

1 charges of rape against these men were later unfounded as evidenced
2 by paragraph 13 of the stipulation of fact. They were men, they were
3 in our custody. And a very basic tenet of our way of life, and by
4 that I mean the American way of life is this: that all men, be they
5 enemy or friend, criminal or saint, and regardless of the color of
6 their skin, their beliefs, or their national identity are absolutely
7 entitled to dignity and respect, all men. The accused chose to
8 disregard this tenant, to take by force and savagery the personal
9 pride and sense of self-worth that we all hold dear, the spark of
10 dignity and self respect that makes us who we are. And that is the
11 fundamental nature of these offenses and the first point we would ask
12 you to consider.

13 Next, Your Honor, I would ask you to consider the
14 consequences of this misconduct. And these are the logical and
15 probable consequences of the type of misconduct at issue here, which
16 is the abuse of individuals in military custody.

17 In paragraph 25, the stipulation of fact reveals that the
18 misconduct of the accused became known to many in the United States
19 and the world. The first consequence, a consequence captured in that
20 paragraph, is that the accused's misconduct contributed to tarnishing
21 the reputation and image of the United States Armed Forces and the

1 United States in the eyes of many Americans as well as the
2 individuals throughout the world.

3 That reputation and image will of course survive, but we
4 must not forget that it was bought with a price, a heavy price. And
5 we cannot get around the fact that the accused's conduct, despite his
6 otherwise good acts at other times and his evident remorse now,
7 worked to lessen that reputation, again a reputation paid for by the
8 hard work, sacrifice, the obedience, and even blood of many of our
9 brothers and sisters in arms.

10 But this consequence is not the only consequence that must
11 be considered. We now know that many in the world are aware of these
12 photos. The fact that the men abused are civilian detainees and not
13 Prisoner's of War is essentially irrelevant, what is seen is men
14 being held in custody by U.S. Army personnel. That is what the world
15 sees. And so what may be some logical consequences of such behavior?
16 There are three closely related but distinct consequences we would
17 ask you to consider.

18 First, how might the enemy use an act like this to his
19 advantage? Here we have a number of men, a number of soldiers,
20 rather, acting in concert to humiliate and abuse Muslim men. The
21 reasons for doing so are completely irrelevant to the individual who
22 sees these photographs. Might existing enemies use such conduct as a

1 moral rallying point? Might not these photos cause others who might
2 not otherwise be enemies of our nation to think differently about us
3 as a people? Might not these actions on the part of the accused
4 foster further distrust and sow even greater hate? How do we now
5 convince others that we are a nation of laws, a nation of equality, a
6 nation of honor and decency? The photographs you have, Your Honor,
7 speak much louder and much more forcibly than our words. That is a
8 consequence of the accused's acts.

9 Second, but a related consequence is this, how might this
10 behavior influence enemies in the future to treat our service members
11 when they are captive? This conflict in Iraq will not be the last
12 for the nation's military. There will be future fights in other far
13 away places and American soldiers, sailors, Marines, and Airmen will
14 find themselves in captivity. Will the treatment inflicted on these
15 men at Abu Ghraib come back to influence their captor's actions?
16 There is simply no way to know for sure, but this is certainly a
17 possible consequence of the accused's actions.

18 Third, the U.S. military is a fighting force unparalleled
19 in the world. Ideally, this knowledge would cause an enemy to
20 surrender to our forces whenever he finds himself arrayed against us.
21 Will an enemy be as likely to surrender if he believes that he will
22 be humiliated in this manner? No doubt some might prefer death over

1 such treatment and in fighting to prevent this might cause greater
2 harm to himself and, more importantly, our forces than would
3 otherwise be necessary. To put it bluntly, will he fight more
4 fiercely and be more likely to wound or kill our soldiers because he
5 fears not so much death as degradation? This, too, is a consequence,
6 a consequence of the actions of the accused.

7 The fact that the accused may not have considered these
8 consequences does not make the consequences any less severe, or the
9 accused any less responsible. He must now pay for his crimes. This
10 brings us to our final point, that under these circumstances,
11 significant punishment is necessary.

12 For the sake of reasoning out this together, let us assume
13 that the accused is the type of man that the testimony and evidence
14 presented to you today suggests, that he has promise and potential.
15 If so, let's hope together that he can learn from this experience and
16 recover from the just and appropriate punishment, which you will
17 shortly administer. But consider this, sir, that the accused had
18 every benefit, apparently loving parents, supportive teachers and
19 leaders, a good education, a distinct knowledge of the difference
20 between right and wrong, and as his father said, his personal moral
21 code, as well as the aid of all our core Army values, all the tools
22 necessary to do the right thing that night, to make different

1 choices. But he did not, and now he must be held accountable. He
2 must be held accountable because this is the essence of military
3 discipline, that the needs of the Army supersede the wants and
4 desires of the individual. That men, even men under stress, don't
5 conduct themselves according to their own passing, personal desires,
6 but rather that these men follow the lawful orders, laws, and
7 regulations meant to govern the warriors of our nation. This is the
8 essence and spirit of our force, and this is the very thing the
9 accused violated.

10 And so, this is exactly why, in this situation, this good
11 order and discipline where punishment is most necessary, and
12 punishment most needed to restore that good order and discipline.
13 This conduct cannot, must not be tolerated. It must be dealt with in
14 such a way that other soldiers under other circumstances both
15 difficult and stressful, and sir, there will be other soldiers under
16 circumstances even more difficult and more stressful than those found
17 here, that those soldiers understand clearly that following their own
18 predilections, their own sense of justice, is inconsistent with who
19 we are as an Army and will result in swift and certain punishment.
20 There is a very fine, but distinct and important line between an Army
21 in the service of the nation and a mob of armed individuals each
22 seeking their own interests. We must hold, at all costs, to the

1 right side of that line. Thus under these circumstances, significant
2 punishment is required, necessary, and just.

3 Sir, the government has presented to you three broad points
4 for use in your deliberations. First, the deliberate and harmful
5 conduct at issue, conduct that deliberate as it was debasing, conduct
6 in concert with others in an attempt to dehumanize three fellow human
7 beings. Second, we ask you to consider the probable consequences of
8 this behavior, how this type of misconduct, abuse of individuals
9 within our custody, might have long term and grave consequences.

10 Finally, we presented the need for punishment under these
11 circumstances to maintain the essence of what and who we are, a
12 disciplined, highly trained and deadly force exercised only by and
13 for the will of the nation, and not a mob of individuals each seeking
14 their own sense of personal justice or interests. We simply cannot
15 allow any slide toward anarchy within our own ranks. This must be
16 stopped, coolly, logically, dispassionately but severely stopped. It
17 is reason, not emotion, that must guide justice now. Sir, for all of
18 the aforementioned reasons stated above and for those otherwise
19 evident to the court, the government requests that you now punish the
20 accused with a bad conduct-discharge, reduction to E1, and
21 confinement as you deem appropriate.

22 MJ: Defense?

1 CDC: Thank you, Your Honor, may it please the court, counsel.
2 Your Honor, the story of Specialist Cruz is that of an American Hero,
3 not a superhuman hero like we see in comic books, but a hero that is
4 human, one who demonstrates heroic acts of bravery and sacrifice, as
5 well as the capacity to make a mistake.

6 The story of Specialist Cruz began when he became the first
7 generation American born into his family, not just any family, but
8 that of a military family. And, not just as the son of a soldier,
9 but that of a West Point graduate. The bar was set, and the bar was
10 set high. How would he measure up to it?

11 As soon as he was old enough, Specialist Cruz chose
12 activities in life which enabled him to help others. From the
13 evidence we've submitted, you've read that while in high school he
14 received life saving training from the Red Cross which he's used to
15 become a lifeguard. On more than one occasion, he came to the aid of
16 swimmers in distress and brought them to shore. He also joined the
17 JROTC program rising to the rank of First Lieutenant and serving as a
18 platoon leader.

19 After high school, his dedication to helping others
20 continued. He majors in history and literature with a minor in
21 American public education so that he can become a certified teacher.
22 He completed his Associate's Degree cum laude. When not in school,

1 he is involved in after school programs for elementary school
2 children.

3 While in college, he decided that he had more time and more
4 to give, so he became a citizen soldier and joined the Reserves. He
5 took time away from his studies and went to basic & AIT, earning top
6 marks at AIT.

7 While in his senior year in college, the Army came to him
8 and asked him if he'd be willing to serve in Iraq. Since Specialist
9 Cruz was in his senior year, his unit wasn't going to require that he
10 be activated. But, being the person that he is, Specialist Cruz
11 volunteered and disenrolled from the classes he'd already begun.

12 Once he became activated, he was cross-leveled and he
13 arrived in Iraq in 2003, April. For his exemplary service to his
14 country from that date to November of 2003, his command nominated him
15 and he has been awarded the Bronze Star, or he's been flagged and he
16 would receive it if he weren't flagged. But not just for his actions
17 on one day, but for 8 eight months. Specialist Cruz's command
18 recognized that he was giving it his all day in and day out. This
19 was an impact award, not just an end of tour award. His unit
20 wouldn't leave for another 5 months. And this is all while he's 23
21 years old and a specialist.

1 In September of '03, he was assigned to Abu Ghraib. On the
2 night of the 20th, he and his teammates were preparing for
3 interrogations when a mortar struck near their tent. Everyone hit
4 the ground and several soldiers were injured, two fatally. And
5 before Sergeant ██████ could get up to go get his gear and the second
6 mortar hit, Specialist Cruz was already bringing back another
7 soldier, Sergeant ██████ who'd been hit in the neck. He brought him
8 back to Sergeant ██████ and he told Sergeant ██████, "I'm going back
9 out." He goes back out and he starts attending to Sergeant ██████
10 ██████, someone who's very close to him. Sergeant ██████
11 body, as you've read in the stipulations of expected testimony,
12 Sergeant ██████ body was ravaged, was missing an arm, you could
13 barely tell who it was. Specialist Cruz began chest compressions and
14 started encouraging his friend, his falling comrade, telling him to,
15 "Hang in there. You can do this. You're going to make it. We're
16 here for you." They then loaded up Sergeant ██████ onto the EVAC
17 chopper and began attending others. And once they were done doing
18 that, they went back and went to the hospital, learned that Sergeant
19 ██████ had died, and they wanted to go say goodbye to him. And
20 that's how much that soldier, that comrade, meant to Specialist Cruz.
21 And they went all the way back to the morgue facility by taking
22 chopper ride.

1 This experience of being wounded in combat and losing a
2 friend that you personally attended is too much for anyone, much less
3 a 23-year old. It didn't take Specialist Cruz long to realize that
4 the stress of this experience was getting the best of him and testing
5 his limits to cope. He needed help. The Army recognizes this
6 onerous impact that such an experience can have on young soldiers and
7 that's why they developed combat stress teams. Specialist Cruz went
8 to his chain of command for help, but none was made available to him.

9 Specialist Cruz did the best that he could to deal with the
10 nightmares and all the questions that he had, but didn't seem to have
11 any answers. To make matters worse, as Lieutenant General Jones
12 found in the excerpts that we've provided to you, while this was
13 going on also at Abu Ghraib, he found out "the difficult
14 circumstances for soldiers, including a poor quality of life and the
15 constant threat of death or serious injury, contributed to soldiers'
16 frustrations and increased their levels of stress."

17 In addition, General Fay reported that Lieutenant General
18 Sanchez confirmed that there was a great pressure placed upon the
19 intelligence system to produce actionable intelligence. General Fay
20 also found that "Leaders failed to take steps to effectively manage
21 pressure placed upon personnel." Specialist Cruz was laboring under
22 this occupational pressure as he struggled with his personal demons.

1 General Fay also commented in his report that when he
2 interviewed Colonel [REDACTED], Lieutenant Colonel [REDACTED] 7 months after
3 the attack, that Lieutenant Colonel [REDACTED] became very emotional and
4 said that he still thinks about the attacks daily about the suffering
5 that Sergeant [REDACTED] received right before he died. General Fay
6 found that there was a general feeling by both MI and MP personnel at
7 Abu Ghraib that it was a forgotten outpost receiving little support
8 from the Army. The frequency of these attacks and the perceived lack
9 of aggressive action to prevent them were contributing factors to the
10 overall poor morale that existed Abu Ghraib."

11 Regarding the incident, this is one night, a month
12 Specialist Cruz was sitting in his cot, minding his own business,
13 when Specialist [REDACTED] came and approached him and told him about the
14 three detainees that supposedly raped a boy and what the MPs were
15 doing with them. He went there out of curiosity. He wasn't on duty,
16 and he walked to the hard site and his life then forever changed.

17 To be sure, Specialist Cruz takes responsibility for his
18 actions and is remorseful, but let's recognize the limited nature of
19 his involvement, at least compared to the other soldiers who were
20 there--to the other soldiers that were there. This wasn't something
21 that he initiated. He was in his cot. Someone came and got him.
22 The abuse had started before he got there and it continued after he

1 left. This wasn't his idea, as the stipulation of fact says, this
2 wasn't orchestrated by him. There was also an E6 present, Sergeant
3 [REDACTED] another Sergeant [REDACTED] who was present. He didn't
4 enjoy his actions. He was coming from a different place. He wasn't
5 laughing. He wasn't posing for pictures. And even in the two
6 pictures that you see, or at least the one picture that you see that
7 he's in, he's standing back away from the other people. He was told
8 the detainees raped a boy, and then he always questioned the degree
9 of the group's actions. He told an MP that a detainee was bleeding
10 around the wrist and then the next day he reported it.

11 So, on this night, we learn that our hero is human. He's
12 fallible. Our 23-year old hero can succumb to peer pressure. At
13 times while he participated, he was active. At other times, he tried
14 to summon the strength to stop himself and the others. Even with his
15 personal problems and the poor morale at Abu Ghraib, he was
16 conflicted about what the MPs were doing that night.

17 Now, this moment did not define Specialist Cruz's
18 character, Your Honor, but represented a departure from it. His
19 actions over his entire life before and after this incident define
20 his character as exemplary and one of the highest moral order. To be
21 fair, if we want you to consider all the good choices he's made, you
22 have to consider this choice as well, but I ask that you consider his

1 level of his involvement and the context in which it occurred. We
2 know he doesn't have a pattern of mistakes. To the contrary, he has
3 a pattern of making all the right choices, but he did not. So why
4 didn't he?

5 Was he able to get something off his chest that night?
6 Maybe. Did he realize that after making that choice it was not a
7 healthy way to deal with his emotions from the attack? Most
8 definitely. His actions since that night prove that he realized he
9 was not comporting himself to the highest standards of his Army
10 training and personal morals. But, what would have happened if
11 someone from the combat stress team would have been made available to
12 him? Would Specialist Cruz be here before you today?

13 We don't know. But what we do know today is that
14 Specialist Cruz asked for help, and he should have received it. Not
15 all soldiers are going to react well under combat stress. Sometimes
16 good soldiers make mistakes under stress because they forget their
17 training or are just unable to act on it. The Army, again,
18 appreciates this fact by having combat stress teams. The combat
19 stress team isn't there for the bad soldiers who are under stress.
20 The combat stress team is there for the good soldiers who need help
21 and can be helped so that they can return to their mission to which
22 the Army assigned them. Maybe the combat stress team was too busy

1 helping other soldiers. Maybe they were understaffed. It doesn't
2 matter. That's not Specialist Cruz's responsibility.

3 We know that Specialist Cruz is a good soldier. We know
4 that he has a pattern of rising to the occasion under stress. Why
5 did he give in to the peer pressure on the night in question? I
6 submit to Your Honor, it's because the emotional pain he was feeling,
7 the guilt, the anger, and the stress was accumulating, extraordinary,
8 and completely predictable and normal.

9 We know that Specialist Cruz has a strong character because
10 he rebounded from that night on his own. He knew it was a mistake,
11 learned from it, and he's moved forward, fantastically. He didn't
12 learn he was under investigation until 3 months later.

13 As I've stated, not all soldiers are going to react well or
14 according to their training under stress, and their reaction is going
15 to depend on what their experience has been up to that point. As the
16 government pointed out, Specialist [REDACTED] didn't actively participate
17 that night. He deserves credit for that. But, while Specialist Cruz
18 was physically in the same position as Specialist Cruz--while
19 Specialist [REDACTED] was physically in the same position as Specialist
20 Cruz that night, he was not the same emotionally. He did not have
21 the same experiences as Specialist Cruz up to this point of the war.

1 This reminds me of the movie Saving Private Ryan, Your
2 Honor. In one scene of the movie, Captain Miller and his squad come
3 across a German machine gun nest. CPT Miller gives the order to take
4 the nest. In the fight, one American soldier dies, and one German
5 soldier surrenders. The most junior soldiers who've lost their
6 comrade want to kill the German soldier, except for one, and that's
7 the translator, Opam. Opam intervenes on behalf of the German
8 soldier, arguing that it would be a crime to kill the German. To the
9 other soldier's dismay, CPT Miller reaches the dispassionate
10 conclusion that killing the German soldier does not comport to their
11 mission and orders him to be released. Later in the movie, Captain
12 Miller and his squad once again encounter the German soldier in a
13 fire fight and Captain Miller dies at the hands of this German
14 soldier. Then, Opam catches that German soldier and some of his
15 comrades off guard. Opam tells the German soldiers to drop their
16 weapons. They do and now they're EPWs. Opam, filled with anger,
17 guilt, and rage kills the one German that killed Captain Miller.

18 Now, Opam's role in these two scenes is there to challenge
19 our moral decision making or how we would respond in the same
20 situation. Unless we actually are Opam, including all of his life
21 ~~experiences and find ourselves in the exact same situation, we'll~~
22 never know if we would act in the same way. But, what's most

1 important, is that we can all identify with Opam's struggle because
2 of the context in which it occurs. His actions were legally wrong,
3 killing the German soldier was murder, but no one looked at Opam as a
4 cold-blooded murderer. The German soldier had the opportunity to
5 kill Captain Miller largely because of Opam's earlier argument that
6 killing him as an EPW was wrong. Indirectly, Opam may have had a
7 hand in creating the situation in which CPT Miller was killed.
8 Judging Opam's actions in this context is difficult. So when we
9 examine Specialist Cruz's actions, we can't forget the context.

10 And although in that situation, the situation after
11 attacking the German machine gun nest and then...well, what I wanted
12 to distinguish, Your Honor, is the fact that even though this
13 incident in October happened one month after, for Specialist Cruz,
14 like it was for Colonel [REDACTED] it might as well had been yesterday
15 that it happened, especially when you don't get treatment. And
16 granted, the scenes from the movie depict a morally complex situation
17 that most of us will never face. But in real life, soldiers must
18 make hard decisions under stress. Like I said, we know that Colonel
19 [REDACTED] cried 7 months after the attack. He was reliving the attack
20 every day. And in fact, Specialist Cruz was only 23 years old one
21 month out from the attack when the incident occurred. When he walked
22 into the hard site that night and saw the adrenaline of the other

1 soldiers going, the mortar attack might as well have just happened,
2 and it didn't matter that those three Iraqis weren't the exact ones
3 who did the mortar attack, and Specialist Cruz was honest, the lines
4 were blurred.

5 Also regarding the context, Your Honor, I'd like for you to
6 consider in the Fay report in one of the excerpts that I've provided,
7 I'd like for you to consider all the excerpts for the purposes of
8 this argument. There is an expert that says using nudity as an
9 interrogation technique had already been started before Abu Ghraib.
10 And that, in the last line there it says, "The use of clothing is an
11 incentive or nudity is significant in that it likely contributed to
12 an escalating dehumanization of the detainees and set the stage for
13 additional and more severe abuses to occur."

14 MJ: Of course, Mr. [REDACTED] the context though, is the use of
15 nudity as an interrogation technique.

16 CDC: Well, Yes, Your Honor.

17 MJ: And there's no issue in this case that these prisoners,
18 these detainees were being interrogated, correct?

19 CDC: Correct, Your Honor.

20 MJ: Okay, just make sure there's no confusion of those two
21 cases.

1 CDC: Oh, absolutely, Your Honor, but I still, overall, I believe
2 that even though just taking clothes off in general when other
3 leadership, when the leadership wasn't around, I think overall it
4 does affect the context of it. There's no excuses, but once you
5 start taking clothes off, I believe that that's what the report is
6 stating, that you're going to have to have even tighter, greater
7 supervision, and that wasn't there.

8 But you're right, Your Honor, regardless, Specialist Cruz
9 made his mistake, learned from it, and moved on, fantastically, and
10 even while working in different MOS's. Remember, this is a soldier
11 who is facing court-martial and has the potential to poison morale by
12 besmirching the Army if he chose to. But not Specialist Cruz, in his
13 heart of hearts, he's a soldier and a true believer. And even after
14 his clearance was pulled and he had to work in the likes of the
15 Internet café, he soldiers on, continuing to support the mission with
16 the best attitude and a superior dedication even to include coming up
17 with new ideas for the command.

18 He has continued to be there for others, as well, even
19 after this incident. For example, as in the evidence that we've
20 provided to you in the soldier packet, he came up for R&R leave
21 before another soldier, a soldier who was married and had kids. He
22 gave up his spot to that soldier so he could be with his family on

1 Christmas. He also became a battle buddy for a soldier in despair, a
2 soldier that now credits him with saving his life.

3 In addition, Specialist Cruz did not get to go home, Your
4 Honor, until January of 2004, and that's when CID approached him. He
5 came to me, and together we went down to CID. We told the agent that
6 he was willing to cooperate. From that point, we just wanted to talk
7 to someone who had some negotiating authority. Over the next 6 months
8 from January, we were proactive and in constant communication with
9 his command. It wasn't until over 6 months later that the government
10 contacted us, and that was in July of 2004. And within 2 months of
11 that contact with the government, then we're here today. I just
12 point that out to Your Honor to simply state that his unit left in
13 March, and he's been here since that time, and we'd just ask that you
14 consider that, as well as initiative and willingness to work with the
15 government back in January.

16 While we've stipulated that his actions may have tarnished
17 the Army's image, I think if you consider the total soldier, the
18 context of his actions, and the level of his involvement, the Army
19 has still gotten a great return on its investment in Specialist Cruz.
20 He hasn't been in the press pointing the finger at the Army and
21 blaming others. He's accepted responsibility. And, his plea has
22 saved the government a vast amount of resources. He's agreed to

1 cooperate with the government. He's waived his Article 32 rights and
2 hasn't fought the government tooth and nail at Article 32s etceteras
3 and asking for hundreds of witnesses.

4 No doubt, Specialist Cruz's actions affected the three
5 detainees, and he accepts responsibility for that. But he's also
6 helped the government mission of helping millions of Iraqis over the
7 past 16 months. And again, Your Honor, to be fair, if the government
8 is going to--it is fair if the government says that he has affected
9 these three Iraqis and he's accepted responsibility for that. But
10 the government is also taking credit for the liberation of Iraq and
11 liberating Iraqis, and that was a mission, that taking credit for
12 that, and Specialist Cruz also deserves that credit because he's been
13 part of that mission, and so he's also helped the Iraqis that the
14 government has said that they've helped. And he's done it at such a
15 level that he's earned the Bronze Star. So I only think that it's
16 fair that we include everyone.

17 In spite of all this, he's continued to help with the
18 mission. He isn't just punching the clock since this has come down.
19 For the past 8 months, knowing he was under investigation, he could
20 have easily thought that the Army was just going to kick him out
21 anyway and put him in jail. Like I said, his unit left in March, and
22 he's still soldiering on. The Army is still getting added value from

1 Specialist Cruz. He's not on the sidelines. He hasn't alienated
2 himself from the Army. That's because he's a genuine hero who
3 recognizes that he deserves punishment, but who loves the Army and
4 believe in its mission, and wants to continue to soldier on. Not
5 only does his soldering show that he still trusts the Army, it shows
6 that the Army can still trust him.

7 As quoted from US v Wheeler, Your Honor, "A punitive
8 discharge so characterizes an individual that his whole future is
9 utterly destroyed. He is marked far beyond the civilian felon,
10 hampered as he may be by the sneering term 'ex-con.' For,
11 justifiably or not, the punitive discharge so dishonors and disgraces
12 an accused that he finds employment virtually impossible; is
13 subjected to many legal deprivations; and is regarded with horror by
14 his fellow citizens. Truly, it has come to be the modern equivalent
15 of the ancient practice of branding felons, and the strain it leaves
16 is as ineradicable."

17 All in all, I believe that Specialist Cruz has cleared that
18 high bar that was set for him. He's done it by leaps and bounds. I
19 don't believe there are parents out there who wouldn't be proud to
20 call him son, a sibling proud to call him a brother, a soldier to
21 call him a comrade, and a commander who wouldn't earnestly seek him
22 out.

1 Specialist Cruz leaves it all on the battlefield. He leans
2 forward in the foxhole. And when your back is against the wall,
3 Specialist Cruz has got your backside. He is a man of honor and a
4 soldier of uncommon mettle.

5 SPC Cruz's story will never end, but his life will. And, I
6 believe I can safely say that when it does, Your Honor, he will be
7 there helping others.

8 Your Honor, all in all, as far as a recommendation on
9 sentence, I think that Specialist Cruz does not deserve a bad-conduct
10 discharge. His rehabilitative potential, his command, you've heard
11 the witnesses say that he has soldiered on and continued to
12 contribute to the Army. He's done that. He's proven that. It's not
13 just after the charges came down. He was that way beforehand. This
14 is a one-time incident. It doesn't warrant a discharge, and I
15 believe that if you believe that confinement is warranted, that it be
16 minimal confinement. Thank you, Your Honor.

17 MJ: Court is closed.

18 [Court closed at 1320, 11 September 2004, and reopened at 1352,
19 September 2004.]

20 MJ: Court is called to order. All parties are again present
21 that were present when the court closed.

1 Defense counsel, have you advised the accused orally and in
2 writing of his post-trial and appellate rights?

3 CDC: Yes, Your Honor.

4 MJ: That's reduced to Appellate Exhibit IV.

5 Specialist Cruz, I have before me what's marked Appellate
6 Exhibit IV, your post-trial and appellate rights form. Is that your
7 signature on this form?

8 ACC: Yes, sir.

9 MJ: And Mr. ██████ that's your signature below his?

10 CDC: Yes, Your Honor.

11 MJ: Specialist Cruz, did your defense counsel explain these
12 post-trial and appellate rights to you?

13 ACC: He did, sir.

14 MJ: Do you have any questions about your post-trial and
15 appellate rights?

16 ACC: No, I don't, sir.

17 MJ: Which counsel will be responsible for the post-trial
18 actions in this case and upon whom is the Staff Judge Advocate's
19 post-trial recommendation to be served?

20 CDC: That would be me, sir.

21 MJ: Mr. ██████ they have your civilian address?

22 CDC: Yes, Your Honor.

1 MJ: And that's your understanding, also, Specialist Cruz?

2 ACC: It is.

3 MJ: Accused and counsel, please rise. [The accused and his
4 counsel stood.]

5 Specialist Armin J. Cruz, this court sentences you:

6 **To be reduced to the grade of Private E1;**

7 **To be confined for 8 months; and**

8 **To be discharged with a bad-conduct discharge.**

9 Please be seated. [The accused and his counsel resumed
10 their seats.]

11 May I see Appellate Exhibit III, please? [Court reporter
12 hands document to MJ.]

13 The way I read the quantum portion of the Appellate Exhibit
14 III is the convening authority is free to approve the adjudged
15 sentence. Is that the understanding of both parties?

16 TC: Yes, sir.

17 CDC: Yes, Your Honor.

18 MJ: And Specialist Cruz, is that your understanding, also?

19 ACC: It is, sir.

20 MJ: Any other matters to take up before this court adjourns?

21 TC: No, Your Honor.

22 CDC: No, Your Honor.

1 MJ: This court is adjourned.

2 [The court-martial adjourned at 1354, 11 September 2004.]

3 [END OF PAGE.]

AUTHENTICATION OF RECORD OF TRIAL

IN THE CASE OF

CRUZ, Armin J., Specialist
Headquarters and Headquarters Services Company, 502d MI Battalion
504th Military Intelligence Brigade, APO AE 09342

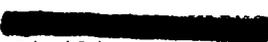
I received the completed record of trial for review and authentication on
10/15 20 04.


COL, JA
Military Judge

15 Oct 20 04

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on
_____ 20 _____.


Civilian Defense Counsel

_____ 20 _____

The record of trial was served on defense counsel on _____ 20 _____. After verifying receipt with defense counsel on _____ 20 _____ and conferring with the military judge on review by defense counsel on _____ 20 _____, the record was forwarded for authentication without completion of the defense counsel's review.

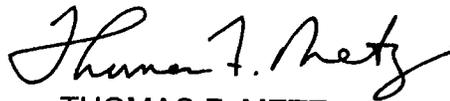
CPT, JA
Chief, Military Justice

003097

ACTION

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

In the case of Specialist Armin J. Cruz , Headquarters and Headquarters
Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence
Brigade, III Corps, Victory Base, Iraq, the sentence is approved and, except for the part
of the sentence extending to bad-conduct discharge, will be executed.



THOMAS F. METZ
Lieutenant General, USA
Commanding

JAN 18 2005

003098

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

003099

UNITED STATES)

v.)

STIPULATION OF FACT)

Cruz, Armin J.)
SPC, U.S. Army,)
Headquarters and Headquarters)
Service Company,)
502nd Military Intelligence Battalion,)
504th Military Intelligence Brigade,)
III Corps,)
Victory Base, Iraq, APO AE 09342)

4 September 2004

I. NATURE AND USES OF THE STIPULATION:

1. It is agreed between Specialist Armin J. Cruz ("the accused"), the Civilian Defense Counsel and Trial Counsel, that the following facts are true, susceptible to proof, and admissible in evidence. These facts may be considered by the military judge in determining the providence of the accused's plea of guilty; to establish the elements of all charges and specifications; and they may be considered by the sentencing authority in determining an appropriate sentence. For these purposes, the accused expressly waives any objection that he may have to the admission of these facts, and any referenced attachments, into evidence at trial under any evidentiary rule, applicable case law, or Rule for Courts-Martial that might otherwise make them inadmissible.

II. THE ACCUSED:

2. The accused is 24 years old and was 23 years old on the date of the charged offenses. The accused is a high school graduate and is in his 4th year of college. The accused has a GT score of 116. He entered military service on 28 September 2000, attended basic training at Fort Leonard Wood, Missouri, and completed basic training in April 2001. He entered active duty in May 2002 to complete his MOS training and was released from active duty on 31 October 2002. The accused was activated for his current period of service in support of Operation Iraqi Freedom on 17 March 2003. The accused has a total of approximately 3 years and 11 months of service in the United States Army Reserve. As a civilian, the accused attends the University of Texas at Dallas where he has a double major in History and Literature and a minor in education. The accused received Geneva Convention and UCMJ training during basic training.

3. At the time of the charged offenses, the accused was on active duty in the United States Army. He was originally assigned to 325th Military Intelligence Battalion and arrived in Iraq on 1 April 2003. The accused is now assigned to Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion. At all times relevant to the charged offenses, the accused was on active duty. This court has proper jurisdiction over the accused and the charged offenses.

003100

PROSECUTION EXHIBIT 1 E10

OFFERED R. 13 ADMITTED R. 16

III. THE MISCONDUCT

4. The Baghdad Central Confinement Facility (BCCF) is located in Abu Ghraib, a city located approximately 12 miles west of Baghdad, Iraq. Within the BCCF there are several compounds used to hold a large number of detainees. One of the compounds is actually a series of buildings built to contain individual cells. This compound is known as the "hard site" and consists of a number of halls, or tiers. Detainees in tier 1 were divided into two sub-tiers, tier 1A and tier 1B. During the relevant time, tier 1A was used for MI holds, those individuals who were believed to possess information of tactical, strategic, or operational value. Tier 1B was used to house certain sub-categories of civilian detainees including women and juveniles. Tier 1B also housed detainees who had caused disciplinary problems.

5. On the night of 25 October 2003, the accused was awakened by SPC [REDACTED] an MI soldier known to the accused and assigned to the accused's unit. SPC [REDACTED] told the accused that the MP had some suspected rapists in the hard site and asked the accused if he wanted to see how the MP dealt with the alleged rapists. The accused agreed to accompany SPC [REDACTED] to the hard site. The accused, SPC [REDACTED], and SPC [REDACTED] all of the 325th Military Intelligence Battalion arrived at the hard site and walked to tier 1B. At tier 1B, the accused found a number of MP personnel present including SSG [REDACTED] the night shift NCOIC of the hard site, CPL [REDACTED] the night shift NCOIC of tier 1A, SPC [REDACTED] the NCOIC of tier 1B, and SPC [REDACTED] a soldier assigned to work in the hard site on the night shift. Also present were Mr. [REDACTED] an employee of the Titan Corporation, Baghdad International Airport (BIAP), Baghdad, Iraq as well as various Iraqi Corrections Officers and other members of the 372d MP Company. These other members of the 372d MP Company, SPC [REDACTED] and the Iraqi Corrections Officers did not participate in the abuse of detainees that was to follow.

6. Upon arrival, the accused was notified by SPC [REDACTED] that the MP were "taking a break." It appeared to the accused as if the MP had previously been conducting some sort of activity with three detainees. The detainees were in a cell together, and all three were naked. The detainees appeared to be afraid and deeply distressed. The three detainees in the cell and that were later abused were [REDACTED] ISN [REDACTED] Mr. [REDACTED] ISN [REDACTED] and Mr. [REDACTED] ISN [REDACTED]

7. SPC [REDACTED] then opened the cell and pulled the detainees into the hallway. SSG [REDACTED] and CPL [REDACTED] were initially standing by and observing. SPC [REDACTED] was present and was holding a camera. SPC [REDACTED] was also present. SSG [REDACTED], and SPC [REDACTED], began yelling at the detainees and forcing them to lay on the floor. SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED] then began to force the detainees to crawl along the floor dragging their genitals on the floor itself. The accused joined in this effort, yelling at the detainees and using his foot to keep the detainees from rising too high off the floor. The detainees, principally at

Stipulation of Fact – United States v. Cruz

CPL [REDACTED] instruction, were also forced to roll on the ground and perform a variety of physical exercises while they were naked.

8. At some point prior to this activity, the accused was told that the detainees had allegedly raped a 15-year-old boy, also detained in the facility. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] had denied doing so, confessed to the act, recanted, then apparently “confessed” again. At some point, the accused asked SSG [REDACTED] if the abusive behavior the detainees were being subjected to was permissible. SSG [REDACTED] told the accused something to the effect of “what you don’t understand is that we don’t get the chance to do this stuff in the civilian world.” CPL [REDACTED] then added that he “loved this shit.” When pressed, both SSG [REDACTED] and CPL [REDACTED] stated that they were “within their rights” to abuse detainees. The accused observed that one of the detainees was bleeding from his wrist while he was still handcuffed or possibly the knee. The accused commented on this bleeding to the MP and asked if the abuse should stop. CPL [REDACTED] urged the accused and others to continue with the abuse, and the accused and other individuals participating in fact did continue.

9. Notwithstanding SSG [REDACTED] and CPL [REDACTED] assertions that the abusive behavior was “within their rights,” the accused knew based on his training, experience, and education that such behavior was illegal, immoral, and without legal justification or excuse. Nevertheless, the accused assisted the MP in abusing the detainees.

10. SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], SPC [REDACTED] and the accused continued to abuse the detainees. The accused was present for one hour, but did not participate in the abuse of the detainees for the full hour. SPC [REDACTED] stood by encouraging the other MP and holding a camera although the accused is not certain that pictures were taken with the camera. [REDACTED] translated for the MP and assisted in yelling at the detainees. SPC [REDACTED] did not take part in the abuse. During this period of abuse, the group of MP (SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]), SPC [REDACTED], and [REDACTED] entered into a silent agreement to abuse the detainees. Ultimately the detainees were handcuffed with their naked bodies pressed tightly together in such a fashion as to suggest that the men were sodomizing one another. While in this position, both CPL [REDACTED] and the accused used their feet to press the detainees closer together. At no time during the abuse did the detainees resist in any way or appear to be a threat. To the contrary, the detainees were in a state of terror, pain, and hopelessness throughout the abuse.

