

- 1990 "Racial Discrimination in Death Penalty Cases," Invited presentation, NAACP Legal Defense Fund Conference on Capital Litigation, August, Airlie, VA.
- 1989 "Psychology and Legal Change: The Impact of a Decade," Invited Address to Division 41 (Psychology and Law), American Psychological Association Annual Convention, New Orleans, LA., August.
- "Judicial Remedies to Pretrial Prejudice," Law & Society Association Annual Meeting, Madison, WI, June.
- "The Social Psychology of Police Interrogation Techniques" (with R. Liebowitz), Law & Society Association Annual Meeting, Madison, WI, June.
- 1987 "The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process," APA Annual Convention, New York, N.Y. August.
- "The Nature and Function of Prison in the United States and Mexico: A Preliminary Comparison," InterAmerican Congress of Psychology, Havana, Cuba, July.
- 1986 Chair, Division 41 Invited Address and "Commentary on the Execution Ritual," APA Annual Convention, Washington, D.C., August.
- "Capital Punishment," Invited Address, National Association of Criminal Defense Lawyers Annual Convention, Monterey, CA, August.
- 1985 "The Role of Law in Graduate Social Science Programs" and "Current Directions in Death Qualification Research," American Society of Criminology, San Diego, CA, November.
- "The State of the Prisons: What's Happened to 'Justice' in the '70s and '80s?" Invited Address to Division 41 (Psychology and Law); APA Annual Convention, Los Angeles, CA, August.
- 1983 "The Role of Social Science in Death Penalty Litigation." Invited Address in National College of Criminal Defense Death Penalty Conference, Indianapolis, IN, September.

- 1982 "Psychology in the Court: Social Science Data and Legal Decision-Making." Invited Plenary Address, International Conference on Psychology and Law, University College, Swansea, Wales, July.
- 1982 "Paradigms in Conflict: Contrasting Methods and Styles of Psychology and Law." Invited Address, Social Science Research Council, Conference on Psychology and Law, Wolfson College, Oxford University, March.
- 1982 "Law and Psychology: Conflicts in Professional Roles." Invited paper, Western Psychological Association Annual Meeting, April.
- 1980 "Using Psychology in Test Case Litigation," panelist, American Psychological Association Annual Convention, Montreal, Canada, September.
- 1980 "On the Selection of Capital Juries: The Biasing Effects of Death Qualification." Paper presented at the Interdisciplinary Conference on Capital Punishment. Georgia State University, Atlanta, GA, April.
- 1980 "Diminished Capacity and Imprisonment: The Legal and Psychological Issues," Proceedings of the American Trial Lawyers Association, Mid-Winter Meeting, January.
- 1975 "Social Change and the Ideology of Individualism in Psychology and Law." Paper presented at the Western Psychological Association Annual Meeting, April.

SERVICE TO STAFF OR EDITORIAL BOARDS OF
FOUNDATIONS, SCHOLARLY JOURNALS OR PRESSES

- 2000-present Reviewer, Society for the Study of Social Issues Grants-in-Aid Program.
- 2000-present Editorial Board Member, ASAP (on-line journal of the Society for the Study of Social Issues)

- 1997-present Editorial Board Member, Psychology, Public Policy, and Law
- 1991 Editorial Consultant, Brooks/Cole Publishing
- 1989 Editorial Consultant, Journal of Personality and Social Psychology
- 1988- Editorial Consultant, American Psychologist
- 1985 Editorial Consultant, American Bar Foundation Research Journal
- 1985-present Law and Human Behavior, Editorial Board Member
- 1985 Editorial Consultant, Columbia University Press
- 1985 Editorial Consultant, Law and Social Inquiry
- 1980-present Reviewer, National Science Foundation
- 1997 Reviewer, National Institutes of Mental Health
- 1980-present Editorial Consultant, Law and Society Review
- 1979-1985 Editorial Consultant, Law and Human Behavior
- 1997-present Editorial Consultant, Legal and Criminological Psychology
- 1993-1997 Psychology, Public Policy, and Law, Editorial Consultant

GOVERNMENTAL, LEGAL AND CRIMINAL JUSTICE CONSULTING

Training Consultant, Palo Alto Police Department, 1973-1974.

Evaluation Consultant, San Mateo County Sheriff's Department, 1974.

Design and Training Consultant to Napa County Board of Supervisors, County Sheriff's Department (county jail), 1974.

Training Consultation, California Department of Corrections, 1974.

Consultant to California Legislature Select Committee in Criminal Justice, 1974, 1980-1981 (effects of prison conditions, evaluation of proposed prison legislation).

Reviewer, National Science Foundation (Law and Social Science, Research Applied to National Needs Programs), 1978-present.

Consultant, Santa Clara County Board of Supervisors, 1980 (effects of jail overcrowding, evaluation of county criminal justice policy).

Consultant to Packard Foundation, 1981 (evaluation of inmate counseling and guard training programs at San Quentin and Soledad prisons).

Member, San Francisco Foundation Criminal Justice Task Force, 1980-1982 (corrections expert).

Consultant to NAACP Legal Defense Fund, 1982- present (expert witness, case evaluation, attorney training).

Faculty, National Judicial College, 1980-1983.

Consultant to Public Advocates, Inc., 1983-1986 (public interest litigation).

Consultant to California Child, Youth, Family Coalition, 1981-82 (evaluation of proposed juvenile justice legislation).

Consultant to California Senate Office of Research, 1982 (evaluation of causes and consequences of overcrowding in California Youth Authority facilities).

Consultant, New Mexico State Public Defender, 1980-1983 (investigation of causes of February, 1980 prison riot).

Consultant, California State Supreme Court, 1983 (evaluation of county jail conditions).

Member, California State Bar Committee on Standards in Prisons and Jails, 1983.

Consultant, California Legislature Joint Committee on Prison Construction and Operations, 1985.

Consultant, United States Bureau of Prisons and United States Department of the Interior (Prison History, Conditions of Confinement Exhibition, Alcatraz Island), 1989-1991.

Consultant to United States Department of Justice, 1980-1990 (evaluation of institutional conditions).

Consultant to California Judicial Council (judicial training programs), 2000.

Consultant to American Bar Association/American Association for Advancement of Science Task Force of Forensic Standards for Scientific Evidence, 2000.

Member, Joint Legislative/California Department of Corrections Task Force on Violence, 2001.

Consultant, United States Department of Health & Human Services/Urban Institute, "Effects of Incarceration on Children, Families, and Low-Income Communities" Project.

PRISON AND JAIL CONDITIONS

EVALUATIONS AND LITIGATION

Hoptowit v. Ray [United States District Court, Eastern District of Washington, 1980; 682 F.2d 1237 (9th Cir. 1982)]. Evaluation of psychological effects of conditions of confinement at Washington State Penitentiary at Walla Walla for United States Department of Justice.

Wilson v. Brown (Marin County Superior Court; September, 1982, Justice Burke). Evaluation of effects of overcrowding on San Quentin mainline inmates.

Thompson v. Enomoto (United States District Court, Northern District of California, Judge Stanley Weigel, 1982 and continuing). Evaluation of conditions of confinement on Condemned Row, San Quentin Prison.

Toussaint v. McCarthy [United States District Court, Northern District of California, Judge Stanley Weigel, 553 F. Supp. 1365 (1983); 722 F. 2d 1490 (9th Cir. 1984) 711 F. Supp. 536 (1989)]. Evaluation of psychological effects of conditions of confinement in lockup units at DVI, Folsom, San Quentin, and Soledad.

In re Priest (Proceeding by special appointment of the California Supreme Court, Judge Spurgeon Avakian, 1983). Evaluation of conditions of confinement in Lake County Jail.

Ruiz v. Estelle [United States District Court, Southern District of Texas, Judge William Justice, 503 F. Supp. 1265 (1980)]. Evaluation of effects of overcrowding in the Texas prison system, 1983-1985.

Atascadero State Hospital (Civil Rights of Institutionalized Persons Act of 1980 action). Evaluation of conditions of confinement and nature of patient care at ASH for United States Department of Justice, 1983-1984.

In re Rock (Monterey County Superior Court 1984). Appointed to evaluate conditions of confinement in Soledad State Prison in Soledad, California.

In re Mackey (Sacramento County Superior Court, 1985). Appointed to evaluate conditions of confinement at Folsom State Prison mainline housing units.

Bruscino v. Carlson (United States District Court, Southern District of Illinois 1984-1985). Evaluation of conditions of confinement at the United States Penitentiary at Marion, Illinois [654 F. Supp. 609 (1987); 854 F.2d 162 (7th Cir. 1988)].

Dohner v. McCarthy [United States District Court, Central District of California, 1984-1985; 636 F. Supp. 408 (1985)]. Evaluation of conditions of confinement at California Men's Colony, San Luis Obispo.

Invited Testimony before Joint Legislative Committee on Prison Construction and Operations hearings on the causes and consequences of violence at Folsom Prison, June, 1985.

Duran v. Anaya (United States District Court, 1987-1988). Evaluation of conditions of confinement in the Penitentiary of New Mexico, Santa Fe, New Mexico [Duran v. Anaya, No. 77-721 (D. N.M. July 17, 1980); Duran v. King, No. 77-721 (D. N.M. March 15, 1984)].

Gates v. Deukmejian (United States District Court, Eastern District of California, 1989). Evaluation of conditions of confinement at California Medical Facility, Vacaville, California.

Kozeak v. McCarthy (San Bernardino Superior Court, 1990). Evaluation of conditions of confinement at California Institution for Women, Frontera, California.

Coleman v. Gomez (United States District Court, Eastern District of California, 1992-3; Magistrate Moulds, Chief Judge Lawrence Karlton, 912 F. Supp. 1282 (1995)). Evaluation of study of quality of mental health care in California prison system, special mental health needs at Pelican Bay State Prison.

Madrid v. Gomez (United States District Court, Northern District of California, 1993, District Judge Thelton Henderson, 889 F. Supp. 1146 (N.D. Cal. 1995). Evaluation of conditions of confinement and psychological consequences of isolation in Security Housing Unit at Pelican Bay State Prison, Crescent City, California.

Clark v. Wilson, (United States District Court, Northern District of California, 1998, District Judge Fern Smith, No. C-96-1486 FMS), evaluation of screening procedures to identify and treatment of developmentally disabled prisoners in California Department of Corrections.

Ruiz v. Johnson [United States District Court, Southern District of Texas, District Judge William Wayne Justice, 37 F. Supp. 2d 855 (SD Texas 1999)]. Evaluation of

current conditions of confinement, especially in security housing or “high security” units.

Osterback v. Moore (United States District Court, Southern District of Florida (97-2806-CIV-MORENO) (2001) [see, Osterback v. Moore, 531 U.S. 1172 (2001)]. Evaluation of Close Management Units and Conditions in the Florida Department of Corrections.

Valdivia v. Davis (United States District Court, Eastern District of California, 2002). Evaluation of due process protections afforded mentally ill and developmentally disabled parolees in parole revocation process.

Ayers v. Perry (United States District Court, New Mexico, 2003). Evaluation of conditions of confinement and mental health services in New Mexico Department of Corrections “special controls facilities.”

Interpersonal Dynamics in a Simulated Prison

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Interpersonal dynamics in a prison environment were studied experimentally by designing a functional simulation of a prison in which subjects role-played prisoners and guards for an extended period of time. To assess the power of the social forces on the emergent behaviour in this situation, alternative explanations in terms of pre-existing dispositions were eliminated through subject selection. A homogeneous, "normal" sample was chosen after extensive interviewing and diagnostic testing of a large group of volunteer male college students. Half of the subjects were randomly assigned to role-play prison guards for eight hours each day, while the others role-played prisoners incarcerated for nearly one full week. Neither group received any specific training in these roles.

Continuous, direct observation of behavioural interactions was supplemented by video-taped recording, questionnaires, self-report scales and interviews. All these data sources converge on the conclusion that this simulated prison developed into a psychologically compelling prison environment. As such, it elicited unexpectedly intense, realistic and often pathological reactions from many of the participants. The prisoners experienced a loss of personal identity and the arbitrary control of their behaviour which resulted in a syndrome of passivity, dependency, depression and helplessness. In contrast, the guards (with rare exceptions) experienced a marked gain in social power, status and group identification which made role-playing rewarding.

The most dramatic of the coping behaviour utilised by half of the prisoners in adapting to this stressful situation was the development of acute emotional disturbance—severe enough to warrant their early release. At least a third of the guards were judged to have become far more aggressive and dehumanising toward the prisoners than would ordinarily be predicted in a simulation study. Only a very few of the observed reactions to this experience of imprisonment could be attributed to personality trait differences which existed before the subjects began to play their assigned roles.

Introduction

After he had spent four years in a Siberian prison the great Russian novelist Dostoevsky commented, surprisingly, that his time in prison had created in him a deep optimism about the ultimate future of mankind because, as he put it, if man could survive the horrors of prison life he must surely be a "creature who could withstand anything". The cruel irony which Dostoevsky overlooked is that the reality of prison bears witness not only to the resilience and adaptiveness of the men who tolerate life within its walls, but as well to the "ingenuity" and tenacity of those who devised and still maintain our correctional and reformatory systems.

Nevertheless, in the century which has passed since Dostoevsky's imprisonment, little has changed to render the main thrust of his statement less relevant. Although we have passed through periods of enlightened humanitarian reform, in which physical conditions within prisons have improved somewhat and the rhetoric of rehabilitation has replaced the language of punitive incarceration, the social institution of prison has continued to fail. On purely pragmatic grounds, there is substantial evidence that prisons in fact neither "rehabilitate" nor act as a deterrent to future crime—in America, recidivism rates upwards of 75% speak quite decisively to these criteria. And, to perpetuate what is additionally an economic failure, American taxpayers alone must provide an expenditure for "corrections" of 1.5 billion dollars annually. On humanitarian grounds as well, prisons have failed: our mass media are increasingly filled with accounts of atrocities committed daily, man against man, in reaction to the penal system or in the name of it. The experience of prison undeniably creates, almost to the point of cliché, an intense hatred and disrespect in most inmates for the authority and the established order of society into which they will eventually return. And the toll which it takes on the deterioration of human spirit for those who must administer it, as well as for those upon whom it is inflicted, is incalculable.

Attempts to provide an explanation of the deplorable condition of our penal system and its dehumanising effects upon prisoners and guards, often focus upon what might be called the *dispositional hypothesis*. While this explanation is rarely expressed explicitly, it is central to a prevalent non-conscious ideology: that the state of the social institution of prison is due to the "nature" of the people who administer it, or the "nature" of the people who populate it, or both. That is, a major contributing cause to despicable conditions, violence, brutality, dehumanisation and degradation existing within any prison can be traced to some innate or acquired characteristic of the correctional and inmate population. Thus on the one hand, there is the contention that violence and brutality exist within prison because guards are sadistic, uneducated, and insensitive people. It is the "guard mentality", a unique syndrome of negative traits which they bring into the situation, that engenders the inhumane treatment of prisoners. Or, from other quarters comes the argument that violence and brutality in prison are the logical and predictable result of the

involuntary confinement of a collective of individuals whose life histories are, by definition, characterised by disregard for law, order and social convention and a concurrent propensity for impulsiveness and aggression. Logically, it follows that these individuals, having proved themselves incapable of functioning satisfactorily within the "normal" structure of society, cannot do so either inside the structure provided by prisons. To control such men as these, the argument continues, whose basic orientation to any conflict situation is to react with physical power or deception, force must be met with force, and a certain number of violent encounters must be expected and tolerated by the public.

The dispositional hypothesis has been embraced by the proponents of the prison *status quo* (blaming conditions on the evil in the prisoners), as well as by its critics (attributing the evil to guards and staff with their evil motives and deficient personality structures). The appealing simplicity of this proposition localises the source of prison riots, recidivism and corruption in these "bad seeds" and not in the conditions of the "prison soil". Such an analysis directs attention away from the complex matrix of social, economic and political forces which combine to make prisons what they are—and which would require complex, expensive, revolutionary solutions to bring about any meaningful change. Instead, rioting prisoners are identified, punished, transferred to maximum security institutions or shot, outside agitators sought and corrupt officials suspended—while the system itself goes on essentially unchanged, its basic structure unexamined and unchallenged.

However, a critical evaluation of the dispositional hypothesis cannot be made directly through observation in existing prison settings, since such naturalistic observation necessarily confounds the acute effects of the environment with the chronic characteristics of the inmate and guard populations. To separate the effects of the prison environment *per se* from those attributable to *a priori* dispositions of its inhabitants requires a research strategy in which a "new" prison is constructed, comparable in its fundamental social-psychological milieu to existing prison systems, but entirely populated by individuals who are undifferentiated in all essential dimensions from the rest of society.

Such was the approach taken in the present empirical study, namely, to create a prison-like situation in which the guards and inmates were initially comparable and characterised as being "normal-average", and then to observe the patterns of behaviour which resulted, as well as the cognitive, emotional and attitudinal reactions which emerged. Thus, we began our experiment with a sample of individuals who did not deviate from the normal range of the general population on a variety of dimensions we were able to measure. Half were randomly assigned to the role of "prisoner", the others to that of "guard", neither group having any history of crime, emotional disability, physical handicap nor even intellectual or social disadvantage.

The environment created was that of a "mock" prison which physically constrained the prisoners in barred cells and psychologically conveyed the sense of imprisonment to all participants. Our intention was not to create a *literal*

simulation of an American prison, but rather a functional representation of one. For ethical, moral and pragmatic reasons we could not detain our subjects for extended or indefinite periods of time, we could not exercise the threat and promise of severe physical punishment, we could not allow homosexual or racist practices to flourish, nor could we duplicate certain other specific aspects of prison life. Nevertheless, we believed that we could create a situation with sufficient mundane realism to allow the role-playing participants to go beyond the superficial demands of their assignment into the deep structure of the characters they represented. To do so, we established functional equivalents for the activities and experiences of actual prison life which were expected to produce qualitatively similar psychological reactions in our subjects—feelings of power and powerlessness, of control and oppression, of satisfaction and frustration, of arbitrary rule and resistance to authority, of status and anonymity, of machismo and emasculation. In the conventional terminology of experimental social psychology, we first identified a number of relevant conceptual variables through analysis of existing prison situations, then designed a setting in which these variables were made operational. No specific hypotheses were advanced other than the general one that assignment to the treatment of “guard” or “prisoner” would result in significantly different reactions on behavioural measures of interaction, emotional measures of mood state and pathology, attitudes toward self, as well as other indices of coping and adaptation to this novel situation. What follows is the mechanics of how we created and peopled our prison, what we observed, what our subjects reported, and finally, what we can conclude about the nature of the prison environment and the experience of imprisonment which can account for the failure of our prisons.

Method

Overview

The effects of playing the role of “guard” or “prisoner” were studied in the context of an experimental simulation of a prison environment. The research design was a relatively simple one, involving as it did only a single treatment variable, the random assignment to either a “guard” or “prisoner” condition. These roles were enacted over an extended period of time (nearly one week) within an environment which was physically constructed to resemble a prison. Central to the methodology of creating and maintaining a psychological state of imprisonment was the functional simulation of significant properties of “real prison life” (established through information from former inmates, correctional personnel and texts).

The “guards” were free with certain limits to implement the procedures of induction into the prison setting and maintenance of custodial retention of the “prisoners”. These inmates, having voluntarily submitted to the conditions of this total institution in which they now lived, coped in various ways with its

stresses and its challenges. The behaviour of both groups of subjects was observed, recorded and analysed. The dependent measures were of two general types: transactions between and within each group of subjects, recorded on video and audio tape as well as directly observed; individual reactions on questionnaires, mood inventories, personality tests, daily guard shift reports, and post experimental interviews.

Subjects

The 21 subjects who participated in the experiment were selected from an initial pool of 75 respondents, who answered a newspaper advertisement asking for male volunteers to participate in a psychological study of "prison life" in return for payment of \$15 per day. Those who responded to the notice completed an extensive questionnaire concerning their family background, physical and mental health history, prior experience and attitudinal propensities with respect to sources of psychopathology (including their involvement in crime). Each respondent who completed the background questionnaire was interviewed by one of two experimenters. Finally, the 24 subjects who were judged to be most stable (physically and mentally), most mature, and least involved in anti-social behaviour were selected to participate in the study. On a random basis, half of the subjects were assigned the role of "guard", half to the role of "prisoner".

The subjects were normal, healthy males attending colleges throughout the United States who were in the Stanford area during the summer. They were largely of middle class socio-economic status, Caucasians (with the exception of one Oriental subject). Initially they were strangers to each other, a selection precaution taken to avoid the disruption of any pre-existing friendship patterns and to mitigate against any transfer into the experimental situation of previously established relationships or patterns of behaviour.

This final sample of subjects was administered a battery of psychological tests on the day prior to the start of the simulation, but to avoid any selective bias on the part of the experimenter-observers, scores were not tabulated until the study was completed.

Two subjects who were assigned to be a "stand-by" in case an additional "prisoner" was needed were not called, and one subject assigned to be a "stand-by" guard decided against participating just before the simulation phase began—thus, our data analysis is based upon ten prisoners and eleven guards in our experimental conditions.

Procedure

Physical aspects of the prison

The prison was built in a 35-ft section of a basement corridor in the psychology building at Stanford University. It was partitioned by two fabricated walls, one of which was fitted with the only entrance door to the cell block, the other

contained a small observation screen. Three small cells (6 x 9 ft) were made from converted laboratory rooms by replacing the usual doors with steel barred, black painted ones, and removing all furniture.

A cot (with mattress, sheet and pillow) for each prisoner was the only furniture in the cells. A small closet across from the cells served as a solitary confinement facility; its dimensions were extremely small (2 x 2 x 7 ft) and it was unlit.

In addition, several rooms in an adjacent wing of the building were used as guards' quarters (to change in and out of uniform or for rest and relaxation), a bedroom for the "warden" and "superintendent", and an interview-testing room. Behind the observation screen at one end of the "yard" was video recording equipment and sufficient space for several observers.

Operational details

The "prisoner" subjects remained in the mock-prison 24 hours per day for the duration of the study. Three were arbitrarily assigned to each of the three cells; the others were on stand-by call at their homes. The "guard" subjects worked on three-man, eight-hour shifts; remaining in the prison environment only during their work shift, going about their usual lives at other times.

Role instruction

All subjects had been told that they would be assigned either the guard or the prisoner role on a completely random basis and all had voluntarily agreed to play either role for \$15.00 per day for up to two weeks. They signed a contract guaranteeing a minimally adequate diet, clothing, housing and medical care as well as the financial remuneration in return for their stated "intention" of serving in the assigned role for the duration of the study.

It was made explicit in the contract that those assigned to be prisoners should expect to be under surveillance (have little or no privacy) and to have some of their basic civil rights suspended during their imprisonment, excluding physical abuse. They were given no other information about what to expect nor instructions about behaviour appropriate for a prisoner role. Those actually assigned to this treatment were informed by phone to be available at their place of residence on a given Sunday when we would start the experiment.

The subjects assigned to be guards attended an orientation meeting on the day prior to the induction of the prisoners. At this time they were introduced to the principal investigators, the "Superintendent" of the prison (P.G.Z.) and an undergraduate research assistant who assumed the administrative role of "Warden". They were told that we wanted to try to simulate a prison environment within the limits imposed by pragmatic and ethical considerations. Their assigned task was to "maintain the reasonable degree of order within the prison necessary for its effective functioning", although the specifics of how this

duty might be implemented were not explicitly detailed. They were made aware of the fact that while many of the contingencies with which they might be confronted were essentially unpredictable (e.g. prisoner escape attempts), part of their task was to be prepared for such eventualities and to be able to deal appropriately with the variety of situations that might arise. The "Warden" instructed the guards in the administrative details, including: the work-shifts, the mandatory daily completion of shift reports concerning the activity of guards and prisoners, the completion of "critical incident" reports which detailed unusual occurrences and the administration of meals, work and recreation programmes for the prisoners. In order to begin to involve these subjects in their roles even before the first prisoner was incarcerated, the guards assisted in the final phases of completing the prison complex—putting the cots in the cells, signs on the walls, setting up the guards' quarters, moving furniture, water coolers, refrigerators, etc.

The guards generally believed that we were primarily interested in studying the behaviour of the prisoners. Of course, we were equally interested in the effect which enacting the role of guard in this environment would have on their behaviour and subjective states.

To optimise the extent to which their behaviour would reflect their genuine reactions to the experimental prison situation and not simply their ability to follow instructions, they were intentionally given only minimal guidelines for what it meant to be a guard. An explicit and categorical prohibition against the use of physical punishment or physical aggression was, however, emphasised by the experimenters. Thus, with this single notable exception, their roles were relatively unstructured initially, requiring each "guard" to carry out activities necessary for interacting with a group of "prisoners" as well as with other "guards" and the "correctional staff".

Uniform

In order to promote feelings of anonymity in the subjects each group was issued identical uniforms. For the guards, the uniform consisted of: plain khaki shirts and trousers, a whistle, a police night stick (wooden batons) and reflecting sunglasses which made eye contact impossible. The prisoners' uniform consisted of loosely fitting muslin smocks with an identification number on front and back. No underclothes were worn beneath these "dresses". A chain and lock were placed around one ankle. On their feet they wore rubber sandals and their hair was covered with a nylon stocking made into a cap. Each prisoner was also issued a toothbrush, soap, soapdish, towel and bed linen. No personal belongings were allowed in the cells.

The outfitting of both prisoners and guards in this manner served to enhance group identity and reduce individual uniqueness within the two groups. The khaki uniforms were intended to convey a military attitude, while the whistle and night-stick were carried as symbols of control and power. The prisoners'

uniforms were designed not only to deindividuate the prisoners but to be humiliating and serve as symbols of their dependence and subservience. The ankle chain was a constant reminder (even during their sleep when it hit the other ankle) of the oppressiveness of the environment. The stocking cap removed any distinctiveness associated with hair length, colour or style (as does shaving of heads in some "real" prisons and the military). The ill-fitting uniforms made the prisoners feel awkward in their movements; since these dresses were worn without undergarments, the uniforms forced them to assume unfamiliar postures, more like those of a woman than a man—another part of the emasculating process of becoming a prisoner.

Induction procedure

With the cooperation of Palo Alto City Police Department all of the subjects assigned to the prisoner treatment were unexpectedly "arrested" at their residences. A police officer charged them with suspicion of burglary or armed robbery, advised them of their legal rights, handcuffed them, thoroughly searched them (often as curious neighbours looked on) and carried them off to the police station in the rear of the police car. At the station they went through the standard routines of being fingerprinted, having an identification file prepared and then being placed in a detention cell. Each prisoner was blindfolded and subsequently driven by one of the experimenters and a subject-guard to our mock prison. Throughout the entire arrest procedure, the police officers involved maintained a formal, serious attitude, avoiding answering any questions of clarification as to the relation of this "arrest" to the mock prison study.

Upon arrival at our experimental prison, each prisoner was stripped, sprayed with a delousing preparation (a deodorant spray) and made to stand alone naked for a while in the cell yard. After being given the uniform described previously and having an I.D. picture taken ("mug shot"), the prisoner was put in his cell and ordered to remain silent.

Administrative routine

When all the cells were occupied, the warden greeted the prisoners and read them the rules of the institution (developed by the guards and the warden). They were to be memorised and to be followed. Prisoners were to be referred to only by the number on their uniforms, also in an effort to depersonalise them.

The prisoners were to be served three bland meals per day, were allowed three supervised toilet visits, and given two hours daily for the privilege of reading or letterwriting. Work assignments were issued for which the prisoners were to receive an hourly wage to constitute their \$15 daily payment. Two visiting periods per week were scheduled, as were movie rights and exercise periods. Three times a day all prisoners were lined up for a "count" (one on each guard

work-shift). The initial purpose of the "count" was to ascertain that all prisoners were present, and to test them on their knowledge of the rules and their I.D. numbers. The first perfunctory counts lasted only about 10 minutes, but on each successive day (or night) they were spontaneously increased in duration until some lasted several hours. Many of the pre-established features of administrative routine were modified or abandoned by the guards, and some were forgotten by the staff over the course of the study.

Data collection (dependent measures)

The exploratory nature of this investigation and the absence of specific hypotheses led us to adopt the strategy of surveying as many as possible behavioural and psychological manifestations of the prison experience on the guards and the prisoners. In fact, one major methodological problem in a study of this kind is defining the limits of the "data", since relevant data emerged from virtually every interaction between any of the participants, as well as from subjective and behavioural reactions of individual prisoners, guards, the warden, superintendent, research assistants and visitors to the prison. It will also be clear when the results are presented that causal direction cannot always be established in the patterns of interaction where any given behaviour might be the consequence of a current or prior instigation by another subject and, in turn, might serve as impetus for eliciting reactions from others.

Data collection was organised around the following sources:

(1) *Videotaping.* About 12 hours of recordings were made of daily, regularly occurring events, such as the counts and meals, as well as unusual interactions, such as a prisoner rebellion, visits from a priest, a lawyer and parents, Parole Board meetings and others. Concealed video equipment recorded these events through a screen in the partition at one end of the cell-block yard or in a conference room (for parole meetings).

(2) *Audio recording.* Over 30 hours of recordings were made of verbal interactions between guards and prisoners on the prison yard. Concealed microphones picked up all conversation taking place in the yard as well as some within the cells. Other concealed recordings were made in the testing-interview room on selected occasions—interactions between the warden, superintendent and the prisoners' Grievance Committee, parents, other visitors and prisoners released early. In addition, each subject was interviewed by one of the experimenters (or by other research associates) during the study, and most just prior to its termination.

(3) *Rating scales.* Mood adjective checklists and sociometric measures were administered on several occasions to assess emotional changes in affective state and interpersonal dynamics among the guard and prisoner groups.

(4) *Individual difference scales.* One day prior to the start of the simulation all subjects completed a series of paper and pencil personality tests. These tests

were selected to provide dispositional indicators of interpersonal behaviour styles—the *F* scale of Authoritarian Personality [1], and the Machiavellianism Scale [2]—as well as areas of possible personality pathology through the newly developed Comrey Personality Scale [3]. The subscales of this latter test consist of:

- (a) trustworthiness
- (b) orderliness
- (c) conformity
- (d) activity
- (e) stability
- (f) extroversion
- (g) masculinity
- (h) empathy

(5) *Personal observations.* The guards made daily reports of their observations after each shift, the experimenters kept informal diaries and all subjects completed post-experimental questionnaires of their reactions to the experience about a month after the study was over.

Data analyses presented problems of several kinds. First, some of the data was subject to possible errors due to selective sampling. The video and audio recordings tended to be focussed upon the more interesting, dramatic events which occurred. Over time, the experimenters became more personally involved in the transaction and were not as distant and objective as they should have been. Second, there are not complete data on all subjects for each measure because of prisoners being released at different times and because of unexpected disruptions, conflicts and administrative problems. Finally, we have a relatively small sample on which to make cross-tabulations by possible independent and individual difference variables.

However, despite these shortcomings some of the overall effects in the data are powerful enough to reveal clear, reliable results. Also some of the more subtle analyses were able to yield statistically significant results even with the small sample size. Most crucial for the conclusions generated by this exploratory study is the consistency in the pattern of relationships which emerge across a wide range of measuring instruments and different observers. Special analyses were required only of the video and audio material, the other data sources were analysed following established scoring procedures.

Video analysis

There were 25 relatively discrete incidents identifiable on the tapes of prisoner-guard interactions. Each incident or scene was scored for the presence of nine behavioural (and verbal) categories. Two judges who had not been involved with the simulation study scored these tapes. These categories were defined as follows:

Question. All questions asked, requests for information or assistance (excluding rhetorical questions).

Command. An order to commence or abstain from a specific behaviour, directed either to individuals or groups. Also generalised orders, e.g. "Settle down".

Information. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Individuating reference. Positive: use of a person's real name, nickname or allusion to special positive physical characteristics. Negative: use of prison number, title, generalised "you" or reference to derogatory characteristic.

Threat. Verbal statement of contingent negative consequences of a wide variety, e.g. no meal, long count, pushups, lock-up in hole, no visitors, etc.

Deprecation insult. Use of obscenity, slander, malicious statement directed toward individual or group, e.g. "You lead a life of mendacity" or "You guys are really stupid."

Resistance. Any physical resistance, usually prisoners to guards, such as holding on to beds, blocking doors, shoving guard or prisoner, taking off stocking caps, refusing to carry out orders.

Help. Person physically assisting another (i.e. excludes verbal statements of support), e.g. guard helping another to open door, prisoner helping another prisoner in cleanup duties.

Use of instruments. Use of any physical instrument to either intimidate, threaten, or achieve specific end, e.g. fire extinguisher, batons, whistles.

Audio analysis

For purposes of classifying the verbal behaviour recorded from interviews with guards and prisoners, eleven categories were devised. Each statement made by the interviewee was assigned to the appropriate category by judges. At the end of this process for any given interview analysis, a list had been compiled of the nature and frequencies of the interviewee's discourse. The eleven categories for assignment of verbal expressions were:

Questions. All questions asked, requests for information or assistance (excluding rhetorical questions).

Informative statements. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Demands. Declarative statements of need or imperative requests.

Requests. Deferential statements for material or personal consideration.

Commands. Orders to commence or abstain from a specific behaviour, directed either to individuals or groups.

Outlook, positive/negative. Expressions of expectancies for future experiences or future events; either negative or positive in tone, e.g. "I don't think I can make it" v. "I believe I will feel better."

Criticism. Expressions of critical evaluation concerning other subjects, the experimenters or the experiment itself.

Statements of identifying reference, deindividuating/individuating. Statements wherein a subject makes some reference to another subject specifically by allusion to given name or distinctive characteristics (individuating reference), or by allusion to non-specific identity or institutional number (deindividuating reference).

Desire to continue. Any expression of a subject's wish to continue or to curtail participation in the experiment.

Self-evaluation, positive/negative. Statements of self-esteem or self-degradation, e.g. "I feel pretty good about the way I've adjusted" v. "I hate myself for being so oppressive."

Action intentions, positive/negative including "intent to aggress". Statements concerning interviewees' intentions to do something in the future, either of a positive, constructive nature or a negative, destructive nature, e.g. "I'm not going to be so mean from now on" v. "I'll break the door down."

Results

Overview

Although it is difficult to anticipate exactly what the influence of incarceration will be upon the individuals who are subjected to it and those charged with its maintenance (especially in a simulated reproduction), the results of the present experiment support many commonly held conceptions of prison life and validate anecdotal evidence supplied by articulate ex-convicts. The environment of arbitrary custody had great impact upon the affective states of both guards and prisoners as well as upon the interpersonal processes taking place between and within those role-groups.

In general, guards and prisoners showed a marked tendency toward increased negativity of affect and their overall outlook became increasingly negative. As the experiment progressed, prisoners expressed intentions to do harm to others more frequently. For both prisoners and guards, self-evaluations were more deprecating as the experience of the prison environment became internalised.

Overt behaviour was generally consistent with the subjective self-reports and affective expressions of the subjects. Despite the fact that guards and prisoners were essentially free to engage in any form of interaction (positive or negative, supportive or affrontive, etc.), the characteristic nature of their encounters tended to be negative, hostile, affrontive and dehumanising. Prisoners immediately adopted a generally passive response mode while guards assumed a very active initiating role in all interactions. Throughout the experiment, commands were the most frequent form of verbal behaviour and, generally, verbal exchanges were strikingly impersonal, with few references to individual identity. Although it was clear to all subjects that the experimenters would not

permit physical violence to take place, varieties of less direct aggressive behaviour were observed frequently (especially on the part of guards). In lieu of physical violence, verbal affronts were used as one of the most frequent forms of interpersonal contact between guards and prisoners.

The most dramatic evidence of the impact of this situation upon the participants was seen in the gross reactions of five prisoners who had to be released because of extreme emotional depression, crying, rage and acute anxiety. The pattern of symptoms was quite similar in four of the subjects and began as early as the second day of imprisonment. The fifth subject was released after being treated for a psychosomatic rash which covered portions of his body. Of the remaining prisoners, only two said they were not willing to forfeit the money they had earned in return for being "paroled". When the experiment was terminated prematurely after only six days, all the remaining prisoners were delighted by their unexpected good fortune. In contrast, most of the guards seemed to be distressed by the decision to stop the experiment and it appeared to us that had become sufficiently involved in their roles so that they now enjoyed the extreme control and power which they exercised and were reluctant to give it up. One guard did report being personally upset at the suffering of the prisoners and claimed to have considered asking to change his role to become one of them—but never did so. None of the guards ever failed to come to work on time for their shift, and indeed, on several occasions guards remained on duty voluntarily and uncomplaining for extra hours—without additional pay.

The extremely pathological reactions which emerged in both groups of subjects testify to the power of the social forces operating, but still there were individual differences seen in styles of coping with this novel experience and in degrees of successful adaptation to it. Half the prisoners did endure the oppressive atmosphere, and not all the guards resorted to hostility. Some guards were tough but fair ("played by the rules"), some went far beyond their roles to engage in creative cruelty and harassment, while a few were passive and rarely instigated any coercive control over the prisoners.

These differential reactions to the experience of imprisonment were not suggested by or predictable from the self-report measures of personality and attitude or the interviews taken before the experiment began. The standardised tests employed indicated that a perfectly normal emotionally stable sample of subjects had been selected. In those few instances where differential test scores do discriminate between subjects, there is an opportunity to, partially at least, discern some of the personality variables which may be critical in the adaptation to and tolerance of prison confinement.

Initial personality and attitude measures

Overall, it is apparent that initial personality-attitude dispositions account for an extremely small part of the variation in reactions to this mock prison experience. However, in a few select instances, such dispositions do seem to be correlated with the prisoners' ability to adjust to the experimental prison environment.

Comrey scale

The Comrey Personality Inventory [3] was the primary personality scale administered to both guards and prisoners. The mean scores for prisoners and guards on the eight sub-scales of the test are shown in Table 1. No differences between prisoner and guard mean scores on any scale even approach statistical significance. Furthermore, in no case does any group mean fall outside of the 40 to 60 centile range of the normative male population reported by Comrey.

Table 1. Mean scores for prisoners and guards on eight Comrey subscales

Scale	Prisoners	Guards
Trustworthiness—high score indicates belief in the basic honesty and good intentions of others	$\bar{X} = 92.56$	$\bar{X} = 89.64$
Orderliness—extent to which person is meticulous and concerned with neatness and orderliness	$\bar{X} = 75.67$	$\bar{X} = 73.82$
Conformity—indicates belief in law enforcement, acceptance of society as it is, resentment of nonconformity in others	$\bar{X} = 65.67$	$\bar{X} = 63.18$
Activity—liking for physical activity, hard work, and exercise	$\bar{X} = 89.78$	$\bar{X} = 91.73$
Stability—high score indicates calm, optimistic, stable, confident individual	$\bar{X} = 98.33$	$\bar{X} = 101.45$
Extroversion—suggests outgoing, easy to meet person	$\bar{X} = 83.22$	$\bar{X} = 81.91$
Masculinity—"people who are not bothered by crawling creatures, the sight of blood, vulgarity, who do not cry easily and are not interested in love stories"	$\bar{X} = 88.44$	$\bar{X} = 87.00$
Empathy—high score indicates individuals who are sympathetic, helpful, generous and interested in devoting their lives to the service of others	$\bar{X} = 91.78$	$\bar{X} = 95.36$

Table 2. Mean scores for "Remaining" v. "Early released" prisoners on Comrey subscales

Scale	Remaining prisoners	Early released prisoners	Mean difference
Trustworthiness	93.4	90.8	+2.6
Orderliness	76.6	78.0	-1.4
Conformity	67.2	59.4	+7.8
Activity	91.4	86.8	+4.6
Stability	99.2	99.6	-0.4
Extroversion	98.4	76.2	+22.2
Masculinity	91.6	86.0	+5.6
Empathy	103.8	85.6	+17.2

Table 2 shows the mean scores on the Comrey sub-scales for prisoners who remained compared with prisoners who were released early due to severe emotional reactions to the environment. Although none of the comparisons achieved statistical significance, three seemed at least suggestive as possible discriminators of those who were able to tolerate this type of confinement and those who were not. Compared with those who had to be released, prisoners who remained in prison until the termination of the study: scored higher on conformity ("acceptance of society as it is"), showed substantially higher average scores on Comrey's measure of extroversion and also scored higher on a scale of empathy (helpfulness, sympathy and generosity).

F-Scale

The *F*-scale is designed to measure rigid adherence to conventional values and a submissive, uncritical attitude towards authority. There was no difference between the mean score for prisoners (4.78) and the mean score for guards (4.36) on this scale.

Again, comparing those prisoners who remained with those who were released early, we notice an interesting trend. This intra-group comparison shows remaining prisoners scoring more than twice as high on conventionality and authoritarianism ($\bar{X} = 7.78$) than those prisoners released early ($\bar{X} = 3.20$). While the difference between these means fails to reach acceptable levels of significance, it is striking to note that a rank-ordering of prisoners on the *F*-scale correlates highly with the duration of their stay in the experiment ($r_s = 0.898$, $P < 0.005$). To the extent that a prisoner was high in rigidity, in adherence to conventional values, and in the acceptance of authority, he was likely to remain longer and adjust more effectively to this authoritarian prison environment.

Machiavellianism

There were no significant mean differences found between guards ($\bar{X} = 7.73$) and prisoners ($\bar{X} = 8.77$) on this measure of effective interpersonal manipulation. In addition, the Mach Scale was of no help in predicting the likelihood that a prisoner would tolerate the prison situation and remain in the study until its termination.

This latter finding, the lack of any mean differences between prisoners who remained *v.* those who were released from the study, is somewhat surprising since one might expect the Hi Mach's skill at manipulating social interaction and mediating favourable outcomes for himself might be acutely relevant to the simulated prison environment. Indeed, the two prisoners who scored highest on the Machiavellianism scale were also among those adjudged by the experimenters to have made unusually effective adaptations to their confinement. Yet, paradoxically (and this may give the reader some feeling for the anomalies we encountered in attempting to predict in-prison behaviour from personality

measures), the other two prisoners whom we categorised as having effectively adjusted to confinement actually obtained the lowest Mach scores of any prisoners.

Video recordings

An analysis of the video recordings indicates a preponderance of genuinely negative interactions, i.e. physical aggression, threats, deprecations, etc. It is also clear that any assertive activity was largely the prerogative of the guards, while prisoners generally assumed a relatively passive demeanour. Guards more often aggressed, more often insulted, more often threatened. Prisoners, when they reacted at all, engaged primarily in resistance to these guard behaviours.

For guards, the most frequent verbal behaviour was the giving of commands and their most frequent form of physical behaviour was aggression. The most frequent form of prisoners' verbal behaviour was question-asking, their most frequent form of physical behaviour was resistance. On the other hand, the most infrequent behaviour engaged in overall throughout the experiment was "helping"—only one such incident was noted from all the video recording collected. That solitary sign of human concern for a fellow occurred between two prisoners.

Although question-asking was the most frequent form of verbal behaviour for the prisoners, guards actually asked questions more frequently overall than did prisoners (but not significantly so). This is reflective of the fact that the overall level of behaviour emitted was much higher for the guards than for the prisoners. All of those verbal acts categorised as commands were engaged in by guards. Obviously, prisoners had no opportunity to give commands at all, that behaviour becoming the exclusive "right" of guards.

Of a total 61 incidents of direct interpersonal reference observed (incidents in which one subject spoke directly to another with the use of some identifying reference, i.e. "Hey, Peter"; "you there", etc.), 58 involved the use of some deindividuating rather than some individuating form of reference. (Recall that we characterised this distinction as follows: an individuating reference involved the use of a person's actual name, nickname or allusion to special physical characteristics, whereas a deindividuating reference involved the use of a prison number, or a generalised "you"—thus being a very depersonalising form of reference.) Since all subjects were at liberty to refer to one another in either mode, it is significant that such a large proportion of the references noted involved were in the deindividuating mode ($Z = 6.9, P < 0.01$). Deindividuating references were made more often by guards in speaking to prisoners than the reverse ($Z = 3.67, P < 0.01$). (This finding, as all prisoner-guard comparisons for specific categories, may be somewhat confounded by the fact that guards apparently enjoyed a greater freedom to initiate verbal as well as other forms of behaviour. Note, however, that the existence of this greater "freedom" on the part of the guards is itself an empirical finding since it was not prescribed

à priori.) It is of additional interest to point out that in the only three cases in which verbal exchange involved some individuating reference, it was prisoners who personalised guards.

A total of 32 incidents were observed which involved a verbal threat spoken by one subject to another. Of these, 27 such incidents involved a guard threatening a prisoner. Again, the indulgence of guards in this form of behaviour was significantly greater than the indulgence of prisoners, the observed frequencies deviating significantly from an equal distribution of threats across both groups ($Z = 3.88, P < 0.01$).

Guards more often deprecated and insulted prisoners than prisoners did of guards. Of a total of 67 observed incidents, the deprecation-insult was expressed disproportionately by guards to prisoners 61 times; ($Z = 6.72, P < 0.01$).

Physical resistance was observed 34 different times. Of these, 32 incidents involved resistance by a prisoner. Thus, as we might expect, at least in this reactive behaviour domain, prisoner responses far exceeded those of the guards ($Z = 5.14, P < 0.01$).

The use of some object or instrument in the achievement of an intended purpose or in some interpersonal interaction was observed 29 times. Twenty-three such incidents involved the use of an instrument by a guard rather than a prisoner. This disproportionate frequency is significantly variant from an equal random use by both prisoners and guards ($Z = 3.16, P < 0.01$).

Over time, from day to day, guards were observed to generally escalate their harassment of the prisoners. In particular, a comparison of two of the first prisoner-guard interactions (during the counts) with two of the last counts in the experiment yielded significant differences in: the use of deindividuating references per unit time ($\bar{X}_{t_1} = 0.0$ and $\bar{X}_{t_2} = 5.40$, respectively; $t = 3.65, P < 0.10$); the incidence of deprecation-insult per unit time ($\bar{X}_{t_1} = 0.3$ and $\bar{X}_{t_2} = 5.70$, respectively; $t = 3.16, P < 0.10$). On the other hand, a temporal analysis of the prisoner video data indicated a general decrease across all categories over time: prisoners came to initiate acts far less frequently and responded (if at all) more passively to the acts of others—they simply *behaved less*.

