACTED] please  
> > prepare to have SPC Ambuhl brought to Camp Victory for the ART 32  
> > Investigation tomorrow, 20 April.

> > I am currently at Victory and can be reached at 537-[REDACTED]

> > S-4, 420th EN Brigade  
> > DNVF 302 559-[REDACTED]

> > ----- Original Message -----

> > F  
> > Date: Monday, April 19, 2004 9:46 am  
> > Subject: Re: Request for Delay

> > > Sir,

> > > I have e-mailed Mr. [REDACTED] but have not heard back from him

002450

> yet.  
> >  
> > > He does not have a copy of the packet and apparently, was just  
> > > retained last week.  
> > >  
> > > Currently, I am working out of the TDS Victory office but I do  
> > > have limited access to e-mail.  
> > >  
> > > V/R,  
> > > [REDACTED]  
> > > CPT, JA  
> > > Trial Defense Counsel  
> > > Tikrit Branch Office (FOB Danger)  
> > > Region IX  
> > > DNVT: 553-[REDACTED] or 553-[REDACTED]  
> > > E-mai

> > > ----- Original Message -----  
> > > From  
> > > Date: Monday, April 19, 2004 9:21 am  
> > > Subject: Re: Request for Delay  
> > >  
> > > [REDACTED] how much of a delay are you requesting?  
> > > > Additionally, [REDACTED] please provide a memorandum (as  
> > > > opposed  
> > > > to an email) requesting the delay. Please forward the  
> > > > memorandum  
> > > > ASAP so that we can work this immediately.

> > > > [REDACTED]  
> > > > [REDACTED]  
> > > > S-4, 420th EN Brigade  
> > > > DNVT 302 559-[REDACTED]

> > > > ----- Original Message -----  
> > > > From:  
> > > > Date: Sunday, April 18, 2004 2:57 pm  
> > > > Subject: Request for Delay  
> > > >  
> > > > > Sir,  
> > > > >  
> > > > > Good evening. Please accept my personal apologies for the  
> > > > > lateness of this request.  
> > > > >  
> > > > > The defense requests a delay in the Art. 32 hearing  
> > > > > scheduled  
> > > > > for  
> > > > > 20 April 2004 in the case of U.S. v. Ambuhl.  
> > > > >  
> > > > > I just received notice today that SPC Ambuhl has hired Mr.  
> > > > > [REDACTED]  
> > > > > [REDACTED] a civilian attorney from Washington, D.C., to  
> > > > > represent  
> > > > > her in the pending case. Both SPC Ambuhl and [REDACTED]  
> > > > > desire  
> > > > > his presence at the Article 32 hearing.  
> > > > >  
> > > > > [REDACTED]'s e-mail address is in the "cc" line of this e-  
> > > > > mail.  
> > > > > His further contact information is as follows: [REDACTED]  
> > > > > [REDACTED]  
> > > > > [REDACTED] 1101 15th Street, NW, Suite  
> > > > > 202,  
> > > > > Washington, D.C., 20005. His phone number is: (202) 828-[REDACTED]  
> > > > >  
> > > > > Thank you for your consideration of this request.

002451





DEPARTMENT OF THE ARMY  
372<sup>nd</sup> MILITARY POLICE COMPANY  
APO AE 09432

REPLY TO  
ATTENTION OF

12 April 04

MEMORANDUM THRU [REDACTED], Staff Judge Advocate, III Corp

FOR LTG Thomas Metz, CG, III Corps

SUBJECT: Rebuttal of AR 15-6 for [REDACTED] 372<sup>nd</sup> MP Company

1. In reading the AR 15-6 Investigative Report, I found it very thorough, involving subject matter experts in the field of Detention Operations and numerous references to AR's or supporting Documents. It would have been nice to have such a library of resources available when the 372<sup>nd</sup> Military Police was tasked to conduct Detention Operations at the Abu Ghriab Prison Facility.
2. The 372<sup>nd</sup> MP Company was assigned to the Abu Ghriab Prison in October 2003. The Unit assumed responsibility on 17 October 03 after a RIP with the 72<sup>nd</sup> MP Company. Prior to this Mission the Unit had been doing a Law and Order Mission in the city of Al Hillah, TACON to the ¼ Marines. The Unit was commended for the outstanding achievements while conducting those operations.
3. During the short 2 week period before Prison Task assumption, a multitude of activities were undertaken, from developing an unimproved living area, service support, force protection, convoy route reconnaissance, learning detention / prison operations, and establishing support and logistics in the area. Abu Ghraib was not just an EPW Operation, but a vague composite of civilian criminals, military detainees, other government detainees, and a host of civilian contract help.
4. These variables complicated by the list of ever increasing numbers of Detainees, CPA, Iraqi Correctional Guards, Prison Reconstruction, limited resources, reduction in our personnel, 12 hour work shifts, and limited basic life support systems. Least of which was the decision to use a Military Police Combat Support Company to conduct these Detention Operations. Who was responsible for making that decision? Was it beyond the 800<sup>th</sup> MP BDE? Our unit had no METL on I/R training or from the mob station prior to our arrival at the prison. Our unit was validated on Combat Support Operations.
5. MG Ryder conducted an assessment of Prison and Detention operations in Iraq, during 13 Oct through 6 Nov 2003. A thorough assessment was conducted at Abu Ghraib. Unfortunately that document or report was never shared with the company or BN working the facility. What could have been corrected if we had the insight of the November Report? Who was the report release too? Is it available to the Prison now?

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DEC

6. Theodore Roosevelt said "do what you can, with what you have, the best you can." An operational plan was set out to accomplish the mission. The resources of the Company and Battalion were limited, but that could not stop conducting operations at Abu Ghraib.

7. Our unit followed the guidelines for training set forth by BN. We pull our soldiers with civilian correction experience, trained on non lethal weapons, 800<sup>th</sup> ROE, Detainee feeding at Ganci, and prison civil disturbance and extraction. The Report fails to mention any successful aspects of the mission. Those successes were possible because 95% of the company's soldiers "did the right thing." Camp Vigilant stood as a model for efficient Detention Operations with minimal resources, no disturbances and no escapes.

8. Every soldier is trained annually on the Geneva Convention and the Laws of War and another class was given by instructors at Ft Lee during mobilization. It was part of the Validation. What they retained or what was accepted varies with individuals. Reflect on the Army Doctoral policy and training of Sexual Harassment; far less complex than the Geneva Convention as it applies to Detainee Operations. Yet why have there been so many reported or unreported incidents of sexual harassment? A "Zero Tolerance" is in place and yet the Army is "evaluating" its policy. Why are there continued problems?

9. Nearly every day I spent time with my soldiers at the Hard site and Camp Vigilant, various times and varying shifts. A greater emphasis was placed on Camp Vigilant as they were more vulnerable, with fewer assets, fewer constraints, and they had no assigned OIC. Other duties included establishment of the basic life support for the company and integration of the sections into the Battalion.

10. How does this command view the 9/11 hearings? Does it feel the current Administration had the ability to forecast and predict the tragedy? Could or would anything been avoided if the Administration had been better trained or informed? Are they making excuses or is it Monday morning quarterbacking by the hearing committee.

11. What of the Cleric [REDACTED]? Who was monitoring him and his movement? What of the city of Fallujah? Would a more restrictive Course of Action result in a change of recent events?

12. What is the status of the Abu Ghraib complex now? Are all the corrective measures from MG Ryder and this AR 15-6 in place for a smooth operation? It's difficult to be at all places at all times. To accomplish multiple tasks, others must be put in responsible positions. We were let down by the soldiers placed in those position of responsibility.

13. This was by no means a perfect deployment. The 372<sup>nd</sup> conducted operations through the Iraqi summer under some of the harshest and poorest conditions while working under the marines in Al Hillah. The Army Logistical and Support assets were not even available until the unit arrived at the prison. The Report refers to the psychological pressures. Yes, these pressures were recognized and mediated by allowing soldiers more comforts while inside their Living Support Areas. Civilian clothing was allowed there but there was an enforced uniform code while on duty or outside the LSA's.

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15. The Unit Conducted 15 Company grade Article 15 proceedings, numerous other situations were handled by First Line Leader Counseling's. Several NCO's were removed from their positions for inappropriate behavior. Standards were enforced.

16. I agree as "leaders" we all have room for improvement. That's why the Army's Doctrine for corrective action is corrective in nature, administered fairly, without prejudice, administered for the development of soldiers. The Soldier's Creed states "leave no fallen comrade behind." These administrative remedies are leaving good soldiers. Yes, there have been documented short comings, but lets not loose site of any gains or benefits from this experience.

17. I agree with the findings of the report; more could have been done to increase the level of awareness. The 372<sup>nd</sup> is a Military Police Combat Support Company. Our history and background is not in the Internment / Resettlement, or EPW areas. After being tasked with this mission the BN mandatory training was conducted, experienced civilian correctional soldiers were aligned with critical positions within the Hard site and Camp Vigilant. The Unit had less than two weeks to prepare for the Operation. The Plan mostly worked. A few individuals, conducting criminal activity, left the boundaries of good training and judgment. Recognize their shortcomings and take the appropriate action.

18. Take into consideration the isolation of the past 82 days waiting for this conclusion. I request any reprimand be filed locally, as an effort to salvage any benefit from this hard and painful experience. I would request you reconsider the administrative remedies recommended and evaluate the future potential, contributions of a soldier.



372<sup>nd</sup> Military Police Company



DEPARTMENT OF THE ARMY  
372<sup>nd</sup> MILITARY POLICE COMPANY  
APO AE 09432

REPLY TO  
ATTENTION OF

12 April 04

MEMORANDUM THRU [REDACTED], Staff Judge Advocate, III Corp

FOR LTG Thomas Metz, CG, III Corps

SUBJECT: Rebuttal of AR 15-6 for [REDACTED], 372<sup>nd</sup> MP Company

1. After reading the AR 15-6 Investigative Report, I found that it was very thorough and contained many subject matter experts in the field of Detention Operations and numerous references to AR's, FM's and many other supporting documents. Unfortunately none of these were made available to the immediate chain of command nor to the soldiers about to operate the Abu Ghraib Prison. We also have never seen any of the other findings of the prison that were mentioned in the 15-6, MG Ryder's report, for example. Also we were never given a copy of the ICRC reports to take corrective action, we were simply briefed. Had these and other reports been made available corrective action would have been taken, possibly making the duties of the MP's safer and easier, and in turn doing the same for the detainees.

2. The Soldiers of the platoon and company received a briefing of cultural awareness and basics of the Geneva Convention at the mobilization site. However I did not have access to the Geneva Convention relative to the Treatment of Prisoners of War to post at locations throughout the hard site of Abu Ghraib. I did ask, on several occasions, to be provided with some form of what was expected by the MP's and what they were and were not to do. This request was made to [REDACTED] and [REDACTED] both of whom were with the MI BDE. [REDACTED] was with the SJA. We did have a copy of the 800<sup>th</sup> MP BDE ROE and a copy of this was posted at every tier in the hard site as well as the MP's office. If not posted on the wall it was posted on the MP's clipboard which also contained the inmate numbers of those housed on that tier.

3. I was the NCOIC of the hard site, I worked directly for the OIC of the hard site, [REDACTED]. I took a managerial role within the prison. There were two shift NCOIC's One for day shift (0400-1600) the other for night shift (1600-0400). I worked an over lapping shift of 1000-0100 so that I was able to work with all of the soldiers in my platoon. I also did this to make it easier for the soldier of the platoon to see me if there were any concerns that needed to be addressed. I made checks of the prison routinely, to include the towers, tiers and the health clinic. I worked extensively for the first several weeks after we took over operations from the 72<sup>nd</sup> MP Company working on a data base where we could effectively track inmates. This data base included the names of the inmates, their Inmate Number and their cell assignment. It also noted any specific information that was pertinent, such as TB patients, sentenced inmates, etc. This kind of information was not easily obtained from the BN and allot of times their information was incorrect. This data base was developed to make tracking of prisoners and head

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counts easier for the guards, and we were then able to give the BN a correct roster digitally when requested. I also made regularly checks on the water tank and generator room, to ensure that there was enough water for the detainees and to ensure that power went uninterrupted when ever possible. I also tried to keep track of maintenance concerns and tried by best to have these fixed in a timely manner. I relied on the shift NCOIC's and the shift SOG to take the supervisory role of the guards working the site for their specific shift. After [REDACTED] had gone home in December for REFRAD, I was instructed by [REDACTED] to more closely supervise the operations at the hard site to include tier 1, in which I did. But as always to accomplish multiple tasks, others must be put in responsible positions. Most of those soldiers did an outstanding job, however we were let down by a few soldiers placed in those position of responsibility. A few individuals, conducting criminal activity, left the boundaries of good training and judgment. Recognize their shortcomings and deal with them.

4. The soldiers of the 372<sup>nd</sup> MP Company were trained on the common tasks of EPW procedure, but not IR operations. The 372<sup>nd</sup> MP Company is a combat support element of the Military Police Corps, therefore at the mob site we trained specifically on combat support operations, to include battlefield circulation control, convoy escorts, close quarters combat, and some law enforcement. We carried out allot of these duties during the first part of our mission in Al Hillah Iraq where we were OPCON to the ¼ Marine BN. We were unaware that our mission would eventually be Internment and Resettlement Operations. Had we know this long in advance of starting the mission we would have been able to adequately retrain ourselves for this type of mission. Because of the lack of knowledge and in turn the lack of training we had to rely on the civilian experience of a few members of the company to train the rest of the company in the two weeks prior to assuming the operations at the prison and then an ongoing OJT. Prior to taking this mission we made it very clear to the chain of command that we were inexperienced in this type of operation.

5. The soldier who allegedly stomped on a detainee's hands and feet was not reported by me because I did not witness any physical contact. I entered the B side of wing 1, walked up the steps to retrieve some paper work, I had noticed that some detainees had been brought in and looked down at the A side and saw on of the guards stomp his foot once, but could not by my vantage point see why he was stomping. Judging by the reaction of the detainee, or lack there of, I had no reason to believe that any contact had been made. The detainee did not flinch nor did he cry out in pain as if he had been struck. I then called for the soldier to leave the tier and return back to his station, the shift NCOIC, [REDACTED], and the tier NCOIC, [REDACTED] were both present, and both are corrections officers as civilians they seemed to have control of the detainees. This statement was given by me to CID during their investigation. The soldier was later counseled and removed from the hard site for allegations of verbally abusive activity against detainees in tier 3A. This counseling was given to him on 16 November 2003 and he was moved into a position within force protection which limited his contact with the detainees. I would have and never will condone any abusive activity, verbal or physical, towards anyone, be it friend or foe. I and other soldiers willingly donated items from our care packages for use be the inmates in the prison. Items such as shampoo, soap, toothpaste, etc, these supplies were difficult to get through the CPA supply system. Many of the detainees did not have shoes, the company supply SGT allowed me to sign out 2 boxes of socks to hand out to the inmates with no shoes. For the juveniles we brought in gum and candy to reward them for good behavior or for a work detail of cleaning. The care and welfare of the detainees were priority to me, the Iraqi people were taught by Saddam to hate the Americans, I wanted to prove to them that we were not the bad guys that he made us out to be.

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6. Since we have been suspended from the operations at the prison and the company, we have been treated as guilty. We have not until this point been given a chance to defend ourselves. We were initially told that we would be suspended for 7-10 days and to pack for a week, this was three months ago. The actions of a few individuals have broken the moral of the soldiers and the leaders of the company. Statements were made that the chain of command had no knowledge of the acts of abuse, in which we did not. These acts were carried out at times when the chain was not around, our fault lines in the fact that we trusted an experienced E-6 and civilian corrections officer in the shift supervisory role and an experienced corrections officer as the tier NCOIC. In an effort to gain any benefit and knowledge from this painful and difficult experience, I request that you reconsider the administrative remedies recommended and evaluate the future potential of a soldier and NCO.

  
  
PLATOON SERGEANT  
372<sup>nd</sup> Military Police Company

002458



DEPARTMENT OF THE ARMY  
320<sup>nd</sup> MILITARY POLICE COMPANY  
APO AE 09432

REPLY TO  
ATTENTION OF

12 April 04

MEMORANDUM THRU [REDACTED], Staff Judge Advocate, III Corp

FOR LTG Thomas Metz, CG, III Corps

SUBJECT: Rebuttal of AR 15-6 for [REDACTED], 372nd MP Company

1. This is my rebuttal of the 15-6 investigation for the incidents at Abu-Ghurayb Prison. After reading through the entire packet several times, I can easily defend all the allegations against me and my soldiers. However, I am quit certain that the outcomes have been decided and a response is only a formality at this point. The first thing I want to say is "I accept full responsibility for the actions of the soldiers of the 372<sup>nd</sup> MP CO." I fully agree that I should have done a better job at supervising them I had assigned an OIC [REDACTED] and a NCOIC [REDACTED] to oversee operations during this period. We are a Combat Support Company so I concur with the fact that we are not trained in I/R functions. We completed the mandatory training required by the 320<sup>th</sup> BN and a two week RIP with the 72<sup>nd</sup> MP CO. We did everything as they were and improved on all areas of accountability and training of the IP's. At the MOB station we trained according to our METL which is consistent with a CS mission.

2. [REDACTED]'s statement in the investigation is inaccurate. He was not present during the escapes and was assigned the escort missions at the BN. His platoon did a great job but the escapes are noted in the report. Also, because he was doing an escort mission during the abuses, I believe he is mistaken for [REDACTED] and should be excluded from being held accountable in this 15-6.

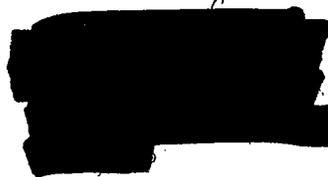
3. Anytime the command was made aware of any situations we were extremely proactive. I have documentation to support the disciplinary measures and all the counseling that was administered during this deployment. I strongly disagree with any reference of an undisciplined atmosphere.

4. The first half of this mission we were TACOM to the ¼ Marines and we performed a L&O, Police Training Academy, Police Force Mission in the city of Al-Hila ,Iraq. We performed extremely well and this company received high praise from the Marines. All the extra training that we focused on at Ft.Lee probably saved a few of my soldier's lives. I am extremely glad we had the opportunity and would not change anything we did there. It would have been nice to know our mission so we could have focused training toward a specific mission.

5. The only thing to decide here is where do you put the letter of reprimand? I guess if you go from what CNN said we will all receive letters that will effectively end our careers. I had dreams before this deployment started to someday lead a BN. The important thing here is my company

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knows that the leadership did there absolute best and we will continue to hold our heads high. I would hope you will consider the past three months we have been isolated and confined from my company as part of the punishment afforded to us. Unlike the General Officer appointed above me, I take the responsibility of what my soldiers did. It's easy sitting back as the Monday morning quarterback and second guessing everything. We had numerous visits by Gen Sanchez and many other dignitaries and experts from CPA and ICRC. In all those visits, no one mentioned that we should post the Geneva Convention or why isn't there an SOP from the Brigade. I wasn't aware the Geneva Convention had to be posted or I would have asked someone to get us a copy. This company was undermanned and under trained for this mission. Regardless of that, they still performed well and it's only the actions of a few ignorant people that caused this entire event. As I told the General during the 15-6, It would not of mattered if the policies were posted or not, it would not of stopped these particular soldiers from performing there actions. There was an SOP for Bucca and they had a similar incident. I hope that I can continue to stay in the military, before this incident I was once very proud and actually volunteered to be here. This company accomplished and affected the lives of many Iraqi citizens in a very positive way. It's amazing that the entire chain-of-command could be so incompetent



372<sup>nd</sup> Military Police Company

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**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

**PRIVACY ACT STATEMENT**

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  
 PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately  
 ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
 DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION ABU GHRAIB PRISON, ABU GHRAIB, IRAQ	2. DATE (YYYYMMDD) 18 JAN 04	3. TIME 1501	4. FILE NUMBER 0003-04-CID149-83130
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS CPT	
8. ORGANIZATION OR ADDRESS 372ND MILITARY POLICE COMPANY, CUMBERLAND, MD (DEPLOYED TO ABU GHRAIB, IRAQ)			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I am the current warden of the Hard Site at Abu-Ghuraib. I have additional responsibilities of the Vigilant Yard along with escorts, a PSD mission and company responsibilities. On 15 Oct 03, we accepted the mission from the 72nd Military Police Company. I divided all my responsibilities among my platoons to evenly distribute as much of the work load as possible. I assigned one platoon to Vigilant the two others split duties at Hard Site. The third platoon is currently still at AL-Hilla performing the PSD Mission. Wing one at the Hard Site is used exclusively by MI and OGA and other government agencies. Wing one was supervised mostly by [REDACTED]. [REDACTED] was very involved with the interrogation process and the day to day activity that occurred. I spent approximately 70% of my time supervising and coordinating the construction activity at the Hard Site. I also worked closely with the CPA to ensure all aspects of the current contract were fulfilled. The rest of my time was spent assisting and mentoring the current Iraqi Warden, operating Camp Vigilant, and performing company commander tasks. Because I knew it was impossible to accomplish all these missions at once, I assigned [REDACTED] as OIC of the Hard Site. [REDACTED] worked closely with [REDACTED] and they understood the daily routine of tier one. [REDACTED] is a superb officer of outstanding morale and ethical values and I am convinced he had absolutely no knowledge of any misconduct. [REDACTED] would often stay later into the night, on many occasions I can recall him returning well after midnight. I am not sure of the exact date, but in November of 2003 I had heard there was a 15-6 investigation on a possible situation which involved interrogator abuse to certain female detainees. [REDACTED] spearheaded the investigation. I was told nothing was founded and everything returned as usual. It was not uncommon to see people without clothing, I only ever saw males, I was told the "whole nudity thing" was an interrogation procedure used by MI, and never thought much of it. We then had a visit by the ICRC and one of their main concerns were the inmates not having clothing or proper bedding. Another major issue was the prison itself was cold. In December, I heard some stories about possible abuse but I was never able to confirm or gather sufficient evidence to sustain anything concrete. I immediately assigned [REDACTED] (the PLT SGT) to the wing just to ensure all was well. [REDACTED] often worked late into the evening and was committed to ensuring the proper care was given to all inmates. [REDACTED] returned to the States in Dec as a refrad and [REDACTED] continued to work the wing. On a few occasions when [REDACTED] did see something minor he made immediate corrections. I was awoken the morning of the 13th of Jan by my operations sergeant. She informed me that the BN Commander wished to speak with me. I reported to the 320th TOC area and was greeted by [REDACTED]. He proceeded to explain the allegations and he immediately started to interview my soldiers and confiscate computers and pictures. When I initially saw the pictures, I was absolutely appalled at what I saw. I specifically assigned the soldiers to certain missions based on their civilian corrections backgrounds. Many of the pictures contained [REDACTED] and [REDACTED] in them. I have since seen and heard many other stories that absolutely sadden me and I can't believe these two soldiers whom I trusted were mainly responsible for these actions. Some of the pictures contained other people observing or participating in events. I will not defend the actions of my soldiers but I know they were others who had knowledge of illegal activity. In the beginning of our mission, it appeared that the MI tactics were very aggressive and then appeared to taper in intensity as time went along. One of my accused soldiers approached me and said "He was unclear of the rules and didn't know what he could or couldn't do" I replied "You are a correctional officer back home, that is the sorriest excuse I have ever heard." I know I am responsible for the site and continue to question myself for not detecting their behavior earlier. I thought I had assigned responsible soldiers with the right knowledge and was totally unaware of any alleged illegal activity taking place. As I stated earlier, I did not spend a lot of time in wing 1 because I was and continue to be extremely busy with many other duties. I feel that I made reasonable decisions and I took the appropriate steps in assigning work duties. My company and the U.S Army will probably not recover from this for a long time. I am ashamed of what my soldiers did and embarrassed as well. This company deserves better, we have worked extremely hard only to have a few soldiers tear down the morale and all our accomplishments. I only hope these two soldiers can live with their choices because it will likely affect many people for a long time.

Q. Who was [REDACTED]  
 A. He was the MI Commander for the Battalion, which has departed the area.  
 Q. Do you know where [REDACTED] is now?

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 4 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"  
 THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

Statement of [REDACTED] taken on 18 Jan 04, at the Abu Ghraib Prison, Abu Ghraib, Iraq

- A. He was my 4<sup>th</sup> Platoon Leader. He was the OIC for the Hardsite.
- Q. Have you witnessed any interrogations conducted by MI?
- (A) Partial. I saw detainees in their rooms without clothing. The interrogators were within the rooms talking to the detainees. It was common practice to walk the tier and see detainees without clothing and bedding.
- Q. During this time period did any of your soldier inform you of the abuse going on in the tiers?
- A. No.
- Q. Who was assigned to work the tiers during the Midnight shift?
- A. CPL [REDACTED], SSG [REDACTED], SPC [REDACTED], SPC [REDACTED] which worked wing 1. The other tiers had soldier working them, but was controlled by the platoons. They handled their relief and days off. SSG [REDACTED] and CPL [REDACTED] were initially assigned to a separate platoon, but because of their experience they were brought into the hard site.
- Q. What was the investigation conducted by [REDACTED]?
- A. It was my understanding it dealt with an interrogator had a female detainee in the nude being interrogated in a closed room.
- Q. What was the result of the investigation?
- A. [REDACTED] handled the investigation and it was unfounded.
- Q. At the time was there any MP's involved?
- A. No.
- Q. Have you had any disciplinary issue with the MP's in the hard site and the detainees?
- A. I pulled out [REDACTED] as the Platoon Sergeant's approached me as he was becoming a little aggressive with the detainees. I pulled him out as a preventive measure.
- Q. When did this occur?
- A. Towards the end of Nov 03.
- Q. Describe how he was being aggressive?
- A. I was informed about excessive yelling, and being very agitated. The Chain of Command was concerned for his well being and had him pulled.
- Q. Was [REDACTED] returned to the hard site after a cooling off period?
- A. No, he is still working with [REDACTED].
- Q. Is it common to have Admin Specialist and Mechanics in the hard site?
- A. Absolutely not.
- Q. Did you authorize them in the hard site?
- A. The mechanic yes, as he was assigned to a 24 hour duty for generator mechanical purpose. The Admin did not have and reason to be there.
- (Q) Is there an SOP for the hard site operation?
- (A) Yes.
- Q. Are all soldiers require to read and understand the SOP?
- A. Yes.
- (Q) Is there any documentation showing everyone read and understood the SOP?
- (A) I do not think so.
- Q. Are the MP's in the site authorized to conduct their own form of interrogation?

A. No.

Q. Do you know who authorized them to conduct these types of acts depicted on the pictures previously shown to you?

A. No.

Q. Was the Chain of Command aware of these types of acts being conducted in the hard site?

A. No.

Q. What happened when the ICRC walked through the hard site?

A. The first time they were upset with what they saw. They were concerned with the amount of nudity and the area was cold and damp. The detainees did not have appropriate clothing and bedding. The second visit occurred two weeks ago, and things were much better. Their nudity has stopped and they seemed happy with what they saw.

Q. Have you heard of your soldiers being told to give detainees the special treatment or something to this affect?

A. No.

Q. How long has CPL [REDACTED] been assigned to your unit?

A. He just came on board when we mobilized. He was an insert.

Q. Have you had any problems with his work performance?

A. Yes, he constantly challenges orders and requests from the leadership. He would put stuff on his uniform that he was not authorized.

Q. How long has SSG [REDACTED] been assigned to your unit?

A. I believe he was assigned to the unit prior to the mobilization. I was just coming on board when we got our orders. There are several assigned that was inserts to the unit for the deployment.

Q. Was there any disciplinary issue concerning SSG [REDACTED]?

A. No.

Q. As far as the other soldiers involved were there any disciplinary issues concerning them?

A. PFC [REDACTED] had an issue of disobeying a direct order to stay away from CPL GRANIER.

Q. When you viewed the pictures did you recognize any other soldiers previously not identified?

A. I believe two of the soldiers are [REDACTED] and [REDACTED], 4<sup>th</sup> Plt, 372<sup>nd</sup>. I cannot be 100% sure on [REDACTED] <sup>or</sup> [REDACTED] but that is [REDACTED].

Q. What actions have you taken to correct the issue regarding this investigation?

A. We immediately moved all suspects out of the hard site and reassigned them. We reassured everyone understood the SOP and LTG SANCHEZ's guidance. Everyone will sign a roster. [REDACTED] will now work the evenings to ensure nothing further occurs. The Command is making more unannounced visits to the hard site. All soldiers were informed no interrogations were to be conducted by them.

Q. Do you wish to add anything else to your statement?

A. No.

ICRC (2nd visit) ± Jan 4

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Initials DTK

Page 3 of 4 Pages

For Official Use Only

EXHIBIT 74



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

10 April 2004

MEMORANDUM FOR [REDACTED], Article 32 Investigating Officer, Headquarters,  
420<sup>th</sup> Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Article 32 Request for Witnesses and Production of Evidence – *United States v. SPC Megan M. Ambuhl*

1. The Defense requests that the following witnesses be produced at the Article 32 investigative hearing scheduled for 20 April 2004, IAW with Rules for Courts-Martial (R.C.M.) 405(f)(9) and 405(g):

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a. CID Agents

i. Special Agent [REDACTED] 10<sup>th</sup> MP BN, Baghdad, Iraq, APO AE 09335.

Agent [REDACTED] testimony is relevant because he interviewed numerous alleged victims and made several visits to the Abu Ghraib prison facility during the period of the alleged offenses. Agent [REDACTED] also interviewed several alleged co-conspirators.

ii. Special Agent [REDACTED] 10<sup>th</sup> MP BN, Baghdad, Iraq, APO AE 09335.

Agent [REDACTED] testimony is relevant because she interviewed several of the alleged victims and actively investigated the allegations in this case.

b. Iraqi Detainees

The Defense requests a certified interpreter to translate the testimony of the Iraqi detainee witnesses. The testimony of these witnesses is extremely relevant. These individuals may have potentially exculpatory information. The Defense has limited if any access to them based on their current status. For that reason, the Defense requests that the government produce the listed detainees to testify at the Article 32(b) Investigation. IAW R.C.M. 405(g)(4)(A) the Defense objects to consideration of the Sworn Statements of the listed alleged victims and Iraqi detainees. Such statements may not be considered by the IO over the objection of the Defense. All alleged victims and detainees reside at Abu Ghraib Prison in Abu Ghraib, Iraq. They are as follows:

- x i. [REDACTED]
- x ii. [REDACTED]
- x iii. [REDACTED]
- x iv. [REDACTED]
- x v. [REDACTED]
- x vi. [REDACTED]

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- ✕ vii. [REDACTED]
- ✕ viii. [REDACTED]
- ✕ ix. [REDACTED]
- ✕ x. [REDACTED]
- ✕ xi. [REDACTED]
- ✕ xii. [REDACTED]
- ✕ xiii. [REDACTED]
- ✕ xiv. [REDACTED]

c. Chain of Command – 372<sup>nd</sup> MP Company

i. <sup>Vickon</sup> [REDACTED], former Company Commander  
 [REDACTED] can testify as to the training provided to his unit, specifically any training regarding detention facilities. [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

ii. <sup>visited states</sup> [REDACTED] former Platoon Leader  
 [REDACTED] can testify as to the training given to reserve MPs, specifically the training regarding detention facilities and control of detainees. [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iii. <sup>Vickon</sup> [REDACTED], former Company 1SG  
 [REDACTED] the senior enlisted member of the 372<sup>nd</sup> MP Company. [REDACTED] can testify as to the training given to his MPs. He can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iv. <sup>Vickon</sup> [REDACTED], former Platoon Sergeant  
 [REDACTED] supervised many of the co-accused at Abu Ghraib. He conducted spot-checks of the facility, specifically cell blocks 1a and 1b. [REDACTED] witnessed at least one of the charges to which SPC Ambuhl is facing court-martial. He can provide exculpatory testimony for SPC Ambuhl. His testimony is highly relevant and critical to this case. If necessary, the defense requests immunity for this witness to testify.

d. Co-Accused – 372<sup>nd</sup> MP Company

- marked*
- i. SGT [REDACTED]
  - ii. PFC [REDACTED]
  - iii. SSG [REDACTED]
  - iv. CPL [REDACTED]
  - v. SPC [REDACTED]
  - vi. SPC [REDACTED]

e. Additional Witnesses – 372<sup>nd</sup> MP Company

- i. <sup>Kuwait</sup> [REDACTED], former S-3 for the 320<sup>th</sup> MP Battalion [REDACTED] the S-3 [REDACTED] was responsible for drafting and disseminating ROE guidance. The ROE and any training received by the 372<sup>nd</sup> MPs are extremely relevant to Charge II.
- ii. <sup>Kuwait</sup> [REDACTED] first reported the alleged offenses to CID. His credibility and motivation are highly relevant. Further, [REDACTED] may provided exculpatory testimony regarding SPC Ambuhl.
- iii. <sup>Victory</sup> [REDACTED]
- iv. <sup>Kuwait</sup> [REDACTED] was the operations NCOIC of Abu Ghraib during the time frame of the charged offenses. He will testify that he never witnessed any abuse taking place at the prison.
- v. <sup>Kuwait</sup> [REDACTED] was the Force Protection NCO of Abu Ghraib during the time frame of the charged offenses. He can testify as to the day-to-day operations of Abu Ghraib and what procedures were in place on cell blocks 1b for interacting with detainees.
- vi. <sup>Kuwait</sup> [REDACTED] spent time at blocks 1a and 1b during October, November, and December 2003. [REDACTED] worked at 1a on evenings when CPL Graner was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received.
- vii. <sup>Kuwait</sup> [REDACTED] as [REDACTED] worked on the same block as [REDACTED] Ambuhl. She can testify as to the nature of detainees that were held on 1b and as to the types of training received by her reserved unit. She can testify as to the interaction between the MI representatives and the MP guards.
- viii. <sup>Kuwait</sup> [REDACTED] worked at block 1a during October, November, and December 2003. He worked at 1a on evenings when CPL [REDACTED] was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

ix. <sup>Kurash</sup> [redacted] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

x. <sup>Kurash</sup> [redacted] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

xi. <sup>Kurash</sup> [redacted] can testify as to the procedures used on the cell blocks and to training that he and his unit received. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

f. Military Intelligence Witnesses

*redeployed U.S.*

- i. [redacted], 325<sup>th</sup> MI Battalion
- ii. [redacted], 325<sup>th</sup> MI Battalion
- iii. [redacted], 325<sup>th</sup> MI Battalion

iv. [redacted] 02<sup>nd</sup> MI Battalion

[redacted] (e@us.army.mil) [redacted] will testify that members of his chain of command told him to delete Abu Ghraib photos off of his computer hard drive prior to the CID investigation.

v. [redacted], formerly assigned to 325<sup>th</sup> MI Battalion 914-360-[redacted] was an MI Interrogator that worked daily at Abu Ghraib at blocks 1a and 1b. [redacted] will testify about authorized MI interrogation techniques. [redacted] can testify as to the interaction and coordination between the MI interrogators and the MP guards. [redacted] has been transferred to the CPA in Baghdad.

*redeployed*

vi. [redacted] 205<sup>th</sup> MI Brigade

[redacted] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03. In command during the time of the alleged offenses, [redacted] knowledge of misconduct at Abu Ghraib and the chain-of-commands response to such allegations is highly relevant.

g. Other Witnesses

*10  
per*

i. [REDACTED], former Interrogation OIC, DNVT: 559-[REDACTED] a Military Intelligence officer, is familiar with the Camp Vigilant SOP and can testify as to CJTF-7 policies regarding Interrogation Rules of Engagement for detainees at Abu Ghraib.

*1768  
BAO #*

*10  
per*

ii. [REDACTED] 205<sup>th</sup> MI Brigade Operational Law, DNVT: 559-[REDACTED] was the legal advisor for the MI Group who ran Abu Ghraib prison. [REDACTED] can testify to the procedures put into place for dealing with detainees and the training that was taught to the members of the 372<sup>nd</sup> MP Company for their work at the facility. [REDACTED] visited Abu Ghraib during the relevant time period and can testify to the conditions at the facility.