11. Prior to handcuffing the detainees together, the accused, along with SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED], yelled loudly at the detainees and with their voices and with various hand signals, compelled the detainees to crawl along the floor and perform various exercises. The accused did this himself and also in conjunction with the other individuals. Additionally, SPC [REDACTED] poured cold water on the naked detainees anytime the detainees would try to close their eyes. Because it was November and night, the cold water greatly chilled the detainees. SPC [REDACTED] also threw a nerf football at the detainees, striking them while they were handcuffed on the floor. The accused threw the same ball as well at the detainees, but did not actually contact any of the detainees with the ball. At one point SPC [REDACTED] grabbed one detainee by the throat and slapped

the detainee several times while asking the detainee “why he raped that kid.” SPC [REDACTED] also screamed and laughed at the detainees pointing out that the detainees had “small dicks” and that she was not sexually interested in “anything these guys had.” This abuse was carried out in the open in tier 1B. In addition to the MI and MP soldiers present, Iraqi Corrections Officers and other detainees witnessed the humiliation of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

12. During the abuse of the detainees, CPL [REDACTED] and SPC [REDACTED] laughed at various times and seemed to be enjoying themselves throughout the abuse. From the actions, words, and demeanor of the individuals involved in the abuse, it was clear that the primary purpose of the abuse was simply to provide entertainment for those conducting the abuse, at least with regard to SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPO [REDACTED]. The accused, however, showed no signs of personal enjoyment while conducting the abuse but remained very serious during the incident. There was no indication whatsoever that the detainees were to be questioned for intelligence value or that the abuse had been directed by any military or civilian personnel other than SSG [REDACTED], CPL [REDACTED], SPO [REDACTED], and SPC [REDACTED]. There were no civilian contract employees or other civilian government employees present encouraging or directing this conduct, nor was there any officers or NCOs senior to SSG [REDACTED]. After the abuse ended, Iraqi Corrections Officers returned the detainees’ clothes.

13. Of the three detainees involved, two were alleged to have raped another detainee, a boy aged 15. The boy was examined soon after the alleged rape and although showed signs of nervousness and fear, did not have any physical trauma that would normally be associated with multiple, forcible, anal sodomy. Further investigation revealed that the allegations of rape were unfounded. At the time of the abuse by the accused and his co-conspirators, the men were being detained for crimes against fellow Iraqis.

14. During the time period of the abuse on 25 October 2003, the accused did not know whether or not the detainees had in fact raped anyone. Prior to the end of the abuse on or about 25 October, SPC [REDACTED], a friend of the accused, left the scene of abuse. SPC [REDACTED] did not participate in the abuse. SPO [REDACTED] later testified during the Article 32 hearing of SPO [REDACTED] that the accused made the statement to him to the effect of “Izzy, you’re not going to tell anyone are you?” SPC [REDACTED] testified during the hearing that this statement was made as SPC [REDACTED] prepared to leave tier 1B the night of the abuse. SPC [REDACTED] left the hard site on the night of 25 October 2003 prior to the end of the abuse and before the accused left the hard site.

IV. PROTECTIONS OF CIVILIAN DETAINEES

15. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], while not enemy prisoners of war, were civilian internees entitled to the protections of Geneva Convention Relative to the Protection of Civilians in Time of War (GC IV). GC IV, Article 5 requires that

civilian internees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] be treated with humanity. GC IV, Article 100, requires that the disciplinary regime in places of interment shall be consistent with humanitarian principles and that under no circumstances should a disciplinary regime include regulation imposing on internees any physical exertion involving physical or moral victimization. Further, Article 100 prohibits punishment drills.

16. Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and other Detainees also proscribes treatment for detainees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. Paragraph 1-5(b) prohibits inhuman treatment including corporal punishment and all cruel and degrading treatment. Paragraph 1-5(c) prohibits all acts of violence to include reprisals and those acts subjecting detainees to public curiosity.

17. Army Regulation 34-52, Intel Interrogation, states that the Geneva Conventions and U.S. policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation. This prohibition applies to all detainees and included, on 25 October 2003, Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

V. CHARGE 1, THE SPECIFICATION – CONSPIRACY TO MALTREATMENT
(In Violation of Article 81, UCMJ).

18. On or about 25 October 2003, at the BCCF, the accused entered into an unspoken agreement with CPL [REDACTED], SSG [REDACTED], SPC [REDACTED], SPC [REDACTED], Mr. [REDACTED] and others to maltreat subordinate, an offense under the Uniform Code of Military Justice. While this agreement continued to exist and while the accused remained party to the agreement, CPL [REDACTED] performed one of the overt acts alleged, that is, CPL [REDACTED] forced three detainees to conduct various physical exercises while the detainees were naked. The overt acts included forcing the detainees to roll on the floor while naked. While the agreement continued to exist and while the accused remained party to the agreement, SPC [REDACTED] also performed overt acts by throwing a nerf football and pouring water on the detainees during the time of the abuse.

19. The detainees who were abused by the accused and his co-conspirators were subject to the orders of CPL [REDACTED], SPC [REDACTED], SSG [REDACTED], SPC [REDACTED], and the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

20. On or about 25 October 2003, at the BCCF, the accused maltreated these individuals by forcing the detainees to conduct various physical exercises while the detainees were naked and by handcuffing the detainees together on the floor while the detainees were naked. Forcing the detainees to perform these exercises and handcuffing the detainees together on the floor was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain

and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

21. During the night of 25 October in which the detainees were abused in tier 1B, the accused never withdrew from the conspiracy. Specifically, the accused did not take an affirmative act wholly inconsistent with his adherence to the unlawful agreement that would show that he had severed all connection with the conspiracy.

VI. CHARGE II, THE SPECIFICATION – MALTREATMENT OF A DETAINEE
(In violation of Article 93, UCMJ)

22. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], as detainees of the BCCF were subject to the orders of the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

23. On or about 25 October 2003, at the BCCF, Abu Ghraib, Iraq the accused maltreated three detainees, [REDACTED] and [REDACTED] by forcing these men, while the men were naked, 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. Forcing the detainees to crawl in this manner and handcuffing the detainees to each other was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

VII. ADDITIONAL INFORMATION IN AGGRAVATION:

24. The accused has since learned that the humiliating and sadistic acts of maltreatment and dehumanization described herein are unacceptable in any culture, but especially so in the Arab world. Homosexual acts are against Islamic law and Arab men consider it humiliating to be naked in front of others. Placing the detainees together in a manner to simulate acts of homosexuality seriously violated the tenets of Islamic law and degraded the detainees.

25. Over the past few months, both Middle Eastern and Western media outlets have broadcast some of the attached photographs. The accused's and his co-conspirators' acts on the night of 25 October, as reflected in these photographs, contributed to tarnishing the reputation and image of the United States Armed Forces and the United States in the eyes of many Americans as well as many individuals throughout the world.

VIII. EXTENUATION AND MITIGATION:

26. On the evening of 20 September 2003, at approximately 2145 hours, Abu Ghraib was the target of a mortar attack. As the accused and his fellow soldiers prepared to begin interrogations that evening, a mortar impacted in very near proximity to the

Interrogation Control Element tent where the accused was located. After initially seeking cover on the floor of the tent the accused and his fellow soldiers scrambled to acquire their personal protective equipment from their indoor sleeping area. The soldiers had been told that a "Risk Assessment" had been completed and that it was safe to work outside. The accused and SSG [REDACTED] were out the door of the tent approximately 5-10 yards. SSG [REDACTED] entered the tent's doorway when suddenly a second mortar hit within 5-10 yards of SSG [REDACTED] SSG [REDACTED], and the accused. Everyone hit the ground. SSG [REDACTED] yelled, "I'm hit, I'm hit". The accused almost immediately returned to SSG [REDACTED]'s side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which SSG [REDACTED] began to triage immediately. The accused turned to go back to the impact site to continue to assist the wounded. The accused worked on a fellow analyst by the name of SGT [REDACTED] for a long time attempting to provide aid. SGT [REDACTED] was one of two soldiers who was in the immediate impact zone of the second mortar. As SSG [REDACTED] handed SSG [REDACTED] off to the medics on the scene he came upon the accused still in attendance of SGT [REDACTED]. SSG [REDACTED] began to assist the accused and the medics in revival and stabilization efforts of SGT [REDACTED]. The accused performed chest compressions on SGT [REDACTED] and verbally comforted and encouraged him unfalteringly saying "you are going to make it, you can do this, and we are here for you". The accused and SSG [REDACTED] personally loaded SGT [REDACTED]'s ravaged body into the medical evacuation chopper and spent the next several hours performing evacuation operations of the other dead and wounded. The accused insisted that SSG [REDACTED] and he follow SGT [REDACTED] to the hospital to continue to see that SGT [REDACTED]'s medical needs were being met. The accused and SSG [REDACTED] did check on SGT [REDACTED] condition after first ensuring that other soldiers had been attended to. The accused learned from the hospital staff that SGT [REDACTED] was pronounced DOA. The accused and SSG [REDACTED] determined where he had been taken and secured another chopper ride to the morgue facility where they viewed SGT [REDACTED] in his interim resting place. The accused and SSG [REDACTED] said good-bye to their fallen comrade and together began their grieving process with a hand on SGT [REDACTED]'s body bag as they said goodbye to him. The accused was wounded during this mortar attack and was subsequently awarded the Purple Heart. The accused, based on this incident as well his overall duty performance was recommended for the Bronze Star award for meritorious service. That award was approved but because the soldier was flagged pending his investigation, the award was withheld from presentation.

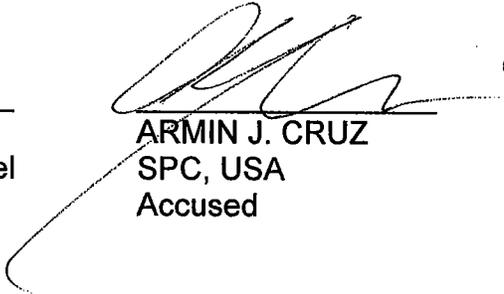
27. The accused has agreed to cooperate with the government in the investigation of misconduct within the BCCF. Additionally, the accused has cooperated with the government by waiving his Article 32 hearing, entering an Offer to Plead Guilty, and agreeing to a trial date convenient to the government. This cooperation has saved the government considerable time, expense, and effort in resolving the accused's case.

IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE

28. The government and the defense agree that this stipulation of fact plus attached enclosures are admissible at trial and may be considered by the military judge in determining the providence of the accused's pleas and in determining an appropriate sentence. The attached enclosures include five photographs labeled 004, 005, 006, 007, and 008. The accused appears in photographs 004 and 005 as the only soldier in black PT shorts.



Civilian Defense Counsel



ARMIN J. CRUZ
SPC, USA
Accused



MAJ, JA
Trial Counsel

ENLISTED RECORD BRIEF

BRIEF DATE: 20040719 NAME: CRUZ, ARMIN JOHN RANK - DOR: PFC 50C PINOS: 96B SSN: 20090928

SECTION I - Assignment Information

YR/MO RTN	CTRY	MONTH	TCS	NUMBER OF TOURS	SHORT	LONG	PSI Status	PSI Invest INIT	PSI Invest Compl	Language	Read	Listen	Speak
				0	0	0							

Date Dependents Arrived OS: 96B

PMOS: 96B

SMOS: PDSI/YRMO 00

Bonus MOS: ASI 00

Bonus Enlist Elig Dt: Promotion Points/YRMO

Prey Promotion Points/YRMO: Prom Seg#: Prom Selected Dt

ASVAB: Test # / Dt ASVAB 01 / 20000401

GT: 116 ELEC 125 FOOD 107 TECH 118

ADMIN: 116 FA 118 COMMO 111

CMBT: 116 MECH 112 MAINT 122

Delay Separation Reason: AEA / Dt L /

Flag Code: Flag Start Dt: Flag Expiration Dt

Date of Loss: Date of Last PCS: 19000101

SECTION II - Security Data

PSI Status: FID Det PS Stat NONE

SECTION V - Foreign Language

Language: Read Listen Speak

SECTION VI - Military Education

DLAB: MELMES: Year

SECTION VII - Civilian Education

LEVEL COMPLETED 4 YRS HS
DESG HIGH SCHOOL DIPLOMA
INSTITUTION: Callin Community College YR 2000
INSTITUTION: Univ. of Texas at Dallas AC YR CURRENT
DISCIPLINE: History of Art

SECTION VIII - Awards and Decorations

Technical Certification: Dt Certified Dt Expires

SECTION IX - Assignment Information

ASGT	FROM	MO	UNIT NO	ORGANIZATION	STATION	LOC	COMPT	DUTY TITLE	DMOS	ASILLANG
PROJ	20030410	17	WZP480	MI BN B CO CICEI	FT DIX	NJ	FC			YY
	1st Prev		WZP480	MI BN B CO CICEI	FT DIX		FC			YY
	2nd Prev		WZP6V3	MI BN CO B INTM W	ST LOUIS		FC			YY
	3rd Prev		WZP6T0	MI BN HHC OPNS	PASADENA		FC			YY
	4th Prev		WSS6XAA	0468 CS BN	DALLAS		FC			YY
	5th Prev		WZP6V1	0321 MI BN	DALLAS		FC			YY
	6th Prev									
	7th Prev									
	8th Prev									
	9th Prev									
	10th Prev									
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	20th Prev									
	21st Prev									
	22nd Prev									
	23rd Prev									
	24th Prev									
	25th Prev									

Total # of Hours: Correspondence Courses

SECTION IV - Personal/Family Data

Date of Birth: Country of Citz US
No of Dependent Adults/Children: 0/0
Religion: ROMAN CATH
Spouse Birthplace/Citz: SINGLE
PULHES: 311111
Height/Weight: 62/204
EFMP Dt: #Comd Sponsored 0
Physical Category: APT P/F Dt
Last Physical Exam: 2442410
MARRB Results/Dt: 20000901

Home of Record: 08540-5150

Mailing Address: USAAG FORT DIX, FT DIX, NJ, 08540-5150

Mil Spouse SSN / MPC: Svc Comp / DOD

Emergency Data Verified Date

HIV YRMO: 200009

RGMT AFL

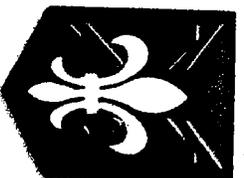
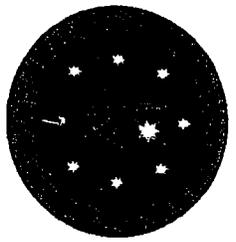
DATE LAST PHOTO

SECTION X - Remarks

On third copy of original were copied
Kath Schuler
SFC BLESUNGER
250904

DEFENSE EXHIBITS ADMITTED INTO EVIDENCE

003109



Combined Joint Task Force 7
 Joint Interrogation and Debriefing Center
Abu Ghurayb
Baghdad, IRAQ

Certificate of Appreciation

is presented to:
 SPC Armin Cruz

October 2003 – February 2004

Your support of the Joint Interrogation and Debriefing Center in Baghdad, Iraq. You made an immediate impact on operations by providing actionable analytical support during interrogations of several top Iraqi prisoners. Your dedication to duty reflects great credit upon yourself, your unit, and the United States Army.

[Redacted Name]
 [Redacted Title]

[Redacted Name]
 [Redacted Title]

[Redacted Name]
 [Redacted Title]

SGT, USA
 Fusion Analysis Cell NCOIC

CW2, MI
 Fusion Analysis Cell SA

CPT, MI
 Fusion Analysis Cell OIC

Excerpts from the AR 15-6 Investigation of the
Abu Ghraib Prison and 205th Military Intelligence Brigade
By LTG Anthony R. Jones and MG George R. Fay

From the AR 15-6 Investigation of LTG Jones, 7. a. (3) at Page 12:

- “At Abu Ghraib, the lack of an MI commander and chain of command precluded the coordination needed for effective operations. At the same time, LTC [REDACTED] failed to execute his responsibilities as Chief, JIDC.”

From the AR 15-6 Investigation of LTG Jones, 8. a. at Page 15:

- “This report, so far, has discussed the OPLAN background, operational environment, and policy, doctrine and structural decisions that created conditions which allowed abuses at Abu Ghraib to occur.”

From the AR 15-6 Investigation of LTG Jones, 8. e. (2) at Page 16:

- “CJTF-7 leaders and staff actions, however, contributed indirectly to the questionable activities regarding alleged detainee abuse at Abu Ghraib.”

From the AR 15-6 Investigation of LTG Jones, 8. f. (1) at Page 17:

- “The leaders from the 205th MI and 800th MP Brigades located at Abu Ghraib or with supervision over Abu Ghraib, failed to supervise subordinates or provide direct oversight of this important mission. The lack of command presence, particularly at night, was clear.”

From the AR 15-6 Investigation of MG Fay, at Page 17:

- “In the critical early stages of the JDIC, as it was being formed, Abu Ghraib needed a LTC to take total control. The need was for a leader to get the JIDC organized, to set standards, enforce discipline, create checks and balances, establish quality controls, communicate a zero tolerance for abuse of detainees, and enforce that policy by quickly and efficiently punishing offenders so that the rest of the organization clearly understood the message. Well-disciplined units that have active, involved leaders both at the NCO and Officer level are less likely to commit abuses or other such infractions. If such instances do occur, they are seldom repeated because those leaders act aggressively to deal with the violators and reemphasize the standards.”

From the AR 15-6 Investigation of LTG Jones, 8. g. at Page 18:

- “Other Contributing Factors. No single, or simple, cause explains why some of the Abu Ghraib abuses happened. In addition to the leadership failings discussed above, other contributing factors include: (1) Safety and security conditions at Abu Ghraib. Resources that might otherwise have been put towards detention operations instead had to be dedicated to force protection. In addition, the difficult circumstances for Soldiers, including a poor quality of life and the constant threat of death or serious injury, contributed to Soldiers’ frustrations and increased their levels of stress. Facilities at Abu Ghraib were poor. Working and living conditions created a poor climate to conduct interrogation and detention operations to standard.”

From the AR 15-6 Investigation of MG Fay, paragraph (4) at Page 8:

- “Looking beyond personal responsibility, leader responsibility and command responsibility, systemic problems and issues also contributed to the volatile environment in which the abuse occurred. These systemic problems included: inadequate interrogation doctrine and training, an acute shortage of MP and MI Soldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq

003111 DEFENSE EXHIBIT B FID

OFFERED R. 63 ADMITTED R. 64

Campaign, and intense pressure felt by the personnel on the ground to produce actionable intelligence from detainees.”

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Page 42:

- “LTG Sanchez did not believe significant pressure was coming from outside of CJTF-7, but does confirm that there was great pressure placed upon the intelligence system to produce actionable intelligence (Reference Annex B, Appendix 1, SANCHEZ).”

From the AR 15-6 Investigation of MG Fay, paragraph (5) at Page 111:

- “Finding: Leaders failed to take steps to effectively manage pressure placed upon JIDC personnel.”

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Pages 10 and 88:

- “The use of nudity as an interrogation technique or incentive to maintain the cooperation of detainees was not a technique developed at Abu Ghraib, but rather a technique which was imported and can be traced through Afghanistan and GTMO. As interrogation operations in Iraq began to take form, it was often the same personnel who had operated and deployed in other theaters and in support of GWOT, who were called upon to establish and conduct interrogation operations in Abu Ghraib. The lines of authority and the prior legal opinions blurred. They simply carried forward the use of nudity into the Iraqi theater of operations. The use of clothing as an incentive (nudity) is significant in that it likely contributed to an escalating ‘de-humanization’ of the detainees and set the stage for additional and more severe abuses to occur.”

From the AR 15-6 Investigation of MG Fay, paragraph (11) at Page 45:

- “LTC ██████ and ten other soldiers were wounded in the mortar attack that occurred on 20 September 2003. Two soldiers died in that attack. LTC ██████ was extremely traumatized by that attack, especially by the two deaths and the agony suffered by one of those soldiers before his death. He was still very emotional about that attack when interviewed for this investigation on 27 May 2004. He said he thinks about the attack and the deaths daily. That attack also had an impact on a number of other Soldiers at Abu Ghraib as did the very frequent mortar attacks that occurred at Abu Ghraib during this entire period. The Soldiers’ and civilians’ morale at Abu Ghraib suffered as the attacks continued. Additionally, there was a general feeling by both MI and MP personnel that Abu Ghraib was the forgotten outpost receiving little support from the Army. (Reference Annex F, Appendix 3, Mortar Attacks). The frequency of these attacks and the perceived lack of aggressive action to prevent them were contributing factors to the overall poor morale that existed at Abu Ghraib.”

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REMOVED BATES PAGES 3113 - 3179
(RECORD OF TRIAL – SPC ARMIN J. CRUZ)

(67 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 AND
DUPLICATES OF NONRESPONSIVE DOCUMENTS FOUND AT
BATES 2819 - 2893

UNITED STATES OF AMERICA)

v.)

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

STIPULATION OF EXPECTED TESTIMONY

1SG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if 1SG [REDACTED] were present and testifying under oath, he would testify as follows:

1. I am SPC Cruz [REDACTED] I have known and worked with SPC Cruz for over 3 months on a daily basis. As his first sergeant, I assign duties and details to him and monitor his well-being and appointments.
2. I have observed SPC Cruz' duty performance, and he has never failed to show for duty on time, and has always been at the right place and time for all training and details. He has worked hard for me and performed up to all of my expectations as a soldier and has never performed poorly.
3. SPC Cruz' attitude has been good. Although he is understandably very concerned about his case, and has a reason to lose focus on his job, he has kept his focus, has not adopted a poor attitude, and has shown no signs of "copping an attitude" or unwillingness to work.
4. SPC Cruz interacts with the other soldiers from the company very well. I made it a point to integrate him into the company and welcome him. He has not had any altercations or problems with anyone in the company or battalion.
5. I have not had to perform or recommend any corrective training for SPC Cruz. He has not failed to attend mandatory training, show up for work, or perform details during his assignment to my company. I have not had to recommend anything in regards to work for SPC Cruz. He has been assigned a job to run the MWR area in our barracks and he has taken the initiative to set standards and ensure they are adhered to.
6. Considering SPC Cruz' performance since being assigned to my company, I believe SPC Cruz has been humbled by the allegations and has already learned what is right and what is wrong. I believe that he can be rehabilitated. Furthermore, I believe that he was impressionable and overwhelmed by the circumstances surrounding the prison and made a mistake in judgment by participating in detainee maltreatment. I do not condone what has happened at the prison, however, I realize how powerful peer pressure can be and someone as young and inexperienced as SPC Cruz can easily make a mistake in judgment. To be involved in armed combat, see what happens to soldiers when wounded or injured is a very emotional experience and can overwhelm most people. We as soldiers need to set emotions aside, do what is right, maintain the discipline that we have been taught and conduct ourselves professionally. SPC Cruz made errors in judgment and his actions are not to be dismissed lightly. Having said that, based on my interactions with SPC Cruz, I still believe that he can be rehabilitated.

7. SPC Cruz has done every duty as required, never been in trouble and always kept the NCO support channel informed on his schedule so we could assist him. I can attest that SPC Cruz has fulfilled all duties assigned to him and has not one time performed his duties poorly. Despite everything going on, he has continued to soldier on and I respect that a lot.


MAJ, JA
Trial Counsel


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


Defense Counsel

UNITED STATES OF AMERICA)

v.)

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

STIPULATION OF EXPECTED TESTIMONY

SSG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. SPC Armin Cruz was assigned to my section in the Joint Interrogation and Debriefing Center, Fusion Analysis Cell, in November 2003, and did an outstanding job throughout the period of his service with me. When initially assigned to me, he was placed in the Former Regime Elements Cell. A few weeks later, seeing his work ethic, dedication, and attention to detail, I reassigned him as my FRE NCOIC in charge of two other junior enlisted soldiers. Once he was transferred into my section, I had daily contact with him until his departure from the JIDC around Feb-Mar 2004. In addition, we have kept in touch via email since going our separate ways.
2. As the FRE NCOIC, SPC Cruz was responsible for the integration of newly assigned personnel into the FRE teams. He ensured the proficiency and accountability of intelligence collection efforts by intelligence analysts assigned to the FRE Tiger Team. SPC Cruz was also accountable for the timely dissemination of team products to the necessary parties as well as the day-to-day management of the FRE team.
3. Additionally, SPC Cruz was also responsible for all-source analysis and the integration of intelligence products in support of the ICE Tiger Teams and Fusion cell. He was tasked to identify intelligence gaps and provide input to direct collection efforts. SPC Cruz also provided assessments and recommended courses of action, participated to the greatest extent possible to ensure accurate analytical exchanges, and was also responsible for relaying all new information obtained to team members.
4. SPC Cruz maintained knowledge of assigned cases and prioritized detainees based on intelligence value. He also coordinated with the Senior Analyst for the creation of products to assist the team's interrogation efforts. SPC Cruz additionally provided all final intelligence available in order to assist the team assessment and DAB memorandums to support Transfer and Release nominee profiles.
5. While working in the Fusion Analysis Cell, SPC Cruz personally wrote 10 Analytical Assessments, which should normally be executed by senior, Corp or Division level, Analysts. His analytical assessments included, but were not limited to the following areas-- General Security Organization, Special Security Organization, Iraqi Intelligence Service, with special emphasis on the Ghafiqi Project, Mohammeds Army and the Former Regime Elements remnants within Iraq. These analytical assessments were distributed around Iraq, some of which went as high as the Secretary of Defense.

DEFENSE EXHIBIT 003182

OFFERED R. 103 ADMITTED R. 105

6. SPC Cruz' work ethic, motivation, dedication and attention to detail initially impressed me, and have continued to do so. From what I have observed, as his supervisor, I feel he is more than capable and competent. He has continuously created a much happier environment, greatly assisting everyone with those long days spent within the office. He has made a significant impact within the organization.

7. As his supervisor, between November 2003 and March 2004, I had opportunities every day to observe his duty performance. SPC Cruz was basically my right hand man. He served as not only the NCOIC of one of my teams, but pretty much as my second in charge, when I was out performing other duties. He never refused to pull extra duty whenever I needed someone to help. SPC Cruz was and is an outstanding analyst and soldier. He was one of my best soldiers, with his outstanding work ethic, attention to detail, and humorous ways he had about him. Overall, I couldn't have asked for a better troop.

8. SPC Cruz' attitude and work ethic were amazing. Although I had set hours for him to work, SPC Cruz often times came in early and stayed much later than his duty hours, to assist his teammates, and ensure everything was going as planned. Although morale was often times low in Iraq, SPC Cruz always tried to keep a positive attitude on life, and passed those vibes off to the rest of the office. It allowed for a more relaxed environment and assisted with the section's productivity.

9. SPC Cruz worked extremely well with other soldiers. As one of my section leaders, SPC Cruz did not rule with an iron fist. He listened to everyone's opinions on the situation, and then acted from there. He never left anyone out, and always made sure his entire section was involved in any decisions that were being made. He worked well with my other section leaders, and also assisted them with their duties, when assistance was necessary.

10. Although we became very good friends, SPC Cruz also recognized that I was his supervisor, and that he had to listen to what I had to say. As such, he didn't gripe or complain, or even ask why, he just sucked it up, and moved on. His level of professionalism while in the combat zone was uncanny. Never did he talk down to anyone offering him suggestions. To the contrary, he would take in those opinions, with that of the others in the section, and mold them into his final piece.

11. I strongly believe SPC Cruz is capable of rehabilitation. Under the conditions, and based on everything that he experienced, I strongly feel he will have no problems with his rehabilitation. SPC Cruz is an outstanding soldier and wonderful friend, and anyone who was close to him will tell you the same.

12. SPC Cruz is a soldier who has definitely separated himself from the rest. SPC Cruz was by far one of the best soldiers with whom I have ever had the privilege of working.


MAJ, JA
Trial Counsel


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


Defense Counsel

003183

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED
TESTIMONY

SSG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. Armin Cruz and I are members of the 321st MI Battalion based in Austin, Texas. I first met SPC Cruz during his initial visits to the unit after enlisting in the Army Reserves.
2. Right from the start SPC Cruz struck me as an educated, articulate young man. Over a drill or two I learned that he worked in a junior managerial position within the national private day-care industry. As a father who'd entrusted his child to the same organization, I gained even more respect for SPC Cruz. Parenting, just as surrogate parenting, is a task which requires discipline, compassion, and the ability to reason and be highly organized, structured and consistent in all aspects of the job. I too work in an industry where the male is only recently making inroads. I am a rehabilitative massage therapist. As an anthropologist by degree, I have studied human nature and found my way naturally to all that I've done in my career which involves people. We are both Red Cross certified Professional Rescuers as well. Specialist Armin Cruz is one of these special people.
3. SPC Cruz was my Analyst when we were first sent to Abu Ghraib. I am proud to have him as a friend, a "brother" and a team member. As an analyst he excels in his work. He constantly provided good data and enthusiastically immersed himself in the job, always making an extra effort. On one occasion he constructed a spread sheet specific to our teams' data making it easier to analyze as well as to report. As friends and team members we lived and worked together during our stay at Abu, even after our managerial staff began juggling team members from one Tiger Team to the next. Much to our dismay SSG Day and I lost SPC Cruz to another team and were unable to reacquire him in spite of our protestations that our team integrity had been compromised.
4. Analysts were in shorter order at Abu and were being heavily multi-tasked. A huge influx of civilian contractors ensued. The analysts endured a great burden at Abu, being shuttled from team to team, being required to hot swap shifts at the whim of the managers of the Interrogation Control Element. When the work day was done, as well as when it began, we would end or begin our day as "brothers" and hooch mates over a pot or two Starbucks coffee. It was something we shared with the entire unit as well as passers-by. This time always included marking down our calendar. "Another day behind us in this hell hole, another day closer to going home" was the oft unspoken mantra. We always shared all that our friends and family sent us. SPC Cruz is very generous and selfless person, never placing his needs before the needs of others.

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DEFENSE EXHIBIT G FID

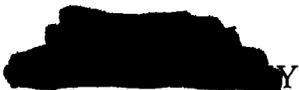
OFFERED R. 103 ADMITTED R. 105

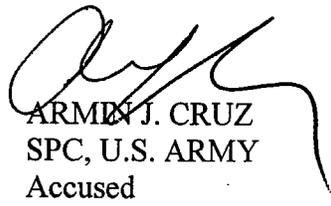
5. On the evening of 20 September 2003 at approximately 2145 hours our facility was once again the target of a mortar attack. We feared this moment because of the fact that we were cleared, as a result of an allegedly conducted Risk Assessment, to work outside at night in tents within the confines of the High Value yard at Abu Ghraib. The prison at that time had nearly unlimited indoor work space available in the form of empty cells and halls. Just prior to our arrival at Abu a mortar attack had killed on the order of 20 prisoners and injured many more. The proximity of our tents to the "cage" and the previous impact site struck fear in our minds. As we prepared to begin interrogations that evening, suddenly a mortar impacted in very near proximity to our Interrogation Control Element tent. After initially seeking cover on the floor of the tent we scrambled to acquire our personal protective equipment from our indoor sleeping area. I left the tent immediately behind my teammates Specialist Armin Cruz and Staff Sergeant [REDACTED]. Cruz and [REDACTED] were out the door of the tent approximately 5-10 yards as I breached the tent's doorway when suddenly a second mortar hit within 5-10 yards of them. As I hit the ground I heard SSG [REDACTED] yell, "I'm hit, I'm hit". Specialist Cruz almost immediately returned to my side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which I began to triage immediately. Specialist Cruz turned to go back to the impact site to continue to assist the wounded. He worked on a fellow analyst by the name of Sergeant [REDACTED] for a long time who was one of two soldiers who were in the immediate impact zone of this second mortar. As I handed SSG [REDACTED] off to the medics on the scene I came upon Specialist Cruz still in attendance of our fallen comrade. I began to assist Cruz and the medics in revival and stabilization efforts of our fallen comrade. Specialist Cruz performed chest compressions on our friend and verbally comforted and encouraged Sergeant [REDACTED] unfalteringly to hang in there, "you are going to make it, you can do this, and we are here for you". Our Red Cross training and military Combat Lifesaver training was being fully utilized. We personally loaded Sgt [REDACTED] ravaged body into the evac chopper and spent the next several hours performing evac operations of the other dead and wounded. Specialist Cruz insisted that we follow Sgt [REDACTED] to the hospital to continue to see that he was being cared for. We were able to do this once all of the casualties were transported to medical facilities and were being attended to. Sadly, we learned from the hospital staff that Sg [REDACTED] was pronounced DOA. We determined where he had been taken and secured another chopper ride to the morgue facility where we viewed Sgt [REDACTED] in his interim resting place. We sadly said goodbye to our fallen comrade and together began our grieving process with a hand on [REDACTED] body bag as we said goodbye to him. Thereafter we were picked up by our rear element and interviewed regarding the occurrence.

6. SPC Cruz, our teammate and I went to SFC [REDACTED] who was our detachment's NCOIC, and collectively asked for help in the form of counseling and were essentially laughed off. I personally pursued speaking with the Chaplain for the 205th MI Brigade whom I know well and was referred to the Chaplain in charge at Abu, who gave me very little of her time and no help to speak of. Access to Combat Stress assistance was provided one time very shortly after the mortar attack in a group session and to my knowledge, leadership made no concerted effort to determine whether individuals or the group needed any further help. We all dealt with the event and the situation in different ways, but SPC Cruz and I discussed issues regularly among ourselves, even after SPC Cruz was assigned to different teams and work schedules.

7. Specialist Cruz has always demonstrated all of the qualities which I referred to throughout the foregoing character reference. He is a brave, selfless human being whom I shall forever hold in the highest regard. He is my brother and has my unwavering support and respect. We have survived having unthinkingly been thrust into harms way by a commander who has hopefully learned a lesson, unfortunately at the ultimate cost, and are better men for it.

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MAJ, JA
Trial Counsel


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


Defense Counsel

APPELLATE EXHIBITS

003187

Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States

v.

SPC Armin Cruz

1. ACCUSED

I have been informed that COL [REDACTED] is the military judge detailed to the court-martial to which the charges and specifications pending against me have been referred for trial. After consulting with my defense counsel, I hereby request that the court be composed of the military judge alone. I make this request with full knowledge of my right to be tried by a court-martial composed of (commissioned) ¹ officers (and, if I so request, enlisted personnel). ²

CRUZ, ARMIN	SPC	x <i>[Signature]</i>	10 September 2004
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2. DEFENSE COUNSEL

Prior to the signing of the foregoing request, I fully advised the above accused of his/her right to trial before a court-martial composed of (commissioned) ¹ officers (and of his/her right to have such court consist of at least one-third enlisted members not of his/her unit, upon his/her request). ²

[REDACTED]	MAJ Civilian	[REDACTED]	10 September 2004
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3. TRIAL COUNSEL

Argument is (not) requested.

[REDACTED]	MAJ	[REDACTED]	10 September 2004
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4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (x one) approved disapproved ³

[REDACTED]	COL	[REDACTED]	11 Sep 04
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1. Delete when accused is a warrant officer or enlisted member.
 2. Delete when accused is a commissioned officer or warrant officer.
 3. When request is disapproved, the basis for the denial must be put on the record. (See MCM, 1984, RCM 903(c))
 DD Form 1722, OCT 84
 Replaces Edition of 1 Oct 69 which may be used until supply is exhausted

UNITED STATES)

v.)

Offer to Plead Guilty)

Cruz, Armin J.)
SPC, U.S. Army,)
Headquarters and Headquarters)
Service Company,)
502nd Military Intelligence Battalion,)
504th Military Intelligence Brigade,)
III Corps,)
Victory Base, Iraq, APO AE 09342)

4 September 2004

1. I, SPC Armin J. Cruz, the Accused, have examined the Charges preferred against me and all statements and documents attached thereto. After consulting with my trial defense counsel and being fully advised that I have a legal and moral right to plead not guilty to the Charges and Specifications under which I may be tried, I offer to plead guilty as follows:

To all Specifications and Charges: Guilty

2. I offer to plead to the Charges as stated above, provided that the Convening Authority will take the action set forth in Appendix I. There are no other promises, conditions, or understandings regarding my proposed pleas of guilty that are not contained in this offer and the quantum at Appendix I.