Although the harassment by the guards escalated overall as the experiment wore on, there was some variation in the extent to which the three different guard shifts contributed to the harassment in general. With the exception of the 2.30 a.m. count, prisoners enjoyed some respite during the late night guard shift (10.00 p.m. to 6.00 a.m.). But they really were "under the gun" during the evening shift. This was obvious in our observations and in subsequent interviews with the prisoners and was also confirmed in analysis of the video taped interactions. Comparing the three different guard shifts, the evening shift was significantly different from the other two in resorting to commands; the means being 9.30 and 4.04, respectively, for standardised units of time ($t = 2.50, P < 0.05$). In addition, the guards on this "tough and cruel" shift showed more than twice as many deprecation-insults toward the prisoners (means of 5.17 and

2.29, respectively, $P < 0.20$). They also tended to use instruments more often than other shifts to keep the prisoners in line.

Audio recordings

The audio recordings made throughout the prison simulation afforded one opportunity to systematically collect self-report data from prisoners and guards regarding (among other things) their emotional reactions, their outlook, and their interpersonal evaluations and activities within the experimental setting. Recorded interviews with both prisoners and guards offered evidence that: guards tended to express nearly as much negative outlook and negative self-regard as most prisoners (one concerned guard, in fact, expressed more negative self-regard than any prisoner and more general negative affect than all but one of the prisoners); prisoner interviews were marked by negativity in expressions of affect, self-regard and action intentions (including intent to aggress and negative outlook).

Analysis of the prisoner interviews also gave *post hoc* support to our informal impressions and subjective decisions concerning the differential emotional effects of the experiment upon those prisoners who remained and those who were released early from the study. A comparison of the mean number of expressions of negative outlook, negative affect, negative self-regard and intentions to aggress made by remaining *v.* released prisoners (per interview) yielded the following results: prisoners released early expressed more negative expectations during interviews than those who remained ($t = 2.32$, $P < 0.10$) and also more negative affect ($t = 2.17$, $P < 0.10$); prisoners released early expressed more negative self-regard, and four times as many "intentions to aggress" as prisoners who remained (although those comparisons fail to reach an acceptable level of significance).

Since we could video-record only public interactions on the "yard", it was of special interest to discover what was occurring among prisoners in private. What were they talking about in the cells—their college life, their vocation, girl friends, what they would do for the remainder of the summer once the experiment was over. We were surprised to discover that fully 90% of all conversations among prisoners were related to prison topics, while only 10% to non-prison topics such as the above. They were most concerned about food, guard harassment, setting up a grievance committee, escape plans, visitors, reactions of prisoners in the other cells and in solitary. Thus, in their private conversations when they might escape the roles they were playing in public, they did not. There was no discontinuity between their presentation of self when under surveillance and when alone.

Even more remarkable was the discovery that the prisoners had begun to adopt and accept the guards' negative attitude toward them. Half of all reported private interactions between prisoners could be classified as non-supportive and non-cooperative. Moreover, when prisoners made evaluative statements of or

expressed regard for, their fellow prisoners, 85% of the time they were uncomplimentary and deprecating. This set of observed frequencies departs significantly from chance expectations based on a conservative binominal probability frequency ($P < 0.01$ for prison *v.* non-prison topics; $P < 0.05$ for negative *v.* positive or neutral regard).

Mood adjective self-reports

Twice during the progress of the experiment each subject was asked to complete a mood adjective checklist and indicate his current affective state. The data gleaned from these self-reports did not lend themselves readily to statistical analysis. However, the trends suggested by simple enumeration are important enough to be included without reference to statistical significance. In these written self-reports, prisoners expressed nearly three times as much negative as positive affect. Prisoners roughly expressed three times as much negative affect as guards. Guards expressed slightly more negative than positive affect. While prisoners expressed about twice as much emotionality as did guards, a comparison of mood self-reports over time reveals that the prisoners showed two to three times as much mood fluctuation as did the relatively stable guards. On the dimension of activity-passivity, prisoners tended to score twice as high, indicating twice as much internal "agitation" as guards (although, as stated above, prisoners were seen to be markedly less active than guards in terms of overt behaviour).

It would seem from these results that while the experience had a categorically negative emotional impact upon both guards and prisoners, the effects upon prisoners were more profound and unstable.

When the mood scales were administered for a third time, just after the subjects were told the study had been terminated (and the early released subjects returned for the debriefing encounter session), marked changes in mood were evident. All of the now "ex-convicts" selected self-descriptive adjectives which characterised their mood as less negative and much more positive. In addition, they now felt less passive than before. There were no longer any differences on the sub-scales of this test between prisoners released early and those who remained throughout. Both groups of subjects had returned to their pre-experimental baselines of emotional responding. This seems to reflect the situational specificity of the depression and stress reactions experienced while in the role of prisoner.

Representative personal statements

Much of the flavour and impact of this prison experience is unavoidably lost in the relatively formal, objective analyses outlined in this paper. The following quotations taken from interviews, conversations and questionnaires provide a more personal view of what it was like to be a prisoner or guard in the "Stanford County Prison" experiment.

Guards

"They [the prisoners] seemed to lose touch with the reality of the experiment—they took me so seriously."

"... I didn't interfere with any of the guards' actions. Usually if what they were doing bothered me, I would walk out and take another duty."

"... looking back, I am impressed by how little I felt for them ..."

"... They [the prisoners] didn't see it as an experiment. It was real and they were fighting to keep their identity. But we were always there to show them just who was boss."

"... I was tired of seeing the prisoners in their rags and smelling the strong odours of their bodies that filled the cells. I watched them tear at each other, on orders given by us."

"... Acting authoritatively can be fun. Power can be a great pleasure."

"... During the inspection, I went to cell 2 to mess up a bed which the prisoner had made and he grabbed me, screaming that he had just made it, and he wasn't going to let me mess it up. He grabbed my throat, and although he was laughing I was pretty scared. I lashed out with my stick and hit him in the chin (although not very hard) and when I freed myself I became angry."

Prisoners

"... The way we were made to degrade ourselves really brought us down and that's why we all sat docile towards the end of the experiment."

"... I realise now (after it's over) that no matter how together I thought I was inside my head, my prison behaviour was often less under my control than I realised. No matter how open, friendly and helpful I was with other prisoners I was still operating as an isolated, self-centred person, being rational rather than compassionate."

"... I began to feel I was losing my identity, that the person I call _____, the person who volunteered to get me into this prison (because it was a prison to me, it *still* is a prison to me, I don't regard it as an experiment or a simulation ...) was distant from me, was remote until finally I wasn't *that* person, I was 416. I was really my number and 416 was really going to have to decide what to do."

"I learned that people can easily forget that others are human."

Debriefing encounter sessions

Because of the unexpectedly intense reactions (such as the above) generated by this mock-prison experience, we decided to terminate the study at the end of six days rather than continue for the second week. Three separate encounter sessions were held, first, for the prisoners, then for the guards and finally for all participants together. Subjects and staff openly discussed their reactions and strong feelings were expressed and shared. We analysed the moral conflicts posed by this experience and used the debriefing sessions to make explicit alternative courses of action that would lead to more moral behaviour in future comparable situations.

Follow-ups on each subject over the year following termination of the study revealed the negative effects of participation had been temporary, while the personal gain to the subjects endured.

Conclusions and Discussion

It should be apparent that the elaborate procedures (and staging) employed by the experimenters to insure a high degree of mundane realism in this mock prison contributed to its effective functional simulation of the psychological dynamics operating in "real" prisons. We observed empirical relationships in the simulated prison environment which were strikingly isomorphic to the internal relations of real prisons, corroborating many of the documented reports of what occurs behind prison walls.

The conferring of differential power on the status of "guard" and "prisoner" constituted, in effect, the institutional validation of those roles. But further, many of the subjects ceased distinguishing between prison role and their prior self-identities. When this occurred, within what was a surprisingly short period of time, we witnessed a sample of normal, healthy American college students fractionate into a group of prison guards who seemed to derive pleasure from insulting, threatening, humiliating and dehumanising their peers—those who by chance selection had been assigned to the "prisoner" role. The typical prisoner syndrome was one of passivity, dependency, depression, helplessness and self-deprecation. Prisoner participation in the social reality which the guards had structured for them lent increasing validity to it and, as the prisoners became resigned to their treatment over time, many acted in ways to justify their fate at the hands of the guards, adopting attitudes and behaviour which helped to sanction their victimisation. Most dramatic and distressing to us was the observation of the ease with which sadistic behaviour could be elicited in individuals who were not "sadistic types" and the frequency with which acute emotional breakdowns could occur in men selected precisely for their emotional stability.

Situational v. dispositional attribution

To what can we attribute these deviant behaviour patterns? If these reactions had been observed within the confines of an existing penal institution, it is probable that a dispositional hypothesis would be invoked as an explanation. Some cruel guards might be singled out as sadistic or passive-aggressive personality types who chose to work in a correctional institution because of the outlets provided for sanctioned aggression. Aberrant reactions on the part of the inmate population would likewise be viewed as an extrapolation from the prior social histories of these men as violent, anti-social, psychopathic, unstable character types.

Existing penal institutions may be viewed as *natural experiments* in social control in which any attempts at providing a causal attribution for observed behaviour hopelessly confound dispositional and situational causes. In contrast, the design of our study minimised the utility of trait or prior social history explanations by means of judicious subject selection and random assignment to roles. Considerable effort and care went into determining the composition of the

final subject population from which our guards and prisoners were drawn. Through case histories, personal interviews and a battery of personality tests, the subjects chosen to participate manifested no apparent abnormalities, anti-social tendencies or social backgrounds which were other than exemplary. On every one of the scores of the diagnostic tests each subject scored within the normal-average range. Our subjects then, were highly representative of middle-class, Caucasian American society (17 to 30 years in age), although above average in both intelligence and emotional stability.

Nevertheless, in less than one week their *behaviour* in this simulated prison could be characterised as pathological and anti-social. The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather, the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it. Thus, we offer another instance in support of Mischel's [4] social-learning analysis of the power of situational variables to shape complex social behaviour. Our results are also congruent with those of Milgram [5] who most convincingly demonstrated the proposition that evil acts are not necessarily the deeds of evil men, but may be attributable to the operation of powerful social forces. Our findings go one step further, however, in removing the immediate presence of the dominant experimenter-authority figure, giving the subjects-as-guards a freer range of behavioural alternatives, and involving the participants for a much more extended period of time.

Despite the evidence favouring a situational causal analysis in this experiment, it should be clear that the research design actually *minimised* the effects of individual differences by use of a homogenous middle-range subject population. It did not allow the strongest possible test of the relative utility of the two types of explanation. We cannot say that personality differences do not have an important effect on behaviour in situations such as the one reported here. Rather, we may assert that the variance in behaviour observed could be reliably attributed to variations in situational rather than personality variables. The inherently pathological characteristics of the prison situation itself, at least as functionally simulated in our study, were a *sufficient* condition to produce aberrant, anti-social behaviour. (An alternative design which would maximise the potential operation of personality or dispositional variables would assign subjects who were extreme on pre-selected personality dimensions to each of the two experimental treatments. Such a design would, however, require a larger subject population and more resources than we had available.)

The failure of personality assessment variables to reliably discriminate the various patterns of prison behaviour, guard reactions as well as prisoner coping styles is reminiscent of the inability of personality tests to contribute to an understanding of the psychological differences between American P.O.W.s in Korea who succumbed to alleged Chinese Communist brain-washing by

"collaborating with the enemy" and those who resisted [6]. It seems to us that there is little reason to expect paper-and-pencil behavioural reactions on personality tests taken under "normal" conditions to generalise into coping behaviours under novel, stressful or abnormal environmental conditions. It may be that the best predictor of behaviour in situations of stress and power, as occurs in prisons, is overt behaviour in functionally comparable simulated environments.

In the situation of imprisonment faced by our subjects, despite the potent situational control, individual differences were nevertheless manifested both in coping styles among the prisoners and in the extent and type of aggression and exercise of power among the guards. Personality variables, conceived as learned behaviour styles can act as moderator variables in allaying or intensifying the impact of social situational variables. Their predictive utility depends upon acknowledging the inter-active relationship of such learned dispositional tendencies with the eliciting force of the situational variables.

Reality of the simulation

At this point it seems necessary to confront the critical question of "reality" in the simulated prison environment: were the behaviours observed more than the mere acting out assigned roles convincingly? To be sure, ethical, legal and practical considerations set limits upon the degree to which this situation could approach the conditions existing in actual prisons and penitentiaries. Necessarily absent were some of the most salient aspects of prison life reported by criminologists and documented in the writing of prisoners [7, 8]. There was no involuntary homosexuality, no racism, no physical beatings, no threat to life by prisoners against each other or the guards. Moreover, the maximum anticipated "sentence" was only two weeks and, unlike some prison systems, could not be extended indefinitely for infractions of the internal operating rules of the prison.

In one sense, the profound psychological effects we observed under the relatively minimal prison-like conditions which existed in our mock prison make the results even more significant and force us to wonder about the devastating impact of chronic incarceration in real prisons. Nevertheless, we must contend with the criticism that the conditions which prevailed in the mock prison were too minimal to provide a meaningful analogue to existing prisons. It is necessary to demonstrate that the participants in this experiment transcended the conscious limits of their preconceived stereotyped roles and their awareness of the artificiality and limited duration of imprisonment. We feel there is abundant evidence that virtually all of the subjects at one time or another experienced reactions which went well beyond the surface demands of role-playing and penetrated the deep structure of the psychology of imprisonment.

Although instructions about how to behave in the roles of guard or prisoner were not explicitly defined, demand characteristics in the experiment obviously exerted some directing influence. Therefore, it is enlightening to look to

circumstances where role demands were minimal, where the subjects believed they were not being observed, or where they should not have been behaving under the constraints imposed by their roles (as in "private" situations), in order to assess whether the role behaviours reflected anything more than public conformity or good acting.

When the private conversations of the prisoners were monitored, we learned that almost all (a full 90%) of what they talked about was directly related to immediate prison conditions, that is, food, privileges, punishment, guard harassment, etc. Only one-tenth of the time did their conversations deal with their life outside the prison. Consequently, although they had lived together under such intense conditions, the prisoners knew surprisingly little about each other's past history or future plans. This excessive concentration on the vicissitudes of their current situation helped to make the prison experience more oppressive for the prisoners because, instead of escaping from it when they had a chance to do so in the privacy of their cells, the prisoners continued to allow it to dominate their thoughts and social relations. The guards too, rarely exchanged personal information during their relaxation breaks. They either talked about "problem prisoners", or other prison topics, or did not talk at all. There were few instances of any personal communication across the two role groups. Moreover, when prisoners referred to other prisoners during interviews, they typically deprecated each other, seemingly adopting the guards' negative attitude.

From post-experimental data, we discovered that when individual guards were alone with solitary prisoners and out of range of any recording equipment, as on the way to or in the toilet, harassment often was greater than it was on the "Yard". Similarly, video-taped analyses of total guard aggression showed a daily escalation even after most prisoners had ceased resisting and prisoner deterioration had become visibly obvious to them. Thus guard aggression was no longer elicited as it was initially in response to perceived threats, but was emitted simply as a "natural" consequence of being in the uniform of a "guard" and asserting the power inherent in that role. In specific instances we noted cases of a guard (who did not know he was being observed) in the early morning hours pacing the "Yard" as the prisoners slept—vigorously pounding his night stick into his hand while he "kept watch" over his captives. Or another guard who detained an "incorrigible" prisoner in solitary confinement beyond the duration set by the guards' own rules and then he conspired to keep him in the hole all night while attempting to conceal this information from the experimenters who were thought to be too soft on the prisoners.

In passing, we may note an additional point about the nature of role-playing and the extent to which actual behaviour is "explained away" by reference to it. It will be recalled that many guards continued to intensify their harassment and aggressive behaviour even after the second day of the study, when prisoner deterioration became marked and visible and emotional breakdowns began to occur (in the presence of the guards). When questioned after the study about their persistent affrontive and harrasing behaviour in the face of prisoner

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emotional trauma, most guards replied that they were "just playing the role" of a tough guard, although none ever doubted the magnitude or validity of the prisoners' emotional response. The reader may wish to consider to what extremes an individual may go, how great must be the consequences of his behaviour for others, before he can no longer rightfully attribute his actions to "playing a role" and thereby abdicate responsibility.

When introduced to a Catholic priest, many of the role-playing prisoners referred to themselves by their prison number rather than their Christian names. Some even asked him to get a lawyer to help them get out. When a public defender was summoned to interview those prisoners who had not yet been released, almost all of them strenuously demanded that he "bail" them out immediately.

One of the most remarkable incidents of the study occurred during a parole board hearing when each of five prisoners eligible for parole was asked by the senior author whether he would be willing to forfeit all the money earned as a prisoner if he were to be paroled (released from the study). Three of the five prisoners said, "yes", they would be willing to do this. Notice that the original incentive for participating in the study had been the promise of money, and they were, after only four days, prepared to give this up completely. And, more surprisingly, when told that this possibility would have to be discussed with the members of the staff before a decision could be made, each prisoner got up quietly and was escorted by a guard back to his cell. If they regarded themselves simply as "subjects" participating in an experiment for money, there was no longer any incentive to remain in the study and they could have easily escaped this situation which had so clearly become aversive for them by quitting. Yet, so powerful was the control which the situation had come to have over them, so much a reality had this simulated environment become, that they were unable to see that their original and singular motive for remaining no longer obtained, and they returned to their cells to await a "parole" decision by their captors.

The reality of the prison was also attested to by our prison consultant who had spent over 16 years in prison, as well as the priest who had been a prison chaplain and the public defender who were all brought into direct contact with out simulated prison environment. Further, the depressed affect of the prisoners, the guards' willingness to work overtime for no additional pay, the spontaneous use of prison titles and I.D. numbers in non role-related situations all point to a level of reality as real as any other in the lives of all those who shared this experience.

To understand how an illusion of imprisonment could have become so real, we need now to consider the uses of power by the guards as well as the effects of such power in shaping the prisoner mentality.

Pathology of power

Being a guard carried with it social status within the prison, a group identity (when wearing the uniform), and above all, the freedom to exercise an unprecedented degree of control over the lives of other human beings. This

control was invariably expressed in terms of sanctions, punishment, demands and with the threat of manifest physical power. There was no need for the guards to rationally justify a request as they do in their ordinary life and merely to make a demand was sufficient to have it carried out. Many of the guards showed in their behaviour and revealed in post-experimental statements that this sense of power was exhilarating.

The use of power was self-aggrandising and self-perpetuating. The guard power, derived initially from an arbitrary label, was intensified whenever there was any perceived threat by the prisoners and this new level subsequently became the baseline from which further hostility and harassment would begin. The most hostile guards on each shift moved spontaneously into the leadership roles of giving orders and deciding on punishments. They became role models whose behaviour was emulated by other members of the shift. Despite minimal contact between the three separate guard shifts and nearly 16 hours a day spent away from the prison, the absolute level of aggression as well as more subtle and "creative" forms of aggression manifested, increased in a spiralling function. Not to be tough and arrogant was to be seen as a sign of weakness by the guards and even those "good" guards who did not get as drawn into the power syndrome as the others respected the implicit norm of never contradicting or even interfering with an action of a more hostile guard on their shift.

After the first day of the study, practically all prisoner's rights (even such things as the time and conditions of sleeping and eating) came to be redefined by the guards as "privileges" which were to be earned for obedient behaviour. Constructive activities such as watching movies or reading (previously planned and suggested by the experimenters) were arbitrarily cancelled until further notice by the guards—and were subsequently never allowed. "Reward", then became granting approval for prisoners to eat, sleep, go to the toilet, talk, smoke a cigarette, wear glasses or the temporary diminution of harassment. One wonders about the conceptual nature of "positive" reinforcement when subjects are in such conditions of deprivation, and the extent to which even minimally acceptable conditions become rewarding when experienced in the context of such an impoverished environment.

We might also question whether there are meaningful non-violent alternatives as models for behaviour modification in real prisons. In a world where men are either powerful or powerless, everyone learns to despise the lack of power in others and in oneself. It seems to us, that prisoners learn to admire power for its own sake—power becoming the ultimate reward. Real prisoners soon learn the means to gain power whether through ingratiation, informing, sexual control of other prisoners or development of powerful cliques. When they are released from prison, it is unlikely they will ever want to feel so powerless again and will take action to establish and assert a sense of power.

The pathological prisoner syndrome

Various coping strategies were employed by our prisoners as they began to react to their perceived loss of personal identity and the arbitrary control of their

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lives. At first they exhibited disbelief at the total invasion of their privacy, constant surveillance and atmosphere of oppression in which they were living. Their next response was rebellion, first by the use of direct force, and later with subtle divisive tactics designed to foster distrust among the prisoners. They then tried to work within the system by setting up an elected grievance committee. When that collective action failed to produce meaningful changes in their existence, individual self-interests emerged. The breakdown in prisoner cohesion was the start of social disintegration which gave rise not only to feelings of isolation but deprecation of other prisoners as well. As noted before, half the prisoners coped with the prison situation by becoming extremely disturbed emotionally—as a passive way of demanding attention and help. Others became excessively obedient in trying to be “good” prisoners. They sided with the guards against a solitary fellow prisoner who coped with his situation by refusing to eat. Instead of supporting this final and major act of rebellion, the prisoners treated him as a trouble-maker who deserved to be punished for his disobedience. It is likely that the negative self-regard among the prisoners noted by the end of the study was the product of their coming to believe that the continued hostility toward all of them was justified because they “deserved it” [9]. As the days wore on, the model prisoner reaction was one of passivity, dependence and flattened affect.

Let us briefly consider some of the relevant processes involved in bringing about these reactions.

Loss of personal identity. Identity is, for most people, conferred by social recognition of one's uniqueness, and established through one's name, dress, appearance, behaviour style and history. Living among strangers who do not know your name or history (who refer to you only by number), dressed in a uniform exactly like all other prisoners, not wanting to call attention to one's self because of the unpredictable consequences it might provoke—all led to a weakening of self identity among the prisoners. As they began to lose initiative and emotional responsivity, while acting ever more compliantly, indeed, the prisoners became deindividuated not only to the guards and the observers, but also to themselves.

Arbitrary control. On post-experimental questionnaires, the most frequently mentioned aversive aspect of the prison experience was that of being subjugated to the apparently arbitrary, capricious decisions and rules of the guards. A question by a prisoner as often elicited derogation and aggression as it did a rational answer. Smiling at a joke could be punished in the same way that failing to smile might be. An individual acting in defiance of the rules could bring punishment to innocent cell partners (who became, in effect, “mutually yoked controls”), to himself, or to all.

As the environment became more unpredictable, and previously learned assumptions about a just and orderly world were no longer functional, prisoners ceased to initiate any action. They moved about on orders and when in their cells rarely engaged in any purposeful activity. Their zombie-like reaction was the functional equivalent of the learned helplessness phenomenon reported by

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Seligman and Groves [10]. Since their behaviour did not seem to have any contingent relationship to environmental consequences, the prisoners essentially gave up and stopped behaving. Thus the subjective magnitude of aversiveness was manipulated by the guards not in terms of physical punishment but rather by controlling the psychological dimension of environmental predictability [11].

Dependency and emasculation. The network of dependency relations established by the guards not only promoted helplessness in the prisoners but served to emasculate them as well. The arbitrary control by the guards put the prisoners at their mercy for even the daily, commonplace functions like going to the toilet. To do so, required publicly obtained permission (not always granted) and then a personal escort to the toilet while blindfolded and handcuffed. The same was true for many other activities ordinarily practised spontaneously without thought, such as lighting up a cigarette, reading a novel, writing a letter, drinking a glass of water or brushing one's teeth. These were all privileged activities requiring permission and necessitating a prior show of good behaviour. These low level dependencies engendered a regressive orientation in the prisoners. Their dependency was defined in terms of the extent of the domain of control over all aspects of their lives which they allowed other individuals (the guards and prison staff) to exercise.

As in real prisons, the assertive, independent, aggressive nature of male prisoners posed a threat which was overcome by a variety of tactics. The prisoner uniforms resembled smocks or dresses, which made them look silly and enabled the guards to refer to them as "sissies" or "girls". Wearing these uniforms without any underclothes forced the prisoners to move and sit in unfamiliar, feminine postures. Any sign of individual rebellion was labelled as indicative of "incurability" and resulted in loss of privileges, solitary confinement, humiliation or punishment of cell mates. Physically smaller guards were able to induce stronger prisoners to act foolishly and obediently. Prisoners were encouraged to belittle each other publicly during the counts. These and other tactics all served to engender in the prisoners a lessened sense of their masculinity (as defined by their external culture). It follows then, that although the prisoners usually outnumbered the guards during line-ups and counts (nine v. three) there never was an attempt to directly overpower them. (Interestingly, after the study was terminated, the prisoners expressed the belief that the basis for assignment to guard and prisoner groups was physical size. They perceived the guards were "bigger", when, in fact, there was no difference in average height or weight between these randomly determined groups.)

In conclusion, we believe this demonstration reveals new dimensions in the social psychology of imprisonment worth pursuing in future research. In addition, this research provides a paradigm and information base for studying alternatives to existing guard training, as well as for questioning the basic operating principles on which penal institutions rest. If our mock prison could generate the extent of pathology it did in such a short time, then the punishment of being imprisoned in a real prison does not "fit the crime" for

most prisoners—indeed, it far exceeds it! Moreover, since prisoners and guards are locked into a dynamic, symbiotic relationship which is destructive to their human nature, guards are also society's prisoners.

Shortly after our study was terminated, the indiscriminate killings at San Quentin and Attica occurred, emphasising the urgency for prison reforms that recognise the dignity and humanity of both prisoners and guards who are constantly forced into one of the most intimate and potentially deadly encounters known to man.

Acknowledgments

This research was funded by an ONR grant: N00014-67-A-0112-0041 to Professor Philip G. Zimbardo.

The ideas expressed in this paper are those of the authors and do not imply endorsement of ONR or any sponsoring agency. We wish to extend our thanks and appreciation for the contributions to this research by David Jaffe who served as "warden" and pre-tested some of the variables in the mock prison situation. In addition, Greg White provided invaluable assistance during the data reduction phase of this study. Many others (most notably Carolyn Burkhart, Susie Phillips and Kathy Rosenfeld), helped at various stages of the experiment, with the construction of the prison, prisoner arrest, interviewing, testing, and data analysis—we extend our sincere thanks to each of these collaborators. Finally, we wish especially to thank Carlo Prescott, our prison consultant, whose personal experience gave us invaluable insights into the nature of imprisonment.

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DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

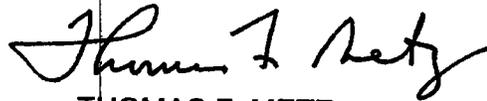
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AUG 14 2004

MEMORANDUM FOR Defense Counsel for Specialist Megan Ambuhl, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl

Your request for Appointment of [REDACTED] as a confidential expert consultant is denied. You have not demonstrated that the appointment of [REDACTED] necessary pursuant to RCM 703(d). I am prepared, however, to detail a military expert of suitable training, education, and experience to assist you if you so desire.



THOMAS F. METZ
Lieutenant General, USA
Commanding

002709

UNITED STATES)

)
)
) RESPONSE TO DEFENSE MOTION
FOR EXPERT ASSISTANCE

v.)

)
)
) AMBUHL, MEGAN M.
) SPC, U.S. Army
) Headquarters & Headquarters Company
) 16th Military Police Brigade (Airborne)
) III Corps, Victory Base, Iraq
) APO AE 09342
)

17 August 2004

RELIEF SOUGHT

The Government moves the Court deny the Defense Motion for Expert Assistance.

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 discussed below.

FACTS

The accused, along with a number of other co-accused, allegedly maltreated and assaulted foreign national detainees while acting as a prison guard at the Baghdad Central Correctional Facility, Abu Ghraib, Iraq.

On 20 March 2004, CPT [REDACTED] preferred charges against the accused 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 the accused's assignment to the facility.

On 6 July 2004, the Defense submitted a Request for Expert Assistance, regarding Dr. [REDACTED] to the Convening Authority. The Defense asserts the following: Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz; Dr. [REDACTED] is one of the original researchers in the "Stanford Prison Experiment"; Dr. [REDACTED] has dedicated over 30 years of research to the 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.

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APPELLATE EXHIBIT V

Recognized R. 40

On 13 July 2004, CPT [REDACTED] preferred additional charges against the accused. 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, the Convening Authority, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

On 14 August 2004, the Convening Authority denied the Defense's 6 July 2004 Request for Expert Assistance. However, the Convening Authority 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 the Convening Authority's decision. The Defense immediately requested that the Government identify who they deemed as a suitable alternative prior to 23 August 2004.

On 17 August the Government notified the Defense that efforts were underway to identify suitable individuals to be detailed to the Defense.

LAW

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). Article 46 of the Manual for Courts-Martial (MCM) provides that the trial counsel and defense counsel shall have equal opportunity to obtain witnesses and other evidence. As a matter of due process, servicemembers are entitled to investigative or other expert assistance at Government expense when *necessary* for an adequate Defense. See United States v. Garries, 22 M.J. 288, 290 (C.M.A. 1986). The necessity requirement exists because, unlike the civilian defendant, the military accused has the resources of the Government at his or her disposal. *Id.* There are three criteria for showing necessity:

First, why the expert assistance is *needed*. Second, what the expert assistance [would] *accomplish* for the accused. Third, why the defense counsel [is] *unable* to gather and present the evidence that the expert assistant would be able to develop.

United States v. Ndanyi, 45 M.J. 315, 319 (C.A.A.F. 1996) (emphasis supplied). Finally, in demonstrating necessity, the accused must demonstrate more than just the possibility of assistance from a requested expert, but instead must show that there exists a reasonable probability that an expert would be of assistance to the defense and that the denial of expert assistance would result in a fundamentally unfair trial. United States v. Gunkle, 55 M.J. 26, 31-32 (C.A.A.F. 2001).

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ARGUMENT

Applying the factors above, the Defense has not shown that the requested investigative assistance is necessary.

First, the Defense has failed to show why the expert assistance is *needed*. The Defense asserts that [REDACTED] can provide insight into how the prison environment “may help to account for a person’s behavior or inaction.” The Defense further asserts that this expert is necessary to explore the defenses to all charges, specifically with reference to the accused’s complacency or inability to act. The expert will also be apparently utilized to demonstrate the “elaborate” training requirements necessary to handle the unique pressures of the prison environment.

With respect to the accused’s complacency or inability to act, the Defense’s ultimate contention appears to be that this expert is able to answer the imponderable question of “why good people do bad things.” This contention is simply speculative at best and falls short of the reasonable probability of assistance specified in United States v. Gunkle. This is particularly true given the inordinate reliance upon the “Stanford Prison Experiment,” an experiment with a questionable foundation. See Alan Zarembo, *A Theater of Inquiry and Evil*, L.A. TIMES at 1, July 15, 2004 (attached). If the Defense’s assertion were given credence then any offense within any prison involving a person’s “action or inaction” would be entitled to expert assistance, a result that is both impractical and nonsensical.

Second, the Defense has failed to show why they are *unable* to present the evidence that the expert assistant would be able to develop. The Defense has the ability to consult with a wide variety of experts, including Colonel [REDACTED]. As an annex to MG Taguba’s investigation, COL [REDACTED] initial report addresses many of the same issues the Defense now seeks to present. COL [REDACTED] report highlights the unique pressures, lack of training, and other situation specific stressors that the Defense seeks to highlight. The Defense has access to Colonel [REDACTED] as well as a wide variety of military and civilian psychologist, and psychiatrist, all of whom may be called to testify on behalf of the Defense upon a proper showing of relevancy.

Additionally, the two defense counsel representing the accused, though not trained as psychologists, have an identified duty to do the hard work necessary to understand the operative facts of their case. In this case, two attorneys (one military and one civilian) represent the accused. Additionally, the Convening Authority previously detailed a trained military police investigator to assist with other aspects of case preparation. The Defense team is also aided by the work of other investigators including MG Taguba’s report, a Department of Army Inspector General’s report (specifically identifying training issues within a military context), as well as a number of other investigations. Together with these reports, the Defense team has the means to adequately research the pertinent issues particularly given the wide variety of trained psychologists within the Department of Defense made available to the all parties to this case.

Finally, although not conceding that the Defense has met their requisite showing for necessity, the Convening Authority, at his discretion, is prepared to appoint a specific psychologist or psychiatrist of appropriately comparable training, education and experience.

CONCLUSION

While the appointment of Dr. [REDACTED] may very well be helpful to the Defense, the standard for appointment of an expert to the Defense team is not whether the assistance is helpful, but rather expert's assistance is *necessary*. Because the Defense has failed to demonstrate either *need* or *inability* to gather and present the requisite evidence and thus failed to establish *necessity*, the Government requests that the Defense motion for appointment of Dr. [REDACTED] as an expert assistant on the Defense team be denied.

RESPECTFULLY SUBMITTED:

[REDACTED]
MAJ, JA
Trial Counsel

CERTIFICATE OF SERVICE

I certify that this Government Response to Motion for Expert Assistance was served on the Defense via e-mail to CPT [REDACTED] at [REDACTED]@us.army.mil and to Mr. [REDACTED] at [REDACTED]@svg-law.com and to the military judge via e-mail on 17 August 2004.

[REDACTED]
MAJ, JA
Trial Counsel

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UNITED STATES)

v.)

Megan M. AMBUHL)
SPC, U.S. Army)
Headquarters & Headquarters Company)
16th Military Police Brigade (Airborne))
III Corps, Victory Base, Iraq)
APO AE 09342)

MOTION TO COMPEL
DISCOVERY

14 August 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to move the Court to compel the government to release certain discovery that is relevant and necessary to the preparation of the defense's case.

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Compel Discovery be granted and that the government be ordered to produce discovery expeditiously in this case.

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. Rule for Courts-Martial (R.C.M.) 905(c).

C. FACTS

On 20 March 2004, the government preferred charges against SPC Megan M. Ambuhl for four alleged violations of the Uniform Code of Military Justice (UCMJ). (See Charge Sheet)

On 10 April 2004, the defense requested production of certain relevant and necessary evidence. The government only partially complied with this request prior to the Article 32(b) hearing in the above-captioned case.

On 7 May 2004, the defense requested copies of the Article 32 hearing reports for the following co-accused: SGT [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]. The government complied with this request.

On 11 May 2004, the defense requested copies of all of the individual rebuttals to MG Taguba's 15-6 investigation. The defense has not yet received all of the rebuttal documents.

On 20 May 2004, the defense requested audio recordings of the Article 32 hearings for the following co-accused: SGT [REDACTED], SPC [REDACTED], and SSG [REDACTED]. The government complied with this request.

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APPELLATE EXHIBIT VI

Recognized R. 71

On 22 May 2004, the defense requested copies of certain case documents from the companion case of *United States v. SPC [REDACTED]*. The government complied with this request.

On 24 May 2004, the defense requested production and declassification of MG Taguba's AR 15-6 Investigation and Annexes. To date, the government has failed to comply with this request. (On 1 July 2004, the government formally requested declassification of these documents by submitting a memorandum to the Commanding General, Coalition Forces Land Component Command.)

On 17 June 2004, the defense submitted a formal request for discovery. The government has not responded and has failed to produce a significant portion of this request.

On 26 June 2004, the defense requested a copy of the audio recording of the Article 32 hearing for the following co-accused: SPC [REDACTED]. The government has failed to comply with this request.

On 26 June 2004, the defense requested production and declassification of several memoranda issued by the Combined Joint Task Force Seven (CJTF-7) relating to International Committee for the Red Cross (ICRC) visits to the Baghdad Central Detention Facility and Special Detentions Facility in October 2003. The government has not responded to or complied with this request.

On 28 June 2004, the defense requested the preservation of certain tangible evidence maintained by the government's Criminal Investigative Command (CID) pertaining to case number 0003-04-CID149. The government has not responded to this request.

On 1 July 2004, the defense requested production of copies of certain tangible CID evidence. The government has not responded to or complied with this request.

On 13 July 2004, the government preferred additional charges against SPC Megan M. Ambuhl for three alleged violations of the UCMJ.

On 22 July 2004, the General Court-Martial Convening Authority referred all charges and specifications to a general court-martial.

On 11 August 2004, the court arraigned SPC Ambuhl on the charges and specifications and the additional charges and specifications.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. Article 46, UCMJ
- b. R.C.M. 701
- c. R.C.M. 703
- d. R.C.M. 905
- e. Brady v. Maryland, 373 U.S. 83 (1963)
- f. United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002)
- g. United States v. Mosley, 42 M.J. 300 (C.A.A.F. 1995)

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- h. United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986)

E. EVIDENCE

The defense requests consideration of the following documents to establish a factual timeline of events in this case and to memorialize the exact content of each defense request:

- a. Memorandum, dated 10 April 2004, SUBJECT: Article 32 Request for Witnesses and Production of Evidence – United States v. SPC Megan M. Ambuhl
- b. Memorandum, dated 11 May 2004, SUBJECT: Request for Copies of 15-6 Rebuttals
- c. Memorandum, dated 24 May 2004, SUBJECT: Request for Production and Declassification of MG Taguba’s AR 15-6 Investigation and Annexes – U.S. v. SPC Megan M. Ambuhl
- d. Request for Discovery, dated 17 June 2004
- e. Memorandum, dated 26 June 2004, SUBJECT: Request for Declassification of Memoranda Reviewing ICRC Detention Facility Visits – U.S. v. SPC Megan M. Ambuhl
- f. Memorandum, dated 28 June 2004, SUBJECT: Request for Preservation of Evidence – U.S. v. SPC Megan M. Ambuhl
- g. Memorandum, dated 1 July 2004, SUBJECT: Request for Production of CID Evidence – U.S. v. SPC Megan M. Ambuhl
- h. Memorandum, dated 1 July 2004, SUBJECT: Declassification of witness statements in AR 15-6 Investigation – 800th Military Police Brigade

F. ARGUMENT

An accused has a right as a matter of due process to favorable evidence. The United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 87 (1963).

The military provides even more generous provisions for discovery in trials by Courts-Martial. In military trials, the defense “shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.” Article 46, UCMJ. Moreover, R.C.M. 703(f)(1) provides: “Each party is entitled to the production of evidence which is both relevant and necessary.” The Discussion to this rule explains that, “[r]elevant evidence is necessary when it is not cumulative and when it would contribute to a party’s presentation of the case in some positive way on a matter in issue.” Upon defense request, the government shall permit the defense to inspect tangible objects that are material to the preparation of the defense. R.C.M. 701(a)(2).

In United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986), the Court of Military Appeals held that Congress and the President enacted higher standards for discovery in trials by Courts-Martial. The Court noted that Article 46, UCMJ, provides for “equal opportunity” to obtain

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witnesses and evidence. See id. at 24. The Court, although not directly addressing the issue, noted that Article 46, UCMJ, may impose a heavier burden on the government to sustain a conviction than is constitutionally required when defense requested discovery is withheld. See id.

In United States v. Mosley, 42 M.J. 300 (1995), the Court of Appeals for the Armed Forces dealt with the issue of defense access to evidence. In that case, the accused was charged with wrongful use of cocaine. The defense made a request to the convening authority for retesting of the urine sample, which was denied. The defense then asked that the Court order the retesting. See id. at 301. Despite the Military Judge's order to retest the sample based upon R.C.M 703(f)(1), the convening authority refused to comply. The Military Judge subsequently abated the proceedings. The Air Force Court of Criminal Appeals reversed the order of the Military Judge, holding that he abused his discretion. The Court of Appeals for the Armed Forces reversed and ordered a new trial, holding that the Military Judge relied upon the proper standard and did not abuse his discretion. See id. at 303.

There is no requirement in military practice that the evidence be exculpatory in nature in order to be discoverable. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002) (finding that neither the phrase "material to the preparation of the defense" in R.C.M. 701 nor Article 46, UCMJ, limits disclosure to exculpatory matters).

1. The Defense has a Right to Equal Access to Evidence in this Case

The defense first requested discovery on 10 April 2004. To date the government has failed to provide a significant amount of discovery and documents. The requested materials should be provided in an expeditious manner to enable SPC Ambuhl's civilian and military counsel to have equal access. Government representatives control the release of discovery in this case and despite continued defense requests, submitted in a timely manner, the government continues to fail to comply with these requests. Civilian and military counsel must be granted equal access.

Additionally, the defense has requested the declassification of a significant number of documents in this case. The government only made the classified documents available to the civilian defense counsel in July 2004 and has not yet provided redacted or declassified copies. The government has suspended SPC Ambuhl's security clearance pending the outcome of the pending charges. The government is also prohibiting SPC Ambuhl from viewing classified documents because of this now-suspended security clearance. Even with these government mandated decisions, the government still refuses to provide declassified or redacted documents for SPC Ambuhl's review. The government is effectively prohibiting SPC Ambuhl from fully participating in her own defense. Despite receiving a defense request for declassification of MG Taguba's 15-6 Investigation on 24 May 2004, the government did not act on that request until 1 July 2004. This failure to produce denies the defense equal access to evidence in this case.

2. The Requested Evidence is Relevant and Necessary to the Defense

The inspection of the requested evidence by the defense team is both relevant and necessary. SPC Ambuhl is charged with dereliction of duty. At issue in this case will be the exact extent of SPC Ambuhl's duties and whether or not her alleged dereliction was actually sanctioned by those in her chain-of-command. Many of the requested documents are relevant and necessary to explore this possible defense. These documents may further assist the defense in presenting extenuation or mitigation if SPC Ambuhl is convicted.

Further, SPC Ambuhl is charged with two specifications of conspiracy, three specifications of maltreatment and one specification of indecent acts. The defense has requested copies of the hard drives of various laptop computers seized by the government. These hard drives contain dozens, if not hundreds, of additional photographs that the Criminal Investigative Division deemed not relevant to its investigation. These photographs, specifically the dates and times these digital photos were taken, are relevant and necessary to SPC Ambuhl's defense.

If deemed necessary by the court, the defense requests argument as to the relevance and necessity of each requested piece of evidence prior to the court's determination to compel production. At a minimum, the defense requests written government responses to each of the defense requests submitted to date.

3. The Requested Evidence is Material to the Preparation of the Defense

R.C.M. 701(a)(2) provides that upon defense request, the government shall permit the defense to inspect tangible objects that are material to the preparation of the defense. The defense team is unable to prepare adequately for trial without being able to examine certain documents and tangible evidence in this case. The defense has a good faith basis as to the materiality of each requested piece of evidence. Certain tangible evidence may prove exculpatory to SPC Ambuhl and is certainly material to preparation of her defense.

G. CONCLUSION

The defense respectfully request that this Court grant the defense's Motion to Compel Discovery and order expeditious production of the requested discovery in this case.

RESPECTFULLY SUBMITTED:


CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion to Compel Discovery 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 14 August 2004.

[REDACTED]

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

10 April 2004

MEMORANDUM FOR MAJ [REDACTED] Article 32 Investigating Officer, Headquarters,
420th 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] 10th 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 Pieron also interviewed several alleged co-conspirators.

ii. Special Agent [REDACTED] 10th 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]

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Enclosure 1

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

c. Chain of Command – 372nd MP Company

i. CPT [REDACTED] former Company Commander

[REDACTED]@us.army.mil) 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

[REDACTED]@us.army.mil) 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

[REDACTED]@us.army.mil) As the senior enlisted member of the 372nd MP Company, 1SG Lipinski 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]@us.army.mil) 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 – 372nd MP Company

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

e. Additional Witnesses – 372nd MP Company

- i. MAJ [REDACTED] former S-3 for the 320th MP Battalion ([REDACTED]@us.army.mil) As the S-3 MAJ [REDACTED] was responsible for drafting and disseminating ROE guidance. The ROE and any training received by the 372nd MPs are extremely relevant to Charge II.
- ii. SPC [REDACTED] ([REDACTED]@us.army.mil) 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] ([REDACTED]@us.army.mil)
- iv. SGT [REDACTED] ([REDACTED]@us.army.mil) 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] ([REDACTED]@us.army.mil) 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] ([REDACTED]@us.army.mil) 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] ([REDACTED]@us.army.mil) 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] ([REDACTED]@us.army.mil) SGT [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. SGT [REDACTED] ([REDACTED]@us.army.mil) 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]@us.army.mil) 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]@us.army.mil) 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] 325th MI Battalion

ii. SPC [REDACTED] 325th MI Battalion

iii. SPC [REDACTED] 325th MI Battalion

iv. SGT [REDACTED] 302nd MI Battalion

[REDACTED] ([REDACTED]@us.army.mil) SGT [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 325th MI Battalion

[REDACTED] ([REDACTED]@us.army.mil) 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] 205th MI Brigade

[REDACTED] ([REDACTED]@us.army.mil) 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, DNV: [REDACTED] ([REDACTED]@us.army.mil) 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] 205th MI Brigade Operational Law, DNV: [REDACTED] ([REDACTED]@us.army.mil) 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 372nd 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]@us.army.mil) CPT [REDACTED] was one of several attorneys who provided advice on detainee operations and ROE at Abu Ghraib.

iv. SGM [REDACTED] 418th MP Detachment ([REDACTED]@us.army.mil)

iii. LTC [REDACTED] CJTF-7, BIAP, Baghdad, Iraq ([REDACTED]@us.army.mil) 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 372nd 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 372nd MP Company, the 800th MP Brigade, the 205th MI Company, the 325th MI Battalion, or the 20th 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 [REDACTED]
- ii. SGT [REDACTED]
- iii. SPC [REDACTED]
- iv. SPC [REDACTED]
- v. SGT [REDACTED]
- vi. SSG [REDACTED]
- vii. PFC [REDACTED]

- viii. SSG [REDACTED]
- ix. CPT [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 72nd MP Company (Las Vegas, Nevada) and the 372nd 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 24th 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 372nd MP Company and the 800th 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 372nd MP Company and 800th 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 519th 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 4th Platoon, 372nd MP Company: SPC [REDACTED] SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED] and SSG [REDACTED]

y. Copies of all work schedules maintained by the 372nd 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, 372nd 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 372nd 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 372nd 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, 109th 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. 40B.