*Redacted  
(C)*

iii. [REDACTED], Ft. Sam Houston [REDACTED] was one of several attorneys who provided advice on detainee operations and ROE at Abu Ghraib.

*Completed*

iv. [REDACTED] 418<sup>th</sup> MP Detachment



v. [REDACTED], CJTF 7, BLAP, Baghdad, Iraq [REDACTED] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03.

*Redacted*

vi. [REDACTED] O'KANE MAJ O'KANE, CJTF-7 [REDACTED] tasked [REDACTED] to respond to inquiries by the ICRC during the fall of 2003. When called to testify he can explain the ICRC inquiries and testify as to his response on behalf of CJTF-7.

2. If the Government contends that any Defense requested witness is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). Your determination should be made after the Government explains *on the record* the specific efforts made to locate and contact the witnesses and after consultation with your legal advisor as to whether or not the witness is reasonably available. If deemed reasonably unavailable, the Defense requests that a specific factual reason be stated on the record.

3. The Defense requests that the following documents and evidence be produced to the Defense at the Article 32 hearing, IAW with R.C.M. 405(f)(10) and 405(g)(1)(B):

a. All copies of CID reports (including 28s), military police reports, or any other reports made by a law enforcement agency relevant to this investigation to include the Agent Activity Reports and the Agent Activity Summaries compiled by the following investigators:

- i. SA [REDACTED]
- ii. SA [REDACTED]
- iii. SA [REDACTED]
- iv. SA [REDACTED]
- v. SA [REDACTED]
- vi. SA [REDACTED]
- vii. SA [REDACTED]
- viii. SA [REDACTED]
- ix. SA [REDACTED]
- x. SA [REDACTED]

- xi. SA [REDACTED]
- xii. SA [REDACTED]
- xiii. SA [REDACTED]
- xiv. SA [REDACTED]
- xv. SA [REDACTED]
- xvi. SA [REDACTED]
- xvii. SA [REDACTED]
- xviii. SA [REDACTED]
- xix. SA [REDACTED]
- xx. SA [REDACTED]

b. All evidence seized from the crime scene or any related evidence be present or made available for inspection by the Defense and the Investigating Officer including but not limited to any evidence seized as a result of the CID searches conducted throughout this investigation;

c. Any and all ROE/RUF guidance established by 372<sup>nd</sup> MP Company from October 2003 to the present;

d. Any and all OPORDs that pertain to the Abu Ghraib mission to include the ROE/RUF card then in effect;

e. Training records for SPC Megan Ambul and the co-accused;

f. Complete medical records for the Iraqi detainees listed in paragraph 1b of this Memorandum;

g. Any and all unit level and/or IG complaints regarding the treatment of Abu Ghraib detainees lodged against any soldier assigned to the 372<sup>nd</sup> MP Company, the 800<sup>th</sup> MP Brigade, the 205<sup>th</sup> MI Company, the 325<sup>th</sup> MI Battalion, or the 20<sup>th</sup> MI Brigade;

h. A complete copy of the unit counseling files to include any records of nonjudicial punishment or administrative action for the following soldiers:

- i. SPC Megan M. Ambuhl
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]
- vi. [REDACTED]
- vii. [REDACTED]

- viii. [REDACTED]
- ix. [REDACTED]
- x. [REDACTED]
- xi. [REDACTED]
- xii. [REDACTED]
- xiii. [REDACTED]
- xiv. [REDACTED]

i. Copies of any relief-in-place (RIP) schedules or training schedules between the 72<sup>nd</sup> MP Company (Las Vegas, Nevada) and the 372<sup>nd</sup> MP Company, to include any OPORDERS;

j. A copy of the final CID case file with exhibits, of case number 0005-04-CID149, as referenced in the AIR of [REDACTED] dated 22 Jan 04, regarding a K-9 incident at Abu Ghraib;

k. Copies of the two Working Papers referenced by BG Karpinski in her 24<sup>th</sup> Dec 03 letter to [REDACTED] ICRC Protection Coordinator;

l. Copies of the ICRC reports dated Oct 03 and Dec 03 obtained by CID from [REDACTED] as referenced in [REDACTED]'s AIR, dated 5 Feb 04;

m. Copies of the official detainee file (as referenced in para. 3-4 of the Camp Vigilant Operations Procedures SOP (draft)) of the detainees listed in para. 1b of this Memorandum. At a minimum, the defense requests the name, detainee sequence number, capture number, capture date and crime charged with or suspected of for the detainees listed in para. 1b of this Memorandum;

n. A copy of the "Behavior Modification Plan" as referenced in para. 3-12 of the SOP;

o. A copy of the draft of Chapter 4 as referenced on pages 9-10 of the SOP;

p. A copy of the parallel AR 15-6 Investigation concerning the charged offenses and the actions and conduct of the leadership of the 372<sup>nd</sup> MP Company and the 800<sup>th</sup> MP Brigade (to include, any documents maintained by the AR 15-6 Officer to include his or her appointment memorandum);

q. Copies of any Press Releases or PAO information disseminated by the command regarding the charges faced by SPC Ambuhl and her co-accused, to include documents drafted by the Office of the Staff Judge Advocate for release;

r. Copies of any administrative action, relief-for-cause documents, letters of reprimand, and OERs/NCOERs for the members of the commands of 372<sup>nd</sup> MP Company and 800<sup>th</sup> MP Battalion who were in command from October 2003 through March 2004;

s. Copies of any SIGACTS, FRAGOs, OPORDERS, or other similar documents related to the ICRC visits to Abu Ghraib from October to December 2003;

t. Copies of any documents obtained or produced by [REDACTED] as a result of his response by CJTF-7 to allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03;

u. Copies of all documents, including documents of UCMJ or administrative action, regarding 3 soldiers from the 519<sup>th</sup> who ordered a female detainee to strip as referenced by CPT Tyler Craner in the preferral packet;

v. Copies of all documents, including documents of UCMJ or administrative action, regarding the ‘Spence Incident,’ as referenced by [REDACTED] in the preferral packet;

w. Copies of all documents, including documents of UCMJ or administrative action, from the August 2003 incident where 2 or 3 soldiers were disciplined by [REDACTED] after a CID investigation into abuse, as referenced by [REDACTED], JIDC, MI, Operations Officer, as referenced in the preferral packet;

x. Copies of all negative counselings, UCMJ records, and records of administrative action regarding the following soldiers from 4<sup>th</sup> Platoon, 372<sup>nd</sup> MP Company: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

y. Copies of all work schedules maintained by the 372<sup>nd</sup> MP Company or higher headquarters showing which soldiers were scheduled to work which shifts at cell blocks 1a and 1b during October, November and December 2003;

z. The Defense reserves the right to ask for additional evidence, as it becomes known during the Article 32 investigation.

4. If the Government contends that any Defense requested evidence relevant to this case is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M 405(g)(2). This determination should be made after the Government counsel explains on the record the specific efforts made to locate and produce the evidence and consultation with your legal advisor as to whether the evidence is reasonably available.

5. The Defense objects to consideration by the IO of the following evidence:

a. Various Documents (From Detainee Medical Records, 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

b. Detainee Medical Records (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

c. Hard-cell Medical Log (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

d. Treatment Logs (From B Company, 109<sup>th</sup> Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

e. Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

f. Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

g. Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

6. The Defense expresses the following additional concerns regarding the Article 32 pretrial investigation in this case:

a. Receipt of Legal Advice. The defense specifically requests that the IO make all determinations on questions of law after referring to R.C.M. 405, DA Pam 27-17, and based on advice from your legal advisor. As per DA Pam 27-17, para.1-2e, SPC Ambuhl and defense counsel are entitled to be informed of any legal advice received by the IO and the opportunity to reply to that legal advice. The Defense proposes that both parties be present during receipt of legal advice, that you restate the legal advice on the record, and that both parties be given the opportunity to respond to that advice before you make a determination on a question of law.

b. Marking Evidence. For record purposes, the Defense requests that you have the reporter mark each piece of evidence received and catalog the evidence. Please do not admit the “packet” as part of the record. This will prevent the parties and you from determining which evidence has been objected to and ruled upon.

c. Delivery of Report to Defense Counsel. The Defense requests that the convening authority direct delivery of your report to the Defense Counsel instead of SPC Ambuhl. See, R.C.M. 405(j)(3). To effect this delivery, I ask that you state my request in your report, and request that

AETV-BGJA-TDS

SUBJECT: Article 32 Request for Witnesses and Production of Evidence – *United States v. SPC Megan M. Ambuhl*

the report be delivered with a personal certification and date annotation so that the Defense may comment on the report within five (5) days allocated UP R.C.M. 405 (j)(4). Defense counsel and SPC Ambuhl are located in different physical jurisdictions and service upon SPC Ambuhl can not be considered the same as service on Defense Counsel.

d. Verbatim Testimony. The Defense requests a verbatim transcript of the testimony presented during the Article 32 hearing. Alternatively, and IAW R.C.M. 405(h) and its applicable discussion, the Defense requests that each witness swear to the truth of his or her testimony, after it is reduced to writing.

7. If I may be of further assistance in this matter, please contact me via email at

[REDACTED]@us.army.mil or by DNVT phone at: 553-[REDACTED] or 553-[REDACTED]

//original signed//

[REDACTED]

[REDACTED] JA  
Trial Defense Counsel

AFZA-AP-CO

2 Apr 04

MEMORANDUM FOR Investigating Officer, U.S. v SPC Ambuhl

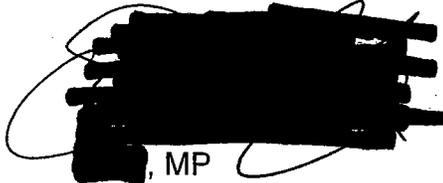
SUBJECT: Decision on Request for Delay

1. I have reviewed the enclosed Defense Request for Delay in the case of U.S. vs SPC Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN).
2.  The request for delay is disapproved.

OR

3.  The request for delay is approved, and the Article 32(b) session in the case of U.S. vs Ambuhl will be rescheduled for 20 April 2004.

Encl  
as

  
, MP  
Commanding

002474



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

29 March 2004

MEMORANDUM FOR [REDACTED] Article 32 Investigating Officer, Headquarters, 420<sup>th</sup>  
Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Delay, United States v. SPC Megan M. Ambuhl

1. The defense requests a delay in the Article 32(b) hearing currently scheduled for 5 April 2004. The earliest available date for the defense to go forward with the Article 32 will be 20 April 2004. The defense requires this delay for the following reasons.

a. Defense counsel received the preferral packet on 26 March 2004. The packet contains several hundred pages of evidence and statements. The packet also contains a CD Rom with over 1,000 visual depictions. Counsel and SPC Ambuhl both must have ample time to conduct an even preliminary review of the evidence.

b. Defense counsel is located at FOB Danger in Tikrit and is reliant on military convoys or MILAIR to get to Victory Base. Defense counsel met with SPC Ambuhl on 26 March 2004 but requires at least two additional meetings with the client simply to prepare for the Article 32. These trips require significant advanced planning and coordination due to travel limitation in the Iraqi Theater.

c. The defense cannot reasonably be prepared to represent SPC Ambuhl at the Article 32 hearing by 5 April 2004. An unprepared counsel is tantamount to no counsel at all. U.S. v. Miro, 22 M.J. 509 (USACMR 1986). The delay is necessary for the defense counsel to reasonably prepare for the Article 32 hearing. Counsel needs time to interview witnesses, coordinate with civilian defense counsel, if any, and otherwise prepare for the hearing which includes 5 charged co-accused, several uncharged potential co-accused, voluminous documents and alleged victim statements in Farsi or Arabic.

d. SPC Ambuhl has considered hiring a civilian attorney. Granting the requested delay will allow the soldier to exercise her right to counsel and to explore avenues to hire a civilian attorney and ensure his or her presence for the Article 32(b) hearing.

e. Granting the requested delay will allow the government and the defense to explore a possible alternate disposition of this case.

f. Defense counsel is one of only two defense attorneys deployed to serve the entire 1<sup>st</sup> Infantry Division. In addition to representation of courts-martial clients, counsel is responsible for serving the needs of clients throughout a dozen geographically diverse FOBs in Iraq. Granting the requested delay will allow counsel to schedule coverage for these areas and to prioritize trial defense counsel requirements.

2. The requested delay is attributable to the defense. If I may be of further assistance in this matter, please contact me via email at [REDACTED] or by phone at DNVT: 553-[REDACTED]

[REDACTED]  
CPT, JA  
Trial Defense Counsel

002475

DEPARTMENT OF THE ARMY  
Headquarters  
420<sup>th</sup> Engineer Brigade  
Victory Base, Iraq APO AE 09342

AFZA-AP-IO

25 March 2004

MEMORANDUM FOR SPC Megan M. Ambuhl,  
Victory Base, Iraq APO AE 09342

HHC, 16<sup>th</sup> MP Bde (Abn),

SUBJECT: Notification of Article 32 Investigation

1. On 5 April 2004, at 1000 hours in the Victory Base Courtroom, Building 94, I will conduct an investigation pursuant to Article 32(b), UCMJ to investigate the facts and circumstances concerning charges preferred against you by [REDACTED]. The charges are:

- Charge I: Conspiracy
- Charge II: Dereliction of Duty
- Charge III: Maltreatment
- Charge IV: Assault
- Charge V: Indecent Acts

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send your decision to me by 1200 hours, 2 April 2004.

3. The names of witness known to me, who will be asked to testify at the hearing, are:

- a. [REDACTED] CID Agent, DNVT 302-550-[REDACTED]

Additionally, it is my intention to examine and consider all evidence.

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 1200 hours, 2 April 2004. If, at a later time, you identify additional witnesses, inform me of their names, phone numbers and/or addresses.

002476



DEPARTMENT OF THE ARMY  
Headquarters  
16<sup>th</sup> Military Police Brigade (Airborne)  
Victory Base, Iraq APO AE 09342

REPLY TO  
ATTENTION OF:

AFZA-AP-CO

24 March 2004

MEMORANDUM FOR [REDACTED] 420 Engineer Brigade, Victory Base,  
Iraq, APO AE 09342

SUBJECT: Appointment as Article 32 Investigating Officer

1. You have been appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the attached charges against Specialist Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), Victory Base, Iraq APO AE 09342. According to Article 32, UCMJ, and Rule 405, Manual for Court-Martial (2002), you are to:

- a. Conduct a thorough and impartial investigation into the truth of the allegation(s);
- b. Consider the correctness of the form of the charges; and
- c. Make recommendations as to the disposition of the charges in the interest of justice and discipline.

2. Prior to the commencement of the investigation, you must contact [REDACTED] [REDACTED] at the Administrative Law Division, Combined Joint Task Force Seven, Victory Base, Iraq, at DSN 318-822-[REDACTED] and advise him that you have been detailed to conduct this investigation. He, or a Staff Judge Advocate designee, will brief you on your responsibilities and provide you with advice throughout the investigation. You will not contact the government representative or defense counsel for assistance in matters, other than routine administrative or clerical matters, regarding this investigation.

3. Your duties as an Article 32 investigating officer takes precedence over any of your other assigned duties. The following guidance pertains to delays:

- a. Schedule the hearing as soon as you receive notice of this appointment. The hearing date should be within seventy-two hours of receipt of this appointment letter. If the defense or the government cannot proceed on the selected date, obtain a request for delay, in writing, from the party requesting the delay. Requests for delay should be attached to the report of investigation.

002477

AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

b. You have the authority to approve one reasonable delay requested by the defense or the government, up to a total of seven days. Any delays in excess of seven days must be approved by me. Requests for delay should be in writing and clearly state the supporting reasons and the dates covering the delay. Before granting a delay you must also consider matters submitted by the opposing counsel. Your decision to grant a delay should be in writing. It should state your reasons and the dates of the delay.

4. [REDACTED] Trial Counsel, 16<sup>th</sup> Mp Bde (Abn) DNV 588 [REDACTED], is appointed as the government representative and is authorized to participate in this investigation. You can contact Trial Defense Service at DNV 838-[REDACTED] to confirm the name of the detailed defense counsel. While these officers or their designees will attend the hearing and will question witnesses, it is your responsibility to conduct the investigation, not the government's representatives. Further, both of these parties play an adversarial role in the proceedings. You should therefore avoid discussing substantive matters pertaining to the case with either party outside formal sessions where all parties have opportunity to be present.

5. You should become familiar with the following reference materials/documents:

a. Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial, 2002 Edition

b. DA PAM 27-17, Procedural Guide for Article 32 Investigating Officer, (especially paragraphs 1-2, General Instructions, 2-3, informing the accused of the investigation and the right to counsel, and 2-4, consultation with counsel for the accused)

c. DD Form 458 (Charge Sheet) and allied documents

6. The Article 32 Investigating Officer Procedural Guide discusses in detail procedural aspects from appointment to submission of the final report. Included in Appendix B is a sample format for notification of the accused. A copy of the notification should be sent to the accused's unit commander to ensure that the unit commander is aware of the time and location of the hearing, thereby ensuring the presence of the accused at the hearing. If the accused is already represented by counsel, the written notice should be sent to that counsel. An information copy should also be provided to the appropriate trial counsel.

7. You are personally responsible for summarizing relevant testimony that is not already reduced to a written statement. [REDACTED] has been appointed as your administrative and paralegal assistant for this case and will act as the reporter. You can contact him at DNV 587-[REDACTED]. However, the Article 32 Investigation will be a summarized transcript and not verbatim.

AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

8. The complete report of investigation, DD Form 457, Investigating Officer's Report, with enclosures, and a chronology of the investigation from receipt of file to submission of the report, will be forwarded with one (1) copy to this headquarters no later than seventy-two hours after completion of the investigation.

2 Encls

1. DD Form 458

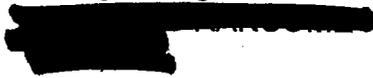
2. Case File

  
MP  
Commanding

AFZA-AP-IO  
SUBJECT: Notification of Article 32 Investigation

5. You may contact me at \_\_\_\_\_.

///original signed///



Investigating Officer

Received by: SPC Megan M. Ambuhl  
MEGAN M. AMBUHL, SPC

Date: 26 MAR 04

002480

RECORD OF PROCEEDINGS OF COURT-MARTIAL

002481





**RECORD OF TRIAL**

**OF**

**AMBUHL, Megan M.**  
(Name: Last, First, Middle Initial)

**[REDACTED]**  
(Social Security Number)

**SPC**  
(Rank)

**HHC, 16th MP Bde (ABN)**  
**III Corps**  
(Unit/Command Name)

**U.S. Army**  
(Branch of Service)

**Victory Base, Iraq**  
(Station or Ship)

**BY**

**GENERAL COURT-MARTIAL**

**Convened by: Commander**  
(Title of Convening Authority)

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

**Tried at**

**Victory Base, Iraq and Mannheim, Germany**  
(Place or Places of Trial)

**on 11, 23 and 25 August 2004**  
(Date or Dates of Trial)

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TESTIMONY

<u>NAME OF WITNESS</u>	<u>DIRECT/ REDIRECT</u>	<u>CROSS/ RECROSS</u>	<u>COURT</u>
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PROSECUTION:

None.

DEFENSE:

None.

COURT:

None.

EXHIBITS ADMITTED IN EVIDENCE

<u>NUMBER OR LETTER</u>	<u>DESCRIPTION</u>	<u>PAGE WHERE</u>	
		<u>OFFERED</u>	<u>ADMITTED</u>

None.

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**RECEIPT FOR COPY OF RECORD OF TRIAL**

I hereby acknowledge receipt of a copy of the record of trial in the case of the United States versus SPC Megan M. Ambuhl delivered to me via U.S. mail, this \_\_\_\_\_ day of November 2004.

\_\_\_\_\_  
[REDACTED] JA  
Defense Counsel



1 MJ: This Article 39(a) session is called to order.

2 TC: This court-martial is convened by Court Martial Convening  
3 Order Number 1, Headquarters, III Corps, dated 14 January 2004, as  
4 amended by Court-Martial Convening Order Number 3, same headquarters,  
5 dated 8 March 2004, copies of which have been furnished to the  
6 military judge, counsel, and the accused, and which will be inserted  
7 at this point into the record.

8 The charges have been properly referred to this court for  
9 trial and were served on the accused on 23 July 2004.

10 The prosecution is ready to proceed in the arraignment of  
11 The United States versus Ambuhl.

12 The accused and the following persons detailed to this  
13 court are present:

14 [REDACTED], **MILITARY JUDGE;**

15 [REDACTED], **TRIAL COUNSEL;** and

16 [REDACTED], **DEFENSE COUNSEL.**

17 The members are absent.

18 [REDACTED] has been detailed reporter  
19 for this court and has been previously sworn.

20 I have been detailed to this Court-martial by [REDACTED]  
21 [REDACTED] Chief of Military Justice, III Corps. I am qualified  
22 and certified under Article 27(b) and sworn under Article 42(a),  
23 Uniform Code of Military Justice. I have not acted in any manner

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1 which might tend to disqualify me in this court-martial.

2 MJ: Thank you. Good afternoon, Specialist Ambuhl.

3 ACC: Good afternoon, ma'am.

4 MJ: You are currently represented by [REDACTED], she is  
5 your detailed military defense counsel, and she is provided to  
6 represent you free of charge. You also have the right to request  
7 another military lawyer to represent you and if that person were  
8 reasonably available, then he or she would also be detailed to your  
9 case to represent you free of charge. If your request for another  
10 military lawyer were granted, however, you would not have the right  
11 to keep the services of [REDACTED] because you're normally  
12 entitled to only one military attorney. You could ask [REDACTED]  
13 [REDACTED] superiors to let you keep her on the case, but your  
14 request would not have to be granted. Now finally, you also have the  
15 right to hire a civilian attorney. It's my understanding that you  
16 have hired [REDACTED] who practices law in the Washington,  
17 D.C. area. Is that right?

18 ACC: Yes, ma'am.

19 MJ: Right. Civilian counsel does have to be provided by you  
20 at no expense to the government and if you hire [REDACTED] to  
21 represent you, then you can keep [REDACTED] on your case to  
22 assist him or you could excuse [REDACTED] and be represented  
23 solely by your civilian counsel.

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1           Now those are your rights to counsel. Do you understand  
2 everything I've told you?

3           ACC: Yes, ma'am.

4           MJ: All right. I note today, well first of all, do you want  
5 to be represented by both [REDACTED] and [REDACTED]?

6           ACC: Yes, ma'am.

7           MJ: All right. Today of course, [REDACTED] alone is in  
8 court and [REDACTED] is not here. The purpose of today's hearing is  
9 merely to set dates and to initiate the court-martial process. Do  
10 you understand that?

11          ACC: Yes, ma'am.

12          MJ: Is it okay with you if we proceed to this arraignment  
13 solely for the purposes of the arraignment just with [REDACTED]  
14 and without [REDACTED]?

15          ACC: Yes, ma'am.

16          MJ: All right. Have you discussed this with [REDACTED]  
17 before today?

18          ACC: Yes, ma'am.

19          MJ: So you are ready to waive his appearance for today only?

20          ACC: Yes, ma'am.

21          MJ: Roger. Okay. [REDACTED] go ahead state your  
22 detailing and qualifications for the record please.

23          DC: Your Honor. I have been detailed to this

1 court-martial by [REDACTED], Regional Defense  
2 Counsel, U.S. Army Trial Defense Service, Region IX. I am qualified  
3 and certified under Article 27(b) and sworn under Article 42(a),  
4 Uniform Code of Military Justice. I have not acted in any manner,  
5 which might tend to disqualify me in this court-martial.

6 MJ: Thank you. I too have been properly certified, sworn, and  
7 detailed to this court-martial. Counsel for both sides appear to  
8 have the requisite qualifications and all personnel required to be  
9 sworn have been sworn.

10 Trial counsel, please indicate the general nature of  
11 the charges in this case.

12 TC: Yes, ma'am. The general nature of the charges in this  
13 case is two specifications of conspiracy in violation of Article 81;  
14 one specification of willful dereliction of duty in violation of  
15 Article 92, three specifications of maltreatment of subordinates in  
16 violation of Article 93, and one specification of indent<sup>ce</sup> acts in  
17 violation of Article 134. The charges were preferred by [REDACTED]  
18 [REDACTED] and forwarded with recommendations as to  
19 disposition by Lieutenant [REDACTED] and investigated by  
20 [REDACTED]. Additional charges were preferred by [REDACTED]  
21 [REDACTED] and forwarded, investigated [REDACTED] and  
22 forwarded with recommendation as to disposition by [REDACTED]  
23 [REDACTED]

1           Your Honor, are you aware of any matter which might be a  
2 ground for challenge against you?

3           MJ: I am not. Does either side desire either to question me  
4 or challenge me?

5           TC: No, ma'am.

6           DC: No, Your Honor.

7           MJ: ██████████ I did not receive a copy of the additional  
8 charges and that may clear it up. Is the additional charge another  
9 specification of maltreatment?

10          TC: Ma'am, the additional charges are one specification of  
11 conspiracy and two specifications of maltreatment and we will make  
12 that copy for you.

13          MJ: All right. After trial please give me a copy of the  
14 additional charge sheet and the referral, okay.

15          TC: Yes, ma'am.

16          MJ: Thanks. Specialist Ambuhl, now we are going to go over  
17 your rights to forum that is your choices to how you can be tried at  
18 this court-martial. You have the right to be tried by a court  
19 consisting of at least five officer members, they would be  
20 commissioned and/or warrant officers. Also, if you request it, your  
21 court or you could be tried by a court consisting of at least one-  
22 third enlisted soldiers, but none of those enlisted soldiers would  
23 come from your company and none of them would be junior in rank to

1 you.

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

3 ACC: Yes, ma'am.

4 MJ: If you are tried by a court with members, the members will  
5 vote by secret, written ballot and two-thirds of the members must  
6 agree before you could be found guilty of any offense. If you were  
7 found guilty, then two-thirds must also agree in voting on a  
8 sentence. If your sentence included confinement for more than  
9 10 years then three-fourth would have to agree. Now you also have  
10 the right to request a trial by a military judge alone, and if your  
11 request is approved, there will be no court members and the judge  
12 alone will decide whether you are guilty or not guilty, and if the  
13 judge finds you guilty, then the judge will determine an appropriate  
14 sentence in your case.

15 Do you understand the difference between trial before  
16 members and trial before military judge alone?

17 ACC: Yes, ma'am.

18 MJ: [REDACTED], are you prepared to enter a choice of  
19 forum today?

20 DC: No, Your Honor. We request to defer choice of forum and  
21 plea, Your Honor.

22 MJ: All right. We'll get to that in a moment. Your request  
23 to defer entry of choice of forum is granted. What that means,

1 Specialist Ambuhl, is, I'll let you continue to talk with [REDACTED]  
2 and [REDACTED] about your options. At sometime prior to the  
3 date of trial, however you'll be required to notify the government  
4 and the court of your choice of how you want to be tried, all right.

5 ACC: Yes, ma'am.

6 MJ: The accused will now be arraigned.

7 TC: All parties to the trial have been furnished with a copy  
8 of the charges. Does the accused want them read?

9 DC: The accused waives reading of the charges, Your Honor.

10 MJ: The reading may be omitted.

11 **[THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]**

12 **[END OF PAGE]**

13

## CHARGE SHEET

### I. PERSONAL DATA

1. NAME OF ACCUSED ( <i>Last, First, MI</i> ) <b>AMBUHL, Megan M.</b>		2. SSN --		3. GRADE OR RANK <b>SPC</b>	4. PAY GRADE <b>E-4</b>
5. UNIT OR ORGANIZATION <b>Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342</b>				6. CURRENT SERVICE	
				a. INITIAL DATE <b>28 Jan 02</b>	b. TERM <b>8 years</b>
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED <b>None</b>		9. DATE(S) IMPOSED <b>N/A</b>
a. BASIC <b>\$1,638.30</b>	b. SEA/FOREIGN DUTY <b>\$100.00</b>	c. TOTAL <b>\$1,738.30</b>			

### II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire with Staff Sergeant [REDACTED], Sergeant [REDACTED], Corporal [REDACTED], Specialist [REDACTED], Specialist [REDACTED], and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Specialist Ambuhl did participate in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 92

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, who knew, of her duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do.

(SEE CONTINUATION SHEET)

### III. PREFERRAL

11a. NAME OF ACCUSER ( <i>Last, First, MI</i> ) [REDACTED]	b. GRADE <b>O-3</b>	c. ORGANIZATION OF ACCUSER <b>HHC, 16<sup>th</sup> MP Bde (Abn) APO AE 09342</b>
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE <b>20 MAR '04</b>

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20<sup>th</sup> day of MARCH, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

\_\_\_\_\_  
*Typed Name of Officer*

HHC, XVIII Abn Corps  
*Organization of Officer*

O-3  
*Grade*

Trial Counsel  
*Official Capacity to Administer Oath  
(See R.C.M. 307(b) - must be a commissioned officer)*

\_\_\_\_\_  
*Signature*

12.

On 20 March 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[Redacted]  
Typed Name of Immediate Commander

HHC, 16<sup>th</sup> MP Bde (Abn) APO AE 09342

Organization of Immediate Commander

O-3

Grade

[Redacted]  
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1845 hours, 21 March, 2004 at Headquarters, 16<sup>th</sup> Military

Designation of Command or

Police Brigade (Airborne) APO AE 09342

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup>

[Redacted]  
Typed Name of Officer

Commanding

Official Capacity of Officer Signing

O-6

[Redacted]  
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Headquarters, III Corps

b. PLACE Victory Base, Iraq  
APD AE 09342-1460

c. DATE JUL 21 2004

Referred for trial to the general court-martial convened by Court-Martial Convening Order Number 1,  
dated 14 January 2004, as amended by Court-Martial Convening Order Number 3,  
dated 8 March 2004, subject to the following instructions: NONE

By Command of Lieutenant General Metz:  
Command or Order

[Redacted]  
Typed Name of Officer

Chief, Criminal Law Division  
Official Capacity of Officer Signing

Captain/O-3

Grade

[Redacted]  
Signature

15.

On 23 July, 2004, I (~~caused to be~~) served a copy hereof on (each of) the above named accused.

[Redacted]  
Typed Name of Trial Counsel

[Redacted]  
Grade or Rank of Trial Counsel

[Redacted]  
Signature

FOOTNOTES: 1— When an appropriate commander signs personally, inapplicable words are stricken.  
2— See R.C.M. 601(e) concerning instructions. If none, so state.

12.

On \_\_\_\_\_, \_\_\_\_\_, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

\_\_\_\_\_  
Typed Name of Immediate Commander

\_\_\_\_\_  
Organization of Immediate Commander

\_\_\_\_\_  
Grade

\_\_\_\_\_  
Signature

**IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY**

13.

The sworn charges were received at \_\_\_\_\_ hours, \_\_\_\_\_ at \_\_\_\_\_  
Designation of Command or

\_\_\_\_\_  
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE<sup>+</sup> \_\_\_\_\_

\_\_\_\_\_  
Typed Name of Officer

\_\_\_\_\_  
Official Capacity of Officer Signing

\_\_\_\_\_  
Grade

\_\_\_\_\_  
Signature

**V. REFERRAL; SERVICE OF CHARGES**

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE (YYYYMMDD)

III Corps

Victory Base, Iraq  
APO AE 09342-1400

20041028

Referred for trial to the Summary court-martial convened by this detail of [REDACTED]

[REDACTED] the summary court-martial officer on

28 October, 2004, subject to the following instructions: None

By Command of Lieutenant General Metz  
Command or Order

\_\_\_\_\_  
Typed Name of Officer

Chief, Criminal Law Division  
Official Capacity of Officer Signing

O-3

\_\_\_\_\_  
Signature

15.

On 29 OCTOBER, 2004, I (caused to be) served a copy hereof on (each of) the above named accused.

\_\_\_\_\_  
Typed Name of Trial Counsel

\_\_\_\_\_  
Grade or Rank of Trial Counsel

\_\_\_\_\_  
Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.  
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

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CONTINUATION SHEET DD Form 458, AMBUHL, Megan M., SPC,  
HHC, 16th MP Bde (Abn), III Corps, Victory Base, Iraq APO AE 09342

Item 10 (continued)

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 93

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 134

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist [REDACTED], and Private First Class [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

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## CHARGE SHEET

### I. PERSONAL DATA

1. NAME OF ACCUSED ( <i>Last, First, MI</i> ) <b>AMBUHL, Megan M.</b>		2. SSN	3. GRADE OR RANK <b>SPC</b>	4. PAY GRADE <b>E-4</b>
5. UNIT OR ORGANIZATION <b>Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342</b>			6. CURRENT SERVICE	
			a. INITIAL DATE <b>28 Jan 02</b>	b. TERM <b>8 years</b>
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
<b>\$1,638.30</b>	<b>\$100.00</b>	<b>\$1,738.30</b>	<b>None</b>	
<b>ADDITIONAL</b>			<b>N/A</b>	

### II. CHARGES AND SPECIFICATIONS

10. CHARGE | **VIOLATION OF THE UCMJ, ARTICLE 81**

THE SPECIFICATION: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist [REDACTED], Private First Class [REDACTED], and others to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Corporal Graner did place naked detainees in a human pyramid.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93

SPECIFICATION 1: In that Specialist Megan M. Ambuhl, U.S. Army, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees being forced to masturbate in front of other detainees and soldiers.

(SEE CONTINUATION SHEET)

### III. PREFERRAL

11a. NAME OF ACCUSER ( <i>Last, First, MI</i> ) [REDACTED]	b. GRADE <b>O-3</b>	c. ORGANIZATION OF ACCUSER <b>HHC, 16<sup>th</sup> MP BDE(ABN) APO AE 09342</b>
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE <b>13 Jul 04</b>	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 13 day of July, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

[REDACTED] <i>Typed Name of Officer</i>	<b>16<sup>TH</sup> MP BDE (ABN)</b> <i>Organization of Officer</i>
<b>O-3</b> [REDACTED] <b>CPT, JA</b>	Trial Counsel <i>Official Capacity to Administer Oath</i> (See R.C.M. 307(b) – must be a commissioned officer)

12. On 13 July 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)  
[Redacted] HHC, 16<sup>th</sup> MP Bde (Abn) APO AE 09342  
Typed Name of Immediate Commander Organization of Immediate Commander

[Redacted] O-3  
[Redacted] CPT, MP

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0900 hours, 13 JUL 2004 at Headquarters, 16<sup>th</sup> Military  
Police Brigade (Airborne) APO AE 09342  
Designation of Command or  
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

[Redacted] FOR THE <sup>1</sup>  
Commanding  
Typed Name of Officer Official Capacity of Officer Signing

[Redacted] O-6

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY Headquarters, III Corps b. PLACE Victory Base, Iraq c. DATE (YYYYMMDD) JUL 21 2004  
APD AE 09342-1400

Referred for trial to the general court-martial convened by Court-Martial Convening Order Number 1, dated 14 January 2004, as amended by Court-Martial Convening Order Number 3, dated 8 March 2004, subject to the following instructions: <sup>2</sup>

To be tried in conjunction with the original charges.  
By Command of Lieutenant General Metz  
Command or Order

[Redacted] Chief, Criminal Law Division  
Typed Name of Officer Official Capacity of Officer Signing  
Captain / O-3  
Grade  
[Redacted] [Signature]  
Signature

15. On 23 July 2004, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted] [Redacted]  
Typed Name of Trial Counsel Grade or Rank of Trial Counsel  
[Redacted] [Redacted]  
Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.  
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

CONTINUATION SHEET (Additional Charges) DD Form 458, AMBUHL, Megan M.,  
SPC HHC, 16th MP Bde (Abn), III Corps, Victory Base, Iraq APO AE  
09342

Item 10 (continued)

SPECIFICATION 2: In that Specialist Megan M. Ambuhl, U.S. Army, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 23 October 2003, did maltreat several Iraqi detainees, persons subject to her orders, by participating in a photograph with Private First Class [REDACTED] depicting Private First Class [REDACTED] holding a naked detainee by a leash wrapped around said detainee's neck and by watching Private First Class [REDACTED] hold a naked detainee by a leash wrapped around said detainee's neck.