3. As part of this offer, I also agree to the following:

a. I agree to enter into a written stipulation of fact correctly describing those offenses to which I am offering to plead guilty. I further agree that the Military Judge may use this stipulation during the guilty plea inquiry and in adjudging an appropriate sentence.

b. Upon receipt of a grant of testimonial immunity from the Convening Authority, I agree to cooperate fully with the Trial Counsel in the investigations and prosecutions of Specialist [REDACTED] Sergeant [REDACTED]; Staff Sergeant [REDACTED], II, Corporal [REDACTED] Jr.; Specialist [REDACTED]; Specialist [REDACTED], Private First Class [REDACTED] and any other soldier or civilian charged based on misconduct at the Baghdad Central Confinement Facility at Abu Ghraib. Specifically, the term "cooperate fully" as used herein shall mean: (a) the full disclosure to the Trial Counsel of all information known by me and relating to the treatment, maltreatment or alleged abuse of detainees at Baghdad Central Correctional Facility, Abu Ghraib, Iraq; (b) the identification of individuals in digital photographs on compact disc titled "CPU Exam" in the "Abu" Criminal Investigation Division file; (c) personally testifying at all such Article 32 investigations, courts-martial and evidentiary hearings relative to the investigation and prosecution of Sergeant [REDACTED] Corporal [REDACTED]

[REDACTED]; Specialis [REDACTED]; Specialis [REDACTED] and Private
First Clas [REDACTED] any other soldier or civilian charged based on misconduct at the
Baghdad Central Confinement Facility at Abu Ghraib.

c. I understand that I have a right to be tried by a court consisting of at least three officer members, or by a court consisting of at least one-third enlisted members. None of the members would come from my company. I further understand that I have a right to request trial by military judge alone, and if approved, there would be no court members and the judge alone would decide whether I am guilty or not guilty. I request trial by judge alone.

c. I agree that the Government will not be required to physically produce any witnesses from the United States to testify on my behalf pursuant to R.C.M. 1001(e). I understand that this does not constitute a waiver of my right to offer into evidence other forms of evidence under R.C.M. 1001(c), including, but not limited to, telephonic testimony, Stipulations of Expected Testimony, letters, photographs, awards and certificates.

4. I am satisfied with the advice of Mr [REDACTED]. He has advised me of the meaning and effect of my guilty plea, and I understand the meaning and effect thereof.

5. The government initiated the negotiations for this offer to plead guilty, however I have made the decision to plead guilty freely, voluntarily, and with the advice of counsel. No person has attempted to force or coerce me into making this offer to plead guilty.

6. If, before or during trial, any specification is amended, consolidated or dismissed with my consent for multiplicity or other reason, this agreement will remain in effect.

7. I understand that I may request to withdraw the plea of guilty at any time before my plea is accepted and that if I do so, this agreement is canceled. This agreement will also be canceled if:

a. I fail to plead guilty as agreed above;

b. The Stipulation of Fact is modified at any time without the consent of either myself or the Trial Counsel; or

c. The Military Judge either refuses to accept my plea of guilty or changes my plea of guilty during the trial.

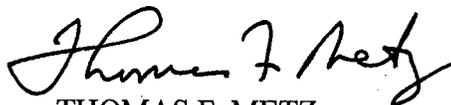
8. This writing, including Appendix I (Quantum), includes all terms and conditions of this Offer to Plead Guilty and contains all promises made to me or by me concerning my plea of guilty. There are no other terms or conditions that are not contained in this writing.


ARMIN F. CRUZ
SPC, USA
Accused


Civilian Defense Counsel

The offer to plead guilty dated 4 September 2004 is:

(accepted) ~~(not accepted)~~



THOMAS F. METZ
Lieutenant General, USA
Commanding

003191

UNITED STATES

v.

APPENDIX I (QUANTUM)

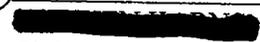
Cruz, Armin J.
SPC, U.S. Army,
Headquarters and Headquarters
Service Company,
502nd Military Intelligence Battalion,
504th Military Intelligence Brigade,
III Corps,
Victory Base, Iraq, APO AE 09342

4 September 2004

1. I, SPC Armin J. Cruz, offer to plead guilty to the Charges and Specifications, as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority agrees to refer my case to a special court-martial empowered to adjudge a bad conduct discharge.

2. Except as limited above, any other lawful punishments can be approved. The Convening Authority will apply any credit given by the military judge to the approved sentence.


ARMIN J. CRUZ
SPC, USA
Accused



Civilian Defense Counsel

The offer to plead guilty dated 4 September 2004 and Appendix I (Quantum) is:

(accepted) ~~(not accepted)~~


THOMAS F. METZ
Lieutenant General, USA
Commanding

003192

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.

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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.)

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

AC b. I would like a copy of the record of trial served on Stephen P. Karns.

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

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AK 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.

AK 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

REDACTED
COPY

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COURT-MARTIAL RECORD

NAME NILES, GLENN A., JR. ILT

SSN [REDACTED]

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S): _____

ASSIGNED TO:

PANEL _____

~~EXAM. DIV.~~ ✓

ACCA CLERK of COURT

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

ADMINISTRATIVE CHECK VOL I OF II VOL(S)

G Examiner
[REDACTED]
Clerk of Court's Office

ARMY 20040683

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VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

NILES, Glenn A., Jr.

(NAME: Last, First Middle Initial)

615th Military

Police Company

(unit/Command Name)

(Social Security Number)

US Army

(Branch of Service)

First Lieutenant

(Rank)

APO AE 09114

(Station or Ship)

BY

GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL

(Title of Convening Authority)

Headquarters, Seventh Army Training Comand

(Unit/Command of Convening Authority)

TRIED AT

Wuerzburg and Vilseck, Germany

(Place or Places of Trial)

ON

9 Jun and 1 Jul 04

(Date or Dates of Trial)

COMPANION CASES:

RECEIVED
CLERK OF COURT
2005 MAR -7 A 11:48
US ARMY JUDICIARY

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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 First Lieutenant Glenn A. Niles, Jr.
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: 30-Jul 2003
(Enter Date)

Date record forwarded to The Judge Advocate General: ² 22 Feb 2005
(Enter Date)

[Redacted Signature]
(signature and rank of Staff Judge Advocate or Legal Officer)

<p>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 unusual delay in the trial of the case.</p> <p>2 Or officer conducting review under Article 64(a)(MCM, 1984, RCM 1112).</p> <p>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.</p> <p>4 Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under sentence or court-martial at time charges are preferred. Item 2 will be the zero date if item 1 is not applicable.</p> <p>5 May not be applicable to trial by special court-martial.</p> <p>6 Only this item may be deducted.</p> <p>7 If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative.</p> <p>8 When further action is required under Article 64 or service directives.</p>	<p>ACTION</p>	<p>DATE 2003</p>	<p>CUMULATIVE ELAPSED DAYS³</p>
	1. Accused placed under restraint by military authority ⁴		
	2. Charges preferred (date of affidavit)	30-Sep-03	
	3. Article 32 investigation (date of report) ⁵	19-May-04	232
	4. Charges received by convening authority	2-Jun-04	246
	5. Charges referred for trial	2-Jun-04	246
	6. Sentence or acquittal	1-Jul-04	275
	Less days:		
	Accused sick, in hospital, or AWOL	0	
	Delay at request of defense	164	
	Total authorized deduction ⁶	164	
	7. Net elapsed days to sentence or acquittal		111
	8. Record received by convening authority	30-Nov-04	263
	Action ⁷	10-Feb-05	335
	9. Record received by officer conducting review under Article 64(a)		
	Action ⁸		

REMARKS

Defense Delay: 14 days. (Defense delay from 18 Oct - 1 Nov 04 [Redacted])
 88 days (Defense delay from 1 Nov 03 - 28 Jan 04)
 27 days (Defense delay from 30 Mar - 26 Apr 04 [Redacted])
 24 days (Defense delay from 17 Apr - 11 May 04 [Redacted])
 11 days (Defense delay from 3 May - 14 May 04 [Redacted]) (AR 27-20 para 5-40b(2))

Number of days from initial investigation of most serious arraigned offense to the date of arraignment:
 307 days. (7 Aug 03 - 9 Jun 04) (AR 27-10, Para 5-40b(1))

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IN THE UNITED STATES ARMY
FIFTH JUDICIAL CIRCUIT

UNITED STATES)

v.)

GLENN A. NILES, JR.)

First Lieutenant, U.S. Army)
615th Military Police Company)
APO, AE 09114)

POST-TRIAL AND
APPELLATE RIGHTS

30 June 2004

I, 1LT Glenn A. Niles, Jr, 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 by me 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 a 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. This recommendation will be sent to me and/or my defense counsel. Any matters that I wish the convening authority to consider, or matters in response to the Staff Judge Advocate's recommendation must be submitted within 10 days after I 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 a punitive discharge or confinement for a year or more are adjudged and the convening authority approves the discharge or confinement for a year or more, my case will be reviewed by the Army Court of Criminal Appeals (USACCA). 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.
5. After the Court of Criminal Appeals completes its review, I may request that my case be reviewed by the Court of Appeals for the Armed Forces. If that Court reviews my

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case, I may request review by the Supreme Court of the United States. I would have the same rights to counsel before those courts as I have before the USACCA.

6. If the Court-Martial does not adjudge or the Convening Authority does not approve either a punitive discharge or confinement for a year or more, my case will be examined by the Office of the Judge Advocate General for any legal errors and to determine if the sentence is appropriate. The Judge Advocate General (TJAG) may take corrective action as appropriate. This mandatory review under Article 69(a), UCMJ, will constitute the final review of my case unless TJAG directs review by the Army Court of Criminal Appeals.

7. I may waive or withdraw review by the appellate courts (subparagraph 4, above) or the Office of The Judge Advocate General (subparagraph 5, above) at any time before such review is completed. 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. It will 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 to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over me or the charged offense, any error prejudicial to my substantial rights, or the appropriateness of the sentence.

8. I understand that IAW Article 57(a), U.C.M.J., any forfeiture and/or reduction that was part of my sentence will take effect 14 days from the earlier of either a) the date the sentence was imposed, or b) the date the Convening Authority approves the sentence. I understand that under Article 57(a), I can, through my attorney, request that the application of these adjudged punishments be deferred by the Convening Authority until the date the Convening Authority approves the sentence.

9. I understand that IAW Article 58b, U.C.M.J., if this court-martial sentenced me to either a) any confinement and a punitive discharge, or b) any confinement in excess of six months, I will automatically forfeit all my pay and allowances during my confinement. I understand that under Article 58b, I can, through my attorney, ask that the Convening Authority defer these automatic forfeitures until the convening authority takes action on my sentence. In addition, my attorney may request that the Convening authority waive this automatic forfeiture for a period not to exceed six months, but only if the following two conditions are met:

a. I have dependents; and

b. The Convening Authority directs that the pay and allowances I would otherwise get would be paid not to me, but to my dependents.

10. I understand that if my court-martial sentence included a punitive discharge, I can request an exception to policy to have my family's household goods shipped at Government expense. (Note: Family members residing in USAREUR under command sponsorship will have household good shipped at government expense without the need for an exception to policy.)

11. I understand that if my court-martial sentence included confinement, I can request that the Convening Authority defer (that is, postpone the start of) my confinement. I understand that it is my burden to show that my interests and those of the community in release outweigh the interests of the community in confining me.

12. 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, as reflected by my initials where appropriate.

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

AMJ b. I request that a copy of the authenticated record of trial be served on myself pursuant to RCM 1104(b); I also request that a separate authenticated copy of the record of trial be served on my military counsel (and civilian counsel, if appropriate) pursuant to RCM 1106(f)(3). I request that individual copies of the Staff Judge Advocate's post trial recommendation be served on by both myself and my defense counsel pursuant to RCM 1106(f).

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

AMJ d. I want to be represented before the 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, Suite 1200, Arlington, Virginia 22203-1837.

AMJ e. I have been informed that I have the right to retain civilian counsel at my expense. I do not have civilian counsel at this time. Should I later retain civilian counsel, I will furnish the above information to: Clerk of Court, U.S. Army Judiciary (JALS-CC), 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203-1837.

f. If applicable, I (do) AMJ (do not) _____ want my attorney to ask the Convening Authority to defer the application of my adjudged forfeitures and/or reduction in Article 57(a) as described in paragraph 8 above.

g. If applicable, I (do) AMJ (do not) _____ want my attorney to ask the Convening Authority to defer or waive the automatic forfeitures in Article 58b as described in paragraph 9 above.

h. If applicable, I (do) AMJ (do not) _____ want my attorney to ask the Convening Authority for an exception to policy to ship my family's household goods at Government expense, as described in paragraph 10 above.

i. If applicable, I (do) AMJ (do not) _____ want my attorney to ask the Convening Authority to defer my confinement, as described in paragraph 11 above.

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13. I understand that if my sentence included either a Bad Conduct or Dishonorable Discharge but no confinement, I can immediately request to be placed on voluntary excess leave (VEL) until the Convening Authority takes action on my case. I understand that if my sentence included either a Bad Conduct or Dishonorable Discharge and any confinement, I can request to be placed on VEL at the completion of my confinement until the Convening Authority takes action on my case. If my request is granted and I am placed on VEL, I understand that:

- a. My accrued leave will be used until exhausted, and then I will be in a VEL status;
- b. While in a VEL status, I will not receive any pay or allowances, nor will I accrue leave;
- c. While in a VEL status, I will not be entitled to travel on a space available basis; and
- d. I will be completely processed for discharge from the Army and, if requested, will receive a separation physical prior to my departure on VEL. I understand that there is no entitlement to physical disability retired pay should I incur a physical disability while in a VEL.

14. I understand that if my sentence included a Bad Conduct or Dishonorable Discharge, when the Convening Authority takes action on my case, I will be placed on involuntary excess leave (IEL) until the completion of the post-trial and appellate process in my case. If I am placed on IEL, I understand that same restrictions as listed above for VEL apply.

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

Name: _____

Street: _____

City, State, Zip: _____

Area Code & Telephone: _____

E-mail Address (if any) _____

Permanent Address (if different from above)

Name: _____

Street: _____

City, State, Zip: _____

Area Code & Telephone: _____

If I cannot be reached at either address above, please contact the following individual(s), who are most likely to have means of contacting me:

Name: _____

Street: _____

City, State, Zip: _____

Area Code & Telephone: _____

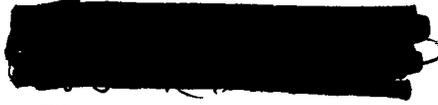
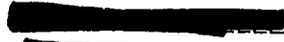
Email Address (if any) _____

DATE:


GLENN A. NILES
1LT, MP
Accused

I certify that I have advised 1LT Glenn A. Niles, Jr., regarding his post-trial and appellate rights as set forth above, that he has received a copy of this document, and that he made elections concerning appellate counsel. IAW R.C.M. 1106(f)(3), I request a copy of the record of trial.

Date: 30 June 04

Defense Counsel

COURT-MARTIAL DATA SHEET

1. OJAG NUMBER

2. NAME (Last, First, Middle Initial)
NILES, Glenn A., Jr.

3. SOCIAL SECURITY NO.

4. RANK
1LT

5. UNIT/COMMAND NAME
615th MP Co, APO AE 09114

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

TC - Trial Counsel. This column will be completed in all cases in which a finding of guilty is returned.

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.

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

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.

References - All references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts Martial, United States (MCM), 1984.

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?	X				X			
b. If not: Did the accused waive his/her right to such representation?	N/A	N/A			N/A	N/A		
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)?		X				X		
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))?	N/A	N/A			N/A	N/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			

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?	N/A	N/A			N/A	N/A		
(b) If not, were reasons given why requested counsel was not reasonably available?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
(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)?	N/A	N/A			N/A	N/A		
(3) Was a verbatim transcript made (Article 19, UCMJ)?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
b. If not, was he/she excused?	N/A	N/A			N/A	N/A		
17. a. If accused was an enlisted person, did he/she make a request that enlisted persons be included in membership of the court?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
c. Did any enlisted member of the court belong to the same unit as the accused?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		

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)?	X				X			
c. Does the record show that a member excused as a result of a challenge withdrew from the court?	X				X			
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?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
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			
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))?	X				X			
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)?	N/A	N/A			N/A	N/A		
c. If special findings were requested, were they made a part of the record?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
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)?	X				X			
b. If trial was by military judge alone, did the military judge announce the sentence (RCM 1007)?	N/A	N/A			N/A	N/A		

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))?	N/A	N/A			N/A	N/A		
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))?	N/A	N/A			N/A	N/A		
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?		X				X		
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			
38. Did the court have jurisdiction of person and offense (RCM 202 & 203)?					X			
39. Does each specification state an offense under the code (RCM 907(b))?					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			
41. Is the evidence sufficient to support the findings?					X			
42. Is the sentence within legal limits (RCM 1112(d))?					X			
43. Is the action of the convening authority properly entered in the record and signed (RCM 1107(f))?					X			
44. If appropriate, is a proper place of confinement designated (RCM 1107(f)(4)(c))?					N/A	N/A		
45. a. Was the staff judge advocate's post-trial recommendation served on the defense counsel for comment (RCM 1106(f))?					X			
b. If the addendum to the recommendation contained new matters, was it served on the defense counsel for comment (RCM 1105(f)(7))?					N/A	N/A		
c. Did the accused submit matters for the convening authority's consideration in a timely manner (RCM 1105)?					X			
d. If yes, was the convening authority's action subsequent to the submission of the matters?					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?					N/A	N/A		
46. a. Does the record indicate that the accused was advised of his/her appellate rights (RCM 1010)?					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			
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		

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COURT-MARTIAL DATA SHEET

SECTION C - COURT-MARTIAL ORDERS (CMO)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
47. Does the initial CMO bear the same date as the action of the convening authority who published it?					X			
48. Are all the orders convening the court which tried the case correctly cited in the CMO?					X			
49. Are the accused's name, rank, SSN, unit/command name and branch of service correctly shown in the CMO?					X			
50. Are all the charges and specifications (including amendments) upon which the accused was arraigned correctly shown in the CMO (RCM 1114)?					X			
51. Are the pleas, findings, and sentence correctly shown in the CMO (RCM 1114)?					X			
52. Does the CMO show the date the sentence was adjudged?					X			
53. Is the action of the convening authority correctly shown in the CMO?					X			
54. Is the CMO properly authenticated (RCM 1114)?					X			

55. REMARKS:

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]	22 Feb 05

57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	22 Feb 05

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]	22 Feb 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

003210

DEPARTMENT OF THE ARMY
Headquarters, Seventh Army Training Command
APO Army Europe 09114

GENERAL COURT-MARTIAL ORDER
NUMBER 9

10 February 2005

First Lieutenant Glenn A. Niles, Jr. [REDACTED] U.S. Army, 615th Military Police Company, APO AE 09114 (currently attached to Headquarters, Seventh Army Training Command due to the deployment of the 1st Infantry Division) was arraigned at Wuerzburg, Germany, on the following offenses at a general court-martial convened by the Commander, Seventh Army Training Command.

Charge I: Article 93: Plea: Not Guilty. Finding: Not Guilty.

Specification 1: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist. Plea: Not Guilty. Finding: Not Guilty.

Specification 2: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist. Plea: Not Guilty. Finding: Not Guilty.

Specification 3: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder. Plea: Not Guilty. Finding: Not Guilty.

Charge II: Article 133: Plea: Guilty. Finding: Guilty.

Specification: At or near Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, while a platoon leader in the 615th Military Police Company, and in the presence of [REDACTED], [REDACTED], and [REDACTED], wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by [REDACTED], wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 1 July 2004: To be reprimanded and to forfeit \$1,003.00 pay per month for 12 months.

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ACTION

The finding of guilty and the sentence is disapproved. The charge is dismissed. The adjudged forfeitures were deferred effective 4 August 2004 until date of convening authority action.

BY COMMAND OF BRIGADIER GENERAL HERTLING:

DISTRIBUTION:

Record Set (1)

Reference Set (1)

Accused (1)

MJ (██████████) (1)

MJ (██████████) (1)

TC (██████████) (1)

ATC (██████████) (1)

DC (██████████) (1)

CDR, 615 MP Co, APO AE 09114 (1)

CDR, 1st ID, APO AE 09036 (1)

CDR, 7th ATC, APO AE 09114-8130 (1)

CDR, DET D, 38th PSB, APO AE 09173 (1)

CDR, DET A, 106th Fin Bn, ATTN: Debt Management

Unit 26210, APO AE 09036 (1)

Clerk of Court, (JALS-CCR), 901 N. Stuart Street, Suite 1200,
Arlington, VA 22203-1837 (10)

CDR, (TAPC-MSP), 200 Stovall Street, Alexandria, VA 22332-0400(1)

Professor of Law, United States Military Academy, West Point,
NY 10996 (2)

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DEPARTMENT OF THE ARMY
Headquarters, Seventh Army Training Command
Office of the Staff Judge Advocate
APO Army Europe 09036

AETV-BGJA

10 February 2005

MEMORANDUM FOR Record

SUBJECT: United States v. 1LT Glenn A. Niles, Jr.

On 10 February 2005, Brigadier General Hertling, GCMCA, Seventh Army Training Command, took action in the case of U.S. v. 1LT Glenn A. Niles, Jr. General Hertling considered all matters submitted by the accused and defense counsel pursuant to R.C.M. 1105/1106. In addition to these matters, with defense consent, the convening authority also considered an email sent to him by [REDACTED] on 9 February 2005 after the defense had submitted clemency matters.

[REDACTED]

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[REDACTED] 11D OSJA-Wuerzburg Law Center ([REDACTED])

From: [REDACTED] 1LT 7ATC HQ [REDACTED]@us.army.mil]

Sent: Thursday, February 17, 2005 2:00 PM

To: [REDACTED] 11D OSJA-Wuerzburg Law Center ([REDACTED])

Subject: Request for Clemency: 1LT Niles

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

From: [REDACTED] (709 MP Bn Commanding)

Sent: Wednesday, February 09, 2005 10:29 PM

To: [REDACTED] 7ATC HQ ([REDACTED]@graf.eur.army.mil)

Cc: [REDACTED] 7ATC HQ; [REDACTED] CSM (709 MP Bn CSM) [REDACTED]@us.army.mil)

Subject: Request for Clemency: 1LT Niles

Sir-

I believe there is a clemency packet enroute to your office for one of my officers.

I recommend you grant clemency for 1LT Niles.

1LT Niles was assigned as a PL in the 615th MP Co which was assigned to the 709th for OIF I. In July 2003, 1LT Niles assaulted 2 criminals who were being held at the Al Taji IP Station after they destroyed the renovations to the detention cell. I suspended him from his duties, conducted a commander's inquiry, and forwarded my findings to my brigade commander. The JAG grabbed a hold of it and it went forward to CJTF-7 where it was finally determined that the officer should be court-martialed. I believe this was based on the fact that the Abu Ghraib scandal had just broken in the press.

Regardless, 1LT Niles was court-martialed last summer and I testified on his behalf.

I do not condone his actions but I do not believe that they were egregious enough to cause this officer to lose his commission.

I realize as the GCMCA you have the responsibility to act in the best interest of the Army and US government as well as consider the officer.

I wish I could tell you that 1LT Glenn Niles is the best MP PL I ever had, that is not the case. He is a good officer, I kept him in Baghdad and had him serve as a battle captain in my TOC throughout our deployment. He learned a lot, grew as an officer, and is a better person for the whole experience.

He has always taken responsibility for his actions - he never once failed to come forward and tell the truth. He understands the seriousness of the offense, accepted his punishment at court-martial, and continues to soldier on.

He is currently the XO of the 615th MP Co at Graf. He is still one of my officers since I have C2 over all the 18th MP Bde units while the brigade is in Iraq.

I trust him to lead Soldiers. I would place him command of one of my units. I know he has learned from his mistake. I appreciate you taking the time to read this.

I will be at Graf on Thursday 10 February at 1230 as I am escorting BG Johnson, MP Commandant. If it is convenient, I can stop by your office and see you in person concerning this matter. I can break away from escorting my Commandant at any time to see you.

I will call your aide while I am enroute to Graf to see if you want to see me.

Thank you again, sir.

VR,

[REDACTED]
2/17/2005

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40040883

[REDACTED]

COMMANDER
709TH MP BATTALION

[REDACTED]

WARRIORS

"ALWAYS A WARRIOR...ALWAYS A PROFESSIONAL"

003215

2/17/2005

20040083



DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
OFFICE OF THE STAFF JUDGE ADVOCATE
 UNIT #26222
 APO AE 09036

REPLY TO THE
ATTENTION OF:

FEB 10 2005

AETV-BGJA

MEMORANDUM FOR Commander, Seventh Army Training Command, APO AE 09114

SUBJECT: Addendum to the Staff Judge Advocate Recommendation in the General Court-Martial of First Lieutenant Glenn A. Niles, Jr. 615th Military Police Company, APO AE 09114

1. The enclosed R.C.M. 1105/1106 request for clemency has been submitted by the accused's defense counsel for your review. In accordance with R.C.M. 1107, you must consider these matters prior to taking action on the case.
2. The accused, through counsel, requests that you disapprove the findings of the court-martial, dismiss the charges and specifications against him, and issue him a General Officer Memorandum of Reprimand. I disagree; no corrective action is required.
3. The following correction is noted to the Staff Judge Advocate's Post-Trial Recommendation (SJAR) dated 25 January 2005: para 6(a) should be changed from "None" to "Effective 4 August 2004, the convening authority deferred the adjudged forfeitures until such time as he takes action on the case." This correction is made after submission of 1105 matters, as it has come to my attention through the defense counsel.
4. In addition, defense counsel also notified the government that despite the approved deferment of adjudged forfeitures, finance has been taking money out of the accused's pay in order to satisfy the adjudged forfeitures. While not required by law, because of this error by finance, I recommend that you approve only so much of the adjudged forfeitures of \$1,003.00 per month for six months.
5. I recommend that you approve only so much of the adjudged findings and sentence as provides for a reprimand and forfeiture of \$1,003.00 per month for six months. The adjudged forfeitures were deferred effective 4 August 2004 until date of convening authority action.

25 Encls

1. Clemency Petition/DC, dtd 8 Feb 05
2. Clemency Petition/ACC, dtd 27 Jan 05
3. OER thru 9 Jul 02

[REDACTED]

Staff Judge Advocate

003216

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AETV-BGJA

SUBJECT: Addendum to the Staff Judge Advocate Recommendation in the General Court-Martial of First Lieutenant Glenn A. Niles, Jr. , 615th Military Police Company, APO AE 09114

4. OER thru 9 Jul 03
5. Memo [REDACTED]
6. MFR, [REDACTED]
7. MFR, [REDACTED]
8. MFR, [REDACTED]
9. MFR, [REDACTED]
10. Memo [REDACTED]
11. Memo [REDACTED]
12. Memo [REDACTED]
13. Memo [REDACTED]
14. Memo [REDACTED]
15. Memo [REDACTED]
16. Memo [REDACTED]
17. MFR, [REDACTED]
18. MFR, [REDACTED]
19. Family Photos
20. Family Photos
21. Letter [REDACTED]
22. Diploma, Master of Arts – Counseling, Webster Univ, dtd 18 Dec 99
23. "Welcome 615th MP Co" Bavarian-American Monthly, Apr 04
24. OER, through 30 Mar 04
25. Staff Judge Advocate Recommendation

8 February 2005

MEMORANDUM FOR Commander, 7th Army Training Command, APO, AE 09114

SUBJECT: Petition for Clemency UP Rules for Courts-Martial 1105 & 1106 — United States v. 1LT Glenn A. Niles, Jr.

1. These matters are submitted under Rules for Courts-Martial (RCM) 1105 and 1106 in regard to the general court-martial of 1LT Glenn A. Niles, Jr., 615th Military Police Company, Grafenwoehr, Germany. At trial, 1LT Niles pled guilty to one specification of Conduct Unbecoming an Officer and a Gentleman and was sentenced to be reprimanded and to forfeit \$1003 per month for 12 months.

2. 1LT Niles respectfully requests that you disapprove the findings of the court-martial under RCM 1107 (c)(2), dismiss the charges and specifications against him, and issue him a General Officer Memorandum of Reprimand (GOMOR) in their stead. Such a grant of clemency is appropriate for the following reasons:

a. Glenn Niles is an honorable man, an outstanding officer and a great American!! His misconduct on 30 July 2003 in Baghdad, Iraq is a complete anomaly – and it is extremely minor considering the circumstances. 1LT Niles has served his country honorably and with great distinction for more than four years. If a finding of guilty at a General Court Martial is approved in this case, the Army will soon lose an extraordinary asset in that 1LT Niles will have to be administratively separated from the service. With a conviction in his file, 1LT Niles' security clearance will be revoked and he will no longer be able to serve in the Army as an Officer. Such a result would be tragic for the Niles family, would amount to excessive punishment, and would needlessly damage the Army and the Military Police Corps.

b. 1LT Niles has never made any excuses for his conduct. From the moment that it happened, he has accepted full responsibility for his actions and has cooperated fully with government investigators and prosecutors. When a commander's inquiry was conducted, 1LT Niles waived his rights and prepared a sworn statement admitting to his misconduct in striking the three Iraqi prisoners at the Al Taji police station. He never lied or withheld information about his actions or encouraged his subordinates to cover for him. Likewise, at all stages of this case, 1LT Niles has acknowledged that his actions were wrong. He attempted to resign in lieu of GCM in October 2003, but his request was denied. At his Article 32 hearing, he candidly apologized to his NCOs and soldiers for letting them down – and at trial, the accused pled guilty to conduct unbecoming an officer and gentleman in violation of Article 133 of the UCMJ. These facts illustrate that he is an honorable man. As an accused in a court martial, 1LT Niles could have maintained his silence, asserted numerous defenses or forced the government to expend great resources to prove his guilt. However, because he is a man of the highest integrity, Glenn Niles chose none of these courses of action. Quite simply, he knows that he made a mistake and has done nothing other than step forward to accept responsibility.

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c. For the ends of justice to be met, and for good order and discipline to be maintained, punishment in a given case must be fitting to the offense committed. Mitigation and extenuation must also be considered. Here, 1LT Niles' actions amounted to nothing more than simple assault. The "victims" were three Iraqi youths who had been detained for murdering a man and stealing his car.¹ They attempted to escape from detention by knocking a hole in the wall of the latrine at the Al Taji police station. 1LT Niles had been working non-stop for months in the extreme heat and sleep-deprived conditions of Baghdad's non-traditional combat environment. When he discovered that these three murder suspects had caused damage to the detention facility, 1LT Niles simply snapped. He momentarily lost control and struck the detainees. They were not injured; the entire incident lasted no more than five seconds. To receive a federal criminal conviction and administrative discharge from the service would be excessive punishment for this misconduct. A GOMOR is much more appropriate and just.

d. Indeed, a GOMOR or other administrative resolution has been the recommendation of 1LT Niles' leaders throughout this entire case. His company, battalion and brigade commanders at the time of the incident all supported lesser disposition than at a GCM. They all agreed that 1LT Niles' misconduct – and the extenuating circumstances present in Baghdad in July 2003 – simply did not warrant such a severe outcome. Likewise, the Article 32 Investigating Officer in this case, [REDACTED], recommended that 1LT Niles receive nothing more than a GOMOR in his restricted fiche. After reviewing all the facts and circumstances of this incident, LTC Vandersteen felt that it did not warrant disposition as a GCM.²

e. A lesser disposition is appropriate here primarily because of the caliber of 1LT Niles as an officer, a soldier, and as a person. Throughout all phases of his career in the military, he has distinguished himself and demonstrated incredible potential. Prior to deployment, Glenn served as a Platoon Leader within the 615th MP Company in Grafenwoehr. He greatly impressed both Company Commanders who rated him (See Encl 2-3). During this timeframe, 1LT Niles also greatly impressed [REDACTED], the 793rd Military Police Battalion XO who closely observed him during the unit's preparation for deployment to Iraq. [REDACTED], who at the time of trial was just leaving his position as the Provost Marshall for the Vilseck Military Community, actually delayed his PCS travel so that he could provide character testimony at Glenn's trial. He testified about his observations of 1LT Niles during his Platoon "Ex-Eval" prior to deployment for OIF. He found 1LT Niles to be a highly competent and resourceful officer, and a man with "a very high level of character" (ROT, pg. 132). [REDACTED] also stated that he would

¹ See Article 32 testimony of [REDACTED], Investigating Officer for Commander's Inquiry, page 16 of Article 32 summarized transcript, Record of Trial, Volume I.

² The Article 32 Investigating Officer's Report is included in Volume I of the ROT. Please pay special attention to [REDACTED] comments on Continuation Sheet 3 of his report dated 19 May 2004 (specifically, ¶ (6) of Item 21). He states a fundamental fact that is of critical importance in the case before you: "junior leaders make mistakes." He also cites two relevant instances where certain individuals (GEN Powell and BG Freakley) made mistakes early in their careers but were given second chances by their leadership because of their demonstrated potential for success.

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be more than comfortable serving with 1LT Niles in combat, and that he would want Glenn as one of his company commanders under such circumstances.³

f. Similar testimony was received by the court from fellow officers and soldiers who served with 1LT Niles during OIF. Two of his peers – fellow platoon leaders with the 615th MP Company in Iraq – both attested to 1LT Niles' high quality as an officer. [REDACTED] rated Glenn as the best of the platoon leaders in the company and told of his complete confidence in Glenn's technical and tactical competence. He also relayed that 1LT Niles was the type of friend who would put his own needs aside to assist a comrade with even the most trivial matter.⁴ Likewise, [REDACTED] – the officer who took over Glenn's platoon in Iraq after the incident – testified to the high state of readiness and discipline he found in the platoon when he arrived at Al Taji. He also told of 1LT Niles mentorship of his fellow platoon leaders who had less experience.⁵

g. Several of 1LT Niles' subordinates also testified at trial. To a man, each of them told of their great respect for their former platoon leader. [REDACTED] called 1LT Niles "a great leader" (ROT, pg. 101) and described his high level of professionalism and "genuine concern" (ROT, pg. 101) for his soldiers.⁶ [REDACTED] described him as a hard, mission-focused leader.⁷ [REDACTED], the platoon sergeant, described 1LT Niles as a "strong, high-standard leader ... very tactically proficient ... [whose] best trait is caring for soldiers" (ROT, pg. 120).⁸ And, [REDACTED], one of the platoon's squad leaders submitted a written statement attesting to his similar opinion (Encl 4). Each of these men would gladly serve again under Glenn Niles' leadership.

h. The most notable testimony, however, came from 1LT Niles' battalion leadership in Iraq. His Battalion Commander, [REDACTED], observed Glenn's performance not only as a platoon leader, but also as a member of his battalion staff.⁹ He very clearly summarized his opinion of Glenn by telling the court members that "Lieutenant Niles can work for me anytime, anywhere that I go ... he can certainly command a company in any unit that I'm responsible for" (ROT, pp. 173-74).¹⁰ LTC [REDACTED] also wrote two letters of support for 1LT Niles at various stages of this

³ Summary of [REDACTED] found at ROT, pp. 128-136.

⁴ Summary of [REDACTED] found at ROT, pp. 137-148.

⁵ Summary of [REDACTED] found at ROT, pp. 148-155.

⁶ Summary of [REDACTED] at ROT, pp. 93-112.

⁷ Summary of [REDACTED] found at ROT, pp. 112-118.

⁸ Summary of [REDACTED] found at ROT, pp. 118-128.

⁹ After the incident at the Al Taji station, 1LT Niles was suspended from his position as Platoon Leader and moved to Battalion Headquarters where he joined the staff of the S-3 as a Night Battle Captain in the Battalion TOC in Baghdad.

¹⁰ [REDACTED] is one of the most highly respected leaders of the MP Corps and brings great credibility to his assessment of 1LT Niles' potential for continued service and advancement. He has over 18 years of service as an MP officer and has held several key positions. He has commanded two companies, including command of an MP company during Operation Desert Storm, and commanded the 793rd MP Battalion throughout that unit's challenging and highly successful service during Operation Iraqi Freedom. He has also served as the Chief of Officer Training at the MP School at Fort Leonard Wood in addition to several varying staff jobs. His opinion of 1LT Niles' potential should be given great credence.

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proceeding which are attached (Encl 5-6). Similarly, Glenn's Company Commander, [REDACTED], wrote two letters in support of 1LT Niles' continued service which are also attached (Encl 7-8). Likewise, many other officers on the battalion staff observed Glenn's performance and submitted powerful letters on his behalf (Encl 9-14). Even the Battalion CSM recognizes that 1LT Niles "should be salvaged" (Encl 15).

i. 1LT Niles' true character is illustrated by the following incident: at the Article 32 hearing, 1LT Niles asked me to arrange for his former Platoon Sergeant and several other subordinates to be present in the courtroom when he made his statement so that he could address them as well as the Investigating Officer. Because of the incident, he had been quickly removed from his position of leadership and had not had the opportunity to speak with his former soldiers because of the pending hearing in which they could be called as witnesses. His first opportunity to speak to them came in the public forum of the Article 32 hearing as he tearfully and humbly thanked them for "showing him what duty honor and courage was all about."¹¹ This example shows what type of leader – and the quality of person – that Glenn Niles is.

j. At the court martial on 1 July 2004, Glenn continued to accept responsibility and step forward to accept his punishment. He demonstrated complete candor with the military judge who accepted his plea of guilty on the charge of conduct unbecoming an officer and a gentleman. After hearing all the evidence in mitigation and extenuation, the military panel of ten officers decided that 1LT Niles should be retained in the service and given a chance to soldier on. They could have sent him to jail for up to a year and/or dismissed him from the service. However, they appropriately chose to adjudge neither of these options, ordering instead that 1LT Niles forfeit some of his pay and that he be reprimanded for his actions.

k. After receiving his sentence, 1LT Niles has continued to live the seven Army values. When he was returned to his unit, he was assigned duties as the Company XO for the 615th MP Company. In this position, Glenn has continued to impress his superiors. Both his Battalion and Company Commanders submitted letters for your consideration which detail his outstanding service since his court martial (Encl 16-17).

l. Through is all, Glenn Niles has remained a committed family man with a wonderful and loving family (Encl 18-19). [REDACTED], rely on him for their support. 1LT Niles wants nothing more than to continue providing for his family by serving in our great Army. Please also consider the attached letter from [REDACTED] (Encl 20) in support of your decision to disapprove the findings in this case.

m. Finally, please consider three additional attachments. I have included a copy of 1LT Niles' diploma showing the awarding of his Masters Degree in Counseling (Encl 21), an article published in the Bavarian-American Monthly magazine detailing the

¹¹ The audio tapes of this hearing are in the possession of the Court Reporter at the Office of the Staff Judge Advocate, 1st Infantry Division, in Wurzburg, Germany.

challenges and accomplishments of the 615th MP Company during OIF (Encl 22), and 1LT Niles' most recent OER which was closed out before his court martial (Encl 23). This evaluation details 1LT Niles' service on the 793rd MP Battalion staff.