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

[REDACTED]

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

11 May 2004

MEMORANDUM FOR CPT [REDACTED], Trial Counsel, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Copies of 15-6 Rebuttals

1. The defense requests copies of the rebuttals to the AR 15-6 Investigation completed by MG Taguba. As the 15-6 Investigation does not identify by name specific respondents, the defense requests copies of all rebuttals. The request *excludes* the rebuttals by the following individuals which previously were served on the defense:

- a. SFC [REDACTED]
- b. 1SG [REDACTED]
- c. CPT [REDACTED]
- d. LTC [REDACTED]

2. This request specifically includes, but is not limited to, copies of the following:

- a. Notification of right to submit rebuttal matters
- b. Rebuttal Memoranda
- c. Exhibits or attachments to the rebuttal memoranda

3. Additionally, the defense requests copies of any and all actions, to include Letters of Reprimand and Relief for Cause OERs and NCOERs, that were issued as a result of the findings of MG Taguba's 15-6 Investigation or as a result of the investigation into misconduct at Abu Ghraib.

4. If possible, the defense requests that these documents be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNVT: [REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel

002730

Enclosure 2



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

24 May 2004

MEMORANDUM FOR CPT [REDACTED], Trial Counsel, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Production and Declassification of MG Taguba's AR 15-6 Investigation and Annexes – U.S. v. SPC Megan M. Ambuhl

1. The defense requests government production of the entire AR 15-6 Investigation and Annexes completed by MG Taguba regarding allegations of abuse at Abu Ghraib prison.
2. The 15-6 annexes are maintained together on a classified CD Rom. After having completed a preliminary review of the annexes, the defense now requests that the government conduct a document-by-document review to determine the proper classification for each annex. Many documents, to include relevant sworn statements, appear to be unclassified; however, by maintaining them with classified documents on a CD Rom, the government has deemed them "secret." The government is reminded that Executive Order Number 12958 prohibits the classification of documents solely to "conceal violations of law." Government documents should be classified only if revealing their contents would harm national security. A cursory review of the annexes reveals that national security would not be jeopardized by the release and/or declassification of the majority of the 15-6 annexes.
3. Prior to any disposition of the charges against the above-referenced accused, the defense requires production of *all* the 15-6 annexes and an unredacted copy of the 15-6 Report. However, to facilitate and expedite the process, the defense requests immediate production of the annexes listed at the enclosure to this memorandum.
4. The defense requests that these documents be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNVT: 553-[REDACTED]

Encl

[REDACTED]
CPT, JA
Trial Defense Counsel

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Enclosure 3

MG Taguba's 15-6 Investigation Annexes

<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
1	Psychological Assessment	Overview of life at Abu Ghraib and its effects on MP guards conducted by COL Henry Nelson, USAF Psychiatrist	
8	15-6 Investigation, 24 Nov 03	Contains 2 documents: (1) Memo from COL ██████████, dated 14 Feb 04, regarding corrective action from 24 Nov 03 incident; and (2) 25-page 15-6 Investigation about the riot and shootings from 24 Nov 03 – includes observations of conditions at hard site and Camp Ganci	
19	MG Ryder's Report, 6 Nov 03		
20	MG Miller's Report, 9 Sep 03		
27	800 th MP Brigade Roster, 29 Jan 04	Contains 2 documents: (1) a 39-page unit roster; (2) another unit roster of 2-pages	
28	205 th MI Brigade IROE, undated	Contains 4 documents: (1) 205 th photos of IROE; (2) 3-page IROE and DROE; (3) LTC ██████████ plan (same as corrective plan in Annex #8); (4) unsigned request from COL ██████████ to CJTF-7 to use "fear-up harsh and isolation approaches," dated 30 Nov 03	
30	Investigation Team's Witness List	List of interviewee names, dated interviewed, type of transcript (verbatim or summarized); 2-page document	
37	Excerpts from log books, 320 th MP Bn	11-pages of the Camp Ganci Log Book	
38	310 th MP Bn's Inprocessing SOP	Al Hillah SOP by the 310 th MP Bn; 36-page SOP	
40	Joint Interrogation and Debriefing Center (JIDC) Slides, undated	Contains 3 sets of JIDC slides – 49 page slide show	
43	General Officer Memoranda of Reprimand (GOMORs)	On 10 Nov 03, BG Karpinski reprimands LTC ██████████ for 8 Nov 03 escape at Abu Ghraib.	
45	BG Janis Karpinski, Commander, 800 th MP BDE	Contains 2 documents: (1) Memo dated 17 Jan 04, issued by BG Karpinski regarding Fraternalization and Memo dated 19 Jan 04, issued by BG Karpinski, regarding treatment of detainees; (2) BG Karpinski's 157 page verbatim deposition.	

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<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>
46	COL ██████████ Commander, 205 th MI BDE	Contains 4 statements from COL ██████████ including a verbatim transcript of his 15-6 interview
47	COL ██████████ CFLCC Judge Advocate, CPA Ministry of Justice	Verbatim deposition, dated 10 Feb 04, 41- pages. Questioned by COL ██████████ ██████████ CFLCC-SJA.
48	LTC ██████████ S-5 and XO, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team
49	LTC ██████████ Command Judge Advocate, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team
50	LTC ██████████ Commander, 165 th MI Battalion (Tactical Exploitation)	Summary of Interview by MG Taguba's Investigative Team
51	LTC ██████████ 202 nd MI Battalion	Summary of Interview by MG Taguba's Investigative Team
52	LTC ██████████ CDR, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team
53	LTC ██████████ former Director, JIDC	Summary of Interview by MG Taguba's Investigative Team
54	LTC ██████████ CDR, 724 th MP Bn and OIC Arifjan Detachment, 800 th MP BDE	Summary of Interview by MG Taguba's Investigative Team
55	LTC ██████████ CDR, 744 th MP Bn	Summary of Interview by MG Taguba's Investigative Team
56	MAJ ██████████ S-1, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team
57	MAJ ██████████ Deputy CJA, 800 th MP BDE	Summary of Interview by MG Taguba's Investigative Team
58	MAJ ██████████ S-1 (forward), 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team
59	MAJ ██████████ S-3, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team
60	MAJ ██████████ XO, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team
61	MAJ ██████████ S-3, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team
62	CPT ██████████ CDR, 670 th MP Company	Summary of Interview by MG Taguba's Investigative Team
63	CPT ██████████ CDR, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team
64	CPT ██████████ Assistant S-3, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team
65	CPT ██████████ S-3, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team

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<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
66	CPT ██████████ S-2, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
67	LTC J. ██████████ CDR, 320 th MP Bn.	Summary of Interview by MG Taguba's Investigative Team	
68	CPT J. ██████████ CDR, 299 th MP Co.	Summary of Interview by MG Taguba's Investigative Team	
69	CPT ██████████ Jr., CDR, 310 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
70	CPT ██████████ IG, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
71	1LT ██████████ Platoon Leader, 372 nd MP Co	Summary of Interview by MG Taguba's Investigative Team	
72	1LT ██████████ Aide-de-Camp to BG Karpinski	Summary of Interview by MG Taguba's Investigative Team	
73	1LT ██████████ CDR, IHC 320 th MP Bn.	Summary of Interview by MG Taguba's Investigative Team	
74	2LT ██████████ Platoon Leader, 229 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
75	CW2 ██████████ 205 th MI Brigade	Summary of Interview by MG Taguba's Investigative Team	
76	CSM ██████████ 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
77	SGM ██████████ 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
78	CSM ██████████ 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
79	1SG ██████████ 977 th MP Co	Summary of Interview by MG Taguba's Investigative Team	
80	SGM ██████████ Ops SGM, 320 th MP Battalion	Summary of Interview by MG Taguba's Investigative Team	
81	MSG ██████████ 1SG, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
82	MSG ██████████ Operations Sergeant, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
83	SFC ██████████ Platoon Sergeant, 299 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
84	SFC ██████████ Platoon Sergeant, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
85	SFC ██████████ 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
86	SSG ██████████ Squad Leader, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
87	SSG ██████████ Army Dog Handler	Summary of Interview by MG Taguba's Investigative Team	

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<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
88	SGT ██████████, Army Dog Handler	Summary of Interview by MG Taguba's Investigative Team	
89	MA1 ██████████ USN Dog Handler	Summary of Interview by MG Taguba's Investigative Team	
90	Mr. ██████████, Civ. Interrogator w/CACI, 205 th MI Brigade	Verbatim transcript of interview conducted by MG Taguba's Investigative Team	
91	Mr. ██████████, Civ. Interpreter w/Titan Corp., 205 th MI Brigade	Verbatim transcript of interview conducted by MG Taguba's Investigative Team	
94	CJTF-7 Interrogation and Counter Resistance Policy, 12 Oct 03	Describes "fear-up" and "pride and ego down"	
101	2LT ██████████ S- 2, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
102	Mem of Admonishment from LTG Sanchez to BG Karpinski, 17 Jan 04		
104	205 th MI Brigade SITREP to MG Miller, 12 Dec 03	Annex contains 5 documents, to include secret briefings.	
105	SGT ██████████ 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
106	1LT ██████████ Cdr, 870 th MP Company	Summary of Interview by MG Taguba's Investigative Team	

UNITED STATES)

REQUEST FOR DISCOVERY

v.)

Megan M. AMBUHL)

SPC, U.S. Army)

Headquarters & Headquarters Company)

16th Military Police Brigade (Airborne))

17 June 2004

III Corps, Victory Base, Iraq)

APO AE 09342)

1. In accordance with the Rules for Courts-Martial (R.C.M.) and the Military Rules of Evidence (M.R.E.), Manual for Courts-Martial, United States, 2002 edition, the defense requests that the government produce and permit the defense to inspect, copy, or photograph each of the following items which are known, or should through the exercise of due diligence be known, to the United States or its agents. The defense requests the government to notify the defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery.

a. R.C.M. 701(a)(1)(A). All papers which accompanied the charges when they were referred to court-martial, including, but not limited to, the charge sheet, transmittals of charges from the commanders, law enforcement reports, laboratory reports, statements by the accused and witnesses, and the Staff Judge Advocate's pre-trial advice.

b. R.C.M. 701(a)(1)(B). The convening order and all amending orders.

c. R.C.M. 701(a)(1)(C). All statements about the charged offenses which are in the possession of the government. The term "statements" includes statements of any person, not just the accused and potential government witnesses, taken by or given to any person or agency, to include all Reports of Investigation under Article 32(b), UCMJ, civilian or military law enforcement agencies, Inspector General investigations, all AR 15-6 investigations, all commander's inquiries or investigations, Central Intelligence Agency investigations, congressional investigations, Department of Justice Investigations, internal CJTF-7 Memoranda and investigations, and any press releases or documents produced or maintained by the III Corps or CJTF-7 Public Affairs Offices and any such documents produced, maintained or disseminated by the press or public affairs offices of the White House, the Office of the President of the United States, the Pentagon, the Department of Defense, the Department of the Army, the Office of the Vice President of the United States, the Office of the Chairman of the Joint Chiefs of Staff, the Office of the Secretary of Defense, the Office of the Secretary of the Army, the Central Intelligence Agency, the Department of Justice, the Office of the Attorney General, and the offices of the members of the Senate Armed Services Committee.

d. R.C.M. 701(a)(2)(A). Any books, papers, documents, photographs, tangible objects, or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which were obtained from or belong to the accused or co-accused or are intended for use by trial counsel as evidence in the government's case-in-chief or are material to the

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preparation of the defense. Request permission to inspect all buildings or places at which the alleged offenses occurred and any such place within government control that may be material to the preparation of the defense.

e. R.C.M. 701(a)(2)(B). Any results or reports of physical or mental examinations, to include those of government witnesses and the alleged victims of the charged offenses, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of military authorities, the existence of which is known to the trial counsel or should be known by the exercise of due diligence, and which are intended for use by the trial counsel as evidence in the government's case-in-chief or which are material to the preparation of the defense.

f. R.C.M. 701(a)(3)(A). The names, addresses, home telephone numbers, work telephone numbers, mobile phone numbers, and e-mail addresses of all witnesses the government intends to call in its case-in-chief.

g. R.C.M. 701(a)(4). Notice and copies of the records of prior civilian or military convictions of the accused which may be offered by the government during trial on the merits, impeachment, or presentencing proceedings.

h. R.C.M. 701(a)(5)(A). Copies of all written material to be presented by the government at the presentencing proceedings, to include the accused's personnel records.

i. R.C.M. 701(a)(5)(B). The names, addresses, home telephone numbers, work telephone numbers, mobile phone numbers, and e-mail addresses of all witnesses the government intends to call at the presentencing proceedings.

j. R.C.M. 701(a)(6). All evidence which may negate the guilt of the accused, reduce the degree of guilt of the accused, or reduce the punishment. See Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agars, 427 U.S. 97 (1976). This request includes the disclosure of any and all evidence affecting the credibility of government witnesses, alleged co-conspirators and alleged victims of the charged offenses, pursuant to United States v. Webster, 1 M.J. 216 (C.M.A. 1975). This request encompasses such documents that may negate the guilt of the accused as maintained by the organizations, offices, agencies, departments and entities listed in paragraph 1c of this Request for Discovery. This request seeks the listed evidence for the following individuals: SSG Ivan L. Frederick, Jr., SGT Javal S. Davis, CPL Charles A. Graner, Jr., SPC Jeremy C. Sivits, SPC Sabrina D. Harman and PFC Lynndie R. England. The list of individuals is non-exclusive. The following provides a non-exclusive list of matters subject to this request:

(1) Prior civilian or court-martial convictions or arrests of all government witnesses; request a check with the National Crime Information Center (NCIC), Criminal Records Center (CRC), and all local military criminal investigatory organizations; see United States v. Jenkins, 18 M.J. 583 (A.C.M.R. 1984).

(2) Records of pending and/or completed nonjudicial punishment; adverse administrative actions, including but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters of reprimand, and letters of admonition; and all

documents or counseling statements which refer to or relate to any adverse or disciplinary actions against government witnesses, to include but not limited to, the counseling packets and 201 files of SSG Ivan L. Frederick, Jr., SGT Javal S. Davis, CPL Charles A. Graner, Jr., SPC Jeremy C. Sivits, SPC Sabrina D. Harman and PFC Lynndie R. England; see United States v. Green, 37 M.J. 88 (C.M.A. 1993). This request also encompasses the counseling records, OERs, letters of reprimand and letters of admonition for the following individuals:

- i. BG Janis Karpinski
- ii. COL [REDACTED]
- iii. LTC [REDACTED]
- iv. LTC [REDACTED]
- v. LTC [REDACTED]
- vi. LTG [REDACTED]
- vii. LTC [REDACTED]
- viii. LTC [REDACTED]
- ix. LTC [REDACTED]
- x. MAJ [REDACTED]
- xi. MAJ [REDACTED]
- xii. MAJ [REDACTED]
- xiii. MAJ [REDACTED]
- xiv. MAJ [REDACTED]
- xv. CPT [REDACTED]
- xvi. CPT [REDACTED]
- xvii. CPT [REDACTED]
- xviii. LTC [REDACTED]
- xix. 1LT [REDACTED]
- xx. 2LT [REDACTED]
- xxi. CW [REDACTED]
- xxii. CSM [REDACTED]
- xxiii. SGM [REDACTED]
- xxiv. MSG [REDACTED]
- xxv. SFC [REDACTED]
- xxvi. SFC [REDACTED]
- xxvii. SSG [REDACTED]
- xxviii. SGT [REDACTED]

(3) Any evidence, including medical records, of psychiatric treatment, mental disease or defect, combat stress treatment, head injury, alcoholism, or drug addiction of the accused, government witnesses, and co-accused; see United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983); United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R. 1971).

(4) Evidence of character, conduct, or bias bearing on the credibility of government witnesses; see Giglio v. United States, 405 U.S. 150 (1972); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983). This request includes, but is not limited to, information relating to any and all consideration or promises of consideration given to or made on

behalf of government witnesses. By consideration, the defense refers to anything of value and use, including but not limited to, plea agreements, immunity grants, witness fees, special witness fees, transportation assistance to members of a witness' family or associates, and any civil or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and that witness, and anything else which could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify or to color or shape testimony.

(5) The questions, answers, and results of any polygraph examination of the accused and government witnesses, including the Polygraph Examination Report (DA Form 2802-E) and related polygraph records, the Polygraph Examination Authorization, and the Polygraph Examination Quality Control Review; see United States v. Mouganel, 6 M.J. 589 (A.F.C.M.R. 1978); United States v. Simmons, 38 M.J. 376 (C.M.A. 1993). This request includes those records maintained at the U.S. Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, Virginia, 22060-5585.

(6) 201 files, unit files, and Military Personnel Records Jacket (MPRJ) of all government witnesses; request a hard copy of the Official Military Personnel File (OMPF) for each government witness; copies of the DA Form 2A, 2-1, and Enlisted Record Brief (ERB) for all enlisted government witnesses and ORBs for all officer government witnesses. Request copies of the counseling packets, DA Form 2A, 2-1 and ERBs for the following:

- i. SPC Megan M. Ambuhl
- ii. SGT [REDACTED]
- iii. SP4 [REDACTED]
- iv. SPC [REDACTED]
- v. SGT [REDACTED]
- vi. SSG [REDACTED]
- vii. PFC [REDACTED]

- viii. SSG [REDACTED]
- ix. CPL [REDACTED]
- x. SPC [REDACTED]
- xi. SP4 [REDACTED]
- xii. SGT [REDACTED]
- xiii. SP4 [REDACTED]
- xiv. SPC [REDACTED]

(7) Counseling/performance files of the investigators who have or are presently participating in the investigation of the allegations contained in the charges and specifications preferred against the accused, to include but not limited to the following:

- 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]

(8) Contracts between the Department of Defense or any subsidiary or sub-entity and Titan and/or CACI Corporations concerning the employment of contractors at Abu Ghraib or Baghdad Central Correctional Facility (BCCF) between August 2003 and March 2004. Request copies of the employee files of all civilian contractors, to include anyone involved in interrogation or intelligence gathering during the referenced time period. Specifically, the defense requests copies of any and all performance evaluations and/or adverse actions and/or counselings or ratings of Mr. Stephen Stephanowicz of CACI Corporation and Mr. [REDACTED] of Titan Corporation.

k. R.C.M. 912(a)(1). The defense requests that the government submit to each panel member the written questions listed at R.C.M. 912 (a)(1) and provide copies of the signed responses of each member to the defense; request copies of the ORBs of officer panel members and DA Form 2A, 2-1, and ERB of enlisted panel members.

l. R.C.M. 912(a)(2). All written matters provided to the convening authority concerning the selection of members detailed to this court-martial or more broadly, selection of the members stated in the applicable Court-Martial Convening Order.

m. R.C.M. 914 (a)(2), 18 U.S.C. Section 3500, et. seq. The defense intends to move at trial for the production by the government of all statements by government witnesses which relate to the subject matter of their testimony, to include statements made by the co-accused; the government is requested to voluntarily disclose all such statements before trial.

n. M.R.E. 201. Any matters the prosecution seeks to have judicially noticed.

o. M.R.E. 301(c)(2). Any immunity or leniency granted or promised to any government witness in exchange for testimony.

p. M.R.E. 304(d)(1). The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, regardless of whether the government intends to use the statements at trial. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

q. M.R.E. 304(d)(2)(B). Notice of government intent to offer against the accused a statement, oral or written, made by the accused that was not disclosed prior to arraignment.

r. M.R.E. 311(d)(1). Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused which is intended to be offered at trial.

s. M.R.E. 311(d)(2)(B). Notice of government intent to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment.

t. M.R.E. 321(c)(1). All evidence of the identification of the accused at a line-up, photo line-up, show-up, voice identification, or other identification process which the government intends to offer at trial; request disclosure of any unsuccessful efforts at identification by any witness.

u. M.R.E. 321(c)(2)(B). Notice of government intent to offer identification evidence that was not disclosed prior to arraignment.

v. M.R.E. 404(b). Notice of whether the government intends to offer other crimes, wrongs, or acts of the accused; the defense requests copies of investigations, witness statements, and names and phone numbers of witnesses pertaining to such alleged crimes, wrongs, or acts.

w. M.R.E. 507. Disclosure of the identity, including name, address, and phone number, of all informants and notice of any government exercise of privilege.

x. M.R.E. 609(b). Notice of whether the government intends to impeach a witness with a conviction older than ten years.

y. M.R.E. 612. All writings or documents used by a witness to prepare for trial; the defense intends to move at trial for the production of any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or before testifying.

z. M.R.E. 807. Notice of any hearsay statements, oral or written, intended to be offered at trial under M.R.E. 807, the particulars of the statements, and the names, addresses, and the phone numbers of the declarants.

aa. Notification of testing upon any evidence which may consume the only available samples of the evidence and an opportunity to be present at such testing; an opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of any government agency or agents. See United States v. Garries, 22 M.J. 288 (C.M.A. 1986), cert. denied, 479 U.S. 985 (1986); United States v. Mobley, 31 M.J. 273 (C.M.A. 1990).

bb. All evidence in rebuttal which is exculpatory in nature or material to punishment. See United States v. Trimper, 26 M.J. 534 (A.F.C.M.R. 1988), aff'd, 28 M.J. 460 (C.M.A.), cert. denied, 493 U.S. 965 (1989). The government is reminded that trial by "ambush" is improper. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

cc. All chain of custody documents generated by any law enforcement or military agency in conjunction with the taking of evidence during the investigation of the alleged offense.

dd. All case notes of the agents involved in this case, investigation report entries, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, or any other similar documentation made by such law enforcement personnel pertaining to this case.

ee. A list of, and the opportunity to view prior to trial, all physical, demonstrative, or other evidence and proposed exhibits the government intends to introduce at trial. Please list the location of such evidence and a contact phone number to arrange for inspection of such evidence.

ff. Names, addresses, and telephone numbers of any expert witnesses whom the government intends to call at trial; copies of all reports and statements of expert witnesses who

spoke with witnesses or otherwise participated in the investigation of this case, regardless of whether such reports or statements are included in any formal report.

gg. Any statements, oral or written, made by the summary, special, or general court-martial convening authorities in this case or by any officer superior to the general courts-martial convening authority, or acting for the command, whether oral or written, which:

(1) in any manner, withholds from a subordinate commander the authority to dispose of the accused's case under the UCMJ, to impose nonjudicial punishment upon the accused, to order the accused's separation or release from active duty or active duty for training, or to order the accused into pretrial confinement.

(2) provides guidance to any subordinate commander concerning the appropriate level of disposition of the charged offenses and/or punishment for the charged offenses, either made before or after the offenses at issue in this case.

hh. United States v. Nix, 40 M.J. 6 (C.M.A. 1994). Disclosure of any information known to government agents which in any manner indicates that a person who forwarded the charges with recommendations displayed bias or prejudice or had an other-than-official interest in the case.

ii. Notice to the defense of the nature of any past or present relationships, associations, or ties between any potential member of the court-martial panel and the trial counsel, assistant trial counsel, chief of military justice, or the Staff Judge Advocate; this request specifically includes, but is not limited to, any religious, social, business, professional, or recreational associations.

2. The defense renews its request of 10 April 2004 for production of the following documents and evidence:

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 372nd 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 Ambuhl and all of 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 372nd MP Company, the 800th MP Brigade, the 205th MI Company, the 325th MI Battalion, or the 20th 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. CPT [REDACTED]

x. SPC [REDACTED]

xi. SPC [REDACTED]

xii. SGT [REDACTED]

xiii. SP [REDACTED]

xiv. SPC [REDACTED]

i. Copies of any relief-in-place (RIP) schedules or training schedules between the 72nd MP Company (Las Vegas, Nevada) and the 372nd 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 24th 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 CW [REDACTED] 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 372nd MP Company and the 800th 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 372nd MP Company and 800th 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 519th 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], JDC, 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 4th Platoon, 372nd MP Company: SPC [REDACTED] PC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], and SSG [REDACTED];
 - y. Copies of all work schedules maintained by the 372nd 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;
3. For any documents that fall within this discovery request, the defense requests that the government begin to declassify such documents so they may be offered at trial by the defense. Alternatively, the defense requests that redacted copies of such documents be provided until such

time as the documents can be unclassified. Providing redacted copies as early as possible will enable the civilian defense counsel to begin to identify specific documents that require further review by the military defense counsel, who possesses adequate clearance. Further, such identification may narrow the scope of those documents that the defense requests be unclassified.

4. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the government. Immediate notification of new evidence and/or material is requested. A negative response is requested on all items the government is unwilling or unable to produce. The government is reminded of its obligation to provide full discovery in a timely manner. Gamesmanship and trial by ambush are not appropriate. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002).

[Redacted signature block]

CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that on 17 June 2004 this defense Request for Discovery was served on the government via e-mail to [Redacted]@vcmain.hq.c5.army.mil and [Redacted]@vcmain.hq.c5.army.mil.

[Redacted signature block]

CPT, JA
Trial Defense Counsel



CONFIDENTIAL -- FOR OFFICIAL USE ONLY

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

26 June 2004

MEMORANDUM FOR MAJ [REDACTED] Lead Trial Counsel, Headquarters and
Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Declassification of Memoranda Reviewing ICRC Detention Facility
Visits – U.S. v. SPC Megan M. Ambuhl

1. The defense requests declassification of the following Headquarters, Combined Joint Task
Force Seven (CJTF-7) memoranda relating to International Committee for the Red Cross (ICRC)
visits to the Baghdad Central Detention Facility and Special Detentions Facility in October 2003:

a. Memorandum for Commander, 800th MP Brigade from LTC [REDACTED] CJTF-
7 DSJA, dated 27 November 2003

b. Memorandum titled "Review of ICRC Detention Visits – Oct 03," from MAJ [REDACTED]
[REDACTED], SJA Ops Law, dated 25 Nov 03

c. Memorandum titled "Review of ICRC Detention Visits – 18-24 Oct 03, Baghdad HVD
Detention Facility," MAJ [REDACTED], SJA Ops Law, dated 25 Nov 03

2. These CJTF-7 SJA reviews of the ICRC working papers indicate that the protections afforded
to certain persons under the Geneva Conventions did not apply to security detainees housed at
Abu Ghraib detention facility. At a minimum, these documents indicate a level of knowledge of
alleged abuses at Abu Ghraib by the Commander, 800th MP Brigade.

3. The defense requests that redacted copies of these documents be served immediately on the
defense electronically at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil.
Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents
may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. The
defense requests that an unredacted copy of these documents be made available to counsel in
Washington, D.C. Point of contact for this request is the undersigned at DNV: 553-9 [REDACTED]

[REDACTED]

CPT, JA
Trial Defense Counsel

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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

28 June 2004

MEMORANDUM FOR MA [REDACTED], Lead Trial Counsel, Headquarters and
Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Preservation of Evidence - U.S. v. SPC Megan M. Ambuhl

1. The defense requests that the government preserve all tangible evidence maintained by the government or its agents relating to CID Case Number 0003-04-CID149 and/or all investigations concerning allegations of MP misconduct or detainee abuse at Abu Ghraib prison.
2. The defense requests preservation of this evidence until such time as there is final action on appeal, if any, in United States v. SPC Megan M. Ambuhl.
3. POC for this request is the undersigned at [REDACTED]@us.army.mil or civilian defense counsel, Mr. [REDACTED], a [REDACTED]@svg-law.com.

[REDACTED]
CPT, JA
Trial Defense Counsel

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Enclosure 6



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

1 July 2004

MEMORANDUM FOR MA [REDACTED], Lead Trial Counsel, Headquarters and Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Production of CID Evidence – U.S. v. SPC Megan M. Ambuhl

1. The defense requests production of the following listed items of tangible evidence maintained by the U.S. Army Criminal Investigative Division, BIAP field office, as part of case number 003-04-CID149:

- a. Document No. 405-04: Request declassification and production of the 4 memoranda included in this piece of evidence.
- b. Document No. 035-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- c. Document No. 036-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- d. Document No. 037-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- e. Item No. 029-04: Request an exact mirrored-copy of the hard drive of this laptop computer.
- f. Item No. 031-04: Request an exact mirrored-copy of the contents of this USB thumb drive.
- g. Item No. 032-04: Request an exact mirrored-copy of the hard drive of this laptop computer.

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Enclosure 7

- h. Item No. 033-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.
- i. Item No. 034-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.
- j. Item No. 330-04: Request an exact mirrored-copy of the compact disc identified in this piece of evidence.
- k. Item No. 301-04: Request an exact mirrored-copy of the hard drive of this laptop computer.
- l. Item No. 162-04: Request an exact mirrored-copy of the compact disc identified in this piece of evidence.
- m. Item No. 073-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.

2. On 22 June 2004, the 16th MP Brigade Trial Counsel seized two boxes of relevant documents, memoranda, schedules, log sheets and log books from the Commander, 301st MP Company at Abu Ghraib prison. The defense requests immediate production of copies of each document seized from the 301st MP Company.

3. At the Article 32 Hearing in U.S. v. SPC [REDACTED] held on 24 June 2004, CPT [REDACTED] Commander, 372nd MP Company, testified under oath that representatives from CID confiscated the hard drive of the government-issued laptop belonging to the 372nd MP Company. The computer shell was returned to CP [REDACTED] at the hard drive remained missing and presumably, in the custody of CID. The defense requests permission to inspect the original hard drive and production of a mirror-image copy of the contents of that hard drive.

4. This request for production of evidence is made in the interests of judicial economy and efficiency. Providing copies of the requested evidence ensures accessibility to civilian defense counsel located in Washington, D.C. and military defense counsel located in Tikrit.

5. If possible, the defense requests that the requested materials be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a CD Rom of the requested evidence may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNVT [REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
HEADQUARTERS, III CORPS
VICTORY BASE, IRAQ
APO AE 09342-1400

REPLY TO
ATTENTION OF

AFZF-JA-MJ

1 July 2004

THRU LTC [REDACTED] Deputy Staff Judge Advocate, Coalition Forces Land Component Command, Camp Doha, Kuwait, APO AE 09304

MEMORANDUM FOR LTG David McKiernan, Commanding General, Coalition Forces Land Component Command, Camp Doha, Kuwait, APO AE 09304

SUBJECT: Declassification of witness statements in AR 15-6 Investigation – 800th Military Police Brigade

1. I am the trial counsel currently prosecuting Staff Sergeant (SSG) [REDACTED] Sergeant (SGT) [REDACTED] is, Specialist (SPC) [REDACTED], Specialist Meghan Ambuhl, and Specialist [REDACTED] in connection with detainee abuse at the Baghdad Central Confinement Facility, Abu Ghraib, Iraq. In a pretrial Article 39(a), Uniform Code of Military Justice (UCMJ) session held on 21 June 2004, defense counsel for SSG [REDACTED] SGT [REDACTED] and SPC [REDACTED] requested that witness statements found in the annexes of the Army Regulation (AR) 15-6 report of investigation (ROI) Major General (MG) Taguba conducted be declassified from secret/secret-noform to unclassified. The defense counsel stated that declassification would allow for easier access to these statements and facilitate their ability to photocopy and use these statements in questioning witnesses. The military judge withheld ruling pending your response to this request.

2. Based upon the defense counsel's request and the need to allow for easier access to these witness statement and other documents collected by MG Taguba, the Government requests that you immediately declassify the annexes of the AR 15-6 ROI, that can be declassified without compromising vital national interests. In order to facilitate this process, the Government has reviewed the annexes and has identified specific annexes that contain documents marked as SECRET (11, 12, 13, 20, 28, 40, 41, 93, 94, 95, 97, 99, 100, 103, and 105). In addition to these annexes that contain secret documents, the Government has identified two other annexes that may contain other sensitive material (44 and 104). At a minimum, the Government requests that the annexes containing witness statements be declassified and marked as "For Official Use Only".

3. The government believes that the declassification of the annexes to the AR 15-6 report, specifically those that contain witness statements, will assist in the expeditious resolution of these cases. Thank you for your consideration in this matter.

[REDACTED]
CPT, JA
Trial Counsel

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Enclosure 8

UNITED STATES)

v.)

[REDACTED])
SSG, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

28 JULY 2004

UNITED STATES)

v.)

[REDACTED])
SPC, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

[REDACTED])
SGT, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

AMBUHL, Megan)
SPC, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

18 JUNE 2004

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APPELLATE EXHIBIT VII

Recognized R. 93

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion and proposed Order were emailed, as instructed by Government Counsel, this 9th day of August 2004, to the Military Judge, Government Counsel, Defense Counsel, and Counsel for CACI at the following email addresses:

• Military Judge: [REDACTED]

• Defense Counsel: [REDACTED]

• Government Counsel: [REDACTED]
[REDACTED]

• Counsel for CACI:
[REDACTED]

[REDACTED]
[REDACTED]
Williams & Connolly, LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Voice: 202-434-5753
Fax: 202-434-5029

August 9, 2004



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



ADMINISTRATION &
MANAGEMENT

November 9, 2001

Ref: 01-CORR-101

MEMORANDUM FOR DOD FOIA OFFICES

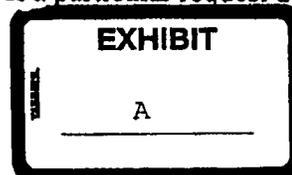
SUBJECT: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)

The President has declared a national emergency by reason of the terrorist attacks on the United States. In the attached memorandum, the Deputy Secretary of Defense emphasizes the responsibilities all DoD personnel have towards operations security and the increased risks to US military and civilian personnel, DoD operational capabilities, facilities and resources. All Department of Defense personnel should have a heightened security awareness concerning their day-to-day duties and recognition that the increased security posture will remain a fact of life for an indefinite period of time.

This change in our security posture has implications for the Defense Department's policies implementing the Freedom of Information Act (FOIA). Presently all DoD components withhold, under 5 USC § 552(b)(3), the personally identifying information (name, rank, duty address, official title, and information regarding the person's pay) of military and civilian personnel who are assigned overseas, on board ship, or to sensitive or routinely deployable units. Names and other information regarding DoD personnel who did not meet these criteria have been routinely released when requested under the FOIA. Now, since DoD personnel are at increased risk regardless of their duties or assignment to such a unit, release of names and other personal information must be more carefully scrutinized and limited.

I have therefore determined this policy requires revision. Effective immediately, personally identifying information (to include lists of e-mail addresses) in the categories listed below must be carefully considered and the interests supporting withholding of the information given more serious weight in the analysis. This information may be found to be exempt under 5 USC § 552(b)(6) because of the heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.

- Lists of personally identifying information of DoD personnel: All DoD components shall ordinarily withhold lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the Department of Defense in response to requests under the FOIA. This is to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. If a particular request does not raise



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security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Particular care shall be taken prior to any decision to release a list of names in any electronic format.

- Verification of status of named individuals: DoD components may determine that release of personal identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.
- Names in documents that don't fall into any of the preceding categories: Ordinarily names of DoD personnel, other than lists of names, mentioned in documents that are releasable under the FOIA should not be withheld, but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

When processing a FOIA request, a DoD component may determine that exemption (b)(6) does not fully protect the component's or an individual's interests. In this case, please contact Mr. [REDACTED] Directorate of Freedom of Information and Security Review, at (703) [REDACTED], or DSN [REDACTED].

This policy does not preclude a DoD component's discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons.

[REDACTED]
[REDACTED]
Director

Attachment:
As stated

002754



**ASSISTANT SECRETARY OF DEFENSE
6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000**

December 28, 2001



**COMMAND, CONTROL,
COMMUNICATIONS, AND
INTELLIGENCE**

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES**

**SUBJECT: Removal of Personally Identifying Information of DoD Personnel from
Unclassified Web Sites**

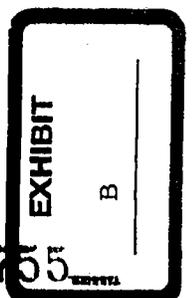
In accordance with DoD 5400.7-R, "DoD Freedom of Information Act Program," unclassified information which may be withheld from the public by one or more Freedom of Information Act (FOIA) exemptions is considered For Official Use Only (FOUO). DoD Web Site Administration policy (www.defenselink.mil/webmasters), issued by Deputy Secretary of Defense memorandum, December 7, 1998, prohibits posting FOUO information to publicly accessible web sites and requires access and transmission controls on sites that do post FOUO materials (see Part V, Table 1).

The attached November 9, 2001, memorandum from the Director, Administration and Management (DA&M), citing increased risks to DoD personnel, states that personally identifying information regarding all DoD personnel may be withheld by the Components under exemption (b)(6) of the FOIA, 5 USC §552. This action makes the information which may be withheld FOUO and inappropriate for posting to most unclassified DoD web sites.

Thus, all personally identifying information regarding DoD personnel now eligible to be withheld under the FOIA must be removed from publicly accessible web pages and web pages with access restricted only by domain or IP address (i.e., .mil restricted). This applies to unclassified DoD web sites regardless of domain (e.g., .com, .edu, .org, .mil, .gov) or sponsoring organization (e.g., Non-Appropriated Fund/Morale, Welfare and



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Recreations sites; DoD educational institutions). The information to be removed includes name, rank, e-mail address, and other identifying information regarding DoD personnel, including civilians, active duty military, military family members, contractors, members of the National Guard and Reserves, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy.

Rosters, directories (including telephone directories) and detailed organizational charts showing personnel are considered lists of personally identifying information. Multiple names of individuals from different organizations/locations listed on the same document or web page constitutes a list. Aggregation of names across pages must specifically be considered. In particular, the fact that data can be compiled easily using simple web searches means caution must be applied to decisions to post individual names. If aggregation of lists of names is possible across a single organization's web site/pages, that list should be evaluated on its merits and the individual aggregated elements treated accordingly.

Individual names contained in documents posted on web sites may be removed or left at the discretion of the Component, in accordance with the DA&M guidance. This direction does not preclude the discretionary posting of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons. Posting such information should be coordinated with the cognizant Component FOIA or Public Affairs office.

In keeping with the concerns stated in the referenced memorandum and in the October 18, 2001, DepSecDef memorandum, "Operations Security Throughout the Department of Defense," the posting of biographies and photographs of DoD personnel identified on public and .mil restricted web sites should also be more carefully scrutinized and limited.

Sites needing to post contact information for the public are encouraged to use organizational designation/title and organizational/generic position e-mail addresses (e.g., office@organization.mil; helpdesk@organization.mil; commander@base.mil).

Questions regarding Web Site Administration policy may be directed to Ms. [REDACTED]. She can be reached at (703) [REDACTED] and e-mail [REDACTED]@osd.mil. Questions regarding Component-specific implementation of the DA&M memorandum should be directed to the Component FOIA office.

[REDACTED]

UNITED STATES)

v.)

[REDACTED])
SSG, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

28 JULY 2004

UNITED STATES)

v.)

[REDACTED])
SPC, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

[REDACTED])
SGT, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

AMBUHL, Megan)
SPC, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

18 JUNE 2004

002757

APPELLATE EXHIBIT VIII

Recognized R. 93

MOTION OF NONPARTY SOS INTERNATIONAL LTD
FOR A PROTECTIVE ORDER

COMES NOW nonparty SOS International Ltd (“SOSi” formerly named SOS Interpreting Ltd.), by and through undersigned counsel, and respectfully moves the Court for entry of a Protective Order pursuant to Rule for Court-Martial (“R.C.M.”) 701(g) to prevent the public dissemination of names and other personally identifying information of SOSi’s employees produced and/or used during the course of the above-captioned court-martial. For the reasons set forth below, a Protective Order is necessary to safeguard any employment records or other personally identifying information of SOSi employees supporting the U.S. military efforts in Iraq that may be produced by the Government or through subpoena to SOSi.

BACKGROUND

SOSi, through its counsel, has been informed (by counsel for Titan Corporation, its prime contractor for the work reflected in the documents at issue) that the Government intends to disclose, on or about August 13, 2004, approximately 26 pages containing sensitive “personally identifying” information concerning Titan and SOSi employees to defense counsel in this court-martial. Titan—as part of its ongoing efforts to fully cooperate with Government investigations—had earlier provided the Army Criminal Investigative Command access to these 26 pages of detailed confidential information concerning Titan and SOSi personnel with the belief it would be held as such. The 26 pages that the Government intends to disclose contain the following information about Titan and SOSi employees who are presently or were previously assigned to support the U.S. military in Iraq: name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history,

employee number. These documents also identify names of close family members of the employees. In addition, Government Counsel has issued a subpoena seeking production of employment records of a particular SOSi employee that contains additional confidential personal information about the employee.

ARGUMENT

The legal framework for analyzing the need for protective orders in a situation such as this is fully set forth in the Motion of nonparty CACI International, Inc. (“CACI”) for Appropriate Relief in the Form of a Protective Order which is pending in the captioned matters. Rather than burden the Court with a repetition of that framework and its applicability to SOSi’s situation, SOSi joins and adopts the arguments and authorities contained in CACI’s motion and relies on them in support of this motion.

Turning to the particular situation of SOSi, there can be no question that the disclosure of the above-described sensitive information would constitute a severe and unwarranted intrusion upon the privacy interests of SOSi’s employees and that SOSi has standing to move for such protection. Cf. United States v. RMI Co., 599 F.2d 1183, 1186 (3d Cir. 1979)(“[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders, and if protection is denied, seek immediate appellate review.”). Moreover, in addition to the privacy concerns, given the role of SOSi’s employees in supporting the military’s efforts in quelling the insurgency in Iraq, disclosure could unnecessarily endanger SOSi’s employees and their families.

The information at issue clearly warrants protection under R.C.M. 701(g).

The Department of Defense has a long-standing policy of protecting from public disclosure “personally identifying” information of military and civilian personnel, including

contractors, who are assigned overseas, on board ship, or to sensitive or routinely deployable units. See Exhibit A, Office of Secretary of Defense Memorandum for DOD FOIA Offices (Nov. 9, 2001). Personally identifying information protected under this policy includes name, rank, email address, along with rosters, directories (including telephone directories) and detailed organizational charts – in short, precisely the type of information that the Government intends to disclose in this case. See Exhibit B, Assistant Secretary of Defense Memorandum, Removal of Personally Identifying Information from Unclassified Websites (Dec. 28, 2001). Such information is properly treated as “For Official Use Only” and protected from public disclosure. See id.; 32 C.F.R. § 505.4 (d)(3)(“Ordinarily, personal information must be afforded at least the protection required for information designated ‘For Official Use Only’ (see Chapter IV, AR 340–17).”).

Since the President’s declaration of a national emergency by reason of the terrorist attacks on the United States, DOD personnel, including DOD contractors, are considered at “increased risk” and “release of names and other personal information must be more carefully scrutinized and limited.” See Exhibit A. Accordingly, DOD policy is now to give more serious weight to the “heightened interest in the personal privacy of DOD personnel that is concurrent with the increased security awareness demanded in times of national emergency.” Id.

The U.S. military’s policy of protecting from disclosure the personally identifying information and unit affiliation of its Service members, civilian employees, and contractors should be fully respected in this proceeding. Accordingly, all information relating to the identity of SOSi employees and their families should remain protected and not subject to public disclosure during the course of these court-martial proceedings, except to the extent deemed necessary and appropriate by the military judge after permitting SOSi to respond, and only after

considering all less intrusive means of proceeding.

Such relief is necessary and appropriate in order to protect the compelling security and privacy interests of SOSi's employees and their families.

CONCLUSION

Accordingly, for the reasons set forth above and in CACI's motion, SOSi respectfully requests this Court GRANT its Motion for Protective Order and issue the attached proposed Protective Order.

Given the emergency nature of the motion, SOSi requests telephonic argument on its Motion.

Respectfully submitted,

[Redacted signature]

By:

[Redacted signature]

[Redacted signature]

[Redacted signature]

Washington, DC 20006
(202) 496-[Redacted]

Counsel for SOS International Ltd.

Dated: August 11, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion and proposed Order were emailed, as instructed by Government Counsel, this 11th day of August 2004, to the Military Judge, Government Counsel, Defense Counsel, and Counsel for CACI and Counsel for Titan at the following email addresses:

- Military Judge: [REDACTED]@us.army.mil
- Defense Counsel: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@usa.net;
[REDACTED]@pope-firm.com; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil;
[REDACTED]@aol.com; [REDACTED]@us.army.mil; [REDACTED]@svg-law.com
- Government Counsel: [REDACTED]@us.army.mil;
[REDACTED]@hqda.army.mil
- Counsel for CACI: [REDACTED]@stepco.com
- Counsel for Titan: [REDACTED]@wc.com

[REDACTED]
[REDACTED]
[REDACTED]

August 11, 2004

MOTION OF NONPARTY TITAN CORPORATION FOR A PROTECTIVE ORDER

COMES NOW nonparty Titan Corporation ("Titan"), by and through undersigned counsel, and respectfully moves the Court for entry of a Protective Order pursuant to Rule for Court-Martial ("R.C.M.") 701(g) to prevent the public dissemination of names and other personally identifying information of Titan's employees produced and/or used during the course of the above-captioned court-martial. For the reasons set forth below, a Protective Order is necessary to safeguard any employment records or other personally identifying information of Titan employees supporting the U.S. military efforts in Iraq that may be produced by the Government or through subpoena to Titan.

BACKGROUND

On August 3, 2004, Titan, through its counsel, was informed that the Government intends to disclose, on or about August 13, 2004, approximately 26 pages containing sensitive "personally identifying" information concerning Titan's employees to defense counsel in this court-martial. Titan—as part of its ongoing efforts to fully cooperate with Government investigations—had earlier provided the Army Criminal Investigative Command access to these 26 pages of detailed confidential information concerning its personnel with the belief it would be held as such. The 26 pages that the Government intends to disclose contain the following information about Titan employees who are presently or were previously assigned to support the U.S. military in Iraq:

name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history, employee number. These documents also identify names of close family members of the employees. In addition, Government Counsel has issued a subpoena seeking production of employment records of a particular Titan employee that contains additional confidential personal information about the employee.

ARGUMENT

The legal framework for analyzing the need for protective orders in a situation such as this is fully set forth in the Motion of nonparty CACI International, Inc. ("CACI") for Appropriate Relief in the Form of a Protective Order with regard to its information. Rather than burden the Court with a repetition of that framework and its applicability to Titan's situation, Titan joins and adopts the arguments and authorities contained in CACI's motion.

Turning to the particular situation of Titan, there can be no question that the disclosure of the above-described sensitive information would constitute a severe and unwarranted intrusion upon the privacy interests of Titan's employees and that Titan has standing to move for such protection. Cf. United States v.

RMI Co., 599 F.2d 1183, 1186 (3d Cir. 1979) ("[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders, and if protection is denied, seek immediate appellate review."). Moreover, in addition to the privacy concerns, given the role of Titan's employees in supporting the military's efforts in quelling the insurgency in Iraq, disclosure could unnecessarily endanger Titan's employees and their families.

The information at issue clearly warrants protection under R.C.M. 701(g).