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1 TC: The charges are signed by [REDACTED],  
2 a person subject to the Code as accuser; and the additional charges  
3 are signed by [REDACTED], the charges and the additional  
4 charges were properly sworn to before a commissioned officer of the  
5 armed forces authorized to administer oaths; and are properly  
6 referred to this court for trial by Lieutenant General Thomas F.  
7 Metz, the Convening Authority.

8 MJ: Very well, Specialist Ambuhl, counsel, please rise.  
9 [The accused and counsel did as directed.]

10 MJ: Specialist Megan M. Ambuhl, how do you plead? Before  
11 receiving your plea, I advise you that any motions to dismiss or to  
12 grant any other appropriate relief should be made at this time. Your  
13 defense counsel will speak for you.

14 DC: Your Honor, the defense request to defer plea. Several  
15 motions have been filed with this court, Your Honor. We request to  
16 defer plea until the outcome of those motions.

17 MJ: Roger. Have a seat, please.

18 [The accused and counsel did as directed.]

19 MJ: All right. Let me put on the record the substance of the  
20 802 that we held just a minute ago in my office. Present were [REDACTED]  
21 [REDACTED], [REDACTED] and myself. A couple of things, I was  
22 informed that [REDACTED] has been retained as civilian counsel  
23 and will be present for the trial even if tried here in Baghdad,

1 Iraq. However, Specialist Ambuhl was willing to waive his appearance  
2 for the purposes of the arraignment. The second thing that we talked  
3 about is that it's my understand<sup>ing</sup> that [REDACTED], who will be the  
4 judge of record in this case, has set the 23rd of August as a date  
5 for motion hearing in Mannheim, Germany and [REDACTED] informed  
6 me that she does expect [REDACTED] to present for that motion hearing  
7 and of course Specialist Ambuhl and counsel will be there as well.  
8 Past that, I'll let [REDACTED] set any future dates as necessary for  
9 either additional motions or trial. I was also told that the defense  
10 has requested an expert on psychological affects of working in  
11 prisons to the effect of why good people may do bad things. The  
12 government has not yet acted on that and of course we're getting down  
13 to the wire because you ought to be able to litigate that motion on  
14 the 23rd. It's my understand<sup>ing</sup> that defense will start travel from  
15 Tikrit on or about 19th, so government you are hereby ordered to get  
16 that to the CG and have action taken one way or the other no later  
17 than the 18th of August, all right.

18 TC: Yes, ma'am.

19 MJ: Defense, if I were you I would just plan on it being  
20 denied so that you can raise the motion before you scoot off to  
21 Germany. I realize that it takes several days to get from Tikrit to  
22 Germany. That was the substance of everything that my notes showed  
23 that we talked about, is there anything counsel that you want to add?

1 TC: No, ma'am.

2 DC: No, Your Honor.

3 MJ: Very well. All right. Specialist Ambuhl, the purpose of  
4 today as I said was to start the pretrial process, it's called an  
5 arraignment and it's essentially where a judge calls for the plea.  
6 You didn't need to enter your plea today, but I called for your  
7 plea.

8 As the accused in a court-martial, you have the absolute  
9 right to be present at every session of your court and that's whether  
10 it's a pretrial session like the one we just held or a pretrial  
11 session like you are going to hold on the 23rd of August or the trial  
12 or even any post-trial session. The one exception to your right to  
13 be present for trial is if you were to go AWOL between now and the  
14 date that is set for trial, then the government could opt to try you  
15 even in your absence. It wouldn't be a pretty sight for [REDACTED]  
16 [REDACTED] or [REDACTED] because they would be defending an empty  
17 chair. The judge would enter a plea of not guilty for you and you  
18 would go with an officer panel. I don't expect that you are going to  
19 go AWOL frankly from Iraq, I don't know where you would go AWOL, all  
20 right. The reason that I tell you that is that I inform everybody of  
21 that I have arraigned because it's critically important for you to  
22 remain in close contact with [REDACTED] and [REDACTED] between  
23 now and the dates you've set for pretrial hearings and for the trial

1 so that you could be present on the day of trial to assist in your  
2 defense. Do you understand that?

3 ACC: Yes, ma'am.

4 MJ: All right. Is there any thing else we can take up here  
5 today then?

6 TC: No, ma'am.

7 DC: No, Your Honor.

8 MJ: Court is in recess.

9 **[The court-martial recessed at 1312, 11 August 2004.]**

10

1 [The Article 39(a) session was called to order at Mannheim, Germany,  
2 at 1505, 23 August 2004.]

3 MJ: Court is called to order. The following people are again  
4 present: the accused, [REDACTED] and [REDACTED].

5 [REDACTED], you weren't at the arraignment of the  
6 accused?

7 ATC: That's correct, Your Honor.

8 MJ: Put your qualifications and detailing on the record,  
9 please.

10 ATC: Yes, my name is [REDACTED]. I've been  
11 detailed to this court-martial by [REDACTED], Chief of  
12 Military Justice, III Corps. I'm qualified and certified under  
13 Article 27(b) and sworn under Article 42(a), Uniform Code of Military  
14 Justice. I have not acted in any manner which might tend to  
15 disqualify me in this court-martial.

16 MJ: And [REDACTED], you weren't here, were you?

17 CDC: I was not here, Your Honor.

18 MJ: Please put your qualifications on the record.

19 MJ: [REDACTED]; I'm the retained counsel for Specialist  
20 Megan Ambuhl. I'm a member in good standing of the bars of the  
21 Commonwealth of Virginia and Washington D.C. and the Court of  
22 Military Appeals, United States Supreme Court, all federal appellate

1 courts. I've handled approximately 100 court-martials and also was  
2 counsel in the case of VCD, the Berlin Democratic Club versus the  
3 Department of the Army.

4 [The civilian defense counsel was sworn.]

5 MJ: You've not acted in any manner inconsistent with your  
6 duties as defense counsel in this case, have you, [REDACTED]?

7 CDC: No, sir.

8 MJ: And Specialist Ambuhl, at the prior hearing with, I believe  
9 [REDACTED], she discussed your rights to counsel with  
10 you. Do you recall that?

11 ACC: Yes, sir.

12 MJ: And at that time, did you indicate you wanted both [REDACTED]

13 [REDACTED]?

14 ACC: Yes, sir.

15 MJ: But at that time, you waived the presence of [REDACTED],  
16 true?

17 ACC: [No verbal response.]

18 MJ: You didn't----

19 ACC: Oh, yes, sir, I did.

20 MJ: I'm [REDACTED] I've been properly certified  
21 and sworn and detailed to this court-martial. As I'm sure both sides  
22 are aware, that I'm also the military judge in the companion cases,

1 but I'm not aware of any grounds that might be a challenge against  
2 me. Does either side desire to question or to challenge me at this  
3 time?

4 TC: No, Your Honor.

5 CDC: No, Your Honor.

6 MJ: And of course, both sides are aware of my status in the  
7 other cases, and if there is an issue, I would expect either side  
8 that wants to raise the issue raises it on their own.

9 [REDACTED] has been detailed to  
10 this court-martial as court reporter and has been previously sworn.

11 I believe that accounts for all the parties.

12 I'll also note for the record that this, as I told all  
13 counsel, this case was moved to Mannheim at the request of the  
14 defense because they were going to be in Germany conducting  
15 discovery. The fact that this hearing is being conducted in Mannheim  
16 in no way indicates the eventual situs of trial and has no  
17 precedential value on any change of venue or change of place of trial  
18 motion.

19 Defense, I understood you have some motions you wish to  
20 make?

21 CDC: That's correct, Your Honor. The first motion will be  
22 presented by [REDACTED]

1 MJ: Okay, that's been marked as Appellate Exhibit I, which is  
2 the request to dismiss the additional charge. Is that correct,

3

4 DC: That's correct, Your Honor.

5 MJ: The failure to comply with R.C.M. 405 alpha in that they  
6 were not investigated.

7 DC: Correct, Your Honor.

8 MJ: Government, do you have a written response?

9 ATC: Yes, Your Honor, it's been previously provided.

10 MJ: That's Appellate Exhibit II. It would appear to the court  
11 that this is primarily a legal issue. Do both sides agree?

12 ATC: Yes, Your Honor.

13 DC: Yes, Your Honor.

14 MJ: And that the facts are really not in dispute?

15 ATC: That is correct, Your Honor.

16 MJ: Okay, I have a copy of the--as I understand it, the  
17 additional charges were not preferred at the time of the 32, but were  
18 preferred and referred subsequent to the 32.

19 ATC: That is correct, Your Honor.

20 MJ: The defense motion includes an exhibit which include the  
21 Article 32 officer's report and the transcript. Any objection to me  
22 considering both those documents?

1 ATC: No, Your Honor.

2 MJ: Defense?

3 ATC: No, Your Honor.

4 MJ: Now [REDACTED] you would agree the defense has the  
5 burden on this motion?

6 DC: Yes, Your Honor, we do.

7 MJ: It would strike to the court to do it by each  
8 specification.

9 DC: Yes, Your Honor.

10 MJ: Now, the specification of Additional Charge I is a  
11 conspiracy offense on or about 8 November. And you allege there was  
12 no evidence presented on that issue at the 32?

13 DC: As to the conspiracy, Yes, Your Honor. The defense's  
14 position on that is that in order for the government ultimately to  
15 meet its burden of proof, not only do they need to meet the elements  
16 of the conspiracy, but also those of the underlying offense, Your  
17 Honor. And this particular conspiracy was not investigated by the  
18 investigating officer.

19 MJ: What element wasn't addressed?

20 DC: Your Honor, the two elements that are required, that the  
21 accused entered into an agreement with one or more persons to commit  
22 an offense. And secondly, that while the agreement continued to

1 exist and while the accused remained a party to that agreement, the  
2 accused, or at least one of the co-conspirators, performed an overt  
3 act.

4 Your Honor, we ask the court to take into consideration  
5 with regard to that charge the fact that the investigating officer,  
6 in fact, recommended that in order to go forward with that, the  
7 government produce more evidence, in effect, recommending that that  
8 charge not be referred over to a general court-martial.

9 MJ: Well, now apparently, we need to refer back to--you're  
10 talking about the additional charge, or it's an original charge?

11 DC: Your Honor, I'm sorry, the underlying predicate.

12 MJ: Of original Charge III?

13 DC: Yes, Your Honor, and I mention that to the court because  
14 that is the way the position of the government is presented in their  
15 responsive motion. Simply focusing on Additional Charge I and its  
16 Specification, the two elements for a conspiracy were not  
17 investigated by the investigating officer, Your Honor.

18 MJ: Well, you would agree that the overt act was, wasn't it?

19 DC: Yes, Your Honor.

20 MJ: Government, what evidence--was there an agreement  
21 introduced at the 32?

1           ATC: We believe that the evidence found in the sworn statements  
2 of the co-conspirators, that is, the statement of--the 32 officer  
3 considered the statement of [REDACTED],  
4 [REDACTED] and [REDACTED], Your Honor, as well as various  
5 pictures showing what occurred the night of November 7th and 8th.  
6 The government did not attach the statements to its motion. We did  
7 attach photographs but can provide the statements of the co-accused  
8 if the court would like.

9           MJ: Well, what you gave me is a picture of a, apparently, naked  
10 detainee with an individual holding a dog leash around his head.

11           ATC: That's correct, Your Honor.

12           MJ: A statement from a [REDACTED].

13           ATC: That's correct.

14           MJ: The SJA recommendation.

15           ATC: And then six photographs, Your Honor, that's correct. And  
16 we believe that those photographs are a sampling of some of the  
17 evidence that we've shown of what happened the night of November  
18 7th----

19           MJ: Defense, do you take any issue that all of this was  
20 presented to the 32 officer?

21           DC: It was presented, Your Honor, no issue there.

1 MJ: And are there any other things you say were presented to  
2 the 32 officer you want me to consider?

3 ATC: There were multiple statements of the co-conspirators. We  
4 can provide the court with a copy of those statements, Your Honor.

5 MJ: It's your case, [REDACTED], not mine.

6 ATC: I understand. The government would request that we provide  
7 those after, unless you want those right now. We could take a quick  
8 break and I can present those to you, Your Honor. [Pause.] It's the  
9 government's fault. It was trying to save paper as far as how much  
10 was copied, but I understand.

11 MJ: There's a lot of paper. So, the witness statements were  
12 considered by whom?

13 ATC: By the 32 officer.

14 MJ: No, but which witness statements? I'm sorry.

15 ATC: [REDACTED] and [REDACTED], as  
16 well as an additional one of PFC England.

17 MJ: But obviously, if you want me to consider them, you've got  
18 to give them to me.

19 ATC: That's correct, Your Honor.

20 MJ: The 32 officer report refers to them, but I don't know what  
21 they are without seeing them.

1 Well, let me ask you about...let's move on, because what  
2 you're telling me is, he considered the factual predicate based on  
3 those statements, [REDACTED], that's the government's  
4 position?

5 ATC: That's correct, Your Honor. And the government can get a  
6 copy of those statements as attachments.

7 MJ: Make them a separate exhibit, Appellate Exhibit III.

8 [REDACTED], in your brief, you allege that one of the  
9 legal deficiencies here is that the accused was not informed of the  
10 nature of each uncharged offense investigated?

11 DC: That's correct, Your Honor.

12 MJ: And where does that requirement come from?

13 CDC: Your Honor, that requirement is from the Manual, if I may,  
14 inquire to the court which paragraph you're referencing of the brief,  
15 Your Honor?

16 MJ: Paragraph 3--or excuse me, page 3, second paragraph, second  
17 full paragraph under F.

18 DC: Yes, Your Honor. Your Honor, as cited, Article 32,  
19 subparagraph D of the UCMJ.

20 MJ: Government, what do you say about that? Any evidence that  
21 the accused was informed?

1           ATC: No, Your Honor. As far as the government's position, is  
2 that that is something that was not done at the Article 32  
3 investigation. However, it is our position that substantial  
4 compliance is the legal test now, and that the Article 32  
5 investigation, by investigating the subject matter of the night of  
6 November 8th has substantially complied with Article 32 of the UCMJ.

7           MJ: But don't you put the defense in the position of, they go  
8 to an Article 32 and they defend themselves against something they're  
9 unaware of?

10          ATC: That is correct, Your Honor.

11          MJ: How hard is it to tell them, "Oh, by the way, I'm looking  
12 at this, too?"

13          ATC: That's correct, Your Honor, that was not done.

14          MJ: But you think they're on notice anyway.

15          ATC: We believe by the subject matter of the investigation and  
16 by the facts educed at the investigation, that yes, that these facts  
17 came up and that they were on notice that----

18          MJ: They had to defend themselves against these facts? Well,  
19 how were they on notice of that? Was Specialist Ambuhl supposed to  
20 say, "Oh, by the way, I want to present a defense on this 8 November  
21 incident that you've not charged me with? And in case you do charge

1 me with it later on, and get back to you?" Is that kind of the  
2 government theory here?

3 ATC: Well, the government's theory here is that during the  
4 investigation, multiple facts were educed, to include the statements  
5 of the co-accused and the photos, as well. That those facts educed  
6 certain charges that were preferred later on, and yes, technically,  
7 yes, step two of UCMJ, paragraph D is not met in this case. That is  
8 correct.

9 MJ: And that's a statutory right backed by Congress.

10 ATC: That's correct, Your Honor, but we believe that it still  
11 substantially complies with the rules. Now, based on the case law  
12 that's cited in the defense brief, the government would agree that if  
13 they want the Article 32 reopened----

14 MJ: We're talking about remedies.

15 ATC: Right.

16 MJ: We're still on wrongs here. We'll get remedies in a  
17 second. You may not agree, but it strikes to the court that it's a  
18 little difficult to defend yourself against something you don't know  
19 about.

20 ATC: That is correct, Your Honor.

21 MJ: I mean, quite frankly, if you look at the underlying  
22 offense, that apparently, the government theory is, on Charge III,

1 that by watching somebody else commit an offense, the accused  
2 committed an offense.

3 ATC: We believe that she was complicit in that offense----

4 MJ: That's not what you said, you said "...by watching naked  
5 detainees in a pyramid of..." so she somehow is guilty of  
6 maltreatment, because by watching some other people commit  
7 maltreatment.

8 ATC: That's correct, under an aider and abettor theory, yes.

9 MJ: So what you're saying is, there's more to this than you've  
10 charged in the specification.

11 ATC: As far as....

12 MJ: I'm talking about Charge III.

13 ATC: Yes, we did not spell out aider and abettor----

14 MJ: I'm on a side issue here [REDACTED], I understand  
15 that. But it's black letter law that mere presence at a scene of a  
16 crime is not an offense.

17 ATC: That is correct, Your Honor.

18 MJ: Unless you have a duty to intervene.

19 ATC: That's correct.

20 MJ: And she is a specialist.

21 ATC: That is correct, and a military police----

1 MJ: Yes, but this isn't charged that way, it's charged as a  
2 maltreatment by watching somebody else commit an offense.

3 ATC: That is correct, Your Honor.

4 MJ: So everybody who watched somebody commit this offense is  
5 equally guilty as the person who committed it.

6 ATC: Unless they had a duty to intervene, that is correct, Your  
7 Honor. And we believe that due to her position at Abu Ghraib, she  
8 had a duty to intervene, that is correct.

9 MJ: And that's a maltreatment and not a dereliction of duty.

10 ATC: That is correct, Your Honor.

11 MJ: That's the government theory, anyway.

12 ATC: Yes, Your Honor.

13 MJ: Okay. And when I say "Okay," I mean okay, in that I  
14 understand the government theory, not okay, that I'm agreeing  
15 necessarily that's the state----

16 ATC: Oh, we understand, sir.

17 MJ: Okay. But there's no compliance with 32(d)(2) in any of  
18 these.

19 ATC: That is correct, Your Honor.

20 MJ: So, if I hold that that's a substantial right of the  
21 accused, then the remedy is....

22 ATC: The remedy is that we reopen the Article 32, yes, sir.

1 MJ: Defense, you want me to dismiss everything.

2 DC: Yes, Your Honor.

3 MJ: Why?

4 DC: Your Honor-----

5 MJ: I know why you want me to, but I'm just saying is, isn't  
6 the real remedy here if you have a defective--isn't the normal remedy  
7 for a defective 32 simply to return it to a new--either the  
8 government can choose to dismiss the charges, or return it to the 32  
9 officer to complete the investigation with all the additional  
10 charges.

11 DC: Those are possible remedies, Your Honor.

12 MJ: Right.

13 DC: If I can be permitted, I guess, further argument based off  
14 of the brief. I've laid it out in the brief as to why that is  
15 certainly not an appropriate remedy in this case, Your Honor.

16 MJ: Tell me why.

17 DC: The prejudice to Specialist Ambuhl is the significant  
18 amount more of jail time, Your Honor. The government has said in  
19 their motion that she has not shown what benefit she can receive at a  
20 32, and that's certainly not the standard at all, but rather, what  
21 prejudice is there to the accused. If you grant, rather, a standard  
22 traditional remedy, Your Honor, of simply reopening the Article 32,

1 Specialist Ambuhl continues to be prejudiced. She's still in Iraq.  
2 She's still pending charges. The government would ask you,  
3 basically, to reopen a 32 from back in May. The IO issued his  
4 findings on May 9th, and Specialist Ambuhl has been facing these  
5 original charges since the 20th of March. So, there's significant  
6 prejudice to her, to the development of her case and rescheduling a  
7 32, reopening it, getting back the Reserve Article 32 officer, and  
8 just coordination with the parties, Your Honor. And that's something  
9 that Specialist Ambuhl should not have to suffer because of the  
10 government's miscalculations or misestimations of the case. Rather,  
11 the case law cited in the defense's brief, Your Honor, allows you the  
12 authority to dismiss with prejudice, to tell the government that this  
13 is not acceptable, to tell the government that when an IO comes down  
14 with his findings on 9 May, you do not wait until the 13th of July to  
15 add additional charges conveniently one week before referral. That's  
16 the appropriate remedy, Your Honor.

17 MJ: [REDACTED] if I dismiss these things, and then  
18 government says, "Fine, we'll prefer them again, and then you'll have  
19 two trials."

20 DC: Your Honor, we ask you to dismiss those three with  
21 prejudice, Your Honor.

1 MJ: Why is this case any different than those other cases?  
2 You're saying the prejudice your client is suffering is the length of  
3 time. I understand that. But that's inherent whenever you get a new  
4 32, true?

5 DC: Yes, Your Honor. The additional prejudice is the jail  
6 time.

7 MJ: Well, yes, I know, but that's also true of every one of  
8 these cases, is that if you go back and reinvestigate or go to a  
9 proper 32, the accused has always got greater exposure, right? I  
10 mean, I'm just trying to figure out why this case is any different  
11 than any of these other cases, that the remedy is normally--you said  
12 the 32 was defective, so you get a new 32.

13 DC: Yes, Your Honor. This case, if I may have a moment of the  
14 court's indulgence, is analogous to United States--sorry, Your Honor,  
15 I've cited a case in my brief in which the appellate courts thought  
16 that the appropriate remedy was dismissal, when there was over 2  
17 months of delay between the end of the Article 32 and the initiation  
18 of the charges. And that case is analogous to the present situation  
19 that we find ourselves in, Your Honor, that months after this 32 has  
20 been opened and investigated, the defense team, in effect, Specialist  
21 Ambuhl should not be prejudiced by this. So the appellate courts  
22 have already said that dismissal is an appropriate remedy, 002521

1 particularly when you've got 2 months of inactivity. The government,  
2 in their responsive motion, Your Honor, concedes that it's the same  
3 factual predicate for these offenses. So even with that, the  
4 government knew of these offenses as early as 20 March. So it should  
5 be a, "It's okay, government, we'll let it happen and we'll let the  
6 defense go through the motions of rehashing out this 32." Sir,  
7 that's not an appropriate remedy when the case is this far gone, Your  
8 Honor. The government--a message needs to be sent to the government  
9 that you do not add on three additional charges with 3 more years  
10 possible maximum confinement a week before referral, because after  
11 the fact, you found that you have enough evidence. That's why  
12 dismissal is appropriate, Your Honor.

13 MJ: Government, the date I have on the report is 8 May 2004.

14 ATC: That's correct, Your Honor.

15 MJ: It takes 2 months to prefer the additional charge?

16 ATC: That's correct, Your Honor. The government----

17 MJ: I mean, the defense is saying that the government just sits  
18 around for 2 months and says, "Oh, by the way, let's add these other  
19 charges." Any reason for that delay?

20 ATC: Yes, Your Honor. What happened after the 8 May timeframe  
21 is two things. First of all, you have a change of the trial counsel  
22 trying the case. Both myself and ██████████ were put on after----

1 MJ: When were you put on?

2 ATC: I was put on May 26th, and [REDACTED] was put on June  
3 22d. Then, the discussion was to add these additional charges based  
4 upon the evidence at the Article 32 after I reviewed. However, to  
5 say there was no activity by the government, the Fay investigation  
6 was ongoing, the Major General Fay investigation into the MI  
7 involvement----

8 MJ: Does that have legal relevance on the 32?

9 ATC: Only to this amount, Your Honor, and this might sound  
10 somewhat self-serving, but we were actually waiting to see if there  
11 was the exculpatory-type of evidence that was being claimed that MI  
12 was telling them. So before we preferred the additional charges, we  
13 were actually waiting to see if this exculpatory information was  
14 coming out. After we, once again, found that the Fay investigation  
15 kept getting pushed back, kept getting pushed back and pushed back,  
16 after we did not find any more exculpatory information, yes, the  
17 government went ahead, recommended and the command preferred  
18 additional charges. So that's the legal relevance of the Fay  
19 investigation, that we were actually waiting to see if this  
20 exculpatory information was going to come out. We have not found  
21 that type of exculpatory information----

002523

1 MJ: But you're still back--what I come back to is, [REDACTED]  
2 [REDACTED], you have a 32 that was finished in May.

3 ATC: That's correct, Your Honor.

4 MJ: Based on that information, more than 2 months later, you  
5 preferred additional charges.

6 ATC: That's correct.

7 MJ: Regardless of whether you've got exculpatory information  
8 out there. Meanwhile, the accused and then--what was the date of  
9 referral?

10 ATC: The date of referral was July 20th, I believe, Your Honor.

11 MJ: And 8 days later, it's referred.

12 ATC: That's correct. I'm simply just documenting what our  
13 thought process was through that 2-month timeframe.

14 MJ: Meanwhile, Specialist Ambuhl is sitting there waiting for  
15 trial.

16 ATC: Yes, Your Honor, that's correct.

17 MJ: And although each case stands on its own, would it be fair  
18 to say that at least four of these cases have been referred by mid-  
19 May and arraigned?

20 ATC: That's correct, four of the seven, yes, sir.

21 MJ: Okay.

1 ATC: There's another case that, once again, Specialist [REDACTED] a  
2 [REDACTED], which was actually referred the same day as Specialist Ambuhl  
3 with the same thought process.

4 MJ: But I'm just saying, there's no delay of the referral of  
5 those other cases because there may be exculpatory evidence coming  
6 out.

7 ATC: That's correct, Your Honor. They were already referred and  
8 getting pushed through by the time I showed up on these cases, Your  
9 Honor.

10 MJ: Okay.

11 DC: Your Honor?

12 MJ: Yes, [REDACTED].

13 DC: If I may, the government's argument seems to defy logic a  
14 little bit. Based on the trial counsel's representations that they  
15 were waiting for this potentially exculpatory evidence when they  
16 really had that exculpatory evidence in front of them, since the  
17 investigating officer recommended dismissal on the underlying factual  
18 predicate, Your Honor. So, they, in fact, had a favorable, at least  
19 to Specialist Ambuhl, favorable recommendation on two of the four  
20 original charges. Yet, [REDACTED] is telling you now that  
21 they waited this 2-month period for some mystical exculpatory  
22 evidence, but ultimately decided to go forward anyway, Your Honor,

1 and that--it's counterintuitive to what actually happened, Your  
2 Honor.

3 ATC: But I'm saying, as far as the Article 32 officer's  
4 recommendations that additional evidence be put forward, it's the  
5 government's position that if the 32 officer had explained to him  
6 aider and abettor theory as will be the instructions to the panel,  
7 that he, too, would have agreed that we had sufficient evidence on  
8 those two charges.

9 MJ: Let me back up here for a second, [REDACTED]  
10 because it looks to me is, you took Charge III and made that into a  
11 conspiracy specification, Additional Charge I. And then you took....

12 ATC: The conspiracy and made it into the underlying offense of  
13 Additional Charge II, yes, Your Honor.

14 MJ: And then....

15 ATC: Additional Charge II----

16 MJ: Specification 2 of Additional Charge II is the  
17 Specification of Charge I.

18 ATC: Excuse me, Your Honor?

19 MJ: Well, what I'm saying is, it seems to me you've taken the  
20 original charges and simply reworded them into three additional  
21 charges.

1 ATC: Well, no, Your Honor, one is the conspiracy and its  
2 underlying offense. The other one, we took and we reversed----

3 MJ: Well, let me just back up.

4 ATC: There was some in artful drafting, I will admit that.

5 MJ: Well, the Specification of Additional Charge I, the overt  
6 act, is the basis of the original Charge III, correct?

7 ATC: That's correct, Your Honor.

8 MJ: In the Specification of Additional Charge II, that appears  
9 to be very similar, in fact, you're going to have to tell me the  
10 difference here of indecent act of Charge IV, original Charge IV.  
11 And, Specification 2 of the Additional Charge is the overt act of  
12 Charge I.

13 ATC: That's correct, Your Honor. The government does not  
14 believe it's inconsistent to charge someone who was charged with  
15 conspiracy with the same underlying offense of that conspiracy.

16 MJ: Now, but what I don't understand here, [REDACTED],  
17 is that on 20 March 04, and as you well know, is you're the trial  
18 counsel standing before me.

19 ATC: Yes, Your Honor.

20 MJ: On 20 March 04, it would seem to me as, the government had  
21 all these facts for both these charges at that time, long before the  
22 32.

1 ATC: That's correct, Your Honor.

2 MJ: And that because somebody didn't do a very good job  
3 drafting charges, in the government's opinion, you added three more  
4 charges after the 32 without telling the accused about it. Arguably,  
5 they're multiplicitous anyway, but that's not the point.

6 ATC: Right.

7 MJ: I'm just trying to figure out, so really, it's not a----

8 ATC: Right, not telling the accused about them at the Article  
9 32, that's correct, Your Honor.

10 MJ: As Congress said you're supposed to.

11 ATC: Right.

12 MJ: And again, I come back to, we're not talking about 8 May  
13 here, we're talking about 20 March.

14 ATC: That's correct, Your Honor.

15 MJ: These charges could have been preferred on 20 March, just  
16 like anything else. Instead, you wait until July.

17 ATC: That's correct, Your Honor.

18 MJ: Does either side have anything further?

19 ATC: No, Your Honor.

20 DC: No, Your Honor.

21 MJ: Okay, I find that the government did not comply with  
22 Article 32(d)(2), in that Additional Charge I and Additional Charge

1 II were not investigated. The accused was not placed on notice of  
2 those charges, and as such, the court finds that R.C.M. 405(a) was  
3 not substantially complied with. The court will not direct they be  
4 dismissed, but if the government wishes to pursue them, they are to  
5 be returned to the convening authority to be directed to be properly  
6 investigated under R.C.M. 405.

7 Does everybody understand the court's ruling?

8 ATC: Yes, Your Honor.

9 DC: Yes, Your Honor.

10 MJ: Defense, do you intend to request a 32 in these charges?

11 DC: Yes, Your Honor.

12 MJ: Government, do you intend to have a new 32 in these  
13 charges?

14 ATC: Yes, Your Honor.

15 MJ: Then it would strike to the court that we can do nothing  
16 more in this case until that's completed.

17 ATC: That's correct.

18 DC: Yes, Your Honor.

19 MJ: The court's in recess.

20 [The session recessed at 1535, 23 August 2004.]

21 [END OF PAGE.]

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1 [Court was called to order at 0758, 25 August 2004.]

2 MJ: Court is called to order. All parties are again present  
3 that were present when the court recessed, with the exception of [REDACTED]  
4 [REDACTED] won't be here today?

5 DC: That's correct, Your Honor.

6 MJ: Have you talked it over with your client as to whether she  
7 wishes to proceed without him being present?

8 DC: I have, Your Honor. She does wish to proceed without [REDACTED]  
9 [REDACTED] today.

10 MJ: Specialist Ambuhl, you know you have the right to have  
11 both your attorneys with you at every hearing. Do you understand  
12 that?

13 ACC: Yes, sir.

14 MJ: And apparently, [REDACTED] will not be here today. Do you  
15 know that?

16 ACC: Yes, sir.

17 MJ: You obviously know that since he's not sitting next to you.  
18 Do you consent to this hearing proceeding today without him being  
19 present?

20 ACC: Yes, sir.

1 MJ: And you've talked it over with [REDACTED] and you  
2 know what you're doing and fully consent to going forward today  
3 without him?

4 ACC: Yes, sir.

5 MJ: Now, at an 802, counsel, government, you indicated that  
6 perhaps the government has reconsidered its position, vis-à-vis the  
7 additional charge?

8 ATC: Yes, Your Honor.

9 MJ: And what is the government's new position?

10 ATC: The government will dismiss without prejudice, Your Honor,  
11 the additional charges at this time.

12 MJ: Any objection to the motion?

13 DC: Your Honor, the defense requests that those charges be  
14 dismissed with prejudice.

15 MJ: Well, really, at this point, are they even technically  
16 before the court?

17 ATC: We believe they are. They've been referred----

18 MJ: No, but from a legal perspective, kind of hyper technical,  
19 but from a legal perspective, is that the court indicated that they  
20 had not been properly investigated in accordance with Article 32, and  
21 therefore, were not properly referred to this court. And therefore,  
22 I think my position would be that they're not properly before this

1 court, therefore, I'm not in a position to dismiss them. All you're  
2 saying is the government is going to go forward on what is properly  
3 before the court.

4 DC: I understand, Your Honor, no objection to that.

5 MJ: Okay, now what the government chooses to do with the  
6 additional charges from this point forward is up to them. But in  
7 effect, what we have from this point forward are only the original  
8 charges for this trial. And if the additional charges resurrect in  
9 some other form, they will be dealt with at that time.

10 ATC: That's correct, Your Honor.

11 MJ: So as I understand, both parties, what we have now is  
12 Additional Charge I, one specification, and then original Charge I,  
13 II, III and IV, each with one specification.

14 ATC: That's correct, Your Honor.

15 DC: Correct, Your Honor.

16 MJ: Defense, do you have any motions you wish to litigate at  
17 this time?

18 DC: Yes, Your Honor, the defense has two motions to present  
19 before the court today. They've already been handed to the court  
20 reporter, Your Honor, and the defense can address in either order the  
21 court prefers.

1 MJ: [Pause.] I'm just clarifying for the record what our  
2 appellate exhibits are. Trial counsel, your motion on the 32 was  
3 Appellate Exhibit II, and then there's apparently a separate stack of  
4 documents beginning with Attachment 10 which deals with sworn  
5 statements?

6 ATC: Yes, Your Honor.

7 MJ: That I believe we marked as Appellate Exhibit III?

8 ATC: That's correct, Your Honor.

9 MJ: The defense motion for expert assistance will be Appellate  
10 Exhibit IV, and the government response will be Appellate Exhibit V.

11 Do both sides believe this issue can be decided on the  
12 briefs?

13 DC: Yes, Your Honor.

14 TC: Yes, sir.

15 MJ: And the convening authority had turned down this request?

16 TC: That's correct, Your Honor.

17 MJ: But did say you would provide a--do you have a copy of  
18 that?

19 TC: Yes, sir.

20 DC: Your Honor, the convening authority's decision by General  
21 Metz is actually the last enclosure to the defense--it's the very  
22 last page, Your Honor.

1 MJ: Okay. And General Metz says, "I am prepared, however, to  
2 detail a military expert with suitable training, education and  
3 experience to assist you." What do you perceive that to mean, Major  
4 Holley?

5 TC: Yes, sir, a psychiatrist or psychologist, not necessarily  
6 with prison experience, but we can provide one with forensic  
7 experience. I would just highlight just one point very briefly. In  
8 the defense's original request, they cite [REDACTED]. [REDACTED]  
9 was an Air Force psychiatrist who assisted General Taguba in his  
10 report, providing an assessment of the prison situation, stressors  
11 within. The defense pointed out that they should be given an expert  
12 suitable, an expert of equally comparable experience to [REDACTED]  
13 [REDACTED]. We can provide that. We can provide [REDACTED].

14 MJ: Is that the request that went to the convening authority?

15 TC: That was referenced in the initial request to the convening  
16 authority. In addition to that, there was additional language about  
17 the necessity for [REDACTED], I don't want to misstate that.

18 MJ: Now what is [REDACTED] Is he a psychiatrist, a  
19 psychologist?

20 TC: I believe he's a psychologist, Your Honor.

21 MJ: Defense, what if you got a [REDACTED] wannabe?

1 DC: Sir, the only witness that we want is [REDACTED]. The  
2 request actually did not kind of cross reference [REDACTED], but  
3 rather said the government had at its own disposal experts like this  
4 for its various investigations. So the only person we really feel  
5 that would be suitable is [REDACTED] Your Honor.

6 MJ: So what you're saying is, your reference to [REDACTED]  
7 is somewhat irrelevant.

8 DC: It was, Your Honor. It's just to let the convening  
9 authority know that, "Hey, the government is already utilizing  
10 experts like this, and we're months behind."

11 MJ: But we know there's all sorts of experts being used in this  
12 kind of case.

13 DC: Oh, yes, Your Honor.

14 MJ: So, your reference to [REDACTED] is simply saying, "The  
15 government is using experts, so we want experts, too, even though the  
16 one we're asking for is not the same as the one the government had."