3. For these reasons, 1LT Niles respectfully requests that you grant him clemency in the form of disapproving his finding of guilt, dismissing his charges and issuing him a GOMOR. This course of action meets the ends of justice and keeps a great officer in uniform! It is a win, win situation.
4. Please include a copy of this memorandum in all copies of the Record of Trial. This memorandum was served via personal service on the Office of the Staff Judge Advocate, 1st Infantry Division, Military Justice Section, Wurzburg, Germany. On behalf of 1LT Niles, thank you for considering these matters submitted in clemency.

[REDACTED]

Trial Defense Counsel

23 Encl

1. Accused's Request for Clemency, dtd 8 Feb 05
2. OER, thru 09 Jul 02
3. OER, thru 09 Jul 03
4. Memo for Members, [REDACTED], dtd 28 Jun 04
5. MFR, [REDACTED], dtd 25 Jan 04
6. MFR, [REDACTED], dtd 30 Oct 03
7. MFR, [REDACTED], dtd 28 Jan 04
8. MFR, [REDACTED], dtd 14 Oct 03
9. Memo for Members, [REDACTED], dtd 25 Jun 04
10. Memo for Members, [REDACTED], dtd 29 Jun 04
11. Memo for Members, [REDACTED], dtd 28 Jun 04
12. Memo for Members, [REDACTED], dtd 28 Jun 04
13. Memo for Members, [REDACTED], dtd 28 Jun 04
14. Memo for Members, [REDACTED], dtd 21 Jun 04
15. Memo for Members, [REDACTED], dtd 24 Jun 04
16. MFR, [REDACTED], dtd 01 Nov 04
17. MFR, [REDACTED], dtd 15 Nov 04
- 18-19. [REDACTED], undtd
20. Letter, [REDACTED], dtd 8 Feb 05
21. Diploma, Master of Arts – Counseling, Webster Univ., dtd 18 Dec 99
22. "Welcome 615th MP CO," Bavarian-American Monthly, Apr 04
23. OER, thru 30 Mar 04

REMOVED BATES PAGES 3223 - 3251
(RECORD OF TRIAL – 1LT GLENN A. NILES, JR.)

(29 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF
OF 1LT NILES AND OTHER RECORDS CONTAINING PRIVATE
INFORMATION, WHICH WERE DETERMINED TO BE
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST

ARTICLE 32 INVESTIGATION

003252

OFFICER EVALUATION REPORT

For use of this form, see AR 623-105; the proponent agency is ODCSPER

SEE PRIVACY ACT STATEMENT
ON DA FORM 67-9

PART I - ADMINISTRATIVE DATA

a. NAME (Last, First, Middle Initial) NILES, GLENN C.		b. SSN	c. RANK 1LT	d. DATE OF RANK Year: 2002 Month: 11 Day: 10			e. BRANCH MP	f. DESIG/INSP / PACT (PFA) 31A
g. UNIT, ORG, STATION, ZIP CODE ON APO, MAJOR COMMAND HHD, 709th Military Police Battalion, APO AE 09165						h. REASON FOR SUBMISSION 03 Change of Rater		
i. PERIOD COVERED			j. RATED MONTHS 8	k. NONRATED CODES	l. NO. OF ENCL	m. RATED OFFICER COPY (Check one and date)		
Year	FROM Month	Day	Year	THRU Month	Day			
2003	07	10	2004	03	30			
						n. PSB INITIAL		
						o. CMD CODE UH		
						p. PSB CODE EU17		

PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and that data is correct)

a. NAME OF RATER (Last, First, MI)	SSN	RANK	POSITION	SIGNATURE	DATE
[REDACTED]	[REDACTED]	[REDACTED]	Battalion S3	[REDACTED]	[REDACTED]
b. NAME OF INTERMEDIATE RATER (Last, First, MI)	SSN	RANK	POSITION	SIGNATURE	DATE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
c. NAME OF SENIOR RATER (Last, First, MI)	SSN	RANK	POSITION	SIGNATURE	DATE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SENIOR RATER'S ORGANIZATION		BRANCH	SENIOR RATER TELEPHONE NUMBER	E-MAIL ADDRESS	
HHD, 709th MP Battalion		[REDACTED]	[REDACTED]	[REDACTED]@us-army.mil	
APO AE 09165		d. This is a referred report, do you wish to make comments?		SIGNATURE OF RATED OFFICER	DATE
		<input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No		[REDACTED]	[REDACTED]

PART III - DUTY DESCRIPTION

a. PRINCIPAL DUTY TITLE **Assistant S3 (Operations)**

b. POSITION ACORR **31A/MP**

c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1

Assistant S3 (Operations) for a forward deployed TO&E Military Police Battalion consisting of an HHD and five Military Police Companies stationed in Baghdad, Iraq in support of Operation Iraqi Freedom. Principle duty as Battle Captain, responsible for dissemination of timely and accurate information to and from subordinate units; conducts TOC operations to include directing units during engagements. Also assigned as the Battalion LNO to the Iraqi Police, responsible for coordination of information and equipment for 14 Iraqi Police Stations in Baghdad. Responsible for coordination and set up of two weekly meetings with Military Police leadership and the Iraqi Police leadership.

PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)

CHARACTER Disposition of the leader, combination of values, attributes, and skills affecting leader actions

a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)			
	Yes	No	
1. HONOR: Adherence to the Army's publicly declared code of values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3. COURAGE: Manifests physical and moral bravery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			Yes No
5. RESPECT: Promotes dignity, consideration, fairness, & EO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6. SELFLESS-SERVICE: Places Army priorities before self	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
7. DUTY: Fulfills professional, legal, and moral obligations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.

b.1. ATTRIBUTES (Select 1) Fundamental qualities and characteristics	1. MENTAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<input checked="" type="checkbox"/> PHYSICAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>	3. EMOTIONAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	Possesses desire, will, initiative, and discipline	Maintains appropriate level of physical fitness and military bearing	Displays self-control; calm under pressure
b.2. SKILLS (Competence) (Select 2) Skill development is part of self-development; prerequisite to action	1. CONCEPTUAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>	2. INTERPERSONAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<input checked="" type="checkbox"/> TECHNICAL <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	Demonstrates sound judgment, critical/creative thinking, moral reasoning	Shows skill with people: coaching, teaching, counseling, motivating and empowering	Possesses the necessary expertise to accomplish all tasks and functions
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving			YES NO
INFLUENCING Method of reaching goals while operating/improving	<input checked="" type="checkbox"/> COMMUNICATING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	2. DECISION-MAKING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	3. MOTIVATING <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	Displays good oral, written, and listening skills for individuals / groups	Employs sound judgment, logical reasoning and uses resources wisely	Inspires, motivates, and guides others toward mission accomplishment
OPERATING Short-term mission accomplishment	<input checked="" type="checkbox"/> PLANNING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<input checked="" type="checkbox"/> EXECUTING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	8. ASSESSING <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	Develops detailed, executable plans that are feasible, acceptable, and suitable	Shows tactical proficiency, meets mission standards, and takes care of people/resources	Uses after-action and evaluation tools to facilitate consistent improvement
IMPROVING Long-term improvement in the Army its people and organizations	7. DEVELOPING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	8. BUILDING <input checked="" type="checkbox"/> NO <input type="checkbox"/>	9. LEARNING <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	Invests adequate time and effort to develop individual subordinates as leaders	Spends time and resources improving teams, groups and units; fosters ethical climate	Seeks self-improvement and organizational growth; envisioning, adapting and leading change

c. APFT: **PASS** DATE: **JAN 2003** HEIGHT: **71** WEIGHT: **237** YES

d. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTs AND WO1s.

WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED? YES NO

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

- OUTSTANDING PERFORMANCE, MUST PROMOTE
- SATISFACTORY PERFORMANCE, PROMOTE
- UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE
- OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND c DA FORM 67-9-1.

During this short rating period, LT Glenn Niles performed his duties as a Battle Captain and Iraqi Police LNO in an outstanding manner during Operation Iraqi Freedom in Baghdad, Iraq. Glenn approached the job with great enthusiasm and an eagerness seldom seen in an officer of his rank. He quickly grasped the duties of Battle Captain which resulted in smooth TOC operations under his watch. LT Niles was able to calmly direct combat operations making on the spot decisions without hesitation. He embraced the tough job as LNO to the Iraqi Police and did an outstanding job. He coordinated countless meetings between the Military Police and Iraqi Police leadership, which ensured critical communication, resulting in improved policing across West Baghdad. He was instrumental in outfitting and equipping hundreds of Iraqi Police officers and fourteen Iraqi Police stations, allowing the Iraqi Police to do their jobs in a more professional manner.

LT Niles has great potential and will continue to excel; promote him to Captain and send him to the next Captain's Career Course. Consider for Company Command.

c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

- BEST QUALIFIED
- FULLY QUALIFIED
- DO NOT PROMOTE
- OTHER (Explain below)

f currently senior rate 10 officer(s) in this grade
 A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review
 YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

ABOVE CENTER OF MASS
 (Less than 60% in top box; Center of Mass if 50% or more in top box)

CENTER OF MASS

BELOW CENTER OF MASS
 RETAIN

BELOW CENTER OF MASS
 DO NOT RETAIN

c. COMMENT ON PERFORMANCE/POTENTIAL

1LT Niles is an outstanding leader who distinguished himself during combat operations in support of Operation Iraqi Freedom in Baghdad, Iraq. As a Battle Captain, 1LT Niles excelled in every aspect of a very demanding and stressful position. Glenn is a caring and compassionate warrior leader and an officer of incredible integrity and honor. Promote to Captain, send to the Captain's Career Course, and place him in command. 1LT Niles has excellent potential.

d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Company Commander, Battalion Assistant S3, Battalion S1.



DEPARTMENT OF THE ARMY
HEADQUARTERS, 7th ARMY TRAINING COMMAND
OFFICE OF THE STAFF JUDGE ADVOCATE
UNIT #28130
APO AE 09036

REPLY TO THE
ATTENTION OF:

AETV-BGJA

JAN 25 2005

MEMORANDUM FOR Commander, 7th Army Training Command, APO AE 09114-8130

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of
First Lieutenant Glenn A. Niles, Jr. 615th Military Police Company, APO AE
09114

1. PURPOSE: To obtain your decision in the general court-martial case of First Lieutenant
Glenn A. Niles, Jr., 615th Military Police Company, APO AE 09114

2. SUMMARY OF CHARGES, PLEAS AND FINDINGS:

<u>CHG</u>	<u>ART</u>	<u>SPEC</u>	<u>SUMMARY OF OFFENSES</u>	<u>PLEAS</u>	<u>FINDINGS</u>
I	93	1	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		2	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		3	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder.	NG	NG

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AETV-BGJA

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of
First Lieutenant Glenn A. Niles, Jr., 615th Military Police Company, APO AE
09114

II 133 The At or near Al Taji Police Station, Baghdad, G G
Iraq, on or about 30 July 2003, while a platoon
leader in the 615th Military Police Company,
and in the presence of [REDACTED], [REDACTED]
[REDACTED], and [REDACTED], wrongfully and
dishonorably grab [REDACTED] by the neck and
strike him in the stomach with a closed fist,
wrongfully and dishonorably strike [REDACTED] in
the stomach with a closed fist, and while being
detained by [REDACTED], wrongfully and
dishonorably kick [REDACTED] in the shoulder, all to
the disgrace of the Officer's Corps, and the
Armed Forces.

3. SENTENCE: Sentence was adjudged on 1 July 2004: To be reprimanded and to forfeit \$1,003.00 per month for 12 months.

4. PRETRIAL AGREEMENT: The convening authority agreed to disapprove any confinement adjudged in excess of 45 days. Any other lawful punishment may be approved. You may approve the sentence as adjudged.

5. CLEMENCY RECOMMENDATIONS BY THE SENTENCING AUTHORITY: None.

6. APPROVED DEFERMENT/WAIVER ACTIONS:

- a. Forfeitures: None.
- b. Reduction in Rank: None.
- c. Confinement: None.

7. BACKGROUND OF THE ACCUSED:

a. Time in Service: The accused has been in the U.S. Army for approximately 4 years and 1 month:

7 November 2000 – present, U.S. Army

b. Current Enlistment and Term: 10 May 2001, 3 years, plus an extension of 4 months.

AETV-BGJA

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of
First Lieutenant Glenn A. Niles, Jr. , 615th Military Police Company, APO AE
09114

- c. ETS Date: October 2004.
- d. Basic Branch: 31A00/Military Policeman.
- e. Awards: National Defense Service Medal, Global War on Terrorism Expeditionary Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon. The accused is authorized to wear a combat patch on his right sleeve.
- f. Dependents: Married with three children.
- g. Civilian Education: Master of Arts Degree from Webster University, Saint Louis, Missouri and a Bachelor of Psychology Degree from College of Charleston, South Carolina.
- h. Prior Convictions/Article 15s: None.
- i. Restrictions on Liberty: The accused was required to physically check in at the company and subsequently call the company twice a week from 3 February until 1 July 2004. The defense counsel did not determine these to be an Article 13 issue nor restriction tantamount to confinement. (See ROT page 58)
- j. Pretrial Restraint: None.

8. POST-TRIAL MATTERS SUBMITTED BY THE ACCUSED: This recommendation and an authenticated copy of the record of trial will be served upon the accused and his defense counsel. Any matters submitted by or on behalf of the accused pursuant to R.C.M. 1105 or 1106(f) will be provided to you. In accordance with R.C.M. 1107, you must consider all written defense submissions prior to taking action in this case.

9. RECOMMENDATION: I recommend that you approve the sentence as adjudged.

3 Encls

- 1. Report of Result of Trial
- 2. Record of Trial
- 3. Proposed Action

[Redacted Signature]

Staff Judge Advocate

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED]	b. GRADE [REDACTED]	c. ORGANIZATION GTA Operations and Plans 100th ASG, APO AE 09114	d. DATE OF REPORT 19 MAY 2004
2a. TO: (Name of Officer who directed the Investigation - Last, First, MI) [REDACTED]	b. TITLE [REDACTED]	c. ORGANIZATION HQ, 100 th ASG, APO AE 09114	
3a. NAME OF ACCUSED (Last, First, MI) NILES, Glenn A. Jr.	b. GRADE 1LT	c. SSN [REDACTED]	d. ORGANIZATION 615 MP CO APO AE 09114
			e. DATE OF CHARGES 30 SEP 2003

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X		
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]	b. GRADE [REDACTED]	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) [REDACTED]	b. GRADE [REDACTED]
c. ORGANIZATION (If appropriate) US Army Trial Defense Service		c. ORGANIZATION (If appropriate) [REDACTED]	
d. ADDRESS (If appropriate) Region IX, Trial Defense Service Vilseck Branch Office, APO AE 09112		d. ADDRESS (If appropriate) [REDACTED]	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE [REDACTED]	b. DATE [REDACTED]		

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

c. SIGNATURE OF ACCUSED
 [REDACTED]

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

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

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)

NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	[REDACTED]	709 th MP Battalion	X	
[REDACTED]	[REDACTED]	Tripler Army Medical Center	X	
[REDACTED]	[REDACTED]	92 nd MP Company	X	
[REDACTED]	[REDACTED]	615 th MP Company	X	
[REDACTED]	[REDACTED]	615 th MP Company	X	
[REDACTED]	[REDACTED]	615 th MP Company	X	
[REDACTED]	[REDACTED]	Grafenwoehr, Germany	X	

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED. X

13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)	YES	NO
Charge Sheet dated 30 SEP 2003		X	
Commander's Inquiry Results by CPT Searl dated 7 AUG 2003 with Enclosures 1-9		X	
1LT Niles ORB as of 20030828		X	
1LT Niles OER dated 10 JUL 2002		X	
1LT Niles OER dated 9 JUL 2003		X	

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED X

14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)

15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.) X

16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL X

17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM X

18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED X

19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).) X

20. I RECOMMEND:

- a. TRIAL BY SUMMARY SPECIAL GENERAL COURT-MARTIAL
 b. OTHER (Specify in Item 21 below)

21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

a. SUMMARY OF FACTS/DISCUSSION OF EVIDENCE

(1) The facts of the case are not in dispute with respect to the striking of prisoners - not in self-defense - by 1LT Niles, and the evidence presented was sufficient to support the charge. All witnesses present at the alleged incident agree that 1LT Niles wrongfully struck three prisoners that were in custody at Al Taji Police Station in Baghdad. This fact is supported by the sworn statements of the soldiers present at the incident, their sworn testimony at the hearing, and the sworn statement of 1LT Niles.

(2) The testimony of all individuals questioned at the hearing, with the exception of [REDACTED] ([REDACTED]), testified that 1LT Niles was wrong to strike the prisoners.

22a. TYPED NAME OF INVESTIGATING OFFICER

b. GRADE

c. ORGANIZATION
 GTA, Operations and Plans
 100th ASG, APO AE 09114

003259

d. SIGNATURE OF INVESTIGATING OFFICER

e. DATE
 18 MAY 2004

<u>DESCRIPTION OF ITEM</u>	<u>LOCATION OF ORIGINAL (If not attached)</u>	<u>YES</u>	<u>NO</u>
LOR from [REDACTED] dated 25 JAN 2004			
LOR from [REDACTED] dated 28 JAN 2004			
CVE of [REDACTED]			

Item 21, continued:

(3) The evidence presented by [REDACTED], [REDACTED] ([REDACTED]), and [REDACTED], suggests that 1LT Niles was shocked by his own actions. 1LT Niles was described by his platoon members as a man seldom at a loss for words. Immediately following the incident, 1LT Niles was incapable of speaking or responding to the angry actions of [REDACTED] who had pulled him away from the prisoners. 1LT Niles has repeatedly accepted responsibility and shown remorse following the incident according to the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

(4) Witnesses testifying at the hearing stated that 1LT Niles should not be punished by court martial. [REDACTED] (Inquiry Officer), was not asked for a recommendation for disposition of the charges, but stated that 1LT Niles should not command soldiers in the future as a result of his actions.

(5) 1LT Niles' Company Commander and Battalion Commander in Iraq presented Letters of Recommendation for 1LT Niles, and also testified in the hearing that they would gladly serve with him again. [REDACTED], [REDACTED], and [REDACTED] all testified that he was a good platoon leader and would serve with him again. There was no testimony to contradict the fact that 1LT Niles' chain of command and his soldiers thought him to be a good leader and passionate about the welfare of his soldiers.

(6) There was no conflicting evidence presented at the hearing with respect to the two charges 1LT Niles is charged with.

(7) The three prisoners that 1LT Niles allegedly struck were not available for the hearing, and they will likely not be available for any court-martial proceedings.

(8) All witnesses that served with 1LT Niles testified that all soldiers in the platoon were under enormous stress because of environmental conditions and ever present danger.

(9) All witnesses, with the possible exception of [REDACTED], were credible witnesses. [REDACTED] could not form a reasonable judgment with respect to the charge of maltreatment as to whether 1LT Niles was wrong to strike the prisoners. He testified that he was about 25% complete with his study and analysis of 1LT Niles' case.

b. COMPARING EVIDENCE TO CHARGES/RECOMMENDATION OF CHANGES TO CHARGES

(1) There are reasonable grounds and sufficient proof to support violations of Article 93, Cruelty and Maltreatment, and the three specifications of striking prisoners listed in the charge sheet.

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Item 21, continued:

(2) There are reasonable grounds and sufficient proof to support a violation of Article 133, Conduct Unbecoming an Officer and Gentleman.

(3) I do not recommend a change to the charges. Article 93 should not be changed to Assault and Battery because the prisoners were subject to his orders at the time of the incident.

c. DEFENSE-REQUESTED OBJECTIONS None.

d. RECOMMENDATION FOR DISPOSITION OF CHARGES

(1) I recommend that 1LT Niles not be charged by Court-Martial. I further recommend a General Officer Memorandum of Reprimand, but placed in the restrictive fiche of his OMPF.

(2) There was never any question as to whether or not 1LT Niles committed misconduct. 1LT Niles admitted misconduct in his statement, has never denied wrongdoing, and the incident was witnessed by three soldiers under his supervision. It is all supported by sufficient evidence. 1LT Niles should be punished as a result. The question for the hearing officer and the appointing authority is how to dispose of this case when considering matters of extenuation, mitigation, deterrent effect; and also, the best interests of 1LT Niles, his unit, and the United States Army. I did not take into account the reports related to the Abu Ghraib prison scandal. These are two separate events, under different circumstances.

(3) Matters of extenuation. Testimony indicated that all soldiers in 1LT Niles' unit suffered similar environmental and danger related hardships throughout their tour of duty. Few received more than a few hours of sleep each night. 1LT Niles snapped; other soldiers did not. Leaders, nonetheless, also have greater burdens with respect to their responsibility for mission accomplishment and caring for soldiers. By all accounts, 1LT Niles was a passionate leader who cared about both his mission and his soldiers. This was the testimony of 1LT Niles' chain of command and his soldiers. The pressures of mission accomplishment included the administration of Iraq police stations for which 1LT Niles had no experience (MPs receive provost marshal training as captains), and the training of Iraqi police. There are many accounts throughout American history where leaders made mistakes under the pressure of their commands. Gen Sherman had a breakdown prior to Vicksburg; LTG Patton slapped a soldier. The enormous burdens of our leaders in combat cannot be judged by the same standards of a peacetime army.

(4) Matters of mitigation. Up to the point where 1LT Niles struck three prisoners, and since that event, 1LT Niles has been an exemplary lieutenant. His commander described in testimony that although he made many of the usual developmental mistakes that his peers made, he was nonetheless a good officer. 1LT Niles received recommendations for future service from his company commander and battalion commander. Both would gladly serve with 1LT Niles in the future. The soldiers under 1LT Niles who testified at the hearing all were impressed by his high standards and would serve with him again, also. In particular, [REDACTED] was passionate describing his service with 1LT Niles: "I would take Lieutenant Niles with me again, down range again." His OERs indicate that 1LT Niles has unlimited potential as an officer.

(cont.)

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Item 21, continued:

(5) Deterrent Effect. This issue was raised by counsel during the hearing, and the witnesses indicated that striking a prisoner was the end of a career; therefore, this in itself would seem to deter maltreatment of prisoners alone. The evidence indicates that 1LT Niles did not enter the police station with the intent of striking prisoners. The event seemed to surprise everyone involved, including 1LT Niles himself. There was no intent to harm; it was a sudden and unplanned action. The fact that 1LT Niles was removed from his position, subjected to humiliation and shame is a deterrent and reminder to other MPs not to place themselves in that sort of position. This does not require court-martial to achieve deterrent effects.

(6) The interests of 1LT Niles, his soldiers, and the United States Army. According to testimony presented at the hearing, 1LT Niles is a good officer, a good husband and father, and a good man. He already earned a masters degree in counseling prior to receiving his commission, and in particular, he was interested in helping troubled youths. According to his wife who testified at the hearing, 1LT Niles always wanted to be a soldier and a police officer; as an MP he could "have his cake and eat it too." He made one mistake. All of his efforts previous to the striking of prisoners are greatly diminished by his actions. But his chain of command believes in him, his soldiers believe in him, and they think he can overcome this event. He should be given the chance to redeem himself while in uniform, and use this event as an example to other leaders for the future. Throughout my career, I've seen junior leaders make mistakes. But they were given the chance to overcome them, based on their potential to the Army. Gen Powell relates how he was given a second chance after losing his pistol as a young officer. BG Freakley once told me how he committed an error as a 1LT commander by unlawfully restricting a soldier for a weekend under lock and key in his supply room. Gen Powell was his brigade commander at the time, and gave him a second chance, too.

e. ARTICLE 32 HEARING DELAYS

Original date of hearing: 5 April 2004

Defense requested delay dated 30 March 2004 for a hearing NET 26 April 2004 for family reasons - approved by [REDACTED] 9 April 2004

Defense requested delay dated 17 April 2004 for a hearing on 11 May 2004 for psychiatric evaluations related to defense - approved by [REDACTED] 20 April 2004

Defense requested delay dated 3 May 2004 for a hearing on 14 May because of scheduling conflicts related to the defending counsel - approved by [REDACTED] on 3 May 2004.

Article 32 hearing was conducted on 14 May 2004.

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SUMMARY OF THE PROCEEDINGS

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles was called to order at 0900 hours, 12 May 2004, Grafenwoehr Training Area, Building 621, 100th Area Support Group Conference Room, Grafenwoehr, Germany:

The following persons were present:

Investigating Officer, [REDACTED]

Trial Counsel, [REDACTED]

Assistant Trial Counsel, [REDACTED]

Defense Counsel, [REDACTED];

The Accused, [REDACTED];

The Reporter, [REDACTED];

Assistant Reporter, [REDACTED]

[REDACTED] 709th Military Police Battalion, was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

Lieutenant Niles was a platoon leader in the 615th Military Police Company. The 615th Military Police Company was one of the units that fall under my battalion. I believe it was one

of the sergeants from the 615th Military Police Company that told the Commanding Officer about the incident. I am not certain nor clear of the actual events. [REDACTED] [REDACTED] informed me of the incident, I agreed to remove Lieutenant Niles from his leadership position. I assigned the Lieutenant in the battalion staff. I appointed [REDACTED] [REDACTED] to investigate the allegations against Lieutenant Niles. [REDACTED] started his investigation after consulting with the brigade Judge Advocate. He took sworn statements from the witnesses present at the incident. While Lieutenant Niles was working at the battalion, he performed his duties very well. Even after the incident, he still performed very well. Lieutenant Niles told me what had happened. He took full accountability for his actions and he apologized. I asked him why he did it, and he could not give me a clear justification. I don't know how much stress Lieutenant Niles experienced, but it's clear to me that he snapped and lost control. Lieutenant Niles was performing as Provost Marshall. He was responsible for the administration of an Iraqi Police station that contractors were building. Lieutenant Niles was also responsible for training the Iraqi Police force. The Iraqis have no concept of the law enforcement system and that's one of the reasons why it was hard for the Lieutenant to complete his mission at the Iraqi Police Station. The Iraqi Police station was the northern most of Baghdad. The soldiers traveled about twenty minutes from their quarters to the Iraqi Police station. There were many hostiles that the soldiers had to go through just to get to the station. Lieutenant Niles was responsible for all the administrative process in the station. He was responsible for many things and I believe that his platoon took great pride in the Iraqi Police station because they were rebuilding something that was completely destroyed. They turned stone and rubble into a working police station, and I believe Lieutenant Niles took personal pride in his work. He rebuilt something that would benefit not only the Iraqis, but also his unit. Lieutenant Niles did not receive the actual

Provost Marshal training because it was reserved exclusively to the Captains and above. Therefore, Lieutenant Niles had to work without the actual training of a Provost Marshall. I don't believe that after he was removed from the platoon that the soldiers performed less. I mean, his platoon sergeant took over his position, but Lieutenant Niles' absence did not change the platoon's mission performance. Yes, his platoon sergeant now had additional duty and responsibility, but even with added task, the platoon was still able to operate the police station and train the Iraqis. I cannot say for certain that the morale became an issue when Lieutenant Niles was removed from platoon leadership. I wrote our brigade commander recommending Lieutenant Niles to resign his commission. I don't believe that such action warrants a person's life. I mean a federal conviction would end Lieutenant Niles' career and civilian chance of working at a reasonable job. I consider his past duty performance and his potential to overcome the incident. Yes, what he did was wrong, but he took full accountability for his action. How much punishment he should get depends on the authority imposing the punishment. I would take Lieutenant Niles with me again down range again.

QUESTIONS FROM THE TRIAL COUNSEL

The platoon sergeant and the platoon went through the same long work hours; lack of sleep; and hostile environment as Lieutenant Niles did. Yes, they did not strike the prisoners. Lieutenant Niles' action was not acceptable. He was training the Iraqi Police how to handle and treat the prisoners. The Iraqi Police had little or no training at all. If Lieutenant Niles was training the Iraqi Police and wanted them to follow his example, then it would send the wrong signal to the Iraqi Police if they had seen what Lieutenant Niles did. But to my knowledge, this was an isolated incident. The Lieutenant did a great job administering the police station. The

prisoners where suspected of criminal offense. They were in the station waiting to be transferred to the Iraqi judicial court system. There they would be tried for their offenses. They were still innocent until found guilty in an Iraqi court. I don't know what happened to them after they were transferred. I fully supported the company commander in handling the incident. It was [REDACTED] that made to me the recommendation of removing Lieutenant Niles from the platoon leadership. I believe the incident should be handled with a letter of reprimand.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Deposition Testimony of [REDACTED] in the case of
U.S. v First Lieutenant Glenn A. Niles adjourned at 0945 hours, 12 May 2004.

SUMMARY OF THE PROCEEDINGS

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles was called to order at 1450 hours, 13 May 2004, Grafenwoehr Training Area, Building 621, 100th Area Support Group Conference Room, Grafenwoehr, Germany:

The following persons were present:

Investigating Officer, [REDACTED];

Trial Counsel, [REDACTED];

Assistant Trial Counsel, [REDACTED];

Defense Counsel, [REDACTED];

The Accused, [REDACTED];

The Reporter, [REDACTED];

Assistant Reporter, [REDACTED]

[REDACTED] Tripler Army Medical Center, Honolulu, Hawaii 96859-5000, Currently TDY at the Laundstul Regional Medical Center, was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

I don't mind starting early today. I went to medical school and became a doctor, physician in surgery. I have specialized training in psychiatry from UCLA (University of California, Los Angeles) and USC (University of Southern California). I did a year of internship and three years of psychiatry practice. In 1984, I worked for the Atascadero State Penitentiary for the criminally insane and became certified in forensics. In 1966 to 1969, I was a Special Forces Medic and cross-trained in weapons and demolitions. I got out and went to school to become a doctor. In 1980, I became the battalion surgeon for the 12th Special Forces in Hamilton Field, California. In 1984, I became a psychiatrist for the SERE (Survival, Evasion, Resistant and Escape) School at Camp McCall in Fort Bragg, North Carolina. I have been a board certified psychiatrist for twenty years. I cannot talk about my work in the Army Special Forces.

The Defense Counsel stated that no questions were to be asked about any Classified work the witness conducted in the Army Special Forces.

The Trial Counsel asked the Investigating Officer if he had a copy of the witness' Curriculum Vitea.

The Investigating Officer stated that he had a copy of the witness' Curriculum Vitea.

Atascadero is a state hospital for the criminally insane. It has approximately a thousand beds and houses various types of criminals. I worked with LAPD (Los Angeles Police Department) SWAT (Special Weapons and Tactics) Team 1983-1984. I became their psychiatrist consultant. My experience in psychiatry in the military began in Tripler Army Medical Center as director of in-patient psychiatric unit and later became director of psychiatry department. I moved to Shofield Barracks, Honolulu, Hawaii and became the Chief of Community Mental Health Center. I am engaged in private practice, military psychiatry, emergency psychiatry, consultation, and psychiatric interviews. I wrote an article in 1997, titled "Stress on the Battlefield." I studied law enforcement stress extensively. I have meet Lieutenant Niles on two occasions. I reviewed the case file. I asked Lieutenant Niles if he could give a clear detail of what was going on in the field before the incident took place. I know things are very difficult in the field right now. I wanted to know the level of stress he was experiencing in the field before the incident. Some of the stress factors Lieutenant Niles was experiencing were long work hours, lack of sleep, climatic (hot) environment, and hostile environment. It was very different compared to the law enforcement shifts in the United States. The Lieutenant did not tell me if he had any days off. Lieutenant Niles told me when he heard the prisoners tried to escape; he asked two others MPs (Military Police) go with him. This act indicated to me that the Lieutenant was anticipating problem with the prisoners or he wanted an extra back up. The Lieutenant ordered the prisoners to face the wall where the hole had been made. He asked them if they made the hole in the wall. Lieutenant Niles stated the he got aggressive with them and punched them in the stomach and one of the sergeants pulled him as he kicked the third prisoner. The Lieutenant was very open and straightforward about everything. He did not try to hide or avoid talking about the incident. The Lieutenant was very emotional and sorry about his action.

During and after deployment, performance starts to go down hill. This means that every individual is subject to stress and job performance will be affected. I have seen MPs having a hard time making transition from the garrison to the field. I think the MPs have more stress because of the different rules they have to follow. The MPs are being told one thing and later being told another. I have formed an opinion in the Lieutenant's case. The Lieutenant had no bad past or prior record. It appears that the Lieutenant had been a very good soldier. I know the Lieutenant had a lot of stress. When the Lieutenant was taking control, he was maintaining control of the prisoners and he just snapped in the process. I think the Lieutenant's action should be recorded and be placed in his record for ninety days as a reminder of what not to do. The key to future misconduct is the past history behavior of the Lieutenant. There is no indication that his action would turn into a pattern in the future.

QUESTIONS FROM THE TRIAL COUNSEL

I remembered talking to you and [REDACTED] yesterday and I got in trouble for talking to you both. My boss thought that I was talking to the press. My boss asked if I was talking to the press and I told my boss that I was talking to the prosecutor. There is a difference between a medical training in psychiatry and medical training in body. The basic or initial part of the training is the same, pre-med. Later on during the course, you would go onto your specialized training, internship, residence, and then license. I am trained and licensed in medicine and psychiatry. I can prescribe medicine to mental patients. I went to Loma Linda University for my undergraduate. I went to the Medical School of Guadalajara. I did my fifth year at Pathway Medical Program in the United States. What I meant when I said, "Niles is

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going to have to pay for an outburst of anger” was Lieutenant Niles made a mistake and in the military justice system, his action has consequences. How much he has to pay will depend on the authority over him. He was not criminally impaired. The Lieutenant knew right from wrong. I have not done an extensive background examination on Lieutenant Niles. My evaluation is really not finished yet. I spoke with three sergeants but I don’t know their names. They made statements that are in the packet. I spoke with them on the telephone. I met with Lieutenant Niles twice face-to-face. I reviewed the file Defense Counsel gave me. There is other information that could change my opinion. I do not yet know that information. I have not done a psychological test on the Lieutenant. I would conduct a full psychological test before making an evaluation on Lieutenant Niles. Lieutenant Niles had a diminished capacity during the incident. Did he know right from wrong? Yes, he did. However, diminished capacity and knowing right from wrong are two different things. Yes, Lieutenant Niles knew right from wrong. However, he had a diminished capacity due to the level of stress. His lack of sleep and long work hours would diminish his capacity to perform his duty. But would he know right from wrong after his diminished capacity? Yes, he would. But because I have not done a complete evaluation on Lieutenant Niles, I don’t know where I stand as far as his diminished capacity. What I meant when I said, “Giving them a doughnut was not going to work” was having control by maintaining control. When a police shows a level of authority, the subject responds to that authority. If the subject sees weakness in the authority, the subject would more likely over turn that authority. Showing force is not abuse. It is a way for the subject to comply with authority or authority will use force to make the subject comply with authority. Law enforcements are trained to be aggressive. I don’t know what happened with Lieutenant Niles’ case but I know he was responding from frustration and anger. I am familiar with what I read in the case file. The

prisoners were not presenting a treat. I was doing my police work, I placed an individual up against the wall. I did not strike at the individual. Lieutenant Niles was baffled by his behavior. He could not give me an explanation for his action. He told me he stuck two in the stomach and kicked the third. The Lieutenant said he was frustrated and angry and he just snapped. There was no policy on how to handle the situation. I think there is a policy on not to strike at prisoners. Military Police are trained on when and when not strike at people. There are differences in Basic Military Police training and Combat Military Police environment. There is a stress level difference. Do I agree that what Lieutenant Niles did was wrong? It's a good question. Maybe he did it to make the prisoners from doing it again. Would it be wrong for a police officer to strike at the prisoner? It would depend on the situation. I cannot say that it was wrong for the Lieutenant to beat up the prisoner in a combat situation. All I know about Lieutenant Niles is what I have read in the case file. I need to do a more extensive background evaluation. But from talking to the people around him, he seemed like a pretty nice guy to me. I have not conducted an extensive background evaluation on Lieutenant Niles' background. I am about one quarter away from my evaluation.