The Department of Defense has a long-standing policy of protecting from public disclosure "personally identifying" information of military and civilian personnel, including contractors, who are assigned overseas, on board ship, or to sensitive or routinely deployable units. See Exhibit A, Office of Secretary of Defense Memorandum for DOD FOIA Offices (Nov. 9, 2001). Personally identifying information protected under this policy includes name, rank, email address, along with rosters, directories (including telephone directories) and detailed organizational charts - in short, precisely the type of information that the Government intends to disclose in this case. See Exhibit B, Assistant Secretary of Defense Memorandum, Removal of Personally Identifying Information from Unclassified Websites (Dec. 28, 2001). Such information is properly treated as "For

Official Use Only" and protected from public disclosure. See id.; 32 C.F.R. § 505.4 (d)(3) ("Ordinarily, personal information must be afforded at least the protection required for information designated 'For Official Use Only' (see Chapter IV, AR 340-17).").

Since the President's declaration of a national emergency by reason of the terrorist attacks on the United States, DOD personnel, including DOD contractors, are considered at "increased risk" and "release of names and other personal information must be more carefully scrutinized and limited." See Exhibit A. Accordingly, DOD policy is now to give more serious weight to the "heightened interest in the personal privacy of DOD personnel that is concurrent with the increased security awareness demanded in times of national emergency." Id.

The U.S. military's policy of protecting from disclosure the personally identifying information and unit affiliation of its Service members, civilian employees, and contractors should be fully respected in this proceeding. Accordingly, all information relating to the identity of Titan employees and their families should remain protected and not subject to public disclosure during the course of these court-martial proceedings, except to the extent deemed necessary and appropriate by the military judge after permitting Titan to respond, and only after considering all less intrusive means of proceeding.

Such relief is necessary and appropriate in order to protect

the compelling security and privacy interests of Titan's employees and their families.

CONCLUSION

Accordingly, for the reasons set forth above and in CACI's motion, Titan respectfully requests this Court GRANT its Motion for Protective Order and issue the attached proposed Protective Order.

Given the emergency nature of the motion, Titan requests telephonic argument on its Motion.

Respectfully submitted,

[REDACTED]

By: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Titan Corporation

Dated: August 9, 2004



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



ADMINISTRATION &
MANAGEMENT

November 9, 2001

Ref: 01-CORR-101

MEMORANDUM FOR DOD FOIA OFFICES

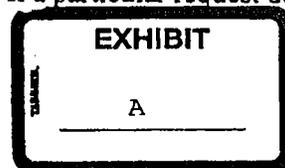
SUBJECT: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)

The President has declared a national emergency by reason of the terrorist attacks on the United States. In the attached memorandum, the Deputy Secretary of Defense emphasizes the responsibilities all DoD personnel have towards operations security and the increased risks to US military and civilian personnel, DoD operational capabilities, facilities and resources. All Department of Defense personnel should have a heightened security awareness concerning their day-to-day duties and recognition that the increased security posture will remain a fact of life for an indefinite period of time.

This change in our security posture has implications for the Defense Department's policies implementing the Freedom of Information Act (FOIA). Presently all DoD components withhold, under 5 USC § 552(b)(3), the personally identifying information (name, rank, duty address, official title, and information regarding the person's pay) of military and civilian personnel who are assigned overseas, on board ship, or to sensitive or routinely deployable units. Names and other information regarding DoD personnel who did not meet these criteria have been routinely released when requested under the FOIA. Now, since DoD personnel are at increased risk regardless of their duties or assignment to such a unit, release of names and other personal information must be more carefully scrutinized and limited.

I have therefore determined this policy requires revision. Effective immediately, personally identifying information (to include lists of e-mail addresses) in the categories listed below must be carefully considered and the interests supporting withholding of the information given more serious weight in the analysis. This information may be found to be exempt under 5 USC § 552(b)(6) because of the heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.

- Lists of personally identifying information of DoD personnel: All DoD components shall ordinarily withhold lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the Department of Defense in response to requests under the FOIA. This is to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. If a particular request does not raise



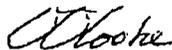
00276

security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Particular care shall be taken prior to any decision to release a list of names in any electronic format.

- Verification of status of named individuals: DoD components may determine that release of personal identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.
- Names in documents that don't fall into any of the preceding categories: Ordinarily names of DoD personnel, other than lists of names, mentioned in documents that are releasable under the FOIA should not be withheld, but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

When processing a FOIA request, a DoD component may determine that exemption (b)(6) does not fully protect the component's or an individual's interests. In this case, please contact Mr. Jim Hogan, Directorate of Freedom of Information and Security Review, at (703) 697-4026, or DSN 227-4026.

This policy does not preclude a DoD component's discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons.



D. O. Cooke
Director

Attachment:
As stated

002769



ASSISTANT SECRETARY OF DEFENSE
6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000

December 28, 2001



COMMAND, CONTROL,
COMMUNICATIONS, AND
INTELLIGENCE

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Removal of Personally Identifying Information of DoD Personnel from
Unclassified Web Sites

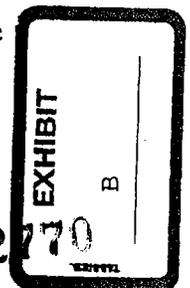
In accordance with DoD 5400.7-R, "DoD Freedom of Information Act Program," unclassified information which may be withheld from the public by one or more Freedom of Information Act (FOIA) exemptions is considered For Official Use Only (FOUO). DoD Web Site Administration policy (www.defenselink.mil/webmasters), issued by Deputy Secretary of Defense memorandum, December 7, 1998, prohibits posting FOUO information to publicly accessible web sites and requires access and transmission controls on sites that do post FOUO materials (see Part V, Table 1).

The attached November 9, 2001, memorandum from the Director, Administration and Management (DA&M), citing increased risks to DoD personnel, states that personally identifying information regarding all DoD personnel may be withheld by the Components under exemption (b)(6) of the FOIA, 5 USC §552. This action makes the information which may be withheld FOUO and inappropriate for posting to most unclassified DoD web sites.

Thus, all personally identifying information regarding DoD personnel now eligible to be withheld under the FOIA must be removed from publicly accessible web pages and web pages with access restricted only by domain or IP address (i.e., .mil restricted). This applies to unclassified DoD web sites regardless of domain (e.g., .com, .edu, .org, .mil, .gov) or sponsoring organization (e.g., Non-Appropriated Fund/Morale, Welfare and



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Recreations sites; DoD educational institutions). The information to be removed includes name, rank, e-mail address, and other identifying information regarding DoD personnel, including civilians, active duty military, military family members, contractors, members of the National Guard and Reserves, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy.

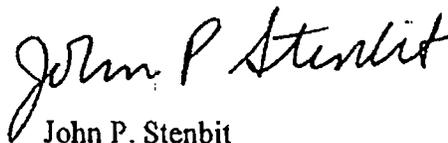
Rosters, directories (including telephone directories) and detailed organizational charts showing personnel are considered lists of personally identifying information. Multiple names of individuals from different organizations/locations listed on the same document or web page constitutes a list. Aggregation of names across pages must specifically be considered. In particular, the fact that data can be compiled easily using simple web searches means caution must be applied to decisions to post individual names. If aggregation of lists of names is possible across a single organization's web site/pages, that list should be evaluated on its merits and the individual aggregated elements treated accordingly.

Individual names contained in documents posted on web sites may be removed or left at the discretion of the Component, in accordance with the DA&M guidance. This direction does not preclude the discretionary posting of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons. Posting such information should be coordinated with the cognizant Component FOIA or Public Affairs office.

In keeping with the concerns stated in the referenced memorandum and in the October 18, 2001, DepSecDef memorandum, "Operations Security Throughout the Department of Defense," the posting of biographies and photographs of DoD personnel identified on public and .mil restricted web sites should also be more carefully scrutinized and limited.

Sites needing to post contact information for the public are encouraged to use organizational designation/title and organizational/generic position e-mail addresses (e.g., office@organization.mil; helpdesk@organization.mil; commander@base.mil).

Questions regarding Web Site Administration policy may be directed to Ms. Linda Brown. She can be reached at (703) 695-2289 and e-mail Linda.Brown@osd.mil. Questions regarding Component-specific implementation of the DA&M memorandum should be directed to the Component FOIA office.


John P. Stenbit

Attachment
As stated

002771

UNITED STATES)

v.)

[REDACTED])
SSG, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

28 JULY 2004

UNITED STATES)

v.)

[REDACTED])
SPC, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

[REDACTED])
SGT, U.S. Army)
HHC, 16th MP BDE (ABN),)
III Corps)
Victory Base, Iraq,)
APO AE 09342)

18 JUNE 2004

002772

FINALLY, IT IS ORDERED that nothing in this Order shall preclude entry of a further protective order as to particular items of discovery material.

Dated: August __, 2004

Military Judge

Copy to:
Civilian Defense Counsel
Military Defense Counsel
Trial Counsel
Counsel for Titan
Counsel for CACI
Counsel for SOSi

made pursuant to the above provision shall be provided a copy of this protective order and will be advised that he or she shall not further disseminate the materials except by the express direction of counsel of record. They shall be further advised that by reviewing the particularly sensitive discovery materials, the individuals consent to the jurisdiction of this Court over them for the purposes of enforcing this order. It is expressly ordered that the attorneys of record for the defendant may not show any of such particularly sensitive discovery materials to witnesses or potential witnesses. The defendant may seek relief from these provisions as to a particular item of discovery by making a motion for such relief to the Court upon notice to the Government, the employee whose records are at issue and his employer. The notice shall identify the particular item(s) at issue. The motion shall be made under seal.

IT IS FURTHER ORDERED that, for the purposes of this order, "personally identifying information" includes, but is not limited to the following information: name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history, travel history, history of residences, employee number, and names and addresses of family members.

IT IS FURTHER ORDERED that any papers to be served upon the Court by either party which include or refer to the contents of particularly sensitive materials shall be filed under seal;

IT IS FURTHER ORDERED that any papers to be served upon the Court in response to papers served in conformity with the preceding paragraph also be filed under seal;

REDACTED
COPY

~~2776~~

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COURT-MARTIAL RECORD

NAME CRUZ, ARMIN J. SPC

SSN _____

ACTIONS CODED:

ASSIGNED TO:

INITIAL FEB 17 2005

PANEL 4

ACCA _____

EXAM. DIV. _____

FINAL _____

COMPANION(S): SEE REVERSE SIDE

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL I OF II VOL(S)

ARMY 20040973

B

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

CRUZ, Armin J.
(NAME: Last, First Middle Initial)
HHS, 502d MI Bn
504th MI Bde
(unit/Command Name)

(Social Security Number)

US Army
(Branch of Service)

Specialist
(Rank)

Victory Base, Iraq
(Station or Ship)

BY
SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

11 September 2004
(Date or Dates of Trial)

COMPANION CASES:

- ██████████ - ARMY 20041130 - referred Clerk of Court 01-13-05
- ██████████ - ARMY 20041129 - CMCR
- ██████████ - ARMY 20040551 - P.4
- ██████████ - ARMY 20050180 - CMCR
- ██████████ - ARMY 20050054 - CMCR
- ██████████ - No Case Record
- ██████████ - No Case Record
- ██████████ - ARMY 20050179 - CMCR

Allied papers through transcript

US ARMY JUDICIARY
2005 FEB 14 P 1:59
RECEIVED
CLERK OF COURT

002778

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

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

CHRONOLOGY SHEET¹

In the case of U.S. v. Specialist Armin J. Cruz
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: 25 Oct 2003
(Enter Date)

Date record forwarded to The Judge Advocate General: ² _____
(Enter Date)

_____ COL, JA, Staff Judge Advocate _____
(Signature and Rank of Staff Judge Advocate or Legal Officer)

1 In a case forwarded to the Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for any unusual delays of the case.

2 Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112)

3 In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.

4 Item 1 is not applicable when accused is not restrained, (See MVM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if item 1 is not applicable.

5 May not be applicable to trial by special court-martial

6 Only this item may be deducted

7 If no further action is required, items 1 through 8 will be completed and chronology signed by such convening authority or his/her representative.

8 When further action is required under Article 64 or service directives.

Action	Date <u>2004-2005</u>	Cumulative Elapsed Days
1. Accused placed under restraint by military authority ⁴	----	----
2. Charges preferred (date of affidavit)	4 Sep 04	----
3. Article 32 investigation (date of report) ⁵	----	----
4. Charges received by convening authority	5 Sep 04	1
5. Charges referred for trial	5 Sep 04	1
6. Sentence or acquittal	11 Sep 04	7
Less days:		
Accused sick, in hospital or AWOL	0	
Delay at request of defense	0	
Total authorized deduction ⁶	0	
7. Net elapsed days to sentence or acquittal		7
8. Record received by convening authority	15 Oct 04	41
Action ⁷	18 Jan 05	116 (-20)
9. Record received by officer conducting review under Article 64(a)		
Action ⁸		

REMARKS

- Post trial defense delay from 21 November 2004 to 11 December 2004. Total of 20 days.
- Investigation of the most serious charge was initiated on 31 Jan 2004. The accused was arraigned on 11 September 2004. Total of 224 days.

002779

20040973

20040970

UNITED STATES ARMY JUDICIARY
901 NORTH STUART STREET
ARLINGTON, VIRGINIA 22203-1837

UNITED STATES

ARMY 20040973

v.

SPC ARMIN J. CRUZ

REFERRAL AND DESIGNATION
OF COUNSEL

1. The record of trial in this case having been received for review pursuant to Article 66(b), Uniform Code of Military Justice, the record is, by authority of The Judge Advocate General, hereby referred to the United States Army Court of Criminal Appeals for appellate review. Pursuant to assignment procedures approved by the Chief Judge, the record is assigned to the Panel indicated below.

2. Pursuant to Article 70(c)(1), Uniform Code of Military Justice, the Chief, Defense Appellate Division, and such additional or other appellate counsel as he may assign, shall represent the accused in these proceedings and in any further or related proceedings in the United States Court of Appeals for the Armed Forces. The Chief, Government Appellate Division, and such additional appellate counsel as he may assign, shall represent the United States.

Date: 16 February 2005

PANEL 4

FOR THE CLERK OF COURT:



Paralegal Specialist

DISTRIBUTION:
JALS-DA GOV'T APPELLATE DIV
JALS-GA

2005 FEB 16 P 1:39

DEFENSE APPELLATE
DIVISION/USALSA

2005 FEB 16 P 1:43

RECEIVED

082780

UNITED STATES OF AMERICA)
)
v.)
)
CRUZ, Armin J.)
SPC; U.S. Army,)
SVC Co., 502nd MI BN, 504th MI BDE)
APO AE 09342)

POST TRIAL AND APPELLATE
RIGHTS
(BCD and Special Courts-Martial)

11 September 2004

I, SPC ARMIN J. CRUZ, the accused in the above entitled case certify that my trial defense counsel has advised me of the following post-trial and appellate rights in the event that I am convicted of a violation of the Uniform Code of Military Justice:

1. In exercising my post-trial rights, or in making any decision to waive them, I am entitled to the advice and assistance of military counsel provided free of charge or civilian counsel provided at no expense to the government.
2. After the record of trial is prepared, the convening authority will act on my case. The convening authority can approve the sentence adjudged (as limited by any pretrial agreement), or he can approve a lesser sentence, or disapprove the sentence entirely. The convening authority cannot increase the sentence. He can also disapprove some or all of the findings of guilty. The convening authority is not required to review the case for legal errors, but may take action to correct legal errors.
3. I have the right to submit any matters I wish the convening authority to consider in deciding what action to take in my case. Before the convening authority takes action, the staff judge advocate will submit a recommendation to him, if applicable. This recommendation is required when there is an adjudged bad-conduct discharge. This recommendation, if made, will be sent to me and/or my defense counsel before the convening authority takes action. If I have matters that I wish the convening authority to consider, or matters in response to the staff judge advocate's recommendation, such matters must be submitted within 10 days after I or my counsel receive a copy of the record of trial or I and/or my counsel receive the recommendation of the staff judge advocate, whichever occurs later. Upon my request, the convening authority may extend this period, for good cause, for not more than an additional 20 days.
4. If the convening authority approves a bad-conduct discharge, my case will be reviewed by the U.S. Army Court of Criminal Appeals (ACCA). I am entitled to be represented by counsel before such court. If I so request, military counsel will be appointed to represent me at no cost to me. If I so choose, I may also be represented by civilian counsel at no expense to the United States. I understand that paragraph six governs my appellate rights if there is not an adjudged or approved bad-conduct discharge.

APPELLATE EXHIBIT 1V

002781

RECOGNIZED R. 151

20040973

5. After the ACCA completes its review, I may request that my case be reviewed by the United States Court of Appeals for the Armed Forces (CAAF). If my case is reviewed by that Court, I may request review by the Supreme Court of the United States. I have the same rights to counsel before those courts as I have before the ACCA.

6. If no punitive discharge is adjudged or approved by the convening authority, my case will be examined by a military lawyer, normally at the local installation, for legal error. I have the right to submit allegations of legal error either to the convening authority under paragraph 3 above or directly to the military lawyer reviewing my court-martial, or both. My case will be sent to the general court-martial convening authority for final action on any recommendation by the lawyer for corrective action. If the military lawyer recommends corrective action and my case is sent to the general court-martial convening authority for action, I will be sent a copy of the convening authority's action and the recommendation of the military lawyer after action is taken by the general court-martial convening authority.

7. I also understand that within two (2) years after the sentence is approved, I may request The Judge Advocate General (TJAG) to take corrective action on the basis of newly discovered evidence, fraud on the court, lack of jurisdiction over me or of the offense, error prejudicial to my substantial rights, or the appropriateness of my sentence.

8. I may waive or withdraw review by the appellate courts at any time before completion of the review. I understand that if I waive or withdraw review:

(a) My decision is final and I cannot change my mind.

(b) My case will then be reviewed by a military lawyer for legal error (see paragraph six above). It may also be sent to the general court-martial convening authority for final action.

(c) Within 2 years after the sentence is approved, I may request The Judge Advocate General (TJAG) to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over me or the offense, error prejudicial to my substantial rights, or the appropriateness of the sentence.

9. I have read and had my post-trial rights explained to me by counsel and I acknowledge these rights and make the elections set forth below. (Please initial where appropriate.)

DC a. I understand my post-trial and appellate review rights.

AC b. I would like a copy of the record of trial served on [REDACTED].

AC c. My defense counsel, [REDACTED], will submit R.C.M. 1105 matters in my case.

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20040973

AC d. If applicable, I want to be represented before the U.S. Army Court of Criminal Appeals by Appellate Defense Counsel appointed by The Judge Advocate General of the Army. I understand that I may contact my Appellate Defense Counsel by writing to Defense Appellate Division, U.S. Army Legal Services Agency (JALS-DA), 901 North Stuart Street, Arlington, Virginia 22203.

AC e. I have been informed that I have the right to retain civilian counsel at my own expense, whose name and address are provided herein: 


If I later retain civilian counsel, I must provide the name and address to: Clerk of the Court, U.S. Army Judiciary (JALS-CC), Nassif Building, 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203.

10. Pending action on my case, I can be contacted or a message may be left for me at the following address:

NAME: Armin J. Cruz

STREET: _____

CITY/ STATE / ZIP CODE: _____

AREA CODE/ TELEPHONE NUMBER _____

DATED: 11 Sep 04


ARMIN J. CRUZ
SPC, U.S. ARMY
Accused

I certify that I have advised the above named accused regarding the post trial and appellate rights as set forth above, that he has received a copy of this document, and that he has made elections concerning appellate counsel.

DATED: 11 Sep 04



Defense Counsel

002783

20040973

COURT-MARTIAL DATA SHEET

1. OJAG NUMBER

2. NAME (Last, First, Middle Initial) CRUZ, Armin J.	3. SOCIAL SECURITY	4. RANK SPC	5. UNIT/COMMAND NAME HHSC, 502d MI Bn, 504th MI Bde
---	--------------------	----------------	--

INSTRUCTIONS

When an item is not applicable to the record of trial being reviewed, mark the proper block with a diagonal line similar to the ones which appear in the SPCMCA blocks for items 6a and b.

KEY TO USE

<p>TC - Trial Counsel. This column will be completed in all cases in which a finding of guilty is returned.</p> <p>SPCMCA - Special Court-Martial Convening Authority who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his/her designated representative.</p>	<p>GCM or JA - General Court-Martial Convening Authority or Judge Advocate. This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to The Judge Advocate General of the branch of service concerned. If the record is reviewed under Article 64(a), UCMJ, this column will be completed by the judge advocate accomplishing the review</p>	<p>OJAG - Appropriate appellate agency in the Office of The Judge Advocate General of the branch of service concerned. This column will be disregarded if a record of trial was reviewed under Article 64, UCMJ, and in cases where there are no approved findings of guilty.</p> <p>References - All references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, United States (MCM), 1984.</p>
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SECTION A - PRETRIAL AND TRIAL PROCEDURE

	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
6. a. If a general court-martial: Was the accused represented in the Article 32 investigation by civilian or military counsel of his/her own selection or by counsel qualified within the meaning of Article 27(b), UCMJ?	/	/			/	/		
b. If not: Did the accused waive his/her right to such representation?	/	/			/	/		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?	X				X			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?	X				X			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?	X				X			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805)?	/	/			/	/		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?	X				X			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?	/	/			/	/		
9. Were the reporter and interpreter, if any, sworn or previously sworn?	X				X			
10. a. Was the military judge properly certified (RCM 502(c))?	X				X			
b. Was the military judge properly detailed (RCM 503(b))?	X				X			
c. Was the military judge present during all open sessions of the court?	X				X			
11. a. Was the accused advised that:								
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?	X				X			

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COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
(2) He/she had the right to be represented at the trial by a civilian lawyer provided at no expense to the government, in which case detailed counsel would serve as associate counsel or be excused with the accused's consent?	X				X			
(3) If he/she did not exercise any of the rights listed above, he/she would be defended by detailed counsel certified under Article 27(b), UCMJ (RCM 502(d)(1))?	X				X			
b. (1) Was the accused represented by a civilian lawyer?	X				X			
(2) Did the accused request a specific military counsel?		X				X		
(3) (a) If so, was such request complied with?	/	/			/	/		
(b) If not, were reasons given why requested counsel was not reasonably available?	/	/			/	/		
12. a. Was the detailed defense counsel properly certified (RCM 502(d))?	X				X			
b. Was at least one qualified counsel for each party present during all open sessions of the court (RCM 502(d) and RCM 805(c))?	X				X			
13. a. If the special court-martial adjudged a BCD:								
(1) Was a military judge detailed to the court (RCM 503(b))?	X				X			
(2) If not, did the convening authority submit a statement indicating why a military judge could not be detailed and why trial had to be held at that time and place (Article 19, UCMJ)?	/	/			/	/		
(3) Was a verbatim transcript made (Article 19, UCMJ)?	X				X			
14. Did any person who acted as the accuser, investigating officer, military judge, court member, or a member of the defense in the same case, or as counsel for the accused at a pretrial investigation or other proceedings involving the same general matter, subsequently act as a member of the prosecution (RCM 502(d)(4))?		X				X		
15. If any member of the defense had acted as a member of the prosecution in the same case, was he/she excused (RCM 502(d)(4))?	/	/			/	/		
16. a. If any member of the defense had acted as the accuser, investigating officer, military judge, or member of the court, were his/her services expressly requested by the accused (RCM 502(d)(4))?	/	/			/	/		
b. If not, was he/she excused?	/	/			/	/		
17. a. If accused was an enlisted person, did he/she make a request that enlisted persons be included in membership of the court?		X				X		
b. If so, were at least one-third of the members who tried the case enlisted persons, or did the convening authority direct the trial without enlisted persons and provide a detailed written explanation which is appended to the record (RCM 503(a)(2))?	/	/			/	/		
c. Did any enlisted member of the court belong to the same unit as the accused?	/	/			/	/		
18. If a military judge was detailed to the court, was the accused informed of his/her right to request trial by military judge alone?	X				X			
19. Were the members of the court, military judge (if any) and the personnel of the prosecution and defense sworn or previously sworn?	X				X			
20. a. Was any person sitting as a member of the court, or military judge (if any), the accuser, a witness for the prosecution, the investigating officer, staff judge advocate, counsel, or convening authority, or upon rehearing or new trial was he/she a member of the former trial (RCM 902(b) and RCM 912(f))?		X				X		
b. If so, did the accused waive such disqualification (RCM 912(f)(4) and RCM 902(e))?	/	/			/	/		

COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
21. a. Was each accused extended the right to challenge military judge (if any), and any member of the court for cause and to exercise one peremptory challenge?	X				X			
b. Was action by court upon challenges proper (RCM 902 and RCM 912)?	/	/			/	/		
c. Does the record show that a member excused as a result of a challenge withdrew from the court?	/	/			/	/		
22. a. Was the accused properly arraigned (RCM 904)?	X				X			
b. Do the following appear in the record: The charges and specifications, the name, rank and unit/command name of the person signing the charges, the affidavit, and the order of reference for the trial?	X				X			
c. Except in time of war, was the accused brought to trial (which includes an Article 39(a), UCMJ session) by general court-martial within five days (by special court-martial within three days) subsequent to service of charges upon him/her (RCM 602)?		X				X		
d. If so, did the accused object to trial?	/	/			/	/		
23. a. Were any charges or specifications affected by the statute of limitations (RCM 907(b))?		X				X		
b. If so, was accused advised of his/her right to assert the statute and was his/her response recorded (RCM 907(b))?	/	/			/	/		
24. Did the court take proper action with respect to motions raising defenses and objections (RCM 905-907)?	X				X			
25. a. Were pleas of accused regularly entered (RCM 910(a))?	X				X			
b. Were pleas of guilty properly explained, and accused's responses recorded (RCM 910(c))?	X				X			
26. Does the record show that all witnesses were sworn?	X				X			
27. Did the military judge or president advise the court concerning the elements of each offense, each lesser included offense reasonably raised by the evidence, and the presumption of innocence, reasonable doubt, and burden of proof, pursuant to Article 51(c), UCMJ (RCM 920(e))?	/	/			/	/		
28. a. If trial was by military judge alone, did the military judge announce the findings (RCM 922)?	X				X			
b. If the trial was with members, did the president announce the findings (RCM 922)?	/	/			/	/		
c. If special findings were requested, were they made a part of the record?	/	/			/	/		
29. Were the findings in proper form (A10)?	X				X			
30. a. Was the evidence, if any, of previous convictions admissible and properly introduced in evidence (RCM 1001(b)(3))?	/	/			/	/		
b. Was the information from personnel records of the accused properly admitted (RCM 1001(b)(2))?	X				X			
c. Was the defense permitted to introduce evidence in extenuation and mitigation after the court announced findings of guilty (RCM 1001(c))?	X				X			
31. a. In a trial with members, did the president announce the sentence (RCM 1007)?	/	/			/	/		
b. If trial was by military judge alone, did the military judge announce the sentence (RCM 1007)?	X				X			

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COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
32. Was the sentence in proper form (A11)?	X				X			
33. Is the record properly authenticated (RCM 1104)?	X				X			
34. a. Did all members who participated in proceedings in revision vote on original findings and sentence (RCM 1102(e)(1))?	/	/			/	/		
b. At proceedings in revision, were a military judge (if one was present at the trial), the accused, and counsel for the prosecution and defense present (RCM 1102(e)(1))?	/	/			/	/		
35. Was each accused furnished a copy of the record or substitute service made on defense counsel (RCM 1104(b))?	X				X			
36. Was clemency recommended by the court or military judge?	/	/			/	/		
SECTION B - PROCEDURE AFTER TRIAL	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
37. Was the court convened by proper authority (RCM 504(b))?	X				X			
38. Did the court have jurisdiction of person and offense (RCM 202 & 203)?	X				X			
39. Does each specification state an offense under the code (RCM 907(b))?	X				X			
40. Did the accused have the requisite mental capacity at the time of trial and the requisite mental responsibility at the time of the commission of each offense (RCM 909 and RCM 916(k))?	X				X			
41. Is the evidence sufficient to support the findings?	X				X			
42. Is the sentence within legal limits (RCM 1112(d))?	X				X			
43. Is the action of the convening authority properly entered in the record and signed (RCM 1107(f))?	X				X			
44. If appropriate, is a proper place of confinement designated (RCM 1107(f)(4)(c))?	/	/			/	/		
45. a. Was the staff judge advocate's post-trial recommendation served on the defense counsel for comment (RCM 1106(f))?	X				X			
b. If the addendum to the recommendation contained new matters, was it served on the defense counsel for comment (RCM 1105(f)(7))?	/	/			/	/		
c. Did the accused submit matters for the convening authority's consideration in a timely manner (RCM 1105)?	X				X			
d. If yes, was the convening authority's action subsequent to the submission of the matters?	X				X			
e. If no, did the accused waive in writing the right to submit matters and was the action taken subsequent to the written waiver or did the time periods provided in RCM 1105(c) expire before the convening authority's action?	/	/			/	/		
46. a. Does the record indicate that the accused was advised of his/her appellate rights (RCM 1010)?	X				X			
b. Do the allied papers contain a statement indicating the desires of the accused with respect to appellate representation in the event his/her case is referred to a court of military review?	X				X			
c. Did the accused waive or withdraw appellate review and is the waiver or withdrawal in proper form and attached to the record of trial (RCM 1110, A19 & 20)?		X				X		

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COURT-MARTIAL DATA SHEET

55. REMARKS (Continued):

56. TRIAL COUNSEL

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	26 Jan 05

57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED

58. STAFF JUDGE ADVOCATE OF GENERAL COURT-MARTIAL CONVENING AUTHORITY OR REVIEWING JUDGE ADVOCATE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	1-26-05

59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

a. ACTION:

b. INDIVIDUAL COMPLETING DATA SHEET

(1) TYPED NAME (Last, First Middle Initial)	(2) RANK	(3) SIGNATURE	(4) DATE SIGNED

DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

SPECIAL COURT-MARTIAL ORDER
NUMBER 2

18 January 2005

Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Baghdad, Iraq, was arraigned at Victory Base on the following offenses at a special court-martial convened by the Commander, III Corps.

Charge I: Article 81. Plea: Guilty. Finding: Guilty.

Specification: At or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with Corporal [REDACTED], Staff Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED], and others, to commit an offence 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] forces detainees to conduct various physical exercises while the detainees were naked and the said Specialist [REDACTED] poured water on the detainees. Plea: Guilty. Finding: Guilty.

Charge II: Article 93. Plea: Guilty. Finding: Guilty.

Specification: At or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, did maltreat several detainees, persons subject to his orders, by forcing naked detainees to crawl on the floor in such a manner as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 11 September 2004. To be reduced to the grade of Private (E-1); to be confined for 8 months and to be discharged with a bad-conduct discharge.

ACTION

The sentence is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed.

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SPCMO No. 2, DA, Headquarters, III Corps, Victory Base, Iraq, APO AE 09342-1400
dated 18 January 2005 (continued)

BY COMMAND OF LIEUTENANT GENERAL METZ:

DISTRIBUTION:

- SPC Cruz (1)
- MJ, [REDACTED] (1)
- TC, [REDACTED] (1)
- ATC, [REDACTED] (1)
- CDC, [REDACTED] (1)
- ADC, [REDACTED] (1)
- Cdr, HHSC, 502d MI Bn (1)
- Cdr, 502d MI BN (1)
- Cdr, 504th MI BDE (1)
- Cdr, III Corps, ATTN: SJA (2)
- Cdr, III Corps (1)
- Cdr, Det D, 15th Fin Bn, ATTN: FAO (1)
- Cdr, 15th PSB, ATTN: Records Section (1)
- Cdr, USAEREC, ATTN: PCRE-FS, Indianapolis, IN 46249 (1)
- Clerk of Court, ATTN: 901 N. Stuart St., Suite 1200, Arlington, VA 22203-1837 (10)


MAJ, JA
Chief, Military Justice

DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

AFZF-CG

JAN 18 2005

MEMORANDUM THRU

Commander, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

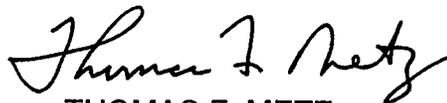
Commander, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

Commander, Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

FOR Specialist Armin J. Cruz, , Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

SUBJECT: Administrative Separation Under the Provisions of AR 635-200, Chapter 10

Action. Your request for discharge in lieu of court-martial under the provisions of AR 635-200, Chapter 10, is disapproved.



THOMAS F. METZ
Lieutenant General, USA
Commanding

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[REDACTED]
ATTORNEY AT LAW
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

December 1, 2004

Commander
III Corps
Victory Base, Iraq
APO AE 09342-1400

SUBJECT: Request for Discharge in Lieu of Approving Court-Martial Sentence- SPC Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq

1. I, SPC Armin J. Cruz, hereby voluntarily request discharge in lieu of trial by court-martial under AR 635-200, chapter 10. I understand that I may request discharge in lieu of trial by court-martial because of the charges which were preferred against me under the Uniform Code of Military Justice, one of which or a combination of which authorizes the imposition of a bad conduct or dishonorable discharge:
2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offenses charged, which also authorize the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.
3. Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel for consultation. I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the Uniform Code of Military Justice, the elements of the offenses with which I am charged, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment in my case. Although he has furnished me legal advice, this decision is my own.
4. I understand that, if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge (including but not limited to reduction to the lowest

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enlisted grade (Private E-1) by operation of law) and that, as a result of the issuance of such a discharge, I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Veterans Administration, and that I may be deprived of my rights and benefits as a veteran under both Federal and State law, as indicated on a copy of DA Poster 635-1, which was provided me). I also understand that I may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge. I further understand that there is no automatic upgrading nor review by any Government agency of a less than honorable discharge and that I must apply to the Army Discharge Review Board or the Army Board of Corrections of Military Records if I wish review of my discharge. I realize that the act of consideration by either board does not imply that my discharge will be upgraded.

5. I understand that, once my request for discharge is submitted, it may be withdrawn only with consent of the commander exercising general court-martial authority, or without that commander's consent, in the event trial results in an acquittal or the sentence does not include a punitive discharge even though one could have been adjudged by the court. Should my trial result in either an acquittal or should my sentence not include a punitive discharge even though one could have been adjudged by the court, I hereby withdraw this request. Further, I understand that if I depart absent without leave, this request may be processed and I may be discharged even though I am absent.

6. I have been advised that I may submit statements I desire in my own behalf, which will accompany my request for discharge. A statement in my own behalf is submitted with this request.

7. I hereby acknowledge receipt of a copy of this request for discharge, with enclosure.


ARMIN J. CRUZ
SPC, U.S. Army

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Having been advised by me of:

- a. The basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice;
- b. The possible effects of an Under Other Than Honorable Discharge if this request is approved (including but not limited to reduction to the lowest enlisted grade (Private E-1) by operation of law and the loss of benefits administered by both the Army and other Federal agencies as indicated on a copy of DA Poster 635-1, which was provided to the soldier); and
- c. The procedures and rights available to him;

SPC Armin J. Cruz, personally made the choices indicated in the foregoing request for discharge in lieu of trial by court-martial.



Civilian Defense Counsel

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AFZF-JA-MJ

JAN - 1 2005

MEMORANDUM FOR Commander, III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Addendum to Post-Trial Recommendation in the Court-Martial of the
United States v. Specialist Armin J. Cruz Headquarters and
Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military
Intelligence Brigade, III Corps, Victory Base, Iraq - ACTION MEMORANDUM

1. Purpose. To forward a petition for clemency submitted by Specialist Armin J. Cruz, under the provisions of Rules for Courts-Martial (RCM) 1105 and 1106, through his defense counsel. The matters submitted by Specialist Cruz, through his defense counsel, are enclosed. Pursuant to RCM 1107, you must consider the defense submission prior to taking action.
2. Discussion. On 11 November 2004, I signed the post-trial recommendation in this case and directed that the document be served on Specialist Cruz's defense counsel for comment. The defense counsel asserts no legal errors.
3. Clemency Request. Specialist Cruz and his defense counsel have requested that you disapprove his bad-conduct discharge and approve the request for a Chapter 10.
4. Recommendation. In accordance with RCM 1106, I have carefully considered the enclosed matters. In my opinion, clemency is not warranted. I adhere to the previous recommendation that you approve the sentence as adjudged. An action to accomplish this is enclosed.

Encl
Defense Counsel Submission
with Enclosures


COL, JA
Staff Judge Advocate

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NOV 11 2004

MEMORANDUM FOR Commander, III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Post-Trial Recommendation in the Court-Martial of the United States v. Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq – ACTION MEMORANDUM

1. Purpose. To obtain action in the special court-martial of the United States v. Specialist Armin J. Cruz.
2. Recommendation. Approve the sentence as adjudged and, except for the part of the sentence extending to bad-conduct discharge, order the sentence executed.
3. Discussion. Pursuant to RCM 1104(e) and 1106, the record of trial in the United States v. Specialist Armin J. Cruz has been referred to me for my recommendation prior to your action. Forwarded herewith is a copy of the court-martial record of trial.

a. **Trial**: On 11 September 2004, the accused was tried by a special court-martial.

b. **Summary of the Charges, Specifications, Pleas, and Findings**:

<u>CHARGE</u>	<u>ART UCMJ</u>	<u>SPEC</u>	<u>GIST OF OFFENSE</u>	<u>PLEA</u>	<u>FINDING</u>
I	81	The	Did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with CPL [REDACTED] SSG [REDACTED] SPC [REDACTED] SPC [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 CPL [REDACTED] forced detainees to conduct various physical exercises while the detainees were naked and the said SPC [REDACTED] poured water on the detainees.	G	G

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AFZF-JA-MJ

SUBJECT: Post-Trial Recommendation in the Court-Martial of the United States v. Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq -- ACTION MEMORANDUM

<u>CHARGE</u>	<u>ART</u> <u>UCMJ</u>	<u>SPEC</u>	<u>GIST OF OFFENSE</u>	<u>PLEA</u>	<u>FINDING</u>
II	93	The	At or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, did maltreat several detainees, persons subject to his orders, by forcing naked detainees to crawl on the floor in such a manner that as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another.	G	G

c. **Sentence Adjudged:** To be reduced to the grade of Private (E-1), to be confined for eight months, and to be discharged with a bad-conduct discharge.

d. **Pretrial Confinement:** None.

e. **Pretrial Agreement:** The convening authority agrees to refer case to special court-martial empowered to adjudge a bad-conduct discharge.

f. **Personal Data of the Accused:**

(1) *Date and Term of Current Service:*

(2) *Date of Birth:*

(3) *Awards and Decorations:*

(4) *Nonjudicial Punishment or Previous Convictions:*

(5) *Dependents:*

(6) *GT Score:*

(7) *MOS:*

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AFZF-JA-MJ

SUBJECT: Post-Trial Recommendation in the Court-Martial of the United States v. Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq -- ACTION MEMORANDUM

(8) *BASD*:

(9) *PEBD*:

(10) Additional information concerning the character of the accused's service is located in the Record of Trial.

g. Discretion of the Convening Authority: As the convening authority, you may approve, disapprove, set aside, or modify the findings of the court-martial. You may also approve, disapprove, commute, or suspend the sentence in whole or in part, in accordance with the pretrial agreement. Such action may be taken in the interests of justice, discipline, mission requirements, clemency, or any other appropriate reason. The action to be taken is matter of command prerogative and lies within your sole discretion.

h. Service on the Accused and Counsel: This memorandum will be served on the defense counsel for comment before action.

4. Point of contact for this action is the undersigned at DSN 318 822-2500.



COL, JA
Staff Judge Advocate

002799

UNITED STATES)

v.)

Specialist CRUZ, Armin J.,)
Headquarters and)
Headquarters Service Company, 502d)
Military Intelligence Battalion, 504th)
Military Intelligence Brigade, III Corps,)
Victory Base, Iraq, APO AE 09342-1400)

SERVICE OF POST TRIAL)
RECOMMENDATION AND A)
POST TRIAL RECORD ON)
DEFENSE COUNSEL)

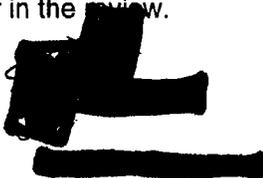
In accordance with R.C.M. 1105 and 1106, Manual for Court-Martial, 2002, a copy of the Post-Trial Recommendation and a copy of the Record of Trial in the case of U.S. v. CRUZ attached for your examination. If you have any rebuttal, comments, corrections or other matters you wish to be considered by the Convening Authority before he takes action, submit them in writing to the Staff Judge Advocate, III Corps, Victory Base, Iraq, within 10 days of service.



NCOIC, Criminal Law Division

CERTIFICATE OF SERVICE

I acknowledge receipt of a copy of the Post Trial Recommendation and a copy of the Record of Trial in the case of U.S. v. CRUZ. I understand that I have an opportunity to rebut, correct, or challenge any matter I deem erroneous, inadequate or misleading, or to comment on any other matter, and that my comments will be appended to the Post Trial Recommendation. If I have matters that I wish the Convening Authority to consider, or matters in response to the Staff Judge Advocate's recommendation, such matters must be submitted within 10 days after the accused or I receive a copy of the Record of Trial or the accused and/or I receive the recommendation of the Staff Judge Advocate, whichever occurs later. Upon my request, the Convening Authority may extend this period, for good cause, for not more than an additional 20 days. If I am unable to complete this within 10 days, I will provide, within that time, a request for delay in submitting the Record of Trial to the Convening Authority for action. I also acknowledge that failure to provide any reply or request for delay within 10 days will normally be deemed a waiver of any error in the review.



Civilian Defense Counsel

15 Nov 04
(date)

002800

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[REDACTED]
ATTORNEY AT LAW
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 31

December 11, 2004

Lieutenant General Thomas F. Metz
Commander, III Corps
Victory Base, Iraq

SUBJECT: Supplemental Materials for Post-Trial Submissions, US v. Armin J. Cruz

Dear LTG Thomas F. Metz:

Enclosed please find, as a supplement to the other enclosed materials, a recommendation for clemency from MAJ [REDACTED], the prosecutor in SPC Cruz's court-martial. Thank you for your attention in this matter.

Yours truly,

[REDACTED]
[REDACTED]

Enclosure

002801

20040973

11 December 2004

MEMORANDUM FOR Commander, Multi-National Corps-Iraq and III Corps

SUBJECT: Recommendation for Clemency for Private Armin J. Cruz

1. I respectfully submit the following points for your consideration with regard to this case. I was the prosecutor for this soldier's trial.

a. Private Cruz knowingly and voluntarily committed the acts of abuse for which he pled guilty. Those actions did in fact tarnish the reputation of the Army and the United States. He acted in concert with several other individuals to commit these acts.

b. Prior to committing the abuses for which he pled guilty, Private Cruz was involved in a mortar attack at his FOB. During the attack, Private Cruz attended to other wounded soldiers though he was himself wounded. Private Cruz also witnessed his close friend and immediate supervisor die in his arms as a result of this attack. Afterwards, Private Cruz had difficulty dealing with the experience and requested that he be allowed to seek professional help on his day off. This request was denied. (See Record of Trial, p. 100-101, 117-118). The significance of this chain of events is that I believe Private Cruz's decision to abuse detainees was appreciably influenced by the significant, untreated, mental stress borne by the soldier at the time.

c. With regard to Private Cruz's background, I have carefully reviewed letters submitted on behalf of the soldier as well as the soldier's civilian and military records. I have also interviewed a number of individuals who know Private Cruz. My professional assessment is that prior to the mortar attack, Private Cruz's life was marked by distinction, by genuine selfless-service to others, and by honorable conduct.

d. Following his court-martial and while in confinement, Private Cruz reported to me through his attorney an incident of inmate abuse by a military police guard. I believe that given the circumstances, Private Cruz demonstrated courage in reporting this incident.

3. Based on the above referenced facts, I recommend that clemency in some form be granted. Thank you for considering these comments.


MAJ, JA

002802

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[REDACTED]
ATTORNEY AT LAW
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

December 8, 2004

Lieutenant General Thomas F. Metz
Commander, III Corps
Victory Base, Iraq

SUBJECT: Post-Trial Submissions, Request for Chapter 10 Discharge, US v. Armin J. Cruz,
SPC, U.S. Army, Headquarters and Headquarters Service Company, 502nd Military
Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq

Introduction

Thank you for the opportunity of presenting this information on behalf of SPC Armin J. Cruz. I acknowledge that this material is lengthy, but I respectfully request that you read my summary and view the brief video statement of SPC Cruz's parents. (See enclosed DVD).

This packet catalogues the evidence for SPC Cruz's superlative moral character. There are over forty letters, military and civilian, from people attesting to the values that SPC Cruz has demonstrated to them through his actions—generosity, bravery, loyalty, integrity, humility, work ethic, professionalism, discipline, and superior competence. (See enclosed Good Soldier packet). To be plain, SPC Cruz is the "real deal." He is the friend that never lets you down, the son that parent's dream to have, and the Soldier that personifies the mission and values of the United States Army.

The incident at Abu Ghraib represents a departure from the nature and quality of SPC Cruz's character rather than an example of it. The materials and testimony presented at trial clearly demonstrate a consistent pattern of good behavior from a good person. If one were to extrapolate from this incident a conclusion as to the nature and quality of SPC Cruz's character as one that is poor, one would certainly fail to accurately assess his moral worth as a man and Soldier. Please judge SPC Cruz's actions *in context*, that is, against the background of facts and evidence that depict his heroism, service to others, and dedication to duty. If you do this, I think you will likely agree that his mistake at Abu Ghraib does not define his character—it *contradicts* it. I submit to you that SPC Cruz's superlative character has earned him consideration for a Chapter 10 discharge in lieu of Court-martial.

Summary

For your convenience, I have summarized the information contained in the Good Soldier packet, testimony given during sentencing, and have included additional character reference letters.

1. In his enclosed personal statement and testimony at trial, SPC Cruz unequivocally takes full responsibility for his behavior in the incident (See Enclosed letter from SPC Cruz):

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"I want to ensure that the intent of my statement is clear. I accept full and complete responsibility for my actions...I apologize to the detainees. (Trial Transcript (TT) p. 124)

2. SPC Cruz is a good man and a distinguished Soldier.

A. Civilian life.

SPC Cruz is a first-generation American born into a military family; his father is a USMA graduate. (Class of 1977). As a civilian, SPC Cruz lived a moral life, a large part of which was in service to others. SPC Cruz is a former elementary school director for Boys and Girls Club of _____ a site founder and assistant director for _____ School District after-school program, and a former head lifeguard for _____ certified by the Red Cross as a lifeguard and swim instructor. (See Good Soldier packet).