17 DC: Yes, sir.

18 MJ: So this isn't a...and I'm going to use this term very  
19 loosely, kind of an equal protection argument that the government  
20 gets this expert, we want the same kind of expert.

21 DC: No, sir, we're entitled to have any expert that we think.

1 MJ: No, I know, but one could read your brief that you seem to  
2 be implying that since the government employed [REDACTED], that  
3 you're entitled to somebody to rebut [REDACTED], which would  
4 imply somebody of his qualifications.

5 DC: No, sir.

6 MJ: As opposed to somebody with different qualifications  
7 altogether.

8 TC: And sir, the reference I'm making is, with regarding  
9 [REDACTED], it says, "The defense is asking for the same access  
10 to expert assistance as that provided to the government."

11 MJ: And what [REDACTED] is telling me is that's a generic  
12 expert assistance, not necessarily the [REDACTED]-type of expert.

13 DC: Yes, Your Honor, and the totality of the request.

14 TC: Yes, sir, and again, sir, there is a great deal in the  
15 request other than that reference. I'd just highlight that to the  
16 court.

17 MJ: [REDACTED], you've lost me here in your brief,  
18 because I'm not sure, I'm not sure why you need a...and I'm going to  
19 use the term "prison expert" to describe [REDACTED], if what we're  
20 talking about here is the state of mind of the accused. I mean,  
21 you're talking about the psychological impact of the environment on

1 prison guards. Does it make any difference whether it impacts on  
2 other guards, it's how it impacted on your client?

3 DC: Your Honor, that may also been inartfully drafted. We do  
4 intend to utilize [REDACTED] as an expert consultant, really, with the  
5 defense team with a view towards him testifying at trial, Your Honor.

6 MJ: For what purpose?

7 DC: To go to the prison, to look at the circumstances----

8 MJ: I didn't ask what he would do. I'm saying, what do you  
9 intend to--what's your purpose?

10 DC: Expect him to testify to, Your Honor?

11 MJ: Yes.

12 DC: Ultimately, why somebody with Specialist Ambuhl's  
13 background may or may not have acted in the circumstances that she's  
14 charged with, Your Honor. All of the charged offenses that remain  
15 before the court are basically all those of complacency and failure  
16 to act or failure to report. And though the court does not have any  
17 factual predicate, other than what's alleged in our brief, Specialist  
18 Ambuhl has very limited training and what----

19 MJ: And what defense is that?

20 DC: Your Honor, the defense position is that Dr. [REDACTED]  
21 testimony will, in fact, go to state of mind and circumstances as to  
22 what was going on at the prison.

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1 MJ: And I come back to, and I just deal with what's in the  
2 book.

3 DC: Yes, sir.

4 MJ: And is this some type of mental responsibility defense?

5 DC: It may be, Your Honor, but until we have the benefit of  
6 [REDACTED] consultation----

7 MJ: But whose mental responsibility are we talking about?

8 DC: Specialist Ambuhl's, Your Honor.

9 MJ: Isn't the issue what happened at the prison, not talking to  
10 detainees, not talking to people there now, but talking to Specialist  
11 Ambuhl and then developing a psychiatric slash psychological profile  
12 from her?

13 DC: Yes, Your Honor.

14 MJ: Then I don't understand how all this other stuff is  
15 relevant to your alleged--what you're saying your reason to have this  
16 expert?

17 DC: Sir, I guess the defense's position is a two-part issue,  
18 one would be on the merits phase of the case for [REDACTED] to  
19 testify. The other would be ultimately at the sentencing phase of  
20 the case to better explain an overall picture. With regard to the  
21 first part, it's important that we'd ask specifically for [REDACTED]  
22 because he has training and expertise in this particular area. A

1 simple psychologist or psychiatrist that does not understand the  
2 effects of a prison environment, what goes on in a prison environment  
3 and may not be able to assess how those affected Specialist Ambuhl,  
4 won't be able to do kind of the big picture, Your Honor.

5 MJ: You're saying only someone-- [REDACTED] is the one person in  
6 the world who can do this?

7 DC: Your Honor, there may be one other one, but Dr. Haney is  
8 the one that we would like.

9 MJ: And who's the other one?

10 DC: [REDACTED], Your Honor.

11 MJ: So there's two in the whole world that can do this.

12 DC: Your Honor, as far as we're concerned, there's only one,  
13 because [REDACTED] will come to Iraq to meet with Specialist Ambuhl.  
14 He doesn't have to do it by phone. He wants to come to Iraq to meet  
15 with her. He wants to go to the prison with her.

16 MJ: Then it strikes to me what you're talking about here can be  
17 done by any psychiatrist or psychologist.

18 DC: No, Your Honor, because what then it boils into is really  
19 the second part, that if [REDACTED] is needed as a sentencing witness  
20 for the defense, we want somebody who has studied the effects of  
21 working in a prison environment, long-term effects, short-term  
22 effects, how the individual's training comes into that, what they're

1 going through day to day. So somebody that isn't familiar with that  
2 type of prison environment isn't enough of an expert for the defense,  
3 Your Honor.

4 MJ: What's his background in a prison environment in a deployed  
5 environment?

6 DC: Your Honor, he has never had experience with prison  
7 environments in a deployed environment. However, I don't believe  
8 there's any----

9 MJ: Aren't we talking about apples and oranges here?

10 DC: No, Your Honor, we're not.

11 MJ: His experience is only with what kind of prisons?

12 DC: Federal or state.

13 MJ: Civilian prisons.

14 DC: Yes, Your Honor, he does have some experience with military  
15 prisons, but aside from that, aside from the fact that they're in  
16 Iraq and they're being mortared, you know, those kinds of outside  
17 physical security issues, [REDACTED] can still assess what goes on in  
18 the prison as its own kind of community, and that's what he does  
19 best, Your Honor, is that these places have certain facts and they  
20 have certain psychological impacts. And he can look at that  
21 regardless of the fact of whether the prison is in Iraq or not.

1 MJ: Does it take an expert to say that having too few guards  
2 for prisoners and having lousy conditions and being mortared all the  
3 time and having poor leadership or whatever you want to say, does  
4 that take an expert to say that that's going to cause problems with  
5 people? I mean, moving aside the psychological profile of your  
6 client, I'm using that as a big term, is the prison itself would seem  
7 to the court that what you told me is something that anybody could  
8 testify to.

9 DC: Your Honor, I think----

10 MJ: You say on sentencing you want to explain how this prison  
11 was at that time, was run in a certain way that--we're talking about  
12 sentencing, would neither mitigate nor extenuate your client's  
13 offenses.

14 DC: Yes, Your Honor.

15 MJ: And again, I'm not prejudging anybody, but you're the one  
16 who mentioned this for on sentencing.

17 DC: Yes, Your Honor.

18 MJ: Then why do you need an expert to come in to say that? And  
19 why can't anybody familiar with the situation and the common person  
20 say, "Hey, yeah, that would cause strain. She was under trained. She  
21 had poor leadership. She had never been in this environment before."

1 Isn't that what you're telling me? Does that take an expert to tell  
2 somebody that?

3 DC: Well, Your Honor, [REDACTED] is also going to talk about the  
4 psychological impact of that with Specialist Ambuhl's background and  
5 considerations-----

6 MJ: But then we're back to the idea that what you need is a  
7 trained psychologist slash psychiatrist that talks about the impact.

8 DC: No, Your Honor.

9 MJ: Why does only this guy can talk about that? You're talking  
10 about here the impact on one individual of the environment the  
11 individual was in, which is primarily based on, correct me if I'm  
12 wrong, the perception that that individual would have of that  
13 environment, true? Isn't that the reality of when you do a  
14 psychological profile?

15 DC: Yes, Your Honor, in part.

16 MJ: But we come back to the idea of a trained  
17 psychologist/psychiatrist can give you what you want.

18 DC: No, Your Honor, we don't feel they can, because that  
19 person, in order to get the best assessment that they possibly can  
20 should be in this environment, should go there and should take a look  
21 at what's going on there.

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1 MJ: But is the environment that exists there today, I'm talking  
2 about August of 2004, the same environment that was there at the time  
3 of the offenses?

4 DC: No, Your Honor, certainly it's not.

5 MJ: So other than the physical plant, what is there back to  
6 revisit?

7 DC: Your Honor, there is a significant part of that prison that  
8 has not changed. Certainly, there's been a fresh coat of paint put  
9 on since the charges in this case, but----

10 MJ: I'm not talking about the physical things. Isn't the  
11 primary thing, it's not the physical environment, but the primary  
12 thing is the personnel environment, both in terms of numbers of  
13 prisoners, of who was in charge, or not in charge, the number of  
14 guards per prisoners, the training the guards have, the command  
15 interest in it? Hasn't it changed considerably since this all came  
16 to light?

17 DC: Those factors have, Your Honor, but----

18 MJ: And aren't those the big factors you're talking about that  
19 have a psychological impact on your client?

20 DC: Your Honor, it's all of those factors, but it's the factors  
21 of the physical prison structure. It's the working hours. It's the  
22 command environment.

1 MJ: But all that stuff is what was--what I'm saying is....

2 DC: Yes, Your Honor.

3 MJ: What you're telling me is that if we have--you need  
4 somebody to go visit that prison in--and let's be realistic, let's  
5 say September, October of 2004.

6 DC: Yes, Your Honor.

7 MJ: To experience the same environment that existed in the fall  
8 of 2003. And I'm asking you is, that environment has changed  
9 radically, has it not?

10 DC: Yes, Your Honor, with regard to that specific question,  
11 that physical environment, personnel have changed. However, there  
12 are still detainees at Abu that have been there since last year, who  
13 can, it's not just Dr.--it's not just one psychologist or one  
14 psychiatrist relying solely on Specialist Ambuhl, Your Honor. That  
15 wouldn't be effective. We need somebody who can take a look at  
16 everything, but actually know what they're looking at, not a  
17 psychologist who just goes to Abu to interview detainees, somebody  
18 who has experience with this type of person and with this type of  
19 environment, and the government doesn't have anyone like that, Your  
20 Honor.

21 MJ: But you're equating talking to prisoners in a United States  
22 civilian facility is the same as talking to a detainee in Iraq? 002544

1 DC: Not exactly, Your Honor, but it's the closest we can find.

2 MJ: But I'm trying to figure out what unique insights are we  
3 going to get out of that a--I'm saying, if you get a psychiatrist or  
4 psychologist, let's just use the term "psychiatrist" for now,  
5 assigned to the defense team to evaluate your client and the impact  
6 the facility had on your client and this person would have the  
7 ability to go to that. I mean, that's what the government is  
8 offering, is what I'm hearing.

9 TC: Yes, sir.

10 MJ: I just don't understand why you need more than that,  
11 because it doesn't strike to me, as most of what you're telling me is  
12 it's not particularly--you don't need an expert to say that the  
13 conditions at the time had an impact on your client.

14 DC: I understand, Your Honor. The defense respectfully  
15 disagrees. We think we need somebody with experience with prisons.  
16 Certainly, again, maybe a security detainee is different, but....

17 MJ: But I'm back to the--we broke this up earlier and we kind  
18 of moved from your defenses and we moved into mitigation now.

19 DC: Yes, well, Your Honor, I think it's relevant, I think [REDACTED].  
20 [REDACTED] is relevant and helpful to the defense with both. Until he's  
21 appointed as a member of the defense team, we don't have the benefit

1 of learning that, obviously, Your Honor, because he hasn't talked to  
2 Specialist Ambuhl.

3 MJ: Well, I'm talking about, yeah, but I'm saying is, for  
4 mitigation, and of course, is the standard helpful?

5 DC: No, Your Honor, and we think we've met, well, obviously we  
6 think we've went behind a helpful----

7 MJ: I mean, you say you need to show a compelling need. I  
8 mean, that's your brief, your standard. That's different than  
9 helpful.

10 DC: Yes, Your Honor.

11 MJ: A lot of things in life would be helpful.

12 DC: Absolutely.

13 MJ: But on sentencing, you say you need a prison expert to  
14 explain the conditions of the prison a year earlier, rough and dirty.  
15 And I'm asking you is, what insights can he provide that are not  
16 basically common sense that anybody who describes the situation at  
17 the time can describe?

18 DC: I guess the underlying answer to that, Your Honor, is that  
19 I don't know because I'm not a psychologist. I believe, in doing my  
20 research and speaking with ██████████ I think he's going to look at  
21 things differently than a layperson, and I think he is going to  
22 better be able to explain to a layperson who may be sitting there

1 Your Honor, going, "Well, I would have done something. I would have  
2 done something. I wouldn't have let this happen." And we need [REDACTED]  
3 [REDACTED] to explain why things like this may happen specifically in a  
4 prison environment.

5 MJ: Well, I come back to the idea is, is are you raising some  
6 type of mental responsibility?

7 DC: Your Honor, we don't know until we have the benefit of [REDACTED]  
8 [REDACTED] expertise.

9 MJ: But then that goes back to your benefit of some expertise.  
10 What I'm just simply saying is, I don't understand--I just fail to  
11 see why you have to have this particular guy. I mean, it strikes to  
12 the court that any competent psychiatrist at least can make a  
13 threshold inquiry, which is routinely in a case with the accused.

14 DC: Your Honor, the defense disagrees. I think that this  
15 expertise and knowledge and over 30 years of experience in dealing  
16 with the psychology of prison environment is what is critical in this  
17 case, Your Honor. That's the key.

18 MJ: But you're telling me, you don't know--and again, I  
19 understand the nature of this type of motion, that sometimes the  
20 defense is put in a position of not knowing stuff because they  
21 haven't been employed, and until they're employed, you don't know,  
22 and you're not going to be employed until you tell them what they

1 would say. So I understand the difficulty here. But basically, what  
2 you're telling me is [REDACTED] may say something that's unique  
3 because of his background as to the psychological impact of the  
4 environment on your client, both on findings and sentencing. Is that  
5 kind of where we're at?

6 DC: Yes, Your Honor. Your Honor?

7 MJ: Yes.

8 DC: I think, and this is not trying to deal with venue or  
9 anything like that, Your Honor. In general, I think any military  
10 panel, the defense would be hard pressed to find any military panel  
11 that hasn't heard anything about this case. Given that premise,  
12 again, Specialist Ambuhl is charged with basically inactivity or  
13 failure to act. And again, sir, what [REDACTED] is going to say is  
14 that a general, natural reaction for a layperson is going to be, "If  
15 I had been in their shoes, I would have done something." Or, "I  
16 can't see why they wouldn't have done something." Again, I guess I'm  
17 going with that premise, Your Honor, based on my discussions with [REDACTED]  
18 [REDACTED]. [REDACTED] is going to be able to explain all of these  
19 different factors and how they come into play. And I think that's  
20 beyond the general knowledge and abilities of a military panel.

21 MJ: And I come back to, that's probative of what kind of  
22 defense?

1 DC: That, I guess, would go to the extenuation and mitigation,  
2 Your Honor.

3 TC: And Your Honor, if I may interject.

4 MJ: Sure.

5 TC: It's the government's position that the military  
6 psychiatrist or psychologist would bring something additional to the  
7 table, in that they would be more familiar with the military dynamic,  
8 the superior, subordinate relationship, and that would be of  
9 assistance and a military psychologist, psychiatrist can resort to a  
10 body of work in the specialized field to educate themselves to better  
11 prepare for testimony. And obviously, it would not rise to the level  
12 of an expert in that field, but again, would meet the requirements of  
13 the court.

14 MJ: What do you say about that, [REDACTED]? Does he have  
15 any military background?

16 DC: No, Your Honor. He's dealt with military cases before. I  
17 couldn't cite them, although his CV is attached, Your Honor. The  
18 problem here is that [REDACTED] got over 30 years of experience in  
19 this particular field. So assuming that somebody in this field is  
20 necessary, it's hard pressed to say that an active duty Army officer  
21 or military officer even, could get up to speed----

1 MJ: But wouldn't the factual predicate be here, that there is  
2 some type of psychological impact on your client?

3 DC: Underlying? Yes, sir.

4 MJ: I mean, there's no showing of that, true?

5 DC: Yes, Your Honor.

6 MJ: What I'm saying is, the government is saying they'll  
7 provide a psychiatrist to the defense team to evaluate your client to  
8 see if there's an issue. But at this point, you're saying that this  
9 environment, ██████████ can explain how it caused my client to act a  
10 certain way. I have some concern whether that's particular  
11 admissible testimony, but that's a separate issue altogether right  
12 now, at least on findings. But it strikes to me is, is that what  
13 you're saying is I need this guy to explain the psychological impact  
14 on my client, and there's been no showing whatsoever that there is  
15 any type of psychological or psychiatric problem, is there?

16 DC: That's correct, Your Honor, she's not been through any kind  
17 of psychiatric evaluation.

18 MJ: So at the end of the day, what ██████████ can say is that,  
19 in my basis of the prison experience, it's not unusual for people to  
20 act this way. Doesn't that, at the end of the day, what you're  
21 telling me he's going to say on sentencing?

22 DC: One of many things, Your Honor.

1 MJ: Well, I just read your brief. Did I miss something else in  
2 there?

3 DC: Your Honor, I think that it's a little bit short-sighted  
4 only in that [REDACTED] hasn't--Your Honor, I've spoken with him. He  
5 hasn't spoken with Specialist Ambuhl. He hasn't seen the documents  
6 because he's not a part of the defense team.

7 The additional concern of the defense, Your Honor, is that  
8 it has taken the government 6 weeks to act on our initial request.  
9 It was literally acted on approximately 8 days before today's court  
10 session in anticipation of the session and it was, in fact, only  
11 acted on when ordered by the judge who did the arraignment. And  
12 certainly, the court could establish deadlines if the government were  
13 to get a psychiatrist or psychologist, however, we're then left with  
14 another period of possible delay if they can't get someone, or if  
15 that person isn't equivalent, Your Honor, in suitable training,  
16 education in experience.

17 MJ: Well, as you define suitable education and experience, the  
18 government concedes there's nobody.

19 DC: Yes, Your Honor.

20 MJ: She does make a point there, [REDACTED] is it seems to  
21 be the government, on this type of issue, takes quite a while to do  
22 anything.

1 TC: Yes, sir.

2 MJ: And if I said, "You've offered an expert," and said, okay,  
3 you give her what you give her and then we come back 6 weeks from now  
4 and we find out where we're at.

5 TC: Yes, sir.

6 MJ: And then what happens then? My concern is, and again, each  
7 case is individual, and I'm not putting blame anywhere else, but it  
8 strikes to me that if I tell you today, provide her a psychiatric--  
9 when will that person be identified and when will that person be part  
10 of the defense team and when will that person be in Iraq?

11 TC: Sir, the government would propose a date of 2 weeks from  
12 today whereby if an individual had not been identified and introduced  
13 to the defense team, that the court would----

14 MJ: At a previous 802, [REDACTED] did you indicate to me  
15 that there's sometimes difficulty dealing with the medical community  
16 in Iraq and getting this type of assistance?

17 TC: There is, Your Honor, but my Staff Judge Advocate has made  
18 great inroads in the last few days in this area.

19 MJ: Is there a trained psychiatrist currently in Iraq?

20 TC: Yes, sir.

21 MJ: That would be available?

22 TC: Yes, sir. In fact, there's----

**REDACTED**  
**COPY**

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# COURT-MARTIAL RECORD

NAME AMBUHL, MEGAN M. SPC

SSN \_\_\_\_\_

**ACTIONS CODED:**  
INITIAL \_\_\_\_\_  
ACCA \_\_\_\_\_  
FINAL \_\_\_\_\_  
COMPANION(S):

**ASSIGNED TO:**  
PANEL \_\_\_\_\_  
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**VERBATIM<sup>1</sup>**  
**RECORD OF TRIAL<sup>2</sup>**  
(and accompanying papers)

OF

AMBUHL, Megan M.

(NAME: Last, First Middle Initial)

HHC, 16th MP Bde (ABN)

III Corps

(unit/Command Name)

\_\_\_\_\_  
(Social Security Number)

US Army

(Branch of Service)

Specialist

(Rank)

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

Victory Base, Iraq/Mannheim

(Place or Places of Trial)

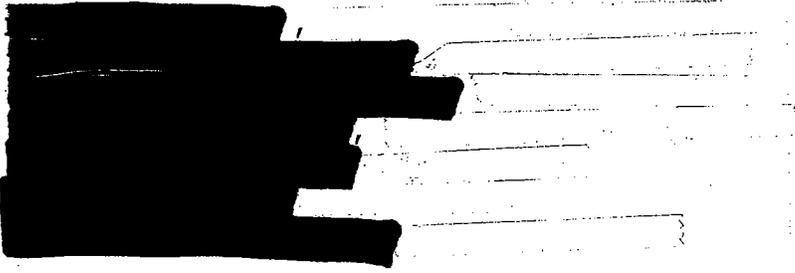
ON

11, 23 and 25 August 2004

(Date or Dates of Trial)

COMPANION CASES:

SGT  
SSG  
SPC  
SPC  
SPC  
SPC  
PFC



Transcript R.60 through appellate exhibits

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1 MJ: Why would it take 2 weeks to put that person....

2 TC: Sir, out of an abundance of caution, just to make certain  
3 that I can get through all the hoops and arrange everything in order.

4 MJ: And [REDACTED] there's a separate issue here.

5 TC: And sir, sorry, one other point. There is, within the  
6 theater, there is a trained psychiatrist who has some experience in  
7 prisons, has worked in prisons for some time that's actually been----

8 MJ: What's his or her name?

9 TC: I'm sorry, don't know the name, sir. I was just given  
10 this----

11 MJ: If I tell you to provide him today, within one week he will  
12 be there talking to Specialist Ambuhl and get this thing going?

13 TC: Yes, sir, or the government would concede with the defense  
14 request.

15 MJ: Or if I say, "If you don't do it within a week, then you  
16 give them Dr. [REDACTED]"

17 TC: Yes, sir. We will have this individual identified. He may  
18 be on leave right now, sir.

19 DC: Your Honor, if the court's inclined to rule overall in  
20 favor of the defense, I guess that's not good enough for us. Sir,  
21 we've gone out and done the legwork, spoken with Dr. [REDACTED]  
22 identified him. And not that we've, again, there's an

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1 attorney/client issue there, sir, but we've gone out and done the  
2 legwork over 8 weeks ago now. And so, for the government to say,  
3 "Well, we'll get to it maybe when this person isn't on the leave and  
4 it's convenient with their schedule," assuming, Your Honor, that this  
5 person isn't already conflicted in some way by having talked to any  
6 number of people involved in this case. I mean, and that's a greater  
7 assumption which I'm not sure the government has investigated,  
8 whether this person has their own knowledge of the prison.

9 MJ: But you would agree with me, Captain [REDACTED] the state of  
10 the law is the defense does not get to pick their experts by name.

11 DC: That's true, Your Honor.

12 MJ: That that's the default.

13 DC: That's true, Your Honor.

14 MJ: Once you've shown necessity.

15 DC: Yes, Your Honor.

16 MJ: But let me, and I don't want to raise a side issue here,  
17 because I think it raises practical concerns, is that [REDACTED]  
18 [REDACTED] you indicated to me in an 802 that you were PCSing to  
19 Virginia?

20 DC: Yes, Your Honor.

21 MJ: And as a matter of fact, you will not be returning to Iraq  
22 except periodically to work on this case.

1 DC: That's correct, Your Honor.

2 MJ: Well, practically speaking, since Specialist Ambuhl is  
3 going back to back Iraq in approximately a week.

4 DC: Yes, Your Honor.

5 MJ: Well, who's going to be the--because [REDACTED] doesn't  
6 live in Iraq, so who is going to--you know, correct me if I'm wrong,  
7 but normally, regardless whether it's Dr. [REDACTED] or somebody else, is  
8 that if this individual shows up to Iraq and talks to your client,  
9 where's her defense counsel?

10 DC: Your Honor, we've discussed this with Specialist Ambuhl and  
11 with Dr. [REDACTED]. Our plan at the time, if it's relevant to the court,  
12 I guess, Your Honor, is that Dr. [REDACTED] will fly into Kuwait  
13 commercial. The TDS office at Camp Doha will make sure that he gets  
14 on a flight from a C-130 from Kuwait up to Baghdad where he'll be met  
15 by the Legal NCO from the TDS office and Specialist Ambuhl, and she  
16 basically will act as his escort and coordinate through the 16th MP  
17 Brigade, which is what I would do, to go out to the prison. He will  
18 meet with her, utilizing the TDS offices there in Baghdad and then  
19 return to the States. Your Honor, I've spoken with him on the phone.  
20 I'll continue to do that. As soon as he's approved, we have a CD-ROM  
21 of the entire case file to get into the mail to him as soon as he's  
22 approved. But it's our position, and we've spoken to him, we don't

1 need to be there. If he's appointed to the defense team, neither Mr.  
2 [REDACTED] I actually need to be there to do what's already--we've  
3 already toured the prison. We've already talked to Specialist  
4 Ambuhl. He can do that without us, Your Honor.

5 MJ: Did you say--maybe I misheard you, that your client is  
6 going to be the escort for Dr. [REDACTED] under your theory?

7 DC: Not the escort, Your Honor, but he has access to her there.  
8 I mean, they have office space to meet. They have a confidential  
9 private area in the TDS office space there. We don't see it as him  
10 needing to meet with her for weeks on end, Your Honor.

11 MJ: Major [REDACTED]

12 TC: Just to interject as another option here, because it's  
13 relevant to this point. The other option that the government would  
14 present is we have a number of forensically trained psychiatrists and  
15 psychologists at Walter Reed who have agreed to consult with the  
16 accused by VTC, being counseled, could accompany the psychologist at  
17 Walter Reed, speak to their client in a confidential manner over VTC.  
18 I just present that as an option.

19 MJ: What about sending Specialist Ambuhl to Walter Reed?

20 TC: Sir, that is a possibility, although the current posture is  
21 that the accused will remain in theater pending these offenses,  
22 absent some order----

1 MJ: But obviously, we're sitting here, there's an exception to  
2 that rule.

3 TC: Yes, sir, there are certain exceptions to that rule, they  
4 would be limited, and I think this would probably qualify, and we are  
5 willing to do that, Your Honor.

6 MJ: Captain ██████████, let's revisit the findings portion of the  
7 trial.

8 DC: Yes, Your Honor.

9 MJ: I'm looking at your brief and I'm trying to figure out--and  
10 it may be just because I'm slow, of how this expertise can be  
11 relevant to any findings issue that another trained psychologist  
12 slash psychiatrist couldn't also do.

13 DC: Your Honor, I think given the court's continuing dialogue  
14 on this issue, certainly a psychologist, any psychologist could  
15 probably testify just as easily on that particular issue. For  
16 judicial economy, we would ask for Dr. ██████████ for sentencing anyway,  
17 Your Honor. And so rather than have two experts, if we are  
18 entitled----

19 MJ: And I don't want you to just--and Captain ██████████, I  
20 understand, I mean, feel free to disagree, but I'm just trying to  
21 figure out.... On findings, I'm trying to figure out how this guy is

1 necessary as opposed to any other trained psychiatrist slash  
2 psychologist.

3 DC: Your Honor, if Specialist Ambuhl's state of mind becomes an  
4 issue with the findings case, Dr. [REDACTED] is in a unique position to  
5 have his, basically his experience and background, Your Honor, is  
6 what we'd be drawing on as to why it's him. Any other psychologist  
7 can just come in and say, "Yeah, I talked to her, and here's what it  
8 was." But with somebody who kind of understands the greater picture  
9 and the impacts and the effects, they're going to be able to better  
10 say, and not that, "Is this normal?" is really an issue for the fact  
11 finder, Your Honor, because it's not. But Dr. [REDACTED] experience and  
12 education and background are what we're relying on to make him an  
13 expert.

14 MJ: I'm not sure you answered my question.

15 DC: I probably didn't, Your Honor.

16 MJ: I'm just saying is, is that on findings, now again, you  
17 keep coming back to the way that some of these specifications are  
18 charged, because two of them appear to be apparently some type of  
19 visual crime, as alleged. By that, I mean, is they're alleging the  
20 misconduct as the accused watching others commit misconduct. And  
21 again, that's a short version of what they are. But anyway, but

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1 there's mental responsibility and partial mental responsibility on  
2 findings.

3 DC: Yes, Your Honor.

4 MJ: And it strikes to the court that any trained psychiatrist  
5 can provide that information.

6 DC: Your Honor, the defense is not ready to concede that.

7 MJ: Has there been a mental responsibility board in this case?

8 DC: No, there has not, Your Honor.

9 MJ: So....

10 DC: Your Honor, I guess because I see the mental  
11 responsibility--the defense position with the mental responsibility  
12 is not--it's the inaction, sir, that's what we want to explain, why  
13 there is, and each of them, sir, did participate in a photograph.

14 MJ: That at least implies some acts.

15 DC: Yes, sir, as charged, it does.

16 MJ: The reality may be something different.

17 DC: The reality----

18 MJ: That's factually specific.

19 DC: Yes, Your Honor.

20 MJ: I'm just going by as charged.

21 DC: Yes, sir.

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1 MJ: And similarly, and on the dereliction of duty charge,  
2 arguably, it's very broad, but I suspect--well, I don't know, there  
3 may or may not be actual acts encompassing that.

4 DC: Well, we received a bill of particulars from the government  
5 on that, Your Honor, and I think everything that's alleged in the  
6 bill of particulars is not reporting, failure to report, failure to  
7 report, and not being the dereliction, as charged.

8 MJ: And is she a military policeman?

9 DC: She is, Your Honor.

10 MJ: But the other two appear to be the inaction.

11 DC: Yes, Your Honor.

12 MJ: And those are offenses.

13 TC: Yes, sir.

14 MJ: Okay, I might add, that's not before me.

15 TC: Yes, sir. It may be before you again.

16 MJ: Well, I've just observed the charges, 93 and a 134 offense.

17 TC: Yes, sir.

18 MJ: Not as a 92 offense.

19 TC: Yes, sir.

20 MJ: And as an aside, in the bill of particulars, for the 92  
21 offense, does that include the same thing as in Charges III and IV?

22 TC: I believe so.

1 DC: Yes, it does, Your Honor.

2 TC: But it's not exclusive, but it does include them.

3 MJ: But that issue is not before me at this time, so.... But  
4 government, I'm concerned, and both sides, I'm concerned with two  
5 practical issues here. One is that if I deny the motion for this  
6 particular person and I tell the government to do what you've already  
7 promised you're going to do, I have concerns about how expeditious  
8 this process has been.

9 TC: Yes, sir, that's a valid concern.

10 MJ: That's my concern to you.

11 TC: Yes, sir.

12 MJ: And for defense, I have real concerns, this is your call,  
13 not my call. I have real concerns for this type of--developing this  
14 type of testimony with no defense counsel with the accused.

15 DC: I understand, Your Honor.

16 MJ: Now I'm not telling you how to break eggs.

17 DC: I understand, Your Honor.

18 MJ: But I have concerns about practically how you do this  
19 without somebody being there.

20 DC: Your Honor, the defense understands the court's concerns  
21 and we'll revisit that issue.

22 MJ: Okay.

1 TC: Sir, we can address the court's concern about the pace of  
2 the assistance. Again, I think a deadline and then contingent upon  
3 the deadline, the appointment of what the defense has asked for would  
4 be appropriate, that if we don't provide this expert by X day, then  
5 the court would order the appointment of Dr. [REDACTED]

6 MJ: For now, based on the record before me and the evidence  
7 presented, is I'm not going to direct that Dr. [REDACTED] become a member  
8 of the defense team. But Major [REDACTED] given your generous offer, if  
9 by 1 September, identify an individual by name with qualifications,  
10 provide that to the defense. And defense, this person will be part  
11 of the defense team. And then defense, you decide whether or not  
12 this person is acceptable or not. Understand what we're talking  
13 about here is what I consider a threshold inquiry. And I'm not  
14 excluding Dr. [REDACTED] forever. I'm simply saying based on what's  
15 before me now, it appears to be pretty speculative whether he's a  
16 necessary witness. And I think quite frankly, there is no showing  
17 that he's necessary for any type of merits with what I have before  
18 me.

19 Now, if this psychologist or psychologist that the  
20 government gives you identifies issues, then obviously, you may need  
21 somebody more experienced in a prison environment. And so what I'm

1 saying is, I'm perfectly willing to revisit the situation upon a  
2 greater showing of necessity, but I just don't see it at this point.

3 But Major [REDACTED] we're talking about one week from today.

4 TC: Yes, sir.

5 MJ: By name and within, once the defense says, "That's okay,"  
6 by one week, that individual, absent extraordinary circumstances,  
7 will personally meet with Specialist Ambuhl.

8 TC: Yes, sir.

9 MJ: And if necessary, for Specialist Ambuhl to go to Walter  
10 Reed. Is the person out of Walter Reed?

11 TC: Yes, sir.

12 MJ: You can take the mountain to Mohammad, whichever way you  
13 want to do it.

14 TC: Yes, sir.

15 MJ: But this, "She has to stay in theater," doesn't cut it.

16 TC: Yes, sir.

17 MJ: And I expect this all to be resolved within 2 weeks, if  
18 not, I'm not going to issue a contingent order at this point, but  
19 within 2 weeks, if there is any problem, let me know by email and  
20 I'll answer you by email of what we'll do, assuming that's acceptable  
21 to both sides.

22 TC: Understood, sir.

1 DC: Yes, sir.

2 MJ: So you understand where we're at here, Captain [REDACTED]

3 DC: Yes, sir.

4 MJ: For now.

5 DC: Yes, sir.

6 MJ: I'm denying your request for this specific expert because  
7 the court finds you've failed to establish sufficient necessity of  
8 why this person is required at this point in time, based on the  
9 evidence presented to me here. But since the government, since you  
10 will have access to a psychiatrist, psychologist....

11 TC: Yes, sir.

12 MJ: If the facts change or the government doesn't get this  
13 person within a period of time we talked about, if either of those  
14 facts occur, we will revisit this issue. And after this person does  
15 his evaluation, if you wish to revisit the issue, I'm certainly  
16 willing to reconsider based on the circumstances of the case.

17 Any questions about where we're at with this issue?

18 TC: No, Your Honor.

19 DC: No, Your Honor.

20 MJ: Next motion. I have Appellate Exhibit VI, motion to compel  
21 discovery. Government, do you have a written response?

22 ATC: We do not, Your Honor.

1 MJ: Let's review some of the bidding here. We discussed in the  
2 802 there appear to be three outstanding investigations, although  
3 apparently we have only two now?

4 ATC: That's correct, Your Honor.

5 MJ: And that deals with the [REDACTED] investigation, the  
6 [REDACTED] investigation, and what's called the [REDACTED] investigation?

7 ATC: That's correct, Your Honor.

8 MJ: And apparently, the [REDACTED] investigation has been  
9 released because it was on TV yesterday.

10 ATC: That is correct, Your Honor.

11 MJ: So you're going to provide a copy of that to the defense.

12 ATC: Yes, Your Honor.

13 MJ: And the [REDACTED] and [REDACTED] investigation?

14 ATC: I do not believe either one of those has been released yet,  
15 but they'll be provided due to the court's ruling in their companion  
16 cases by no later than 10 September.

17 MJ: And then the last issue, well, not necessarily the last  
18 discovery issue, but the other outstanding discovery issue deals with  
19 the classified server in the prison is being looked at one page at a  
20 time by one CID agent?

21 ATC: That's correct, Your Honor. The government has already  
22 made phone calls regarding that situation.

1 MJ: Okay, but when can you get that information?

2 ATC: Based upon the court's ruling in the companion cases....

3 MJ: Not based on what I say, what are the people doing it  
4 saying?

5 ATC: Well, I expressed the concerns of the court to people.  
6 They did not give me a deadline in return to say, "We'll have it done  
7 by X date." I told them what dates the judge said to have it done  
8 by.