QUESTIONS FROM THE DEFENSE COUNSEL

The Defense had not asked me to do a full extensive report. I was just asked to assess and consult with the Defense. I was asked to do a preliminary evaluation on Lieutenant Niles. Diminished capacity and knowing right from wrong are two separate things. Lieutenant Niles knowing right from wrong is not an issue. He knew what he was doing. The issue is the level of diminished capacity. I cannot give an answer to his level of diminished capacity. My opinion on

his diminished capacity is that it should be taken into consideration when imposing punishment. Lieutenant Niles never told me that what he did was okay. He took full accountability for his action.

QUESTIONS FROM THE INVESTIGATING OFFICER

I will use suicide to explain Past History Behavior. When someone tries to kill himself or herself, psychiatrist look at the past history of the individual. The psychiatrist is looking for pattern of behavior that would indicate future or repeated pattern of the same kind of behavior. Basically, if someone tried to commit suicide twice, more likely the person would try to commit suicide again. I was looking for Lieutenant Niles' Past History Behavior to see if he had the same outburst of anger before. I did not find any.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles adjourned at 1645 hours, 13 May 2004.

SUMMARY OF THE PROCEEDINGS

The Article 32 Investigation was called to order at 0859 hours, 14 May 2004, Rose Barracks Courtroom, Vilseck, Germany:

The following persons were present:

Investigating Officer, [REDACTED]

Trial Counsel, [REDACTED]

Assistant Trial Counsel, [REDACTED]

Defense Counsel, [REDACTED]

The Accused, [REDACTED]

The Reporter, [REDACTED]

The Investigating Officer stated that he was the Investigating Officer detailed in the case and read the rights of the Accused to an Article 32 Investigation and stated that he understood his rights.

The Defense Counsel waived the reading of the charges.

The Investigating Officer declared the three Iraqi prisoners as reasonably unavailable for purposes of testimony.

The Trial Counsel introduces the complete commander's inquiry report done by [REDACTED] [REDACTED] 1LT Niles' sworn statement, 1LT Niles right waiver, two sworn statements from [REDACTED] [REDACTED] sworn statement, [REDACTED] sworn statement, [REDACTED] sworn statement, and [REDACTED] sworn statement.

The Defense Counsel voir dire the Investigation Officer.

QUESTIONS FROM THE DEFENSE COUNSEL

I have not had any conversations with the command concerning this case. I am familiar with the incidents in Iraq right now with the prisons and the MP's. I have heard statements made by government officials that justice would be handed out in these cases. I do not feel any pressure to recommend any certain disposition in this case based on the incidents in Iraq.

[REDACTED] 92nd Military Police Company, was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE TRIAL COUNSEL

I was formerly deployed in Iraq. I was involved in the commander's inquiry for 1LT Niles. [REDACTED] appointed me to that duty. I was appointed to look into misconduct at the Al-Taji police station. After I was appointed I went to battalion to speak with [REDACTED] for a legal briefing on how to handle the investigation. Then I went to the Al-Taji police station to interview

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all of the soldiers there to see what they knew. The Al-Taji police station is on the north side of Baghdad. The battalion is on the west side of Baghdad. It's about 20-30 minutes from the battalion to the police station. I brought in all of the soldiers to explain to them what I would be doing. I told them not to discuss the incidents among themselves. I interviewed the soldiers one by one. There was a maltreatment of three detainees at the police station. I took five sworn statements. Three of the detainees tried to escape from the prison. The platoon sergeant informed 1LT Niles of the incident. The next day, 1LT Niles went to inspect the damages done by the prisoners. It was around 24 hours from the time of the attempted break out to the time of the incident. 1LT Niles discovered that the prisoners had attempted to break through the wall with a pipe. He told one of the sergeants to bring the detainees into the latrine where the damage was done. He grabbed one of the detainees and kind of threw him over to where they had attempted to break out. He repeated the same process with the second and the third followed. Then he struck the first detainee in the stomach. He did the same to the second and attempted to strike the third but [REDACTED] pulled him away. 1LT Niles then kicked the third detainee. It was not self-defense. The detainees were being compliant. Afterwards I reviewed all of the statements I had received, and then I interviewed 1LT Niles. I talked with him at the battalion TOC, in [REDACTED] [REDACTED] room. I did read him his rights and he did do a rights waiver.

Trial Counsel hands [REDACTED] a copy of the commander's inquiry and [REDACTED] confirms that it is his commander's inquiry for the 1LT Niles incident.

1LT Niles explained everything to me exactly how I just explained the incident to you. 1LT Niles struck them because of what they did the night prior. I can't speculate as to whether he did

it out of anger. One soldier did say that while the unit was in Kuwait that 1LT Niles had pulled a soldier out of the tent because the soldier was not "moving fast enough". That was a previous display of his temper. I don't think that 1LT Niles should command soldiers in the future because of his temper and the position he put his soldiers in that day. The soldiers have a responsibility to report such behavior, so they had to choose between loyalty and duty. [REDACTED]

[REDACTED] came forward about the incident. I am currently a company commander. 1LT Niles was a platoon leader. He was over approximately 30 soldiers. He has to set a good example for these soldiers. Striking these detainees did set a bad example. The MP's also did training with the Iraqi police. One of their missions was to train the IP's in proper police procedures.

Defense Counsel objects on grounds of speculation, to a question about how 1LT Niles' actions affected the Iraqi Police.

If the IP's would have found out about this incident it would have set a bad example for them.

QUESTIONS FROM THE DEFENSE COUNSEL

I think [REDACTED] told me about the incident where 1LT Niles had pulled the soldier out of the tent. It was not [REDACTED] that was pulled out of the tent. They did not mention the circumstances surrounding the event. I didn't hear anything about a fire. I did speak with [REDACTED] [REDACTED] once on the phone and once at the brigade. I did that before I spoke with the witnesses. I contacted him again to let him know the report was complete. I don't remember talking with him about my findings. I did see the damage done by the detainees. It wasn't actually a hole in the

wall. They used a metal pole to damage the wall. The damage was approximately three feet by four feet. If they would have gone all the way through the wall, the detainees could have slipped through it. I understood that the detainees were there because they killed a taxi driver and stole his car. 1LT Niles never dodged the issue. He was very forthcoming with all of the information. It took me about a week to complete my report. Once I turned in my report I did not have any further contact with the command, concerning the incident. I'm not sure why it took two months to prefer charges.

QUESTION FROM THE INVESTIGATING OFFICER

I met 1LT Niles last March when we deployed. We spent 7 months together, but did not have a lot of contact with each other because of our positions. I did not know any of the NCOs prior to the incident.

QUESTIONS FROM THE TRIAL COUNSEL

I believe the detainees were about five foot six to five foot eight and around 150-180 pounds.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Defense Counsel introduced the audiotapes from the VTC's with [REDACTED] and [REDACTED]
[REDACTED]

[REDACTED] 615th Military Police Company was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

I was with the 615th MP Company in Iraq. We deployed in March and I took over the platoon sergeant slot in April. Prior to that, I did not really know 1LT Niles. When the incident occurred I was sitting at the front desk with the IP's. [REDACTED] came down the hallway and told me I needed to get back to where 1LT Niles was. As I came to the doorway to the D-Cell 1LT Niles was coming out. I saw three prisoners on the ground. [REDACTED] came out and was upset as well. I asked 1LT Niles what was going on and he just shook his head. I found out from [REDACTED] that 1LT Niles had struck some prisoners. It was out of character for 1LT Niles to not say anything. He is never at loss for words. I never did talk with him again about the incident. I gave a statement to [REDACTED]. I had been with 1LT Niles for about four months prior to this incident. I have been in the Army and an MP for 16 years now. I've been an NCO for about 12 years. I was a platoon sergeant at Fort Polk for a little over a year. Expectations are greater in a combat zone. 1LT Niles was a stern platoon leader who had high standards. He expected soldiers to toe the line. We did patrols in Iraq before we got the mission to get the police stations up and running. Most of them were looted and burnt, and we basically had to start from scratch. About 20 percent of the IP's were dependable. They had no ethics or police standards. One of the main

stresses was the heat. Force protection was a big issue as well. There was also the threat of IED attacks to and from the battalion and police station. There were no days off. We worked 12-16 hours a day. There were incidents about stations being attacked. I don't think that 1LT Niles should go to jail. A letter of reprimand would be sufficient. That would not send a message of toleration. A letter of reprimand is pretty serious for an officer.

QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL

There were some serious effects because of this incident. I was the one who reported the incident. That was probably the most difficult thing I've ever had to do. I am responsible for helping train the LT and I kind of feel like I failed him. It's still in the back of my mind. 1LT Niles put his soldiers in a bad situation. You have to lead by example. This is something young soldiers would not picture an officer doing. They had to choose between 1LT Niles and the Company. As the platoon sergeant I had to step up. There were already plenty of stress factors. I got five hours of sleep if I was lucky. I did put in as many hours as 1LT Niles and was under the same kind of stress. I never did strike anyone. I found other ways to deal with the stress. The three detainees were accused of crimes, but that doesn't mean they deserve to be struck. Just because they tried to break out the night before does not mean they deserve to be struck. What 1LT Niles did was wrong. It was our duty to get the stations up and running and to train the IP's. IP's had different tactics in dealing with prisoners. It would not be uncommon for them to beat prisoners. We were trying to teach them to only use necessary force. We taught them the proper ways to treat detainees. We tried to lead by example. 1LT Niles did not set a good example.

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QUESTIONS FROM THE DEFENSE COUNSEL

I did report the incident. 1LT Niles never told me to keep things between us. I think the day of the incident we had a force protection inspection. 1LT Niles did seem detached during this whole incident. I've never talked with [REDACTED] about this case. I don't recall any weapons being retrieved around the Taji station.

QUESTIONS FROM THE INVESTIGATING OFFICER

1LT Niles never gave me any impression that I wasn't doing my job as a platoon sergeant. He actually complimented me. I do not believe that the IP's knew why 1LT Niles was re-assigned.

QUESTIONS FROM THE DEFENSE COUNSEL

We moved those three detainees to Camp Crawford, and from what I heard, one of them was released due to a lack of evidence. They were not injured or taken to a hospital.

QUESTIONS FROM THE INVESTIGATING OFFICER

I have been with these NCOs for over a year now. They all have very strong character. I do not know of any personal conflicts between the NCOs and 1LT Niles. They may have procedural conflicts. There were complaints about how he wanted to run things, but I did support my platoon leader.

QUESTIONS FROM THE DEFENSE COUNSEL

I never felt that the things 1LT Niles wanted to do were inappropriate. He just had high standards. These were just basic soldier gripes. [REDACTED] does have a tendency to exaggerate things.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.

The Article 32 investigation recessed at 1000 hours, 14 May 2004

The Article 32 investigation reconvened at 1002 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

[REDACTED], 615th Military Police Company was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

I was in the same platoon down range as 1LT Niles and [REDACTED] I was the first squad leader in first platoon. I did observe what happened. [REDACTED] and [REDACTED] were also in the room with 1LT and myself Niles. I was the closest to 1LT Niles. The incident stopped when I grabbed the LT. Once I nudged him back he turned around and walked out the door. I followed him to the patrol room and I closed the door. I told 1LT Niles that he better not ever put me or my soldiers in that position again. 1LT Niles didn't respond. That was unusual and out of character for him. He seemed zoned out. He just kept looking straight ahead. I was not present for the conversation between 1LT Niles and [REDACTED]. None of us discussed it after that day. 1LT Niles never told me to keep this between us. He hit two of the detainees once each in the gut and kicked the third. I would not say that he used full force. He did not resist as I pulled him away. The detainees were brought in because they killed a taxi driver and stole his car. They tried to escape the same night they had been brought in. One of the other prisoners informed us of their attempt to escape. None of the three denied doing the damage. Had the hole been bored the whole way through, the prisoners could have escaped. I've been in the Army for 13 years. I've been an NCO for about 8 years and an MP all 13 years. 1LT Niles is a great lieutenant. Everything he did was for the platoon and he had high standards. Other than this incident there was nothing inappropriate in his actions. In Kuwait we had a trashcan by our tent that had caught fire. We had to get everyone out of the tent. I didn't see what 1LT Niles did, but I heard that he just grabbed the soldier and pulled him out of the tent. I don't think that 1LT Niles should be court-martialed. I think a letter of reprimand would be strong enough punishment.

QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL

The attempted escape happened the night before the incident. 1LT Niles wanted to talk to the detainees responsible. [REDACTED] is ordered to watch the remaining detainees as the three responsible were taking into the latrine area. It was 1LT Niles, [REDACTED], [REDACTED], and myself. I don't remember what the detainees were wearing. They were about five foot five or six and maybe 150 pounds. They were not a threat to us at that time. They did not make any threatening gestures. 1LT Niles makes first contact. [REDACTED] demonstrates 1LT Niles actions by grabbing [REDACTED] by the back of the neck and kind of pushing him about three feet over. He then demonstrates how 1LT Niles struck the detainees by performing a low punching motion towards [REDACTED] stomach area. [REDACTED] then demonstrates the position of the third detainee by crouching down on the ground with one knee on the ground and one hand in the air shaking, as he says, "no mister, no". He then demonstrates 1LT Niles actions towards this third detainee by showing a kicking motion while acting as if being pulled back at the same time. This kick was said to have landed in the chest area of the third detainee.

The detainees were lined up facing 1LT Niles. He keeps asking them, "Did you do this, did you do this?" in a forceful tone. He then punched one in the gut and I started to walk towards him. Before I got to him he had already punched the second one in the gut. I pulled him back and he kicked the third detainee, then turned around and walked out. [REDACTED] had left the room. None of the detainees attempted to lunge at 1LT Niles. He did not act in self-defense. 1LT Niles may have been stressed out and upset. 1LT Niles did put me in a bad situation. I had to choose between the LT and the Company. He did not put my career in jeopardy. I don't feel that it could come back on my soldiers or me because we had not done anything. I was concerned about the potential effect this could have on my soldiers and me. We did have stressful conditions. We had

no air conditioner. We did work long hours and little sleep. I never struck anyone. The detainees were the worst of the worst; car-jackers, rapists, murderers. This does not give us the right to strike them. "Sending a message" to the prisoners is not justification to strike the prisoners. We were there to show the IP's that abuse and unnecessary force was not the way to handle police situations. 1LT Niles set a bad example.

QUESTIONS FROM THE DEFENSE COUNSEL

Typically, you may get three to four hours of sleep. This did add to the stress level. There were threats of mortar attacks and car bombs as well as other issues. Force protection was very important. There were some mortars found in a well right outside our station. These could have been used to attack our station. Leaders do have additional stresses. I had nine soldiers in my squad. 1LT Niles had about 30 soldiers under him. The detainees did not require medical attention. This incident was reported immediately.

QUESTION FROM THE INVESTIGATING OFFICER

I know the NCOs in my platoon quite well. I am a friend with them. They have good character. The only conflicts they had with 1LT Niles were with some of his ideas on how to run things.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.

[REDACTED], 615th Military Police Company was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

I was present during this incident. I did observe what happened. 1LT Niles said he wanted to see the prisoners who had attempted to break out. [REDACTED] stayed with the remaining prisoners and we took the other three in to where they had tried to break through the wall. I did see the damage. They had taken a pipe and busted the wall. With more time they could have escaped. 1LT Niles grabbed the first prisoner and put him up to the wall and asked him, "Did you do this?" and then struck him in the stomach. Then he immediately grabbed the second one and struck him in the stomach. Then [REDACTED] pulled him back. I did not discuss the incident with 1LT Niles or anyone else because of the investigation. I was never encouraged to not tell the truth. The prisoners were not injured. I've been active duty for about 6 years now and was in the reserves for about 6 years before that. I've been an MP for about 12 years. I've been an NCO for less than a year now. There were things that 1LT Niles did as a platoon leader that I disagreed with. We butted heads a lot. His heart was always in the right place even if I didn't always agree with him. He did have very high standards. I think things have gone far enough as far as punishment. A letter of reprimand would be a strong enough message. I do fee that he is reformed and has repented. I am confident in his leadership and I would deploy with him.

QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL

We were all armed that day. The detainees were 5'5 to 5'10 and approximately 140-160 pounds. They were compliant to the orders they were receiving. There was no translator. I did not feel that they were a risk to us at that moment. 1LT Niles made first contact. He grabbed the first detainee and put him in front of the hole and asked, "Did you do this?" and then struck him in the stomach. He did the same with the second. Then [REDACTED] pulled him away. The third detainee was not a threat. 1LT Niles did not act in self-defense. I don't feel that I was put in a bad situation; maybe the platoon sergeant and the squad leader. I wasn't happy with the position they were put in. Security was not really heightened because of this. We worked 12 hours minimum everyday of the week. I lived in like a partial kitchen area. There were about six inches between my cot and the sink. It got around 140 degrees. I would get maybe four to five hours of sleep a night. I was in Iraq for almost a year. There were a lot of stress factors over there. There were a lot of times I was not in a good mood. I did soldier on. I never struck any detainees. Just because the detainees were in the prison for serious crimes does not make it right to strike them. Striking the detainees was wrong. One of our missions was to train the IP's proper police procedures. The IP's were drunk a lot of times and would beat the prisoners. We were there to try and help bring some reform. We had to lead by example. We tried to train them to use only the necessary force for the situation at hand. 1LT Niles actions that day did not set a good example.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.

The Article 32 investigation recessed at 1046 hours, 14 May 2004

The Article 32 investigation reconvened at 1053 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

[REDACTED], 1LT Niles [REDACTED], was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

We have been married for almost eight years. We have three children. Glen has been in the Army for almost four years. We got to Grafenwoehr at the end of 2001. His company deployed in March of 2003. He was gone for almost a year. He called me and told me that he was sorry. He was crying and said that he had put the kids and me in a bad situation. He couldn't elaborate but he kept saying he was sorry. It was a little hard in the beginning when he first got back. There was an adjustment time. He has been a little more withdrawn. Before he got in the military he worked with kids. He got his master's degree in counseling. He worked a lot with troubled kids. We went to lunch one day and Glen started talking to an Army recruiter and then a few months later, here we are. He always wanted to be a police officer and a soldier, so here he is having his cake and eating it too. Glen is our family's rock: financially, spiritually, and emotionally. There's nothing he would not do for his family. He has always said God first and then family. When I talked to him about Iraq, he said that he fought for God and country. The

fact that he got up everyday and did his job to his best ability even after knowing that his career was on the line shows what kind of man he is.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was permanently excused.

The accused (1LT Niles) makes an unsworn statement.

The Article 32 investigation recessed at 1106 hours, 14 May 2004

The Article 32 investigation reconvened at 1347 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

The Defense Counsel introduces 1LT Niles Officer Enlisted Records, and two letters of support written by [REDACTED].

[REDACTED], 615th Military Police Company was called as a witness, was sworn, and testified in substance as follows:

QUESTIONS FROM THE DEFENSE COUNSEL

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I am still with 615th MP Company. I have been with them for almost two years. I PCS to Fort Leonard Wood on Monday. I was the company commander and 1LT Niles was one of my platoon leaders. He has grown to be a very good lieutenant. He did make a mistake, which has brought us here. He was a lieutenant that was learning and had challenges to overcome. There was the incident about pulling the soldier out of the tent. He has had developmental issues that all lieutenants go through. I never questioned his integrity. Our mission in Iraq was to train the Iraqi police and to stand up the police stations. Our unit had about seven stations to oversee. I worked as the liaison for the sector commander. Our guys worked as provost marshals and chiefs of police. The lieutenants were also in charge of setting up all force protection measures for the stations. Our platoons were stretched pretty thin. There were attacks on the police stations. It was extremely hot there, between 120 and 140. 1LT Niles accomplished the missions. 1LT Niles was moved out of the platoon pending the commander's inquiry report. He was moved to battalion staff. He worked under the Executive Officer in the S4 and also as a night battle captain. I still talked to him on a regular basis because he was still one of my soldiers. He soldiered through all of this. Soldiers who get in trouble either let it get to them, or they soldier on. I do know who [REDACTED] is and I talked to him on a regular basis. [REDACTED] spoke with him first concerning this incident and then I talked with [REDACTED]. First we wanted to let the commander's inquiry to be done first. Once it was determined that the incident did in fact occur, [REDACTED] and me discussed what to do with the case. [REDACTED] and I disagreed on the basis of this case. He felt that it was a war crime and I did not. I interpreted this as an assault. I would not compare this to the current issues in the news concerning the prison abuse. It was my signature that did prefer charges. I think that he should receive a letter of reprimand or a general officer Article 15. I think that the statement that this will not be tolerated has already been made.

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QUESTIONS FROM THE TRIAL COUNSEL

One of the squad leaders came to me saying that 1LT Niles had placed his hands on one of the soldiers. It turns out that he did not place his hands on the soldier. He did grab the soldier's LBV and pulled them out of the tent. I was briefed that they were looking for a magazine containing 9mm rounds. I don't know the exact reason except that he was trying to clear the room. He told me that he was just trying to get the soldiers out of the room. I had no thought that he was trying to injure the soldier. I do know that JAGs do not make the final decision and that it was me who preferred charges. There was no undo command influence. We did scenario base things but I was free to do as I saw fit. I've been an MP for about nine and a half years. MP's do get trained on when and when not to use force. We are not trained to use force for no reason. MP's are only supposed to use force when necessary. It was not necessary for 1LT Niles to use force. 1LT Niles was responsible for about 26-28 soldiers. As a leader you are set apart to set an example for your platoon or company. The troops knew that what he did was wrong. Part of his mission was to train the IP's. This kind of behavior would not send a good message to the IP's we're trying to train.

QUESTIONS FROM THE DEFENSE COUNSEL

1LT Niles never denied that the incident happened. He has taken full responsibility for everything.

QUESTIONS FROM THE INVESTIGATING OFFICER

Our company was attached to [REDACTED] battalion. Our battalion commander is normally [REDACTED]. [REDACTED] was in Kosovo during the time of the incident. This incident was not included in that particular rating period reflected on the ORB. I had seven platoon leaders in my company. One was rated under [REDACTED], and [REDACTED] rated all the others. I recommended 1LT Niles at center mass. We were responsible for seven police stations. The brigade commander at the time was [REDACTED]. Force protection was the most important thing during his inspections. The next big issue was overall sanitation. He would tell you if your station was not adequate but he wouldn't chew out any junior officers. I do highly recommend 1LT Niles. I do not want to see his career ended. He does need to be held accountable for his actions. Court-martial or dismissal is definitely career ending. An Article 15 is close to a career ender, but it can be overcome with a lot of hard work. I would like to see him continue his career.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was permanently excused.

The Government Representative asked the defense if they wanted any of the other possible witness to be called.

Defense counsel declined the calling of further witnesses.

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The Investigating Officer permanently excused all of the witnesses.

The Article 32 investigation adjourned at 1440 hours, 14 May 2004.

[REDACTED]

CURRICULUM VITAE

DATE OF BIRTH: 4 October 1946

PLACE OF BIRTH: Glendale, California

SSN:

PERSONAL DATA: Married

HIGH SCHOOL: San Fernando Valley Academy
San Fernando, CA

COLLEGE: Loma Linda University
09-1964 to 06-1966 Loma Linda, CA
08-1969 to 08-1973 B.S. degree – Major – PreMed
Degree received 14 March 1974

MEDICAL:
09-1973 to 06-04-1977 Universidad Autonoma De Guadalajara
Guadalajara Jalisco, Mexico
M.D. Degree

POSTGRADUATE:
07-01-1977 to 06-30-1978 Pre-clerkship in general medicine in preparation for the
5th Pathway Program – Granada Hills Community Hosp.
Granada Hills, California
07-01-1978 to 06-30-1979 Pre-externship in general medicine in preparation for the
5th Pathway program – Los Angeles County,
Olive View Medical Center-Sylmar, California
07-01-1979 to 06-30-1980 5th Pathway Program
Loma Linda University School of Medicine
Loma Linda, California

INTERNSHIP: General Psychiatry Internship
Los Angeles County-Olive View Medical Center
Sylmar, California

This consisted of an eight months of rotation. One month in the emergency room, three months psychiatric outpatient, four months psychiatric inpatient (locked psychiatric ward).

Page Two
Curriculum Vitae

09-1980 to 12-1980 Sepulveda Veterans Administration Medical Center-UCLA

This included two months of outpatient with emergency room work, two months of medical wards.

RESIDENCY:

07-01-1980 to 06-30-1984 Psychiatry Residency – Los Angeles County
Olive View Medical Center, UCLA
Sylmar, California

PROFESSIONAL EXPERIENCE:

07-1984 to 02-01-2000 Private Practice – Psychiatry

MILITARY EXPERIENCE:

08-23-1966 to 06-12-1969 CO C –6th Special Forces Group (ABN)
1st Special Forces US CONARC – Fort Bragg, NC

COMMISSIONED:

10-15-1981 to 02-01-2000 United States Army Reserves
Rank – Lieutenant Colonel, 13 Dec 1995
Rank – Major, 14 Dec 1988
Rank – CPT, 15 Dec 1981
Rank – 1LT, 10 Sept 1981

BOARD CERTIFICATION: Eligible, General Psychiatry, June 29, 1984

BCFM - Forensic Medicine
Diplomate of the American Board of Forensic Examiner
Certificate #944 issue date 05-07-1996

BCFE – Forensic Examiner
Diplomate of the American Board of Forensic Examiner
Certificate #2501 issue date 03-15-1996

LICENSURE:

California #A36936, issued 07-01-1981, exp 10-31-04
Alaska #AA2849, issued 08-04-1992, exp. 12-31-04
Hawaii #11166, issued 08-11-00, exp 08-11-04

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ECFMG CERTIFICATE: Passed 1980 – took 5th Pathway Clinical training program to replace this certification.

FLEX – Passed 1980.

WORK EXPERIENCE: As a licensed M.D. from 1981 to Present

1. L.A.P.D. (SWAT Team), Crisis Negotiating Team - Psychiatric consultant
Dealing with personal police problems; barricaded suspects, evaluation of police stress.
2. Granada Hills Community Hosp.-Hospice, Psychiatric consultant
Specific problems dealing with death and dying of terminally ill patients and family members.
3. Granada Hills Medical Center, General practice, outpatient clinic.
Dealing with general medical problems with outpatients and night call.
4. Olive View Medical Center, Ward, on-duty
General medical and psychiatric problems occurring on the wards.
5. Olive View Medical Center- Psychiatric Emergency Room
Acute psychiatric emergencies, evaluations and hospitalizations.
6. 12th Special Forces Group, Battalion Surgeon – Rank, Captain
Function as a general medical officer, dealing with combat injuries, educating Medics.
7. Granada Hills Community Hospital – Hypnosis with pulmonary lab.
8. Atascadero State Hospital – Staff Psychiatrist, Forensic Medical Admissions, documentation of Legal Statutes.
9. S.E.R.E. Committee (Survival, Escape, Resistance and Evasion), Project Officer, Fort Bragg, North Carolina
10. Granada Hills Psychiatric Medical Group, Inc. – Private Practice, General Psychiatry.
11. Learning Skills Laboratory, Medical Psychiatric Director
10515 Balboa Blvd., Granada Hills, CA 91344
12. Community Living Resource Center, Patient Consultant
6740 Kester Avenue, Van Nuys, CA
13. Lakeview Medical Center, Psychiatric Medical Director- inpatient unit
14. Mission Hills Psychiatric Medical Group, Inc. – General Psychiatry, private practice. 11550 Indian Hills Road, Mission Hills, CA 91345 from 1984-1992.
15. Edgemont Hospital – Assistant Medical Director
16. San Fernando Valley Community Hospital, Medical Director, in and outpatient psychiatric unit.

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17. Pacifica Hospital of the Valley, Psychiatric Medical Director, in and outpatient unit.
18. Center For Living and Learning, Inc., staff psychiatrist and psychiatric Medical Director.
19. Forensic testifying in California courts as an expert witness on mental competence 5150 and 5250 hearings.
20. Coldwater Canyon Hospital, Woodview Calabasas Hospital, Charter Hospital, Thousand Oaks, California- Psychiatric Consultant
21. Active Duty Military –October 1990, rank- Major. Operation Desert Shield Fort Bragg, NC. Interviewed soldiers leaving for Saudi Arabia and also evaluating psychiatric casualties returning from Saudi Arabia. Consultant for Special Forces at the S.E.R.E. School.

Active Duty Military – March 1991, rank –Major. Operation Desert Shield, Fort Irwin, CA. Chief, Mental Health at the National Training Center. Evaluated forces undergoing desert warfare training. Treated dependants and also ran the chemical dependency treatment program.

22. El Dorado Mental Health – outpatient psychiatrist. 03-1991 to 09-1991
23. ██████████, M.D.- private practice 1992 to 08-1998
24. 113th Combat Stress Company, Consultant to Commander 03-27-1991 to 06-27-1992.
25. 176th ARCOM Headquarters, Chief of Psychiatry 01-30-1993 to 02-02-1996
26. National Earthquake Disaster-United States Army Reserves assigned to the American Red Cross 01-27 to 02-10-1994.
27. Holy Cross Hospital, Mission Hills, CA, - Chief of Psychiatry 01-01-1994 to 08-09-1998.
28. Pacifica Hospital of the Valley, Medical Director, Behavioral Health Unit inpatient psychiatric programs 12-01-1994 to 08-09-1998.
29. Henry Mayo Newhall Memorial Hospital, Medical Director, Behavioral Health Unit, partial hospitalization program and inpatient psychiatric program 01-01-1995 to 08-09-1998.
30. Serra Medical Clinic, Psychiatric Consultant, 01-01-1995 to 08-09-1998.
31. United States Army Reserve, 2nd Medical Brigade, San Pablo, CA. Psychiatrist, Mental Health Section 06-1995 to 01-1999.
32. Promoted to Lieutenant Colonel, United States Army Reserve, Medical Corp., 12-13-1995.
33. Charter North Behavioral Health System AKA Charter North Hospital, Anchorage; Alaska – Medical Director outpatient clinics 08-10-1998 to 09-17-1999.

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34. [REDACTED] – private practice, General Psychiatry, Anchorage, Alaska 08-10-1998 to 02-01-2000.
35. United States Army Reserve – 1984th Army Reserve Hospital 01-1999 to 02-01-2000.
36. Tripler Army Medical Center, Tripler, Hawaii. Active Duty United States Army.
 - Chief, Inpatient Psychiatric Services 02-04-2000 to 06-2000
 - Chief, Outpatient Psychiatric Services 06-2000 to 06-2001
 - Chief, Community Mental Health, Schofield Barracks 06-2001 to 12-01
 - Chief, Community, Operational Psychiatric Services, 01-2002 to present
37. Uniformed Services University of the Health Sciences- appointed Instructor in Psychiatry, 02-05-2001 to present.

Publications:

- 1). [REDACTED]
P. [REDACTED]
[REDACTED]
[REDACTED]
- 2). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 3). [REDACTED]
[REDACTED]
- 4). [REDACTED]
[REDACTED]

[REDACTED]

Court cases: Expert Witness Testimony

Appointed as expert in the following cases;

California

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED] (Del)
16. [REDACTED] (Del)
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]

ALASKA

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

MILITARY

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]



DEPARTMENT OF THE ARMY
Headquarters, 100th Area Support Group
APO AE 09114

REPLY TO
ATTENTION OF:

126 MAR 2004

AETTV-SB-CO

MEMORANDUM FOR [REDACTED] Chief, GTA OPS, 100th Area Support Group, APO AE 09114

SUBJECT: Appointment of Article 32(b) Investigating Officer in the case of *U.S. v. First Lieutenant Glenn A. Niles, Jr.*

1. You are hereby appointed to investigate the enclosed charges against First Lieutenant Glenn A. Niles, Jr., 615th Military Police Company, APO AE 09114. Article 98, UCMJ, prohibits any unnecessary delay in the processing of court-martial charges. This investigation is your primary duty until completed. It takes precedence over all other assignments, including field duty, as well as scheduled leave and TDY. If you believe you have a compelling reason to be excused from this duty, you must submit your request to me within 24 hours of receiving this notice.
2. Conduct your investigation in accordance with Article 32(b), UCMJ, and RCM 405, Manual for Courts Martial, Edition 2002, and follow the procedural guidance of DA Pam 27-17. Conduct your investigation no later than 7 duty days after receipt of this letter. You are, however, authorized to grant a one-time, seven-day delay at the request of the Defense Counsel, Trial Counsel, or for your convenience. I must approve any delay of greater than 7 days. Document all delays in writing.
3. Upon receipt of this endorsement, immediately contact [REDACTED] at [REDACTED]-6187/7114. Advise [REDACTED] that you have been detailed to conduct this investigation. He will schedule an appointment for you to receive a briefing. [REDACTED] will provide you with legal advice and guidance. Direct all questions relating to the investigation, including the admissibility of evidence, to [REDACTED]. Although you may consult with him about procedural matters outside the presence of the accused and defense counsel, you should notify the trial and defense counsel if you intend to discuss substantive matters of law. Do not contact the trial counsel for assistance in legal matters regarding the investigation of this case.
4. Complete your investigation and forward it to the Office of the Staff Judge Advocate, 1st Infantry Division, ATTN: Military Justice, Grafenwoehr Law Center, APO AE 09114. Upon completion of your investigation, deliver seven copies of DD Form 457 (Appendix 5, MCM), with enclosures and a detailed chronology of your handling of this investigation.
5. [REDACTED] ([REDACTED]-8436) is currently designated as the trial counsel in this case. While this attorney will attend the hearing and question witnesses, it is your responsibility to conduct the investigation. The Trial Defense Service ([REDACTED]-2191) will detail counsel to represent First Lieutenant Niles.

003300

DEPARTMENT OF THE ARMY
18TH MILITARY POLICE BRIGADE
APO AE 09302

AETV-MP

3 October 2003

MEMORANDUM FOR Major [REDACTED] IPS OIC, 18th Military Police Brigade, APO
AE 09302-1322

SUBJECT: Appointment of Article 32(b) Investigating Officer in the Case of U.S. v. 1LT Glenn Niles,
515th Military Police Company, 709th Military Police Battalion, 18th
Military Police Brigade, APO AE 09302

1. You are hereby designated to investigate the attached charges in the case of 1LT Glenn Niles, 615th Military Police Company, APO AE 09302.
2. Your investigation will be conducted IAW Article 32(b), UCMJ, R.C.M. 405, MCM (2000 Edition) and AR 27-10. Procedural guidance is contained in DA Pam 27-17.
3. Promptly upon receipt of this endorsement, you will contact the Administrative Law Section, CJTF7 SJA, [REDACTED]-0709 to have a legal advisor appointed for you. You are directed to contact your legal advisor within 24 hours of receipt of this endorsement to arrange for a legal briefing. Your appointed advisor will assist you in technical legal advice and guidance. All questions concerning the law applicable to this case, as well as questions concerning admissibility of evidence, etc., will be directed to the advisor. You will not contact the government representative ([REDACTED] and [REDACTED]) for assistance or advice in any substantive legal matters regarding the investigation.
4. Your investigation will be completed and forwarded to the 18th Military Police Brigade, Legal Section, not later than ten duty days from receipt of this correspondence. You may approve reasonable defense-requested delays, not to exceed ten duty days in length, occasioned by scheduling conflicts or defense requests for witnesses, and such periods will be excluded from your allotted time. Any requested delays beyond twenty duty days from your receipt of this correspondence will be immediately forwarded through the trial counsel to me for action. Upon completion of your investigation, you will deliver the original Investigating Officer's Report, DD Form 457, with enclosures, and a detailed chronology of the investigation to the Legal Section, 18th Military Police Brigade.
5. [REDACTED]-5110/5112, is the designated government representative in this case. [REDACTED], [REDACTED]-0709, will be assisting with this case. While these officers may attend the hearing, question witnesses, and present the government's case at your discretion, it is your responsibility to conduct the investigation. The accused will be represented by an attorney assigned to or detailed by the Trial Defense Service.