B. Military service prior to the incident.

He joined as an enlisted soldier rather than through ROTC, although eligible to do so. He volunteered for activation and deployment to Iraq. (TT p. 108). SPC Cruz was approved for a Bronze Star by LTG Thomas F. Metz for performance of duty during Operation Iraqi Freedom from 11 April 2003 to 15 November 2003. (See "Awards," Good Soldier packet). He was awarded the Purple Heart for multiple shrapnel wounds received as a result of enemy action in a mortar attack at Abu Ghraib. (See "Awards," Good Soldier packet). Although wounded, he came to the aid of SSG _____ (See enclosed letter from SSG _____). He also came to the aid of fellow soldier, friend, and mentor SGT _____ who was mortally wounded. (TT p. 97-99). After the mortar attack, he requested assistance from a Combat Stress Team but he was denied this assistance. (TT p. 100 – 101).

C. His actions during the incident.

SPC Cruz's limited acts are distinguishable in severity from those of other Soldiers and his culpability is not equivalent to that of other Soldiers involved in the incident for the following reasons stated in the Stipulation of Fact (SOF) and trial transcript:

1. The incident started before he got there and continued after he left. (SOF p. 2).
2. He was told that the detainees had raped a boy. (SOF p. 3).
3. The abuse was not directed or orchestrated by him. (TT p. 34).
4. He did not enjoy it—he did not laugh, smile, or have his picture taken. (SOF p. 4).
5. He questioned his and the group's actions. (TT p. 44).
6. He pointed out a detainee's wound to the MP and then left the area. (TT p. 35).
7. He reported the incident the next day. (TT p. 118).
8. He was there only one hour and did not participate for that entire hour. (SOF p. 3).

D. Military service following the incident, but while SPC Cruz was unaware of the allegations and investigation.

SPC Cruz suffered and continues to suffer from post-traumatic stress disorder. (See TT p. 117-118 & Enclosed letter from _____ LPC). Regardless, he still performed

PLEASE NOTE THAT THERE IS A BATES STAMPING ERROR
BETWEEN BATES NUMBERS 2805 – 2816

THERE ARE NO PAGES ASSOCIATED WITH THESE BATES
NUMBERS

his duty at the highest levels of dedication and competence. From November 2003 to March 2004, he worked for SSG [REDACTED] in the JIDC at Abu Ghraib. SSG [REDACTED] stated SPC Cruz was "my right hand man. SPC Cruz's attitude and work ethic were amazing... [SPC Cruz] was and is an outstanding analyst and soldier... was one of my best soldiers... will have no problems with his rehabilitation... anyone who was close to him will tell you the same. SPC Cruz is a soldier who has definitely separated himself from the rest... was by far one of the best soldiers with whom I have ever had the privilege of working." (See Stipulation of Expected Testimony).

In January 2004, SPC Cruz flew to Dallas for 15 days leave. He was given the last available seat on the plane, which was in first class. After having been in Iraq for the better part of nine months, SPC Cruz, true to his moral character, gave his seat to an elderly gentleman on the flight in exchange for the man's coach seat. (See letter from Mr. [REDACTED]). Even in such an ordinary, everyday moment, SPC Cruz is thinking of others. In fact, SPC Cruz never told me of this incident. I only learned of it when Mr. [REDACTED] e-mailed me after he saw SPC Cruz's case in the news.

E. Military service following the incident and while SPC Cruz was aware of the allegations and investigation.

According to the testimony of CPT [REDACTED] Headquarters Service Company, 502nd MI Battalion, SPC Cruz continued to "soldier on" even under the uncomfortable circumstance of being investigated. He stated: "[SPC Cruz] did an excellent job... He is very well disciplined... [How does Specialist Cruz treat his superiors?]... With dignity and respect; it's never wavering... [So, how would you describe his military bearing overall?]... excellent... [His attitude?]... Professional." (TT p. 79 – 81).

SFC [REDACTED] also worked with SPC Cruz during this time: "[SPC Cruz]... did all the tasks that we would give him in an outstanding fashion. Everything he did he took some kind of initiative to either make sure it got done or improve... on what we expected... he was an outstanding soldier. (TT p. 69 – 75).

SFC [REDACTED] states: "[SPC Cruz] always executed his duties very professionally... he always tries to improve things rather than just go with what's already happening... he's always stepped up." (TT p. 84 – 87).

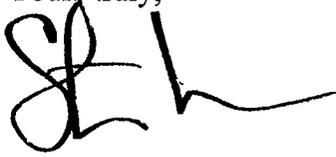
F. While in confinement.

SPC Cruz continues to comport himself according to the highest moral and military standards. He is now classified with a status of minimum security/trustee. This status is not easily awarded nor earned.

Conclusion

It does not serve the Army's interest to give SPC Cruz a Bad Conduct Discharge because he possesses a superior potential for rehabilitation. I urge you to consider SPC Cruz as a Soldier and person who has always sought to be the best he can be and of the most benefit to those around him. Please consider granting his request for a Chapter 10 Discharge in lieu of Court-martial or grant him any other relief you deem appropriate. Thank you for your consideration.

Yours truly,



Stephen P. Karns

Enclosures

1. DVD
2. Good Soldier packet
3. November 16, 2004 statement by SPC Cruz
4. Request for Chapter 10
5. Letter from SSG [REDACTED]
6. Letter from [REDACTED] LPC
7. Letter from [REDACTED]
8. Letter from [REDACTED]

002818

REMOVED BATES PAGES 2819 - 2893
(RECORD OF TRIAL – SPC ARMIN J. CRUZ)

(75 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF
OF SPC CRUZ AND OTHER RECORDS CONTAINING PRIVATE
INFORMATION, WHICH WERE DETERMINED TO BE
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST

DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

AFZF-CG

JAN 18 2005

MEMORANDUM THRU

Commander, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

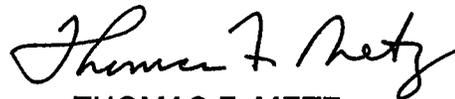
Commander, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

Commander, Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

FOR Specialist Armin J. Cruz, [REDACTED] Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

SUBJECT: Action on Matters Submitted Pursuant to Rules for Courts-Martial 1105 & 1106

I personally reviewed and considered all post-trial matters submitted by your defense counsel before taking action in this case.



THOMAS F. METZ
Lieutenant General, USA
Commanding

002894

20040973



DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

REPLY TO
ATTENTION OF

AFZF-JA-MJ

MEMORANDUM FOR Mr. [REDACTED], Law Offices of [REDACTED]
[REDACTED]

SUBJECT: Request for Delay for submitting R.C.M. 1105 Matters in United States v. Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq

Your request for delay, dated 15 November 2004, is hereby granted until 11 December 2004.

[REDACTED]
[REDACTED]
LTC, JA
Acting Staff Judge Advocate

16 Nov 04

002895

20040973

MNC-I OSJA DET OPS

From: [REDACTED]
Sent: Monday, November 15, 2004 19:39
To:
Subject: RE: US v. Cruz 1105

SSG [REDACTED]

Please find attached the Certificate of Service. I would like to request an additional 20 days. I will mail the 1105 matters since I would like to include a short DVD statement from my client's family for the CG. It will be a different statement than the one presented at trial. I assume that the post mark date must be within the filing deadline not when you actually receive it. Also, what is the best to get it to you?

Thanks,
[REDACTED]
Attorney at Law

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

From:
Sent: Sunday, November 14, 2004 12:53 AM
Subject: US v. Cruz 1105

Sir, I just wanted to follow up with you on whether or not you have receive the SJA post-trial recommendation on Cruz in order to submit his clemency maters. Couls you respond to let me know if this is a correct e-mail.

002896

20040873

11/16/2004

PRETRIAL ALLIED PAPERS

002897

DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

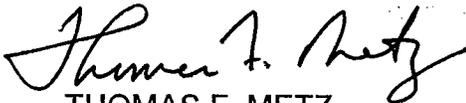
AFZF-CG

SEP 5 2004

MEMORANDUM FOR Staff Judge Advocate

SUBJECT: Disposition of the Court-Martial Charges Preferred Against Specialist Armin J. Cruz

The recommendations of the Staff Judge Advocate are approved. The attached charges and their specifications are referred to a special court-martial empowered to adjudge a bad conduct discharge convened by Court-Martial Convening Order Number 2, dated 14 January 2004, as amended by Court-Martial Convening Order Number 6, dated 24 July 2004.


THOMAS F. METZ
Lieutenant General, USA
Commanding

002898

SEP 5 2004

MEMORANDUM FOR Commander, III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Advice on Disposition of the Court-Martial Charges Preferred Against Specialist Armin J. Cruz
-ACTION MEMORANDUM

1. Purpose. To forward for disposition, in accordance with Rule for Court-Martial (RCM) 407, the court-martial charges against Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502 Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342.

2. Recommendations.

a. *Chain of Command.* As reflected on the attached transmittal of court-martial charges memoranda, the soldier's company commander, battalion commander and brigade commander recommended referral to a general court-martial.

b. *Article 32 investigation.* The accused conditionally waived the Article 32 on 4 September 2004.

c. *Staff Judge Advocate.* Pursuant to the offer to plead guilty, I recommend you refer the attached charges and their specifications to a special court-martial empowered to adjudge a bad conduct discharge, pursuant to RCM 601, and refer the case to trial by Court-Martial Convening Order Number 2, dated 14 January 2004, as amended by Court-Martial Convening Order Number 6, dated 24 July 2004.

3. Staff Judge Advocate Review. In accordance with RCM 406 and Article 34, Uniform Code of Military Justice (UCMJ), I have reviewed the attached charges and supporting documentation. It is my legal conclusion that:

a. The specifications allege offenses under the UCMJ;

b. The allegations of the offenses are warranted by the evidence indicated in the attached documentation; and

c. The court-martial will have jurisdiction over the accused and the offenses alleged.

4. POC is CPT [REDACTED] at

- Encls
- 1. Charge Sheet
- 2. Court-Martial Charges Transmittal
- 3. Allied Documents

[REDACTED]

[REDACTED]

COL, JA
Staff Judge Advocate

002899



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
Headquarter, 504th Military Intelligence Brigade
Task Force Ready
APO AE 09342

AFVQ-CDR

4 September 2004

MEMORANDUM FOR Commander, III Corps, Victory Base, Iraq APO AE 09342

SUBJECT: Transmittal of Court-Martial Charges – United States V. Specialist Armin J. Cruz

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

- Summary Court-Martial
- Special Court-Martial
- Special Court-Martial empowered to adjudge a Bad Conduct Discharge
- General Court-Martial

Encls
nc


COL, MI
Commanding

002900

AFZH-MIE-CDR

4 September 2004

MEMORANDUM THRU Commander, 504th Military Intelligence Brigade, III Corps,
Victory Base, Iraq APO AE 09342.

FOR Commander, III Corps, Victory Base, Iraq APO AE 09342

SUBJECT: Transmittal of Court-Martial Charges – United States V. Specialist Armin J. Cruz

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

() Summary Court-Martial

() Special Court-Martial

() Special Court-Martial empowered to adjudge a Bad Conduct Discharge

 General Court-Martial

Encls
nc


MAJ, MI
Commanding

002901



DEPARTMENT OF THE ARMY
HEADQUARTERS, 502D MILITARY INTELLIGENCE BATTALION
TASK FORCE RAINIER
APO AE 09342

REPLY TO
ATTENTION OF:

AFZH-MIE (600-20)

1 September 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Assumption of Command By Authority of 2-8a

The undersigned assumes command of 502d Military Intelligence Battalion, APO AE 09342 (WBVEAA), effective 0001 hours 1 September 2004.



MAJ, MI
Acting Commander

DISTRIBUTION:

- 1 - 504th MI Bde
- 1 - A Co
- 1 - B Co
- 1 - C Co(P)
- 1 - HHSC

002902

AFZH-HHSC-CDR

4 September 2004

MEMORANDUM THRU Commander, 504th Military Intelligence Brigade, III Corps,
Victory Base, Iraq APO AE 09342.

FOR Commander, III Corps, Victory Base, Iraq APO AE 09342

SUBJECT: Transmittal of Court-Martial Charges – United States V. Specialist Armin J. Cruz

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, [REDACTED] Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

- () Summary Court-Martial
- () Special Court-Martial
- () Special Court-Martial empowered to adjudge a Bad Conduct Discharge
- (X) General Court-Martial

[REDACTED]
Encls
nc

[REDACTED]
CPT, MI
Commanding

002903

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.
SPC, U.S. Army,
SVC Co., 502nd MI BN, 504th MI BDE
APO AE 09342

CONDITIONAL WAIVER OF
PRETRIAL INVESTIGATION UNDER
ARTICLE 32, UCMJ

4 September 2004

I, SPC ARMIN J. CRUZ, the accused in the above styled case, hereby conditionally waive an Article 32 investigation in this case, provided that this case is referred to a special court-martial authorized to adjudge a bad-conduct discharge. In the event this case is not referred to a special court-martial authorized to adjudge a bad-conduct discharge, I shall retain the right to have an Article 32 investigation conducted prior to referral to a general court-martial.

This decision has been made after full consultation with my defense counsel. I understand and have had explained to me the purpose of the Article 32 investigation under R.C.M. 405.

I understand that no charge against me may be tried at a general court-martial without first being investigated at an Article 32 investigation unless I waive that investigation. I understand that I have a right to have that investigation and to have a fair and impartial officer inquire into the truth of the matters charged and to obtain information on which to recommend a disposition of my case.

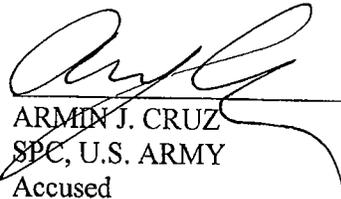
I understand that I would have the right to be present at the Article 32 hearing and to be represented by counsel at that hearing. I understand that I would have the right to call witnesses, cross-examine government witnesses, and present documents for the investigating officer to consider. I understand that I would have the right to provide an unsworn statement or sworn testimony at the investigation, or I can choose not to testify at all.

I understand that I would have the right to attempt to have the investigating officer recommend a disposition of the charges other than a trial by general court-martial.

Knowing these rights, I freely and willingly conditionally waive the Article 32 investigation in my case upon the terms and conditions set forth above.

[Redacted signature area]

Defense Counsel


ARMIN J. CRUZ
SPC, U.S. ARMY
Accused

012A-04-00022

MEMORANDUM FOR RECORD

SUBJECT: Statement of SGT [REDACTED], Headquarters and Headquarters Company, Garrison Fort Lee, Virginia

1. My name is SGT [REDACTED], Headquarters and Headquarters Company, Garrison Fort Lee, Virginia. On 24 September 2001, I was assigned to 352nd MP Company, 220th MP Brigade, Gaithersburg, Maryland. On 23 February 2003, I was involuntarily transferred to 372nd MP Company, Cumberland, Maryland. On 24 February 2003, my unit was mobilized and on 27 February 2004, I arrived at Fort Lee, Virginia. On 16 May 2003, members of 372nd MP Company deployed from Fort Lee, Virginia to Camp Arifjan, Kuwait. I remained at Fort Lee in order to undergo surgery. On 21 September 2003, after the surgery, I deployed from Fort Lee and arrived at Camp Arifjan, Kuwait. On 30 September 2003, I left Camp Arifjan and on 1 October 2003, I arrived at the Baghdad Correctional Facility (BCF/Abu Ghreib). I was assigned to 3rd platoon of 372nd MP Company. My duty assignment was Team Leader. My missions included escort of detainees from BCF to various courts in Baghdad, as well as escorts of VIPs and contractors. My quarters were located at 3rd platoon building, approximately 400 meters away from the BCF hard-site. I was not detailed to conduct any missions at the BCF hard-site.

2. During the last week of October at approximately 2200 hours I went over to the BCF hard-site in order to speak with SPC [REDACTED], my driver. I found SPC [REDACTED] at Tier 1A speaking with his cellmate, CPL [REDACTED]. When I approached Tier 1A, I observed two (2) service members (the first service member wore black PT shorts, brown t-shirt, and shower shoes; the second service member wore DCU pants and brown t-shirt). I perceived both service members to be military intelligence (MI). I saw both MI soldiers handcuff two (2) naked Iraqi detainees to the bars of cells on opposite sides. I then witnessed the same MI soldiers handcuff the detainees together, face to face. The MI soldier dressed in black PT shorts and brown t-shirt approached me and asked me in a sarcastic tone of voice: "Do you think we crossed the line?" or words to that effect. I responded: "I am not sure, you are MI" or words to that effect. The MI soldier then stated that they were interrogating 2 detainees and said: "We know what we are doing," or words to that effect.

3. Subsequently, both MI soldiers walked back to the detainees, separated them, and then re-cuffed them to the bars. The MI soldier wearing PT shorts tapped one of the detainees on his buttocks with a plastic water bottle. Then both MI soldiers re-cuffed the detainees together. Throughout this incident, both MI soldiers, via an interpreter, ordered the detainees to confess. When the detainees failed to cooperate, both MI soldiers yelled at them and ordered CPL [REDACTED] to yell at the detainees. At this time another MI soldier (wearing DCU pants and brown t-shirt) came in and the others seemed to look to him with respect and sought his approval. I asked him: "Is this how you interrogate detainees?" or words to that effect. The MI soldier responded "there are different ways to get it done," or words to that effect. The MI soldiers escorted the naked detainees around Tier 1A.

EX 157

002905

ATZM-DPS-C

SUBJECT: Statement of SGT [REDACTED], Headquarters and Headquarters Company, Garrison Fort Lee, Virginia

0129-01-40022

4. One of the MI soldiers pointed to the naked detainees and said, "These are the people who raped a little boy," or words to that effect. Then SSG [REDACTED], I believe, escorted a third detainee to Tier 1A. SSG [REDACTED] said that this detainee assisted in the rape by holding down the victim. One of the MI soldiers then told the third detainee to get undressed like the other two. The new detainee refused. The MI soldiers proceeded to yell at the detainee. Then, one of the MI soldiers ordered CPL [REDACTED] to tell the detainee to get undressed. The third detainee undressed after CPL [REDACTED] yelled at him. Then the MI soldiers ordered all three detainees to low crawl on the floor. When the detainees attempted to arch up, two of the MI soldiers put pressure in the middle of their backs and yelled at them to get down. Two MI soldiers then cuffed the detainees together.

5. After the detainees were again handcuffed, I walked over and asked the detainee to tell the MI soldiers what they needed know and that I would try to make the MI soldiers stop. The detainee stated, through the interpreter, that he would not confess to something that he did not do. I turned to the older MI soldier and asked him with a raised voice: "Did you all ever consider that they guys are innocent?" or words to that effect. The MI soldier responded: "I've been doing this longer than you've been in the military. You know, sergeant, they are guilty," or words to that effect. I then turned to walk out and the MI soldier wearing black PT shorts started to sprinkle water on the detainees from his water bottle. While I was leaving the tier, I also observed one of the MI soldiers on the upper tier tossing a nerf ball towards the detainees. I also noticed SPC [REDACTED] standing in the distance and taking photos. I went back to my LSA at approximately 2230. By the time I returned to my LSA, everyone was already asleep.

6. Following morning, at approximately 0530, I along with SPC [REDACTED] and SPC [REDACTED], left the BCF on mission to escort detainees to Rusafa Courthouse. After completing the mission, at approximately 1600, I went to my platoon leader, 2LT [REDACTED], and I described to him the incident I witnessed the previous night. I informed 2LT [REDACTED] that MI soldiers were interrogating naked detainees. 2LT [REDACTED] stated: "They are MI and they are in charge let them do their job," or words to that effect. I then began to question 2LT [REDACTED] about who was in charge of the facility. I further voiced my concerns about our mission and organization. 2LT [REDACTED] then acknowledged my complaint and indicated that he will address it. Approximately one week later CPL [REDACTED] received a written counseling statement from CPT [REDACTED] for use of excessive force. CPL [REDACTED] informed me about the counseling statement and I overheard CPT [REDACTED] indicating that he counseled CPL [REDACTED] for use of excessive force.

7. Approximately one week prior to the incidents I described above, I spoke with CPL [REDACTED] and I noticed that CPL [REDACTED] voice was hoarse. I asked CPL [REDACTED] why he was hoarse. CPL [REDACTED] stated that OGA and MI were making him yell at detainees and do things that he felt were wrong. CPL [REDACTED] did not provide any details. I told him "then don't do it," or words to that effect. He stated that MI soldiers would tell him after an explosion that there are Americans out there dying and unless he helps them get information from the detainees then more Americans will die. CPL [REDACTED] then told me that he was taking pictures to protect himself. I told CPL [REDACTED] to take this issue up his chain of command.

0129-04-00022

ATZM-DPS-C

SUBJECT: Statement of SGT [REDACTED] Headquarters and Headquarters Company, Garrison Fort Lee, Virginia

8. I returned to Tier 1A approximately one week later in order to inform one of the detainees of his release date. At this time, I did not observe any unusual conduct by the MI personnel. This was the last time I went to Tier 1A.

9. In November 2003, while in Iraq, I experienced post-surgery complications. On 2 December 2003, my unit received a Red Cross message informing me that my father experienced a very serious heart attack. I was placed on Emergency Leave status and returned to Dallas, Texas on 2 December 2003. Subsequently, I returned to Fort Lee, Virginia on or about 17 December 2003 in order to undergo medical procedures.

10. In addition to attempting an on the spot correction, I reported the above-mentioned incident to my platoon leader, 1LT [REDACTED]. After returning to Fort Lee, Virginia I informed the following, among others, of my concerns regarding the incident I witnessed at BCF:

- Chaplain [REDACTED] December 2003
- 1SG [REDACTED] December 2003
- CPT [REDACTED] December 2003
- CPT [REDACTED] January 2004
- COL [REDACTED] March 2004
- COL [REDACTED] March 2004
- COL [REDACTED] March 2004
- Chaplain [REDACTED] April 2004
- Ms. [REDACTED] April 2004
- U.S. House of Representatives Armed Services Committee: April 2004

11. POC is the undersigned ([REDACTED])

[REDACTED]
SGT, [REDACTED]

Ex 157

002907

REMOVED BATES PAGES 2908 - 2920
(RECORD OF TRIAL – SPC ARMIN J. CRUZ)

(13 TOTAL PAGES)

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PAULA ZAHN NOW

Who is to blame for Abu Ghraib? Interview with men who were there.

Aired August 26, 2004 - 20:00 ET

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PAULA ZAHN, HOST: Who is really to blame for Abu Ghraib? Military police? Military intelligence? Two men who were there, 2 different stories. (BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: It was told to us that military intelligence is in charge of this compound.

UNIDENTIFIED MALE: That's probably their only line of defense, to blame everything on military intelligence. (END VIDEO CLIP)

ZAHN: Tonight, a CNN exclusive: Eyewitness to Abu Ghraib.

Good evening. Welcome. Glad to have you with us tonight. The truth of what happened at Abu Ghraib almost taken for granted now. It is the abuse we've all seen in those horrid pictures.

The truth of how it happened, well, that is only still becoming clear, thanks in part to the reports out there and independent investigators. They point to failure in leadership far up the chain of command. But the circle of blame on the ground.

When the pictures first appeared, the story focused on one detachment, the military police assigned to the prison. Now we know that more than two dozen military intelligence personnel may have been involved. (BEGIN VIDEOTAPE)

ZAHN (voice-over): Under Saddam, the Abu Ghraib Prison was a place where people were tortured. After Saddam's defeat, it became the U.S. Army's own house of horrors. All too familiar pictures like the American flag in Iraq.

So far, 7 guards from the military police have been charged with mistreating detainees. But defense attorneys say military intelligence agents, not the military police, created the atmosphere of abuse.

Nevertheless, testimony has shown the actions depicted in the worst photos had little to do with intelligence. Lynndie England holding a leash, told an investigator this was no more than an effort to persuade a prisoner to another cell. The 3 men, hand-cuffed together in a naked tangle, were suspected in the rape of a 15-year-old prisoner in the human pyramid were thought to have incited a riot in another part of the prison compound.



ZAHN: And where is Mr. Graner in this picture?

DAVIS: Graner has his hand up against the wall in the back of that picture. He has gloves on.

ZAHN: Did he seem to be disturbed by what he was being told to do?

DAVIS: He just seems like he was doing what they were telling him to do. He -- it was hard to tell if he was going on that night. I had only been in country 2 1/2, 3 weeks. So, I felt like I had missed something trying to pay attention to what's going on. I'm looking for blatant abuse, someone punching someone, them, something that maybe that would cross the limit with me. Because I wasn't sure where the line especially since military intelligence said they were interrogating. I don't know anything about interrogating or what roughing someone up is in their books.

ZAHN: Did it strike you that what they were doing was wrong?

DAVIS: Oh, yes.

ZAHN: Did you challenge either Mr. Cruz or Mr. Krol?

DAVIS: Earlier in the -- what they were doing, they walked up to me when I came on the Tier, Cruz did we crossed the line? Kind of sarcastically. I said, I don't know. You are military intelligence.

He said, well, you are the MP.

I said, well, I'd have to say yes. In a question form thinking, what have I walked into. What am I seeing?

He said, that's right, we're military intelligence, we know what we're doing.

ZAHN: So, the signal that sent to you was what? Don't say anything else to me?

DAVIS: Correct.

Plus not wearing rank or knowing who they were, there's no telling who they were, what rank they were.

ZAHN: So, what was the next step you took after witnessing what you allege was acts of degrading part of the guards towards these detainees.

DAVIS: The following day we -- I ran my missions because we were -- my teams were in charge of routing. Which was off site, outside of the compound. We would run into Baghdad and take detainees to court.

Well, coming back from the missions, my lieutenant was out back of our living facility. And I said, sir, you. And we started to talk.

And I said, military intelligence is doing some weird things to naked detainees over at the hard site.

He said what?

I said they are interrogating naked detainees and it's pretty weird.

And he said, that's military intelligence. They are in charge. Stay out of their way.

ZAHN: And who was this you spoke to?

DAVIS: My lieutenant, which is my platoon leader, Lieutenant Raider (ph).

ZAHN: I actually have a quote from your platoon leader when asked about some of your allegations. quote, I don't recall my specific conversation with Davis, but no one reported to me any incidents of a

DAVIS: mm-hmm.

ZAHN: Are you saying he's lying?

DAVIS: I can't say he's lying, because if he doesn't recall a conversation, how does he recall what exactly? And if I'm saying they are doing some pretty weird things with naked detainees, how do you call it about that's proper interrogation techniques. You don't know if it's abuse. And who knows if he knew that or

Yet a Pentagon investigation has found military intelligence personnel, M.I. in shorthand, set the tone the abuse. Often joining in the interrogations.

MAJ. GEN. GEORGE FAY, U.S. ARMY: There were a few pictures that had military intelligence sold them, and we do find instances where some military intelligence soldiers participated in the actual ab

ZAHN: Intelligence agents, none of them charged, could be seen in this picture of the rape suspects on the floor. One was Roman Krol, a young reservist from Massachusetts. We'll talk with him in this hour only an onlooker. Not so, says Sergeant Kenneth Davis, a guard. He tells us, M.I. orchestrated the at

Abu Ghraib has become both a horror story and a mystery. How much more is yet to be told?

(END VIDEOTAPE)

ZAHN: And joining us now, former Army Reservist Kenneth Davis who says he saw naked detainees at Abu Ghraib, and says military intelligence agents led and directed the abuse. Welcome.

KENNETH DAVIS, FRM. ARMY RESERVIST: Thank you, Paula.

ZAHN: Based on your experience at Abu Ghraib, how clear was the chain of command?

DAVIS: It was very unclear. It was very confusing. As MPs, we're used to being in charge, but when military intelligence is in charge of you, it makes a confusing site.

ZAHN: How did it work on any given night? How were orders made?

DAVIS: I'm not sure how the orders were made, but I -- what I know is every time we'd question someone who was in charge, it was explicit. It was told to us, military intelligence is in charge of this compound

ZAHN: Who would you ask that of?

DAVIS: Either our lieutenants or our captain, anybody that would number the chain of command, even sergeants would know. That's who is in charge of this place, because they make it very evident.

ZAHN: When is the first time you saw something that you thought was morally reprehensible and not the Geneva Conventions? DAVIS: Being unaware of what the Geneva Conventions actually say, because I've been trained on the Geneva Convention, it would have been October 25, the night I walked up on Tier

ZAHN: Describe to us what you saw?

DAVIS: As I walk over to the tier, I saw what I thought was two MI, military intelligence officers, agents on the tier interrogating 2 naked detainees.

ZAHN: We're looking at that picture now.

What do you allege is happening now?

DAVIS: This is well after they had already done other things. Now 3 detainees are handcuffed together in the middle of the floor screaming, because the MI would be positioning them in different positions. And then

ZAHN: Where are you standing?

DAVIS: I am number 2 in that picture.

ZAHN: And number 1 you to allege is whom?

DAVIS: Is Krol, Specialist Krol. And then number 3 is Specialist Cruz, who are military intelligence.

ZAHN: And do you allege that they were directing this kind of treatment of the detainees, or just observe

DAVIS: They were definitely directing, because when they brought in the third detainee, he still had a jumpsuit on and they instructed him to take it off through the interpreter. He refused. They instructed him to take it off again. And they look at Graner, he said Graner, he's refusing to take off his clothes, make him

ZAHN: So, you are saying both of these military intelligence officials at the same time told Soldier Gr

DAVIS: Yes.

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ZAHN: Mr. Krol vehemently denies he participated in the abuse. He says he witnessed it. He was an did not direct the abuse.

DAVIS: It's all on video. It's all in pictures. And he's in a lot more pictures than I or even Rivera, who military intelligence analysts, was in as well.

ZAHN: As a man of deep faith who carried pocket Bibles with him around in Iraq, occasionally sharing children in Iraq, how haunted are you by what you witnessed at Abu Ghraib?

DAVIS: It hurts. That's not what I went over there for. I didn't go over there to see abuses. I went over people. Help an Iraqi people that were now free.

But when you see this going on. And then you see a prison riot where detainees are shot inside their them die and one of them is dropped at your feet, it changes you. You are wondering why am I even what America brought me here for.

I really don't believe that a lot of soldiers went over there with the intention to hurt anybody. My bigge to let me shoot an Iraqi. Don't let me shoot anybody's son or anybody's daughter or anybody. I just w there and help these people.

And then you see this and you get confused thinking, why am I really here? And so that's what I live

ZAHN: How troubled are you by the fact that you weren't able to stop it?

DAVIS: Very troubled.

ZAHN: As you look back and place yourself in that prison on various occasions, do you think there w could have done that would have stopped the madness?

DAVIS: Knowing what I know now, yes. I could have apprehended them all on the spot.

ZAHN: And you would have had the power to do that.

DAVIS: With what I know now, I would have.

ZAHN: Ken Davis, thank you very much for joining us tonight. Appreciate your sharing your painful of us.

DAVIS: Thank you.

(END VIDEOTAPE)

ZAHN: And the allegations you just heard leveled against former military intelligence Specialist Roma and carry severe penalties. When we come back, I will ask Roman Krol about those allegations in an interview.

(COMMERCIAL BREAK)

ZAHN: We are talking tonight about the abuse at Abu Ghraib prison in Iraq. And for the first time on t about to hear from a member of military intelligence who was there. Roman Krol was an interrogator prison. He joins us now in this exclusive interview. Welcome. Thanks so much for joining us.

ROMAN KROL, FORMER ABU GHRAIB INTERROGATOR: Thank you for having me, Paula.

ZAHN: Our pleasure. So you were assigned to the prison for six weeks, and there are two brand new week who describe the abuse that went on as freelance at the prison, much like the atmosphere of " that a fair characterization based on what you saw?

KROL: I would have to say yes. Major General Fay's report is very accurate. I would -- I'm very impre actually. Especially the part about the atmosphere in Abu Ghraib. It was very well defined.

ZAHN: Describe that atmosphere to us tonight.

KROL: Well, lack of personnel, for one. The MPs, their job is to escort a prisoner to the cell and from interrogation. Handcuff the prisoners and guard them. And because of the lack of MPs, MI personnel that.

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ZAHN: Were you forced to do that?

KROL: I was forced to walking prisoners to the interrogation booth and back.

ZAHN: So you were put into a position where you were physically handcuffing detainees?

KROL: Yes, I was.

ZAHN: Is that something you were trained to do?

KROL: No, I wasn't.

ZAHN: We're going to go through a series of pictures now so the audience can better understand mo witnessed. Up on the screen now, you'll see a picture of Lynndie England with a detainee on a leash.

KROL: Yes.

ZAHN: Describe to us your reaction when you say you stumbled on to this scene.

KROL: One word, indifference.

ZAHN: Indifference?

KROL: Yes.

ZAHN: Were you shocked?

KROL: No.

ZAHN: Why indifference?

KROL: It might sound strange, but during the wartime, I was not shocked. If this happened at peaceti country maybe, and I haven't seen a lot of war, it would probably shock me. But back then, I didn't feel

ZAHN: So you weren't troubled on any level?

KROL: No. I wasn't.

ZAHN: You didn't think anything was wrong with this treatment of detainees?

KROL: Well, I thought something was wrong, but it wasn't my business. It was not my soldier. It was I That's what I did. I just walked by.

ZAHN: When you look back on that now and reflect on how you felt at the time, as a human being, ar disappointed in yourself?

KROL: You can say that. But now it's all different. Now I'm back in the States. There's no war going o different.

ZAHN: And as you look at that picture tonight, what are you thinking?

KROL: It's wrong, but it happened.

ZAHN: Let's fast forward to another picture. This picture taken in October, not long after you were as: Ghraib prison. Describe to us what we're looking at here.

KROL: We have three detainees on the floor. They are stripped of their clothes. They are handcuffed here. I'm not sure who this is, and I'm not sure who the guy in the green uniform is.

ZAHN: We're going to look at this scene now from another angle...

KROL: OK.

ZAHN: ... where we have you clearly identified by a number.

KROL: Yes, yes, this is me right there.

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KROL: I have no idea who Davis is, actually, even looking at this picture, I couldn't identify him. Maybe myself or Cruz for another person. I don't know. Maybe he's trying to help a friend. I have no idea who (UNINTELLIGIBLE) testified, I believe in his testimony, he did say that he arrived and the detainees were naked, handcuffed, on the floor, and the same thing happened.

ZAHN: Roman, if you wouldn't mind standing by, we want to hear much more of what you have to say. We're going to take a short break and continue our conversation on the other side. We'll be right back.

(COMMERCIAL BREAK)

ZAHN: Welcome back. Thanks so much for staying with us. We continue an exclusive conversation from inside Iraq's Abu Ghraib prison. My guest is Roman Krol who was an interrogator at the prison. Welcome.

Before we went to the break we talked about what some of your early exposure was to Abu Ghraib. You were in England with a detainee on a leash. You said you were quite indifferent about it that night. You were there tonight.

KROL: Yes.

ZAHN: But what about the picture of the three detainees who are naked on the floor and you are sort of above them with sort of no expression on your face.

KROL: Yes, as you can see, I do have no expression on my face. It's -- I have very accurately described just plain indifference. I found out what those people did, and I was just indifferent. Just completely indifferent.

ZAHN: So you -- in your heart, you made no attempt to stop the treatment of these prisoners?

KROL: No.

ZAHN: What about your understanding of the Geneva Conventions at that time, which bars not just torture but inhumane or degrading treatment?

KROL: Military intelligence have their rules of engagement for interrogations. And every interrogation stays within those boundaries. I never went out of boundaries during interrogation. Now what happened was directed by MPs. I would assume that.

ZAHN: And, of course, the accusation by Ken Davis is that you and your colleague, Mr. Cruz were doing these activities here.

KROL: He's wrong, of course.

ZAHN: Why is it that you think then in the conclusion of both of these reports that came out this week that they come down pretty hard on military intelligence officers, and you've got attorneys out there representing soldiers who have been charged so far basically pointing at you guys.

KROL: That's probably their only line of defense, to blame everything on military intelligence. They have no defense to base it on. What else can they say?

ZAHN: But was it really clear who was in charge on most nights when you did your job?

KROL: It's very clear who was in charge when. For example, military intelligence is in charge of prisoners being interrogated...

ZAHN: Now these prisoners weren't being interrogated.

KROL: These prisoners are not intelligence value, these prisoners are not being interrogated, and no one talked to them. That's me, myself, Cruz, and Rivera. I don't believe Rivera talked to them at all. I did not talk to them so that's not interrogation. We did not...

ZAHN: But why were you there?

KROL: Well...

ZAHN: Did you need to be there?

KROL: I explained why I went there, to talk to one of my prisoners, and I just -- I stood there like a man. I admit that. Rivera said the same thing, I believe. I'd like to say the same thing about Cruz, probably, I



other reasons to do it.

ZAHN: I'm interested in hearing you say that you thought there were clear lines of delineation between police were supposed to do and military intelligence officers because one of the criticisms of the Pentagon in these reports is the fact that they didn't think the Pentagon gave you clear enough guidelines for and sometimes that the chain of command within the prison was confused.

KROL: The Geneva Conventions for the interrogation was pretty clear. No physical abuse of prisoner say to a prisoner he's going to be tortured or basically general dislike and everybody stayed in those sure.

ZAHN: So you deny ever physically abusing a prisoner?

KROL: Of course.

ZAHN: Did you see any of your colleagues?

KROL: Military intelligence, no.

ZAHN: Hurt a prisoner?

KROL: Hurt a prisoner? No.

ZAHN: So why are there so many accusations flying out there that it was your guys' fault that it turned they were taking orders? Attorneys for some of these seven soldiers are saying quite pointedly...

KROL: I understand -- people that are -- for example, Graner, I believe he's a sergeant and myself are specialists. He is a higher rank than us. We physically cannot give him orders. Legally we cannot give do anything. OK, just, in our position, we cannot give order to anybody to do anything.

ZAHN: How many nightmares have you had about what you witnessed at Abu Ghraib and what you were accused of?

KROL: None.

ZAHN: You are at peace?

KROL: Yes.

ZAHN: With what you saw on one hand but troubled that you didn't react in a more aggressive way or

KROL: Yes, that's correct. That's exactly what I feel.

ZAHN: Is it hard for you?

KROL: I'm trying to forget what I saw back in Iraq. I think I can manage it.

ZAHN: Are you worried you're going to be charged?

KROL: Of course, I'm worried about I'm going to get charged.

ZAHN: Do you think you will be?

KROL: I think so, yes.

ZAHN: You think you will be charged?

KROL: I probably will be charged on not reporting information.

ZAHN: And how will you confront that charge? How do you plan to fight that charge?

KROL: I can't.

ZAHN: You can't? What do you mean?

KROL: Well, I was a witness of what you saw in the picture and there's nothing I can do about it, and

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ZAHN: So you are prepared to spend time in prison for what you describe as your indifference?

KROL: If the penalty for not reporting information that I saw is prison, then, yes.

ZAHN: And do you understand the outrage in the world about the kind of abuse that took place at Abu Ghraib? Of course, I understand the outrage. What else can I say? I am just happy that I wasn't directing the participants in it. Basically, by not reporting it, I know I also did the wrong thing, but people that were pictures are my buddies also. Some of the MPs were my friends, they were my buddies. And also by reporting information, I guess, you can say by reporting the information I understand that would probably get them in trouble, that they are in right now. And one of their own people went public with the photos, of course I know.

ZAHN: And now you are fully expecting to face a prison sentence, basically, because you were trying to say, your colleagues under very difficult conditions.

KROL: That's not the main reason why I didn't report the information, but that was part of the reason. I was on the same team, even though there were military police and military intelligence, but we work together. And what they did were very disgusting. That was one of the reasons why I did not report the information.

ZAHN: Roman Krol, thank you for spending time with us this evening and telling us what you saw at Abu Ghraib.

KROL: Thank you.

ZAHN: Good luck to you.

When we come back, the perspective on the events at Abu Ghraib from a reporter who has been following the events from day one.

(COMMERCIAL BREAK)

ZAHN: It will take some time to get a complete and accurate picture of what happened at Abu Ghraib. The report heard tonight was chilling. I was struck by the tragedy of two young men confronting a situation even though they were neither emotionally nor professionally prepared for. Small wonder, then, that so many investigators are having trouble getting to the truth.

With that in mind, we turn to a journalist who has written extensively on the abuse at Abu Ghraib. In the "Los Angeles Times" national security correspondent, Greg Miller. He is the co-author of a new book called "Interrogators: Inside the Secret War Against al Qaeda."

Welcome, Greg. You have just heard these two men tell their story. Where does the truth lie?

GREG MILLER, L.A. TIMES: Paula, to me this shows you just how tangled this story is still, and it probably will take some time. I mean, these two accounts from these two soldiers that you interviewed tonight, as gripping as they are, they are somewhat contradicted by the Fay report. Davis says because the Fay report says — concludes his description of this incident that MI was not controlling or directing this behavior, and Krol's because he concludes that two military intelligence troops took part in the abuses last night, and other sources indicate that there was one of them.

ZAHN: Specialist Krol, as you heard, adamantly denied he had anything to do with neither directing nor participating in the abuses. We have a statement for the lawyer for Specialist Armin Cruz, quote: "we adamantly deny that Specialist Krol orchestrated anything." Your response.

MILLER: There — the third military intelligence soldier who was there last night is Specialist Rivera, and he has a different version of events. He has described Krol having taken part in the abuses by climbing up on the balconies in the tier and throwing footballs at the detainees, and Cruz of dumping water on the detainees. So there are contradictions all around here.

ZAHN: The two gentlemen also contradicted each other's accounts of the chain of command. Mr. Krol is now suggesting that it was a very confused situation. The last guest, Roman, saying that that wasn't true. The military police knew what they were supposed to do. They were in charge of the prison. The MI guys were in charge of the interrogations. You see a lot of gray area there, don't you?

MILLER: There's a lot of gray area there. It certainly doesn't look like anybody was totally in charge of the prison. I mean, one of the striking things to me, having written a book about a prison in Afghanistan, is just that the situation is much greater here. In Afghanistan, the largest prisons held 500, 600 prisoners at most, and at Abu Ghraib they held many as 6,000. It was just a much more chaotic and large and sort of amok facility than anything I had ever been prepared for.

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ZAHN: I know this is early on, and everybody's accounts of what they believe went on in this very case where should most of the blame be pointing right now?

MILLER: That's a tough question. I think that the Fay report makes it clear that this is no longer a case that can be described as confined to a few bad apples taking advantage of their freedom on the night shift. It also says that there was no indication in many of these instances that this was being ordered or directed. I mean, I think that what has to happen now is just -- the Pentagon and other agencies need to really sit down to reach some -- arrive at some new policies that achieve some clarity that eliminates the possibility of a confusing environment in the future.

ZAHN: Just a final thought, a very personal reflection on the tragedy that both of these men confront. How do you account for the account you buy into?

MILLER: Well, it's, you know, one of the things that I try to keep in mind as we write these stories is, for many readers and many of your viewers think about this as well. What would we have done in those cases that are hard to know. We saw Krol tonight talking about feeling indifferent toward this. He told me much the same in an interview recently several months ago, where he talked about he didn't report it because he simply didn't want to.

And that's hard to understand. But when you talk to people who have worked in these prisons, you understand that these are debilitating places to be, especially over a long period of time.

ZAHN: I think both of the gentlemen made that clear this evening. Greg Miller, thank you for your additional thoughts. We appreciate your time tonight.

MILLER: Thank you, Paula.

ZAHN: Just ahead, we move on to politics, as New York braces for the GOP's big show, and the Democrats are coming with it. That story when we come back.

(COMMERCIAL BREAK)

ZAHN: Well, if you are counting, we are 68 days from the election. In a CNN/"USA Today"/Gallup poll shows President Bush and John Kerry still locked in a statistical dead heat. We are also, of course, focused on the Republican convention here in New York, which was the subject of another poll. This one from the University of New York. Well, the survey found President Bush has an approval rating of only 25 percent among New Yorkers. Those same New Yorkers apparently think more highly of themselves. 77 percent of them expect New York to be good hosts for the convention. Still, not everyone is planning such a warm welcome. Maria Hinojosa reports.

(BEGIN VIDEOTAPE)

MARIA HINOJOSA, CNN CORRESPONDENT (voice-over): In New York City, not all protests look alike. A group of women shoot this video as they sneak into Grand Central Station to send a very public message.

UNIDENTIFIED FEMALE: It seems like people were so overjoyed and relieved to see those words go up.

HINOJOSA: An anti-Bush punching bag standing on a street corner. Self-described anarchists holding meetings. A little flower store turned political rallying spot.

(on camera): What are you hearing from New Yorkers? Are you hearing New Yorkers saying, "I want that protest" or are you hearing New Yorkers saying, "I'm getting away."

UNIDENTIFIED MALE: No. The majority of them are going to be there, I think.

HINOJOSA: In a city where Democrats outnumber Republicans, 5 to 1, protesters want to send a message like these, pro-choice, gay-friendly, anti-war, have nothing in common with Republicans. But inside the convention, the Republicans aren't buying into the caricature being painted outside. They are taking advantage of the image of New York, where many top Republicans are Democratic converts and where party labels don't matter.

RUDOLPH GIULIANI, FORMER NEW YORK MAYOR: I believe one of the things we can accomplish is to demonstrate how broad the Republican party really is.

HINOJOSA: Former Republican Mayor Rudy Giuliani is one of the convention's top speakers. Once a conservative, he has a history of taking more moderate stances on conservative issues.

GIULIANI: There are a substantial number of Republicans who you would describe as moderate Republicans.

that's probably the best way to describe them but who have some very, very strong conservative view economy, on national defense. But on social views we tend to be moderates.

HINOJOSA: The "we" Giuliani is talking about includes Michael Bloomberg, another Democrat who became a Republican and then became mayor of New York. And there's the state's moderate Republican Governor Pataki. Both will be convention speakers.

GOV. GEORGE PATAKI (R), NEW YORK: I've got elected three times in the state of New York because Independents and enough Democrats believe that these principles and policies work for them, too.

HINOJOSA: Going after so-called swing voters means showing that Republican delegates inside the convention can address some of the issues the protesters are raising outside.

GEORGE ARZI, POLITICAL CONSULTANT: It might be a way in which to leverage opposition and to get to the people, the protesters out there. Because I don't know what these people out there are protesting about, but these moderates we have inside.

HINOJOSA: But demonstrators want to send a message of their own that no matter how moderate a candidate is, it's not enough.