9 MJ: What did they say, okay, what did they say X date is? Or  
10 is that an unknown?

11 ATC: That's an unknown, sir.

12 MJ: They say, "It will be done by X date."

13 ATC: Well, what I was told when I talked to the individuals  
14 doing this 10 days ago, is if it's just him doing it, it will be  
15 December of this year.

16 MJ: Okay.

17 ATC: If he gets additional people, he believes that can be  
18 accomplished in a much quicker time span.

19 MJ: And your follow up calls?

20 ATC: What I did was I told them what the judge had ruled and  
21 they said, "All right, we'll get going on it." They didn't say, "All  
22 right, that changes the----

1 MJ: Okay, well, the drop dead date on that is 1 December.

2 ATC: Right.

3 MJ: Okay, but understanding that on or about the 21st of  
4 October, because we're going to have the next hearing in this case  
5 and other cases on or about that time, is I want a status evaluation  
6 of this. And I've said this in other cases, but since each case is  
7 different, you understand this and make sure they understand this,  
8 that if this comes into another, "We'll get to it when we get to it,"  
9 then I'm seriously going to consider dismissing this case until the  
10 government completes its investigation. Okay?

11 ATC: Yes, Your Honor.

12 MJ: Captain ██████████ rather than going through page by page,  
13 what don't you have that you think you're entitled to?

14 DC: Your Honor, what is not mentioned in there but was  
15 something that I believe the court had mentioned in a companion case  
16 was the internal CID investigation of the actions of its own agents  
17 with regard to this investigation.

18 MJ: Do you know anything about that, government?

19 ATC: Well, it's not the CID's actions in regards to this  
20 investigation, it's alleged abuse by CID agents at Abu Ghraib.

21 MJ: Okay, so this is another variation of the theme, it started  
22 with looking at the MPs with General Taguba.

1 ATC: Correct.

2 MJ: And then General Fay starts looking at the MI folks.

3 ATC: That's correct.

4 MJ: And now we've decided to have somebody else look at the CID  
5 folks.

6 ATC: There were certain allegations that specific CID agents had  
7 done specific acts out there.

8 MJ: Okay, so this is more of a focused criminal investigation.

9 ATC: That's correct, Your Honor.

10 MJ: And when did this investigation start, on or about?

11 ATC: From what we understand, it's been completed. I just do  
12 not have a copy. I sent email correspondence to the CID agent to the  
13 office that ran the investigation, which is in Tikrit, Iraq. I've  
14 not received a response yet from that. I will renew my request  
15 through them, but then I will also ask CID higher headquarters to  
16 provide a copy.

17 MJ: Captain [REDACTED] I understand that you have to request  
18 these things.

19 ATC: Right.

20 MJ: They are to provide that not later than 10 September.

21 ATC: Okay.

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1 MJ: And I don't care what form it's in. When you tell me the  
2 investigation is complete, because all we're talking about is  
3 crossing T's and dotting I's and making things look pretty.

4 ATC: That's correct, Your Honor.

5 MJ: And then vetting it up for--there's no security  
6 classification issue, is there?

7 ATC: No, Your Honor, and it's not a question of vetting or not  
8 vetting, it's just, I haven't been provided with it.

9 MJ: Okay, 10 September.

10 ATC: Yes, Your Honor.

11 MJ: And when I tell you these dates, Captain ██████████ I expect  
12 you, if you don't get it, I was about to say "when you don't get it,"  
13 but that would be an unfair comment, if you don't get it, I expect  
14 you to let me know and we'll go from there.

15 DC: Yes, Your Honor.

16 MJ: What else?

17 DC: Your Honor, specifically, it may assist the court in  
18 looking at enclosure number 5 to the defense motion. Your Honor, not  
19 only has the defense not received those----

20 MJ: Let me....

21 DC: Yes, Your Honor.

22 MJ: Trial counsel, do you have a copy of this document?

1           ATC: If the enclosure we're talking about is the request for  
2 declassification for ICRC.

3           MJ: 26 June 2004.

4           ATC: That's correct, I do have that.

5           MJ: Do you have the documents referenced in here?

6           ATC: We have already provided at least one of these documents.  
7 The government's position on these is, the ICRC is a private  
8 organization that the defense can go and request these documents from  
9 themselves.

10          MJ: Let me ask you this, well, let's go through these one at a  
11 time. One alpha would appear to be not an ICRC document. Am I  
12 right?

13          ATC: That is correct, Your Honor.

14          MJ: Has that been provided to the defense?

15          ATC: It has not.

16          MJ: And why not? And again, this document talks about  
17 declassification. I'm going to ignore that issue temporarily,  
18 because that's different than access to documents. Does this  
19 document exist?

20          ATC: I'm unaware if it does or not. To be honest, since the  
21 accused's case has been following along three other co-accused's  
22 cases and it was just arraigned, I have not necessarily worked on the

1 specific discovery request in this particular case. So, I do not  
2 know if this particular document exists or not.

3 MJ: Okay, how about one bravo?

4 ATC: I'm not sure if that exists yet, either.

5 MJ: But none of these have been--one Charlie?

6 ATC: I'm not sure if that exists yet or not.

7 MJ: Any of these--none of these look like to me like ICRC  
8 documents.

9 ATC: That's correct, those three are not.

10 MJ: So I didn't understand your original comment about ICRC.

11 ATC: I was mistaken. I thought we were talking about--there's  
12 also a request out there for the ICRC reports themselves, and that's  
13 been given to--you're right, I was mistaken.

14 MJ: And Captain ██████████, you seem to know, what's your source  
15 of these documents' existence?

16 DC: I believe that the legal clerk or the former legal clerk  
17 for the 16th MP Brigade does have copies of them, Your Honor. But  
18 because they are classified, they could not be distributed. They  
19 just don't have them, Your Honor.

20 MJ: But you have a clearance, right?

21 DC: I do, Your Honor, however, the request for declassification  
22 comes into play for two accounts, one, we'd like to utilize those

1 documents with witnesses and in talking to witnesses. We believe  
2 that they may provide a basis of knowledge. The second basis, Your  
3 Honor, is that because she is pending charges, Specialist Ambuhl, her  
4 security clearance has been revoked and she is not able to review any  
5 secret documents.

6 MJ: Well, I suspect it's really been suspended.

7 DC: It has been suspended, Your Honor.

8 MJ: But you've had an opportunity to review these documents.

9 DC: I have, Your Honor, briefly, Your Honor. I do have the  
10 opportunity to go look at them when the 16th MP Brigade legal office  
11 can find them.

12 MJ: So what I'm hearing both sides tell me, at least Captain  
13 [REDACTED] knows where these documents are and has looked at them.  
14 Captain [REDACTED]----

15 ATC: That's more than what I've done.

16 MJ: But the real issue here is whether they should be  
17 declassified. Is there any--does the government have any response to  
18 whether they intend to declassify these documents?

19 ATC: We'll put them in for a declassification review, Your  
20 Honor. At this point, since I haven't seen them, read them----

1 MJ: But you have to understand, this document is really not a  
2 discovery document, is what you're asking for. You're asking for  
3 them to be declassified to prepare.

4 ATC: Right, so it's not a discovery issue as much as a  
5 declassification issue, yes, sir.

6 MJ: And let me, and I really hate to ask this, is how long does  
7 a declassification process take?

8 ATC: Depending on the priority of what's being asked to be  
9 declassified, the issue that we have in this case is, a vast majority  
10 of documents need to go through a declassification review, beginning  
11 with the 6,000 pages of the General Taguba report, followed by  
12 various documents that are in our joint intelligence note there at  
13 Camp Victory, and to include, obviously, these three memorandums. So  
14 what we elevate are, these are priority documents, will determine how  
15 soon we can have it turned around. If the defense is saying, "These  
16 are three priority documents for us," then we'll put them at the top  
17 of the list. Otherwise, they're going to go into the mix of a lot of  
18 declassification.

19 DC: Your Honor, they can certainly go into the mix. They're  
20 not smoking gun-type documents. However, we would ask the court to  
21 note that we did put our request in on the 26th of June.

1 MJ: Now, I understand Captain [REDACTED], you and Major [REDACTED]  
2 are juggling all these balls. Captain [REDACTED] is the only one who's  
3 asked that these be declassified?

4 ATC: That's correct, Your Honor.

5 MJ: Put it at the top of the list. There's only three  
6 documents. It doesn't strike to be--and it would it be fair to say  
7 that some of these documents were classified just out of habit, or  
8 happened to be put on a classified server and became classified, as  
9 opposed to any type of scrutiny?

10 ATC: That's correct. I believe----

11 MJ: These appear to be internal legal memorandums.

12 ATC: Well, what I believe the posture, from what has been  
13 explained to me of the U.S. government towards ICRC, because this is  
14 a request from ICRC, is they provide confidential reports to the U.S.  
15 government and they like to receive that same confidentiality back.  
16 So I believe that----

17 MJ: Confidential would be a need to know basis.

18 ATC: Right.

19 MJ: Which doesn't require....

20 ATC: There's a lot of inaccuracies when it comes to the  
21 classification process.

22 MJ: Put these at the top and get them to the....

1 ATC: Yes, Your Honor.

2 MJ: But you've had copies--you've had a chance to see them,  
3 Captain ██████████ so you still can prepare your case. You just  
4 wanted to ask other people about them.

5 DC: Yes, Your Honor. Your Honor, this may be a good segue.  
6 There are two additional documents that we've asked to be  
7 declassified, and those are contained in enclosure 7, Your Honor,  
8 which is the 1 July request for evidence from CID, and that would be  
9 at item 1a.

10 MJ: Government, what's the position--well, let's break this up.  
11 Captain ██████████, what do you mean by the four memoranda included in  
12 this piece of evidence?

13 DC: Your Honor, I don't believe that the--I didn't want to  
14 specify it more because I didn't know how the government is about  
15 what's classified and what's not. My understanding is that if I say  
16 what they are----

17 MJ: What piece of evidence are you talking about?

18 DC: The item number that's listed there, Your Honor, that's the  
19 CID case file evidence.

20 MJ: Okay, I got it. Do we know what we're talking about here?

21 ATC: I personally have not gone back to review that piece of  
22 evidence.

1 DC: I can give the court general information, sir.

2 MJ: No, I suspect both sides can figure out what this is.

3 ATC: Right, but as I stand here, the government has no issue in  
4 putting it in for declassification.

5 MJ: And this logbook?

6 ATC: Our position on that is, it is available at the BIAP CID  
7 office, and they're asking for a copy of it. They can send down  
8 their 27 Delta and copy it.

9 MJ: How many pages is this logbook?

10 ATC: It's many, I mean, it's a logbook.

11 MJ: What's a logbook?

12 DC: Your Honor, the logbook is of different movement transfers  
13 of prisoners from different parts of Tier 1A and Tier 1B, a logbook  
14 of medical treatment that certain prisoners may have received on or  
15 about with the dates and the people that treated them. Your Honor,  
16 if I can add to that, with regard to most of the rest of that memo,  
17 the defense has not received the evidence, and I guess we could deal  
18 with the electronic items separately. With regard to the hard copies  
19 of documents, as I represented to the government on previous  
20 occasions, CID will not allow us to look at these documents without  
21 the following conditions: that the evidence custodian be there with  
22 the evidence, which is located at one spot in Baghdad; that the

1 actual case agent be there, who is located up at Abu Ghraib. It  
2 can't be any agent, it must be the case agent. That the trial  
3 counsel or a representative of the government be there; and that  
4 Specialist Ambuhl and one of her attorneys be there. So those are  
5 their requirements, sir, which is why we've asked, as noted in there  
6 for judicial economy, just to give us copies.

7           The other issue, Your Honor, is that Specialist Ambuhl was  
8 entitled to go last week. CID would not let her copy anything. So  
9 she put aside the items she wanted copied. CID or a government  
10 representative copied one set for Specialist Ambuhl and a copy for  
11 themselves, Your Honor, and that doesn't give the defense equal  
12 access when the government is--and certainly, they have access to  
13 those documents, too, but were making an exact copy of what  
14 Specialist Ambuhl has copied does not help the defense, Your Honor.  
15 At this point, we're asking the court to order that we have this  
16 stuff on CD-ROM so we can look at it at our leisure without the  
17 watchful eye of the government.

18           ATC: Your Honor, I have no----

19           MJ: Firsthand knowledge of this----

20           ATC: Right, I have no idea.

21           MJ: Let me ask you this. Would it surprise you that CID would  
22 act in such a way?

1 ATC: CID is always reluctant with all their pieces of evidence.  
2 From what I understand, that their requirements are that a case  
3 agent, not necessarily the case agent be there, and the evidence  
4 custodian.

5 MJ: But Captain [REDACTED] let's deal in the real world. You  
6 say they can just send over one of their legal clerks to do all the  
7 copying, and so Specialist [REDACTED] knocks on the CID door, "I'm here  
8 from TDS. I want to copy all of these documents. Can you show me  
9 where they are, and where's your copy machine?" And they're going to  
10 say what? "Sure, come on in."

11 ATC: Well, they'll probably have the evidence custodian there  
12 for obvious reasons. I mean, the destruction of evidence,  
13 potential...there's a lot of--I mean, it's not an unreasonable  
14 request to have your evidence custodian be with someone who's going  
15 through the evidence in a case file.

16 MJ: Yeah, but I understand what you're saying, and I'm not  
17 saying it isn't unnecessary and unreasonable, but it's kind of like  
18 they want it both ways. They want to make it as difficult as  
19 possible for somebody else to copy it, but they don't want to copy it  
20 themselves.

21 ATC: Yes, Your Honor. I mean, it's not an unsubstantial amount  
22 of stuff they're asking for.

1 MJ: Does that mean it's a substantial amount?

2 ATC: Yes, it is.

3 MJ: Okay, what you're saying to me, trial counsel, is that the  
4 defense, ignoring the scanning issue temporarily, you're saying  
5 there's no problem with copying this stuff, now we're just talking  
6 about who's going to turn on the machine and do it.

7 ATC: Right, it's a manpower issue. But at the same time, the  
8 government doesn't believe we have to do every little thing for the  
9 defense, either.

10 MJ: No, you don't, you don't, but you're going to have to do  
11 this.

12 ATC: Whatever the judge wants us to do, that's what we're going  
13 to do.

14 MJ: I'm just saying is, I understand there are concerns in--and  
15 I'll take judicial notice of personal dealings with CID, but what  
16 Captain ██████████ represented doesn't strike to me as out of the norm.

17 ATC: That's correct.

18 MJ: And so just tell them to do it.

19 ATC: Okay.

20 MJ: They want to make sure they know exactly everything the  
21 defense is getting, then they do it. And if they want to copy each  
22 thing the defense individually copies, which causes a little concern,

1 also, then they just copy everything and give a copy to the defense.  
2 And once one copy is made, government...how many pages in this  
3 logbook?

4 ATC: We're talking several thousand pages of stuff.

5 DC: Sir, the logbooks are only, there's about three--and I  
6 don't have a copy of that, I think there's three or four logbooks  
7 with may be 30 to 50 pages each in the book.

8 MJ: Okay, based on that representation, you're talking about  
9 less than 200 pages.

10 DC: I am, Your Honor.

11 MJ: Well, then what I want you to do is you specify to the  
12 government exactly which logbooks you're talking about, because you  
13 appear to be talking about two different sets. He's talking about a  
14 library, you're talking about a short----

15 DC: Your Honor, I want the ones that are identified in that  
16 memo as the item. That's how CID has them marked is by evidence  
17 number.

18 ATC: Okay, we'll go by evidence number.

19 MJ: Yeah, okay, well, she's saying it's less than 200 pages.

20 ATC: Okay.

21 MJ: Are these logs classified?

22 ATC: No, Your Honor.

1 MJ: I'm not going to order the government to scan documents.  
2 They provide them to you in either a hard copy or other kind of copy.

3 DC: Yes, Your Honor.

4 ATC: I can short circuit the whole discussion about the----

5 MJ: Electronic stuff?

6 ATC: It'll happen, I just...once again.

7 DC: Your Honor, I guess with regard to the electronic items,  
8 those are items that we don't even have access to because they're at  
9 the USACIL lab. And it may assist both the government and the  
10 defense if the court would order a deadline as to when those need to  
11 be produced, because USACIL, it's my understanding that they don't  
12 prioritize things unless there is a date, Your Honor.

13 MJ: We're talking about items 1 Echo through 1 M.

14 ATC: That's correct, Your Honor.

15 MJ: Is Captain ██████ correct, that these are sitting at  
16 USACIL for one of their....

17 ATC: She is correct that they're sitting at USACIL and USACIL  
18 usually doesn't act without a court date, yes, Your Honor.

19 MJ: What do they do?

20 ATC: USACIL?

21 MJ: Yeah.

22 ATC: In which department?

1 MJ: Well, I'm just saying, is you apparently sent these things  
2 to them to be copied, correct?

3 ATC: No, those were sent to them to go through each one of these  
4 things. So they take the thumb drive, they go through each document.  
5 They run their computer program that, you know, deleted items, all  
6 that.

7 MJ: Okay, let's do the short version, 10 September they are  
8 either produced or tell me why they're not doing their job. Is this  
9 evidence I suspect that is more government evidence than it is  
10 defense evidence?

11 DC: I believe there may be exculpatory evidence on the entire  
12 hard drives, Your Honor. What CID did when they first did their  
13 analysis----

14 MJ: Which hard drive are we talking about here?

15 DC: We're talking about Corporal [REDACTED] hard drive. We're  
16 talking about Sergeant [REDACTED] thumb drive. We're talking about  
17 CD-ROMs that were seized from other co-accused. And the CID's case  
18 file only includes what CID thought was important, Your Honor, and we  
19 think there may be some exculpatory information on those hard drives.

20 MJ: Okay, but it would seem to also put--most of it would  
21 appear to be either irrelevant or inculcable or a chunk of it could

1 be--but of course, you don't know because you don't know what's on  
2 it.

3 DC: Yes, sir.

4 MJ: Got it. Okay. I mean, if they want to do it--no, we don't  
5 need to beat this horse. You understand where we're at, Captain

6 [REDACTED]

7 ATC: I understand, Your Honor.

8 DC: Your Honor, additionally----

9 MJ: Still on that enclosure?

10 DC: No, Your Honor, done with that enclosure. Your Honor,  
11 additionally, in a prior hearing for one of the co-accused in this  
12 case, the court had addressed the issue of the AARs from CID that  
13 will not be released without a court order.

14 MJ: Okay, that's easy. Give them copies of the AARs. CID is  
15 to copy them and provide them to the defense.

16 ATC: Yes, Your Honor.

17 MJ: Next?

18 DC: Yes, Your Honor. With regard to enclosure 4, which is a 17  
19 June discovery request, it's a very minute subparagraph, Your Honor,  
20 so the court doesn't necessarily have to look at the subparagraph,  
21 but what it asks for are the government contracts with CACI and Titan  
22 and other organizations where civilian contractors did

1 interrogations. Those contracts have not yet been provided, Your  
2 Honor.

3 MJ: Trial counsel, what's the government's position on the  
4 contracts?

5 ATC: I've already started the process of tracking those down.  
6 They're classified contracts, and that's been one of the problems of  
7 getting them. I believe that we have them now, and now it's going to  
8 be a declassification issue once again. Now obviously, Captain  
9 ██████████ and Mr. ██████████ both have security clearances, so it's a  
10 matter of putting it on a CD and passing the information along to  
11 the----

12 MJ: Now, it's my understanding is the classified documents in  
13 this case are to be maintained in two places, Baghdad and Washington  
14 D.C.

15 ATC: That's correct.

16 MJ: At this point, you foresee it to be relatively short in  
17 time to provide that, at least in a classified form to the defense.

18 ATC: That's correct, Your Honor. [Pause.] My 27 Delta has  
19 informed me that when we went and asked for the contracts, in  
20 particular, for the linguists that the defense has requested, instead  
21 of having one overarching contract, they have contracts with each of  
22 the linguists, so we're talking about hundreds of linguists here. If

1 they can identify exactly who they're asking for, otherwise, we're  
2 just going to have a lot of information.

3 MJ: Well, let me back up, because you indicated Titan  
4 Corporation, CACI, and SOS are the primary--are we talking about  
5 linguists or interrogators?

6 DC: Both, Your Honor, civilians that worked there at the time.  
7 My understanding was that the U.S. government had overriding  
8 contracts with these corporations that is going to tell them what  
9 their expectations are, and that's----

10 MJ: Okay, so we're talking about at this point is the big  
11 contracts, and then subcontracted individual linguists, that's a  
12 different issue.

13 ATC: Right, correct.

14 DC: Yes, Your Honor.

15 ATC: And as far as linguists or interrogators, CACI provides  
16 interrogators. Titan and SOS provide analysts and interpreters.

17 MJ: Then apparently, since I have a motion which I haven't  
18 gotten to yet, there must be some type of contract for each of those  
19 three entities, since----

20 ATC: That's correct, they are contracted with the United States  
21 government.

22 MJ: And those are in U.S. government hands, obviously.

1 ATC: Yes, in Baghdad, yes, sir.

2 MJ: Provide the overall contracts. If you need to explore that  
3 further, Captain [REDACTED], separate issue, we'll get there.

4 DC: Your Honor, again, I guess just to put on the record, we  
5 would request the same names and general counsel contact information  
6 that the government has agreed to provide to the other co-accused in  
7 this case. And we certainly would narrow it down at a reasonable  
8 basis once we were provided with that information, as well.

9 MJ: Do you have a copy of those third party motions?

10 ATC: I do. [Pause.] My apologies, Your Honor, I don't have the  
11 one for CACI with me this morning. I have the protective order for  
12 Titan.

13 MJ: I'll just note for the record that Titan Corporation, SOS  
14 International Limited and CACI have requested that subpoenas be  
15 quashed. You don't have the CACI one?

16 ATC: Not with me, Your Honor. I can provide it to the court  
17 later.

18 MJ: We'll add that as Appellate Exhibit IX, the Titan brief as  
19 Appellate Exhibit VII, and the SOS brief will be VIII, and we'll add  
20 CACI. You've seen these documents, Captain [REDACTED]

21 DC: Yes, Your Honor.

1 ATC: Are you including the Titan brief, suggested protective  
2 order?

3 MJ: No, because I'm not going to sign it.

4 And Captain ██████████ you're familiar with the court's  
5 ruling in the companion cases on this issue?

6 DC: Yes, Your Honor.

7 MJ: Do you have anything to add or request why this issue  
8 should be handled any different in this case as it did in the other  
9 cases?

10 DC: No, Your Honor.

11 MJ: Government, similar question.

12 ATC: No, Your Honor.

13 MJ: Based on the representations of counsel and the briefs  
14 filed by the third parties, the court directs that the government  
15 provide names of the personnel involved during the relevant  
16 timeframe, which is August through....

17 ATC: August through December.

18 MJ: August through December of employees of these companies  
19 that worked at Abu Ghraib.

20 ATC: Yes, Your Honor.

21 MJ: And once you provide the names, the defense is free to make  
22 contact with them through the general counsel of the respective

1 companies. And would it be fair to say that the general counsel  
2 point of contact would be the person who signed the brief?

3 ATC: That's correct, Your Honor.

4 MJ: And you have copies of all the briefs, right?

5 DC: Yes, Your Honor.

6 MJ: And like I said, we'll add the CACI brief as Appellate  
7 Exhibit IX.

8 Any other discovery?

9 DC: Yes, Your Honor. There are--it's the defense's  
10 understanding that there were interrogation plans maintained by  
11 either MI or MP personnel at Abu. Those interrogation plans  
12 basically were a file folder for each detainee that talked about what  
13 was required for each detainee regarding sleep management, food  
14 management, exercise, those types of things, Your Honor.

15 MJ: Were these kept as separate--where were these kept?

16 DC: They were kept at Abu, Your Honor, and defense has  
17 requested production or access to them from the government, and we've  
18 not been provided access to them. We've listed in the 17 June  
19 discovery request a list of detainees with their detainee number,  
20 Your Honor, and we would limit that request to those individuals.

21 ATC: Part of this issue is tied to the CID SIPR net, because  
22 that's where this stuff resides.

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1 MJ: It's been reduced to electronic copies, you said?

2 ATC: That's correct.

3 MJ: I think Captain ██████ seems to imply to me that it was a

4 hard copy. Captain ██████ you believe it was a----

5 DC: I believe it was a hard copy, Your Honor, but that may have

6 been on the SIPR net, as well.

7 ATC: I haven't seen any hard copies. I do know it's on the SIPR

8 net.

9 MJ: For all these people? You know what she's talking about?

10 ATC: Yes.

11 MJ: You believe those notes were eventually put in an

12 electronic form and then on the SIPR net?

13 ATC: That's correct.

14 MJ: So when you provide the SIPR net information, it should

15 have all this in it.

16 ATC: And any other interrogation plans that might be hard

17 copies, CID did seize all of the MP files from Abu Ghraib. Now, as

18 accurate as those are and as completed as those are, and those have

19 been at the BIAP CID office. Now some of these have been available

20 to the defense. There is a CD-ROM that's been available both in

21 Baghdad and in Washington D.C. with some of these interrogation plans

22 and reports, and those have been available since the first week of

1 July. And I made that known that I was bringing the classified  
2 Taguba report and a CD filled with things that I had received from  
3 our intelligence node.

4 MJ: Have you had an opportunity to review all this stuff that  
5 he's talking about?

6 DC: I will concur with co-counsel, Your Honor, my  
7 understanding----

8 MJ: Well, he's really not your co-counsel.

9 DC: I'm sorry, I meant with Mr. [REDACTED] Your Honor.

10 MJ: Oh, okay.

11 DC: I'll check with Mr. [REDACTED] who's in Washington D.C., but I  
12 know that there were hard copies at the prison, because that's the  
13 day-to-day files that they used. So an interrogation plan might have  
14 come down on the SIPR, someone might have gotten it, but they  
15 certainly weren't running to the SIPR to input their information  
16 every time a detainee, you know.....

17 MJ: But what Captain [REDACTED] telling me is some of this  
18 information is on an electronic format that you have already been  
19 provided access to.

20 DC: Yes, sir.

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1 MJ: Some of it is on electronic format that you've not been  
2 provided access to that deals with the classified computer issue.  
3 Some of it may be in the CID report investigation, which they have.

4 ATC: Right, in the evidence room, boxes of files.

5 DC: Sir, we can reserve this issue, and readdress it with the  
6 court later on.

7 MJ: Yes, I mean, really we're getting into so much voluminous  
8 material here, Captain ██████████, you may have stuff that you don't  
9 know you have or at least have access to.

10 DC: Okay, sir.

11 MJ: You understand what she's talking about.

12 ATC: Yes.

13 MJ: If there's a problem where the government says, "It's  
14 sitting here," and you go there and you can't find it. I mean,  
15 they're not going to have to hand you every individual document.

16 DC: Yes, sir.

17 MJ: And you understand that.

18 DC: Yes, sir, absolutely.

19 MJ: I'm not implying that that's what you're asking for. But  
20 if you made efforts to secure or review the documents and you can't  
21 find it, then I'm sure the trial counsel will provide ample  
22 assistance. And also, I don't expect, and just convey this, is that

1 it was related to earlier about CID's sometimes approach to these  
2 things, let's have reasonable rules here. The defense counsel shows  
3 up and asks to see something, I don't think it's unreasonable for a  
4 case agent to sit there. But if there's all these other rules, the  
5 trial counsel being there or anything else, it seems to me to be  
6 unnecessary.

7 ATC: I agree, I don't think the trial counsel needs to be there.

8 MJ: Or a particular agent.

9 ATC: That's correct.

10 MJ: And they don't have to drop everything----

11 ATC: As long as the evidence custodian is there.

12 MJ: I understand. And I'm not saying if the defense counsel  
13 knocks on the door that the CID drops everything to do what they do,  
14 but they make an arrangement or an appointment to go look at  
15 evidence, I expect CID to act professionally and cooperate.

16 ATC: Yes, sir.

17 MJ: Not that they haven't, but just not....

18 ATC: Yes, sir.

19 DC: Sir, speaking of evidence that we've tried to get a hold of  
20 from CID and that we are seeking government assistance on, this also,  
21 I apologize, was referenced in the 1 July memo that we'd gone over  
22 earlier in paragraph 2. There seems to be what is a missing hard

1 drive. Now certainly, I understand if the government doesn't have  
2 something, they can't give it to us. It's the defense's  
3 understanding that the hard drive, the hard drive from the office  
4 computer of Captain ██████████ who is the 372d MP company  
5 commander, he had his hard drive laptop that he used for official  
6 business. He and Sergeant Frederick used that laptop computer at  
7 Abu. There was testimony under oath from Captain ██████████ at an Article  
8 32 hearing that CID came, took his hard drive, and never got it back.  
9 And off the top of my head I don't know, but I think he did identify  
10 an agent by name, Your Honor. I don't want to represent to the court  
11 which one it was. But Captain ██████████ remembers that a CID agent came  
12 and took that hard drive. Well, there's absolutely no record of that  
13 seizure or that piece of evidence in CID records.

14 MJ: Did you ask the agent?

15 DC: We did, Your Honor, and they said they----

16 MJ: What's he say?

17 DC: He said he doesn't know what we're talking about. And I  
18 guess we're asking the government...maybe an unusual----

19 MJ: I'm not sure where we go here, Captain ██████████ because  
20 you say Captain ██████████ says that, "Agent ██████████----

21 DC: X, yes, sir.

22 MJ: ----took my hard drive and left."

1 DC: Yes, sir.

2 MJ: And didn't give him a receipt.

3 DC: No, sir.

4 MJ: And didn't fill out a, to your knowledge, a chain of  
5 custody document or anything like that.

6 DC: Correct, sir.

7 MJ: And Agent X says, "I don't know what Captain [REDACTED] is  
8 talking about, I have no such thing."

9 DC: Correct, Your Honor.

10 MJ: Okay, and now where do we go next?

11 DC: Your Honor, I guess I don't know, and I'd like the  
12 government to make additional inquiries. I am very clearly a defense  
13 attorney, Your Honor, and I very often get the reaction of, "I don't  
14 know what you're talking about."

15 MJ: Provide the name of the agent to the government.

16 DC: Yes, sir.

17 MJ: And government, check with the agent and see what he says.  
18 Also, more than just check with him, it would strike to me in this  
19 case is that a lot of computer hard drives have been seized.

20 ATC: That's correct, Your Honor.

21 MJ: And any reason to believe that Captain [REDACTED] is  
22 misremembering that they took his hard drive?

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1 ATC: I have not personally looked into this issue, so I have no  
2 idea.

3 MJ: Just follow it down and provide an answer back to the  
4 defense by a date of September. By 10 September, just let her know  
5 where you're at.

6 ATC: Okay.

7 MJ: But Captain [REDACTED] you give them the name.

8 DC: Yes, sir, we'll do that.

9 MJ: And then it seems to me is, I'm not sure we can do much  
10 more than that.

11 DC: Yes, Your Honor. Your Honor, the last thing is just that I  
12 had filed the discovery request on 17 June. It is rather lengthy. I  
13 understand the government's constraints with time. At this point, I  
14 would ask that you set a date for the government to respond to that  
15 in writing rather than go over every subparagraph and sub-  
16 subparagraph. That would probably be the best for judicial economy,  
17 sir, since they have not yet responded in writing, and there are a  
18 certain number of very detailed requests about Article 15 records,  
19 counseling records, offshoot investigations, those kinds of things,  
20 Your Honor.

21 ATC: The government realizes the discovery responsibilities  
22 under the rules and will respond accordingly, Your Honor.

1 MJ: The simplest way to do this is to provide a paragraph by  
2 paragraph response.

3 ATC: Right, and that's our intention to do that.

4 MJ: Already provided, doesn't exist, go look here for it, we'll  
5 get it by this date.

6 ATC: Yes, Your Honor.

7 MJ: Provide that response by 10 September.

8 ATC: All right.

9 MJ: Earlier is better than later.

10 DC: May I have one moment, Your Honor?

11 MJ: Sure. Captain [REDACTED], you gave me the Graner copy of  
12 the brief.

13 ATC: Oh, did I? I apologize. I'll get the correct copy of the  
14 CACI brief, Your Honor.

15 DC: Nothing further from the defense, Your Honor.

16 MJ: Trial counsel, do you have anything further?

17 ATC: No, Your Honor.

18 MJ: As we discussed in the 802, is that I intend to have the  
19 next hearing in this case on or about 21 October, 22 October in  
20 Baghdad. And as I stated yesterday, is absent a change of venue, all  
21 further proceedings in this case will be conducted in Baghdad.

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1           At that time, defense, you indicated at the 802 that you'd  
2 be prepared to litigate a command influence motion?

3           DC: Yes, Your Honor, that's correct.

4           MJ: Which would appear to be a significant motion that also  
5 could change the entire posture of the case. Also, at that time--any  
6 other motions?

7           DC: Your Honor, we intend to file an Article 13 motion to be  
8 litigated at that time. And we may also file a motion for  
9 unreasonable multiplication of charges, Your Honor.

10          MJ: Okay, your suspense for filing motions is 14 October, and  
11 understand, right now, the current schedule for this is the Frederick  
12 trial on 20 and 21 October, and the 39(a)s in Graner, Davis and this  
13 case, which probably each one will take a whole day subsequent to  
14 this. So I'm using on or about dates. But if you need any out of  
15 theater witnesses for the motions, that request should be in no later  
16 than 1 October. Obviously if something comes up and you need later--  
17 but you understand, Captain [REDACTED] the difficulty in getting them  
18 here.

19          DC: Yes, Your Honor.

20          MJ: Also, if you don't know where somebody is, assume they're  
21 out of theater. So provide your tentative witness list, it's not  
22 written in stone, not later than 1 October for the motions so the

1 government has ample time to make sure they're there. If it turns  
2 out that somebody falls out, tell them that and just take them off  
3 the list.

4 DC: Your Honor, is it sufficient for the court, with regard to  
5 that, that the entire motion perhaps not be filed until the 14th, but  
6 that we say for the motion, "For Article 13, I need these people?"

7 MJ: Yes, that's fine.

8 DC: Okay.

9 MJ: Now, give the court a synopsis of what these people will  
10 say.

11 DC: Yes, sir, absolutely.

12 MJ: And if there's an issue, it's not sufficient enough or  
13 whatever it is, government, we can handle that probably by email.  
14 But again, we're talking motions here. So, I don't want to say it's  
15 a loose standard, but it's not the same standard when it's production  
16 for trial. Anything else?

17 TC: No, Your Honor.

18 DC: No, Your Honor.

19 MJ: The court's in recess.

20 [The session recessed at 0926, 25 August 2004.]

21

22

[END OF PAGE.]

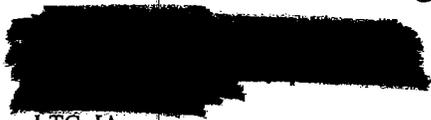
**AUTHENTICATION OF THE RECORD OF TRIAL**

IN THE CASE OF

AMBUHL, MEGAN M., SPECIALIST/E4  
HEADQUARTERS AND HEADQUARTERS COMPANY,  
16th MILITARY POLICE BRIGADE (AIRBORNE),  
III CORPS, VICTORY BASE, IRAQ APO AE 09342

I received the completed record of trial for review and authentication on 16 August 2004.

(ROT pp. 1-13 only)



LTC, JA  
Military Judge  
(Pages 1-13)

DATE: 16 August 2004

**ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION**

I received the record of trial for review in the foregoing case on 15 August 2004 and completed my examination on 15 August 2004.

(ROT pp. 1-13 only)



CPT, JA  
Defense Counsel

DATE: \_\_\_\_\_ 2004

The record of trial was served on defense counsel on \_\_\_\_\_ 2004. After verifying receipt with defense counsel on \_\_\_\_\_ 2004 and conferring with the military judge on review by defense counsel on \_\_\_\_\_ 2004, the record was forwarded for authentication without completion of defense counsel's review.



CPT, JA  
Chief, Military Justice

**AUTHENTICATION OF RECORD OF TRIAL**

**IN THE CASE OF**

AMBUHL, Megan M., , Specialist

Headquarters and Headquarters Company, 16th Military Police Brigade (Abn)

III Corps, Victory Base, Iraq, APO AE 09342

I received the completed record of trial for review and authentication on  
15 NOV 20 04.