003302

AETV-MP

SUBJECT: Appointment of Article 32(b) Investigating Officer in the Case of U.S. vs. 1LT Glenn Niles, 615th Military Police Company, 709th Military Police Battalion, 18th Military Police Brigade, APO AE 09302

The government representative and the defense counsel play adversarial roles in the proceeding. Avoid talking to either of these parties (and any prospective witnesses) about the merits of the case outside of formal sessions in which all parties have the opportunity to be present.

6. Your clerical support will be provided by the Legal Section, 18th Military Police Brigade, [REDACTED]-5110/5112. The duty uniform should be worn at this hearing to facilitate witnesses returning to regular duties.

7. Article 98, UCMJ, prohibits any unnecessary delay in the processing of court-martial charges. This is your primary duty until completed and it takes precedence over all other assignments, including field duty, and scheduled leave or TDY.

[REDACTED]

Commanding

Encls

003303



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS 18th MILITARY POLICE BRIGADE
BAGHDAD, IRAQ

AETV-MP-S3

S: 1 NOV 03
21 OCT 03

MEMORANDUM FOR 1LT Glenn Niles, 615th MP Company, 709th MP Bn, 18th MP BDE, Baghdad Iraq APO AE 09302

SUBJECT: Postponement of Article 32(b) Investigation

1. The request for delay in the Article 32(b) Hearing for 1LT Niles is granted.
2. The hearing is rescheduled for NOV 1, 2003 at 1000 hrs in Warrior Palace. I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning charges preferred against you by [REDACTED]. The charges are: Charge I: Violation of the UCMJ, Article 93, Cruelty and Maltreatment, and Charge II: Violation of the UCMJ, Article 133, Conducting Unbecoming an Officer and a Gentlemen.
3. The name of witnesses known to me, who will be asked to testify at the hearing are:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Additionally, it is my intention to examine and consider the following evidence:

DA Form 2823, [REDACTED]
DA Form 2823, [REDACTED]

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 25 OCT 03. If, at a later time, you identify additional witnesses, inform me of their names and addresses.

5. You may contact me at [REDACTED] 5131/ [REDACTED]-6747.

[REDACTED]

Investigating Officer

003304

PRETRIAL ALLIED PAPERS

003305



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
7th Army Training Command
Directorate of Simulation-Forward
APO AE 09114-3700

26 MAR 2004

AEAGC-TS-F

MEMORANDUM FOR First Lieutenant Glenn A. Niles, Jr.,
Company, APO AE 09114

615th Military Police

SUBJECT: Article 32 Investigation

1. At 1000 hrs 5 APRIL in the Rose Barracks Courtroom, Vilseck, Germany, Building 343, I will conduct an investigation pursuant to Article 32, UCMJ, to investigate the facts and circumstances concerning court-martial charges preferred against you by [REDACTED]. The general nature of the charges are three specifications of cruelty and maltreatment, in violation of Article 93, UCMJ; and one specification of conduct unbecoming an officer and a gentleman, in violation of Article 133, UCMJ. The uniform for this investigation is the Battle Dress Uniform (BDU).

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during this investigation by legally qualified counsel. Such counsel may be a civilian lawyer of your choice, provided at no expense to the United States, or a qualified military lawyer of your selection, if reasonably available, or a qualified military counsel detailed by the Senior Defense Office, U.S. Army Trial Defense Service, Bamberg Field Office, APO AE 09139. There is no cost to you for military counsel. You also have the right to waive representation by counsel.

3. Additional rights you may reserve include:

- a. The right against self-incrimination under Article 31, UCMJ.
- b. The right to cross-examine any witness presented against you.
- c. The right to present anything in defense, extenuation, or mitigation.
- d. The right to make a sworn or unsworn statement, oral or in writing.

4. The names of witnesses as known to me, who will be asked to testify at the Article 32 investigation, are: [REDACTED] 92nd MP CO, [REDACTED]-7281.

5. Additionally, I intend to examine and consider the following evidence:

Commanders Inquiry into LT Nile's misconduct dated 7 August, 2003 investigated by [REDACTED]
[REDACTED] (Entire Investigation and all enclosures.)

003306

AEAGC-TS-F
SUBJECT: Article 32 Investigation

6. As investigating officer, I will try to arrange for the appearance of any witnesses that you may want to testify at the hearing. Send me the names, addresses, and telephone numbers of any such witnesses by NLT 3 days after the receipt of this notification. If, at a later time, you want additional witnesses, inform me of their names, addresses, and telephone numbers.

7. You may contact me by calling [REDACTED] 7945.

[REDACTED]
[REDACTED]

Investigating Officer



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
Grafenwoehr Law Center
Unit 21830
APO AE 09114-3700

AETV-BGJA-G (27-10e)

MEMORANDUM FOR Record of Trial

SUBJECT: Receipt of Service of the Article 32b, Investigating Officer Notification Letter

Enclosed is a copy of the notification letter of the Article 32b, Investigating Officer. Please sign and date the acknowledgement below.

[Redacted Signature]

29 March 04

Encls
as

[Redacted Name]

Military Paralegal

I hereby acknowledge receipt of the above documents on _____.

Glenn A. Niles, Jr.

GLENN A. NILES, JR

1LT, U.S. Army

Accused

29 March 2004

003308

DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
BAGHDAD FIELD OFFICE
CAMP VICTORY, IRAQ
APO, AE 09342

REPLY TO
ATTENTION OF:

AETV-THH-TDS

14 October 2003

MEMORANDUM FOR Commander, 18th Military Police Brigade, Baghdad, Iraq, APO AE 09304

SUBJECT: Request for delay – Article 32 Investigation, US v. 1LT Niles

1. The defense requests a delay in the Article 32(b) investigation to pursue alternate resolution of this case. The Article 32 Investigation is currently scheduled for 18 October 2003.
2. I am 1LT Niles' military defense counsel. 1LT Niles wishes to pursue alternate resolution to this case. Delaying the court-martial proceedings while alternate resolution is pursued has several benefits for the command, most importantly time and resources.
3. This delay is premised on the fact that alternate resolution is a real possibility. This is evidenced by the fact that 1LT Niles Company and Battalion Commanders have already given their support to alternate resolution of the case.
4. Defense assumes full responsibility for this delay. Should alternate disposition not work out the defense will be prepared to conduct the Article 32 Investigation 5 days after being notified of such decision.
5. I am the point of contact for this memorandum at [REDACTED]@us.army.mil and [REDACTED]-[REDACTED]-1135.

// original signed //

[REDACTED]
[REDACTED]
Trial Defense Counsel

003309

From "[REDACTED] C. [REDACTED]" <[REDACTED]@hq.2[REDACTED].army.mil>

Sent Thursday, October 30, 2003 4:33 pm

To "[REDACTED]@us.army.mil" <[REDACTED]@us.army.mil>

Cc

Bcc

Subject U.S. v. Niles

Attachments [Article 32 delay request 2 - Niles.doc](#)

31K

[REDACTED],
Attached is a delay request in this case. As I stated earlier on the phone, the only outstanding document is a letter of recommendation from his Battalion Commander, [REDACTED]. Once obtained, his resignation packet is complete.

Thank you and the command for the patience.

[REDACTED]

003310

DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
BAGHDAD FIELD OFFICE
CAMP VICTORY, IRAQ
APO, AE 09342

REPLY TO
ATTENTION OF:

AETV-THH-TDS

30 October 2003

MEMORANDUM FOR Commander, 18th Military Police Brigade, Baghdad, Iraq, APO AE 09304

SUBJECT: Request for delay – Article 32 Investigation, US v. 1LT Niles

1. The defense requests a delay in the Article 32(b) investigation to pursue alternate resolution of this case. The Article 32 Investigation is currently scheduled for 1 November 2003.
2. I am 1LT Niles' military defense counsel. 1LT Niles submitted a request to resign in lieu of general court-martial on 30 October 2003. One supporting document to this request remains outstanding. 1LT Niles is diligently trying to obtain this document. Delaying the court-martial proceedings while alternate resolution is pursued has several benefits for the command, most importantly time and resources.
3. The timeline of processing this resignation action is out of 1LT Niles hands. Therefore, the defense requests that the Article 32 Investigation be delayed pending resolution of the resignation action.
4. Defense assumes full responsibility for this delay. Should 1LT Niles resignation not be accepted the defense will be prepared to conduct the Article 32 Investigation 5 days after being notified of such decision.
5. I am the point of contact for this memorandum at [REDACTED]@us.army.mil and [REDACTED]-[REDACTED]-1135.

// original signed //

[REDACTED]
[REDACTED]
Trial Defense Counsel

003311

30 March 2004

MEMORANDUM THRU Article 32 (b) Investigating Officer (Attention: [REDACTED])

FOR Commander, 100th Area Support Group (Attention: [REDACTED]), APO, AE 09114

SUBJECT: Request for Article 32 Delay – U.S. v. 1LT Glenn A. Niles

1. I am a U.S. Army Trial Defense Services attorney representing 1LT Niles.
2. On behalf of my client, I request a delay in the pending Article 32 hearing until no earlier than Monday, 26 April 2004. The purpose for this request is to allow 1LT Niles to tend to urgent family matters. Specifically, his wife is scheduled for surgery and will be hospitalized from 1 April until approximately 7 April. She will be in recovery for several days, and has a follow-up procedure scheduled for 20 April. The Niles family has three children; 1LT Niles must be available to tend to the children during Mrs. Niles' hospitalization and recovery period.
3. I understand that this time will be "defense delay" for purposes of "speedy trial" IAW Rule for Court Martial 707.
4. POC is myself at [REDACTED]@cmtymail.100asg.army.mil, or at [REDACTED] 2191.

Cc: [REDACTED], OIC, Grafenwoehr Law Center
[REDACTED], Trial Counsel

[REDACTED]
[REDACTED]
Defense Counsel

003312

DEPARTMENT OF THE ARMY
Headquarters, 100th Area Support Group
APO AE 09114-3700

06 APR 2004

SFIM-GU-G-Z

MEMORANDUM FOR Commander, 100th Area Support Group, APO AE 09114-3700

SUBJECT: Article 32b, Investigation, Defense Delay Request

In the case of *U.S. v First Lieutenant Glenn A. Niles*, 615th Military
Police Company, APO AE 09114, the Defense's delay request in the pending Article 32
hearing until 26 April 2004 is (approved) (disapproved).




Commanding

003313

17 April 2004

MEMORANDUM THRU Article 32 (b) Investigating Officer (Attention: [REDACTED])

FOR Commander, 100th Area Support Group (Attention: [REDACTED]), APO, AE 09114

SUBJECT: Request for Article 32 Delay – U.S. v. 1LT Glenn A. Niles

1. I am a U.S. Army Trial Defense Services attorney representing 1LT Niles.
2. On behalf of my client, I request an additional delay in the pending Article 32 hearing until Tuesday, 11 May 2004. The purpose for this request is to allow for the appointment of a military psychiatrist as an expert assistant to the defense team; for 1LT Niles to meet with this doctor; and for the doctor to complete his evaluation report.
3. I understand that this time will be "defense delay" for purposes of "speedy trial" IAW Rule for Court Martial 707.
4. POC is myself at [REDACTED]@cmtymail.100asg.army.mil, or at [REDACTED] 2191.

cc:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Defense Counsel

[REDACTED]

From: [REDACTED]
Sent: Monday, April 19, 2004 10:14 AM
To: [REDACTED]
Cc: [REDACTED] (Judge Advocate)
Subject: FW: US v. Niles - Req for Add. 32 Delay

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

From: [REDACTED] (Defense Counsel)
Sent: Saturday, April 17, 2004 10:00 AM
To: [REDACTED]
Cc: [REDACTED] (OIC, Law Center); [REDACTED] (Judge Advocate)
Subject: US v. Niles - Req for Add. 32 Delay

[REDACTED]

As we discussed on the phone on Thursday, we request delay until Tues., 11 May so that [REDACTED] can evaluate the accused and produce a report (in addition to getting appointed). Signed delay request is attached. Thanks,



Art 32 Delay Req
#2.pdf

V/R,
[REDACTED]
Defense Counsel

003315

DEPARTMENT OF THE ARMY
Headquarters, 100th Area Support Group
APO AE 09114-3700

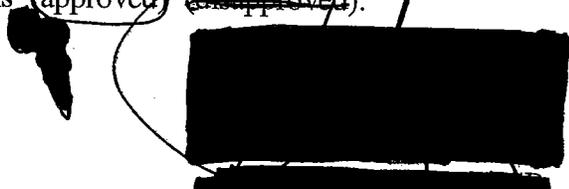
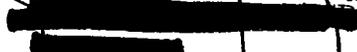
SFIM-GU-G-Z

20 APR 2004

MEMORANDUM FOR Commander, 100th Area Support Group, APO AE 09114-3700

SUBJECT: Article 32b, Investigation, Defense Delay Request

In the case of *U.S. v First Lieutenant Glenn A. Niles*, 615th Military
Police Company, APO AE 09114, the Defense's delay request in the pending Article 32
hearing until 11 May 2004 is approved ~~(disapproved)~~.



Commanding

003316

DEPARTMENT OF THE ARMY
Headquarters, 100th Area Support Group
APO AE 09114-3700

SFIM-GU-G-Z

21 MAY 2004

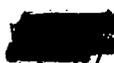
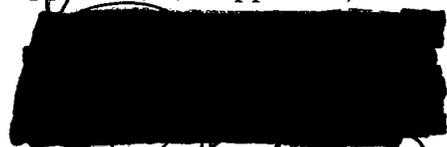
MEMORANDUM FOR RECORD

SUBJECT: Article 32b, UCMJ, Investigation, Defense Delay Request

In the case of *U.S. v First Lieutenant Glenn A. Niles,* 615th Military
Police Company, APO AE 09114, the Government requests that following Defense
delay requests be approved and ratified:

14 October 2003
30 October 2003
30 March 2003
17 April 2004
03 May 2004

The defense delays listed above are (approved) (~~disapproved~~).

Commanding

003317



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, V CORPS
UNIT 91400
APO AE 09302-91400



AETV-CG

10 DEC 2003

MEMORANDUM FOR Commander, PERSCOM (TAPC-PDT-PM), 200 Stovall Street,
Alexandria, Virginia 22332-0478

SUBJECT: Resignation for the Good of the Service in Lieu of General Court-Martial – 1LT
Glenn Niles, Jr., 615th Military Police Company, 709th Military Police Battalion, 18th Military
Police Brigade, APO AE 09302

1. I recommend disapproval of 1LT Niles' resignation from the Army in lieu of general court-martial.

2. 1LT Niles is pending trial by court-martial and is charged with three specifications of a violation of Article 93 and one specification of a violation of Article 133, both charges stemming from cruelty and maltreatment toward three Iraqi prisoners. In accordance with paragraph 3-14, Army Regulation 600-8-24, the charge sheet and allied documents are enclosed.

7 Encls

1. Accused's request
2. Chain of Command Recommendations
3. Defense Counsel Request
4. DA Form 458
5. Commander's inquiry and allied documents
6. OER
7. ORB



Lieutenant General, US Army
Commanding

003318



**DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
200 STOVALL STREET
ALEXANDRIA VA 22332-0478**

AHRC-PDT-PM

28 JAN 2004

MEMORANDUM FOR Commanding General, Headquarters, V Corps, Unit 91400,
APO AE 09302-91400

SUBJECT: Resignation for the Good of the Service

1. The enclosed resignation for the good of the service tendered by First Lieutenant Glenn A. Niles Jr. USAR, MP, was not accepted by the Deputy Assistant Secretary (Army Review Boards).
2. The Deputy Assistant Secretary has directed that you take action as deemed appropriate.

FOR THE COMMANDER:

[Redacted Signature]

[Redacted Name]

[Redacted Title]

Encls

Chief, Officer Retirements
and Separations Section

C03319



DEPARTMENT OF THE ARMY

527th Military Police Company
Baghdad, Iraq
APO AE 09302-1325

REPLY TO
ATTENTION OF

AETV-MPB

7 August 2003

MEMORANDUM THRU [REDACTED], Executive Officer, 709 Military Police Battalion, Baghdad, Iraq APO AE 09302-1324

FOR [REDACTED], Commander, 709 Military Police Battalion, Baghdad, Iraq APO AE 09302-1324

SUBJECT: Commander's Inquiry on 1LT Glenn A. Niles Jr. [REDACTED], 615 Military Police Company

1. BACKGROUND. On 30 JUL 03 it is alleged that 1LT Niles while in the latrine of the Detention Cell at the Al Taji Iraqi Police Station on 301000DJUL03 maltreated several of the detainees.

a. On 29 JUL 03 at the Al Taji Iraqi Police Station in Baghdad Iraq four detainees later identified as [REDACTED] and [REDACTED] were being held in the detention cell. Allegedly three of the detainees, [REDACTED], [REDACTED] and [REDACTED] went into the latrine portion of the detention cell. When the three detainees identified above entered the latrine they allegedly broke off one of the shower pipes in the middle shower stall and used the pipe to attempt to break a hole in the wall of the latrine. They broke several of the ceramic tiles out of the wall with the pipe and the hole is about four inches in depth at the deepest point. They were unsuccessful in breaking a hole all the way through the wall.

b. The detention cell in the Al Taji Iraqi Police Station is broken up into two sections; a holding area section and a latrine section. The holding area section is 32.5 feet long by 15.8 feet wide. The latrine section is joined to the holding section by a door. The latrine section of the detention cell is 15.8 feet long by 15.8 feet wide. In the latrine there are three stalls that each contain an Iraqi style toilet and a shower system.

c. The fourth detainee, [REDACTED], told the Military Police at the Al Taji Iraqi Police Station that the three detainees had attempted to escape from the Al Taji Iraqi Police Station by using a pipe from the shower in the second shower stall to punch a hole in the wall of the latrine. [REDACTED] has worked for coalition forces as an interpreter in the past.

e. The MPs removed the three detainees suspected of attempting to escape from the Al Taji Detention Cell and placed them in hand restraints. The prisoners remained in the plastic hand restraints for approximately one hour and then the hand restraints were removed so the detainees could use the latrine.

f. The MPs at the Al Taji Police Station called the 615 Military Police Company Tactical Operations Center (TOC) and informed the TOC of the incident. The TOC then notified the Platoon Leader that was responsible for the station, 1LT Niles, of the incident.

g. On 30 JUL 03 at approximately 0900D, 1LT Niles arrived at the Al Taji Iraqi Police Station. 1LT Niles informed [REDACTED] that he was going to enter the Detention Cell to look at the damage that was done to the detention cell. [REDACTED] gathered several other soldiers, [REDACTED], [REDACTED] and [REDACTED] to guard the detainees while 1LT Niles inspected the damage to the wall in the latrine of the Detention Cell. When the group entered the detention cell the detainees, approximately four detainees were placed against the back wall in the large holding area. [REDACTED] was ordered by 1LT Niles to pull security on the detainees. [REDACTED] stood in the doorway of the latrine keeping eyes on [REDACTED] and [REDACTED] in the latrine. 1LT Niles, [REDACTED] and [REDACTED] entered the latrine. 1LT Niles inspected the portion of the wall of the latrine that had been damaged by the detainees on 29 JUL 03. After conducting a visual inspection 1LT Niles told [REDACTED] to bring in the three

003320

detainees that had allegedly damaged the wall of the latrine. [REDACTED] and [REDACTED] separated the three detainees that had caused the damage. [REDACTED] remained in the large holding area pulling security on the remaining detainee.

h. When the first detainee entered the Detention Cell, 1LT Niles grabbed the detainee around the neck and pulled the detainee toward the wall and asked the detainee several times, "Did you do this?" directing the detainee to look at the hole in the wall of the latrine. He then pushed the detainee toward the back corner of the latrine. He grabbed the second detainee entering the latrine around the back of the neck in a similar fashion as the first and asked the second detainee several times, "Did you do this?" directing the detainee to look at the hole in the wall of the latrine. 1LT Niles then pushed the detainee toward the first detainee in the corner of the latrine near the damage to the wall. The third detainee walked around 1LT Niles and joined the other two detainees in the corner of the latrine near the damage to the wall. The three detainees were in a line against the wall facing 1LT Niles. At this point 1LT Niles struck the first detainee to enter the latrine in the stomach. When [REDACTED], located in the doorway of the latrine, witnessed 1LT Niles strike the first detainee, he went to inform [REDACTED], the platoon sergeant, what had taken place in the latrine. Then 1LT Niles struck the second detainee in the stomach. [REDACTED] located behind 1LT Niles, grabbed 1LT Niles from behind and attempted to pull him away from the detainees. 1LT Niles kicked the third detainee in the neck and shoulder area before [REDACTED] was able to remove 1LT Niles from the latrine. Once [REDACTED] had pulled 1LT Niles from the detainees, 1LT Niles proceeded to the MP Office. [REDACTED] passed 1LT Niles in the hallway on his way to the Detention Cell to try to determine what had transpired. [REDACTED] followed 1LT Niles into the MP Office and closed the door behind him. He told 1LT Niles, "You had better never ever put me or my soldiers in that kind of situation ever again", and [REDACTED] walked out of the office.

2. FINDINGS. After interviewing and gathering sworn statements from 5 soldiers that were at the Al Taji Iraqi Police Station during the incident, I conclude that 1LT Niles did maltreat three detainees in the latrine of the Detention Cell at the Al Taji Police Station. The three soldiers that were eye witnesses to the incident all state that they saw 1LT Niles assault the detainees by striking them with his fist and foot. 1LT Niles stated that he struck the detainees out of anger due to the damage they had caused to the wall of the latrine and the attempted escape from the Detention Cell. 1LT Niles lost control of the situation and his actions. All of the exhibits associated with this investigation reference the incident that occurred on 30 JUL 03.

a. Enclosures 2, 3, 4, 5, 6, 7, and 8 state that [REDACTED], [REDACTED], [REDACTED], [REDACTED], and 1LT Niles did enter the Detention Cell at the Al Taji Iraqi Police Station on 30 JUL 03.

b. Enclosure 4, and 6 allege that [REDACTED] and [REDACTED] witnessed 1LT Niles strike three detainees in various locations on their bodies while he was in the latrine of the Detention Cell at the Al Taji Iraqi Police Station.

c. Enclosure 5 alleges that [REDACTED] witnessed 1LT Niles strike one detainee before he ([REDACTED]) exited the latrine in order to inform the [REDACTED] about what had transpired in the latrine of the Detention Facility.

d. In Enclosures 2, 3, 4, and 5 [REDACTED], [REDACTED], and [REDACTED] all state that the detainees that 1LT Niles struck did not require any additional medical treatment nor did they sustain any visible injuries from the assault.

e. In Enclosure 8 1LT Niles states that he was overcome by anger and he was not in control of himself or his actions when he mistreated the detainees in the latrine of the Detention Cell of the Al Taji Police Station on 30 JUL 03.

f. In Enclosures 4, 5, 6, 7, and 8 all soldiers state that they did not feel threatened by any of the detainees while they were in the Detention Cell of Al Taji Police Station on 30 JUL 03.

g. In Enclosures 4, 5, and 6 [REDACTED], [REDACTED] and [REDACTED] state that the unit does not have Standing Operating Procedures to deal with Detainee Misconduct.

3. RECOMMENDATION. I recommend that a formal AR 15-6 Investigation be conducted, and that 1LT Niles be removed from his troop leading position until the completion of the investigation. I recommend that 1LT Niles

AETV-MPB

SUBJECT: Commander's Inquiry on 1LT Glenn A. Niles Jr,

615 Military Police Company.

attend anger management classes. I also recommend that all soldiers in the Battalion, that deal with detainees, get additional training regarding proper detainee handling procedures.

4. POC is the undersigned at [REDACTED]-5231.

[REDACTED]
[REDACTED]
Investigating Officer

003322

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Enclosure 1	Commander's Inquiry Appointment Letter	
Enclosure 2	Sworn Statement [REDACTED]	, on 01 AUG 03
Enclosure 3	Sworn Statement [REDACTED]	, on 04 AUG 03
Enclosure 4	Sworn Statement [REDACTED]	, on 04 AUG 03
Enclosure 5	Sworn Statement [REDACTED]	, on 04 AUG 03
Enclosure 6	Sworn Statement [REDACTED]	, on 04 AUG 03
Enclosure 7	Sworn Statement [REDACTED]	, on 04 AUG 03
Enclosure 8	Sworn Statement [REDACTED]	, on 06 AUG 03
Enclosure 9	Rights Warning Procedure/Waiver Certificate from 1LT Niles, on 06 AUG 03	

003323



DEPARTMENT OF THE ARMY
709th Military Police Battalion
Baghdad, Iraq
APO AE 09302-1324

AETV-MPB

1 August 2003

MEMORANDUM FOR [REDACTED]
Detachment, 709th Military Police Battalion

[REDACTED], Headquarters and Headquarters

SUBJECT: Commander's Inquiry

1. You are hereby appointed to conduct an unofficial investigation and Battalion Commander's Inquiry for the alleged maltreatment of Iraqi prisoners by a U.S. Army officer.
2. It has been alleged that 1LT Glenn A. Niles, [REDACTED], 615th Military Police Company, has mistreated Iraqi prisoners. Your findings will be presented in memorandum format to the undersigned no later than 8 August 2003.
3. The point of contact for this memorandum is the undersigned at [REDACTED] (222) [REDACTED]-5235.
4. "WARRIORS!"

[REDACTED]

Commanding

003324

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION BAGHDAD, IRQ	2. DATE (YYYYMMDD) 2003/08/01	3. TIME 1100	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]		7. GRADE/STATUS [REDACTED]
8. ORGANIZATION OR ADDRESS 1/615 MP Co			

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

On 30 July 03 AT Approx. 1100hrs I was working AT The front Desk of The AL-TAJI Police station when [REDACTED] Ran out of the D-CELL Telling me that I needed to go in there. I Ran Down The Hallway and entered the D-CELL. 1LT Niles was exiting the D-CELL As I entered. [REDACTED], [REDACTED], and [REDACTED] were in there. There were three prisoners who were brought in for murder sitting on the ground and they appeared to be upset. I was told that 1LT Niles had struck the prisoners I don't recall who told me that AND I still Don't know why the LT DID what He DID. I went to the MP Room To speak with The LT. I Asked him what happened and he just shook his head. [REDACTED] was very upset I was trying to Figure out what happened Because I know [REDACTED] will exaggerate the truth. [REDACTED] had Already gone out and told soldiers what had happened Before he talked to me. So I Told them to stop talking about It Because Everytime they tell somebody the story will change. I Told him to Let me handle It and stop Talking to soldiers about It. I was very

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED]"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

003325

STATEMENT OF

[REDACTED]

TAKEN AT

BAGDAD

DATED

2003/08/01

9. STATEMENT (Continued)

Confused About what had happened. AT The time I DID NOT KNOW How to deal with It. In Almost 16 years of service I Have Delt with many soldier Issues but I have never had to deal with officer misconduct. I Know that there is A Dislike For the LT in the platoon and part of the company. I Feel that there are some soldiers in this platoon who would use an opportunity like this one and try and get LT Niles Removed From The Platoon whether he did anything or not. I Do Not agree with nor AM I Trying To cover up what LT Niles may have done in the D-CELL. It was Not Reported immediately Because I was confused and I was trying to Figure out what happened because The LT was very calm and acted like nothing had happened I was Also trying to Figure out the Best course of Action To TAKE. I Also Recently Found out that LT Niles has had A History of anger problems while in Kuwait. Since taking over the platoon It has been very difficult AT Times To Deal with him. He is set in his ways and will Not Listen at times. I have worked very hard to reestablish A working relationship Between the LT and the Platoon. Lastly I ~~was hoping~~^{was hoping} the LT would come forward and Clear the air with me on what happened. But That never happened. I continued to work with the platoon Like everything was being handled and taken care of. Because I knew I would have to Inform the chain of command on what happened.

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE

2 OF 3

PAGES

STATEMENT OF

[REDACTED]

TAKEN AT

BAGHDAD

DATED

2003/08/01

9. STATEMENT (Continued)

NOT USED

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 2 day of Aug, 2003 at

[REDACTED]

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED]

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

ARC (3)(b)(4)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE 3 OF 3 PAGES



DEPARTMENT OF THE ARMY

709th Military Police Battalion
615th Military Police Company
Unit 28130
APO AE 09302-1326

REPLY TO
ATTENTION OF

AETV-MPC-K

18 SEP 03

MEMORANDUM THRU

Commander 709th Military Police Battalion
Commander 18th Military Police Brigade

FOR Commanding General, CJTF-7

SUBJECT: Recommendation of UCMJ Action on 1LT Glenn Niles

1. Request 1LT Glenn Niles be allowed to resign his commission with a General Discharge from active service in lieu of General Courts martial. Without question 1LT Niles did conduct himself in an unacceptable manner as an officer. However, his performance prior to and his actions afterward have convinced me that this officer is worthy of this request.
2. 1LT Niles has been assigned to the unit and served as a Platoon Leader for over 2 years. Prior to this incident, I have never questioned his judgment, values or ability to serve with distinction. Prior to this deployment he successfully led his platoon thru 2 company level EXEVALs, numerous field exercises, and community law enforcement throughout USAREUR. During combat operations he successfully led his platoon from the front rendering superb results.
3. 1LT Niles did not try to cover up any misconduct on his part and came forward truthfully disposing all that happened in the incident. His open admissions show that he is willing to accept responsibility for his actions.
4. 1LT Niles needs to be punished for his actions. However, I request that the punishment not be one that will significantly impact on his livelihood for the rest of his life. Prior to entering the Army 1LT Niles served as a counselor for abused children, where he helped over 100 families and was truly an asset to society. A federal conviction from a Courts Martial will ultimately severely impact his ability to perform again as a counselor as well as give back to society.
5. POC for this action is [REDACTED] at [REDACTED]-5321.

[REDACTED]
[REDACTED]
[REDACTED]
Commanding

003328



DEPARTMENT OF THE ARMY
709th Military Police Battalion
Baghdad, Iraq
APO AE 09302-1324

AETV-MPB

23 SEP 03

MEMORANDUM THRU Commander, 18th MP BDE

FOR Commanding General, CJTF-7

SUBJECT: Recommendation of UCMJ Action on 1LT Glenn Niles

1. I request that you allow 1LT Glenn Niles to resign his commission with a General Discharge in lieu of General Court Martial. I do not condone the actions of 1LT Niles but I am compelled to ask for leniency in this case.
2. The actions 1LT Niles took on the day in question were inappropriate and there is no excuse for his conduct. I ask that you consider the circumstances surrounding the incident and 1LT Niles' past performance. 1LT Niles and his platoon put their heart and soul into the Taji Police Station. They personally cleared debris from the police station prior to contract work beginning and supervised every detail of renovation. 1LT Niles committed himself to the mission at hand. His dedication was not for his benefit, it was for the benefit of the Iraqi Police and the Iraqi citizens in general. 1LT Niles got mad because detainees had destroyed part of the renovated detention cell, an area that had extensive contract work completed. He was frustrated because he saw the hard work that he supervised get destroyed.
3. 1LT Niles is a passionate young officer. He made a mistake and he took responsibility for his actions. He has been removed as a platoon leader and moved to a staff position and continues to provide outstanding service to the soldiers he serves.
4. I hope that you will consider these facts and also recognize that the possibility of a Federal conviction will severely impact on this young man's future.
5. The point of contact is the undersigned, [REDACTED]

[REDACTED]
Commanding

003329

DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
OFFICE OF THE STAFF JUDGE ADVOCATE
APO AE 09114

AETV-BGJA

JUN 2 2004

MEMORANDUM FOR Commanding General, Seventh Army Training Command, APO AE 09114

SUBJECT: Pretrial Advice on Disposition of Court-Martial Charges, 1LT Glenn A. Niles Jr.,
515th Military Police Company, APO AE 09114

1. I have reviewed the charge sheet and evidence indicated in the report of investigation in the subject case. The following constitutes my advice in accordance with the provisions of Article 34, Uniform Code of Military Justice, and Rule for Courts-Martial 406, Manual for Courts-Martial, United States, 2002.

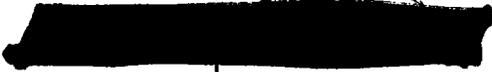
2. Legal Conclusions. After a thorough review of the charge sheet and report of investigation, I have reached the following legal conclusions:

a. Each specification alleges an offense under the Uniform Code of Military Justice.

b. The allegation of each offense is warranted by the evidence indicated in the report of investigation conducted in accordance with the provisions of Article 32, Uniform Code of Military Justice, and Rule for Courts-Martial 405, Manual for Courts-Martial, United States, 2002.

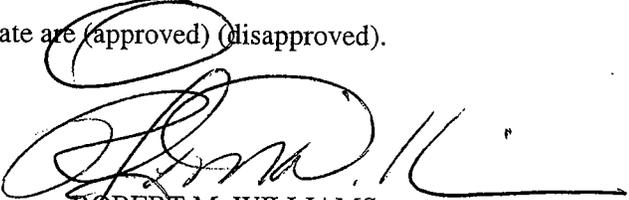
c. There is court-martial jurisdiction over the accused and the charged offenses.

3. Recommendation. The Investigating Officer recommends this case be disposed of with a General Officer Memorandum of Reprimand. I disagree. I recommend the charges and their specifications be referred to the general court-martial convened by Court-Martial Convening Order Number 1, this headquarters, dated 25 February 2004.



Staff Judge Advocate

The recommendations of the Staff Judge Advocate are (approved) (disapproved).


ROBERT M. WILLIAMS
Brigadier General, USA
Commanding

JUN 2 2004

003330

DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
UNIT 28130
APO AE 09114-8130

AETT-CG

JUN 2 2004

MEMORANDUM FOR 1LT Glenn A. Niles Jr., [REDACTED] 615th Military Police Company, APO AE 09114

SUBJECT: Referral of Court-Martial Charges, 1LT Glenn A. Niles Jr., 515th Military Police Company, APO AE 09114

The charges and their specifications, preferred on 30 September 2003, are referred to the general court-martial convened by Court-Martial Convening Order Number 1, this headquarters, dated 25 February 2004.


ROBERT M. WILLIAMS
Brigadier General, USA
Commanding

003331

COURT-MARTIAL CHARGES TRANSMITTAL FORM

PART I

TO:

FROM:

DATE:

Court-Martial charges against the following named individual are forwarded and Enclosed. Witness statements, any evidence of previous misconduct, and the accused's ERB are attached. Soldier is not pending chapter action UP AR 635-200.

NAME: NILES, Glenn A., Jr.