BILL DOBBS, UNITED FOR PEACE AND JUSTICE: The Republicans have brought us four years of erosion of civil liberties, immigrant round-ups and now many of us are going to be marching under the banner, the opposition to the Bush agenda.

HINOJOSA: So as the opposition welcomes protesters to town, the Republicans are rolling out a more moderate image.

ARZI: If you look at the images outside, with all the protesters and you look at the images inside with the Karl Rove types will try to tell you, you see, we are much more moderate than people are trying to tell you.

(END VIDEOTAPE) ZAHN: And that was Maria Hinojosa reporting for us this evening. And just one week after President Bush accepts his party's nomination for the second time. You can see live prime-time coverage of the Republican National Convention in New York starting Monday night right here on CNN.

Coming up next, a tale of two JFKs. The surprising connections you may not know.

(COMMERCIAL BREAK)

ZAHN: John Fitzgerald Kennedy, John Forbes Kerry. They share the same initials. They're from the same state, both served in the Navy during wartime and they both wanted to be president.

Well, after Kennedy achieved his goal, he made quite an impression on Kerry, even in person 42 years later.

(BEGIN VIDEOTAPE)

ZAHN (voice-over): On an August day in 1962, President John Fitzgerald Kennedy is sailing off New York. One of his passengers is 18-year-old John Forbes Kerry. It is the summer before Kerry starts at Yale. Janet Auchincloss, Jackie Kennedy's half-sister. Auchincloss invited Kerry to Hammersmith Farm where she married Kennedy nine years before.

The politically active Kerry idolizes Kennedy. They chat. They board the 60-foot Manitou for a cruise in the bay. (UNINTELLIGIBLE). A few weeks later, Kerry is invited back, this time to watch an America's Cup race. President Kennedy is there and again they have a private conversation.

"Thank you for a very unforgettable and exciting time," Kerry later would write the president. "I am, to this day, an ardent Kennedy supporter." Indeed he was like so many young Catholic men from Massachusetts. Kerry's political speech in a prep school debate was in support of Kennedy's 1960 presidential run. Kerry voted for Kennedy's first Senate campaign in '62. And when the president campaigned for Democrats in Connecticut, Kerry was in the crowd, a crowd peppered with disruptive hecklers.

JOHN F. KENNEDY, FMR. PRESIDENT OF THE UNITED STATES: But they will learn as this country grows that the Democratic party is best for them as it is for the country.

ZAHN: Kerry, in this October 1962 letter, apologizing for the quote, "deplorable behavior of some of our undergraduates here at Yale." The young Kerry added, "it is possible that you personally were not here when it happened here, but the insult was made and there is no one here who is not now conscious of it."

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A year later, President Kennedy was dead.

LOUIS DINATALE, UNIVERSITY OF MASSACHUSETTS: Kennedy's shadow on Massachusetts has been big for 30 or 40 years. ZAHN: Political science professor Lou Dinatale describes Kennedy as the Democratic party.

DINATALE: Celebrity, good looks, coat over the shoulder, loosened tie around the neck. You know, it's for Democrats and it's also a standard because it was unfulfilled.

ZAHN: After the late president's brother Bobby also fell to an assassin, Ted Kennedy became the star of the family mystique and eventually Kerry's mentor. The senator backed his first and unsuccessful run in 1972. The two men have stood side by side for two decades in the Senate, and this year, Kennedy played a key role in Kerry's presidency.

SEN. TED KENNEDY (D), MASSACHUSETTS: Let's give him a great Waterloo reception!

ZAHN: Kerry seems to be tapping into that JFK playbook, sometimes literally following his footsteps, like the same West Virginia diner Kennedy visited 44 years ago.

KERRY: Well, we're going to get to work on it.

ZAHN: Kennedy had PT 109, the small boat he commanded in the Pacific during World War II, swimming to safety after being rammed by an enemy warship. Kerry has PCF 94, the Swift boat he commanded during the Vietnam War, saving a man and winning five medals in combat. Each a decorated veteran when he ran for president, would make America safer than the Republican incumbent, whether against the communists or the

DINATALE: The campaign actually is evolving precisely the way the 1960 campaign evolved, which is using his war record is finding himself -- is fighting the fight in the middle of the political spectrum, and as a squeaker of an election just like Kennedy was in '60.

ZAHN: Many Democratic presidential candidates before Kerry have tried to capture the magic of JFK. Whether through personal or political inadequacy, most of those efforts have fallen short except the one by a year-old at this White House handshake.

For John F. Kerry the Kennedy era was a sort of golden age and he hopes that the imagery and the legacy will be for him this year.

(END VIDEOTAPE)

ZAHN: For more on the imprint that John Kennedy left on John Kerry, I am joined from Washington by biographer Laurence Leamer. His most recent book is, "Sons Of Camelot, The Fate Of An American Dynasty." It's good to see you.

So the similarities in the two JFKs are certainly hard to ignore. But there are some very distinct differences there? LAURENCE LEAMER, KENNEDY FAMILY BIOGRAPHER: Yes, there certainly are. The idea of some ways it's very similar in that they are both authentic heroes, although there have been aspersions cast on them, JFK during his lifetime as well. They both saved one of their sailors. They both deserve the title of hero but the motivation is very different.

John F. Kennedy was a kind of reluctant hero. When his boat was cut in half by a Japanese destroyer, he saved his men. He wasn't too comfortable with being called a hero. John Kerry, he's more like JFK's older brother. He was the anointed, the golden one in the Kennedy family. He was brought up to be president of the United States. He was opposed to World War II, but he entered because he thought if he was president, I've got to be a hero. So he was a self-conscious hero and he sought the hero's medals and in the summer of 1944, he volunteered for a very risky mission and he was killed. And that's a more similar case.

ZAHN: Laurence, when you see pictures of John Kerry with Ted Kennedy, for example, you are left with the impression that they are close. But it hasn't always been that way, has it?

LEAMER: No, I mean Ted Kennedy is an 800-pound gorilla in Massachusetts. He doesn't like anybody, and in the -- during the early years, I mean, he was not too comfortable on Kerry and Senator Kerry's issues that, you know, didn't get him too close to Kennedy. Kerry wasn't going to have medical issues, wasn't going to get in the same way. Now, Senator Ted Kennedy sees the election of Kerry as being a triumph. If he can't be in the White House, this is as close to him being in the White House as he can get.

ZAHN: How much do you think John Kerry has studied the life of John F. Kennedy?

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RECORD OF PROCEEDINGS OF COURT-MARTIAL

002933

RECORD OF TRIAL

OF

CRUZ, Armin J.

(Name: Last, First, Middle Initial)

SPC

(Rank)

HHS, 502d MI Bn

504th MI Bde

(Unit/Command Name)

U.S. Army

(Branch of Service)

Victory Base, Iraq

(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

Convened by: Commander

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

Tried at

Baghdad, Iraq

on

11 September 2004

(Place or Places of Trial)

(Date or Dates of Trial)

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TESTIMONY

NAME OF WITNESS	DIRECT/ REDIRECT	CROSS/ RECROSS	COURT
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PROSECUTION:

None.

DEFENSE:

SFC [REDACTED]	69		
CPT [REDACTED]	76		
SFC [REDACTED]	83		
1SG [REDACTED]	88		
SSG [REDACTED]	92		
SSG [REDACTED]	93		
Accused (unsworn)	106		

COURT:

None.

EXHIBITS ADMITTED IN EVIDENCE

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APPELLATE EXHIBITS

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DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

COURT-MARTIAL CONVENING ORDER
NUMBER 6

24 July 2004

The following personnel are detailed as members of the special court-martial convened by Court-Martial Convening Order Number 2, this headquarters, dated 14 January 2004:

COL [REDACTED] HHC, 3d Sig Bde
LTC [REDACTED], SC, HHC, 57th Sig Bn
COL [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps

VICE

COL [REDACTED], HHC, III Corps
COL [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps
MAJ [REDACTED], AR, HHC, III Corps
MAJ [REDACTED] HHC, III Corps

Relieved permanently.

BY COMMAND OF LIEUTENANT GENERAL METZ:

[REDACTED]

Chief, Criminal Law Division

DISTRIBUTION:

Each individual indicated (1)
Cdr, III Corps (SJA) (1)
Record Set (1)
Reference Set (1)

002938

DEPARTMENT OF THE ARMY
Headquarters, III Corps
APO AE 09342-1400

COURT-MARTIAL CONVENING ORDER
NUMBER 2

14 January 2004

A special court-martial is convened with the following members:

COL [REDACTED], 504th MI Bde
COL [REDACTED], HHC, III Corps
LTC [REDACTED], TC, HHC, III Corps
LTC [REDACTED], HHC, III Corps
LTC [REDACTED], HHC Corps
MAJ [REDACTED], AR, HHC, III Corps
MAJ [REDACTED], HHC, III Corps

In the event an accused requests that the membership of the court-martial include enlisted persons, the following members are detailed to the special court-martial convened by this order:

MEMBERS

CSM [REDACTED], HHC, III Corps
CSM [REDACTED], 504th MI Bde
SGM [REDACTED], HHC, III Corps
MSG [REDACTED], HHC, 89th MP Bde
MSG [REDACTED], HHC, 3d Sig Bde

VICE

COL [REDACTED], HHC, III Corps
COL [REDACTED], HHC, III Corps
LTC [REDACTED], HHC, III Corps
LTC [REDACTED], HHC Corps
MAJ [REDACTED], HHC, III Corps

Relieved only for trials in which an accused requests that the membership of the court-martial include enlisted persons.

BY COMMAND OF LIEUTENANT GENERAL METZ:

[REDACTED]

DISTRIBUTION:

Each individual indicated (1)
Cdr, III Corps (SJA) (1)

[REDACTED]
MAJ, JA
Chief, Criminal Law Division

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1 MJ: Court is called to order.

2 TC: This court-martial is convened by Court-Martial Convening
3 Order Number 2, Headquarters, III Corps, dated 14 January 2004, as
4 amended by Court-Martial Convening Order Number 6, same headquarters,
5 dated 24 July 2004, copies of which have been furnished the military
6 judge, counsel and the accused and which will be inserted at this
7 point in the record. The charges have been properly referred to this
8 court for trial and were served on the accused on 5 September 2004.

9 The prosecution is ready to proceed in the case of United
10 States versus Specialist Armin J. Cruz.

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

13 COLONEL [REDACTED], MILITARY JUDGE;

14 MAJOR [REDACTED], TRIAL COUNSEL;

15 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;

16 MR. [REDACTED], CIVILIAN, DEFENSE COUNSEL; and

17 CAPTAIN [REDACTED], ASSISTANT DEFENSE COUNSEL.

18 The members are absent.

19 Sergeant First Class [REDACTED] has been detailed
20 reporter for this court and has been previously sworn.

21 All members of the prosecution have been detailed to this
22 court-martial by Captain [REDACTED] Chief of Justice, III

1 Corps. All members of the prosecution are qualified and certified
2 under Article 27(b) and sworn under Article 42(a), Uniform Code of
3 Military Justice. No member of the prosecution has acted in any
4 manner which might tend to disqualify us in this court-martial.

5 MJ: Specialist Cruz, you have the right to be represented by
6 Captain [REDACTED] your detailed military defense counsel. He is
7 provided to you at no expense to you. Do you understand that?

8 ACC: I understand that, sir.

9 MJ: You also have the right to request a different military
10 lawyer to represent you. If the person you request is reasonably
11 available, he or she would be appointed to represent you free of
12 charge. Now, if your request for this other military lawyer were
13 granted, however, you would not have the right to keep the services
14 of your detailed defense counsel because you are entitled only to one
15 military lawyer. Now, you may ask Captain [REDACTED] superiors to let
16 him stay on the case, but your request would not have to be granted.
17 Do you understand that?

18 ACC: Yes, sir.

19 MJ: In addition, you have the right to be represented by a
20 civilian lawyer. A civilian lawyer would have to be provided by you
21 at no expense to the government. If you're represented by a civilian
22 lawyer, you can keep your military lawyer on the case to assist your

1 civilian lawyer. Or, you could excuse your military lawyer and be
2 represented only by your civilian lawyer. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Specialist Cruz, do you understand your rights to counsel?

5 ACC: I understand, sir.

6 MJ: By whom do you wish to be represented?

7 ACC: I wish to be represented by Mr. [REDACTED].

8 MJ: And Captain [REDACTED], also?

9 ACC: Both, yes, sir.

10 MJ: Those two and nobody else?

11 ACC: Yes, sir.

12 MJ: Captain [REDACTED], put your detailing and qualifications on
13 the record.

14 DC: I have been detailed to this court-martial by Lieutenant
15 Colonel [REDACTED]. I'm qualified and certified under Article 27(b)
16 and sworn under Article 42 Alpha, Uniform Code of Military Justice.
17 I have not acted in any manner which might tend to disqualify me in
18 this court-martial.

19 MJ: Mr. [REDACTED] put your qualifications on the record, please.

20 CDC: Yes, Your Honor. I'm an attorney licensed to practice law
21 in the state of Texas. I'm a member in good standing of the state

1 bar. I have not acted in any manner which might tend to disqualify
2 me in this court-martial.

3 [The civilian defense counsel was sworn by the military judge.]

4 MJ: I've been properly certified, sworn, and detailed to this
5 court-martial. Counsel for both sides appear to have the requisite
6 qualifications and all personnel required to be sworn have been
7 sworn.

8 Trial counsel will announce the general nature of the
9 charges.

10 TC: Yes, sir. The general nature of the charges in this case
11 is one specification of conspiracy to maltreat a subordinate and one
12 specification of maltreatment of a subordinate.

13 The charges were preferred by Captain [REDACTED]
14 and forwarded with recommendations as to disposition by Major [REDACTED]
15 [REDACTED] and Colonel [REDACTED]. The Article 32 investigation was
16 waived.

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

19 MJ: As I think both sides are aware of, I am the military judge
20 in the companion cases involving, at least according to the
21 Specification, Corporal [REDACTED], Sergeant [REDACTED], and Specialist
22 [REDACTED]. I have no involvement up to this point with Specialist [REDACTED]

1 and in neither of the other three cases have we done anything in the
2 case except motions. There has been no entering of findings. The
3 trials are pending. And I have tried and accepted a guilty plea in a
4 co-accused's case by the name of Specialist [REDACTED]. I believe
5 both sides are aware of that. I made no findings in that case or
6 credibility determinations. I did enter findings of guilty pursuant
7 to his plea and sentenced him.

8 I'm assuming both sides are aware of my involvement in the
9 companion cases?

10 TC: Yes, sir.

11 CDC: Yes, Your Honor.

12 MJ: Does either side desire to question me further or to
13 challenge me?

14 TC: No, Your Honor.

15 DC: No, sir.

16 MJ: Now, Major [REDACTED], you said the Article 32 in this case was
17 waived, but my charge sheet shows this has been referred to a
18 straight special--or to a BCD special?

19 TC: Yes, sir, that's correct.

20 MJ: Specialist Cruz, you have the right to be tried by a court
21 composed of at least three officer members. Also, if you requested,
22 you would be tried by a court consisting of at least one-third

1 enlisted members, but none of those enlisted members could come from
2 your company and no member of the court would be junior in rank to
3 you. Do you understand what I've said so far?

4 ACC: I understand, sir.

5 MJ: Now, if you're tried by court members, the members will
6 vote by secret, written ballot and two-thirds of the members must
7 agree before you could be found guilty of any offense. If you were
8 found guilty, then two-thirds must also agree in voting on a
9 sentence. Do you understand that?

10 ACC: I understand, sir.

11 MJ: You also have the right to request a trial by military
12 judge alone. And if approved, there will be no court members, and
13 the judge alone will decide whether you are guilty or not guilty, and
14 if found guilty, the judge alone will determine your sentence.

15 Do you understand the difference between trial before
16 members and trial before military judge alone?

17 ACC: Yes, sir.

18 MJ: Do you understand the choices that you have?

19 ACC: Yes, sir.

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

21 ACC: I wish to be tried by judge alone, sir.

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1 MJ: I have before me what's been marked as Appellate Exhibit I,
2 a written request for trial by military judge alone. Specialist
3 Cruz, is that your signature on this document?

4 ACC: It is, sir.

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

7 ACC: I did, sir.

8 MJ: My name was written in there up at the top?

9 ACC: Yes, sir.

10 MJ: Now, is your request a voluntary one? By that, I mean, are
11 you making this request of your own free will?

12 ACC: I'm sorry, sir?

13 MJ: Is your request a voluntary one? By that, I mean, are you
14 making this request of your own free will?

15 ACC: I am making the request, sir.

16 MJ: If I approve your request for trial by me alone, you give
17 up your right to be tried by a court composed of members. Do you
18 understand that?

19 ACC: Yes, sir.

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

21 ACC: Yes, sir.

1 MJ: Defense, I understand there is a pretrial agreement in this
2 case. Is that correct?

3 CDC: Yes, Your Honor.

4 MJ: Is the judge alone request part of the pretrial agreement?

5 DC: Yes, Your Honor.

6 MJ: Specialist Cruz, we'll talk more about your pretrial
7 agreement later in the case, but I want to go over this provision
8 with you now. Your pretrial agreement apparently states that you
9 agree to waive, that is, give up trial by members and select trial by
10 military judge alone. Is that correct?

11 ACC: Yes, sir.

12 MJ: Do you understand the difference between trial before
13 members and trial before military judge alone as I explained them to
14 you earlier?

15 ACC: I understand, sir.

16 MJ: Did you understand these differences between the various
17 types of trial at the time you signed your pretrial agreement?

18 ACC: Yes, sir.

19 MJ: Did you understand you were giving up trial with members
20 when you signed your pretrial agreement?

21 ACC: Did I understand the....

1 MJ: You were giving up trial with members when you signed your
2 pretrial agreement?

3 ACC: Yes, sir.

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

5 ACC: It was, sir.

6 MJ: The request for trial by military judge alone is approved.
7 The court is assembled. The accused will now be arraigned.

8 TC: All parties to the trial have been furnished with a copy of
9 the charges. Does the accused want them read?

10 CDC: The accused waives the reading of the charges.

11 MJ: The reading of the charges may be omitted.

12 **[THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]**

13 **[END OF PAGE]**

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) CRUZ, ARMIN J.		2. SSN	3. GRADE OR RANK SPC	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, APO AE 09342			6. CURRENT SERVICE	
			a. INITIAL DATE 28 SEP 2000	b. TERM 8 years
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$1,726.80	\$100.00 N/A	\$1,826.80 \$1,726.80	None	
			N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE I | VIOLATION OF THE UCMJ, ARTICLE 81

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with Corporal [REDACTED], Staff Sergeant [REDACTED], Specialist [REDACTED], Specialist [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] forced detainees to conduct various physical exercises while the detainees were naked and the said SPC [REDACTED] poured water on the detainees.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, did maltreat several detainees, persons subject to his orders, by forcing naked detainees to crawl on the floor in such a manner as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHSC, 502nd MI Battalion
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 4 SEP 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of September, 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]

Typed Name of Officer

HHD, 504th Military Intelligence Battalion

Organization of Officer

Captain

Grade

Trial Counsel

Official Capacity to Administer Oath

(See R.C.M. 307(b) - must be a commissioned officer)

[REDACTED]

Signature

12.

On 4 September 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

HHSC, 502nd MI Battalion
Organization of Immediate Commander

Captain

Grade

[Redacted]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1350 hours, 4 Sept, 2004 at HQ, 502nd MI BN
Designation of Command or

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

FOR THE¹

[Redacted]
Typed Name of Officer

Commanding
Official Capacity of Officer Signing

Major

Grade

[Redacted]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
Headquarters, III Corps

b. PLACE Victory Base, Iraq
APO AE 09342

c. DATE (YYYYMMDD)
SEP 5 2004

Referred for trial to the special court-martial convened by Court-Martial Convening Order Number 2, dated 14 January 2004, as amended by Court-Martial Convening Order Number 6, dated 24 July 2004, subject to the following instructions: ²

Empowered to adjudge a bad-conduct discharge.

By COMMAND of LIEUTENANT GENERAL METZ:
Command or Order

[Redacted]
Typed Name of Officer

Chief, Paralegal NCO
Official Capacity of Officer Signing

Sergeant Major/E-9

Grade

[Redacted]
Signature

15.

On 05, SEP, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted]
Typed Name of Trial Counsel

Major
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.

1 TC: The charges are signed by Captain [REDACTED], a
2 person subject to the Code as accuser; are properly sworn to before a
3 commissioned officer of the armed forces authorized to administer
4 oaths; and are properly referred to this court for trial by
5 Lieutenant General Thomas F. Metz, the Convening Authority.

6 MJ: Accused and counsel, please rise. [The accused and his
7 counsel stood.]

8 Specialist Armin J. Cruz, I now ask you, how do you plead?
9 Before receiving your plea, however, I advise you that any motions to
10 dismiss or to grant other appropriate relief should be made at this
11 time. Your defense counsel will speak for you.

12 CDC: Your Honor, the defense has no motions.

13 MJ: Please enter a plea.

14 CDC: **To all charges and their specifications: Guilty.**

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

21 ACC: I understand.

1 MJ: A plea of guilty is equivalent to a conviction and is the
2 strongest form of proof known to the law. On your plea alone and
3 without receiving any evidence, this court can find you guilty of the
4 offenses to which you've pled guilty. Your plea will not be accepted
5 unless you realize that by your plea, you admit every act or omission
6 and element of the offenses to which you've pled guilty, and that
7 you're pleading guilty because you actually are, in fact, guilty. If
8 you do not believe that you are guilty, then you should not, for any
9 reason, plead guilty.

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

11 ACC: Yes, sir.

12 MJ: Now by pleading guilty, you give up three important rights,
13 first, the right against self-incrimination; that is, the right to
14 say nothing at all.

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

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

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

22 ACC: No, I do not, sir.

1 MJ: And that's what you have, okay. In this whole document,
2 the photos and the narrative constitute the stipulation of fact.
3 That's your understanding?

4 ACC: I understand that, sir.

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

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

11 ACC: I understand and agree, sir.

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

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

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

20 ACC: I understand, sir.

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

1 [The accused did as directed.]

2 MJ: Have you finished reading the stipulation of fact?

3 ACC: Yes, sir.

4 MJ: Is everything in the stipulation true?

5 ACC: Yes, sir.

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

8 ACC: No, sir.

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

12 ACC: Yes, sir.

13 MJ: Defense counsel, do you have any objection to Prosecution
14 Exhibit 1 for identification?

15 CDC: No, Your Honor.

16 MJ: Prosecution Exhibit 1 for identification is admitted into
17 evidence, subject to my acceptance of the accused's guilty plea.

18 Specialist Cruz, at this time, I'm going to explain to you
19 the elements of the offenses to which you have pled guilty. By
20 "elements," I mean those facts which the government would have to
21 prove beyond a reasonable doubt before you could be found guilty if
22 you had pled not guilty. When I state each element, ask yourself two

1 things, first, is the element true; and second, whether you wish to
2 admit that it's true. After I list the elements for you, be prepared
3 to talk to me about the facts regarding the offenses.

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

5 ACC: Yes, sir.

6 MJ: I'm going to start with Charge II. In the Specification of
7 Charge II, you have pled guilty to maltreatment of subordinates, in
8 violation of Article 93 of the Uniform Code of Military Justice. As
9 alleged and pled, this offense has the following two elements:

10 One, that several detainees were subject to your orders.

11 And two, that at or near Baghdad Central Confinement
12 Facility, Abu Ghraib, Iraq, on or about 25 October 2003, you
13 maltreated the said several detainees by forcing them to crawl on the
14 floor in such a manner as to cause the detainees' genitals to touch
15 the floor and by handcuffing the said detainees to one another.

16 "Subject to the orders of" include persons under the direct
17 or immediate command of you. The maltreatment must be real, although
18 it does not have to be physical. "Maltreated" refers to treatment
19 that when viewed objectively under all the circumstances is abusive
20 or otherwise unwarranted, unjustified and unnecessary for any lawful
21 purpose and that results in physical or mental harm or suffering or

1 reasonably could have caused physical or mental harm or suffering.

2 Assault or improper punishment may constitute this offense.

3 Now, turn back to Charge I. In the Specification of Charge
4 I, you have pled guilty to conspiracy to maltreat subordinates, in
5 violation of Article 81 of the Uniform Code of Military Justice. As
6 alleged and pled, this offense has the following two elements:

7 First, that at or near Baghdad Central Correctional
8 Facility, Abu Ghraib, Iraq, on or about 25 October 2004 [sic], you
9 entered into an agreement with Corporal [REDACTED], Staff
10 Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED]
11 [REDACTED] and others to commit maltreatment of subordinates, an offense
12 under the Uniform Code of Military Justice.

13 And two, that while the agreement continued to exist and
14 while you remained a party to the agreement, Corporal [REDACTED] and
15 Specialist [REDACTED] performed the overt acts alleged, that is, Corporal
16 [REDACTED] forced detainees to conduct various physical exercises while
17 the detainees were naked, and Specialist [REDACTED] poured water on the
18 detainees for the purpose of bringing about the object of the
19 agreement.

20 Now, the elements of the offense to which you are charged
21 with conspiracy to commit, namely, maltreatment of subordinates, or
22 as I told you earlier for Charge I, proof that the offense of

1 maltreatment of subordinates actually occurred is not required.
2 However, to be guilty of conspiracy, the agreement must have included
3 every element of the offense of maltreatment of subordinates.

4 Now, the agreement of the conspiracy does not have to be in
5 any particular form or expressed in formal words. It is sufficient
6 if the minds of the parties reach a common understanding to
7 accomplish the object of the conspiracy, and this may be proved by
8 the conduct of the parties. The agreement does not have to express
9 the part in which the conspiracy is to be carried out or what part
10 each conspirator is to play. The overt act required for this offense
11 does not have to be a criminal act, but it must be a clear indication
12 that the conspiracy is being carried out. The overt act may be done
13 either at the time of or following the agreement. The overt act must
14 clearly be independent of the agreement itself, that is, it must be
15 more than merely the act of entering into the agreement or an act
16 necessary to reach the agreement.

17 Specialist Cruz, do you understand the elements and
18 definitions as I've read them to you and as they apply to each
19 specification?

20 ACC: I understand, sir.

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

1 ACC: I understand, yes, sir.

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

3 ACC: Yes, sir, I don't know how to bring this up, it's the date,
4 sir?

5 MJ: The date?

6 ACC: You said 2004, and it's 2003.

7 MJ: Well, the charge sheet says 2003.

8 ACC: Oh, my apologies, sir.

9 MJ: No, it was my fault, it's my fault. I wrote down 2004, but
10 no, thank you. No, both of these events allegedly occurred on or
11 about 25 October 2003.

12 ACC: Yes, sir.

13 MJ: Do you have any other questions?

14 ACC: No, sir.

15 MJ: Do you believe and admit the elements and definitions taken
16 together correctly describe what you did?

17 ACC: I do, sir.

18 MJ: Specialist Cruz, at this time, I want you to talk about
19 what happened. First of all, how old are you?

20 ACC: I'm 24 now, sir.

21 MJ: And how long have you been in the Army?

22 ACC: In just a couple of weeks, it will be 4 years, sir.

1 MJ: 4 years. Are you a Reserve component soldier?
2 ACC: I am, sir.
3 MJ: Are you National Guard or Reserve?
4 ACC: Reserve, sir.
5 MJ: Reserve, okay. And were you activated for this deployment?
6 ACC: I was, sir.
7 MJ: And when were you activated, approximately?
8 ACC: March 17th, if memory serves, sir.
9 MJ: 2003?
10 ACC: Yes, sir.
11 MJ: And how long were you activated for?
12 ACC: There's some confusion as to that from the unit, sir. The
13 first set of orders we got were for 6 months, but it ended up being
14 for the one-year tour in Iraq, sir.
15 MJ: And then have you been extended beyond that pending this
16 proceeding?
17 ACC: Pardon me, sir?
18 MJ: Have you been extended beyond that pending this proceeding?
19 ACC: Yes, sir.
20 MJ: Defense, is there any issue that the accused is properly on
21 active duty for this trial?
22 CDC: He's properly on active duty, Your Honor.

1 MJ: Currently.

2 CDC: Yes, sir.

3 MJ: There's no issue as to----

4 CDC: There's no issue.

5 MJ: Now let's go back to 23 October of--excuse me, 25 October
6 of 2003, I'll get the dates right. Now, were you working at the
7 prison at Abu Ghraib at the time?

8 ACC: I was, sir.

9 MJ: What was your job?

10 ACC: I was an analyst, a member of a Tiger Team.

11 MJ: A Tiger Team, and your MOS is what?

12 ACC: 96 Bravo, intelligence analyst.

13 MJ: That would be in the rubric of the military intelligence
14 area?

15 ACC: Yes, sir.

16 MJ: And you were there in the course of your job, and again, I
17 don't want you to tell me anything that may be classified. What did
18 you do in the day to day, doing the job in your MOS, I know that
19 there's other things that soldiers do.

20 ACC: Roger, sir. During the time that I was at Abu Ghraib on a
21 Tiger Team before I moved to other sections, the job duties would
22 require finding intelligence gaps that an interrogator may find, and

1 then researching the information to prove or disprove whatever
2 information was extracted in interrogation.

3 MJ: So, somebody else--you weren't an interrogator then.

4 ACC: I was never--I'm not qualified. I didn't go to AIT, sir,
5 as an interrogator, but there were times that I was asked to
6 interrogate based on the security clearance level for the
7 interrogation.

8 MJ: Okay, so your day-to-day activities were to analyze the
9 intelligence other interrogators got, but occasionally because of
10 your clearance, you had to ask detainees or the individuals
11 questions.

12 ACC: Roger, because of the difference between an interrogator's
13 clearance and the analyst's clearance.

14 MJ: Okay, now on the 25th of October of 2003, from looking at
15 the stipulation of fact, this event began, at least your involvement
16 was, when Specialist [REDACTED] woke you up?

17 ACC: Roger, sir.

18 MJ: Now, in your own words, just kind of tell me what happened
19 that day.

20 ACC: I was on my cot. It was late. I was getting ready to rack
21 out, or I was already racked out. Specialist [REDACTED] came to the hooch
22 area that I was staying in.

1 MJ: Now who's Specialist [REDACTED]

2 ACC: He's an interrogator, 97 Echo, assigned to the unit I was
3 assigned to, sir.

4 MJ: Okay, he was an interrogator, but he was also in your
5 military intelligence unit for want of a better term.

6 ACC: Roger, sir.

7 MJ: Okay, go ahead.

8 ACC: And then said that he was--he told me that the MPs were
9 disciplining three detainees that were alleged to have raped a
10 teenager and if I wanted to go see what they were doing. And, I
11 said, "Yes," I walked down there. When I got there, it appeared that
12 they were taking a break. My assumption was that Specialist [REDACTED] was
13 there for the first part because he told me what they were doing, it
14 was--punishing for raping a young man. And then....

15 MJ: When you showed up, there was nothing going on.

16 ACC: It seemed like they were done, yes, sir, a break.

17 MJ: Now, when you said "showed up," where did this occur?

18 ACC: In the hard site, sir.

19 MJ: Now, there's two tiers there?

20 ACC: I always got them confused, sir.

21 MJ: Confused, okay.

1 ACC: I'm going to trust that this is right and it was 1B, but I
2 always had a hard time what that was.

3 MJ: And when you walked into this scene up to the point before
4 you did anything, who did you see there that you can remember?

5 ACC: I remember seeing a female, Army Specialist [REDACTED] a lady,
6 a female soldier who I didn't realize her name until later on in the
7 media and then seeing her picture as PFC [REDACTED]. I might've known
8 her name that day, but I really didn't know her; Sergeant [REDACTED],
9 Corporal [REDACTED] Specialist [REDACTED], Specialist [REDACTED], Specialist
10 [REDACTED]. There was a civilian interpreter there, I can't really
11 pronounce his name correctly.

12 MJ: Was he an Iraqi civilian?

13 ACC: No, no, sir, he worked for, my belief is that he worked for
14 the Titan group. He worked with soldiers.

15 MJ: I mean, but was he American?

16 ACC: Yes, sir. Then there was a soldier there that was in green
17 BDUs. I couldn't tell you his name, sir. That's all that I can
18 remember, sir.

19 MJ: Now, did you see any detainees when you walked up?

20 ACC: Not initially. Soon after I got there, Specialist [REDACTED]
21 pulled them out.

22 MJ: Pulled them out from where?

1 ACC: Cells, sir.

2 MJ: Were they in three separate cells, or all were in one cell,
3 if you can remember?

4 ACC: If memory serves right, sir, I believe two were together
5 and one was brought later, and I don't know from where, sir.

6 MJ: And Specialist [REDACTED] brought them out. Now, you're in a
7 hallway between cells here?

8 ACC: Yes, sir.

9 MJ: And this is a multi-tiered operation, two tiers?

10 ACC: Yes, sir.

11 MJ: And the floor is concrete?

12 ACC: Yes, sir.

13 MJ: So Specialist [REDACTED], you said, brought the three guys out?

14 ACC: Roger, sir.

15 MJ: What were they wearing?

16 ACC: To be honest, I couldn't remember. The typical garb was
17 either, an orange jumpsuit, sometimes sheets.

18 MJ: The first time----

19 ACC: They were wearing something, yes, sir.

20 MJ: The first time you saw the three detainees, they were
21 wearing something.

22 ACC: I believe one of them was just in underwear.

1 MJ: Did they eventually become naked?

2 ACC: Yes, they did, sir.

3 MJ: How did that happen?

4 ACC: By orders of me and other people there, sir.

5 MJ: Now, you walk up to the scene, had you heard anything
6 before this about how the MPs sometimes treated the detainees?

7 ACC: I didn't know how they brought their disciplinary
8 procedures or anything, sir.

9 MJ: So you walked up, and then you said, you among others told
10 them to take off all their clothes?

11 ACC: Yes, sir.

12 MJ: Well, why did you do that?

13 ACC: There's no real good reason why that would happen, sir.

14 MJ: Do you have a real bad reason why it happened, though?
15 Were you just going along with what the other guys were doing?

16 ACC: Perhaps that's a part of it. I think a bigger part is I--I
17 think this is in there that....

18 MJ: Specialist Cruz, don't worry about whether it's in the
19 stipulation of fact or not, just tell me in your own words as best
20 you can remember, okay?

21 ACC: I was under the--I didn't really see when I was looking at
22 the three detainees that were rapists when I was looking at them,

1 sir. It was shortly after a mortar attack, and frankly, I saw three
2 guys that killed two soldiers and injured me, injured my bosses, and
3 that's not a reason.

4 MJ: No, it's an explanation though. You were saying, and the
5 mortar attack that occurred about a month earlier that's in the
6 stipulation of fact of where two soldiers died, including one who
7 apparently you knew?

8 ACC: He was my boss for a while, sir, he was my NCOIC.

9 MJ: And other people were injured. So when you came onto this
10 scene, you saw these three Iraqis, you associated them with the
11 Iraqis who, or similar to the Iraqis who had mortared your friends.
12 Is that what you're telling me?

13 ACC: Yes, sir.

14 MJ: That in your mind, you knew they weren't the same guys, or
15 they could be, but you didn't know.

16 ACC: They could've been, I mean, there's no proof. It wasn't a
17 logical thing.

18 MJ: But did you want then to take out on them what happened to
19 your friends?

20 ACC: I believe that's correct.

21 MJ: Now, when you walked in, you were clear that these people
22 were detainees?

1 ACC: Yes, sir, they were in the prison.

2 MJ: And in your role as, I guess, primarily as a soldier, are
3 they subject to your orders?

4 ACC: They are, sir.

5 MJ: The way the prison runs is that they have to obey what you
6 tell them to do?

7 ACC: Yes, sir.

8 MJ: Okay, so they come out and then you and others tell them to
9 take off their clothes. What happened next?

10 ACC: They were told to do various physical exercises such as the
11 low crawlings. When one of them arched their back up to get up, I
12 put my----

13 MJ: How did they--we're kind of out of sequence here. They
14 came out, you told them...Specialist Cruz, take your time. We've got
15 all the time in the world. They came out, you among others told them
16 to take off their clothes.

17 ACC: Yes, sir.

18 MJ: And then, what happened right after that?

19 ACC: They were handcuffed together, sir, near--I believe the
20 first time was standing up next to the actual bars of the cell.

21 MJ: Okay, now did you handcuff them to each other? Did you
22 help the other ones handcuff----

1 ACC: At this time--I did, yes, I'm not saying I did not, I did,
2 but not at this particular time.

3 MJ: Okay, it starts out, somebody else is handcuffing them
4 together, and they're standing up?

5 ACC: Right.

6 MJ: What happened next?

7 ACC: They were instructed to get on the ground, and that's when
8 I started with the handcuffing.

9 MJ: They got on the ground and then you started handcuffing.

10 ACC: Roger.

11 MJ: Now, were they any threat to you at this time?

12 ACC: No, they were not.

13 MJ: You had a, what, half dozen, at least, soldiers there, if
14 not more? And these guys, were these guys obeying everything you
15 guys told them to do?

16 ACC: They were.

17 MJ: When you told them to take off their clothes, they took off
18 their clothes?

19 ACC: Yes, sir.

20 MJ: When [REDACTED] pulled them out, one female specialist was able
21 to tell all three to come out?

22 ACC: Yes, sir.

1 MJ: So there was no risk of these guys.

2 ACC: They were not a threat to us.

3 MJ: Why did you handcuff them then? I mean, was this part of
4 your...I mean, did you do it to protect yourself or did you do it to
5 mess with the guys, for want of a better term?

6 ACC: I believe it would be the latter, to mess with them, sir.
7 And they clearly weren't any sort of threat to us. They couldn't
8 have inflicted any harm to any of us.

9 MJ: And do you think when you did that, that caused them
10 physical suffering?

11 ACC: Yes, sir.

12 MJ: And in this whole environment, having their clothes taken
13 off and putting them down----

14 ACC: It was humiliating.

15 MJ: What happened next?

16 ACC: At some point right thereafter, Specialist [REDACTED] went to the
17 second floor--before that, actually, there was a time when two of
18 them were handcuffed on the ground. They were both handcuffed on the
19 ground. There was a third detainee off closer to the main exit door.
20 Specialist [REDACTED] was asking that person, "Why did you rape this young
21 man?" And he expressed to him that he did not want him to lie, and
22 to tell him the truth.

1 MJ: Did he say it like you saying it to me, or was it perhaps a
2 lot more forceful?

3 ACC: It was yelling and screaming. He wasn't happy at the time.

4 MJ: Did any of these guys speak English, to your knowledge?

5 ACC: No, sir. The civilian, whose name I can't pronounce
6 correctly----

7 MJ: Was he kind of translating or....

8 ACC: Roger, sir.

9 MJ: Okay, go ahead.

10 ACC: At one point, the first overt act there I saw was
11 Specialist [REDACTED] go grab a detainee by...I don't remember if he was
12 wearing a jumpsuit or just grabbing him by the chest. I remember
13 grabbing this area.

14 MJ: The upper chest area?

15 ACC: Roger, and slapped him and said, "I know you're lying to
16 me. Tell me the truth."

17 MJ: Okay, what happened next?

18 ACC: I think he pulled them over to the two detainees and he
19 walked upstairs.

20 MJ: Okay, was this guy, was he naked, too, then at that point,
21 or had he put his clothes back on?

1 ACC: If he did have clothes on, and I don't think he did, sir.
2 He definitely was instructed to get them off by the time he got to
3 the other two detainees.

4 MJ: So when you say [REDACTED] may have grabbed his shirt, you're
5 just not sure whether he was undressed. Okay, so he goes back
6 and....

7 ACC: Second floor, someone was throwing a Nerf ball, initially.
8 I don't remember who it was. I know I saw Specialist [REDACTED] up there.
9 He took a Nerf ball, football, and threw it down on the detainees.

10 MJ: And threw it down, and what did he do with it?

11 ACC: He just threw it down at the detainees, sir.

12 MJ: Just to hit them?

13 ACC: Roger.

14 MJ: What were the detainees doing at this time?

15 ACC: Nothing, they couldn't do anything, sir. They were
16 helpless, they were handcuffed.

17 MJ: They were handcuffed? Were the handcuffs behind their back
18 or in front, or were they handcuffed together?

19 ACC: They were handcuffed...all of the above, sir.

20 MJ: The Ziploc--cuffs----

21 ACC: Negative, metal----

22 MJ: The metal regular handcuffs.

1 ACC: Right, like the handcuffs used back home in the States, not
2 zip ties, just metal.

3 MJ: What happened next?

4 ACC: One of the senior ranking persons, Sergeant [REDACTED],
5 reorganized the handcuffs. That went on for a little bit. I cannot
6 tell you the logic to that one. Clearly there isn't, it was just a,
7 "I'm gonna handcuff them this way, and then I'm going to handcuff
8 them this way."

9 MJ: Okay.

10 ACC: And then, I went up to the second floor and I grabbed a
11 Nerf football.

12 MJ: Okay.

13 ACC: I threw it, but I also say that I didn't hit the detainees,
14 but it was in the direction.

15 MJ: You were trying to hit them?

16 ACC: Yes, sir.

17 MJ: I'm sorry?

18 ACC: [No verbal response.]

19 MJ: I saw you nod, it's just that the court reporter needs a
20 verbal.

21 What happened after that?

1 ACC: I went downstairs and leaned against the wall and I said,
2 at some point close to this, I noticed that one of the detainees
3 around the handcuffs was starting to bleed. And I looked at Corporal
4 [REDACTED] and I said to him, "Hey, guy, that guy's bleeding. I
5 mean, some of this stuff you're telling me...whatever. This can't be
6 okay. He's bleeding. We've got to loosen those cuffs. We've got to
7 take them off. We've got to put a stop to this now."

8 MJ: Okay.

9 ACC: That went back and forth for a few minutes. It wasn't like
10 just one time, "Hey, he's bleeding," or anything like that.
11 Eventually, he got up, he went over and took the cuffs off. And then
12 pretty shortly thereafter, Specialist [REDACTED] left and I left, and I
13 would assume Specialist [REDACTED] left soon thereafter. I don't know.

14 MJ: During the time you were there, you said you'd...let's kind
15 of back up a little bit. There was a point where you put a foot on
16 them?

17 ACC: Yes, sir.

18 MJ: When was that?

19 ACC: A detainee was low crawling and he tried to stand up, arch
20 up, and I just put my foot down on him.

21 MJ: He was low crawling on all fours?

22 ACC: Negative, like a low crawl.

1 MJ: Okay, like a low crawl, he was dragging himself on his
2 elbows and pulling along, and then he'd try to raise up and you put
3 your foot down, okay.

4 Now, did you tell them to crawl on the floor?

5 ACC: I'm sorry, sir?

6 MJ: Were you part of the group that told them to crawl on the
7 floor?

8 ACC: Yes, sir.

9 MJ: I'm sure that's before you put your foot on him.

10 ACC: Roger, sir.

11 MJ: And that was after the handcuffs had gone on, or before?

12 ACC: Before.

13 MJ: And how did that part of the incident come up?

14 ACC: At the time we just said, you know, "Low crawl."

15 MJ: And were they naked at the time?

16 ACC: In the beginning, no, but eventually, sir, they were.

17 MJ: Were they low crawling naked?

18 ACC: Yes, sir.

19 MJ: And you told them to low crawl?

20 ACC: Yes, sir.

21 MJ: And that was causing their genitals to drag along the
22 floor?

1 ACC: Yes, sir.

2 MJ: Now, when you walked in and you saw [REDACTED] [REDACTED]
3 [REDACTED] and [REDACTED], and there were some others involved in this, also?

4 ACC: Yes, sir.

5 MJ: And I suspect--how long did it take you to realize what was
6 happening here?

7 ACC: Pardon me?

8 MJ: You said you walked in, the detainees were in the cell
9 before [REDACTED] brought them out, right?

10 ACC: Right.

11 MJ: They brought them out, and [REDACTED] had said something to you
12 earlier, "Let's see what the MPs are going to be doing."

13 ACC: Roger.

14 MJ: And then, she brings them out, and then is that when the
15 abuse started when you were there?

16 ACC: Yes, sir.

17 MJ: So at that point, was [REDACTED], [REDACTED] [REDACTED] and [REDACTED]
18 all involved in this?

19 ACC: [REDACTED], [REDACTED], [REDACTED], [REDACTED] yes, sir.

20 MJ: And there were some other people involved, who you don't
21 know their names?

22 ACC: Yes, sir, I'm sorry, I wish I did.

1 MJ: No, no, no, no. The way it's charged, it says those four
2 names and others.

3 ACC: Correct.

4 MJ: So at that point, you realized that they were going to be
5 abusing these detainees?

6 ACC: Yes, sir.

7 MJ: And then did you, by your actions, join in with them in
8 this abuse?

9 ACC: I did, sir.

10 MJ: Now, remember I talked to you about the conspiracy requires
11 an agreement, and that can be in a couple of ways. It could be, for
12 example in this case, you walk in saying, "Hey, I'll go along with
13 you guys, let's abuse the detainees," and that would be a verbal
14 agreement. Do you understand that?

15 ACC: Yes, sir.

16 MJ: Or by your actions, saying nothing at all, that could form
17 an agreement, also.

18 ACC: Yes, sir.

19 MJ: Do you believe your actions indicated your affirmative
20 agreement to go along with what they were about to do to maltreat the
21 detainees?

1 ACC: I think it was clear that it was a silent agreement that
2 was expressed through my actions.

3 MJ: And in your mind, that's what you were doing.

4 ACC: Yes, sir.

5 MJ: Now after you had, by your actions, joined in with this,
6 did [REDACTED] make the detainees do something with physical exercise?

7 ACC: Yes, sir.

8 MJ: What did he make them do?

9 ACC: Made them low crawl and a lot of PT, jumping jacks, roll
10 left or right.

11 MJ: And at the time, they were naked?

12 ACC: Both, and yes, there were times that they were naked, yes,
13 sir.

14 MJ: And [REDACTED], did he do anything with some water?

15 ACC: Yes, sir.

16 MJ: What did he do with water?

17 ACC: He poured water on the detainees, sir.

18 MJ: Why did he do that?

19 ACC: I have no idea, sir.

20 MJ: Let me back up. This was October, correct?

21 ACC: Yes, sir.

22 MJ: Even for Iraq, I suspect it was cool.

1 ACC: Yes, sir.

2 MJ: And was cold water being poured on them?

3 ACC: Yes, sir.

4 MJ: Do you believe that was part of the abusive behavior that
5 these guys were doing?

6 ACC: It was, sir.

7 MJ: And you understand the law of conspiracy, is that once you
8 join the agreement, you're responsible for all the acts?