[REDACTED]

COL, JA  
Military Judge

30 NOV 20 04  
79P13-106

**ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION**

I received the record of trial for review in the foregoing case on  
\_\_\_\_\_ 20 \_\_\_\_\_.

[REDACTED]

CPT, JA  
Defense Counsel

\_\_\_\_\_ 20 \_\_\_\_\_

The record of trial was served on defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_. After verifying receipt with defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_ and conferring with the military judge on review by defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_, the record was forwarded for authentication without completion of the defense counsel's review.

[REDACTED]

CPT, JA  
Chief, Military Justice

APPELLATE EXHIBITS

002603

UNITED STATES	)	
	)	MOTION TO DISMISS
v.	)	
	)	
Megan M. AMBUHL	)	
SPC, U.S. Army	)	
Headquarters & Headquarters Company	)	
16 <sup>th</sup> Military Police Brigade (Airborne)	)	22 July 2004
III Corps, Victory Base, Iraq	)	
APO AE 09342	)	

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to move the Court to dismiss the charges and specifications preferred on 13 July 2004 for failure to comply with Rule for Courts-Martial (R.C.M.) 405(a).

**A. RELIEF SOUGHT**

The defense respectfully requests that the defense Motion to Dismiss be granted and that the Court dismiss with prejudice all charges and specifications that were preferred against SPC Ambuhl on 13 July 2004.

**B. BURDEN OF PROOF & STANDARD OF PROOF**

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c).

**C. FACTS**

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts).

On 1 and 3 May 2004, an Investigating Officer (IO) conducted an Article 32 hearing concerning the 20 March 2004 charges and specifications. On 9 May 2004, the IO issued his findings and recommendations. The IO recommended that Charges I and II be referred to a General Court-Martial. The IO further recommended that Charges III and IV, effectively, be dismissed. The IO did not recommend that any additional charges or specifications be preferred against the accused. The government did not request that any uncharged misconduct be investigated.

From 9 May 2004 through 12 July 2004, there was no government activity on SPC Ambuhl's case. On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC

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APPELLATE EXHIBIT I

Recognized R. 16

Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment).

There was no Article 32 hearing to investigate these additional charges and specifications. SPC Ambuhl did not waive her right to an investigation regarding these charges and specifications.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

#### **D. LAW**

The defense relies on the following authorities in support of its motion:

Article 32, UCMJ

R.C.M. 405

R.C.M. 905

R.C.M. 906

United States v. Bender, 32 M.J. 1002 (N.M.C.M.R. 1991)

United States v. Miro, 22 M.J. 509 (A.F.C.M.R. 1986)

United States v. Castleman, 11 M.J. 562 (A.F.C.M.R. 1981)

United States v. Louder, 7 M.J. 548 (A.F.C.M.R. 1978)

United States v. Donaldson, 49 C.M.R. 542 (C.M.A. 1975)

United States v. Dozier, 38 C.M.R. 507 (A.B.R. 1967)

United States v. Cunningham, 30 C.M.R. 402 (C.M.A. 1961)

United States v. Mickel, 26 C.M.R. 104 (C.M.A. 1958)

United States v. Nichols, 23 C.M.R. 343 (C.M.A. 1957)

United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956)

United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954)

United States v. Westergren, 14 C.M.R. 560 (A.F.B.R. 1953)

#### **E. EVIDENCE & WITNESSES**

The defense requests argument on this Motion to Dismiss. The defense requests consideration of the following documents:

- a. Charge Sheet, dated 20 March 2004
- b. Charge Sheet, dated 13 July 2004
- c. Article 32 Report (including DD Form 457, Enclosures #1 - #3, the IO's Memorandum for Record, dated 8 May 2004, and the summarized transcript)

The defense requests government production of the Staff Judge Advocate's Pretrial Advice prepared in accordance with R.C.M. 406 for consideration by the Court.

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The defense requests government production of the following witnesses for this motion:

MG Thomas Metz, Commander, III Corps  
CPT ██████████, Commander, HHC, 16<sup>th</sup> MP Brigade

The defense may call SPC Megan M. Ambuhl for the limited purpose of litigating this motion.

## F. ARGUMENT

### 1. *Violation of R.C.M. 405*

The accused is entitled to a thorough and impartial Article 32 pretrial investigation. It is well established that, “no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation . . . has been made in substantial compliance with [R.C.M. 405].” R.C.M. 405(a). An Article 32 investigation is not a mere formality; rather, it is an integral part of the court-martial proceedings. See United States v. Nichols, 23 C.M.R. 343, 348 (C.M.A. 1957). Further, Article 32 proceedings are quasi-judicial and protect important rights of the accused, including the ability “to gain a soundly conceived recommendation concerning their disposition.” United States v. Cunningham, 30 C.M.R. 402, 404 (C.M.A. 1961).

Under certain circumstances, uncharged misconduct may be investigated at an Article 32 hearing prior to the preferral of additional charges. Article 32(d), UCMJ. However, the subject matter of the uncharged misconduct must specifically be investigated by the IO. Further, Article 32(d) requires that the accused be informed of the nature of each uncharged offense investigated. The proper procedure to follow “when evidence of additional offenses arises during an investigation is to recommend to the appointing authority that additional charges be preferred and referred for investigation while investigation is still in progress.” United States v. Bender, 32 M.J. 1002, 1003 (N.M.C.M.R. 1991) (rejecting the government’s “odd notion” that “additional charges may be preferred at the conclusion of an Article 32 investigation and referred for trial . . . if only there is, in retrospect, sufficient evidence in the report of investigation to warrant them”).

This required step was not done. The IO never informed SPC Ambuhl that he would be investigating any uncharged misconduct or any additional charges. Tellingly, the IO did not recommend any additional charges; rather, he found that the government failed to present sufficient evidence on two of the four charges.

The three additional specifications preferred on 13 July 2004, on their face, appear factually similar to allegations in the original charges preferred on 20 March 2004. Simply because the charges share the same factual predicate, does not relieve the government of its responsibility to insure that the additional specifications are investigated at an Article 32 hearing.

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*a. Additional Charge I and its Specification*

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge I, in violation of R.C.M. 405(a).<sup>1</sup>

At the Article 32 hearing, the IO investigated one specification of maltreatment in violation of Article 93, UCMJ. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

On 13 July 2004, the government preferred the additional charge of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The factual basis for this charge appears to be the same basis as that of original Charge III. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

Well-settled is the legal concept that, “[a] conspiracy to commit an offense is a separate and distinct offense from the offense which is the object of the conspiracy.” Article 81, para. c(8). Both a conspiracy and the underlying object of the conspiracy may be charged. Each is treated as a separate offense and must be charged, tried and punished of its own merits. See id.

In the present case, neither of the elements of the charged conspiracy were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl accountable for this offense and intends to subject her to possible punishment of an additional 12 months of confinement for a charge that never was properly investigated.

<sup>1</sup> Additional Charge I and original Charge III appear to allege the same factual basis. The charges are as follows:

Original Charge III & its Specification, 20 March 2004	Additional Charge I & its Specification, 13 July 2004
CHARGE III: ARTICLE 93, UCMJ  In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.	CHARGE I: ARTICLE 81, UCMJ  In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003 conspire with Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] and others to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Corporal [REDACTED] did place naked detainees in a human pyramid.

The defense recognizes that the recommendation of an Article 32 IO is not binding. However, in the present case, the IO's recommendation should be considered when evaluating the basis of this Motion. The IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense." The IO further recommended that the government provide additional evidence as to original Charge III. Despite this recommendation the government used the flawed foundation of Charge III as the basis for Additional Charge I.

*b. Additional Charge II, Specification 1*

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 1, in violation of R.C.M. 405(a).<sup>2</sup>

At the Article 32 hearing, the IO investigated one specification of indecent acts with another in violation of Article 134, UCMJ. The elements of this offense are: (1) that the accused committed a certain wrongful act with a certain person; (2) that the act was indecent; and (3) that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. If convicted of a violation of this offense at a general court-martial, SPC Ambuhl faces up to 5 years of confinement.

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual predicate for this charge appears to be the same as that of original Charge IV and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was 'cruel'

<sup>2</sup> Specification 1 of additional Charge II and original Charge IV appear to allege the same factual basis. The charges are as follows:

Original Charge IV & its Specification, 20 March 2004	Additional Charge II, Specification 1, 13 July 2004
CHARGE IV: ARTICLE 134, UCMJ  In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.	CHARGE II: ARTICLE 93, UCMJ  SPEC 1: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees being forced to masturbate in front of other detainees and soldiers.

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toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

In the present case, neither of the elements of the newly charged maltreatment were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl subject to an additional 12 months of confinement for a charge that was never investigated.

As highlighted with regard to the first set of charges, the IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense," regarding original Charge IV. The IO further recommended that the government provide additional evidence as to original Charge IV, a charge that shares the same factual basis as Additional Charge II, Specification 1.

*c. Additional Charge II, Specification 2*

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 2, in violation of R.C.M. 405(a).<sup>3</sup>

At the Article 32 hearing, the IO investigated one specification of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

<sup>3</sup> Specification 2 of additional Charge II and original Charge I appear to allege the same factual basis. The charges are as follows:

Original Charge I & its Specification, 20 March 2004	Additional Charge II, Specification 2, 13 July 2004
<p>CHARGE I: ARTICLE 81, UCMJ</p> <p>In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire with Staff Sergeant [REDACTED] Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Specialist Ambuhl did participate in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck.</p>	<p>CHARGE II: ARTICLE 93, UCMJ</p> <p>SPEC 2: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003, did maltreat several Iraqi detainees, persons subject to her orders, by participating in a photograph with PFC [REDACTED] depicting PFC [REDACTED] holding a naked detainee by a leash wrapped around said detainee's neck and by watching PFC [REDACTED] hold a naked detainee by a leash wrapped around said detainee's neck.</p>

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual basis for this charge appears to be the same basis as that of original Charge I and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

At trial, in order for an accused to be found guilty of a violation of Article 81 the government bears the burden of proof for the conspiracy and that the alleged agreement included every element of the underlying offense. In the present case, the government did not advocate at the time of the Article 32 hearing for an additional charge to encompass the underlying offense of the conspiracy. The IO did not recommend the additional charge of maltreatment, the underlying offense of the conspiracy. SPC Ambuhl is entitled to an Article 32 investigation regarding this additional Article 93 charge. See United States v. Donaldson, 49 C.M.R. 542, 543 (C.M.A. 1975) (finding that an accused is entitled to enforcement of his pretrial rights without regard to whether such enforcement will benefit him at trial); Bender, 32 M.J. at 1003 (prohibiting post-32 addition of charges simply because the government finds sufficient evidence, in hindsight, to warrant the charges).

## *2. Appropriate Remedy*

If an accused is improperly denied a substantial pretrial right, such as a thorough and impartial pretrial investigation, reversal is required, upon timely complaint, regardless of whether accused suffers specific prejudice. See United States v. Miro, 22 M.J. 509, 511 (A.F.C.M.R. 1986); United States v. Castleman, 11 M.J. 562, 566 (A.F.C.M.R. 1981); see also Donaldson, 49 C.M.R. at 543; United States v. Mickel, 26 C.M.R. 104, 107 (C.M.A. 1958) (finding "if an accused is deprived of a substantial pretrial right on timely objection, he is entitled to judicial enforcement of his right, without regard to whether such enforcement will benefit him at the trial").

Among the rights to which an accused is entitled at an Article 32 investigation are the following: the right to cross-examine witnesses, have witnesses produced, have evidence (to include documents) within the control of military authorities produced, and to present anything in defense, extenuation or mitigation. R.C.M. 405(f)(1)-(12). This Court may grant appropriate relief if there is a failure to comply with R.C.M. 405. R.C.M. 906(b)(3).

Failure to comply substantially with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. The discussion to R.C.M. 405(a) provides for further investigation if charges are changed to allege a more serious offense than any of those investigated at the Article 32 hearing. See also United States v. Dozier, 38 C.M.R. 507, 508 (A.B.R. 1967) (providing for a new Article 32 hearing when there has been "a substantial change alleging a different offense" even though there was no additional evidence to be offered"). If convicted at a general court-martial, SPC Ambuhl faces an additional three years of confinement. This increase in the maximum punishment is analogous to the allegation of a more serious offense referenced in the discussion to R.C.M. 405(a). Further investigation is required if there is an essentially different offense.

While both of these legal “gates” are triggered in this case, further investigation is not the appropriate remedy.

The appropriate relief in this case for the government’s violation of R.C.M. 405 is dismissal of the additional charges and specifications. See Donaldson, 49 C.M.R. at 543 (granting discretion to the trial court to set aside findings and dismiss the charges when there was a R.C.M. 405 violation). Failure to provide appropriate relief, while not depriving the court-martial of jurisdiction, may require the reversal of a conviction. See generally United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956); United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954).

In United States v. Louder, the Article 32 IO recommended withdrawal of a certain specification because it charged a violation of a lawful order that was not punitive in nature. 7 M.J. 548, 549 (A.F.C.M.R. 1978). Rather than withdraw the specification, the convening authority amended the specification at referral to allege a violation of an entirely different lawful order. See id. The trial judge failed to grant the accused a new 32 or any alternate appropriate relief. See id. at 550. The appellate court found that the trial judge erred. As a remedy the court set aside the findings of guilt at the trial level and dismissed the amended specification. See id.; see also United States v. Westergren, 14 C.M.R. 560, 577 (A.F.B.R. 1953) (finding that failure to comply substantially with 10 U.S.C. § 832 may be grounds for reversal).

It is the government’s obligation to comply with R.C.M. 405. Any failure to meet this obligation should not prejudice the accused. The Court should not chose as a remedy to reopen the Article 32 hearing since this remedy causes prejudice to SPC Ambuhl. Thus, the only appropriate remedy for the Court is dismissal.

If the Court orders the Article 32 hearing to be reopened, SPC Ambuhl will suffer prejudice. First and foremost is the additional delay that SPC Ambuhl’s case will undergo if there are supplemental Article 32 proceedings. Even with expedient efforts by the government, coordination must be made for civilian defense counsel to attend the proceeding in Iraq. Requests for witness and evidence production must be addressed. Findings and recommendations must be issued and the case must then be forwarded through the chain-of-command for recommendations. This anticipated delay will cause significant prejudice to SPC Ambuhl who has been awaiting disposition of the original charges since 20 March 2004.

There was over two months of inactivity in SPC Ambuhl’s case. See Donaldson, 49 C.M.R. at 543 (the additional charges were preferred two months after the conclusion of the investigation for the original charges). The Article 32 IO issued his findings and recommendations on 9 May 2004. During that two-month period the government easily could have preferred additional charges and even conducted an Article 32 investigation. The choice belonged to the government. The government chose “eleventh hour” preferral of charges, just one week before referral.

The additional charges rely on the same factual predicate as the original charges. As such, the government knew as early as 20 March 2004 that SPC Ambuhl might face additional charges. The government had six weeks between the original preferral and the start of the

Article 32 hearing in which to prefer additional charges. The government chose not to do so. Further, the government did not advocate the additional preferral of charges at the Article 32 hearing, instead choosing the stated "eleventh hour" preferral of the additional charges.

SPC Ambuhl has been awaiting action on her case since 9 May 2004. To force the soldier to endure additional delay because of the government's error would be an abuse of discretion. Ultimately, the most significant prejudice to SPC Ambuhl is to force her to stand trial for three additional specifications, that carry and an additional 3 years of confinement if she is convicted. Due process requires a remedy that does penalize or prejudice the soldier – the only such remedy is dismissal.

#### G. CONCLUSION

Dismissal with prejudice of the 13 July 2004 charges and specifications is the only appropriate remedy under the specific circumstances of this case. The defense respectfully requests that this Court grant the defense's Motion to Dismiss.

RESPECTFULLY SUBMITTED:



CPT, JA  
Trial Defense Counsel

#### CERTIFICATE OF SERVICE

I certify that this defense Motion to Dismiss was served on the government via e-mail to @vcmain.hq.c5.army.mil and @vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 22 July 2004.



CPT, JA  
Trial Defense Counsel

**INVESTIGATING OFFICER'S REPORT**  
(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) ██████████		b. GRADE O-4	c. ORGANIZATION HHC, 420th Engineer Brigade APO AE 09391	d. DATE OF REPORT 8 May 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) ██████████		b. TITLE Brigade Commander	c. ORGANIZATION Headquarters, 16th MP Bde (Airborne) APO AE 09342	
3a. NAME OF ACCUSED (Last, First, MI) Ambuhl, Megan M.		b. GRADE E-4	c. SSN ██████████	d. ORGANIZATION HHC, 16th MP Bde (Airborne), Story Base, Iraq, APO AE 09342
(Check appropriate answer)				e. DATE OF CHARGES 20 March 2004
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES NO <input checked="" type="checkbox"/> <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				<input checked="" type="checkbox"/> <input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				<input checked="" type="checkbox"/> <input type="checkbox"/>
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) ██████████		b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) ██████████	b. GRADE O-3
c. ORGANIZATION (If appropriate) ██████████		c. ORGANIZATION (If appropriate) Trial Defense Counsel, Tikrit Branch Office (FOB Danger) Region IX		
d. ADDRESS (If appropriate) 1101 15th ST, NW, Suite 202 Washington, D.C., 20005		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in item 21.)				
a. PLACE ██████████		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES NO
a. THE CHARGE(S) UNDER INVESTIGATION				<input checked="" type="checkbox"/> <input type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER				<input checked="" type="checkbox"/> <input type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				<input checked="" type="checkbox"/> <input type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION				<input checked="" type="checkbox"/> <input type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				<input checked="" type="checkbox"/> <input type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				<input checked="" type="checkbox"/> <input type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				<input checked="" type="checkbox"/> <input type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				<input checked="" type="checkbox"/> <input type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				<input checked="" type="checkbox"/> <input type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				<input checked="" type="checkbox"/> <input type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				<input checked="" type="checkbox"/> <input type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				
NOTE: If additional space is required for any item, enter the additional material in item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading. (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."				

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	E-5	302nd MI Battalion	X	
[REDACTED]	CW-2	GJTF-7	X	
[REDACTED]	E-9	416th MP Detachment	X	
[REDACTED]	E6	CID, Ft. Jackson, S.C.	X	
Please refer to the attached Enclosure #1		for additional witnesses		
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
Prosecution Exh 1-Sworn statement of SPC [REDACTED]	X			
Prosecution Exh 2-Sworn statement of SGT [REDACTED]	X			
Prosecution Exh 3-Sworn statement of SPC [REDACTED]	X			
Prosecution Exh 4A thru 4R -20 photos from CID CD	X			
Prosecution Exh 5-Sworn statement of PFC Lyndie England	X			
Please refer to the attached Enclosure #2		for additional Exhibits from the Investigation		
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(a).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL.			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER (See R.C.M. 403(a)(1)).			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Enclosure #1 - Continuation of DD Form 457 Block 12a				
Enclosure #2 - Continuation of DD Form 457 Block 13a				
Enclosure #3 - Defense Counsel's Objections Prior to and During the ART 32 Investigation.				
Enclosure #4 - Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #5 - IO Concurrence on Request for Delay, U.S. v. SPC Ambuhl				
Enclosure #6 - Article 32 Request for Witnesses and Production of Evidence - United States v. SPC Megan M. Ambuhl				
Enclosure #7 - Second Request for Delay - United States v. SPC Megan M. Ambuhl				
Enclosure #8 - IO Recommendation on 2nd Defense Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #9 - Approval of 2nd Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #10 - IO Determination on Trial Counsel's response to Defense Request for Witnesses and Production of Evidence				
Enclosure #11 - Appointment as Article 32 Investigating Officer				
Enclosure #12 - Transcript of ART 32 Investigation US v. SPC Ambuhl				
Enclosure #13 - ART 32 Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl				
Block #14 above, Def did not present any grounds to show that the accused was not mentally responsible for the offenses.				
22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION		
[REDACTED]	O-4	HHC, 420th Engineer Brigade APO AE 09391		
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]			9 MAY 2004	

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Enclosure #1 - CONTINUATION OF DD FORM 457, BLOCK 12a

The following witnesses were Available but invoked their rights

1. [REDACTED] O-3 372<sup>nd</sup> MP CO - invoked at last 32
2. [REDACTED] E-8 372<sup>nd</sup> MP CO - invoked at last 32
3. [REDACTED] E-7 372<sup>nd</sup> MP CO - invoked at last 32

The following witnesses were Declared reasonably unavailable

CID Agents:

1. [REDACTED] SA 10<sup>th</sup> MP BN - Redeployed to the U.S.

Chain of Command:

1. [REDACTED] O-3 372<sup>nd</sup> MP CO - Redeployed to U.S.

Additional Witnesses -

1. [REDACTED] O-4 320<sup>th</sup> MP BN - Kuwait
2. [REDACTED] E-4 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
3. [REDACTED] E-6 - LSA Anaconda - invoked at prior 32
4. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
5. [REDACTED] E-6 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
6. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
7. [REDACTED] E-4 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
8. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
9. [REDACTED] E-5 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
10. [REDACTED] E-4 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
11. [REDACTED] E-6 372<sup>nd</sup> MP CO - LSA Anaconda - Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.

Military Intelligence Witnesses:

1. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
2. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
3. [REDACTED] E-4 325<sup>th</sup> MP BN - Redeployed to U.S.
4. [REDACTED] O-6 205<sup>th</sup> MI BDE - Redeployed to U.S.

Other Witnesses:

1. [REDACTED] O-3 Former Interrogation OIC - Redeployed to U.S.

- 2. [REDACTED] O-3 205<sup>th</sup> MI BDE - Redeployed to U.S.
- 3. [REDACTED] O-3 Ft. Sam Houston - Redeployed to U.S.
- 4. [REDACTED] O-5 CJTF-7 - cannot locate
- 5. [REDACTED] O-4 Member of Australian forces - Redeployed to

Co-Accused:

- 1. England, Lyndie R. E-3 372<sup>nd</sup> MP CO - Fort Bragg, awaiting court-martial

The following witnesses are co-accused, have invoked their rights and are represented by counsel.

- 1. [REDACTED] E-5 372<sup>nd</sup> MP CO
- 2. [REDACTED] E-6 372<sup>nd</sup> MP CO
- 3. [REDACTED] E-4 372<sup>nd</sup> MP CO
- 4. [REDACTED] E-4 372<sup>nd</sup> MP CO
- 5. [REDACTED] E-4 372<sup>nd</sup> MP CO

The following witnesses were requested by Defense Counsel and were available, Defense Counsel decided during the investigation to not call these witnesses and they were therefore deemed reasonably unavailable.

- 1. [REDACTED] Vigilant A, security detainee
- 2. [REDACTED] Vigilant A, security detainee
- 3. [REDACTED] Hard site, 6-B, criminal
- 4. [REDACTED] Ganci 5, security detainee
- 5. [REDACTED] Ganci 8, security detainee
- 6. [REDACTED] Hard site 3-B, criminal
- 7. [REDACTED] Ganci -1, security detainee
- 8. [REDACTED] Hard site 4-B, criminal
- 9. [REDACTED] Unknown, released
- 10. [REDACTED] Unknown, released
- 11. [REDACTED] Vigilant C, security detainee
- 12. [REDACTED] Ganci 5, Unknown
- 13. [REDACTED] Unknown, released
- 14. [REDACTED] Ganci 8, security detainee

Enclosure #2 - CONTINUATION OF DD FORM 457, BLOCK 13a

Prosecution Exhibit #6 - Sworn statement of SPC [REDACTED]  
Prosecution Exhibit #7 - CD ROM of pictures and video clips  
Prosecution Exhibit #8 - Sworn statement of SPC [REDACTED]  
Prosecution Exhibits #9A thru 9O - Sworn statements of Detainees at the Prison  
Case File

Defense Exhibit A - ARTICLE 15-6 Investigation of the 800<sup>th</sup> MP Brigade  
Defense Exhibit B - Rebuttal of AR 15-6 for SFC [REDACTED]  
Defense Exhibit C - Rebuttal of AR 15-6 for 1SG [REDACTED]  
Defense Exhibit D - Rebuttal of AR 15-6 for CPT [REDACTED]  
Defense Exhibit E - Sworn statement of [REDACTED]

**Enclosure #3 – Defense Counsel's Objections prior to and during the ART 32 Investigation.**

- The Defense objected to consideration by the IO of the following evidence. These were published in Defense Counsel's memorandum of 10 April, 2004.

1) Various Documents (From Detainee Medical Records, 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

2) Detainee Medical Records (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

3) Hard-cell Medical Log (From the 372<sup>nd</sup> MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

4) Treatment Logs (From B Company, 109<sup>th</sup> Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

5) Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

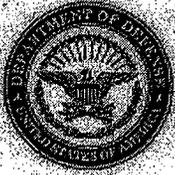
6) Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

7) Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some

nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

- DC had the following objections during the investigation

- 1) Admittance of photos that do not apply specifically to the charges against SPC Ambuhl.
- 2) Consideration of statements from the detainees that have been released.
- 3) Consideration of the CD ROM and specifically those items not relative to the case against SPC Ambuhl.



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 420th ENGINEER BRIGADE  
Victory Base, IRAQ  
APO AE 09342



**Builders in Battle!**

AFRC-CAR-EBA-LG

8 MAY 2004

**MEMORANDUM FOR RECORD**

**SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl**

1. On 24 March 2004, I was appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the charges noted below against Specialist Megan M. Ambuhl, HHC, 16<sup>th</sup> MP BDE (ABN), Victory Base, Iraq APO AE 09342. The charges preferred were:
  - a. Charge I: ART 81 Conspiracy
  - b. Charge II: ART 92 Dereliction of Duty
  - c. Charge III: ART 93 Cruelty and Maltreatment
  - d. Charge IV: ART 134 Indecent Acts with Another
  
2. During the conduct of the investigation, there were two delays granted. Both were attributed to the defense. The first was a 15-day request to allow defense adequate time to prepare for the ART 32 investigation. The second delay was an 11-day request to allow for a civilian defense counsel to travel to Victory Base for the ART 32 investigation and to prepare for the investigation.
  
3. Upon completion of the investigation and consideration of all evidence presented during the investigation (as noted in block 13a of DD Form 457 and Enclosure #2), I have the following findings regarding the charges against Specialist Megan M. Ambuhl.
  - a. Charge I: Violation of UCMJ, Article 81, Conspiracy
    - i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire and enter into an agreement with SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] and PFC [REDACTED] to commit an offense under UCMJ, Maltreatment of subordinates, and did effect the object of the conspiracy when she participated in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck. (See PE 4A thru 4D, PE 5)
    - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States  
v. SPC Megan M. Ambuhl

- iii. Strengths-The Trial Counsel presented evidence to show that SPC Ambuhl entered into an agreement with the co-accused to maltreat a detainee and then performed the overt act by proceeding downstairs with the co-accused to pull the detainee from the cell, place a tie down strap around his neck and then participate in a picture with PFC England as she held the leash.
- b. Charge II: Violation of UCMJ, Article 92, Dereliction of Duty
- i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, who knew of her duties as a Military Police soldier at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do. (See PE 3, PE 4A thru 4D, PE 5)
  - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.
  - iii. Strengths-Trial counsel presented compelling evidence to show that SPC Ambuhl had a duty as an MP and as the NCOIC of 1B to oversee and protect those housed at BCCF. It is reasonable to expect that SPC Ambuhl would have known those duties by virtue of her MOS and of being a U.S. Soldier. Finally, she was willfully derelict in those duties when she did not protect those detainees under her control.
- c. Charge III: Violation of UCMJ, Article 93, Cruelty and Maltreatment
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.
  - ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
  - iii. Weaknesses-There is no contention that element 1 of this charge has been met. I do believe that Trial Counsel failed to present adequate evidence to meet the second element of this charge. SPC Ambuhl was present as the pyramid was built but aside from showing that she was present, Trial Counsel did not present evidence that SPC Ambuhl carried out any act of cruelty or maltreatment other than being present at the building of the pyramid.
- d. Charge IV: Violation of UCMJ, Article 134, Indecent Acts with Another
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, SSG [REDACTED] CPL [REDACTED], SPC [REDACTED] PFC [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located

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AFRC-CAR-EBA-LG

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States  
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in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

- ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
  - iii. Weaknesses-Of the three elements of this charge, I believe that Trial counsel failed to provide adequate evidence to show that elements #1 and #2 were met. SPC Ambuhl was present when the detainees were forced to masturbate but Trial counsel failed to provide evidence that she played any role, other than being present, in the perpetuation of the act itself. I do feel that element #3 was proven adequately as SPC Ambuhl being present was prejudice to good order and discipline and certainly brings discredit upon the armed forces.
4. After review of all evidence presented and completion of the Article 32 Investigation, it is my recommendation that Charges I and II against Specialist Megan Ambuhl be referred to a General Court Martial. I further recommend that Trial Counsel provide additional evidence to show that the elements listed above as not met, were indeed met if they intend to proceed with charges III and IV.
  5. POC for this memorandum is MAJ Charles Ransome at [REDACTED]@us.army.mil or by phone at DNVT/DSN [REDACTED]

[REDACTED]  
MAJ, EN  
Article 32 Investigating Officer

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## Article 32 Transcript

### U.S. v Ambuhl

The Article 32 Proceedings were called to order at 1002 hours, 1 May 2004, at Victory Base, Iraq.

#### PERSONS PRESENT

MAJ [REDACTED], Investigating Officer  
CPT [REDACTED], Government Counsel  
1LT [REDACTED], Assistant Government Counsel  
Mr. [REDACTED], Civilian Defense Counsel  
CPT [REDACTED], Military Defense Counsel  
SPC Megan M. Ambuhl, Accused  
SFC [REDACTED], Recorder

#### PERSONS ABSENT

None

**The Government Counsel stated that sometime today, he would like for all parties to review each packet to ensure all contents were the same.**

**The Defense Counsel conducted a voire dire of the Investigating Officer, and made no objection to the Investigating Officer being detailed to the hearing.**

**Government Counsel stated that all parties understand that due to witness location and different ways testimony would be given, the proceedings may not run as normal.**

The Investigating officer stated that this was a formal investigation and that he had been detailed as the Article 32 Investigating Officer by order of Colonel [REDACTED] Commander, 16<sup>th</sup> Military Police Brigade (Airborne).

The investigating officer informed the accused that his sole function as the Article 32 investigating officer was to determine thoroughly and impartially all of the relevant facts of the case, to weigh and evaluate those facts, and to determine the truth of the matters stated in the charges.

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence, examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

**The Investigating Officer advised the accused of her right to counsel.**

**The Accused stated she would be represented by Mr. [REDACTED]**

The Investigating Officer instructed Mr. [REDACTED] to fill out items on DD Form 457, Investigating Officer's Report.

The Defense Counsel waived the reading of the charges.

**The Investigating Officer notified the accused of her rights during the Article 32 Investigation.**

The accused stated that she understood her rights.

**The Investigating Officer stated that the following witnesses would be present:**

CW2 [REDACTED], IMIR, CJTF-7  
SGM [REDACTED], 418<sup>th</sup> MP Det, (CLD)  
CPT [REDACTED], 372d MP CO  
1SG [REDACTED], 372d MP CO  
SFC [REDACTED], 372d MP CO

Telephonic testimony:

SGT [REDACTED], A CO, 302d MI BN, Germany  
SA [REDACTED], CID  
PFC [REDACTED], HHC, 16<sup>th</sup> MP BDE(ABN) (REAR), Fort Bragg, NC

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

**Prosecution Exhibit 1: Sworn Statements of SPC [REDACTED]**  
**Prosecution Exhibit 2: Sworn Statements of SGT [REDACTED]**  
**Prosecution Exhibit 3: Sworn Statements of SPC [REDACTED]**  
**Prosecution Exhibit 4A – 4R: 18 photos; with objection; Defense Counsel objected to photos not pertaining to SPC Ambuhl.**

The Assistant Government Counsel stated that the witnesses from the 372d MP CO, located at LSA Anaconda would probably not be here due to convoy difficulty.

The Government Counsel made an Opening Statement.

The Defense Counsel reserved his Opening Statement.

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**SFC [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:**

**The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.**

**CPT [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:**

**The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.**

**1SG [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:**

**The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.**

**SGT [REDACTED] A CO, 302d MI BN, Germany, was called as a witness, sworn, and testified telephonically in substance as follows:**

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I was deployed to Abu Ghraib Prison Iraq at the end of September 2003 until February 2004; I left when my Battalion redeployed. I was the Systems Administrator and Trojan Spirit Operator for what was called the ICE Intelligence Center for the Interrogators. I was assigned to a MI Bn from Camp Victory, and worked with the interrogators that worked at Abu Ghraib. I worked in the center where the interrogators prepared their reports and collected data and kept information.

The MI personnel had to interact with MPs in order to do their interrogations. The MPs would provide security, or be told by individual interrogators from MI to alter diets or sleep of detainees. The Interrogation teams were usually made up of a civilian interrogator or interpreter. They would give direction to the MPs.

I may know SPC Ambuhl, but I don't recognize the name right now.

I do not know how Tier 1A and 1B is set up. I visited it once, and I was told that the real bad guys were there in individual cells.

I actually sat in on one interrogation with SPC [REDACTED] an interrogator from Victory Base. I was to interrogate a General, and I provided security.

To help with the interrogations, MP guards would play loud music, alter detainees' diets when feeding MRE's and taking out certain items. They would alter detainees' sleep,

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use dogs to intimidate, pour water over them and put them in the back of HMMWVs and drive around.

Physical Training that was authorized would be push-ups, overhead arm clap, instruction like from a Drill Sergeant to a Recruit.

I have not seen photos of abuse at Abu. My Chain of Command has not asked me if I have seen any photos, nor have they told me to delete photos from hard drives. I have only heard of incidents from interrogators.

I heard of the incident involving SPC [REDACTED] I was told that he was too aggressive, and was relieved. I do not know of any UCMJ action. He was placed in a more analytical role at the ICE. SPC [REDACTED] was also relieved because she had a detainee stripped naked and made him walk back to his cell naked in the view of all the other prisoners. This happened in November or December 2003.

My Bde Cdr, moved into the ICE; he was a LTC, and seemed pretty involved with everything that went on until he was replaced by a MAJ [REDACTED]

I would say that MI was in control of prison operations. The OPTEMPO was high. I was the system administrator, and there were many requests for new accounts to be added to the network. More and more personnel and prisoners would arrive.

I would say that there was pressure for the interrogators to produce info from the detainees. It was an overwhelming amount of detainees in the facility. There was no deadline to get detainees out of interrogations.

I recall my statement to CID when I talked of a conversation with SPC [REDACTED] I was sitting at the DFAC and heard him and his peers talking about what the MPs did to the detainees. Things like beating them up and using them as practice dummies and knocking them out.

I had just returned from leave, so this discussion was in December 2003.

Someone from the Nevada National Guard, an older female soldier, told me of some stuff that she saw going on. She documented it, and her chain of command reprimed her because of it. She was afraid of her chain of command. She sent the documentation to her relatives.

I spoke with a SPC [REDACTED] about the MPs using dogs on the detainees. She said how fearful the detainees were of the dogs. She described how a MP pretended to be a dog to scare the detainees. I don't know what happened to SPC [REDACTED] because she witnessed the incident. She is in the same unit as SPC [REDACTED] and SPC [REDACTED]. They are all in a Reserve Unit. She did take pictures of the facilities, but I do not know of her taking pictures of any detainees.

I did not report the abuse that I heard from others. I knew that some of the stuff was authorized, and did not need to be reported.

I talked to one woman about it only being a matter of time before the abuse got out and an investigation initiated. I spoke to at least everyone that I knew about how the place was poorly run. It was very unorganized. The response I got that it was a lot worse under Sadaam. LTC [REDACTED] mad that statement after the Red Cross visited the prison and saw the conditions. The Red Cross criticized the food, from what I remember.