RANK: 1LT/O2 SSN

UNIT: 615th Military Police Company, APO AE 09114-3700

Recommend:

Summary Court-Martial

Special Court-Martial

BCD Special Court-Martial

General Court-Martial

NAME OF COMMANDER

SIGNATURE OF COMMANDER

PART II

TO:

FROM:

DATE:

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

Summary Court-Martial

Special Court-Martial

BCD Special Court-Martial

General Court-Martial

NAME OF COMMANDER

SIGNATURE OF COMMANDER

PART III

TO: Commander, 7th Army
Training Command, APO AE
09114

FROM: Commander, 100th Area
Support Group, APO AE 09114

DATE:

21 MAY 2004

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

Summary Court-Martial

Special Court-Martial

BCD Special Court-Martial

General Court-Martial

Other: *Article 15*

NAME OF COMMANDER

SIGNATURE OF COMMANDER

[Redacted], Commanding

003332

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION <i>BAGHDAD, IRAQ</i>	2. DATE (YY MMDD) <i>2003/08/04</i>	3. TIME <i>1500</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN	7. GRADE/STATUS [REDACTED]	
8. ORGANIZATION OR ADDRESS <i>11615 MP Co</i>			

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

ON 30 July 03 AT APPROXIMATELY 1000 hrs. I WAS WORKING THE FRONT DESK AT THE AL-TAJI POLICE STATION WHEN [REDACTED] RAN OUT OF THE D-CELL AND TOLD ME THAT I WOULD TO GET IN THERE. I RAN DOWN TO THE D-CELL AND I WAS ENTERING 1LT NILES WAS EXITING. HE HAD A VERY ANGRY EXPRESSION ON HIS FACE. I ENTERED THE D-CELL AND [REDACTED], [REDACTED] AND [REDACTED] WERE ALL STANDING IN THE LATRINE AREA OF THE D-CELL. THERE WERE 3 PRISONERS SITTING ON THE GROUND AND THEY SEEMED VERY UPSET AND SCARED. I ASKED WHAT HAD HAPPENED AND I DON'T RECALL WHO TOLD ME BUT I WAS TOLD THAT THE [REDACTED] HAD STRUCK THE PRISONERS. I STILL DON'T KNOW WHAT PROVOKED THE [REDACTED] HIT THE PRISONERS THE PRISONERS DID NOT SEEM TO BE INJURED. [REDACTED] LEFT THE D-CELL AND WENT TO THE MP ROOM WHERE 1LT NILES WAS. I ALSO WENT TO THE MP ROOM WHERE 1LT NILES WAS SITTING BEHIND THE DESK. I ENTERED AND SHUT THE DOOR. [REDACTED] STOOD IN FRONT OF 1LT NILES AND TOLD ME THAT HE HAD NEVER DO THAT AGAIN AND LEFT. I THEN ASKED 1LT NILES WHAT HAPPENED AND HE JUST SHOOK HIS

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF <u>5</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

003333

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT BAGHDAD, Iraq DATED 2003/08/04

9. STATEMENT (Continued)

head and did not Respond. A short Time later he was acting as if Nothing had happened. I was hoping he would tell me what really happened But he never did. I Don't know why he took 4 MP's with him into the D-CELL. ALL I KNOW IS THAT he wanted to speak To them about what had happened the day prior. They tried To Escape by chipping away at the wall. Normally we check on the prisoners with no more than 2 MP's. why the LT Took 4 with him is unknown Also I Don't Recall there Being an Interpreter or IP's IN THE D-CELL AT THE TIME. AFTER THE INCIDENT Happened I was confused and DIDN'T KNOW how to EXACTLY handle IT. I HAVE NEVER Delt with any type of officer misconduct before. I continued to work the remainder of the shift like Everything was normal and nothing happened. I DID NOT want the soldiers to Find out ABOUT the incident. The Following morning soldiers were talking ABOUT what had happened and I Found out [REDACTED] had already told several Soldiers of the incident. I spoke with [REDACTED] and Told him to stop talking ABOUT IT Because Everytime a soldier tells his/her side of the story IT will change I Told him to let me handle IT [REDACTED] has been KNOWN to Exaggerate the truth

003334

INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 5 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT BAGHDAD, Iraq DATED 2003/09/04

9. STATEMENT (Continued)

I DID NOT REPORT IT immediately Because Like I stated I was very confused and I have never Been placed in A situation like this one. I was Also hoping the LT would come Forward and Clear the Air but he continued to Act Like nothing happened. I know the incident was serious and It needed to be reported. I donot agree with nor was I trying to cover anything LT NILES DID. shortly AFTER entering the platoon I was told that LT Niles has had A History of anger problems. I was told of Two seperate incidents he was involved in while still at camp New York. It has been difficult For me AT TIMES To work with LT Niles because he is set in his ways and will not Listen at times. However he has never gotten angry with me. He has gotten in several arguments with the squad leaders and other leaders of the company when there is A disagreement. Nothing has been physical. I HAVE worked very hard to reestablish A working relationship between him and the platoon but Like I said he is A very difficult individual to work with at times because It is very easy for issues to develop into arguments. The names of the Three prisoners who were sitting on the Floor and were upset are [REDACTED], [REDACTED] and [REDACTED].

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INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 3 OF 5 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT BACHMAN DATED 2003/08/04

9. STATEMENT (Continued)

~~The following questions were used to clarify the statement of [REDACTED]~~
Q. WHAT IS THE STANDARD OPERATING PROCEDURE FOR DEALING WITH PRISONER MISCONDUCT? ([REDACTED])

A. WE DO NOT HAVE AN SOP TO DEAL WITH PRISONER MISCONDUCT TO MY KNOWLEDGE. THIS IS THE FIRST CASE OF PRISONER MISCONDUCT THAT I ~~DO~~ HAVE KNOWLEDGE OF. ([REDACTED])

Q. IN THE PAST HAVE YOU EVER WITNESSED US MILITARY USE PHYSICAL FORCE TO DEAL WITH ANGER?

A. NO

Q. WHAT WAS THE DISPOSITION OF THE 3 DETAINEES THAT US MILITARY STRUCK WHEN YOU ENTERED THE LATRINE OF THE DETENTION CELL?

A. ALL THREE WERE SITTING ON THE FLOOR Huddled TOGETHER. THEY APPEARED TO BE SCARED. I DID NOT SEE ANY SIGNS OF INJURY ON THE DETAINEES.

Q. DID ANY OF THE DETAINEES THAT WERE STRUCK BY US MILITARY REQUIRE ~~ANY~~ ADDITIONAL MEDICAL ATTENTION?

A. NO

Q. WHEN AND HOW WERE THE DETAINEES TRANSPORTED AND TRANSPORTED TO Camp Cropper?

A. AT APPROXIMATELY 1300 HRS ON 30 JULY 03. THEY WERE TRANSPORTED BY [REDACTED] AND [REDACTED]

Q. IS THERE ANYTHING THAT YOU WOULD LIKE TO ADD TO THIS STATEMENT?

A. NO

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INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 4 OF 5 PAGES

STATEMENT OF [REDACTED] TAKEN AT BAGHDAD DATED 2003/08/04

9. STATEMENT (Continued)

Not USED

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 4 day of Aug, 2003 at TAJI IPS STATION

WITNESS

[REDACTED]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED]
(Typed Name of Person Administering Oath)

WITNESS

Pat 136 (b) (4)
(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE 5 OF 5 PAGES
003334

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION: ALTAJI POLICE STATION
2. DATE (YYYYMMDD): 20030804
3. TIME: 2345

5. LAST NAME, FIRST NAME, MIDDLE NAME: [REDACTED]
6. SSN: [REDACTED]

8. ORGANIZATION OR ADDRESS: 615TH MP Co

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT: ON 30 JULY 2003 AT APPROXIMATELY 0945 HRS LT NILES WANTED TO... THE D-CELL AND THE 3 INDIVIDUALS (PRISONERS) THAT DID THE DAMAGE... AND I OPENED THE D-CELL TO... THE DOOR THE LT WENT BACK INTO THE LATRINE/SHOWER ROOM... US SEPARATED THE PRISONERS TO GET THE THREE THAT WERE... THE 4 THAT HAD NOTHING TO DO WITH IT AGAINST THE EAST... YOU ENTER THE D-CELL. I LEFT [REDACTED] IN THE D-CELL TO... AND PROCEEDED WITH THE OTHER 3 INTO THE LATRINE/SHOWER... INTO THE ROOM THE LT WAS STANDING AT THE EDGE OF THE... AT US, [REDACTED] AND [REDACTED] WERE IN FRONT OF... PRISONERS IN THE LT STARTED TO BACK UP A LITTLE AND GRABBED... BEHIND HIS HEAD AND STARTED SAYING, "DID YOU DO THIS?... SWUNG THE PRISONER BY HIS HEAD IN THE DIRECTION OF THE... THEN GRABBED THE SECOND ONE AROUND THE BACK OF HIS HEAD... THE SAME DIRECTION. THE THIRD PRISONER PICKED UP WHAT... MOVED OVER TO THE FIRST TWO. BY THIS TIME I HAD WALKED... [REDACTED] AND WAS INSIDE OF THE ROOM. AS I HAD WALKED... HAD MOVED DOWN TO THE 3 PRISONERS. WHEN I ROUNDED... AND WATCHED THE 4 OF THEM. WITHOUT WARNING THE LT... PUNCHED HIM IN THE BUT CAUSING THE PRISONER TO FALL DOWN... HE THEN I STARTED TO MOVE FORWARD AND AS I DID THE...

10. EXHIBIT: [REDACTED]
11. INITIALS OF PERSON MAKING STATEMENT: [REDACTED]

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT...
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING STATEMENT AND MUST BE INDICATED.

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STATEMENT OF [REDACTED] TAKEN AT 2345 [REDACTED] HOTEL 200 [REDACTED]

9. STATEMENT (Continued)

PRISONER AND PUNCHED HIM IN THE GUT ALSO AND THAT PRISONER FELL DOWN. THE THIRD PRISONER WAS VERY AFRAID AND WAS COVERING DOWN SAYING "PLEASE NO." BY THIS TIME I HAD MY ARMS AROUND THE LT AT EAR STING AWAY AND TELLING HIM THAT THAT WAS ENOUGH. AS I WAS PUNTING HIM BACK THE THIRD PRISONER IN THE SHOULDER AS HE WAS COVERING DOWN I PUNCHED BACK AND TURNED HIM AROUND. WHEN I TURNED AROUND [REDACTED] WAS THE ONLY ONE THERE, [REDACTED] HAD GONE TO GET [REDACTED]. [REDACTED] TOLD HIM TO GET THE LT OUT OF THERE. I TURNED AROUND AND CHECKED TO SEE IF THE PRISONERS WERE OK AND THEN I TURNED AROUND TO GO AND SPEAK TO THE LT, I WAS VERY MAD. AS I WAS LEAVING THE CELL [REDACTED] STILL GUARDING THE OTHER 4 PRISONERS AGAINST THE WALL. I WENT GOING DIRECTLY TO THE MP BREAK ROOM/ARMS ROOM. SSG [REDACTED] WAS BEHIND ME. AS I ENTERED THE ROOM I SHUT THE DOOR ON MY WAY IN, [REDACTED] RIGHT IN [REDACTED] FACE. I WAS SO MAD AT THE LT THAT I DID NOT THINK ABOUT DISRESPECTING MY PLATOON [REDACTED], I JUST HAD TO TELL HIM THAT HE DID WAS WRONG. I TOLD HIM THAT HE BETTER NEVER, EVER TALK TO SOLDIERS IN THAT KIND OF [REDACTED] SITUATION EVER AGAIN AND TURNED [REDACTED] AND WALKED OUT. WHEN I WALKED OUT [REDACTED] WENT TO [REDACTED] AND SHUT [REDACTED] DOOR.

Question (G) [REDACTED]

Answer (A) [REDACTED]

Q: WHAT IPS STATION DO YOU WORK AT?

A: AL TAJI POLICE STATION [REDACTED]

Q: WHAT DAMAGE DID THE DETAINEES DO TO THE INTERIOR OF THE DETENTION CELL?

A: THEY PULLED A PIPE OFF OF THE SHOWER AND USED THIS TO KNOCK ABOUT 6 TILES OFF AND THEN DUG INTO THE WALL APPROXIMATELY 10 INCHES, PUT [REDACTED]

Q: How do you know WHICH DETAINEES CAUSED THE DAMAGE TO THE WALL OF THE LATRINE?

003339

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

STATEMENT OF [REDACTED] TAKEN AT 2345th DATED 20/3/08

9. STATEMENT (Continued)

A. AT THE TIME THAT THE DAMAGE OCCURED WE HAD 4 PRISONERS IN THE CELL. 3 THAT WERE IN FOR MURDER/VEHICLE THEFT AND 1 FOR LOOTING. THE 1 THAT WORKS FOR US TOLD US WHAT THEY WERE DOING. ALL WERE TRAINED HERE

Q: WHAT ARE THE NAMES OF THE 4 DETAINEEES THAT WERE TRAINED HERE IN THE DETENTION CELL ON 30/10/00 JUL 05?

A: THEIR NAMES WERE [REDACTED] (SUSPECTED LOOTING), MUHSIN ALI MONDI, [REDACTED], AND [REDACTED]

Q: WHO IDENTIFIED THAT THE WALL IN THE DETENTION CELL HAD BEEN DAMAGED?

A. THE PRISONER [REDACTED] SPEAKS A LITTLE ENGLISH AND GOT [REDACTED] TO GO IN TO INSPECT IT.

Q: WHO DID YOU NOTIFY ABOUT THE DAMAGE TO THE WALL OF THE DETENTION CELL AT YOUR IPS STATION?

A: I CALLED BLOODHOUND BASE TO INFORM THEM OF THE DAMAGE.

Q: WHAT DAY DID THE DAMAGE OCCUR TO THE WALL OF THE DETENTION CELL?

A: THE DAY BEFORE THE INCIDENT, THE 29TH OF JULY.

Q: HOW DID 1LT NILES TELL YOU HE WAS WITH THE DETAINEEES THAT DID THE DAMAGE TO THE DETENTION CELL?

A: HE DIDN'T SAY THAT HE WAS GOING TO DO ANYTHING TO THEM. HE JUST SAID THAT HE WANTED TO SEE THOSE RESPONSIBLE.

Q: WHEN 1LT NILES TOLD YOU THAT HE WANTED TO ALLEGEDLY CAUSED THE DAMAGE TO THE WALL OF THE DETENTION CELL WAS HE GOING TO CAUSE PHYSICAL HARM TO THEM?

A: NO, I DID NOT.

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

003340

STATEMENT OF [REDACTED] TAKEN AT 2345 [REDACTED] DATED 30804

9. STATEMENT (Continued)

Q: WHAT DID LT NICES DO TO THE FIRST PRISONER WHO ENTERED THE CATLINE

A: HE GRABBED HIM BY THE BACK OF THE HEAD AND SWUNG HIM AROUND, THROWING HIM TOWARDS THE DAMAGED WALL.

Q: DID YOU ATTEMPT TO STOP LT NICES FROM BEHAVING IN THIS MANNER?

A: NO, I DID NOT.

Q: WHY DIDN'T YOU CORRECT LT NICES BEHAVIOR?

A: I THOUGHT THAT HE WAS JUST TRYING TO SCARE THEM SO THEY WOULD TRY TO BREAK OUT AGAIN, I DIDN'T KNOW THAT HE WAS GOING TO ESCALATE.

Q: HOW DO YOU KNOW THAT LT NICES STRUCK THE PRISONER?

A: I WAS STANDING BY THE EDGE OF THE INNER WALL AND HE WAS NO ONE BETWEEN ME AND THE LT. I SAW HIM PUNCH THE FIRST PRISONER INTO THE WALL DIRECTLY TO THE FLOOR HOLDING HIS STOMACH.

Q: HOW DO YOU KNOW THAT LT NICES STRUCK THE SECOND PRISONER?

A: I SAW HIM GRAB THE PRISONER THEN I SAW HIS ARM MOVE BACK AND HE THREW A PUNCH TO THE GUT.

Q: WHAT DID YOU DO WHEN LT NICES STRUCK THE PRISONER?

A: I STARTED TO MOVE FORWARD TO PULL THE LT OFF OF THE PRISONER.

Q: WHAT WAS HIS REACTION WHEN YOU ATTEMPTED TO PULL HIM BACK?

A: HE STARTED TO BACK UP AND ON THE WAY BACK HE KICKED THE PRISONER'S SHOULDER AREA.

Q: WHAT DID YOU DO TO ASSESS THE EFFECTS OF LT NICES STRUCK THE PRISONERS ON THEIR MEDICAL CONDITION?

A: I GAVE THE PRISONER A LOOK TO SEE HOW THEY WERE. THEY WERE STILL CONCIIOUS, NOT BLEEDING, AND ALL WERE CRYING. AT THAT POINT I WENT TO GO AND TALK TO THE LT.

INITIALS OF PERSON MAKING STATEMENT [REDACTED] PAGE 2 PAGES

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STATEMENT OF [REDACTED]

TAKEN AT

2345 [REDACTED]

DATED

20030804 [REDACTED]

9. STATEMENT (Continued)

Q. Did Any of the Detainees that Ict Nices Struck Require Any Medical Care Due to His Alleged Assault?

A. NO, THEY DID NOT.

Q. Have you ever seen Ict Nices Physically Abuse anyone in the Past?

A. WHILE IN KUWAIT AT CAMP NEW YORK HE GRABBED ONE OF THE GUARDS BY THE ARM AND THREW HIM TOWARDS THE DOOR OF OUR TENT.

Q. What is the Standard Operating Procedure for Dealing with Detainees that Cause Damage to Government Facilities.

A. WHEN WE HAVE A PRISONER IN THIS SITUATION WE CAN RESTRICT THE INDIVIDUAL BY USING ZIP STRIPS, HAND CUFFS, ETC.

Q. What Punishment did the 3 Detainees that Damaged the Wall in the Corridor of the Detention Cell Receive?

A. THEY RECEIVED NO PUNISHMENT BUT WE DID ZIP STRIP THEM BEHIND THEIR BACKS FOR APPROXIMATELY 45 MINUTES. AND WE MOVED THE OTHER PRISONER TO THE OTHER D-CELL FOR FEAR OF RETRIBUTION.

Q. How did Ict Nices React when you told him that you had warned him to sit you on your shoulders in that position?

A. HE HAD NO REACTION. HE JUST SAT THERE, HE DIDN'T SAY OR DO ANYTHING.

Q. Is there Any other Soldiers that I should Talk to that were in the Detention Cell when this Incident took Place?

A. [REDACTED]

Q. Do you Have Anything to Add to this Statement?

A. NO.

|| END OF STATEMENT ||

003342

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

STATEMENT OF [REDACTED] TAKEN AT 2845 [REDACTED] DATED 20030804

9. STATEMENT (Continued)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 6. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this [REDACTED] of Aug 2003 at TAJI [REDACTED]

ORGANIZATION OR ADDRESS

[REDACTED]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED]
An [REDACTED] in Administering Oath
[REDACTED] Administer Oath

003343

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 6 OF 6 PAGES

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION: Al Tari Police Station.
2. DATE (YYYYMMDD): 20030804
3. TIME: 2300
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME:
6. SSN:
7. GRADE/STATUS: E-5/A.D
8. ORGANIZATION OR ADDRESS:
9. Lt 5 to MP Co Baghdad Iraq.

I, [redacted], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
On the morning of July 30, 2003 after shift change procedures had been completed Lt. Miles stated that he wanted to speak to the prisoners about an attempted breakout the day prior. At that time I grabbed [redacted] and [redacted] and we followed [redacted] and [redacted] to the D-cell. We did not take any IP's with us. We entered the D-cell separated the 3 prisoners in question from the rest. Leaving [redacted] the main room of the D-cell to guard the remaining prisoners. I stood in the doorway between the main room and the latrine to watch [redacted] back while he guarded the remaining detainees. Lt. Miles, [redacted], [redacted] and the 3 in question were in the latrine. [redacted] and [redacted] were standing side by side just beyond the half wall in front of the stalls. I saw Lt. Miles take the one of the prisoners by the neck, he did this by grabbing the back of his neck and take him towards the damaged wall. At this point I looked over [redacted] to see if he was alright and heard a loud thud as if someone was pushed against a wall with Lt. Miles saying "Yo [redacted] did you do this to my D-cell." at that time. I went to where Sgt. Ernest [redacted] [redacted] was standing and I looked around to the corner of the latrine. I saw two of the prisoners pressed against the wall with one covering the front of them. I saw Lt. Miles closed fistful punching the prisoner in the right shoulder, collar bone area, he punched him 3 times, in rapid succession and then immediately started kicking the prisoner in the ribs area. at which time [redacted] went over to pull Lt. Miles off the prisoner, but Lt. Miles got in at least 3 good kicks before [redacted] could

10. EXHIBIT:
11. INITIALS OF PERSON MAKING STATEMENT: [redacted]
PAGE 1 OF 6 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT [redacted] DATED [redacted]
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.
003344

STATEMENT OF [REDACTED] TAKEN AT Taji Police Station DATED 4 Aug 03

9. STATEMENT (Continued)

Pull himself. Pissed off and disgusted I left the D-cell and went to get [REDACTED] the PLT SGT. I told him he needed to be in the D-cell now because the Lt was hitting one of the prisoners. at that time I went outside, I came back in approx. 5 minutes later to see [REDACTED] come out to a closed door discuss with Lt with and the PLT SGT go into cell. I went back outside and worked the dis mount point with [REDACTED] and [REDACTED] approx. 4 hours later we ascertained the 3 that attempted the breakout and one other prisoner to Camp Cropper. we returned with one prisoner to be released and [REDACTED] the day finished business as usual.

The following questions are used to clarify the statement by [REDACTED]

Question (1) [REDACTED]

Answer (1) [REDACTED]

Q. When you entered the Detention Cell is your Police Presence required?

A. as far as I know, NO

Q. How much time elapsed from the time you entered the Detention Cell to the time you exited?

A. 3-to 4 minutes tops

Q. How many detainees did Lt Nicos Strike?

A. 1

Q. When you entered the Detention Cell did you feel that your well-being was threatened?

A. No.

003345

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

STATEMENT OF [REDACTED] TAKEN AT [REDACTED] Police Station DATED 04 Aug 83

9. STATEMENT (Continued)

Q. Did the Detainees Receive Any Additional Medical Care Due to the Assault by 1st Niles?

A. No.

Q. When you witnessed 1st Niles Strike the Detainees what was your Location in Relation to 1st Niles, etc. etc. etc.

A. I was to the left of [REDACTED] and [REDACTED] who were standing adjacent to the first stall. Lt. Niles was in front of me to the left with his back towards the stalls. So I had a view of his left side.

Q. What is your Duty Description within 1st Squadron?

A. I am the 1st Squad Bravo Team Leader.

Q. Have you ever witnessed 1st Niles Lose His Temper?

A. Yes.

Q. By what means did he Deal with His Anger?

A. He Walked Away from the Situation.

Q. Have you ever witnessed 1st Niles use Physical Force to Deal with Anger?

A. No.

Q. After you exited the Detention Cell what are the Circumstances Around your Next Interaction with the Detainees that 1st Niles Struck?

A. We took them out of the cell one by one searched and cuffed them. Then one by one we placed them into the vehicles. Drove to Cripps. Got them out of the vehicles one by one. E sorted them into the holding area where MI asked them some questions. Letter Redcross took care of them.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF

TAKEN AT

DATED

01 Aug 83

9. STATEMENT (Continued)

after Redcross, they were escorted into the actual detainee compound turned over to the MPs running the camp.

Q. How long after the incident in the detention cell did you transport the detainees to Camp Cropper?

A. Approx 3 to 4 hours.

Q. Before you transported the detainees to Camp Cropper you stated that you searched all the detainees, what were you looking for during your search and what did you find?

A. Contraband and tender spots from the assault. I found neither.

Q. Where did you search the detainees?

A. I did a pat down search before I put them in the vehicles.

Q. For contraband, did you find any contraband on tender spots on the detainees' bodies?

A. No I did not.

Q. What did the three detainees do to upset the MPs?

A. The day before they attempted a breakout. They broke a steel pipe out of the shower and attempted to break through the brick wall.

Q. How were the detainees disciplined for their misconduct?

A. They were handcuffed for a couple of hours.

Q. Is there a standing operating procedure in place that details the proper disciplinary measures for detainees with behavior misconduct?

A. To my knowledge, no.

Q. When you entered the detention cell with [redacted] and [redacted] what were your intentions/expectations in relation to what was going to happen?

A. Provide security for Lt Miles while he talked to the prisoners. I expected him to talk to them.

INITIALS OF PERSON MAKING STATEMENT

PAGE 4 OF 6 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT Tajikistan DATED 4 APR 03

9. STATEMENT (Continued)

Q. Why didn't you attempt to stop [REDACTED] from hitting the detainees?

A. because [REDACTED] had already started, and I felt that the issue should be handled by him and the PST. So I went and got [REDACTED] instead.

Q. Do you have anything to add to this statement?

A. No.

/// End of Statement ///

003348

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

Not used
[Redacted]

Not used
[Redacted]

AFFIDAVIT

I, [Redacted], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 6. I FULLY UNDERSTAND THE CONTENT OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[Redacted Signature]
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 4th day of Aug, 2003 at TASI IPS [Redacted]

ORGANIZATION OR ADDRESS

[Redacted Signature]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[Redacted Name]
(Typed Name of Person Administering Oath)
Apt 134 (4)
(Authorized to Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT [Redacted]

003349

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION: Al Taji Police Station, IRAQ
2. DATE (YYYYMMDD): 2003 08 04
3. TIME: 1735
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME:
6. SSN:
7. GRADE/STATUS: E-4/AD
8. ORGANIZATION OR ADDRESS: 615th MPCo

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

On 30 Jul 03, at approx. 1000hrs, I stated that myself and [REDACTED] were going to get the detainees out of the Taji D-cell for a work detail. Lt Niles told me to wait that he and [REDACTED] were going with us to the D-cell. Upon entering the cell, Lt Niles asked which 3 detainees had tried to escape the previous day. We pointed out the 3 detainees and the [REDACTED] motioned for them to go into the bathroom, where they had tried to escape by knocking a hole through the wall with a pipe. Lt Niles went into the bathroom first followed by [REDACTED] and then myself. [REDACTED] stayed in the main detention cell guarding the other prisoners. Lt Niles grabbed the first detainee by the back of the neck or his shoulder and moved him over to the hole in the wall and asked him once or twice "Did you do this?". He then struck the man in the stomach and the man fell to the floor. He then grabbed the second man and struck him in the stomach as well. [REDACTED] was grabbing Lt as he was going at the third man. The third man cowered on the floor and the Lt kicked at him as [REDACTED] was pulling him away. I think the Lt grazed the man's shoulder with the kick. [REDACTED] showed up somewhere in the middle of all of the confusion. I think Sgt Brian saw the Lt. hit the first and possibly the second prisoner. [REDACTED] then he went to get SSG Dixon out of the office. [REDACTED] came in to see what all happened in the D-cell and then all of the NCOs took the Lt to the office, where I heard one or more of them yelling at him.

The following questions are to clarify the statement:
Question: [REDACTED]
Answer: [REDACTED]
Q. Is there a SOP for dealing with detainees that we have been trained before. We try to [REDACTED]
A. Just what we have been trained before. We try to [REDACTED] handle the D-cell.

10. EXHIBIT:
11. INITIALS OF PERSON MAKING STATEMENT: [REDACTED]
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT [REDACTED]"
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND THE PAGE NUMBER MUST BE INDICATED.
PAGE 1 OF 4 PAGES
003350
PAGE NUMBER

STATEMENT OF [REDACTED] TAKEN AT Taji Police Station on 14 Aug 03

9. STATEMENT (Continued)

Q. WERE THE DETAINEES DISCIPLINED FOR AGGRESSIVE BEHAVIOR OR THE JAIL?

A. [REDACTED] stated that he wanted to bound the detainees behind their back. WE got zip strips for him and showed them how to use them.

Q. How Much Time ELAPSED FROM THE TIME THAT YOU ENTERED THE CELL TO THE TIME THAT YOU EXITED?

A. FROM 5-10 minutes [REDACTED]

Q. WHAT WAS THE DISTANCE BETWEEN YOU AND [REDACTED] WHEN HE WAS STRIKING THE DETAINEES?

A. I WAS APPROX. 10FT BEHIND HIM [REDACTED]

Q. HOW MANY TIMES AND WHERE DID [REDACTED] STRIKE THE DETAINEES?

A. HE STRUCK THE FIRST 2 ONCE EACH IN THE STOMACH. THE SECOND WAS KICKED IN THE SHOULDER AREA ONCE THAT I COULD SEE [REDACTED]

Q. WHEN YOU ENTERED THE DETENTION CELL AT ANY POINT DID YOU FEEL THREATENED SO THAT YOU WOULD BE REQUIRED TO DEFEND YOURSELF?

A. NO, NOT AT ALL [REDACTED]

Q. DID ANY OF THE DETAINEES THAT WERE STRUCK BY [REDACTED] REQUIRES ADDITIONAL MEDICAL ATTENTION?

A. NO [REDACTED]

Q. HAVE YOU EVER BEEN IN OR WITNESSED [REDACTED] ASSOCIATION WITH ANYONE?

A. NO. [REDACTED]

Q. WHAT WAS YOUR INVOLVEMENT IN TRANSFERRING THE DETAINEES WHO WERE STRUCK BY [REDACTED] TO CAMP CRIPPER?

A. I WAS A GUAARD RIDING IN THE HMVEE AND I GUAARD THEM AT ALL TIMES. I DID NOT NOTICE ANY OF THEM LIMPING OR HAVING INJURIES. [REDACTED]

003351

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

STATEMENT OF [REDACTED] TAKEN AT Taji Police Station DATE 2/11/03

9. STATEMENT (Continued)

Q. ^{Is there anything that Lt Nicos did from the cell that would have led you to believe that he was going to hit the detainees?}

A. He put flight gloves on, but he is always wearing the other than that, NO ADMISSIONS.

Q. How would you characterize the relationship between you and Lt Nicos?

A. We do not get along. He is very physical, he does not play fair. So I try not to do anything physical. We do not get along with him to begin with.

Q. Were you in a position to stop Lt Nicos from hitting the detainees?

A. Yes, but [REDACTED] had already moved in to stop him.

Q. How much time elapsed between the time that the first and third detainees were hit?

A. 10-20 seconds, it was too fast to really register what was going on until the third detainee was hit. It all happened very fast.

Q. Do you have anything to add to this statement?

A. Not that I can think of.

END OF STATEMENT

003352

INITIALS OF PERSON MAKING STATEMENT

4 PAGES

STATEMENT OF [REDACTED] TAKEN AT Taji Police Station DA 1203

9. STATEMENT (Continued)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THE STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 4. I FULLY UNDERSTAND THE CONTENTS OF THE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE OR UNLAWFUL INDUCEMENT.

[REDACTED] (Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, I am authorized by law to administer oaths, this 4 day of 2003 at TAJI IPS Station

ORGANIZATION OR ADDRESS

[REDACTED] (Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED] (Typed Name of Person Administering Oath)
[Signature] (Authorized)

INITIALS OF PERSON MAKING STATEMENT

003353
4 PAGES

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION: TAJI POLICE STATION
2. DATE (YYYYMMDD): 2003 08 04
3. TIME: 2345
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME:
6. SSN:
7. GRADE/STATUS:
8. ORGANIZATION OR ADDRESS: 615th MP COMPANY

I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH: I WAS ON RADIO GUARD AT THE DESK WHEN I OVER HEARD THAT THE PRISONERS WERE TRYING TO BREAK OUT. WELL AT THE TIME I WANTED TO SEE THE WHOLE THAT WAS TRYING TO BE DUG. BUT I COULDN'T BECAUSE I WAS ON RADIO GUARD. [REDACTED] WAS AVAILABLE TO RELIEVE ME, AT FIRST SHE [REDACTED] BUT SHE WANTED TO SEE IT FIRST. SHE CAME BACK AND RELIEVED ME, SO THAT I TOO MIGHT SEE THE WALL WALKING TO GO TO THE O-CELL I WAS ORDERED TO WATCH THE THREE PRISONERS. SO I DID. THE OTHER THREE PRISONERS WENT TO THE SHOWER/BATH-ROOM PART WHERE THEY TRIED TO ESCAPE. I WAS ORDERED BY THE LT [REDACTED] AND [REDACTED] TO GUARD THE OTHER THREE. WHILE THE LT, [REDACTED], [REDACTED] WENT WITH THE LT. BE ADVISED I DID NOT HAVE EYES ON THE LT, [REDACTED], THE PRISONERS. IF I LEANED BACK I COULD SEE [REDACTED] [REDACTED] WAS THE CLOSEST ONE TO ME. LIKE I SAID I WAS GUARDING THE PRISONERS AND ONLY WATCHED THEM. I TOOK MY EYES OFF OF THEM THREE TIMES. ONCE WAS WHEN I HEARD THE LT SAY, "LOOK AT THIS DID YOU DO THIS" THEN I TURNED LOOKING FOR A SPLIT SECOND I HAD EYES ON [REDACTED] [REDACTED] BUT I COULDN'T SEE ANY THING ELSE. I TURNED BACK AND RESUM ED WATCHING THE OTHERS. I HEARD IT AGAIN FOLLOWED BY FOOTSTEPS RIGHT NEXT TO ME. SO OUT [REDACTED] OUT OF NATURAL INSTINCT I TURNED TO GLANCE AT WHO WAS COMING BEHIND ME IT WAS [REDACTED] THE LT ONCE AGAIN, "DID YOU DO THIS?" LEAVING. I THEN HEARD I DIDNT HEAR ANY CRIES OF DEATH OR NOTHING. THIS WENT ON FOR A FEW MORE SECONDS THEN THE LT CAME OUT ALL LOOKING LIKE A MAD FATHER. RIGHT AFTER THAT [REDACTED] SAID I WAS RELIEVED SO WE LEFT, AND WENT TO OUR NEXT GAURD SPOT. ALL OF THIS HAPPENED BETWEEN 900 HRS AND 1300 HRS.

The following questions are meant to clarify the statement of [REDACTED]

10. EXHIBIT
11. INITIALS OF PERSON MAKING STATEMENT: [REDACTED]
PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT TAIL POLICE STATION DATED 7003 0804 [REDACTED]

9. STATEMENT (Continued)

QUESTION: [REDACTED]

ANSWER: [REDACTED]

Q. WHO ORDERED YOU TO GUARD THE THREE PRISONERS IN THE DETENTION CELL THAT DAY?

A. LT [REDACTED]

Q. WHEN THE THREE DETAINEES ENTERED THE CARRYING PORTION OF THE DETENTION CELL COULD YOU SEE THEIR INTERACTION WITH LT NILES?

A. NO HE [REDACTED] I COULD NOT.

Q. AT WHAT POINT DID [REDACTED] EXIT THE DETENTION DETENTION CELL?

A. AFTER LT NILES SAID "LOOK AT THIS, DID YOU DO THIS, DID YOU DO THIS." THATS WHEN HE LEFT.

Q. DO YOU HAVE ANYTHING TO ADD TO THIS STATEMENT?

A. NO

|| END OF STATEMENT ||

003355

INITIALS OF PERSON MAKING STATEMENT
[REDACTED]

PAGE 2 OF 3 PAGES

STATEMENT OF [REDACTED] TAKEN AT TALI POLICE STATION DATED 2003 08 04

9. STATEMENT (Continued)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 4 day of Aug, 2003 at TALI 1PS STATION

[REDACTED]

(Signature of Person Administering Oath)

[REDACTED]

(Typed Name of Person Administering Oath)

ART. 136(b)(4)

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

003356

PAGE 3 OF 3 PAGES

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION <i>Musayib, Iraq</i>	2. DATE (YYYYMMDD) <i>20030706</i>	3. TIME <i>1033L</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <i>Niles, Jr Glenn Anthony</i>	6. SSN	7. GRADE/STATUS <i>02/1LT</i>	
8. ORGANIZATION OR ADDRESS <i>615th MP Company</i>			

9. *Glenn A. Niles, Jr.*, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
 On 29 July, 2003 I was notified that detainees in the Taji Police Station did attempt to escape. On 30 July, 2003 I did go to the Taji Police Station and requested to be shown the area in which the detainees attempted to escape. [redacted] did show me the area & damage made to the wall. At which time I asked that the detainees in question enter the latrine. It is at this time that I became engaged and struck the detainees. I believe that there were four prisoners that I struck in various parts of their body. I was then removed from this area by a soldier. I then went and sat down in the MP office. It was at this time [redacted] came in and expressed his dissatisfaction in my behavior. [redacted] then came in and asked what happened. I believe [redacted] explained the situation to [redacted]. No further incidents occurred during the day. Days later I expressed to [redacted] that I was out of line and my behavior was not warranted.

The following questions are used to clarify this statement

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [redacted]	PAGE 1 OF <u>7</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" _____ TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

00335

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Niles, Jr Glenn A. TAKEN AT Brockton, 209 DATED 10 Aug 2003

9. STATEMENT (Continued)

Q. [REDACTED]

A. ILT NILES [REDACTED]

Q. WHAT WAS YOUR REACTION WHEN YOU WERE MADE AWARE OF THE ATTEMPTED BREAKOUT AT THE DETENTION CELL AT AL TASI POLICE STATION ON 29 JUL 03?

A. I WAS VERY ANGRY AND PISSED OFF. [REDACTED]

Q. WHEN YOU WENT TO AL TASI POLICE STATION ON 30 JUL 03 WHAT TIME DID YOU ENTER THE DETENTION CELL?

A. EXACT TIME UNKNOWN. APPROX. TIME WOULD BE AFTER 0900L [REDACTED]

Q. WHY DID YOU ENTER THE DETENTION CELL AT AL TASI POLICE STATION ON 30 JUL 03?

A. TO ~~SEE~~^{GO} see the damage that was done to the cell. [REDACTED]

Q. HOW MANY ~~OF~~^{DO} SOLDIERS ENTERED THE DETENTION CELL WITH YOU AT AL TASI POLICE STATION ON 30 JUL 03?

A. EXACT NUMBER UNKNOWN. [REDACTED]

Q. AT ANY TIME WHILE YOU WERE IN THE DETENTION CELL DO YOU FEEL THAT YOUR SAFETY OR THE SAFETY OF YOUR SOLDIERS WAS IN JEOPARDY?

A. WHEN I ENTERED THE CELL I DID NOT FEEL THAT MY SAFETY WAS IN JEOPARDY. DURING THE ACTUAL INCIDENT I DO NOT RECALL THINKING ABOUT MY SAFETY. [REDACTED]

Q. HOW MANY DETAINMENTS WERE IN THE DETENTION CELL WHEN YOU ENTERED ON 30 JUL 03?

A. I BELIEVE IT WAS EIGHT. [REDACTED]

003358

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Al. Los, Jr. Glenn A. TAKEN AT Brighton, Iowa DATED 4 Aug 2003

9. STATEMENT (Continued)

Q. WHEN YOU WERE IN THE LATRINE OF THE DETENTION CELL WITH THE DETAINEES THAT ALLEGEDLY ATTEMPTED TO BREAK OUT OF THE DETENTION CELL ON 29 JUL 03 WHERE WERE THE REMAINDERS OF THE DETAINEES?