9 ACC: I do, sir.

10 MJ: Now Specialist Cruz, I need to talk a little more about
11 your training and background. You indicated earlier you're an
12 intelligence analyst?

13 ACC: I am, sir.

14 MJ: In your military job.

15 ACC: Yes, sir.

16 MJ: And as such, have you received training in the Geneva
17 Convention?

18 ACC: I did receive Geneva Convention training at basic training.

19 MJ: And have you ever received any specialized training in
20 interrogation, proper interrogation techniques?

1 ACC: In interrogation techniques, the only thing I really
2 received, sir, was like on the job training, sir, but no like
3 schoolhouse training.

4 MJ: Now, at the time, were these guys, the MPs told you that
5 these guys were suspected of raping a 15-year old boy in another part
6 of the prison, correct?

7 ACC: At the time, it went from being a solid, "They did it," to
8 "We think, and suspect." But at first, it was, "These guys raped a
9 kid."

10 MJ: Were these guys, to your knowledge, have any type of
11 intelligence value?

12 ACC: No, sir.

13 MJ: I mean, were they in the facility to begin with because of
14 that, to your knowledge?

15 ACC: To my knowledge, they were never interrogated for any
16 intelligence value whatsoever, sir.

17 MJ: They were simply there for other type of criminal
18 misconduct.

19 ACC: Most likely if they were in the hard site, sir, it was
20 either there was some kind of criminal misconduct or they were a
21 disciplinary problem, which was held on that side.

22 MJ: Okay.

1 ACC: I mean, just from the talks in the interrogation control
2 room, you kind of have a feeling which guys are of intelligence
3 value, and I never heard anything about these guys having any kind of
4 intelligence value.

5 MJ: And in your position, you would have heard that, right?

6 ACC: I believe I would, sir.

7 MJ: I mean, is it usual if someone is going to be coming--an
8 intelligence detainee or a detainee for which there may be some
9 interrogation, I'm assuming there's some type of interrogation plan
10 developed?

11 ACC: Roger.

12 MJ: And they're identified. Are you involved in that part of
13 the plan?

14 ACC: Roger.

15 MJ: So it's not just, all of a sudden people show up and the
16 MPs start interrogating these guys.

17 ACC: MPs don't run interrogations, sir. I mean, they can help
18 with setting conditions, which is like, where are they going to live,
19 which camp, well, maybe in some cases the MI guys decide which camp.
20 But the interrogation process itself is supposed to be done by
21 interrogators.

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1 MJ: And the MP's role is simply, for want of a better term,
2 care and custody?

3 ACC: And security.

4 MJ: And security of these guys. So your job----

5 ACC: We're not responsible for feeding them, etceteras.

6 MJ: But the MPs aren't responsible for interrogating them.

7 ACC: They do not interrogate.

8 MJ: They do not interrogate. And at your level, you're at the
9 tactical level down there where the rubber meets the road, and the
10 MPs were not there to interrogate, they were simply to provide
11 security and other types of things.

12 ACC: I never once saw an MP do an interrogation.

13 MJ: Never saw them----

14 ACC: Now, I've seen them in the facilities and I've seen them
15 provide security and walk them to and from. But the interrogation
16 process itself is solely done by either civilian or military
17 interrogators.

18 MJ: Through----

19 ACC: MI or----

20 MJ: You're MI, okay. So then would it be fair to say that to
21 your knowledge, there was no direction from any level to tell the MPs
22 to interrogate these guys?

1 ACC: I can't imagine that happening, sir.

2 MJ: You just find that....

3 ACC: I can't imagine anyone telling an MP to go interrogate.

4 MJ: And then what they were doing to these guys, was it any way
5 or shape--do you believe that they were performing something of a
6 military authorized function of interrogating them, or did they just
7 want to take their chance to abuse detainees?

8 ACC: They wanted to take their chance, sir.

9 MJ: Did anyone make any remarks that would indicate to you that
10 that's what they were doing?

11 ACC: Yes, sir.

12 MJ: And what was that?

13 ACC: At one point, when I asked Sergeant [REDACTED], I mean I
14 asked throughout the night, "Are we within our norms here? I mean, I
15 know what my IROE is," that's interrogation rules of engagement.

16 MJ: And your IROE says you don't do this.

17 ACC: Right, sir. You can't touch them except for handcuffing
18 them, sir. "What's your SOP, and what's your ROE," and he said that
19 he was in the green and he was good. And then right after that in
20 the same conversation, Corporal [REDACTED] said that--well, Sergeant
21 [REDACTED] said that, "Well, the thing is, this kind of thing right
22 here doesn't happen back home." He works in a correctional facility

1 somewhere, I don't remember where, but he said he worked in the jail.
2 And then Corporal ██████ said, you know, he loves this shit. Hey,
3 this is what he lives for.

4 MJ: What was he referring to when he said that?

5 ACC: What's happening to the detainees, sir.

6 MJ: Now, I know you're not an MP, but when you walked in and
7 you saw what was happening, did you know it was wrong?

8 ACC: Yes, sir.

9 MJ: Did you know your participation was wrong?

10 ACC: Yes, sir.

11 MJ: Even though you were upset about what happened to your
12 friend, do you think that gave you a legal reason to do this to these
13 detainees?

14 ACC: No reason, sir.

15 MJ: There's an explanation, but I'm just saying....

16 ACC: There's no way to justify that, sir.

17 MJ: And you knew it was wrong at the time, sir.

18 ACC: Yes, sir.

19 MJ: And today you know it's wrong.

20 ACC: I do, sir.

21 MJ: Does either side believe any further inquiry is required?

22 TC: No, Your Honor.

1 CDC: No, Your Honor.

2 MJ: Trial counsel, I would assume that the maximum permissible
3 punishment in this case is the jurisdictional limit of this court?

4 TC: Yes, sir.

5 MJ: Do you agree?

6 CDC: Yes, Your Honor.

7 MJ: Special Cruz, the maximum punishment authorized in this
8 case based solely on your guilty plea is confinement for one year,
9 reduction to the grade of Private E1; forfeiture of two-thirds pay
10 per month for 12 months, a bad-conduct discharge, and a fine may also
11 be adjudged. Do you understand that?

12 ACC: Yes, sir.

13 MJ: Do you also understand that based on your plea alone, this
14 court could sentence you to the maximum punishment of which I just
15 stated?

16 ACC: I do, sir.

17 MJ: There is a pretrial agreement?

18 TC: Yes, sir.

19 MJ: Mark the offer portion as Appellate Exhibit II, the quantum
20 as Appellate Exhibit III. Defense, have copies of both documents in
21 front of the accused.

1 Specialist Cruz, I have before me what's marked as
2 Appellate Exhibit II, which is the offer portion of your pretrial
3 agreement. You should have both this document and also Appellate
4 Exhibit III. Did you sign this pretrial agreement?

5 ACC: The offer to plead guilty, sir?

6 MJ: Yes.

7 ACC: Yes, I did.

8 MJ: Did you read it thoroughly before you signed it?

9 ACC: I read it, sir, yes, sir.

10 MJ: Do you understand the contents of your pretrial agreement?

11 ACC: I understand, sir.

12 MJ: Did anyone force you in any way to enter into this
13 agreement?

14 ACC: No, sir.

15 MJ: Does this agreement contain all the understandings or
16 agreements that you have in this case?

17 ACC: Yes, sir.

18 MJ: Has anyone made any promises to you that are not written
19 into this agreement in an attempt to get you to plead guilty?

20 ACC: No, sir.

1 MJ: Counsel, are Appellate Exhibits II and III the full and
2 complete agreement in this case and are you satisfied there are no
3 other agreements?

4 TC: Yes, sir.

5 CDC: Yes, Your Honor.

6 MJ: Specialist Cruz, basically, a pretrial agreement means you
7 agree to plead guilty, and in return, the convening authority agrees
8 to take some favorable action in your case, usually in the form of
9 limiting a sentence that he will approve. Do you understand that?

10 ACC: Yes, sir.

11 MJ: The law requires that I discuss the agreement with you.
12 Let's go over Appellate Exhibit II together. The first paragraph
13 said you talked it over with your attorneys and you've decided to
14 plead guilty as you have done, pretty straight forward. Do you have
15 question about that provision?

16 ACC: No, sir.

17 MJ: Paragraph 2 says you agree to do as stated in the offer to
18 plead guilty, and in return, the convening authority will take the
19 actions set forth in Appendix I, which I've now labeled as Appellate
20 Exhibit III. In other words, you do what's in Appellate Exhibit II
21 and they do what's in--or he does what's in Appellate Exhibit III.
22 Is that your understanding?

1 ACC: Yes, Your Honor.

2 MJ: Now paragraph 3 has got a lot of parts to it. The first
3 one, 3 Alpha deals with the stipulation of fact. We've discussed
4 that, what it is and what it can be used for. Do you have any
5 question about the stipulation of fact?

6 ACC: No, sir.

7 MJ: Now 3 Bravo deals with your testimony in other cases, in
8 that the convening authority will give you testimonial immunity, and
9 after he does that, you have to cooperate fully with the trial
10 counsel in the investigation and prosecution of Specialist [REDACTED]
11 Sergeant [REDACTED], Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist
12 [REDACTED], Specialist [REDACTED], PFC [REDACTED], and any other soldier or
13 civilian charged based on misconduct at the Baghdad Central
14 Confinement Correctional--excuse me, Confinement Facility at Abu
15 Ghraib. Now, what testimonial immunity means is that the convening
16 authority will sign a piece of paper saying that anything you say in
17 the course of this cooperation cannot be used against you. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: And Mr. [REDACTED] you've explained to him the difference
21 between testimonial and transactional immunity and he understands
22 what he's getting?

1 CDC: Yes, Your Honor.

2 MJ: And it talks about what "cooperate fully" means. It means
3 full disclosure to the trial counsel of all information known by you
4 relating to the treatment or maltreatment of any alleged abuses at
5 the Abu Ghraib facility; the identifications of anybody that you see
6 in digital photos on a compact disk entitled "CPU Exam," in the Abu
7 Criminal Investigation Division file. I'm assuming, Mr. [REDACTED], you
8 know what that refers to, the CPU Exam, do you know what that means?

9 CDC: No, Your Honor.

10 MJ: No, I'm saying, it says a compact disk titled this.

11 CDC: Oh, yes, sir, yes, sir.

12 MJ: I don't know what it means, but I'm assuming you guys know
13 what it means, some disk that CID has.

14 CDC: Yes, sir.

15 MJ: And then testify at any Article 32 investigation, courts-
16 martial and evidentiary hearings relative to the investigation and
17 prosecution of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or anybody
18 else. Do you understand that?

19 ACC: Yes, sir.

20 MJ: Basically, you get the testimonial grant of immunity, then
21 you fully cooperate. Do you understand that?

22 ACC: I understand, sir.

1 MJ: And although it's not written in here, defense, I would
2 assume that it's also necessarily by implication the accused is also
3 subject to be interviewed by the defense counsel for the various
4 people named here.

5 CDC: Yes, Your Honor.

6 MJ: Do you understand that?

7 ACC: Yes, sir.

8 MJ: Three Charlie talks about the judge alone request, we've
9 already discussed that. Do you have any questions about that
10 provision?

11 ACC: No, Your Honor.

12 MJ: Now, there's also a second three Charlie, which I'm
13 assuming is just a typo. And what this says, the government will not
14 be required to physically produce any witness from the United States
15 to testify on your behalf on sentencing. This simply means is that
16 under R.C.M. 1001, you can have witnesses come and testify on your
17 behalf on the sentencing proceeding. And what you're saying, you're
18 not going to require the government to produce them physically from
19 the United States. Do you understand that?

20 ACC: Yes, sir.

21 MJ: But it does not preclude you from presenting that evidence
22 to the court in all sorts of other ways. You can do it by letters,

1 stipulation of expected testimony, telephonic testimony or something
2 else. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Paragraph 4 says you've talked it over with Mr. [REDACTED]s and
5 you're satisfied with his advice. Have you talked it over with Mr.
6 [REDACTED]?

7 ACC: Thoroughly, sir.

8 MJ: And you're satisfied with his advice?

9 ACC: I am, sir.

10 MJ: Five says the government initiated these negotiations, but
11 you're pleading voluntarily and freely after advice of counsel. Is
12 all that true?

13 ACC: Yes, sir.

14 MJ: Paragraph 6 will not appear to apply to this case, since no
15 specification has been amended or consolidated. I assume that's
16 boilerplate, defense, just included--it doesn't apply, true?

17 CDC: Yes, sir.

18 MJ: Basically 6 is something lawyers put in every one of these
19 things, and nine times out of ten, it doesn't apply, and it doesn't
20 apply to your case. It's just in there.

21 Paragraph 7 has got some things that we'll talk about if
22 the agreement--what could cause the agreement to be canceled. If you

1 withdraw from your guilty plea at any time, the agreement is
2 canceled. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Do you want to withdraw from your guilty plea?

5 ACC: No, sir.

6 MJ: If you change your mind, let me know, okay?

7 ACC: Yes, sir.

8 MJ: Secondly, is if you fail to plead guilty as above, or if
9 the stipulation of fact is modified without your consent or the trial
10 counsel. Now, neither one of those things has happened. If either
11 one of those things were to happen, I'll revisit this provision. Do
12 you understand that?

13 ACC: Yes, sir.

14 MJ: And lastly, in 7 Charlie, it says, if the military judge
15 refuses to accept your plea or changes your plea of guilty during the
16 trial. That means if at any point between now and when sentence is
17 announced, if you tell me anything that is inconsistent with the
18 guilty plea, I will have to reopen this inquiry. And if I can't
19 resolve the inconsistency, I will have to enter a plea of not guilty
20 on your behalf. The case returns to the point when I asked, "How do
21 you plead?" and then proceeds from there forward as a not guilty plea
22 case. Do you understand that?

1 ACC: Yes, sir.

2 MJ: So if that were to happen, you'd lose your pretrial
3 agreement and also the stipulation of fact is canceled. Do you
4 understand that?

5 ACC: Yes, sir.

6 MJ: Again, if that were to come up, we'll talk about it in more
7 detail. So far, that's not, but if it does, understand, that's from
8 now until the sentence is actually announced. Do you understand
9 that?

10 ACC: Yes, Your Honor.

11 MJ: And paragraph 8, it says that Appellate Exhibits II and III
12 are the full and complete agreements in the case and there's no other
13 agreements. Is that your understanding, also?

14 ACC: Yes, sir.

15 MJ: There isn't anything else other than what's in this piece
16 of paper, I'm holding Appellate Exhibit II and Appellate Exhibit III?
17 Is that correct?

18 ACC: They're the same thing, right, sir?

19 MJ: No.

20 ACC: Oh, yes, sir.

1 MJ: What you are holding in your hand is the same thing, but
2 you're looking at something else I'm not going to look at for a
3 while.

4 ACC: I understand, that's correct.

5 MJ: But that's the whole agreement.

6 ACC: Yes, sir.

7 MJ: Now, I'm not going to look at Appellate Exhibit III until
8 after I announce the sentence in your case. But I want you to look
9 at it now and read it silently to yourself and then tell me whether
10 that is what you and the convening authority agreed to.

11 CDC: Your Honor, can I approach the trial counsel?

12 MJ: Sure.

13 [CDC retrieved document from TC.]

14 ACC: [Accused read Appellate Exhibit III.] Yes, sir.

15 MJ: Is that what you agreed to?

16 ACC: That is, Your Honor.

17 MJ: Now, Specialist Cruz, you're going to get the benefit of
18 whichever is less, the sentence adjudged by this court or what the
19 convening authority agreed to in that document. If the sentence
20 adjudged by this court is greater than the one provided in the
21 pretrial agreement, the convening authority must reduce the sentence
22 to one no more severe than the one in your pretrial agreement. On

1 the other hand, if the sentence of this court is less than the one in
2 your agreement, the convening authority cannot increase the sentence
3 adjudged. Do you understand that?

4 ACC: Yes, Your Honor.

5 MJ: Now, have you had enough time to discuss this pretrial
6 agreement with your defense counsel? Have you had enough time to
7 talk this over with----

8 ACC: Yes, I have had enough time, yes, sir.

9 MJ: Are you satisfied with his advice concerning this pretrial
10 agreement?

11 ACC: Yes, sir.

12 MJ: Did you enter into the agreement of your own free will?

13 ACC: I did, sir.

14 MJ: Did anyone try to force you to make this pretrial
15 agreement?

16 ACC: No, sir.

17 MJ: Do you have any questions about your pretrial agreement?

18 ACC: No, sir.

19 MJ: Do you fully understand the terms of the pretrial agreement
20 and how they affect your case?

21 ACC: Yes, sir.

1 MJ: Are you pleading guilty not only because you hope to
2 receive a lighter sentence, but also because you are convinced that
3 you are, in fact, guilty?

4 ACC: I am, sir.

5 MJ: Do counsel for both sides agree with the court's
6 interpretation of the pretrial agreement?

7 TC: Yes, sir.

8 CDC: Yes, Your Honor.

9 MJ: Now, Specialist Cruz, I just want to go over one other
10 thing that occurred to me. When you saw the--when you told me
11 earlier about you saw some bleeding on one of the detainee's wrists
12 from the....

13 ACC: The handcuffs, sir?

14 MJ: From the handcuffs. And you said something to the effect
15 is that, "Would you stop doing this?" or something.

16 ACC: I said, "We should loosen them."

17 MJ: You were referring just to the handcuffs?

18 ACC: Yes, sir.

19 MJ: Were you referring to the continuing abuse being done at
20 the time?

21 ACC: I left right after that, sir.

1 MJ: You left right after that. But up to that point, had you
2 said anything to anybody after you joined in with everybody else to
3 indicate you didn't want to participate?

4 ACC: No, sir, I never withdrew.

5 MJ: Until--you left after the handcuff....

6 ACC: Well, that's when I physically....

7 MJ: Physically left, okay.

8 Defense counsel, have you had enough time and opportunity
9 to discuss this case with your client?

10 CDC: Yes, Your Honor.

11 MJ: And Specialist Cruz, have you had enough time and
12 opportunity to discuss your case with your defense counsel?

13 ACC: Yes, sir.

14 MJ: And have you, in fact, consulted fully with your defense
15 counsel and received the full benefit of his advice?

16 ACC: Yes, sir.

17 MJ: Specialist Cruz, I'm going to ask you to speak up a little
18 bit.

19 ACC: I'm sorry, sir.

20 MJ: I think the court reporter may have a tough time hearing
21 you.

22 ACC: Yes, sir.

1 MJ: Are you satisfied that your defense counsel's advice is in
2 your best interest?
3 ACC: Yes, sir.
4 MJ: And are you satisfied with your defense counsel?
5 ACC: I am, sir.
6 MJ: Are you pleading guilty voluntarily and of your own free
7 will?
8 ACC: Yes, sir.
9 MJ: Has anyone made any threat or tried in any way to force you
10 to plead guilty?
11 ACC: No, sir.
12 MJ: Do you have any questions as to the meaning and effect of a
13 plea of guilty?
14 ACC: Do I have any questions?
15 MJ: Do you have any questions about the meaning and effect of a
16 plea of guilty?
17 ACC: No, sir.
18 MJ: Do you fully understand the meaning and effect of a plea of
19 guilty?
20 ACC: I understand, sir.
21 MJ: Do you understand that even though you believe you are
22 guilty, you have the legal and moral right to plead not guilty and to

1 place upon the government the burden of proving your guilt beyond a
2 reasonable doubt?

3 ACC: Yes, sir.

4 MJ: Take one last moment now and consult with your defense
5 counsel and tell me whether you still wish to plead guilty. [Accused
6 conferred with his counsel.]

7 Do you still wish to plead guilty?

8 ACC: I want to plead guilty, sir.

9 MJ: Specialist Cruz, I find your plea of guilty is made
10 voluntarily and with full knowledge of its meaning and effect. I
11 further find that you have knowingly, intelligently and consciously
12 waived your rights against self-incrimination, to a trial of the
13 facts by a court-martial and to be confronted by the witnesses
14 against you. Accordingly, your plea of guilty is provident and is
15 accepted. However, I advise you that you may request to withdraw
16 your guilty plea at any time before your sentence is announced and if
17 you have a good reason for your request, I will grant it. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: Accused and counsel, please rise. [The accused and his
21 counsel stood.]

1 Specialist Armin J. Cruz, in accordance with your plea of
2 guilty, this court finds you:

3 **Of both Charges and their Specifications: Guilty.**

4 Please be seated.

5 Specialist Cruz, we're now entering the sentencing phase of
6 the trial where you have the right to present matters in extenuation
7 and mitigation, that is, matters about the offenses or yourself that
8 you want me to consider in deciding your sentence.

9 In addition to testimony of witnesses and the offering of
10 documentary evidence, you may yourself testify under oath as to these
11 matters or you may remain silent, in which case, I will not draw any
12 adverse inference from your silence.

13 On the other hand, if you desire, you may make an unsworn
14 statement. Because the statement is unsworn, you cannot be cross-
15 examined on it. However, the government may offer evidence to rebut
16 any statement of fact contained in an unsworn statement.

17 An unsworn statement may be made orally, in writing, or
18 both. It may be made by you, by your counsel on your behalf, or by
19 both.

20 Do you understand these rights?

21 ACC: I understand, sir.

1 MJ: Defense counsel, is the personal data on the front page of
2 the charge sheet correct?

3 CDC: Yes, Your Honor.

4 MJ: Has the accused been punished in any way prior to trial
5 that would be illegal punishment under Article 13?

6 CDC: No, Your Honor.

7 MJ: Has he been under any form of pretrial restraint, other
8 than the normal limitation on soldiers' movements in this theater?

9 CDC: No, Your Honor.

10 MJ: Trial counsel, do you have any documentary evidence to
11 present on sentencing?

12 TC: Yes, sir. The government would move to admit the enlisted
13 record brief of the accused.

14 MJ: The ERB of the accused has been marked as Prosecution
15 Exhibit 2 for identification.

16 Defense counsel, have you had an opportunity to review this
17 document?

18 CDC: Yes, Your Honor.

19 MJ: There are some pen and ink corrections you've made?

20 CDC: I'm sorry, sir?

21 MJ: There's been some pen and ink corrections?

22 CDC: Yes, Your Honor.

REDACTED
COPY

003003

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VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

CRUZ, Armin J.
(NAME: Last, First Middle Initial)
HHS, 502d MI Bn
504th MI Bde
(unit/Command Name)

(Social Security Number)

Specialist
(Rank)

US Army
(Branch of Service)

Victory Base, Iraq
(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

11 September 2004
(Date or Dates of Trial)

COMPANION CASES:

[REDACTED]

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00300

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

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

1 MJ: Trial counsel, do you have any objection to the pen and ink
2 corrections?

3 TC: No, Your Honor.

4 MJ: Defense Exhibit, do you have any objection to Prosecution
5 Exhibit 2 for identification with the pen and ink corrections?

6 CDC: No, Your Honor.

7 MJ: Prosecution Exhibit 2 for identification is admitted.
8 Government?

9 TC: The government has nothing further, Your Honor.

10 MJ: Defense, do you have any documentary evidence to present on
11 sentencing?

12 CDC: Yes, Your Honor, I've previously handed those to the court
13 reporter.

14 MJ: Defense Exhibit Alpha, Defense Exhibit Bravo and Defense
15 Exhibit Charlie, any objection to these documents?

16 TC: No, Your Honor.

17 MJ: Before I admit them, I want a chance to review them. Are
18 the originals in Defense Exhibit Charlie, are these like computer-
19 generated stuff?

20 CDC: I'm sorry, sir, I'm not sure....

21 MJ: Well, I'm saying, Charlie is the one with the pictures in
22 it. Are there original photos that the accused would want back----

1 CDC: No, those are photocopies, Your Honor.

2 MJ: These are digital colored copies.

3 CDC: Those can go up with the record.

4 MJ: The court will be in recess while I read the documents.

5 [Court recessed at 1031, 11 September 2004, and reconvened at 1111,
6 11 September 2004.]

7 MJ: Court is called to order. All parties are again present
8 that were present when the court recessed.

9 Trial counsel, there's no objections to Defense Exhibits
10 Alpha through Charlie?

11 TC: No objection, Your Honor.

12 MJ: They are admitted.

13 Defense?

14 CDC: Your Honor, before I forget, I'd like to go ahead and offer
15 Defendant's Exhibit D for identification.

16 MJ: And that's a CD?

17 CDC: Yes, Your Honor.

18 MJ: A DVD?

19 CDC: Yes, Your Honor.

20 MJ: Do you want to play it?

1 CDC: It doesn't have to be right now. I was just going to offer
2 it and get it into evidence. We can play it right now, if you'd like
3 to do that.

4 MJ: Let's play it right now.

5 CDC: Okay.

6 TC: Your Honor, just for clarification sake, we're going to
7 play the video, VCR version of that same information. So I'm not
8 sure if you want to enter the CD, as well. Again, just to clarify
9 that.

10 MJ: We're using different technology here there, Major [REDACTED]?

11 TC: Yes, sir. There is a DVD and a VCR copy of the same
12 footage.

13 MJ: And you have VCR capability?

14 TC: Yes, sir, and the VCR is ready to go.

15 MJ: We'll play the VCR. Is it okay if we use the VCR as the
16 exhibit?

17 CDC: Yes, Your Honor.

18 MJ: Is that in your hand the exact same thing that's on the
19 VCR?

20 CDC: Yes, Your Honor.

21 MJ: Could you give that to the court reporter for insertion n
22 the record of trial, and it's easier to make copies off of that than

1 it is off the other one. It's the same. The exhibit itself will be
2 the videotape.

3 TC: Yes, sir.

4 MJ: Any objection to Defense Exhibit Delta?

5 TC: No, Your Honor.

6 MJ: Defense Exhibit Delta is admitted.

7 TC: Play the video. [Defense Exhibit D was played in open
8 court. The following is a transcript of the audio.]

9 AUDIO: The Honorable Judge [REDACTED] We thank you for the
10 opportunity to address the court regarding the sentencing of our son,
11 Specialist Armin John Cruz. We appreciate you taking the time to
12 hear us. And so out of respect of your time, we are reading a
13 prepared statement as a way to keep on track. Our purpose is merely
14 to share with you our full and substantial experience of our son's
15 character as his parents. Please consider the following about our
16 son during your deliberations.

17 Armin volunteered to serve his country, postponing his
18 education to do so. He could have chosen to complete his education
19 first, joining the Army through ROTC. However, he chose to join as
20 an enlisted soldier. He is a young man who has put his country's
21 interests in winning the war on terror before his career and his
22 interest of completing his bachelor's degree. He has done this for

1 his own deeply personal reasons not complaining or expecting special
2 treatment for his sacrifices, but also because he's a first
3 generation American and born and raised in an Army family.

4 Armin has served admirably, earning a Purple Heart and a Bronze
5 Star. He was wounded in a mortar attack and despite his heroic
6 efforts, could not save the life of his best friend and mentor in
7 Iraq. He has never refused a request that entailed putting his own
8 interests behind those of someone else. On the whole, he has been a
9 selfless, compassionate, bright, dedicated and loyal team player for
10 the Army. Please do not lose sight of the unique character of our
11 son or his service record by lumping him in with other soldiers
12 accused of wrongdoing. Contrary to some of these other soldiers,
13 Armin did not enjoy his participation in the incident. Armin has
14 taken responsibility for his mistakes. He is not passing the buck.
15 We know that Armin views this as a personal failing and regrets not
16 having the courage or conviction in the moment he chose to
17 participate in the abuse of detainees. Even though we know that our
18 son was suffering from the lingering effects of stress from combat
19 trauma and enormous pressure from being overworked in his MOS, he
20 still blames only himself for failing to follow his personal moral
21 code and Army training. Even though we know that had the proper
22 support system been made available to our son to help him deal with

1 his traumatic combat experiences, he would not now be in this
2 position. Our son, nevertheless, takes full and complete
3 responsibility for his choices without pointing fingers or lamenting
4 if only....

5 Armin's attorney, [REDACTED], has pointed out many
6 considerations for your deliberation on sentencing. We understand
7 the Army's reasoning for punishing Armin, but the Army will not
8 punish Armin more than he is punishing himself. It is our further
9 wish and prayer that you realize that Armin's choice to participate
10 in the abuse of detainees does not define his character, but only
11 contrasts it. He's a good man and a good soldier who was put under
12 enormous pressure and made a bad decision. But he has learned from
13 his experience and has vowed to overcome the poisonous effects it has
14 had on his spirit and he will overcome it.

15 What happened to the detainees at Abu Ghraib is a tragedy,
16 but we hope you see that to saddle our son with a bad-conduct
17 discharge for the rest of his life is a further tragedy. Not only do
18 we know that our son is a good man, but we have heard the remorse in
19 his voice over our countless conversations with him since this
20 incident. We respectfully ask that you give due weight to our
21 observations and we thank you for hearing our plea.

22 MJ: Defense?

1 CDC: Yes, Your Honor. We call Sergeant First Class [REDACTED].
2 Sergeant First Class [REDACTED], U.S. Army, was called as a witness
3 for the defense, was sworn, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the trial counsel [Major [REDACTED]]:

6 Q. If you would, please state your full name.

7 A. [REDACTED].

8 Q. And your unit of assignment?

9 A. HHC, 504th MI Brigade.

10 Questions by the defense [Mr. Karns]:

11 Q. Sergeant [REDACTED] if I ask you any questions you don't know the
12 answer to, just let me know, or if you don't understand the question,
13 just let me know and I'll try and rephrase it for you.

14 A. Yes, sir.

15 Q. What's your current unit?

16 A. HHC, 504th MI Brigade.

17 Q. And what's your current duty assignment?

18 A. I'm the [REDACTED]

19 Q. What's your MOS?

20 A. I'm a [REDACTED]

21 Q. And how long have you been in the Army?

22 A. 17 1/2 years.

1 Q. Have you ever been deployed before?

2 A. Yes.

3 Q. How many times?

4 A. Six.

5 Q. And did you say whether or not you're active or Reserve?

6 A. I'm active duty.

7 Q. And do you know Specialist Cruz?

8 A. Yes.

9 Q. How did you come to meet him?

10 A. He was transferred to our unit, I think, in April, and

11 that's how I met him.

12 Q. And you've come into contact with him how often since that

13 time?

14 A. Pretty much on a daily basis up until about a month ago, a

15 month and a half when he was transferred to one of the battalions,

16 but I see him now about four or five times a week.

17 Q. How is that possible?

18 A. Well, he was with HHD, he worked in the building that my

19 office is in, and then when he was with the other battalion, he works

20 in a different office, but his duties, his current duties, I see him

21 every day, or I see him four to five times a week.

22 Q. Okay, basically, what are his current duties?

1 A. He's the MWR monitor, and so I see him like in the barracks
2 or up at MWR all the time.

3 Q. What was your initial impression when you first met him?

4 A. My initial impression was, just a soldier. I didn't really
5 try to form an opinion.

6 Q. What is your opinion of him now?

7 A. As I got----

8 TC: I'd object. I just want clarification as to what type of
9 opinion, what----

10 MJ: Mr. ████████ you need to focus the question, please.

11 CDC: I'll narrow it down.

12 Q. Did you have an opportunity to observe his duties?

13 A. Yes.

14 Q. How do you think he performed his duties?

15 A. He did all the tasks that he would give him in an
16 outstanding fashion. Everything was done on time. He was on time.
17 He was prompt in all the duties that he accomplished.

18 Q. Did you ever see him take initiative on anything?

19 A. Pretty much everything he did he took some kind of
20 initiative to either make sure it got done or improve the way,
21 improve on what we expected. Like we had a lot of--in our building,
22 there was a lot of maintenance issues, so we would put work orders

1 in, but they were kind of slowly getting done. So, certain tasks, I
2 personally told him to go and put the work orders in, and all of a
3 sudden, things started getting done. He built a rapport down there
4 with people who are responsible for fixing some of the stuff and came
5 up with all kinds of ideas to get things done within our building.

6 Q. So do you think he made a difference in that regard, as far
7 as getting things accomplished?

8 A. Yes. On some of the stuff, we had put repeated work orders
9 in for them, and for some reason, they didn't get done. He started
10 to get things done.

11 Q. Why did you choose Specialist Cruz to help you with that?

12 A. I think the soldiers we had to choose from that worked in
13 the MI, I thought he was more responsible.

14 Q. What was his unit's mission? What was Specialist Cruz's
15 unit's mission at that point?

16 A. Well, HHD was the Headquarters and Headquarters Detachment
17 for the brigade, so we housed all of the staff and performed all the
18 staff functions for the brigade.

19 Q. How would you describe his level of dedication to the
20 mission?

21 A. I thought he was pretty dedicated. He never--he was always
22 at work on time and he was always, you know, he was upbeat about

1 everything. He never really complained about some of the stuff that
2 some of the other soldiers were complaining about.

3 Q. How well did he get along with other soldiers?

4 A. He got along pretty well with all the other soldiers. Even
5 one of the soldiers who, they were in the same rank but she was in
6 charge of him, she's not the--she's lacking on some of her leadership
7 skills, he never even argued with her. He would just tell me about
8 some of the issues they had and I would go fix them, or either the
9 first sergeant would go fix them.

10 Q. Was he receptive to learning new things? Did you all talk
11 about those sorts of matters as far as--well, I guess, you've shared
12 some things with me about, just kind of having an NCO-to-soldier
13 talk.

14 A. Right, I would talk with him as I started to learn, you
15 know, more about what was going on. I talked to him about just
16 keeping his head up, and I talked to him as an NCO, a senior NCO
17 about, especially because he had been over here so long, about some
18 of the things that I had went through when I was deployed and I had
19 to be extended and things like that, but just to keep his head up and
20 to stay motivated and to just keep doing the right things that he was
21 doing.

22 Q. And he did that.

1 A. Yes.

2 Q. How does he treat his superiors?

3 A. I think he has an overwhelming respect for his superiors.
4 I think that, in my opinion, just the time he was in HHD, I think
5 he's kind of a reflection of his superiors. We've got some pretty
6 good leaders, the first sergeant and company commander, at the time,
7 the brigade commander and sergeant major, and then I was there. He
8 did--he looked for approval from his superiors, and I would give him,
9 you know, I would tell him, "Hey, you did a good job here." It was
10 almost like, to me, it was like giving a kid a toy at Christmas. It
11 just made him feel good knowing that his superiors said, you know,
12 good things about him.

13 Q. How was his military bearing?

14 A. Outstanding, I mean, he was always at parade rest when he
15 talked to NCOs. He always addressed people properly. He had pretty
16 good military bearing.

17 Q. How was his overall attitude?

18 A. I think he has a positive attitude, I mean, you wouldn't
19 think that he was even going through anything because he was always
20 positive. He would sit and talk about, not only would we talk about
21 military things, but sometimes talk about his civilian life and some
22 of the things he did as far as in civilian life, and how he was

1 looking forward to getting back and doing some of the things with
2 some of the social organizations that he was with.

3 Q. Have you formed an opinion as to his rehabilitative
4 potential?

5 A. I don't know if I've formed an opinion, I try not to. I
6 mean, I'm not sure.

7 Q. Would you be willing to, let me ask this, would you be
8 willing to serve with him again?

9 A. If I had a choice, I would definitely serve with him. He
10 would be one of the soldiers that I would definitely choose to work
11 with me because I think he shows initiative. I think he's
12 hardworking. I think he works hard for his leadership. I think with
13 good leadership, he's an outstanding soldier.

14 CDC: No further questions, thank you, Sergeant.

15 MJ: Trial counsel, do you have any questions of Sergeant [REDACTED]

16 TC: No, Your Honor.

17 [The witness was excused and remained in the spectator's gallery.]

18 CDC: Your Honor, we'd like to call Captain [REDACTED]
19 please.

20 [END OF PAGE.]

1 Captain [REDACTED] U.S. Army, was called as a witness for the
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major [REDACTED]]:

5 Q. State your full name.

6 A. [REDACTED].

7 Q. Your unit of assignment, please.

8 A. [REDACTED], 502d MI

9 Battalion.

10 Questions by the defense [Mr. Karns]:

11 Q. How long have you been in the Army?

12 A. 14 years.

13 Q. Is that active duty time?

14 A. Yes, that's active duty time.

15 Q. Prior enlistment.

16 A. Prior enlisted.

17 Q. Excuse me, prior enlisted. Have you ever been deployed
18 before?

19 A. Yes.

20 Q. How many times?

21 A. Three.

22 Q. And do you know Specialist Cruz?

1 A. I do.

2 Q. How do you know him?

3 A. He came to our unit. We hold formation every day at
4 Headquarters Company. It's at 8:30 in the morning, except for
5 Mondays, we have formation at 8 o'clock. And every morning, I see my
6 soldiers every single day, and on one particular day, I noticed that
7 Specialist Cruz arrived at [REDACTED] [REDACTED]
8 [REDACTED] and he showed up and I spoke to [REDACTED]
9 [REDACTED] about, you know, who was this soldier? And he briefly
10 said he'd talk to me offline [REDACTED] which he then went
11 in to say that he was roughly on holdover. He didn't really know the
12 full gist of what the holdover was entailing. And at that point, we
13 found out later that he was going to be assigned to [REDACTED], that he
14 originally came from the HHD, 504th MI Brigade, and that he was in
15 part of [REDACTED]

16 Q. What was your initial impression of him?

17 A. It really wasn't any impression. I look at [REDACTED]
18 equally, and I gave him the courtesy. I went up to him, introduced
19 myself, asked him if he needed anything, you know, where was he going
20 to be staying, where was he staying currently at the time. And then
21 I spoke to [REDACTED] afterwards and said you know, "Let me
22 know if there's any problems, if he needs anything at all." And at

1 the time, we still didn't know. I personally didn't know anything
2 about what was going on.

3 Q. What duties did you assign him?

4 A. Initially, my [REDACTED] said that he was going to the
5 command sergeant major for the 502d MI and they were looking at
6 putting him in some form of position working with 51 Fox; 51 Fox is
7 the building where all the soldiers are mainly housed, a three-story
8 building. And we were trying to create a better quality of life for
9 the soldiers there at 51 Fox, because when we arrived there in
10 January, it was pretty much a gutted out building. It was in
11 shambles, and it needed a lot of attention.

12 Q. Did Specialist Cruz help you in that regard?

13 A. He did. We decided that we were going to go out and
14 purchase some equipment for the soldiers. Part of it was, in this
15 technology today, soldiers rely on email. It's a great thing for
16 soldiers to have. Also, being over here when we first arrived,
17 phones were a hard thing to come by. There was one little trailer.
18 They went up and they purchased some satellite technology, dishes and
19 stuff, and along with my soldiers, the electronic personnel, they put
20 this whole system together along with my sister battalion personnel,
21 and they put that MWR together. And it was isolated in this one room
22 inside 51 Fox, and we primarily did that because we didn't want the

1 soldiers going outside if they didn't have to, everything could just
2 stay there, the fact of--mortar attacks and stuff that was going on
3 when we first arrived.

4 Q. Did you have an opportunity to either observe him perform
5 his duties or to see his work?

6 A. Correct on both. I've seen him work and I've seen what
7 he's done. When they first started out, they initially had the MWR
8 in a really small area, and they moved it to another mezzanine on the
9 second floor to make it much bigger and to give the soldiers more
10 options. When I say "options," we had at one end the computers and
11 the phones, and then they took and they put in a bunch of electronic
12 equipment, amplifiers, speakers and a Proxima so that the soldiers
13 would be able to watch DVDs or VHS movies, they could put them up on
14 the wall and they didn't need a screen.

15 Q. How would you describe his execution of those duties?

16 A. No problems whatsoever.

17 Q. Is it more than just no problems, I mean, did he do it
18 well?

19 A. He did an excellent job. I've never had any single
20 problems since Specialist Cruz has been in my unit. He knows from
21 being in [REDACTED], along with any of my NCOs, [REDACTED] is very well

1 disciplined, and he's had no problems whatsoever, you know, came
2 right into the unit and became one of us.

3 Q. Is he a soldier that just does what he's told to do, or
4 does he take initiative?

5 A. There are times when he has actually gone above what
6 [REDACTED] has asked him to do, and he's come back and shown the
7 [REDACTED] the stuff that he did. Case in point, that the
8 electronics and the Proximas, he helped out one of my fellow soldiers
9 that I had working up at MWR, was actually one of my cooks, because
10 of the fact when we deployed over here, we weren't really sure what
11 our mission was for our cooks, and we found out there was a lot of
12 contractual bids with different companies that were running the food
13 service. So, we put a couple of our cooks into different areas to
14 help out, to pick up the slack, and one of them was Specialist [REDACTED]
15 and he worked with Specialist Cruz on a daily basis.

16 Q. How well does Specialist Cruz get along with other soldiers
17 in the unit?

18 A. His relationship, what I've seen, what I've observed has
19 been, there's been no issues at all. He's gotten along with
20 everybody in the unit. My unit has taken him in. When he first came
21 to the unit because, again, I look at my unit as every soldier in my

1 [REDACTED] is my family. I'm a little older than most, and I treat it
2 that way. I treat every one of my soldiers as a part of my family.

3 Q. How does Specialist Cruz treat his superiors?

4 A. With dignity and respect; it's never unwavering. Whenever
5 I've approached him, he's popped a salute right away. It wasn't
6 something that was like, you know, very slow motion or anything like
7 that. It was very popped, "Good morning, sir. Good afternoon, sir."
8 It was always a greeting, very respectful.

9 Q. Is your experience that other soldiers don't do that?

10 A. I've had soldiers that are, I can't characterize on their
11 reasoning or why they were doing it, but I mean, I've had soldiers,
12 they could have had a bad day or whatever and they were, "Hey, sir,
13 what's going on?" that sort of stuff like that, but he never
14 exhibited anything like that.

15 Q. So, how would you describe his military bearing overall?

16 A. In the past that he's been under [REDACTED] excellent.

17 Q. His attitude?

18 A. Professional.

19 Q. And have you formed an opinion as to his rehabilitative
20 potential?

21 A. I think that, in light of what's transpired, I think that
22 he can be rehabilitated, I do.

1 MJ: That's all you're permitted to say. Go ahead.

2 Q. Would you be willing to serve with him again?

3 TC: Your Honor, we'd object to that question. It's an Ohrt
4 violation.

5 MJ: The objection is sustained.

6 Q. You are the officer who initially [REDACTED] in this
7 case?

8 A. Correct, I am.

9 Q. And you continue to put Specialist Cruz or keep him in
10 the...he's allowed to have his weapon and continued to serve in your
11 unit, sometimes unsupervised?

12 A. That is correct, because I didn't see the need for taking
13 away the part--for self defense measures, and he never exhibited any
14 type of unprofessionalism that would warrant us to take away his
15 weapon.

16 Q. So you would be willing to be in the foxhole with him?

17 TC: Objection, the same....

18 MJ: Sustained.

19 CDC: No further questions, Your Honor.

20 MJ: Trial counsel, any questions?

21 TC: No, Your Honor.

22 [The witness was excused and remained in the spectator's gallery.]

1 CDC: Your Honor, we'd like to call Sergeant First Class [REDACTED]
2 [REDACTED]
3 Sergeant First Class [REDACTED], U.S. Army, was called as a
4 witness for the defense, was sworn, and testified as follows:

5 DIRECT EXAMINATION

6 Questions by the trial counsel [Major [REDACTED]]:

7 Q. Please state your full name.

8 A. [REDACTED].

9 Q. Unit of assignment?

10 A. HHS, 502d MI.

11 Questions by the defense [Mr. [REDACTED]]:

12 Q. What's your current MOS?

13 A. My current MOS is 33 Whiskey, electronic warfare repair,
14 sir.

15 Q. How long have you been in the Army?

16 A. I've been in 19 years.

17 Q. And that's active duty time?

18 A. All active duty time.

19 Q. And how many times have you been deployed?

20 A. This is my second deployment.

21 Q. Do you know Specialist Cruz?

22 A. Yes, I do, sir.

1 Q. How do you know him?

2 A. I know Specialist Cruz from when he was assigned to our
3 unit in June. Right after he got assigned to the unit, I noticed him
4 out in the formation area, and I asked him who his platoon sergeant
5 was, and he said he hadn't really been assigned to a platoon at that
6 time. Based on my first impression of him, I told him, "Hey, I tell
7 you what, we'll put you in our platoon. I'll assign you a squad
8 leader who will look out for you, and we'll take care of you."

9 Q. So you've known him since June?

10 A. Roger, sir.

11 Q. Have you had an opportunity to observe his duties?

12 A. He works out--in my platoon, he works for us in the MWR
13 room, so I observe his duties every day.

14 Q. How would you describe his execution of those duties?

15 A. He's always executed his duties very professionally, always
16 done them to standard. Usually, he always tries to improve things
17 rather than just go with what's already happening.

18 Q. How receptive is he to you as far as any suggestions that
19 you would make to him?

20 A. He's been very receptive. Anything I've ever asked
21 Specialist Cruz to do, he's been motivated to do, never gave me any
22 issues, always willing to help out.

1 Q. How well does he get along with the other soldiers in the
2 unit?

3 A. I think he gets along excellent with the other soldiers.
4 He's developed a lot of friendships. Once he came into our platoon,
5 he immediately made himself a part of the platoon by showing he has
6 teamwork. He was always motivated to help everybody out. He has a
7 very generous personality, so any time he saw anybody performing any
8 type of detail, even though he might not have been tasked to be
9 involved, he'd always jump in to help out and give somebody a helping
10 hand.

11 Q. You mentioned something, we had talked before and you
12 mentioned something before about him packing. Can you describe that
13 for the court, please?

14 A. Sure. Before the appearance in court, we were to inventory
15 all of Specialist Cruz's gear. This is the second time I've been
16 involved in a court-martial. The other soldiers, I had to inventory
17 their gear, once we went into their area, it was usually trashed, the
18 soldiers were not prepared. Basically, we were boxing up garbage.
19 They were like, "Oh, I want to keep that, Sergeant." So we'd have to
20 pack all their junk up, and it would be totally a waste of time.
21 We'd spend 3 or 4 hours doing it.

1 When we went to do Specialist Cruz's room the other night,
2 he already had all his gear laid out dress right dress. He had got
3 down to the detail where he had his underwear, t-shirt and socks
4 rolled within one bundle so it was just like, it took us about 30
5 minutes to inventory all his gear.