I remember soldiers from my BN visiting from Camp Victory being trained on how to interrogate and secure prisoners. They were also trained on how to better use their approaches.

I know that the detainees received blankets and clothing if the interrogators wanted them to have it. SPC [REDACTED] had mentioned to me that they made them wear women's panties, and if they cooperated, some would get an extra blanket.

SPC [REDACTED] was known to bang on the table, yell, scream, and maybe assaulted detainees during interrogations in the booth. This was to not be discussed. It was kept "hush hush" by the individual interrogators.

To my knowledge, the only thing that happened after the incidents was the team getting together to make reports after the interrogation. Nothing was said about not banging on tables. Nothing was put out about not stripping detainees naked after the SPC [REDACTED] incident. She was relieved because she made a detainee walk to his cell naked in front of other detainees.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

I don't know what training was given to the MPs of the 372d MP CO. The only time I saw MPs was while waking through the facility, or at chow.

SPC [REDACTED] also told me of two inmates that supposedly raped a child, and the MPs punished them by making them get into all sorts of sexual positions.

I am vaguely familiar with interrogation techniques. I know the IROE. Putting inmates in sexual positions naked would not be appropriate. I wouldn't do it if someone ordered me to do something like that; not even a CPT.

The different things I was told, I wondered if it was a joke for the guards. I wouldn't be surprised if the freed innocent prisoners retaliated against the prison after being treated this way, by helping to pinpoint locations in the prison for the mortar attacks.

The MPs were directed by the MI personnel to play loud music, vary diets, limit MREs, deprive sleep, and PT exhaustion.

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People got in trouble for being too aggressive. Physical violence would be over the limit of the IROE. It would not be authorized.

I would not hit someone to get them to soften up. Others shouldn't either. That would not be a legal order. Putting a leash around someone's neck, pretending to drag them and taking a picture would not be authorized.

Taking pictures was forbidden. Personnel were placing pictures on the database, and I was told to remove the pictures from the database. These were pictures of soldiers throughout the facility just walking around. It was totally inappropriate to take pictures of detainees. It is inappropriate to take pictures of detainees naked in a pyramid. You would not do this to soften them up. I don't know of anything that would allow MPs to have detainees masturbate to soften up for an interrogation. This would not be allowed. Pictures of this masturbation would be illegal also. Pictures of a detainee with his face next to another detainees genital area masturbating would also be unauthorized. This is not a technique used to soften someone up. I have never heard of any of these techniques used by MI.

#### **QUESTIONS BY THE INVESTIGATING OFFICER (MAJ ██████████)**

I didn't report the stuff that I heard, because I thought some of the things I heard was authorized. The dietary and sleep stuff was common knowledge within the ICE. MPs using dogs to scare detainees, I think was approved by our IROE.

Dragging detainees with at leash, making detainees masturbate, and piling them naked in pyramids and taking pictures of it is not authorized.

It was confusing the way the place was run. It was an important mission run by Reservists who did not know what they were doing. They were just on their own. It was a shocking experience.

#### **QUESTIONS BY THE DEFENSE COUNSEL (Mr. ██████████)**

I don't know if the MI personnel received efficiency reports; I got an NCOER, and I counseled my soldiers. I guess the people above me were counseled on their performance.

The goal of the interrogators was to get information, make diagrams of the info and piece together theories or hypotheses of terrorist events that was going on.

It was important to get the information to prevent terrorist activity, and find perpetrators of terrorist activity.

We would get attacked at the prison. There was pressure to get results by effectively interrogating the prisoners. If there were no results, then the supervisors would be concerned. The goal was to get results.

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General Sanchez opened more facilities, and made things better. The place was getting cleaned up. This was an incentive to get more information from the prisoners.

**QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

Goals would not justify committing a crime; it would be definitely possible for maybe the civilian interrogators to overlook that. They were not under any authority.

General Sanchez never ordered anyone to commit crimes to get information. The Brigade, Battalion, Company, and MI Commanders, never told anyone to commit crimes to get information.

The facility in general, had no real authority base, other than LTC [REDACTED]. There were no clear-cut guidelines.

There is no justification to have detainees masturbate, piled in pyramids naked, or be pulled by leashes. The conditions might lead some people to act inappropriately. The people who act inappropriately should be punished.

I know that there is a separate facility for women and children. There are more than terrorists and security detainees at the prison. Some people were living there. The raids would round up people that were just in the area and probably innocent. If a prisoner was being kept for robbing an Iraqi bank, I wouldn't know about it.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1149, 1 May 2004.**

**The Article 32 proceeding reconvened at 1203, 1 May 2004, with all parties present.**

**CW2 [REDACTED] IMIR, CJTF-7, was called as a witness, sworn, and testified in substance as follows:**

I organize and process reporting by Iraqi information collectors. I am a 351E, Interrogations Technician. Prior to my current job, I was at the JIDC at Abu Ghraib from September 2003 until January 2004. I was reassigned when my unit left. I was asked to stay.

I am familiar with the layout of the prison. The largest camp is Ganci; it holds security detainees primarily, next is Vigilant, it holds detainees of informational interest; and then there is the Hard Site; it holds detainees of MI interest, females and juveniles, problematic detainees from the other camps, like rioters, or crazy detainees.

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Tier 1A and 1B holds persons of MI interest. I do not know anything about what type of training the MP guards would have received at Tier 1A and 1B.

In January 2004, we ceased to bring problematic detainees into the Hard Site, because they created a chaotic environment. The FOB Commander ordered this change. They were troublemakers. I recall one who would rip up his mattress and relieve himself right on the floor of his cell; another would sling their feces at the guards.

I don't know if the MP guards received any special type of training.

I worked in the Operations section of the JIDC. We accounted for the detainees, and answered questions from CJTF-7. We tracked requirements and assessments of the detainees. Leaders would gather the information from the sections, The ICE NCOIC was SFC [REDACTED] and the OIC was CPT [REDACTED]. I don't recall seeing any suspense dates. We were short staffed; we requested for more personnel, and we got more personnel.

I think there was interaction with MPs and MI personnel. SPC [REDACTED] was a liaison, and would attend the FOB BUB daily. The personnel from each section would disseminate the info obtained from the BUB.

I know SPC Ambuhl; she worked in Tier 1, and she is here today. I don't remember when I first met her, but I had a almost daily professional interaction with her. She would provide updates on who was present or not. I don't know how long she worked at the prison. She observed juvenile and female detainees. She had interaction with them; she helped move them from cell to interrogation wing.

I don't know if she received any training on how to interrogating prisoners. We did have a conversation about supplies and Iraqi food for the detainees. We once talked about rewarding detainees that helped clean and do tasks, with cigarettes, because they loved to smoke.

I was the "old Operations expert", everyone would just ask me stuff.

I remember a discussion with her about problem detainees; it was about reducing the environment that caused them to misbehave. Some of the detainees were cooperative and others were not.

There were a few approved interrogation techniques; for example, prod and go down – when you speak down to someone to get them to cooperate.

I do not know of any SPC [REDACTED]. I know SPC [REDACTED] he was an analyst that worked in the ICE shop. I understand that he was removed because of a situation when a detainee was stripped naked.

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SPC [REDACTED] was also involved in this same incident and was moved to my section after she was relieved from her duties. I asked her why she was moved, but I did not ask her what she did. I do not know if SPC [REDACTED] or SPC [REDACTED] received any UCMJ.

We had mandatory IROE training and implemented a mandatory sign out procedure. All MI personnel attended this training.

I heard about a riot at Ganci. I do not know of any punishment after they were moved to the hard site. I hope that they were segregated and silenced.

Embarrassment of the Arab culture would be contrary to producing results, in my opinion. Some of our most effective means to communicate is to just develop a rapport. I do not know if the MPs were trained on the Arab culture.

SPC Ambuhl would help move the prisoners from their cells to the interrogation wing or where we picked them up. The interrogator would ask for the prisoners they needed. SPC Ambuhl would cross-reference and tell which cell the prisoner was in, and she would facilitate the move.

Sleep deprivation would be documented in an interrogation plan. It is a separate book from other files.

I never had any problems with SPC Ambuhl.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT McCabe)**

The Hard Site has problematic detainees in 1A and 1B. The rest of the Hard Site houses Iraqi corrections prisoners, such as robbers, and thieves. The CPA is in charge of the rest of the hard site, 2A, 2B, and so on. 1A and 1B contained security detainees for MI, females, and juveniles.

Ganci contained people possibly gathered from raids. There are many camps in Ganci, No one from Ganci has any interrogation value. Someone removed from a riot would not be interrogated. If detainees in Ganci could not be controlled, then they would be moved.

Our priority was to get information to stop the IED attacks, terrorist activity, and crimes against the Coalition.

Every detainee was inprocessed and assessed. After the screening, they were determined to be of value or not value to MI. These reports went to CJTF-7.

I am a trained interrogator. I finished my training in 1990; and I have been an interrogator for 14 years. MPs would do the sleep management plan, it was requested of MI. General Sanchez would have to approve speaking to someone about something that would make them upset. An MP could not just do this on his own.

I am familiar with the Geneva Conventions. We treated them the same as POWs; we treated them with dignity and respect. Anything outside of that required approval.

No MPs attended our training. MPs did not attend our Geneva training. The IROE is classified and located at the JIDC.

The worst criminals were to be treated with dignity and respect.

I never saw SPC Ambuhl treat anyone without dignity and respect. She would help us with the female detainees. She was nice and pleasant. She knew the difference between right and wrong, and what dignity and respect was. I saw her treat people with dignity and respect. I assume she was a guard; she took direction from the Shift NCO, SGT [REDACTED], CPL [REDACTED] or SSG [REDACTED].

There is nothing in the IROE that allows stripping detainees naked. There are times when they are naked for strip-searching. Detainees being piled in a pyramid naked, or being forced to masturbate has no MI or military purpose.

I've seen a handful of photos of the pyramid. That type of interrogation "plan" would not have made it to General Sanchez for approval; it would not have made it past me.

Forcing detainees to masturbate kneeling in front of one another would be outside of the bounds. Placing a leash around a detainee's neck would be out of bounds.

All of these acts would be criminal offenses. If I were ordered to do these acts, I would not carry them out. Embarrassment as a technique would be contradictory to achieving results.

**Government Counsel shows the witness Prosecution Exhibit 4A.**

This looks like 1A or 1B. I recognize the metal doors. SPC Ambuhl is in this picture. I have seen the other female around, but I do not know her name. I do not recognize the detainee on the "leash". This scene serves no military purpose; it is inappropriate. Interrogators would not tell MPs to do this. I have never seen SPC Ambuhl do anything like this.

**QUESTIONS BY THE INVESTIGATING OFFICER (MAJ Ransome)**

The rest of the Hard Site Tiers housed, as I understood it, Iraqi criminals; some I thought were actually sentenced and serving prison terms.

## **QUESTIONS BY THE DEFENSE COUNSEL (Mr. Volzer)**

A "unclassified" description of the general requirements would be: who's attacking us-, what are some imminent attacks-, where is the WMD-, what do you know about terrorist activity-?

Reports were generated from the information obtained from the detainees interrogated. CJTF-7 developed the reporting requirement.

1 to 2 people would interview or interrogate a detainee, depends on the detainee.

You could not "fear up" or belittle someone without approval. MI would tell the MPs to make the detainees more receptive. It depended on the environment; a detainee may be moved to another area, monitored for interaction, told to keep quiet and not interact with others, with proper documentation, put on dietary management, and possibly be given cigarettes.

These were effective techniques were used by MI and required approval. Removing a blanket or other item required approval.

Saying MI personnel are aggressive is an unfair statement. Some are, and some are not. I am a former grunt. 11B and 11C grunts are aggressive too.

The interrogation techniques used are taught.

MI does not own the detainees. The sleep management procedure was directed by MI to the MPs to supervise and report at the end of the day.

After someone is interrogated, doesn't mean they could leave the prison. There may be more interest in keeping them.

Yelling was not authorized. We had a few that were loud with the detainees.

I saw the special reaction team at the Vigilant camp once. Sometimes handling a situation quietly works better and is more effective. If one technique is working, we continue to scrutinize that technique. Its not one of those "not broke don't fix it" scenarios. We do continue to develop rapport.

There was a sign in sheet in the beginning; it is kept with the NCOIC of each tier. The detainee interrogation plans are classified and kept in the ICE log. Detainee files are secret.

## **QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])**

To prod and go down is a technique, such as getting a captured officer, making them tired, and calling them a coward.

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You exploit how they were captured and use it to your advantage. An example of fear up would be, "okay, as long as you don't cooperate, you will just stay in here". Approval is need for these two techniques.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1315, 1 May 2004.**

**The Article 32 proceeding reconvened at 1412, 1 May 2004, with all parties present.**

**SGM [REDACTED] 418<sup>th</sup> MP Det (CLD), was called as a witness, sworn, and testified in substance as follows:**

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I first arrived to Iraq 1 February 2004. My mission was to work a BLD/CLD versus a EPW mission. CLD is Camp Liaison Detachment; BLD is Brigade. The 16<sup>th</sup> MP BDE (ABN) gave us our mission. We replaced the 381<sup>st</sup> BLD. There were no EPWs, except for a handful at Camp Bucca. We took on the detainee operations role.

The definition of detainee and EPW is in the Geneva Convention, Article 4.

Our mission falls under the 16<sup>th</sup> MP BDE (ABN). I have not aware of allegations of abuse and mistreatment of detainees. I have heard of the rumors.

I don't know what training was given in the past; I am aware that training is going on now. There are 30 corrections personnel from Fort Knox, Fort Leavenworth here to train soldiers at the prison. There is training on the Arab culture, ROE, and the Geneva Conventions.

I visit the prison often. I am aware of the prison breakdown; 1A and 1B houses MI holds, females and juveniles. Juveniles were moved recently. The Hard Site is fairly secure. Normally, females would be separated. We use the Geneva Convention as a guideline.

Changes are going on in Ganci and Vigilant to make conditions safer for the detainees. The 16<sup>th</sup> MP BDE (ABN) is refining policies, and SOPs.

I do not know of the officer involvement prior; but COL Quantock frequently visits the prison.

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We have MPs and MI personnel in the inprocessing center at the prison. I do not know of any cross over training. When we made our assessment, we noted that the nutrition and sanitation conditions were not within the Geneva Convention.

I do not know if the Geneva Conventions was followed before the 16<sup>th</sup> MP BDE (ABN) arrived. It is being followed now. There are weigh ins, and the meals are nutritional.

The Geneva Convention recommends that female detainees be guarded and searched by female MPs.

When a detainee arrives, they are assessed and inprocessed within 72 hours. I do not know of any SOPs being left behind or given to the 372d MP CO.

We at the BLD look at the prison from a Geneva Convention standpoint. We ensure that prisoners are treated properly, and that environmental conditions are correct.

The 372d MP CO was previously at Mosul. I am not aware of anyone else performing the prison mission before them.

We brought our regulations and documentation with us. I have walked throughout the compound and had casual conversations with the soldiers. We have a big switch of OIF1 and OIF 2 personnel.

**With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.**

**The Article 32 proceeding recessed at 1435, 1 May 2004.**

**The Article 32 proceeding reconvened at 1459, 1 May 2004, with all parties present.**

**SA [REDACTED] U. S. Army CID, Fort Jackson, SC, was called as a witness, sworn, and testified telephonically in substance as follows:**

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

I first became involved in the detainee abuse case when we received a anonymous letter and cd-rom containing pictures. In the preliminary stage of the investigation, I was the case manager. I left in February 2004. Our CID detachment was located at Abu Ghraib; we were three agents conducting interviews of prisoners. We also had three translators.

In order to find out who the detainees were that were abuse, we obtained logs of the prisoners that were in the isolation wing at the time of 7November and a couple of other days.

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Initially, the person who came forward with the letter and cd-rom provided the names of the main persons involved. This was SPC [REDACTED]; he went through the pictures with us and identified the military personnel involved. He identified the majority of the personnel, and knew who they were. Others, he did not know. We interviewed every single MI and military personnel that worked in the prison; we sent numerous requests for assistance to other CID offices worldwide to interview all other persons that were ever at the prison and identified in the photographs. I have no idea of any UCMJ action. The case is still open. I interviewed several hundred people, but I cannot remember a SPC [REDACTED]

I believe SPC [REDACTED] came forward because he knew this stuff was wrong, and that CPL [REDACTED] would go back to work in the isolation wing and continue the abuse. He wanted the abuse to stop. He received the pictures approximately one week before he came forward. He was weighing his conscience, and decided to do the right thing.

I think several people suspected abuse but did not report it. I don't know the status of any UCMJ against anyone. CID does not recommend what action be taken against subjects of our investigations. We just gather facts; the chain of command decides what to do. We briefed the Company and Battalion commanders about our progress during the investigation.

I remember my interview with SGT [REDACTED] he was interviewed twice. He lied in his first statement, and told the truth in his second statement; admitting to stepping, stomping, and jumping on the detainees.

After talking with the detainees and personnel, the names of the main perpetrators of the abuse were CPL [REDACTED], SSG [REDACTED], and SGT [REDACTED]. The ones taking pictures were SPC Ambuhl, PFC [REDACTED] and another I cannot recall. These names are based on the interviews, and who was there.

I recall the detainees mentioning SPC Ambuhl; they would refer to her as Miss [REDACTED]. I can't recall if she helped a detainee by giving him an inhaler.

When I interviewed a detainee, I explained why I was there, and just gave them a pen and a sworn statement form in Arabic or English; and they would write what they knew about the incidents. Their statements were later translated. If something wasn't clear, we had follow up questions. If they did not know someone's name, they were told to just describe that person using as much detail as possible.

I remember SGT [REDACTED] but not his statement. I remember SSG [REDACTED] once being a suspect; I thought he observed the abuse; he was later cleared of any wrongdoing. This was all based on our interviews of the personnel that were there.

SFC [REDACTED] as I remember was not involved. It became apparent through the course of the investigation, that the nightshift-- SPC Ambuhl, CPL [REDACTED], SSG [REDACTED], PFC

██████████, and on occasion SPC ██████████, would do these acts after SFC ██████████ had left; and after the chain of command had changed shifts and gone home. It became clear to me that they knew that SFC ██████████ would not tolerate these acts. There was one incident when SFC ██████████ was on the upper tier and saw an incident and ordered them to stop immediately; I believe he observed SGT ██████████ stepping on a detainee. They were shocked at how angry he was when he told them to stop. I don't believe that SFC ██████████ reported that incident.

I have no recollection of SGT ██████████ again, I spoke with several hundred personnel.

SPC ██████████ was identified as one of the people in the photos, but I don't recall his statement. He never came forward to report any misconduct to the CID office. SPC ██████████ and SPC ██████████ were MI soldiers identified in one of the photographs.

I am not sure of any UCMJ action pending on anyone; I left Iraq in February 2004, and until very recently, I did not know of anyone pending any UCMJ action. I turned the investigation over to SA ██████████. I don't know if he did any follow up interviews. We gave the 15-6 Investigation Staff a copy of our case file; we also provided the photos and statements we gathered.

I do not recall a SGT ██████████ again, I spoke with hundreds of personnel. Our main purpose was to identify the personnel in the photos; we also wanted to find out if MI told the MPs to do these acts. If so, we wanted to know who told them; that's why we interviewed everyone. No one said do this to that person, or anything specific. Our second purpose was to have the most thorough investigation that we could. We wanted to talk with each and every person mentioned in the interviews.

Most of the interrogators did not wear nametags. You knew who they were, if you knew them. We would figure out who was working, and interview all the handlers, interrogators, and guards.

I do not recall if there are any civilians involved in the investigation; several people were interviewed.

I remember ██████████. We listed someone as a subject if there was reasonable belief that they committed a crime. The investigative file is a working document, and the status of personnel involved may change. Like when SSG ██████████ was listed as a subject, and later taken off of the status report.

There are numerous things involved when determining if someone is derelict in their duty; if they inform their chain of command, then they are not derelict in my mind, and the way the UCMJ puts it, as I know.

No one reported any abuse up until January 15, 2004, to CID; however, there was one individual who reported the abuse to his chain of command—his NCOIC.

The NCOIC then went to SSG [REDACTED] to report the abuse; and because SSG [REDACTED] was the perpetrator in this incident, it did not go anywhere. The individual that reported it did the right thing.

Had SPC Ambuhl reported the abuse to SFC [REDACTED] she would not be a subject of the investigation. It would be different if she had reported it to SSG [REDACTED]; I am not a lawyer. This was an ongoing incident. The NCOIC that reported the incident to SSG [REDACTED] I believe, did not report it to anyone else. When he reported to SSG [REDACTED], he did not know that SSG [REDACTED] was the perpetrator.

I do not recall interviewing SPC [REDACTED] or SPC [REDACTED]. The investigation is still open, and pending a few requests for assistance. You can add and remove subjects as credible information becomes known.

I worked at Abu from October 2003 to February 2004; I would visit the Hard Site at least once or twice a week. We would interview suspects of crimes against U.S. Forces, or individuals who knew of deaths of U.S. Forces. On occasion, I visited with CPT [REDACTED] in tier 1a and 1B. I had no involvement with the Red Cross.

I heard of a deceased individual that was being stored at the facility, but I don't know the specifics. Our focus was Iraqis committing crimes against U.S. soldiers.

Based on our proximity and the amount of time, the 12<sup>th</sup> CID came over to help with the investigation. There were a lot of people to be interviewed. They were initially investigating hostile fire incidents. It was a higher priority to work the logistics of this case.

I had no interaction with SPC Ambuhl; I would see her when I went to the Hard Site. I did not see her commit any abuse. I only went there during the day in the morning; the alleged abuse happened in the evening or nighttime.

I never saw the detainees do any PT. I believe a SPC [REDACTED] or someone else hung a detainee in handcuffs for over six hours. I don't recall SPC Ambuhl letting the detainee down.

I don't recall if I interviewed PFC [REDACTED]. I read every document when I was there, but I cannot remember any statements that she made. I do not remember if she changed her stories; she may have. There were a lot of people and documents in this case.

We do criminal record checks on our subjects. I believe PFC [REDACTED] received an Article 15 for a improper relationship with CPL [REDACTED]. I believe CPL [REDACTED] was admonished, and they were told to stay away from each other. I don't remember if CPL [REDACTED] was recommended to take anger management by his commander.

When I interviewed the detainees, I did not provide any names. I would not ask, for instance, "Did CPL [REDACTED] hit you?"—I would simply ask "Were you in the isolation

wing-- and what happened when you were there?" We wanted a clear and unbiased environment.

I don't know if they wore their BDU Tops while in the isolation wing. I don't know if they were told to not use their first names; or to even use fake names. The MI personnel I interviewed never told me they told the MPs what to do to the prisoners.

In some of the incidents, some of the detainees being abused were not actively scheduled for interrogation. They were rioters. This appeared to me as just retaliation against the rioters. The riots were in separate camps.

We interviewed all of the MI personnel. No one admitted to telling the MPs to soften up any detainees; if they had, they would have been violating the UCMJ and the Geneva Convention. No one ever admitted to "good job, keep doing what you are doing".

MI had their very specific interrogation plan. It detailed things they could and could not do. No one I interviewed said they were abused during an interrogation. I am not aware of any MI investigation.

There was absolutely no evidence that the MI or MP chain of command authorized any of this kind of maltreatment. These individuals were acting on their own. The photos I saw, and the totality of our interviews, show that certain individuals were just having fun at the expense of the prisoners. Taking pictures of sexual positions, the assaults, and things along that nature were done simply because they could. It all happened after hours. The fear instilled in the prisoners after these incidents may have been a benefit, but I don't know for sure. These individuals wanted to do this for fun.

#### **QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])**

Benefiting the interrogators did not come out in our investigation. The abused individuals were not going to be interrogated. The rioters would have been in another camp if they had military intelligence value. It is clear to me that the abuse was retaliation after the riot.

I know I am here today to help clarify the allegations against SPC Ambuhl. My investigation determined that she was present and took pictures. She is in the pictures with PFC [REDACTED] holding a leash around a detainee's neck. She is described as being present by some of the detainees during the abuse.

I do not recall her present at the riot incident. Our investigation did not determine her committing any abuse; nor did it determine that she stopped the abuse or reported the abuse.

I don't remember a statement from [REDACTED]. If he described a tall white female with green eyes named [REDACTED], he would be talking about SPC Ambuhl. I did not give the detainees any names.

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I told them to use the names if they knew them, and to describe what happened. [REDACTED] would also be SPC Ambuhl. In the Arab dialect, they have a hard time pronouncing [REDACTED] and end up saying [REDACTED]

**QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])**

There was an amnesty period during the course of our investigation, ordered by the FOB Commander. We did not collect any of this evidence; none of it pertained to our investigation. We reviewed cds and media as requested by the chain of command. The commander had access to the amnesty boxes; it entirely a command function. The commander would have kept all the other contraband. We returned the stuff we reviewed to the chain of command to be destroyed.

The detainee statements were translated. [REDACTED] stated that all the guards were good except for SSG [REDACTED], CPL [REDACTED] and SGT [REDACTED], as I specifically recall. He also said that despite all the abuse, he realized that the majority of U.S. soldiers did not abuse detainees. He only pointed out SGT [REDACTED] and CPL [REDACTED] abusing him.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

**The Article 32 proceeding recessed at 1608, 1 May 2004.**

**The Article 32 proceeding reconvened at 1617, 1 May 2004, with all parties present.**

**PFC [REDACTED] HHC 16<sup>th</sup> MP BDE (ABN) (REAR), Fort Bragg, NC, SC, was called as a witness, sworn, and testified telephonically in substance as follows:**

**The witness was read her Article 31 rights; she acknowledged and understood them, and stated that she would participate in the proceedings without a lawyer. Upon discussion wit all parties present, the Defense Team decided that they did not wish to question PFC England.**

**The Article 32 proceeding recessed at 1640, 1 May 2004.**

**The Article 32 proceeding reconvened at 1643, 1 May 2004, with all parties present.**

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

- Prosecution Exhibit 5: Sworn Statements of PFC [REDACTED]**
- Prosecution Exhibit 6: Sworn Statement of SPC [REDACTED]**

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**The Article 32 proceeding recessed at 1643, 1 May 2004.**

**The Article 32 proceeding reconvened at 0713, 3 May 2004, with all parties present except for the Assistant Government Counsel.**

**The Government Counsel asked that the members of the 372d MP CO be declared unavailable since they could not make their convoy to Victory Base.**

**The following exhibits were presented by the Government Counsel and admitted into evidence as follows:**

**Prosecution Exhibit 7: CD Rom containing photos and video clips; with objection; the Defense objects to photos that do not pertain to SPC Ambuhl's charges.**

**Prosecution Exhibit 8: Sworn Statement of SPC [REDACTED]**

**Prosecution Exhibit 9A – 9O(oscar): Sworn Statement of detainees; with objection; the Defense objects to the statements of detainees that have been released.**

#### **THE GOVERNMENT RESTS**

**The following exhibits were presented by the Defense Counsel and admitted into evidence as follows:**

**Defense Exhibit A: 15-6 Investigation of 800<sup>th</sup> MP Bde**

**Defense Exhibit B: Rebuttal to 15-6, by SFC [REDACTED]**

**Defense Exhibit C: Rebuttal to 15-6 by 1SG [REDACTED]**

**Defense Exhibit D: Rebuttal to 15-6 by CPT [REDACTED]**

**Defense Exhibit E: Sworn Statement of CPT [REDACTED]**

#### **THE DEFENSE RESTS**

**The Government Counsel made a closing statement.**

**The Defense Counsel made a closing statement.**

**The Article 32 proceeding adjourned at 0814, 3 May 2004.**

002641



Martial Convening Authority, Colonel (COL) [REDACTED] appointed Major (MAJ) [REDACTED] as the Article 32 investigating officer.

The Article 32 investigation was held on 1 May 2004 and re-opened on 3 May. MAJ [REDACTED] heard testimony from four witnesses and admitted nine government exhibits and five defense exhibits (See Summarized Transcript, attachment, Defense Motion). Of those exhibits, government exhibit #4 contained 18 photos (A-R), government exhibit #7 (a copy of the CD-ROM SPC Darby turned over to CID that contained numerous photos and video clips), exhibit #9 contained sixteen translated, sworn statements from the abused Iraqi detainees, and defense exhibit A was the lengthy Army Regulation (AR) 15-6 report prepared by Major General (MG) Antonio Taguba.

Subsequent to the Article 32 investigation, CPT [REDACTED] preferred two additional charges. The first additional charge was conspiracy to maltreat subordinates on 8 November 2003. This charge is connected to conduct that the accused was previously charged with in the first set of charges (See Charge Sheet, Charge III, specification 1, dated 20 March 2004). The second additional charge carried two specifications for maltreatment of subordinates on 23 October 2003 and 8 November 2003. Both of these specifications involve misconduct associated with the charges found on the original charge sheet (See Charge Sheet, Charge I and its specification and Charge III, specification 2, dated 20 March 2004).

#### **LAW**

Under Article 32, Uniform Code of Military Justice (UCMJ) and R.C.M. 405, no charge or specification can be referred to a general court-martial until all the matters set forth in those charges and specifications have been thoroughly and impartially investigated by an investigating officer whose function is to inquire into the truth and form of the charges and to make a recommendation as to the disposition of those charges. When reviewing an alleged error in an Article 32 investigation, substantial compliance is the appropriate legal standard. R.C.M. 405(a).

#### **ARGUMENT**

The accused complains that the additional charges were not subject investigation under Article 32, UCMJ. While it is true that the Article 32 investigation was not re-opened to specifically look at these additional charges, the subject matter of these offenses is the exact same as what was previously impartially investigated by MAJ [REDACTED]. The additional charges

are integrally connected to the original charges and are substantially similar to the charges and specifications MAJ [REDACTED] investigated on 1 and 3 May 2003. Consequently, R.C.M. 405 has been substantially complied with in the accused's case.

Stepping out of order and addressing the last of the additional charges first, additional Charge II, specification 2 is a violation of Article 93, UCMJ, maltreatment of subordinates. This charge is a clear outgrowth of Charge I and its specification, conspiracy to maltreat subordinates, on the original Charge Sheet. The Article 32 officer was presented with pictures showing the accused standing mere feet away as her co-conspirator, Private First Class (PFC) [REDACTED] holds a naked detainee with a leash wrapped around the detainee's neck. See Attachment 1, Article 32 - Exhibit 4A. In addition, MAJ [REDACTED] was also presented the sworn statement of PFC [REDACTED] acknowledging the accused's complicity that night. See Attachment 2, Article 32 - Exhibit 5.

It is well settled law that a co-conspirator is also legally liable for the substantive offense that is the object of the conspiracy. Furthermore, as the accused admits in her motion, in order for the government to be successful in proving the conspiracy charge both at trial and during the Article 32 investigation, all of the elements of underlying offense of maltreatment of subordinates must be proved. Additional Charge II, specification 2 merely adds this underlying offense to the listed charges against the accused. Since the accused was present at the Article 32 investigation, knew of the conspiracy charge and the underlying misconduct that was the object of the conspiracy, was afforded the right to representation and cross-examination, and did present evidence concerning this misconduct, R.C.M. 405 and Article 32, UCMJ has been substantially complied with in relation to this charge. R.C.M. 405(a).

The other two additional charges stem from the same night of abuse, 8 November 2003, that is the subject matter of Charge III and Charge IV on the original Charge Sheet.<sup>1</sup> During the Article 32 investigation, MAJ [REDACTED] received into evidence numerous photographs documenting the subject matter of additional Charge I and additional Charge II, specification 1 as well as the sworn statements of several co-accused that detailed the events of that night to include those of SPC [REDACTED] Sergeant (SGT) [REDACTED]

<sup>1</sup> While it is true that MAJ [REDACTED] stated that he did not believe there were reasonable grounds to believe that the accused committed these offenses, the convening authority was appraised of this recommendation prior to referral of both the original and additional charges. See Attachment 3, Pretrial Advice, dated 21 July 2004. The convening authority disagreed with MAJ [REDACTED] recommendation and, within his due discretion, decided to refer these charges to general court-martial.

██████████, SPC ██████████ and PFC ██████████ See Attachment 4-9, Article 32 - Exhibits 4J-0. It can hardly be said that the series of abuses that occurred the night of November 8 were not thoroughly investigated by MAJ ██████████. Moreover, like additional Charge II, specification 2, these additional charges have a clear relation to the original charges.

Additional Charge I and its specification is a conspiracy charge directly related to Charge III in that Charge III is the underlying offense of newly preferred conspiracy charge. Throughout the Article 32 investigation, it was clear that a number of soldiers acted in concert to maltreat and abuse soldiers on the night of 8 November. Additional Charge II, specification 1 deals with the same sexual in nature misconduct as Charge IV, the forced masturbation of the detainees in her care. This is not a case where the misconduct was not investigated or the accused was not on notice of the conduct being investigated.

The amount of evidence that MAJ ██████████ reviewed, to include the large number of photographs, statements of co-accused, and the lengthy AR 15-6 investigation completed by MG Antonio Taguba, and the detail of his report clearly shows the absolute thoroughness of his investigation. The Article 32 investigation took in so much evidence that the government could determine no discernable benefit to re-opening the investigation for the additional charges that were fairly raised by the evidence adduced and which dealt with the same matter that had been investigated. This point is underlined by the inability of the accused to identify any witness or evidence that she would present in a re-opened Article 32 investigation.

The accused's inability to identify any benefit that she might receive from a re-opened Article 32 investigation forces her to take the untenable position that the only appropriate remedy is dismissal of the additional charges. However, if this Court should determine that the government erred in not re-opening the Article 32 investigation prior to referring these additional charges, the proper remedy would be to order the re-opening of the Article 32 investigation for a number of reasons. First, all of the cases that the accused cited in support of the proposition that dismissal is the only fitting remedy are cases that deal with remedying a defect to a pretrial right *after* trial on the merits. The accused's case is in a different trial posture altogether. A trial date has to be set. Discovery for the accused's case has been voluminous and is still underway. Evidence and investigations that the accused has specifically

requested is still being compiled and have yet to be released.<sup>2</sup> Even if this discovery is finalized and released in short order, a trial date for the accused is still at least two months away. This realistic assessment of the accused's case shows that there is ample time to re-open the Article 32 investigation and not unduly the accused's trial in the least.

The accused goes on to allege that "there was over two months of inactivity" in her case. Defense Motion at 8. However, this allegation belies reality. The actions of the accused and her co-accused have been the subject of numerous and wide-ranging investigations to include the AR 15-6 investigation conducted by MG Taguba, an AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones, and the extensive investigation being conducted the Criminal Investigation Division. As the Court and all of the participants in this case are well aware, these investigations, with the exception MG Taguba's investigation, have been active and have taken longer than originally expected to complete. Of particular interest to both the government and the accused, the AR 15-6 investigation being conducted by MG Fay and LTG Jones studying the role that military intelligence played in the abuses at the BCCF originally had a suspense date of 1 June that has been extended on a number of occasions so as to continue to interview relevant witnesses. It was only after the deadline for that investigation was extended yet again was the decision made to recommend and prefer the additional charges at issue.

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<sup>2</sup> While trial counsel has yet to see the investigation, it has been reported that the AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones into the role that military intelligence played in the abuses will consist of over 8,000 pages of witness statements and supporting documents.

**CONCLUSION**

In sum, the accused received a thorough investigation into the charges that have been brought against him. Therefore, the defense's motion to dismiss should be denied.

[REDACTED]

CPT, JA  
Trial Counsel

Delivered to defense counsel, by email, this 22nd day of August 2004.

[REDACTED]

CPT, JA  
Trial Counsel

002647

**OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837**

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAS [HAVE] BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION 6 and 7(C):

Photographic Exhibit

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UNITED STATES

v.

Megan M. AMBUHL  
SPC, U.S. Army  
Headquarters & Headquarters Company  
16<sup>th</sup> Military Police Brigade (Airborne)  
III Corps, Victory Base, Iraq  
APO AE 09342

MOTION FOR EXPERT ASSISTANCE

16 August 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to request that Dr. [REDACTED] a psychologist, be appointed to the defense team, pursuant to Rule for Courts-Martial [R.C.M.] 703(d).

**A. RELIEF SOUGHT**

The defense respectfully requests that the defense Motion for Expert Assistance be granted and that Dr. [REDACTED] appointed to the defense team as an expert consultant with the expectation that Dr. [REDACTED] will also become an expert witness for the defense at trial. In lieu of Dr. [REDACTED] the defense will accept a comparable substitute expert witness, if once can be identified by the government. The defense further requests that Dr. [REDACTED] be designated as a member of the defense team under U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987), Military Rule of Evidence [M.R.E.] 502(a), and Article 46, UCMJ.

**B. BURDEN OF PROOF & STANDARD OF PROOF**

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c). The current legal standard for employment of a defense expert is a convincing showing of a compelling need. See U.S. v. Cameron, 21 M.J. 59 (C.M.A. 1985).

**C. FACTS**

SPC Megan M. Ambuhl entered the U.S. Army Reserves in early 2002. SPC Ambuhl never served on active duty prior to this initial enlistment. In October 2002, SPC Ambuhl was notified that she would be activated in support of Operation Iraqi Freedom. As a civilian, SPC Ambuhl worked as a technician in a medical laboratory. She had no law enforcement training or experience prior to her joining the military as a Military Police Officer. As an MP, SPC Ambuhl was trained to conduct combat support operations, not relocation and interment operations. During her time in the military, she has never received any training on how to conduct detainee operations or how to work in a prison.

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APPELLATE EXHIBIT

IV

Recognized R. 40

In October 2003, while deployed to Iraq, SPC Ambuhl and members of her unit were relocated from Hillah, to Abu Ghraib Prison or Baghdad Central Correctional Facility (BCCF). SPC Ambuhl was assigned to work at Tier 1B of the maximum security section of the prison. The command gave SPC Ambuhl this assignment because they needed a female soldier to work on the wing to assist with the female detainees housed on Tier 1B. SPC Ambuhl worked at BCCF until January 2004.

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts). All of these offenses are alleged to have occurred at BCCF during the time of SPC Ambuhl's assignment to the prison.

On 6 July 2004, the defense submitted a Request for Expert Assistance, regarding Dr. [REDACTED] to MG Thomas Metz, Commander, III Corps. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein.

On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment). These additional charges are alleged to have occurred at BCCF while SPC Ambuhl worked on Tier 1B.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

On 14 August 2004, MG Metz denied the defense's 6 July 2004 Request for Expert Assistance. However, MG Metz indicated that the government would detail a military expert of suitable training, education, and experience to assist the defense.

On 16 August 2004, the government notified the defense of MG Metz's decision. The defense immediately requested that the government identify who they deemed as a suitable alternative prior to 23 August 2004.

#### D. LAW

The defense relies on the following authorities in support of its motion:

- a. U.C.M.J. Article 46
- b. R.C.M. 703(d)

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- c. M.R.E. 502
- d. Ake v. Oklahoma, 470 U.S. 68 (1985)
- e. United States v. Ford, 51 M.J. 445 (C.A.A.F. 1999)
- f. United States v. Gonzalez, 39 M.J. 459 (C.M.A. 1994)
- g. United States v. Burnette, 29 M.J. 473 (C.M.A. 1990)
- h. United States v. Toledo, 25 M.J. 270 (C.M.A. 1987)
- i. United States v. Garries, 22 M.J. 288 (C.M.A. 1986)
- j. United States v. Cameron, 21 M.J. 59 (C.M.A. 1985)

### E. EVIDENCE & WITNESSES

The defense requests argument on this Motion for Expert Assistance. The defense requests consideration of the following documents:

- a. Memorandum through SJA, III Corps, for CG, III Corps, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 6 July 2004
- b. Curriculum Vitae of [REDACTED] Ph.D.
- c. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]
- d. Memorandum for Defense Counsel for SPC Ambuhl, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 14 August 2004

The defense may call SPC Megan Ambuhl to testify for the limited purpose of litigating this motion.

### F. ARGUMENT

A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (C.M.A.), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her "[m]eaningful access to justice." Ake, 470 U.S. at 77.

Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate "a proper showing of necessity." U.S. v. Burnette, 29 M.J. 473, 475 (C.M.A. 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (C.M.A.), cert. denied, 513 U.S. 965 (1994); see also U.S. v. Ford, 51 M.J. 445, 455 (C.A.A.F. 1999).

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*1. Why is expert assistance needed?*

Expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all of the charges, with specific reference to SPC Ambuhl's complacency or inability to act. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person's behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

Granting expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report, conducted by MG Taguba, is a "Psychological Assessment" conducted by COL [REDACTED] USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

Dr. [REDACTED] should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. [REDACTED]. Dr. [REDACTED] holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. [REDACTED] has provided evaluations of prison conditions and their psychological effects.

*2. What would the expert assistance accomplish for SPC Ambuhl?*

For SPC Ambuhl's case, Dr. [REDACTED] would provide invaluable insight and expert assistance. Dr. [REDACTED] will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. [REDACTED] will visit Abu Ghraib for a first-hand evaluation of the facility. He will review training documents and evaluate the training given to soldiers prior to their work at the prison. He will review the standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. [REDACTED] can also assist the

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defense in developing evidence in extenuation or mitigation, in effect, "why good people do bad things."

3. *Why is the defense team unable to gather and present the evidence that the expert assistant would be able to develop?*

Finally, the defense is unable, on its own, to gather and present the evidence that the Dr. [REDACTED] would be able to develop. Neither counsel maintains any type of degree or background in psychology. Neither counsel has researched the psychological or social impacts of prisons on the corrections guards that work there. Dr. [REDACTED] over-30-years of experience can not be replicated even with the most diligent of efforts by counsel. Further, Dr. [REDACTED] is anticipated to testify at SPC Ambuhl's court-martial, a task clearly beyond the ethical boundaries permitted by any defense bar.

If this motion is granted, the defense further requests that Dr. [REDACTED] be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests that Dr. [REDACTED] assist in the investigation of the case, and, if requested, be present with SPC Ambuhl at trial as a member of the defense team. It is also requested that confidentiality extend to all research assistants that may assist Dr. [REDACTED] in his work with the defense.

For his assistance, Dr. Haney charges \$175 per hour. He anticipates spending between 100 and 200 hours in preparation of SPC Ambuhl's defense. Once Dr. [REDACTED] is appointed to the defense team and is able to speak with SPC Ambuhl and to begin to review discovery documents, he can provide a more accurate cost/time estimate. Once Dr. [REDACTED] is appointed, funding will be required so that Dr. [REDACTED] can travel to Iraq to consult with SPC Ambuhl and to visit the Abu Ghraib prison. Dr. [REDACTED] intent is to visit Iraq in early September 2004 to minimize disruption to his academic duties at UCSC caused by approximately 10-days of travel to Iraq.

### G. CONCLUSION

The defense requests that the government appoint Dr. [REDACTED] as an expert assistant on the defense team with confidentiality. Additionally, the defense requests that the court's order includes a determination that the government fund the travel of Dr. [REDACTED] to the crime scene at Abu Ghraib Prison, Iraq. This travel will be necessary for Dr. [REDACTED] to properly analyze all of the physical, social, and psychological factors that may have contributed to SPC Ambuhl's action or inaction in the charged offenses.

RESPECTFULLY SUBMITTED:

[REDACTED]

CPT, JA  
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion for Expert Assistance was served on the government via e-mail to [redacted]@vcmain.hq.c5.army.mil and [redacted]@vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 16 August 2004.

[redacted signature block]

CPT, JA  
Trial Defense Counsel



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
REGION IX, FOB DANGER BRANCH OFFICE  
APO AE 09392

REPLY TO  
ATTENTION OF:

AETV-BGJA-TDS

6 July 2004

MEMORANDUM THRU Staff Judge Advocate, III Corps, Victory Base, APO AE 09342-1400

FOR Commanding General, III Corps, Victory Base, APO AE 09342-1400

SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl

1. The defense requests that the government appoint Dr. [REDACTED] as a confidential expert consultant to the defense team to provide advice on the psychological and sociological impact of working in a prison, areas of expertise that fall outside the experience of defense counsel.
2. A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (CMA), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her “[m]eaningful access to justice.” Ake, 470 U.S. at 77.
3. Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate “a proper showing of necessity.” U.S. v. Burnette, 29 M.J. 473, 475 (CMA 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (CMA), cert. denied, 513 U.S. 965 (1994).

a. First, expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all four charges, with specific reference to SPC Ambuhl’s complacency or inability to act. Dr. [REDACTED] a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking “Stanford Prison Experiment,” Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person’s behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological

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forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

b. Second, for the accused, Dr. ██████ would provide invaluable insight and expert assistance. Dr. ██████ will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. ██████ will visit Abu Ghraib for a first-hand evaluation of the facility. He will review documents about the training that personnel were provided before beginning work at the prison and standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. ██████ can also assist the defense in developing evidence in extenuation or mitigation, in effect, why good people do bad things.

c. Finally, the defense is unable, on its own, to gather and present the evidence that the Dr. ██████ would be able to develop. Neither counsel maintains any type of degree or background in psychology. Neither counsel has researched the psychological or social impacts of prisons on the corrections guards that work there. Dr. ██████ over-30-years of experience can not be replicated even with the most diligent of efforts by counsel. Further, Dr. ██████ is anticipated to testify at SPC Ambuhl's court-martial, a task clearly beyond the ethical boundaries permitted by any defense bar.

4. Authorizing expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report is a "Psychological Assessment" conducted by COL ██████ USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

5. Dr. ██████ should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. ██████. Dr. ██████ holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. ██████ has provided evaluations of prison conditions and their psychological effects.

6. If this request is granted, the defense further requests that Dr. ██████ be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests that Dr. ██████ assist in the investigation of the case, and, if requested, be present with SPC Ambuhl at trial as a

member of the defense team. It is also requested that confidentiality extend to all research assistants that may assist Dr. [REDACTED] in his work with the defense.

7. For his assistance, Dr. [REDACTED] charges \$175 per hour. He anticipates spending between 100 and 200 hours in preparation of SPC Ambuhl's defense. Once Dr. [REDACTED] is appointed to the defense team and is able to speak with SPC Ambuhl and to begin to review discovery documents, he can provide a more accurate cost/time estimate.

8. Once Dr. [REDACTED] is appointed, funding will be required so that Dr. [REDACTED] can travel to Iraq to consult with SPC Ambuhl and to visit the Abu Ghraib prison. Please inform us of your decision as quickly as possible so there will be no undue delays in this case. Dr. [REDACTED] intent is to visit Iraq in late August or early September 2004 to minimize disruption to his academic duties at UCSC caused by approximately 10-days of travel to Iraq.

9. Thank you for your prompt consideration of this request. If I may be of further assistance in this matter, please contact me via unsecured email at [REDACTED]@us.army.mil or by phone at DNVT: 553-[REDACTED]

[REDACTED]  
CPT, JA  
Trial Defense Counsel

Encls

1. Curriculum Vitae of [REDACTED] Ph.D.
2. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]

CURRICULUM VITAE

[REDACTED]  
Professor of Psychology  
Department of Psychology  
University of California, Santa Cruz 95064

home address: [REDACTED]  
Santa Cruz, California 95062  
phone: [REDACTED]  
fax: [REDACTED]  
email: [REDACTED]  
birthdate: 3/8/47  
citizenship: U.S.A.  
spouse: Aida Hurtado

PREVIOUS EMPLOYMENT

1985- University of California, Santa Cruz, Professor of Psychology  
1981-85 University of California, Santa Cruz, Associate Professor of Psychology  
1978-81 University of California, Santa Cruz, Assistant Professor of Psychology  
1977-78 University of California, Santa Cruz, Lecturer in Psychology  
1976-77 Stanford University, Acting Assistant Professor of Psychology

EDUCATION

1978 Stanford Law School, J.D.  
1978 Stanford University, Ph.D.  
1971 Stanford University, M.A.  
1969 University of Pennsylvania, B.A.

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## HONORS AWARDS GRANTS

- 2004 National Science Foundation Grant to Study Capital Jury Decisionmaking
- 2002 Santa Cruz Alumni Association Distinguished Teaching Award,  
University  
of California, Santa Cruz.
- United States Department of Health & Human Services/Urban Institute,  
“Effects of Incarceration on Children, Families, and Low-Income  
Communities” Project.
- American Association for the Advancement of Science/American  
Academy of Forensic Science Project: “Scientific Evidence Summit”  
Planning Committee.
- Teacher of the Year (UC Santa Cruz Re-Entry Students’ Award).
- 2000 White House Forum on the Uses of Science and Technology to Improve  
Crime and Prison Policy.
- Excellence in Teaching Award (Academic Senate Committee on  
Teaching).
- Joint American Association for the Advancement of Science-American  
Bar Association Science and Technology Section National Conference  
of Lawyers and Scientists.
- 1999 American Psychology-Law Society Presidential Initiative  
Invitee (“Reviewing the Discipline: A Bridge to the Future”)
- National Science Foundation Grant to Study Capital Jury Decisionmaking  
(renewal and extension).
- 1997 National Science Foundation Grant to Study Capital Jury Decisionmaking.
- 1996 Teacher of the Year (UC Santa Cruz Re-Entry Students’ Award).
- 1995 Gordon Allport Intergroup Relations Prize (Honorable Mention)
- Excellence in Teaching Convocation, Social Sciences Division
- 1994 Outstanding Contributions to Preservation of Constitutional Rights,  
California Attorneys for Criminal Justice.

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- 1992 Psychology Undergraduate Student Association Teaching Award  
SR 43 Grant for Policy-Oriented Research With Linguistically Diverse Minorities
- 1991 Alumni Association Teaching Award ("Favorite Professor")
- 1990 Prison Law Office Award for Contributions to Prison Litigation
- 1989 UC Mexus Award for Comparative Research on Mexican Prisons
- 1976 Hilmer Oehlmann Jr. Award for Excellence in Legal Writing at Stanford Law School
- 1975-76 Law and Psychology Fellow, Stanford Law School
- 1974-76 Russell Sage Foundation Residency in Law and Social Science
- 1974 Gordon Allport Intergroup Relations Prize, Honorable Mention
- 1969-71 University Fellow, Stanford University
- 1969-74 Society of Sigma Xi
- 1969 B.A. Degree Magna cum laude with Honors in Psychology  
Phi Beta Kappa
- 1967-1969 University Scholar, University of Pennsylvania

#### UNIVERSITY SERVICE AND ADMINISTRATION

- 1998-2002 Chair, Department of Psychology
- 1994-1998 Chair, Department of Sociology
- 1992-1995 Chair, Legal Studies Program
- 1995 (Fall) Committee on Academic Personnel
- 1995-1996 University Committee on Academic Personnel (UCAP)
- 1990-1992 Committee on Academic Personnel

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1991-1992 Chair, Social Science Division Academic Personnel Committee

1984-1986 Chair, Committee on Privilege and Tenure

## WRITINGS AND OTHER CREATIVE ACTIVITIES IN PROGRESS

Books Limits to Prison Pain: Using Psychology to Improve Prison Policy, American Psychological Association, forthcoming, circa 2005.

### Articles

“Indifferent as They Stand Unsworn?: Pretrial Publicity, Fairness, and the Capital Jury,” (with [REDACTED]), in preparation.

“Death Penalty Attitudes, Selective Memory, and Instructional Incomprehension in Capital Jury Decisionmaking,” (with [REDACTED]), in preparation.

“Race and Capital Sentencing: Another Look at Discriminatory Death Sentences,” (with [REDACTED]), in preparation.

## PUBLISHED WRITINGS AND CREATIVE ACTIVITIES

### Monographs and Technical Reports

1989 Employment Testing and Employment Discrimination (with [REDACTED]). Technical Report for the National Commission on Testing and Public Policy. New York: Ford Foundation.

### Articles in Professional Journals and Book Chapters

2004 “Special Issue on the Death Penalty in the United States” (co-edited with [REDACTED]), for Psychology, Public Policy, and Law, in press.

- "Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation, and the Empathic Divide," DePaul Law Review, 53, 1557-1590.
- 2003 "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," Crime & Delinquency (special issue on mental health and the criminal justice system), 49, 124-156.
- "The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment," in [REDACTED] (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press.
- "Comments on 'Dying Twice': Death Row Confinement in the Age of the Supermax," Capital University Law Review, in press.
- 2002 "Making Law Modern: Toward a Contextual Model of Justice, Psychology, Public Policy, and Law, 7, 3-63.
- "Psychological Jurisprudence: Taking Psychology and Law into the Twenty-First Century," (with [REDACTED]), in [REDACTED] (Ed.), Taking Psychology and Law into the Twenty-First Century (pp. 35-59). New York: Kluwer Academic/Plenum Publishing.
- "Science, Law, and Psychological Injury: The Daubert Standards and Beyond," (with [REDACTED]), in [REDACTED], The Handbook of Psychological Injury (pp. 184-201). Chicago, IL: American Bar Association. [CD-ROM format]
- 2001 "Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times" (with [REDACTED]). In [REDACTED] (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association.
- "Afterword," in J. Evans (Ed.), Undoing Time (pp. 245-256). Boston, MA: Northeastern University Press.
- 2000 "Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty" (with [REDACTED]), Law and Human Behavior, 24, 337-358.

"Cycles of Pain: Risk Factors in the Lives of Incarcerated Women and Their Children," (with [REDACTED]), Prison Journal, 80, 3-23.

1999 "Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences ('The SPE and the Analysis of Institutions')," In [REDACTED] (Ed.), Obedience to Authority: Current Perspectives on the Milgram Paradigm (pp. 221-237). Hillsdale, NJ: Erlbaum.

"Ideology and Crime Control," American Psychologist, 54, 786-788.

1998 "The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment," (with [REDACTED]), American Psychologist, 53, 709-727. [Reprinted in special issue of Norwegian journal as: USAs fengselspolitikk i fortid og fremtid, Vardoger, 25, 171-183 (2000); in [REDACTED] (Ed.), Debating Points: Crime and Punishment. Englewood Cliffs, NJ: Prentice-Hall, in press; and in Annual Editions: Criminal Justice. Guilford, CT: Dushkin/McGraw-Hill, in press; [REDACTED] (Ed.), The American Prison System (pp. 17-43) (Reference Shelf Series). New York: [REDACTED] (2001).]

"Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency," Hastings Women's Law Journal, 9, 27-78.

"Becoming the Mainstream: 'Merit,' Changing Demographics, and Higher Education in California" (with [REDACTED]), La Raza Law Journal, 10, 645-690. [Reprinted in

1997 "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," (with [REDACTED]), New York University Review of Law and Social Change, 23, 477-570.

"Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law," Psychology, Public Policy, and Law, 3, 499-588.

"Commonsense Justice and the Death Penalty: Problematizing the 'Will of the People,'" Psychology, Public Policy, and Law, 3, 303-337.

"Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death," Stanford Law Review, 49, 1447-1486.

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"Mitigation and the Study of Lives: The Roots of Violent Criminality and the Nature of Capital Justice." In [REDACTED], America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction. Durham, NC: Carolina Academic Press, 343-377.

"Clarifying Life and Death Matters: An Analysis of Instructional Comprehension and Penalty Phase Arguments" (with [REDACTED]), Law and Human Behavior, 21, 575-595.

"Psychological Secrecy and the Death Penalty: Observations on 'the Mere Extinguishment of Life,'" Studies in Law, Politics, and Society, 16, 3-69.

1995 "The Social Context of Capital Murder: Social Histories and the Logic of Capital Mitigation," Santa Clara Law Review, 35, 547-609.

"Taking Capital Jurors Seriously," Indiana Law Journal, 70, 1223-1232.

"Death Penalty Opinion: Myth and Misconception," California Criminal Defense Practice Reporter, 1995(1), 1-7.

1994 "The Jurisprudence of Race and Meritocracy: Standardized Testing and 'Race-Neutral' Racism in the Workplace," (with [REDACTED]), Law and Human Behavior, 18, 223-248.

"Comprehending Life and Death Matters: A Preliminary Study of California's Capital Penalty Instructions" (with [REDACTED]), Law and Human Behavior, 18, 411-434.

"Felony Voir Dire: An Exploratory Study of Its Content and Effect," (with [REDACTED]), Law and Human Behavior, 18, 487-506.

"Broken Promise: The Supreme Court's Response to Social Science Research on Capital Punishment" (with [REDACTED]), Journal of Social Issues (special issue on the death penalty in the United States), 50, 75-101.

"Deciding to Take a Life: Capital Juries, Sentencing Instructions, and the Jurisprudence of Death" (with [REDACTED]), Journal of Social Issues (special issue on the death penalty in the United States), 50, 149-176. [Reprinted in [REDACTED] (Ed.), Capital Punishment. New York: Garland Publishing (1995).]

"Modern' Death Qualification: New Data on Its Biasing Effects," (with [REDACTED]), Law and Human Behavior, 18, 619-633.

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- "Processing the Mad, Badly," Contemporary Psychology, 39, 898-899.
- "Language is Power," Contemporary Psychology, 39, 1039-1040.
- 1993 "Infamous Punishment: The Psychological Effects of Isolation," National Prison Project Journal, 8, 3-21. [Reprinted in [REDACTED] (Eds.), Correctional Contexts: Contemporary and Classical Readings (pp. 428-437). Los Angeles: Roxbury Publishing (1997); [REDACTED] (Eds.), Correctional Perspectives: Views from Academics, Practitioners, and Prisoners (pp. 161-170). Los Angeles: Roxbury Publishing (2001).]
- "Psychology and Legal Change: The Impact of a Decade," Law and Human Behavior, 17, 371-398.
- 1992 "Death Penalty Attitudes: The Beliefs of Death-Qualified Californians," (with [REDACTED]). Forum, 19, 43-47.
- "The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies." (with [REDACTED]). Special issue on Discrimination and the Law. Behavioral Science and Law, 10, 179-195.
- 1991 "The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process," Law and Human Behavior, 15, 183-204.
- 1988 "In Defense of the Jury," Contemporary Psychology, 33, 653-655.
- 1986 "Civil Rights and Institutional Law: The Role of Social Psychology in Judicial Implementation," (with [REDACTED]), Journal of Community Psychology, 14, 267-277.
- 1984 "Editor's Introduction. Special Issue on Death Qualification," Law and Human Behavior, 8, 1-6.
- "On the Selection of Capital Juries: The Biasing Effects of Death Qualification," Law and Human Behavior, 8, 121-132.
- "Examining Death Qualification: Further Analysis of the Process Effect," Law and Human Behavior, 8, 133-151.

"Evolving Standards and the Capital Jury," Law and Human Behavior, 8, 153-158.

"Postscript," Law and Human Behavior, 8, 159.

"Social Factfinding and Legal Decisions: Judicial Reform and the Use of Social Science." In [REDACTED] (Eds.), Perspectives in Psychology and Law. New York: John Wiley, pp. 43-54.

1983 "The Future of Crime and Personality Research: A Social Psychologist's View," in [REDACTED] (Eds.), Personality Theory, Moral Development, and Criminal Behavioral Behavior. Lexington, Mass.: Lexington Books, pp. 471-473.

"The Good, the Bad, and the Lawful: An Essay on Psychological Injustice," in [REDACTED] (Eds.), Personality Theory, Moral Development, and Criminal Behavior. Lexington, Mass.: Lexington Books, pp. 107-117.

"Ordering the Courtroom, Psychologically," Jurimetrics, 23, 321-324.

1982 "Psychological Theory and Criminal Justice Policy: Law and Psychology in the Formative Era," Law and Human Behavior, 6, 191-235. [Reprinted in [REDACTED] (Eds.), Law and American History: Cases and Materials. Minneapolis, MN: West Publishing, 1989.]

"Data and Decisions: Social Science and Judicial Reform," in [REDACTED] (Ed.), The Analysis of Judicial Reform. Lexington, Mass.: D.C. Heath, pp. 43-59.

"Employment Tests and Employment Discrimination: A Dissenting Psychological Opinion," Industrial Relations Law Journal, 5, pp. 1-86.

"To Polygraph or Not: The Effects of Preemployment Polygraphing on Work-Related Attitudes," (with [REDACTED]), Polygraph, 11, 185-199.

1981 "Death Qualification as a Biasing Legal Process," The Death Penalty Reporter, 1 (10), pp. 1-5. [Reprinted in Augustus: A Journal of Progressive Human Sciences, 9(3), 9-13 (1986).]

1980 "Juries and the Death Penalty: Readdressing the Witherspoon Question," Crime and Delinquency, October, pp. 512-527.

"Psychology and Legal Change: On the Limits of a Factual Jurisprudence," Law and Human Behavior, 6, 191-235. [Reprinted in [REDACTED] (Ed.), Social Research and the Judicial Process. New York: Russell Sage, 1983.]

"The Creation of Legal Dependency: Law School in a Nutshell" (with [REDACTED], in [REDACTED] (Ed.), The People's Law Review. Reading, Mass.: Addison-Wesley, pp. 36-41.

"Television Criminology: Network Illusions of Criminal Justice Realities" (with [REDACTED]), in [REDACTED] (Ed.), Readings on the Social Animal. San Francisco, [REDACTED] pp. 125-136.

1979 "A Psychologist Looks at the Criminal Justice System," in [REDACTED] (Ed.), Challenges and Alternatives to the Criminal Justice System. Ann Arbor: Monograph Press, pp. 77-85.

"Social Psychology and the Criminal Law," in [REDACTED] (Ed.), Social Psychology and Modern Life. New York: Random House, pp. 671-711.

"Bargain Justice in an Unjust World: Good Deals in the Criminal Courts" (with [REDACTED]), Law and Society Review, 13, pp. 633-650. [Reprinted in [REDACTED] (Eds.), Criminal Law and Its Processes. Boston: Little, Brown, 1983.]

1977 "Prison Behavior" (with [REDACTED]), in B. Wolman (Ed.), The Encyclopedia of Neurology, Psychiatry, Psychoanalysis, and Psychology, Vol. IX, pp. 70-74.

"The Socialization into Criminality: On Becoming a Prisoner and a Guard" (with [REDACTED], in [REDACTED] (Eds.), Law, Justice, and the Individual in Society: Psychological and Legal Issues (pp. 198-223). New York: [REDACTED]

1976 "The Play's the Thing: Methodological Notes on Social Simulations," in P. Golden (Ed.), The Research Experience, pp. 177-190. Itasca, IL: Peacock.

1975 "The Blackboard Penitentiary: It's Tough to Tell a High School from a Prison" (with [REDACTED]). Psychology Today, 26ff.

"Implementing Research Results in Criminal Justice Settings,"  
Proceedings, Third Annual Conference on Corrections in the U.S.  
Military, Center for Advanced Study in the Behavioral Sciences, June 6-7.

"The Psychology of Imprisonment: Privation, Power, and Pathology"  
(with [REDACTED]), in D. Rosenhan and P. London  
(Eds.), Theory and Research in Abnormal Psychology. New York: Holt  
Rinehart, and Winston. [Reprinted in: [REDACTED] (Ed.), Doing Unto  
Others: Joining, Molding, Conforming, Helping, Loving. Englewood  
Cliffs: Prentice-Hall, 1974. [REDACTED]  
(Eds.) Contemporary Issues in Social Psychology. Third Edition.  
Monterey: [REDACTED], 1977. Calhoun, James Readings, Cases, and  
Study Guide for Psychology of Adjustment and Human Relationships.  
New York: Random House, 1978.]

1973

"Social Roles, Role-Playing, and Education" (with [REDACTED]), The  
Behavioral and Social Science Teacher, Fall, 1(1), pp. 24-45. [Reprinted  
in: [REDACTED] (Eds.) Psychology For Our Times.  
Glenview, Ill.: [REDACTED] 1977. [REDACTED] (Eds.)  
Current Perspectives in Social Psychology. Third Edition. New York:  
Oxford University Press, 1978.]

"The Mind is a Formidable Jailer: A Pirandellian Prison" (with [REDACTED]  
[REDACTED], The New York Times Magazine, April  
8, Section 6, 38-60. [Reprinted in [REDACTED] (Ed.), Psychology Is Social:  
Readings and Conversations in Social Psychology. Glenview, Ill.: Scott,  
Foresman, 1982.]

"Interpersonal Dynamics in a Simulated Prison" (with [REDACTED]  
[REDACTED], International Journal of Criminology and Penology, 1, pp. 69-  
97. [Reprinted in: [REDACTED] (Eds.)  
Examining Deviance Experimentally. New York: Alfred Publishing, 1975;  
[REDACTED] (Ed.) The Research Experience. Itasca, Ill.: Peacock, 1976;  
[REDACTED] (Ed.) The Sociology of Corrections. New York: [REDACTED]  
1977; A kiserleti tarsadalom-lelektan foarma. Budapest, Hungary:  
[REDACTED] 1977; [REDACTED] Justice  
and Corrections. New York: John Wiley, 1978; Research Methods in  
Education and Social Sciences. The Open University, 1979; [REDACTED]  
(Ed.), Modern Sociology. British Columbia: Open Learning Institute,  
1980; [REDACTED] (Ed.) Prison Guard/ Correctional Officer: The Use  
and Abuse of Human Resources of Prison. Toronto: Butterworth's 1981;  
[REDACTED] (Eds.), Social Science in Law:  
Cases, Materials, and Problems. Foundation Press, 1985; [REDACTED]  
(Ed.), The Context of Human Behavior. Jagiellonian University Press,  
2001; [REDACTED] (Ed.), Mapping the Social Landscape: Readings in  
Sociology. St. Enumclaw, WA: Mayfield Publishing, 2001.]

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"A Study of Prisoners and Guards" (with [REDACTED]  
Naval Research Reviews, 1-17. [Reprinted in [REDACTED] (Ed.) Readings  
About the Social Animal. San Francisco: [REDACTED], 1980; [REDACTED]  
(Ed.) Key Studies in Psychology. Third Edition. London: Hodder &  
Stoughton, 1999; [REDACTED] (Ed.), Basic Themes in Law and  
Jurisprudence. Anderson Publishing, 2000.]

#### MEMBERSHIP/ACTIVITIES IN PROFESSIONAL ASSOCIATIONS

American Psychological Association

American Psychology and Law Society

Law and Society Association

National Council on Crime and Delinquency

#### INVITED ADDRESSES AND PAPERS PRESENTED AT PROFESSIONAL ACADEMIC MEETINGS AND RELATED SETTINGS (SELECTED)

- 2003 "Crossing the Empathic Divide: Race Factors in Death Penalty  
Decisionmaking," DePaul Law School Symposium on Race and the Death  
Penalty in the United States, Chicago, October.
- "Supermax Prisons and the Prison Reform Paradigm," PACE Law School  
Conference on Prison Reform Revisited: The Unfinished Agenda, New  
York, October.
- "Mental Health Issues in Supermax Confinement," European Psychology  
and Law Conference, University of Edinburgh, Scotland, July.
- "Roundtable on Capital Punishment in the United States: The Key  
Psychological Issues," European Psychology and Law Conference,  
University of Edinburgh, Scotland, July.
- "Psychology and Legal Change: Taking Stock," European Psychology and  
Law Conference, University of Edinburgh, Scotland, July.

“Economic Justice and Criminal Justice: Social Welfare and Social Control,” Society for the Study of Social Issues Conference, January.

“Race, Gender, and Class Issues in the Criminal Justice System,” Center for Justice, Tolerance & Community and Barrios Unidos Conference, March.

2002

“The Psychological Effects of Imprisonment: Prisonization and Beyond.” Joint Urban Institute and United States Department of Health and Human Services Conference on “From Prison to Home.” Washington, DC, January.

“On the Nature of Mitigation: Current Research on Capital Jury Decisionmaking.” American Psychology and Law Society, Mid-Winter Meetings, Austin, Texas, March.

“Prison Conditions and Death Row Confinement.” New York Bar Association, New York City, June.

2001

“Supermax and Solitary Confinement: The State of the Research and the State of the Prisons.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“Mental Health in Supermax: On Psychological Distress and Institutional Care.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“On the Nature of Mitigation: Research Results and Trial Process and Outcomes.” Boalt Hall School of Law, University of California, Berkeley, August.

“Toward an Integrated Theory of Mitigation.” American Psychological Association Annual Convention, San Francisco, CA, August.

Discussant: “Constructing Class Identities—The Impact of Educational Experiences.” American Psychological Association Annual Convention, San Francisco, CA, August.

“The Rise of Carceral Consciousness.” American Psychological Association Annual Convention, San Francisco, CA, August.

- 2000 "On the Nature of Mitigation: Countering Generic Myths in Death Penalty Decisionmaking," City University of New York Second International Advances in Qualitative Psychology Conference, March.
- "Why Has U.S. Prison Policy Gone From Bad to Worse? Insights From the Stanford Prison Study and Beyond," Claremont Conference on Women, Prisons, and Criminal Injustice, March.
- "The Use of Social Histories in Capital Litigation," Yale Law School, April.
- "Debunking Myths About Capital Violence," Georgetown Law School, April.
- "Research on Capital Jury Decisionmaking: New Data on Juror Comprehension and the Nature of Mitigation," Society for Study of Social Issues Convention, Minneapolis, June.
- "Crime and Punishment: Where Do We Go From Here?" Division 41 Invited Symposium, "Beyond the Boundaries: Where Should Psychology and Law Be Taking Us?" American Psychological Association Annual Convention, Washington, DC, August.
- 1998 "Psychology and the State of U.S. Prisons at the Millennium," American Psychological Association Annual Convention, Boston, MA, August.
- "Spreading Prison Pain: On the Worldwide Movement Towards Incarcerative Social Control," Joint American Psychology-Law Society/ European Association of Psychology and Law Conference, Dublin, Ireland, July.
- 1998 "Prison Conditions and Prisoner Mental Health," Beyond the Prison Industrial Complex Conference, University of California, Berkeley, September.
- "The State of US Prisons: A Conversation," International Congress of Applied Psychology, San Francisco, CA, August.
- "Deathwork: Capital Punishment as a Social Psychological System," Invited SPPSI Address, American Psychological Association Annual Convention, San Francisco, CA, August.
- "The Use and Misuse of Psychology in Justice Studies: Psychology and Legal Change: What Happened to Justice?," (panelist), American

- Psychological Association Annual Convention, San Francisco, CA,  
August.
- “Twenty Five Years of American Corrections: Past and Future,” American  
Psychology and Law Society, Redondo Beach, CA, March.
- 1997 “Deconstructing the Death Penalty,” School of Justice Studies, Arizona  
State University, Tempe, AZ, October.
- “Mitigation and the Study of Lives,” Invited Address to Division 41  
(Psychology and Law), American Psychological Association Annual  
Convention, Chicago, August.
- 1996 “The Stanford Prison Experiment and 25 Years of American Prison  
Policy,” American Psychological Association Annual Convention,  
Toronto, August.
- 1995 “Looking Closely at the Death Penalty: Public Stereotypes and Capital  
Punishment,” Invited Address, Arizona State University College of Public  
Programs series on Free Speech, Affirmative Action and Multiculturalism,  
Tempe, AZ, April.
- “Race and the Flaws of the Meritocratic Vision,” Invited Address, Arizona  
State University College of Public Programs series on Free Speech,  
Affirmative Action and Multiculturalism, Tempe, AZ, April.
- “Taking Capital Jurors Seriously,” Invited Address, National Conference  
on Juries and the Death Penalty, Indiana Law School, Bloomington,  
February.
- 1994 “Mitigation and the Social Genetics of Violence: Childhood Treatment  
and Adult Criminality,” Invited Address, Conference on the Capital  
Punishment, Santa Clara Law School, October, Santa Clara.
- 1992 “Social Science and the Death Penalty,” Chair and Discussant, American  
Psychological Association Annual Convention, San Francisco, CA,  
August.
- 1991 “Capital Jury Decisionmaking,” Invited panelist, American Psychological  
Association Annual Convention, Atlanta, GA, August.