6 Q. How does that make you feel as a platoon sergeant?

7 A. That makes me feel excellent. I didn't give him that
8 direction. I said, "Hey, we're going to come and inspect at this
9 time," and I told him what we'd be looking for. And once again, he
10 excelled above the standard. He took the initiative. He knew what
11 we'd be looking for. He's been in the military a few years. He just
12 went way above what I expected.

13 Q. How would you describe his military bearing?

14 A. It's been excellent ever since I've known him. Like I
15 said, the first time I met him, the first thing he did was pop to
16 parade rest. He addressed me as "Sergeant" every time he talks to
17 me. His bearing has been better than a lot of soldiers that are on
18 active duty. I know he's a Reservist. I know the situation he's
19 been in. He's never shown any disrespect toward anybody.

20 Q. How has his overall attitude been?

21 A. Once again, his attitude has been excellent. When I first
22 met him, I didn't know what the circumstances he was held over for.

1 He just seemed to be held over on some type of admin reason. He was
2 always cheerful. He always had good things to say about everybody.
3 If somebody was down, he was always one of the first guys to step in
4 and try to lighten the mood up and make people feel better. His
5 attitude toward his duties has been excellent. He's never questioned
6 anything we've asked him to do. As a matter of fact, his duties in
7 the MWR room were actually considered kind of an easier job. He's
8 inside all day. He's got computer access, TV access. But instead of
9 just riding those duties and just getting over, he comes out and he
10 volunteers to help us load connexes. He volunteers to be on escort
11 duty out in the sun all day. Anything we've ever needed, he's always
12 stepped up.

13 Q. Have you formed an opinion as to his rehabilitative
14 potential?

15 A. Yes, I have. I know a lot of his future goals are to go
16 back and get his master's degree and eventually become a teacher.
17 He's also--he still wants to remain in the military, and I think he'd
18 still make an excellent soldier. I don't think he's shown anything
19 other than being an excellent soldier. So I think he is fully
20 rehabilitatable.

21 CDC: Thank you, sergeant. Nothing further.

22 MJ: Trial counsel, anything?

1 TC: No questions, sir.

2 [The witness was excused and remained in the spectator's gallery.]

3 CDC: Your Honor, we don't have any more live witnesses, just
4 telephonic.

5 MJ: Are they ready to go?

6 TC: Yes, sir, I believe so.

7 **First Sergeant [REDACTED], U.S. Army, was called as a witness for**
8 **the defense, was sworn, and testified telephonically as follows:**

9 **DIRECT EXAMINATION**

10 **Questions by the trial counsel [Major [REDACTED]]:**

11 Q. First Sergeant, if you'd please state your full name.

12 A. [REDACTED]

13 Q. And your unit of assignment?

14 A. HHSC, 502d MI Battalion.

15 **Questions by the defense [Mr. [REDACTED]]:**

16 Q. [REDACTED], are you there?

17 A. Yes, sir, I'm here.

18 Q. This is [REDACTED], we've spoken before.

19 A. Yes, sir.

20 Q. Now, you're presently in Washington?

21 A. That's correct, I'm in Tacoma.

1 Q. And you're otherwise, when you're present here in Iraq,
2 you're Specialist Cruz's [REDACTED]?

3 A. That is correct.

4 Q. How long have you been in the Army?

5 A. I've been in the Army approximately 18 years.

6 Q. And is that active duty time?

7 A. That is active duty time.

8 Q. How many times have you been deployed?

9 A. I have been deployed for [inaudible].

10 Q. Now, what were Specialist Cruz's duties in your unit?

11 A. [Inaudible]

12 Q. Did you have an opportunity to observe him perform his
13 duties or to see his work?

14 A. Yes, I did observe him on a regular basis.

15 Q. And what was your observation of his duties?

16 A. [Inaudible] ...I never had to go back and check and see
17 what he was... [inaudible] ...very responsible, and then any time
18 [inaudible].

19 Q. Did you ever see him take initiative?

20 A. [Inaudible]

21 Q. How was his attitude?

22 A. I never had problems with his attitude.

1 Q. Did he get along well with other soldiers in the unit?
2 A. Yes, he always got along well with soldiers in the unit.
3 Q. Did you feel he was dedicated to the unit's mission?
4 A. [Inaudible]
5 Q. If he weren't pending UCMJ action, would you be willing to
6 assign him to other duties?
7 TC: Your Honor, object.
8 MJ: The objection is overruled.
9 WIT: [Inaudible]
10 TC: Your Honor, I just want to make sure that the court
11 reporter can hear the audio.
12 MJ: [To the reporter] Can you hear it okay?
13 REPT: [Negative response.]
14 MJ: Ask him to speak a little louder.
15 Q. First Sergeant, can you speak a little louder, please?
16 We're having a little trouble hearing you.
17 A. Yes, I can.
18 Q. Thank you. How is Specialist Cruz's military bearing?
19 A. Each time I spoke with Specialist Cruz, [inaudible].
20 CDC: [To the reporter] Are you able to hear that now?
21 REPT: [Negative response.]

1 Q. Has Specialist Cruz been receptive to any suggestions that
2 you've made to him?

3 A. [Inaudible]

4 Q. Compared to other soldiers that you've seen that have been
5 facing UCMJ action, how would you compare his attitude to those
6 soldiers?

7 A. [Inaudible]...Specialist Cruz's attitude has been
8 excellent. [Inaudible] He's maintained his military bearing and has
9 worked through all of this.

10 CDC: Thank you, First Sergeant. No further questions.

11 TC: No questions, Your Honor.

12 [The witness was excused and the phone call terminated.]

13 CDC: Your Honor, would there be any objection to offering also
14 the stipulations of expected testimony just to make sure that....

15 TC: No, Your Honor, not from the government, sir.

16 MJ: No, not at all. Well, you have no objection?

17 TC: Sir, I have no objection.

18 MJ: I have no objection.

19 [END OF PAGE.]

1 Staff Sergeant [REDACTED], U.S. Army, was called as a witness
2 for the defense, was sworn, and testified telephonically as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major [REDACTED]]:

5 Q. Please state your full name.

6 A. [Inaudible]

7 Q. Sergeant [REDACTED], we're going to ask you to speak up a
8 little louder so that the military judge can hear your answers.

9 Could you state your unit of assignment, please?

10 A. [Inaudible.]

11 CDC: Your Honor, may I offer a suggestion? It sounds like he
12 may be on a cell phone. Is there a land line that we can call him
13 and ask him that?

14 MJ: Is he on a cell phone?

15 Q. Sergeant [REDACTED] it sounds like you're on a cell phone.
16 Is that the case?

17 A. Yes.

18 Q. We're going to let you talk to our tech guys, and can you
19 give us a good land line that we can call you on?

20 A. This is the only...I have.

21 Q. I'm sorry?

22 A. This is...only I have right now.

003035

1 MJ: I don't think this is going to work, Mr. [REDACTED].

2 CDC: I agree.

3 MJ: Do you want to use the stipulation of expected testimony
4 for this witness?

5 CDC: Yes, Your Honor, if that's okay with Specialist Cruz.

6 MJ: He's just breaking up, or we could wait until he finds a
7 land line.

8 CDC: I don't think--it's a matter of a phone company coming out
9 for the land line, unless he went out and drove somewhere.

10 MJ: Why don't you excuse the witness?

11 [The witness was excused and the phone call terminated.]

12 You have one more telephonic?

13 CDC: Yes, sir.

14 MJ: Mr. [REDACTED], lead the witness a little bit more and we'll get
15 shorter and maybe "yes" or "no" answers.

16 CDC: No problem, Your Honor.

17 **Staff Sergeant [REDACTED], U.S. Army, was called as a witness**
18 **for the defense, was sworn, and testified telephonically:**

19 **DIRECT EXAMINATION**

20 **Questions by the trial counsel [Major [REDACTED]]:**

21 Q. State your full name.

22 A. [REDACTED]

1 Q. And Sergeant [REDACTED] if you could spell your last name,
2 please?

3 A. It's spelled [REDACTED]

4 Q. Thank you, and if you would state your unit of assignment.

5 A. It's Delta Company, 321st [inaudible].

6 MJ: Mr. [REDACTED], I recommend you keep the questions short,
7 because I'm having difficulty hearing this guy.

8 CDC: Yes, Your Honor.

9 **Questions by the defense [Mr. [REDACTED]]:**

10 Q. Sergeant [REDACTED], you've known Specialist Cruz since you all
11 first came in country, or did you all meet in Abu Ghraib?

12 A. He came to Iraq [inaudible].

13 Q. I'm not sure I understood your answer on that. When did
14 you first meet Specialist Cruz?

15 A. I first met Specialist Cruz in Dallas.

16 Q. Oh, okay, my apologies. So you've known him for how long?

17 A. Oh, let's see, about [inaudible].

18 Q. Now, you all served in Abu Ghraib together, and when you
19 were at Abu Ghraib, there was a mortar attack?

20 A. Yes, that's correct.

21 Q. And Specialist Cruz was there with you during the attack?

22 A. Yes, he was.

1 Q. And there were several soldiers injured in that attack,
2 correct?

3 A. Yeah, a couple dozen injuries [inaudible].

4 Q. And two soldiers were killed?

5 A. That's correct.

6 Q. And one of those soldiers was very close, not only a
7 section leader, but Specialist Cruz was very close to that soldier?

8 A. That is correct.

9 Q. And that was Sergeant [REDACTED]

10 A. Yes.

11 Q. Now, when the first mortar hit, you all hit the ground?

12 A. There were three of us, Chief [REDACTED] [inaudible] all in a
13 tent.

14 CDC: Could you hear that, Your Honor?

15 TC: Your Honor, I suggest on this witness, I believe he will
16 have a land line. We could take those 2 minutes and reconnect to a
17 landline.

18 MJ: Let Major [REDACTED] do this, Mr. [REDACTED].

19 TC: Sergeant, this is Major [REDACTED] again. Do you have a
20 landline, don't tell me the number yet, but do you have a land line
21 that we can call you back on?

22 WIT: [Inaudible.]

1 TC: I apologize. [To the witness] Thank you, we're having a
2 little difficulty making out some of your answers just because of the
3 connection. So, if you could speak as clearly and as loudly as
4 possible.

5 WIT: Yes, sir.

6 MJ: Repeat the last question, Mr. [REDACTED]

7 CDC: Frankly, Your Honor, I don't know where I was.

8 MJ: What happened when the mortar hit?

9 CDC: Thank you, sir.

10 **Questions by the defense [continued]:**

11 Q. Sergeant, when the first mortar hit, you all hit the
12 ground?

13 A. Yes, sir.

14 Q. And then you all were scrambling to get your gear?

15 A. Yes.

16 Q. When I say "your gear," your body armor and your helmets
17 were in another tent?

18 A. We were [inaudible].

19 Q. And that night, you all were getting ready to start work
20 and you were without your gear, and then a second mortar hit by the
21 time you all started to get up after the first one?

22 A. That's correct.

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1 Q. Now, before you got up, was Specialist Cruz bringing
2 another injured soldier back to you?

3 A. Right, he was bringing our teammate at the time, Staff
4 Sergeant [REDACTED], back into the tent.

5 Q. And Sergeant [REDACTED] had been hit, as well as Specialist Cruz?

6 A. I'm sorry, sir?

7 Q. Sergeant Cruz [sic] was hit, as well as Sergeant [REDACTED]?

8 A. Yes, correct.

9 Q. And then you began treating Sergeant [REDACTED]

10 A. Yes.

11 Q. And Specialist Cruz then said, "I'm going to go back out
12 there."

13 A. Yes.

14 Q. And when you got done attending to the needs of Sergeant
15 [REDACTED] you went out there and you saw Specialist Cruz attending to
16 Sergeant [REDACTED]

17 A. Yes, Specialist Cruz, along with several other individuals,
18 at that time, I was taking Staff Sergeant [REDACTED] into the building
19 [inaudible].

20 Q. And you observed Specialist Cruz performing chest
21 compressions on Sergeant [REDACTED]

1 A. Yes, I did. When I took Sergeant [REDACTED] over to the medic
2 [inaudible] and Specialist Cruz along with the medic [inaudible]
3 vehicle, and I at that time [inaudible] Specialist Cruz and I were
4 [inaudible] medic, each other as [inaudible], when he could, that he
5 was being attended to and keeping him conscious, alive.

6 Q. Could you briefly describe Sergeant [REDACTED] injuries?

7 A. Yes. [Inaudible], when the mortar hit. Much of the damage
8 that occurred happened to his right side, primarily the upper body.
9 Also, it had roughly [inaudible] hole in his front [inaudible].

10 Q. I'm sorry, Sergeant. He was hit in the head, the neck,
11 approximately how many times?

12 A. It shredded his right upper torso, was very [inaudible].

13 Q. You said his right upper--his lower arm, right arm was
14 blown off, is that correct, and the remainder was shredded?

15 A. I believe that is correct.

16 Q. And you've heard Specialist Cruz saying encouraging things
17 to Sergeant [REDACTED]

18 A. Yes, he was very positive. He was very encouraging. He
19 was with [inaudible].

20 Q. When you're saying it was nonstop, he was telling him,
21 "You're going to make it. You can do this. We're here for you.
22 Hang in there."

1 A. Yes, exactly.

2 Q. And then, you all loaded him up and he was taken away, then
3 you all continued to tend to the other injured soldiers?

4 A. Yes, correct. What he did was he took off with the vehicle
5 that Specialist [REDACTED] was in the back of [inaudible] procedures.
6 He asked to be [inaudible] of that vehicle [inaudible] to the helipad
7 and continued [inaudible] and the others on the helicopter to be
8 EVAC'd to Cropper and BIAP and [inaudible].

9 Q. And then after you all attended to the other soldiers, you
10 went to the hospital or at least at some point learned that he was
11 dead on arrival at the hospital, and then took another chopper ride
12 to the morgue facility where he was?

13 A. Correct, sir.

14 Q. And is that something that Specialist Cruz had wanted to
15 do?

16 A. Yes. Armin wanted very much to see that [REDACTED] had the
17 best possible care given to him and that [inaudible] the deceased.
18 He wanted to follow on and make sure he was put to rest properly in
19 his interim rest place.

20 Q. And was Sergeant [REDACTED] was Specialist Cruz close to
21 Sergeant [REDACTED]

22 A. Yes, very close.

1 Q. I'm sorry?

2 A. Yes, they were.

3 Q. After this, was there a time when Specialist Cruz went to
4 his chain of command, I say specifically Sergeant First Class
5 ██████████ to ask him for help to deal with his experience after this
6 mortar attack?

7 A. There was one time, specifically, where Specialist Cruz
8 [inaudible] Sergeant First Class ██████████ and [inaudible] spoken with
9 everybody who [inaudible] Specialist Cruz [inaudible].

10 Q. Okay, so he did seek help, but it is my understanding that
11 the combat stress team may have come out, but it was more like they
12 addressed everyone as a group, whereas Specialist Cruz was seeking
13 out more individual attention that was never given to him?

14 A. Correct, as I understand it.

15 Q. Well, you went with him, correct, to ask for that help?

16 A. Yes, I'm his--Sergeant ██████████ and myself were along with
17 Specialist Cruz. We were all being mortared. Sergeant ██████████ and
18 his folks [inaudible] so we were [inaudible].

19 Q. Okay, but essentially, to put it in your words, you all
20 were laughed off.

21 A. Sorry, sir?

1 Q. I don't want to put words in your mouth, but it's my
2 understanding that your feeling is is that when you all approached
3 the chain of command, that you were essentially, and when I say chain
4 of command, Sergeant First Class [REDACTED] he was the point of contact
5 for that, and you all were, essentially, laughed off.

6 A. I would say as much, sir. [Inaudible] his response perhaps
7 was more like, "Oh, what do you want me to do?" [inaudible] help you
8 or whatever. That was the [inaudible] that was conveyed.

9 Q. Okay, and you all were short of soldiers, at least military
10 analysts, correct?

11 A. I'm sorry, sir?

12 Q. You were short on military analysts, correct?

13 A. Yes, from what I saw [inaudible] very similar [inaudible]
14 and as it turns out, the leadership [inaudible] that we did have and
15 move them to different work schedules [inaudible]. That's how myself
16 and Sergeant [REDACTED] and our team [inaudible] I think at least
17 [inaudible].

18 CDC: Okay, thank you, Sergeant. No further questions.

19 TC: Sir, the government has no questions.

20 [The witness was excused and the phone call was terminated.]

21 MJ: I understand, Mr. [REDACTED] is you have stipulations of
22 expected testimony of all three of these witnesses?

1 CDC: Yes, Your Honor, may I approach the court reporter?

2 MJ: Please.

3 CDC: And I'd like to go ahead and offer these. I believe
4 they've been marked.

5 MJ: Out of an abundance of caution, because on some of the
6 telephonic testimony, at least as far as the two we took, it would
7 appear that most of it the court reporter could get. But Mr. [REDACTED],
8 would it be fair to say these stipulations of expected testimony, in
9 particular, Defense Exhibits Echo and Golf, accurately reflect and
10 actually reiterate what they said over the phone?

11 CDC: Yes, Your Honor. Your Honor, I'd like to call Specialist--
12 yes, Your Honor. No further witnesses, Your Honor.

13 MJ: No, you can call Specialist Cruz. I've just got to go over
14 something with him.

15 CDC: Yes, Your Honor.

16 MJ: I just want to give him a second.

17 CDC: Yes, Your Honor.

18 MJ: Do you want a break, Specialist Cruz?

19 ACC: Yes, Your Honor.

20 MJ: The court will be in recess.

21 [Court recessed at 1206 and reconvened at 1219, 11 September 2004.]

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

3 Mr. ████████ you wanted just to pick up the stipulation of
4 expected testimony?

5 CDC: I'm sorry, sir, I'd like to....

6 MJ: You wanted to introduce the stipulation of expected
7 testimony?

8 CDC: Yes, Your Honor.

9 MJ: And would it be fair to say, in case there is a slight
10 transcribing problem, that these are accurate, almost substantially
11 verbatim summaries of what the witnesses actually testified over the
12 phone?

13 CDC: Yes, sir.

14 MJ: I need to go over these with Specialist Cruz. Specialist
15 Cruz, did you sign Defense Exhibits Echo, Foxtrot and Golf?

16 ACC: Yes, sir.

17 MJ: Did you read each of these stipulations before you signed
18 them?

19 ACC: Yes, sir.

20 MJ: Do you agree with the contents of the stipulations?

21 ACC: Yes, sir.

1 MJ: Before signing these stipulations, did your defense counsel
2 explain the stipulations to you?

3 ACC: Yes, sir.

4 MJ: Do you understand you have the absolute right to refuse to
5 stipulate to the contents of these documents?

6 ACC: Yes, sir.

7 MJ: You should enter into these stipulations only if you
8 believe it's in your best interest to do so. Do you understand that?

9 ACC: Yes, sir.

10 MJ: Now, I want to ensure you understand how these stipulations
11 are to be used. When counsel for both sides and you agree to a
12 stipulation of expected testimony, you're agreeing that, in Defense
13 Exhibit Echo, First Sergeant [REDACTED], Defense Exhibit Foxtrot,
14 Staff Sergeant [REDACTED], and Defense Exhibit Golf, Staff Sergeant
15 [REDACTED] were present in court and testifying under oath, they would
16 testify substantially as set forth in these stipulations. These
17 stipulations do not admit the truth of the person's testimony. The
18 stipulations can be contradicted, attacked or explained in the same
19 way as if that person was testifying in person. Do you understand
20 that?

21 ACC: Yes, sir.

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1 MJ: Now knowing what I just told you and what your defense
2 counsel earlier told you about these stipulations, do you still
3 desire to enter into the stipulations?

4 ACC: My only question, sir, is for the two that you could
5 understand, they're the same thing, so....

6 MJ: What it will be, Specialist Cruz, is that I will consider
7 both the testimony and also the stipulations, and as some of them may
8 repeat what I heard. In fact, most of it will repeat, I will just
9 consider them both.

10 ACC: Yes, sir, I understand.

11 MJ: Do you have any objection to me doing that?

12 ACC: No, sir.

13 MJ: Trial counsel, do you concur on the contents of the
14 stipulations?

15 TC: We do, Your Honor.

16 MJ: Do you have any objection to the stipulations?

17 TC: No, sir.

18 MJ: Defense Exhibits E through G are admitted.

19 Defense?

20 CDC: Yes, Your Honor, we'd like to call Specialist Cruz for an
21 unsworn statement.

22 MJ: Proceed.

1 [The accused took the stand for an unsworn statement.]

2 **UNSWORN STATEMENT**

3 **Questions by the defense [Mr. ██████]:**

4 Q. Specialist Cruz, why did you join the Army?

5 A. Sir, I joined the Army because of some privileges I was
6 given at an early age. I was able to travel to Guatemala, Central
7 America and Europe, France and England, Germany, and I noticed that
8 our country is given a lot of freedoms that we take for granted, and
9 I felt a really deep need inside myself to serve. That's the biggest
10 push for it, it was just an inner push. It wasn't for a GI Bill. I
11 joined when I was a junior in college, sir. It wasn't for money. I
12 didn't get a bonus or anything. It wasn't for a kicker or anything
13 like that. I joined because my father served, because my father came
14 from Cuba. I can't say my forefathers served, but I have a very
15 patriotic sense inside me, sir, and I felt I should, and that's the
16 only reason.

17 Q. When did you join?

18 A. I joined the Delayed Entry Program in September of 2000 and
19 went to basic training in January of '01.

20 Q. And you're in school right now when you're not here?

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1 A. When I'm back home, I would be a senior at UT Dallas
2 pursuing a double major in history and literature and a minor in
3 American public education.

4 Q. What do you do when you're not doing the Reserves or going
5 to school?

6 A. Of course, because of the Army and other things, I work out
7 a lot. I rock climb, I swim. I used to be a lifeguard, I used to
8 swim. I also have a black belt in Tae Kwon Do; I'm a martial artist,
9 competed in wrestling and football.

10 Q. Now, you went to basic at Fort Leonard Wood and then AIT at
11 Fort Huachuca?

12 A. Yes, sir.

13 Q. Then how did you do on your test at AIT?

14 A. At AIT, all but two tests I maxed out at 100 percent or
15 better.

16 Q. Now, how did you come to Iraq? How did that come about?

17 A. I was on the way to a study group at UT Dallas. My
18 commander called my cell phone and asked if I wanted to go to war.
19 He said that he needed to change so many personnel from his unit to a
20 different unit in New England and asked if I wanted to go, and made
21 clear that, since I was a graduating senior, he wouldn't make me go.
22 I went into the study group, told them what the deal was, I said,

1 "Listen guys. I'm sorry, I just literally got a call. I'm going to
2 accept it." I called my commander and said, "I volunteer." I was
3 eligible for a deployment at that time, approximately 4 months, and I
4 told my commander, "I'm not going to miss out on the first fight the
5 country needs me to be in just because I'm about to graduate. School
6 will be there when I go home, sir."

7 Q. Now, you got cross-leveled to another unit, and that was in
8 March of '03?

9 A. That was in March of '03. It's the 325th MI Battalion.

10 Q. And then you came in country in April of '03?

11 A. Roger.

12 Q. What was your unit then at that point?

13 A. It was the 325th MI Battalion underneath the 205th MI
14 Brigade.

15 Q. And when you came in country, where was your starting point
16 and where did you go first after that?

17 A. We started at Camp Virginia, Kuwait. I wasn't there very
18 long, I believe 2 weeks at the most. And then I volunteered to be on
19 the advanced party as a 60-gunner. It was just three vehicles from
20 our battalion tacked on to another unit's advanced party. We trailed
21 up on them and went straight up to Balad and checked the route. I

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1 wanted to get out there as quick as I can and do my job well, and
2 volunteered to be a gunner, even though I'm MI.

3 Q. How long was the convoy ride up?

4 A. Three days.

5 Q. And so your first stop was Balad?

6 A. No, we first stopped, I don't remember all the stops. We
7 stopped in Scania, which is south of here. We stopped somewhere
8 between Scania and there. It was so long ago, I can't remember the
9 exact stop, but we drove for about 12 hours the first 2 days and then
10 about 5 or 6 hours the third day.

11 Q. And your first assignment, I won't say your first
12 assignment, but your first destination was Balad.

13 A. My first duty position and destination or base was Balad
14 Air Base.

15 Q. And what did you do there?

16 A. I was just part of an analytical cell. It ended up being
17 pretty temporary. I was only there for a few weeks until they pushed
18 me west to Ar Ramadi.

19 Q. And when did you get there?

20 A. Late April, early May, but I'm going to go with late April.

21 Q. And did anything significant happen in May while you were
22 there?

1 A. Yes. It was my first experience with being shot at and
2 insurgencies and war. We all slept up on the roof in Ramadi, tried
3 to beat the heat and escape it. There was one day, I was recovering
4 from a night duty. I was sleeping a little bit in the morning, and I
5 heard a whiz while I was sleeping in my cot up on the roof. I had no
6 idea what it was, and I just passed it off and didn't worry about it.
7 And then I heard another whiz and I looked at another guy that was up
8 there with me, a fellow soldier, and I said, "Did you hear that?"
9 And he said, "Yeah, I have no idea what it was, though." And we both
10 heard it that time, a snap, a very, very, distinct, and I can't
11 describe it except for quoting a movie, "Blackhawk Down," a just very
12 distinct air popping sound. We both rolled over onto the roof, the
13 floor, and crawled up against the retaining wall, and we heard a few
14 more snaps, I believe two, and we were clueless. We were clueless,
15 we didn't know what to do. We started devising a plan to go against
16 this guy, and it later turned out that he was shooting from right
17 across the street from where we were in an elevated position. And
18 while we were planning out a react to contact plan, to be quite
19 honest, I'm glad we didn't. Because in a sniper position, if we
20 would've popped up, I believe we would have just been picked off.

21 Q. So you learned the difference between a whiz and a snap at
22 that point?

1 A. I learned the difference between a whiz and a snap.

2 Q. The difference....

3 A. The whiz is, as it was explained to me when I was with 3d
4 Cavalry, is when it's in your general area and it's just going by.
5 But the snap is when, they said, is breaking the sound barrier near
6 your ears. So, it's kind of like a mini sonic boom in a bullet, it's
7 just right next to you. That's how you know you're being engaged,
8 they say.

9 Q. And then June, was there another incident that you would
10 like to share with the court?

11 A. In June, I was on a convoy back from BIAP going towards,
12 back to home in Ar Ramadi. It was the first time I went on a convoy
13 that I had a bad feeling, and I went on convoys often. I was part of
14 a team that went out three, four times a week, minimum. And it was
15 the first time I looked at the 203 gunner, I believe it is, with the
16 grenades that go under the M-16, and I said, "Hey, man, I don't have
17 a good feeling about this one. Why don't you pop an HE round in
18 there, a high explosion." And everyone, you know, was razzing me a
19 little bit saying, "When was the last time you felt good about a
20 convoy? The threat is there," etceteras. But I didn't have a good
21 feeling, and I can't explain why it is. That's the only time I've
22 been on a convoy when I didn't have a good feeling. And never since

1 has that same feeling come back. Anyway, on the way back, I'm
2 sitting on the back driver's side near the tailgate of a 5-ton, and I
3 feel this heat slap on the back of my neck. I mean, the only way I
4 can describe it is if your hand was really hot and you just hit me
5 really hard on the back of the neck. I turned. I didn't realize
6 what it was, and I saw an explosion to the front and left of the
7 front vehicle. I put two and two together later on and figured out
8 it was an RPG that flew right by us and exploded just off the road.
9 I turned, and on a firing position on my knee and was scanning trying
10 to find the target, and I found him. He was semi-concealed behind a
11 sand berm, and he fired another RPG. It was a four-vehicle convoy
12 and it barely missed the trail vehicle. The front vehicle and the
13 trail vehicle both had a little bit of shrapnel on the doors. I got
14 my sight picture. I rose my weapon up, and I've gotta tell you, I
15 had a perfect sight picture. I wasn't hitting anything, and I didn't
16 know why. So what I did was I dropped my weapon down and found my
17 line of fire in the sand, and I rose it up until I saw the target
18 fall down. And then I picked up, I looked around. I knew we were
19 taking small arms fire, but I didn't know from where. I couldn't
20 find that target. To this day, I can't tell you where he was. But
21 in effect, when I hit him and he fell down, he had another RPG tube

1 on his shoulder, and I was able to take him out before he shot it off
2 at us.

3 And I want to take a quick second, I know it's
4 understandable and whatnot, talking about the attacks and talking
5 about my buddy dying is something to this day that was really hard,
6 and I apologize.

7 Q. At Ramadi, did you all ever encounter any other mortar or
8 RPG attacks?

9 A. It was often, and at that point, it was the most I've ever
10 seen. It was every few nights; it wasn't every night. And it was
11 three or four at a time, rockets, mortars, bombs. We've seen suicide
12 bombers come up to the gate, and luckily, I was nowhere near the gate
13 at the time. There's been holes blown in our walls, really big holes
14 from like 122s. It was intense. We saw a lot of HMMWVs right
15 outside where our building was just get destroyed. We saw a mortar
16 land on the building next to us that was housed by MPs. We saw our
17 water blivits get destroyed and us have to go without water for a
18 while. It was already rationed, and then it got rationed even more
19 when water--I don't know what the proper term is, but the plastic
20 blivit that goes on the back of the truck, that was our water supply
21 at the time. We didn't have water bottles or anything, and
22 everything around us was getting blown up.

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1 Q. Specialist Cruz, were you still able to, or at this point,
2 did you start performing duties under your MOS?

3 A. Close to MOS, it wasn't my MOS. I was assigned to an
4 operational management team, which is known to--who supported
5 tactical HUMINT teams. I went out with the teams and worked with the
6 teams, they were talking to people that wanted to help us, give us
7 information. The part that was my job was, I was in an analytical
8 cell, and my duties were to evaluate the threat, do predictive
9 analysis on the threat, and give that to the teams and the team
10 chiefs so they can better do their job and find who they need to be
11 talking to about what subversive groups to save our lives.

12 Q. And after Ramadi, you went to BIAP?

13 A. After Ramadi, and actually, one of the documents there they
14 got published there when I went to BIAP.

15 Q. And was there an incident there that you want to share with
16 the court?

17 A. Pardon me?

18 Q. I said incident, was there a time where you assisted with
19 some other soldiers who had come under attack?

20 A. At Ramadi?

21 Q. At BIAP.

22 A. At BIAP?

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1 Q. Where you radioed.

2 A. There was one incident. I just got to BIAP and I was put
3 on a nightshift in the analytical cell again supporting the Corps
4 Interrogation Facility, or the CIF. My duty there was to help
5 establish and to find intelligence gaps. Whatever the interrogator
6 needed to know about any given subject, our job as analysts was to
7 research and find it and then disprove or prove whatever the detainee
8 or source, depending, was saying. One night on night duty, our job
9 on nightshift was, in addition to that, check the commander's emails
10 and make sure nothing is popping up on a SITREP, monitor the radio
11 and telephone if anything comes through to wake him up. Well, I
12 heard this call come in on the radio and it was one of our guys in
13 the headquarters battalion got ambushed. His vehicle got hit by an
14 IED, and they weren't able to get any help. Either no one could or
15 no one would--no one could hear what they were saying on the radio.
16 I got on the radio and I asked who they were. I found out it was our
17 guys. I called up to HQ up north in Balad, arranged with a CW5 that
18 was in the office at the time who worked dayshift. He was just
19 coming in, rescue operations, got the nine-line. I called up and got
20 helicopter support, air support because they were still taking fire,
21 and called the HQ to call--because I couldn't do this myself, to get
22 flatbeds and a ground force out there to secure the perimeter and get

1 the truck that was completely disabled the heck out of there and get
2 our Jo's away from being fired at. I wasn't there, but you could
3 hear a lot of things in the background, and it was terrible.

4 Q. After BIAP, you went to Abu Ghraib?

5 A. I went to Abu Ghraib after BIAP.

6 Q. And it was about mid-September?

7 A. Mid-September.

8 Q. And you were in Abu Ghraib from that time to about....

9 A. Mid-January when I went home on leave.

10 Q. You all were under constant mortar attacks?

11 A. For a long time, it was almost every day. You can look
12 that up in the news or in the reports or anything. It was way more
13 intense than Ramadi, and I thought that's about as bad as it can get.
14 It was during combat operations in Ramadi; the war was actually going
15 on. When I got to Abu Ghraib, I knew that we were getting hit a lot.
16 I didn't realize how much until I got there. The first day we got
17 there, I unpacked my stuff. It was like an hour later after I walked
18 around where my living area is, found out where the showers, if there
19 was any, and the port-a-johns were. And I noticed a tail fly over
20 right outside our door, and it was hitting the guard towers and the
21 MPs were firing back. They fired several RPGs, three or four.
22 Mortars were going off. I ran and grabbed my crap, my body armor, my

1 helmet and my weapon and I just stood there in case someone told me
2 what to do. I didn't have a clue. The base was attacked the first
3 day I got there and then all the time, all the time.

4 Q. Now, testimony has already been presented regarding the one
5 mortar attack where you were injured. After that mortar attack, did
6 you do anything to ask for help?

7 A. Sergeant [REDACTED]--I'm sorry, Sergeant [REDACTED] talked about
8 how Sergeant [REDACTED] death affected him. I went up with Sergeant
9 [REDACTED] and I asked for help. I asked to speak with a combat stress
10 team. I asked to speak to a psychologist. I asked to speak to
11 anyone to tell me that these things I was feeling, these dreams I was
12 having, even things I was seeing when I was wide awake were normal.
13 And I said to him, Sergeant [REDACTED] I was like, "I know where I'm
14 going. This is not a good place. I want to talk to somebody."

15 Q. And did you ever get that help?

16 A. I didn't, and in fact, the first couple times, he just
17 laughed at me. He said, "What do you need this for? What am I
18 supposed to do?" He was, at the time, the senior enlisted person at
19 AG that I could report to, very senior. After a while, I started to
20 wonder to myself if this was about duty performance and him worrying
21 about losing someone that can write reports or do work or anything
22 and I approached him and I said, "Sergeant, if you're worrying about

1 me wanting to leave AG, if you're worried about me, you know, not
2 working or anything, I'll do this on my down day. If you send me on
3 a convoy to BIAP, I'll do this on my down day. I don't want to leave
4 AG, I don't want to stop working. I need to talk to somebody about
5 what's going on," and I was still shot down.

6 Q. Specialist Cruz, on October 25th, the incident there with
7 the detainees, the next day, what did you do?

8 A. The next morning after a brief about, as I just said,
9 numbers of reports and how we're not producing, took a break and I
10 went straight down to the hard site, found the dayshift NCOIC,
11 Sergeant [REDACTED], and reported what happened the previous day.

12 Q. Now, when did you first learn that you were under
13 investigation?

14 A. Late January, January 22d, plus or minus.

15 Q. And so that was when you were on R&R?

16 A. I was on leave at home. If I remember right, I left on the
17 17th and I was called for an investigation a few days later.

18 Q. And that's when you got in contact with me.

19 A. I went and met the investigator, had an interview with him
20 the first day, expressed my willingness and desire to help with this
21 investigation, to get it over quickly. We talked for a few hours,
22 and then I said I wanted to get an attorney and could we continue

1 this investigation tomorrow, the rest of it. It was on a weekend, I
2 think it was a Saturday, the first day, and the second day would be
3 on a Sunday. I went home. I retained [REDACTED]. I went in the
4 second day, ensured that the investigator had fax number, telephone
5 number, email, every contact method possible to get a hold of Mr.
6 [REDACTED] my email address, my unit information. And then I expressed
7 again, "I want to be talked to. I want to help you out. The only
8 thing is I just want a lawyer next to me, but I want to tell you
9 anything."

10 Q. Now, that was in January, and then you came back to Iraq in
11 January?

12 A. I think it was late January, it would be 2 weeks, so yeah.

13 Q. And then you gave me your chain of command contact
14 information.

15 A. I did.

16 Q. Then we contacted your chain of command to let them know
17 that I represented you in regard to the allegations and that you were
18 willing to cooperate and to tell us who the trial counsel was on the
19 case?

20 A. Right.

21 Q. And then changing the units a couple times, and we
22 continued to make that contact.

1 A. Every time I changed units, I went through the same mission
2 template. I got the entire chain of command's emails from--if I had
3 a platoon sergeant like I do this time, first sergeant, commander,
4 battalion commander, now that I have one, but when I was at HHD, I
5 didn't have one, just the brigade commander, and brigade sergeant
6 major. I emailed every single one of them, expressed my willingness
7 to help in this investigation, expressed my willingness and desire to
8 make this as quick as possible.

9 Q. And then early on, we got an email back from Colonel
10 [REDACTED] the brigade commander as well as the brigade judge advocate
11 that basically just said, or either didn't respond or they'd just
12 say, "We'll get back with you."

13 A. Right, it was Colonel [REDACTED], though, and yeah, the response
14 was, to use a military term, standby to standby.

15 Q. And then it wasn't until July 9th that we got an email from
16 the government stating, asking if you wanted to cooperate.

17 A. This is correct.

18 Q. And that's when you were allowed to begin your cooperation.

19 A. Yes.

20 Q. Okay. Now, Specialist Cruz, your unit left in March?

21 A. March 17th.

22 Q. 2004.

1 A. Right.

2 Q. And you've been extended.

3 A. Yes.

4 Q. Moving away from that, can you tell us some people that are
5 important to you?

6 A. Very clearly, Sergeant [REDACTED] is very close to me. We had a
7 very traumatic event together. We, on many levels, are almost like
8 brothers, even though he's old enough to be my father. He's one of
9 the few people I can talk openly, still emotionally, but openly about
10 what happened that night. Of course my father, he's like a hero to
11 me, an extremely intelligent man. He's a West Pointer. I admire
12 him, my mother and sister. But there's this little boy that I serve
13 a godfather-type role to. His name is [REDACTED], and I've been with
14 him since he was approximately just around 2 years until now, he's 5,
15 turning 6 in January.

16 Q. Specialist Cruz, what are your future goals?

17 A. As soon as I get home, I want to finish that undergrad
18 degree in history and lit. I want to pursue a minor in education; I
19 want to teach. I feel I can turn people on to education. I've been
20 working with kids for community service since I was 11 years old,
21 1991. I also want to apply to grad school, and there's still two
22 routes I'm still debating between. One is, honestly, legal, and the

1 other is graduate school and postgraduate and the history, humanities
2 and education field. I feel that's my calling. I've worked with
3 kids since I was a kid.

4 Q. Would you like to continue in the Reserves?

5 A. I would very much so. Coming to Iraq, when I came into
6 Iraq, I was dead set on joining ROTC. And even a long time into the
7 Iraq conflict, I was dead set on going to ROTC, but while that view
8 has changed, the view of me being in the Army has not. I think I'd
9 be better suited as an NCO, as a sergeant. I love being with the
10 troops. I love motivating them. I love taking care of them. I've
11 made decisions under really stressful conflicts, on react to contact,
12 as we say. I think I can really be a good NCO.

13 Q. Is there a statement that you'd like to read to the court?

14 A. There is a statement. The events that occurred are clearly
15 outlined in detail in the stipulation of fact that I signed, and I
16 accept full and total responsibility for my actions. As far as my
17 actions are concerned, the buck will stop here. I clearly recognize
18 the fact that I was in the wrong and have had since last October to
19 think about it. I assure you that not one day has gone by that this
20 tragedy has not haunted me. The statement reads double true since
21 January until now, as this is the time that I was approached and
22 asked to make a statement. I have been until a short while ago been

1 in a virtual black hole, not knowing my fate or what would happen,
2 and all I had were my thoughts and my shame to face. Believe me, in
3 nearly every conversation to my parents back home this came up. I'm
4 deeply apologetic for the actions that took place on that night in
5 the prison. And I assure you, sir, that over 10 months of thinking
6 about one event creates an unbelievable amount of sorrow, shame and
7 regret.

8 An immense amount of the guilt I felt within myself derives
9 from the very reason most of us joined the Army to begin with, and
10 that is to protect and fight for those who cannot fight for
11 themselves. Of course, this is not the sole purpose we're here in
12 Iraq, however, as liberators in Iraq, this is a major goal and
13 mission for all service members here in Iraq. I clearly had an
14 opportunity to fight for those who cannot defend themselves and do
15 not. Rather, I showed a lack of leadership, discipline, respect,
16 personal courage, integrity and honor, some of the very values our
17 Army is built upon.

18 I had something everyone dreams of, a chance to make a
19 difference. I took that chance, however, and failed to make a
20 positive difference in other human beings' life. Rather, a few
21 soldiers and I subjected detainees to hardship and humiliation. The
22 events that transpired on that night in question depicted a person

1 that I, myself, are not familiar with, one that, as Specialist [REDACTED]
2 said in a news article, something close to these lines, "The Cruz I
3 know is always a calm and reserved Cruz. He never gets mad. The
4 Cruz I saw that night was a different Cruz." This is true in my
5 opinion. I was always a calm and reserved person. However that
6 night, I did not see three detainees. In honesty, I saw three people
7 who tried to kill me and who killed my section leader and my friend.
8 The amount of time I spent in the tier, in the hard site that night
9 was without a doubt, the darkest hour of my life. I turned my back
10 on my country and my Army and myself. I no longer fought for and
11 upheld the values that I strived to uphold my entire life. I was a
12 different person for that time. I assure you I'm not making any
13 excuses and I have said and continue to say that the events that
14 transpired held no honor and were clearly wrong.

15 I want to ensure that the intent of my statement is clear.
16 I accept full and complete responsibility for my actions that night,
17 which include humiliating detainees by viewing them naked,
18 handcuffing, throwing a ball in their direction, and watching others
19 on occasion pour water on them, poke and prod them and subject them
20 to a great deal of humiliation. I accept full and complete
21 responsibility for the actions indicated in this stipulation of fact
22 concerning the night in question. Furthermore, I would like to call

1 upon every noncommissioned officer and commissioned officer alike to
2 do the same. This clearly imprints a blemish in our clear and
3 honorable name in the United States Army and every soldier serving
4 proudly and honorably under Operation Iraqi Freedom. I apologize to
5 the detainees that felt the wrongdoing and to the soldiers in the
6 service that have lived the stigma of this wrongdoing.

7 Q. Specialist Cruz, I told you that you would have an
8 opportunity to write a statement. That was the exact same statement
9 that you wrote and prepared without any----

10 A. This is it. There's no editing done. I wrote it, sent it,
11 and this it.

12 CDC: No further questions.

13 MJ: You may return to your seat, Specialist Cruz.

14 CDC: Your Honor, the defense rests.

15 MJ: Government, do you have any rebuttal?

16 TC: No, sir.

17 MJ: Trial counsel, you may argue first on sentencing.

18 TC: Thank you, sir.

19 Sir, on behalf of the Government of the United States, we
20 respectfully submit three general points for your consideration as
21 you fashion an appropriate sentence for the accused, Specialist Armin
22 Cruz.

1 These points are, first, the nature of these offenses.
2 Second, the logical consequences of this type of misconduct. And
3 third, the necessity for severe punishment under these circumstances.
4 The points are submitted in order to assist in fashioning a sentence
5 based on reason, and not emotion.

6 First, the nature of these offenses. Let's begin with an
7 examination of the basic facts. We know that the accused was present
8 at the hard site on the night of 25 October out of curiosity, nothing
9 more, nothing less. We know that SPC [REDACTED] informed the accused that
10 the military police had an alleged rapist in the hard site and asked
11 the accused if he wanted to see how the MP handled the situation. At
12 that point, the accused made his first decision, to go and see what
13 was happening in the hard site. He didn't have to go, but he did.

14 And then the accused chose to participate. We know that he
15 wasn't compelled to participate in any way. As you can see in
16 paragraph 12 of the stipulation of fact, no one ordered the accused
17 to participate, neither military nor civilian. And you can see that
18 there was no information of value to the military intelligence
19 community to be obtained from these men. What we do know, from the
20 word and actions of Sergeant [REDACTED] and Corporal [REDACTED] and the
21 others, that the military police present were enjoying themselves as
22 evidenced by paragraph 8 of the stipulation. We also know that

1 others, like Specialist ██████ chose not to participate in this
2 abuse. The accused didn't have to participate, but he did.

3 Then, we know that over the course of approximately an
4 hour, the accused and his co-conspirators chose to abuse three men.
5 The accused chose to yell at these men. The accused chose to force
6 these men to crawl along the floor, naked, shaking and frightened.
7 The accused forced these men to crawl, dragging their genitals on the
8 floor, and as the accused did this, he used his foot to press the men
9 back down to the cold concrete floor when they rose too high in his
10 estimation. The accused, this accused sitting here now, chose to
11 terrify these men, to mock them and degrade them like they were
12 animals and not fellow human beings. The accused chose to add his
13 efforts and his ideas as to how to abuse these men to the choices and
14 the actions of those around him in an effort to do what? To magnify
15 the terror and the humiliation of these men. And when he noticed
16 that one of the men was bleeding, what did he do? Despite knowing
17 that the conduct was wrong, he chose to continue. And when he saw
18 another soldier, SPC ██████, throw a football at the bound, exposed,
19 and completely vulnerable fellow human beings on the floor before
20 him, what did he do? He chose to throw the football as well. He
21 chose to handcuff these men together, pressing them together in such
22 a way as to mimic sexual relations. And when the men naturally,

1 reasonably tried to create space between themselves and the naked
2 body of the man now bound to him, the accused chose to press them
3 back together, again using his feet. With contempt and with disdain,
4 the accused chose to do all of this. He did not have to, but he did.

5 He chose, he decided, he made the conscious effort to
6 continue in this abuse along with all of his reveling co-
7 conspirators. And now, Your Honor, the accused is responsible, not
8 only for his own acts, but the acts of all of these men and women who
9 chose to torment rather than to safeguard, to demean rather than to
10 protect. And while his motivations may have been different than were
11 Sergeant [REDACTED] or Corporal [REDACTED] men who clearly took great
12 enjoyment out of the misery of the three detainees lying helpless and
13 hopeless on the hard concrete floor, the accused assisted these
14 military police, joined them in their ultimate purpose and in their
15 terrible work. And now he is responsible for all of their actions,
16 and they of his, all because of his choice.

17 Your Honor, please let me make one final point with regard
18 to the nature of these offenses. The government has consciously
19 chosen not to call the men abused by the accused as witnesses, and I
20 have consciously chosen not to use their names here out of respect
21 for their privacy. In a way, however, the identity of these men is
22 really independent of the misconduct. It doesn't matter that the