A. I believe that they were in the D-cell. [REDACTED]

Q. WAS A SOLDIER SECURING THE DETAINEES WHILE YOU WERE IN THE LATRINE PORTION OF THE DETENTION CELL?

A. I would assume that they were. [REDACTED]

Q. DO YOU NORMALLY ENTER THE DETENTION CELL?

A. Yes, at times I assist the soldiers in securing prisoners and searching the D-cell. [REDACTED]

Q. UNDER WHAT CIRCUMSTANCES DID YOU ENTER THE DETENTION CELL?

A. THE REASON FOR ENTERING THE D-CELL WAS TO SEE WHAT DAMAGES WERE DONE TO THE CELL. [REDACTED]

Q. WERE THERE ANY IPS INAA Police Service Present When you ENTERED THE DETENTION CELL?

A. NO. [REDACTED]

Q. DID YOU HAVE BLACK GLOVES ON WHEN YOU ENTERED THE DETENTION CELL?

A. NO. [REDACTED]

Q. DID YOU ENTER THE DETENTION CELL WITH THE INTENTION OF STRIKING ANY OF THE DETAINEES?

A. NO. [REDACTED]

003359

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Nikolaj, Jr. Glenn A TAKEN AT Bojardo, Iraq DATED 6 Aug 2003

9. STATEMENT (Continued)

Q WHAT WAS YOUR INTENTION WHEN YOU ENTERED THE DETENTION CELL?

A. MY INTENTION WAS TO SEE THE DAMAGES DONE TO THE CELL.

Q. WHEN YOU SAW THE DAMAGE DONE TO THE CELL WHAT DID YOU DO?

A. I ASKED THAT THE DETAINEES BE BROUGHT INTO THE LATRINE TO SEE WHAT DAMAGES THEY DID.

Q. WHEN THE DETAINEES THAT ALLEGEDLY CAUSED THE DAMAGE TO THE DETENTION CELL WERE BROUGHT INTO THE LATRINE WHAT DID YOU DO?

A. I LOST CONTROL AND BEGAN TO STRIKE THEM.

Q. EXPLAIN WHICH DETAINEES YOU STRUCK AND WHERE ON THEIR BODIES YOU STRUCK THEM.

A. I DO NOT REMEMBER WHICH DETAINEE I STRUCK. I REMEMBER STRIKING THEM ON THEIR TORSO.

Q. DID YOU STRIKE MORE THAN ONE DETAINEE?

A. I BELIEVE I DID.

Q. HOW MANY OF THE DETAINEES DID YOU STRIKE?

A. I BELIEVE ALL FOUR.

Q. WHAT IS THE APPROXIMATE HEIGHT AND WEIGHT OF THE DETAINEES THAT YOU STRUCK?

A. UNKNOWN

Q. DID THE DETAINEES THREATEN YOU IN ANY WAY?

A. NO. NOT IN THE CELL

003360

INITIALS OF PERSON MAKING STATEMENT

PAGE 4 OF 7 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Niles, Jr. Green A TAKEN AT Brighton, Iowa DATED 6 Aug 2003

9. STATEMENT (Continued)

Q. ON THE DAY IN QUESTION WERE YOU AWARE OF ANY OF THE
DETAINEES

A. NO. YAH

Q. AFTER YOU STRUCK THE DETAINEES UNDER WHAT CIRCUMSTANCES
DID YOU EXIT THE DETENTION CELL?

A. I WAS REMOVED BY A SOLDIER. YAH

Q. DO YOU REMEMBER WHICH SOLDIER REMOVED YOU?

A. NO. YAH

Q. HOW DID THE SOLDIER REMOVE YOU?

A. I WAS GRABBED & PULLED OUT. YAH

Q. WHERE DID YOU GO AFTER YOU WERE REMOVED FROM THE ~~THE~~ DETENTION
CELL?

A. MP OFFICE. YAH

Q. DID YOU EVER CHECK IF THE DETAINEES REQUIRED ANY MEDICAL
ATTENTION AS A RESULT OF YOUR ACTIONS?

A. NO. YAH

Q. ~~HOW~~ WHY DID YOU STRIKE THE DETAINEES IN THE CORRIDOR
OF THE DETENTION CELL ON 30 JUL 03?

A. I WAS ASY. YAH

Q. DOES YOUR UNIT HAVE AN STANDING OPERATING PROCEDURE
IN PLACE THAT DESCRIBES HOW TO DEAL WITH DETAINEE AND
DETAINEE MISCONDUCT?

A. YES, THE DIVISION POLICY AND THE USE OF FORCE. YAH

003361

INITIALS OF PERSON MAKING STATEMENT

YAH

PAGE 5 OF 7 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Nikis, Jr. Gibson A TAKEN AT Baylor, Tex DATED 10 Aug 2003

9. STATEMENT (Continued)

Q. WERE YOUR ACTIONS IN THE DETENTION CELL ON 30 JUL 03 WHEN YOU STRUCK SEVERAL DETAINEES IN ACCORDANCE WITH THOSE POLICIES?

A. NO. SAG

Q. DID YOU BRING THIS INCIDENT TO THE ATTENTION OF YOUR CHAIN OF COMMAND?

A. NO. SAG

Q. WHY DIDN'T YOU BRING THIS INCIDENT TO THE ATTENTION OF YOUR CHAIN OF COMMAND?

A. UNKNOWN. DID NOT THINK ABOUT REPORTING THE INCIDENT HIGHER.

Q. DO YOU HAVE ANYTHING TO ADD TO THIS STATEMENT?

A. NO. SAG

End of statement
SAG

003362

INITIALS OF PERSON MAKING STATEMENT
SAG

PAGE 6 OF 7 PAGES

STATEMENT OF Niles, Jr Eken A TAKEN AT Bastrop, Iowa DATED 6 Aug 2003

9. STATEMENT (Continued)

Not used

AFFIDAVIT

I, Eken A. Niles, Jr., HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 7. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[Redacted Signature]

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6 day of August, 2003 at Warrion Prairie, Bastrop, Iowa

[Redacted Signature]

(Signature of Person Administering Oath)

[Redacted Name]

(Typed Name of Person Administering Oath)

Antonia B. Hill

(Author. To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

003363

PAGE 7 OF 7 PAGES

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <i>Bashdad, Iraq</i>	2. DATE <i>6 AUG 2003</i>	3. TIME <i>10:18L</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>Niles, Jr Glenn A</i>	8. ORGANIZATION OR ADDRESS <i>6015th MP Company APO AE 09302</i>		
6. SSN <i>[REDACTED]</i>	7. GRADE/STATUS <i>02/1LT</i>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army *Military Police* and wanted to question me about the following offense(s) of which I am suspected/accused: *ARTICLE 93 CRUELTY AND MALTREATMENT AND LAW OF WAR VIOLATION*

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. For personnel subject to the UCMJ I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)	3. SIGNATURE OF INTERVIEWEE <i>[REDACTED]</i>
1a. NAME <i>(Type or Print)</i>	4. SIGNATURE OF INVESTIGATOR <i>[REDACTED]</i>
b. ORGANIZATION OR ADDRESS AND PHONE	5. TYPED NAME OF INVESTIGATOR <i>[REDACTED]</i>
2a. NAME <i>(Type or Print)</i>	6. ORGANIZATION OF INVESTIGATOR <i>709 Military Police Battalion</i>
b. ORGANIZATION OR ADDRESS AND PHONE	

Section C. Non-waiver

1. I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything 003364

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

Accused M. J. [unclear] at [unclear]

1. **WARNING** - Inform the suspect/accused of:
 - a. Your official position. *Investigative Officer*
 - b. Nature of offense(s). *Ar 93 (Unauthorized Management)*
 - c. The fact that he/she is a suspect/accused.
2. **RIGHTS** - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

 - a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

003365

00503483

OFFICER EVALUATION REPORT						SEE PRIVACY ACT STATEMENT ON DA FORM 67-9	
PART I - ADMINISTRATIVE DATA							
1. NAME (Last, First, MI) NILES, GLENN A.		2. GRADE 2LT	3. DATE OF BIRTH Mo: 05 Day: 10 Year: 2001	4. BRANCH MP	5. GRADE / POINTS 31A		
6. UNIT, ORG, STATION, ZIP CODE OR APO, MILITARY COMMAND 615TH MILITARY POLICE COMPANY, APO AE 09114				7. USAREUR 22		8. SERVICE FOR COMMERCIAL SR Option	
9. PERIOD COVERED		10. DUTY STATION	11. REPORTING CODE	12. MIL. REP. DIST.	13. MILITARY ADDRESS (Check one and date)	14. PER. POINTS	15. USMC CODE
Year: 2001 Month: 09 Day: 19	Year: 2002 Month: 07 Day: 09	10			1. Home in US: <input type="checkbox"/> 2. Forwarded to US: <input checked="" type="checkbox"/> 19 Jul 02	28	UH
PART II - AUTHENTICATION (Rated officer's signature portion below has been completed per DA Form 67-9 and the photo data is correct)							
16. NAME OF RATER (Last, First, MI)		17. GRADE	18. TITLE	19. POSITION	20. SIGNATURE	21. DATE	
[Redacted]				Company Commander	[Redacted]	19 Jul 02	
22. NAME OF WITNESS/ADJUTANT (Last, First, MI)		23. GRADE	24. TITLE	25. POSITION	26. SIGNATURE	27. DATE	
[Redacted]				Battalion Commander	[Redacted]	10 Jul 02	
28. NAME OF SUPERVISOR (Last, First, MI)		29. GRADE	30. TITLE	31. POSITION	32. SIGNATURE	33. DATE	
[Redacted]				MP	[Redacted]	10 Jul 02	
34. SERVICE CENTER/STATION HQ, 793D MILITARY POLICE BATTALION APO AE 09139				35. ORGANIZATION/STATION NUMBER 7245	36. EMAIL ADDRESS [Redacted]@us.army.mil	37. DATE 10 Jul 02	
PART III - DUTY DESCRIPTION							
38. PRINCIPAL DUTY TITLE Platoon Leader				39. POINTS RANGE 31A00/MP			
40. DUTY DESCRIPTION (Refer to DA Form 67-9) Platoon Leader of in a Corps Combat Support Military Police Company. Responsible for the health, welfare, and morale of 32 soldiers and their family members. Lead, train, and maintain personnel and equipment valued in excess of \$4,000,000. Conducts realistic training in platoon collective tasks and supervises individual tasks supporting the unit METL. Provides trained and professional military police to conduct law enforcement support for four military communities. Performs major additional duties as the Arms Room, Motor Officer, NBC Officer and Training Officer.							
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rated)							
CHARACTER (Qualities of the leader: compilation of values, attitudes, and skills affecting leader actions)							
41. ARMY VALUES (Comments mandatory for all "NO" entries, use PART V&I)							
1. HONOR: Adherence to the Army's publicly declared code of values		For <input checked="" type="checkbox"/> No <input type="checkbox"/>		5. RESPECT: Promotes dignity, consideration, tolerance, and ED		For <input checked="" type="checkbox"/> No <input type="checkbox"/>	
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed		For <input checked="" type="checkbox"/> No <input type="checkbox"/>		6. SELFLESS SERVICE: Places Army priorities before self		For <input checked="" type="checkbox"/> No <input type="checkbox"/>	
3. COURAGE: Maintains physical and moral bravery		For <input checked="" type="checkbox"/> No <input type="checkbox"/>		7. DUTY: Fulfills professional, legal, and moral obligations		For <input checked="" type="checkbox"/> No <input type="checkbox"/>	
4. LOYALTY: Shows true faith and allegiance to the U.S. Constitution, the Army, the unit, and the public		For <input checked="" type="checkbox"/> No <input type="checkbox"/>					
42. LEADER ATTRIBUTES / SKILLS / ACTIONS: (Rate, mark "YES" or "NO" for each block. Summed, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (Leadership). Place an "X" in the appropriate evaluation box with optional comments in PART V. Comments are mandatory in Part V for all "NO" entries.)							
43. ATTRIBUTES (Select 1) Fundamental qualities and characteristics		<input checked="" type="checkbox"/> MENTAL Possesses desire, will, initiative, and discipline		<input checked="" type="checkbox"/> NO		44. PHYSICAL Maintains appropriate level of physical fitness and military bearing	
45. SKILLS (Competence) (Select 2) Skill development is part of self-development, susceptible to action		1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, sound reasoning		<input checked="" type="checkbox"/> NO		2. INTERPERSONAL Shows skill with people; coaching, teaching, counseling, motivating and supervising	
		<input checked="" type="checkbox"/> TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and prioritizing		<input checked="" type="checkbox"/> NO		3. EMOTIONAL Displays self-control; calm under pressure	
						4. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	
						5. MOTIVATING Inspires, motivates, and guides others toward achieving accomplishment	
46. ACTIONS (Leadership) (Select 3) Major activities leaders perform: influencing, operating, and improving		1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups		<input checked="" type="checkbox"/> NO		2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely	
47. INFLUENCING Method of reaching goals while inspiring / inspiring		4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable		<input checked="" type="checkbox"/> NO		3. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of subordinates	
48. OPERATING Short-term mission accomplishment		7. DEVELOPING Initiates adequate time and effort to develop individual subordinates as leaders		<input checked="" type="checkbox"/> NO		4. ASSESSING Uses after-action and debriefing tools to facilitate continuous improvement	
49. IMPROVING Long-term improvement in the Army by people and organizations						5. LEARNING Shows self-education and organizes formal, personal, experiential, and on-the-job learning	
6. APPT: PASS		DATE: APR 2002		HEIGHT: 71		WEIGHT: 235	
						YES	
4. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LT4 AND ABOVE							
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?							
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NA							

DA FORM 67-9, OCT 97

REPLACES DA FORM 67-9, 1 SEP 79, WHICH IS OBSOLETE, 1 OCT 97

USAPA V2.01

15 AUG 2002

003366

NAME (Last, First, Middle Initial)
ILES, GLENN A.

PART I - ADMINISTRATIVE DATA

b. SSN: [Redacted] c. GRADE: 1LT d. YEAR: 2002 e. MONTH: 11 f. DAY: 10 g. BRANCH: MP h. DESERIALIZED SPECIALTIES: 31A i. PERIOD: 05 ANNUAL

UNIT, ORG. STATION, ZIP CODE OR APO, MAJOR COMMAND
15th Military Police Company, APO AE 09114 USAREUR

Table with columns: FROM (Year, Month, Day), TO (Year, Month, Day), RATER MONTHS, DEGRADED CODES, NO. OF ENCL, RATED OFFICER COPY, 1. Check to Officer, 2. Forwarded to Officer, RATER INITIAL, CMD CODE (UH), PSA CODE (EU17)

PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)

Signature verification section for RATER, INTERMEDIATE RATER, and SENIOR RATER, including names, ranks, positions, and signatures.

PART III - DUTY DESCRIPTION

PRINCIPAL DUTY TITLE: Platoon Leader
SIGNIFICANT DUTIES AND RESPONSIBILITIES: Leads a forward deployed MTO&E Military Police Platoon capable of deploying anywhere in the world at a moments notice to conduct high intensity conflict or stability and support operations in support of the 793d Military Police Battalion, 18th Military Police Brigade and V Corps. Responsible for the combat readiness, training, health, morale and welfare of 32 soldiers. Plans and executes realistic training as well as providing law enforcement support to 3 different communities. Maintains over 85 weapons, 10 HMMWVs, 2 Armored Security Vehicles, numerous communications equipment and various other MTO&E equipment valued in excess of \$1,000,000. Areas of special emphasis include: unit supply officer, unit budget officer, unit status reporting officer, and DFAC officer.

PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)

CHARACTER Disposition of the leader; combination of values, attributes, and skills affecting leader actions

Table for ARMY VALUES (HONOR, INTEGRITY, COURAGE, LOYALTY) and LEADER ATTRIBUTES / SKILLS / ACTIONS (RESPECT, SELFLESS SERVICE, DUTY) with Yes/No checkboxes.

Table for ATTRIBUTES (MENTAL, PHYSICAL, EMOTIONAL), SKILLS (CONCEPTUAL, INTERPERSONAL, TECHNICAL), and ACTIONS (COMMUNICATING, DECISION-MAKING, MOTIVATING, PLANNING, EXECUTING, ASSESSING, DEVELOPING, BUILDING, LEARNING) with Yes/No checkboxes.

PERFORMANCE GRADE: PASS DATE: OCT 2002 HEIGHT: 71 WEIGHT: 237 YES

FOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTJ AND WOL. 003368

NAME **NILES, GLENN A.** PERIOD COVERED **20010919** -- **20020709**

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Senior)

1. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE **SATISFACTORY PERFORMANCE, PROMOTE** **UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE** **OTHER (Specify)**

2. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 67-9 AND PART IV, 5, AND DA FORM 67-9-1.

2LT Niles performance has been extremely exceptional. As a platoon leader of 32 soldiers platoon, he successfully provided direction and oversight with excellent result. A great leader, he inspired his soldiers to get a first time go during the most recent M4 qualification range. 2LT Niles is an excellent officer with unlimited potential for position of higher responsibilities. 2LT Niles is an aggressive, dedicated, highly motivated and a hard working Platoon Leader who gets the mission accomplished. 2LT Niles coordinated, planned, resourced and executed effective training exercises for his platoon, leading to his platoon's success during the Company EXEVAL. The Observer Controller complemented 2LT Niles for his platoon's performance, and his soldiers level of motivation during the Company EXEVAL. 2LT Niles maintained one hundred percent weapons qualification rate in his platoon, in addition to maintaining complete accountability of his platoon's equipment. He also ensured that his platoon's equipment was always mission capable. He planned and executed M4 qualification ranges. As the unit's NBC Officer and Arms room Officer, he has ensured that all the weapon systems and the NBC equipment are serviceable. Promoted him to First Lieutenant, groom for the Military Police Captain's Career Course and company command.

3. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES, FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC. ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

4. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

BEST QUALIFIED **FULLY QUALIFIED** **DO NOT PROMOTE** **OTHER (Specify below)**

I currently occupy grade 7 sufficient to this grade
A completed DA Form 67-9-1 was reviewed with this report and considered in my evaluation and rating.
 Yes **No (Specify below)**

5. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (Commented by ON)

6. COMMENT ON PERFORMANCE/POTENTIAL

HODA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

CENTER OF MASS

RO: 2LT NILES GLENN A

SR: LTC WARD KENNETH M

DATE: 2002 08 15

TOTAL RATINGS: 14

RATINGS THIS OFFICER: 1

2LT Niles performance during this rating period has been nothing short of outstanding. Despite the high OPTEMPO, Glenn Niles has managed to lead, train and care for his soldiers in a totally professional and comprehensive manner. He shored up soldier weaknesses and sustained proficiency through well planned and flawlessly implemented training. He has improved his platoon's morale through leadership and by demonstrating an abiding orientation of care for soldiers. Send to a challenging company command immediately following attendance at the Captains' Career Course. Unlimited potential.

7. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED, FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC. ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Company Commander, Battalion Assistant S3, Battalion S1.

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND c DA FORM 67-9-1.

1LT Niles has aggressively performed his job as a platoon leader and produced good results. Glenn consistently took on every challenge that was set in front of him and accomplished them all with a high degree of success. 1LT Niles is a true motivator of soldiers both by his aggressive nature and rock solid concern for their well-being. Glenn performed such additional duties as the unit supply officer and budget officer. In the performance of these duties he played a critical role in splitting the unit's property book and maintaining accountability of all lateral transfers, additions, orders, and turn-in documents prior to deployment. His platoon spearheaded the units Armored Security Vehicle training which included 3 different training sessions all producing great results. 1LT Niles proved he had a good grasp of the Army training system when he planned and executed a rigorous pre-deployment training cycle that enable his platoon to receive all "T" ratings during their External Evaluation prior to deployment to "Operation Iraqi Freedom". While deployed he successfully planned and conducted over 20 convoy security missions, 7 cordon and searches and performed Maneuver and Mobility Support operations in an area over 100 square kilometers rendering superb results. He also led his platoon through 7 platoon level JUMP TOC operations in less than 40 days. Upon his platoons entry into Baghdad he aggressively took charge of and put into operation 2 Iraqi police stations helping to make the city a more secure place to live.

1LT Niles has unlimited potential. Continue to groom him and upon promotion assign him as the commander of a Corps Support Military Police company

c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC. ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Will serve the Army best in Operational Career Field 31A / MP

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below)

I currently senior rate 14 officer(s) in this grade
 A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review
 YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

ABOVE CENTER OF MASS (Less than 50% in top box; Center of Mass if 50% or more in top box)

CENTER OF MASS

BELOW CENTER OF MASS RETAIN

BELOW CENTER OF MASS DO NOT RETAIN

c. COMMENT ON PERFORMANCE/POTENTIAL

1LT Glenn Niles has lead his platoon, under combat conditions, exceptionally well. He has proven himself uniquely competent - both technically and tactically, no doubt the reason his platoon enjoyed enormous success during Operation Iraqi Freedom. Physically and mentally tough, Glenn is absolutely mission oriented and a leader that inspires his troops to perform at their very best. A talented officer who should be promoted to Captain and selected to command a Corps or Division MP Company. Great Potential.

d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC. ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Company Command, Asst S-3, Community Provost Marshal

003369



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, 280th PSB

Dear [REDACTED]

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

In or out of the Army, this conviction is going to greatly impede 1LT Niles' future. If the conviction remains on his record, he will likely lose his security clearance. This will prevent him from continuing to serve as a member of the MP Corps. It will also eliminate many other options that he would have within the military. As a civilian, however, this conviction will have even more serious consequences. For instance, 1LT Niles will likely be unable to use his Masters in counseling because he would have a record.

I feel that a criminal conviction is unjust in this case. Of course, 1LT Niles could have pled not guilty and fought this charge. The simple fact is, however, that he did strike the Iraqi prisoners as alleged. He is a man of integrity and could not morally or ethically plead not guilty when he knew he did it. My belief is that 1LT Niles' misconduct should never have been brought to a court martial. My goal is to convince the Commanding General of that with my petition for clemency. 1LT Niles should have been given a reprimand in the beginning; the CG now has the opportunity to correct this and give 1LT Niles a real chance to "soldier back" from this incident and advance.

This is where you can help. RCM 1105 (b)(2)(D) provides that an accused can submit clemency recommendations from any person, including court-martial panel members, and that the defense can ask any person for such a recommendation. That is my purpose for writing you. It is not my intent to pressure you, nor do I desire to get any inside information related to your deliberations. Simply stated, 1LT Niles and I need your help. A letter from you as a panel member that heard all the facts in this case supporting our request will send a strong message that would be helpful in persuading the CG to set aside the conviction.

1LT Niles and I thank you for your consideration of this request. I am available to discuss this matter with you any time if you desire to contact me. I can be reached on [REDACTED] or in the office at [REDACTED]-2191. You can also contact me by email at [REDACTED]@us.army.mil. If you are willing and wish to make a clemency recommendation for 1LT Niles, please let me know and I will coordinate the logistics to make it happen.

Very Respectfully,

[REDACTED]

[REDACTED]

Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003370



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, Combat Maneuver Training Center

Dear [REDACTED]

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1LT Niles and I thank you for your consideration of this request. I am available to discuss this matter with you any time if you desire to contact me. I can be reached on [REDACTED] or in the office at [REDACTED]. You can also contact me by email at [REDACTED]@us.army.mil. If you are willing and wish to make a clemency recommendation for 1LT Niles, please let me know and I will coordinate the logistics to make it happen.

Very Respectfully,

[REDACTED]

[REDACTED]

Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003371

DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
UNIT 28130
APO AE 09114-8130

AETT-CG

APR 26 2004

MEMORANDUM FOR [REDACTED], U.S. Army Trial Defense Service, Vilseck Branch
Office, APO AE 09114

SUBJECT: Request for Expert Assistance in the Case of United States v. 1LT Glenn A. Niles,
Jr.

Your request for appointment of [REDACTED], Landstuhl
Regional Medical Center, as an expert assistant and member of the defense team in the case of
U.S. v. 1LT Glenn A. Niles, Jr. is approved.


ROBERT M. WILLIAMS
Brigadier General, USA
Commanding

003372



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

REPLY TO
ATTENTION OF:

AETV-BGJA-V-TDS

19 April 2004

MEMORANDUM THRU Staff Judge Advocate, Headquarters, 1st Infantry Division,
APO, AE 09036

FOR Commander, 7th Army Training Command (General Court Martial Convening
Authority), APO, AE 09114

SUBJECT: Request for Expert Assistance – United States v. 1LT Glenn A. Niles, 615th
Military Police Company, APO, AE 09114

1. 1LT Glenn A. Niles, the accused in the above-pending General Court Martial, requests the appointment of [REDACTED], Landstuhl Regional Medical Center, as an expert assistant to the Defense in the above matter. 1LT Niles further requests that [REDACTED] be designated as a member of the Defense team under U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987).
2. A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. U.S. v. Garries, 22 M.J. 288 (C.M.A. 1986); U.S. v. Robinson, 39 M.J. 88 (C.M.A. 1994), citing Britt v. North Carolina, 404 U.S. 226 (1971) and Ake v. Oklahoma, 470 U.S. 68 (1985). "The Equal Protection Clause, the Due Process Clause, and Caldwell v. Mississippi, 470 U.S. 68 (1985); the Code; and the Manual provide that service members are entitled to expert assistance when necessary for an adequate defense. This right extends from the investigative stage through the appellate process." See, U.S. v. Johnson, 39 M.J. 88, 89 (C.M.A. 1994). Failure to employ this expert assistant would effectively deprive 1LT Niles of his ability to present a defense in this case and would deny him a "[m]eaningful access to justice." Ake v. Oklahoma, 470 U.S. 68 (1985).
3. This expert assistance is both relevant and necessary. 1LT Niles is accused of maltreatment of Iraqi prisoners during a brief period in the midst of a highly stressful combat deployment. His mental state at the time of the alleged offenses is critical to determining his degree of culpability. As his defense counsel, my ability to adequately prepare his defense will be compromised without the type of expert assistance requested. Further, the Defense cannot communicate freely with the expert on issues relating to the preparation of 1LT Niles' defense unless he is designated as a member of the Defense team under Toledo.

003373

AETV-BGJA-V-TDS

SUBJECT: Request for Expert Assistance – United States v. 1LT Glenn A. Niles, 615th
Military Police Company, APO, AE 09114

4. Thank you for your consideration of this request. POC is the undersigned at [REDACTED]
[REDACTED] 2191 or via email at [REDACTED]@cmtymail.100asg.army.mil.

cc:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

Trial Defense Counsel

DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
APO AE 09114

AETT-CG

AUG 4 2004

MEMORANDUM FOR First Lieutenant Glenn A. Niles, Jr. [REDACTED] 615th Military Police
Company, 409th Base Support Battalion, APO AE 09114

SUBJECT: Request for Deferment of Forfeitures

Effective today, pursuant to Article 57(a)(2), UCMJ, I defer adjudged forfeitures until such time
as I take action on this case.


ROBERT M. WILLIAMS
Brigadier General, US Army
Commanding

CF: 106th Finance Det.

003376

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

For use of this form, see AR 27-10; the proponent agency is OTJAG

TO: Commander
1st Infantry Division
Office of the Staff Judge Advocate
APO AE 09036

M/B

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-30 is hereby given in the case of the United States v. First Lieutenant Glenn A. Niles, Junior, 615th Military Police Company, APO AE 09114.

2. Trial by General Court-Martial on 01 July 2004, at Rose Barracks Court Room, Vilseck, Germany convened by Court-Martial Convening Order Number 1, Headquarters, 1st Infantry Division, APO AE 09036.

3. Summary of offenses, pleas and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
I	93	1	In that 1LT NILES, at or near Al Taji Police Station, Baghdad, Iraq, on or about 30JUL03, were cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		2	In that 1LT NILES, at or near Al Taji Police Station, Baghdad, Iraq, on or about 30JUL03, were cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		3	In that 1LT NILES, at or near Al Taji Police Station, Baghdad, Iraq, on or about 30JUL03, were cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder.	NG	NG
II	133	The	In that 1LT NILES, did, at or near Al Taji Police Station, Baghdad, Iraq, on or about 30JUL03, while a platoon leader in the 615th MP Co., and in the presence of [REDACTED], and [REDACTED], wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by [REDACTED] wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces.	G	G

003378

CONTINUATION SHEET OF DA Form 4430, SEP 2002, Pertaining to U.S. v First Lieutenant Glenn A. Niles Junior, 615th Military Police Company, APO AE 09114

4. SENTENCE: To be reprimanded and to forfeit \$1003.00 pay per month for 12 months.
5. Date sentence adjudged and effective date of any forfeiture or reduction in grade (YYYYMMDD): 20040701 (See UCMJ Articles 57-58b and R.C.M. 1101.)
6. Contents of pretrial agreement concerning sentence, if any: The accused offer to plead guilty to the Charges and Specifications as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority agrees to disapprove any confinement adjudged in excess of 45 days.
7. Number of days of presentence confinement, if any: None
8. Number of days of judge-order administrative credit for presentence confinement or restriction found tantamount to confinement, if any: None
9. Total pre-sentence confinement credit toward post-trial confinement: None
10. Names(s) and SSN(s) of companion accused or co-accused if any: None
11. DNA processing IAW 10 U.S.C. 1565 *is not* required.
12. Conviction(s) *does not* require sex offender registration IAW 42 U.S.C. 14071.

CF:
Cdr. 615th MP Co.
Cdr, Det B, 106th Finance
Trial Counsel
Defense Counsel

[REDACTED]

Trial Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, 11th Aviation Regiment

Dear [REDACTED]

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

In or out of the Army, this conviction is going to greatly impede 1LT Niles' future. If the conviction remains on his record, he will likely lose his security clearance. This will prevent him from continuing to serve as a member of the MP Corps. It will also eliminate many other options that he would have within the military. As a civilian, however, this conviction will have even more serious consequences. For instance, 1LT Niles will likely be unable to use his Masters in counseling because he would have a record.

I feel that a criminal conviction is unjust in this case. Of course, 1LT Niles could have pled not guilty and fought this charge. The simple fact is, however, that he did strike the Iraqi prisoners as alleged. He is a man of integrity and could not morally or ethically plead not guilty when he knew he did it. My belief is that 1LT Niles' misconduct should never have been brought to a court martial. My goal is to convince the Commanding General of that with my petition for clemency. 1LT Niles should have been given a reprimand in the beginning; the CG now has the opportunity to correct this and give 1LT Niles a real chance to "soldier back" from this incident and advance.

This is where you can help. RCM 1105 (b)(2)(D) provides that an accused can submit clemency recommendations from any person, including court-martial panel members, and that the defense can ask any person for such a recommendation. That is my purpose for writing you. It is not my intent to pressure you, nor do I desire to get any inside information related to your deliberations. Simply stated, 1LT Niles and I need your help. A letter from you as a panel member that heard all the facts in this case supporting our request will send a strong message that would be helpful in persuading the CG to set aside the conviction.

1LT Niles and I thank you for your consideration of this request. I am available to discuss this matter with you any time if you desire to contact me. I can be reached on [REDACTED] or in the office at [REDACTED]-2191. You can also contact me by email at [REDACTED]@us.army.mil. If you are willing and wish to make a clemency recommendation for 1LT Niles, please let me know and I will coordinate the logistics to make it happen.

Very Respectfully,

[REDACTED]

[REDACTED]
[REDACTED]
Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003380



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilsack Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, Combat Maneuver Training Center

Dear [REDACTED]:

I am writing this memorandum as part of my continuing representation of ILT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, ILT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

In or out of the Army, this conviction is going to greatly impede ILT Niles' future. If the conviction remains on his record, he will likely lose his security clearance. This will prevent him from continuing to serve as a member of the MP Corps. It will also eliminate many other options that he would have within the military. As a civilian, however, this conviction will have even more serious consequences. For instance, ILT Niles will likely be unable to use his Masters in counseling because he would have a record.

I feel that a criminal conviction is unjust in this case. Of course, ILT Niles could have pled not guilty and fought this charge. The simple fact is, however, that he did strike the Iraqi prisoners as alleged. He is a man of integrity and could not morally or ethically plead not guilty when he knew he did it. My belief is that ILT Niles' misconduct should never have been brought to a court martial. My goal is to convince the Commanding General of that with my petition for clemency. ILT Niles should have been given a reprimand in the beginning; the CG now has the opportunity to correct this and give ILT Niles a real chance to "soldier back" from this incident and advance.

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ILT Niles and I thank you for your consideration of this request. I am available to discuss this matter with you any time if you desire to contact me. I can be reached on my [REDACTED] or in the office at [REDACTED]-2191. You can also contact me by email at [REDACTED]@us.army.mil. If you are willing and wish to make a clemency recommendation for ILT Niles, please let me know and I will coordinate the logistics to make it happen.

Very Respectfully,

CF:
OSJA, 1st Infantry Division

[REDACTED]
[REDACTED]
[REDACTED]
Trial Defense Counsel

003381



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, 7th Army Training Command

Dear [REDACTED]:

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

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[REDACTED],

[REDACTED]

[REDACTED]

Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003382



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, 98th ASG

Dear [REDACTED]:

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

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1LT Niles and I thank you for your consideration of this request. I am available to discuss this matter with you any time if you desire to contact me. I can be reached on my [REDACTED] or in the office at [REDACTED]-2191. You can also contact me by email at [REDACTED]@us.army.mil. If you are willing and wish to make a clemency recommendation for 1LT Niles, please let me know and I will coordinate the logistics to make it happen.

Very Respectfully,

[REDACTED]

CF:
OSJA, 1st Infantry Division

[REDACTED]
[REDACTED]
Trial Defense Counsel

003383



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
Headquarters, 98th ASG

Dear [REDACTED]:

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

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Very Respectfully,

[REDACTED]

[REDACTED]

Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003384



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Region VIII, Vilseck Branch Office
APO AE 09112

7 September 2004

[REDACTED]
U.S. Army Medical Activity

Dear [REDACTED]:

I am writing this memorandum as part of my continuing representation of 1LT Glenn A. Niles, Jr. to respectfully ask you for your support in getting clemency for my client.

As you learned at his court-martial, 1LT Niles now has a federal criminal conviction on his civilian record, and a court-martial conviction in his military record. I am petitioning the General Court-Martial Convening Authority (BG Williams, Commander of 7th ATC) to set aside this conviction IAW Rule for Court Martial (RCM) 1107(c)(2)(A). I will be asking him to issue the reprimand in its place.

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Very Respectfully,

[REDACTED]

[REDACTED]

Trial Defense Counsel

CF:
OSJA, 1st Infantry Division

003385

RECORD OF PROCEEDINGS

003386

DEPARTMENT OF THE ARMY
Headquarters, Seventh Army Training Command
Office of the Staff Judge Advocate
APO Army Europe 09036

AETV-BGJA-CLD

MEMORANDUM FOR Record of Trial

SUBJECT: Receipt for Staff Judge Advocates Recommendation and Record of Trial

1. Enclosed is a copy of the Staff Judge Advocate's Recommendation and Record of Trial in your case. Please sign and date the acknowledgement below and fax receipt to our office at [REDACTED] 6757.
2. 1105 matters are due to this office ten calendar days from the date this receipt of service is delivered to your defense counsel.

[REDACTED]

25 Jan 05

NCOIC, Military Justice

I hereby acknowledge receipt of the above documents on

Glenn A. Niles, Jr.
28 Jan 05

GLENN A. NILES, JR.
1LT, USA

003387

DEPARTMENT OF THE ARMY
Seventh Army Training Command
Office of the Staff Judge Advocate
APO Army Europe 09036

AETV-BGJA

MEMORANDUM FOR Record

SUBJECT: Receipt for Staff Judge Advocate's Recommendation

1. Enclosed is a copy of the Staff Judge Advocate Post Trial Recommendation and Record of Trial in the General Court-Martial of U.S. v. 1LT Glenn A. Niles, Jr..
2. Please sign and date the acknowledgment and fax the receipt to our office at [REDACTED]-6757.

Encls
as

[REDACTED]
NCOIC, Military Justice

25 Jan 05

I hereby acknowledge receipt of the above named documents on 27 Jan 2005

[REDACTED]
[REDACTED]
[REDACTED]
Defense Counsel

003388

ERRATA SHEET (Fassler)

CASE NAME:

U.S. V. Niles, Glenn A. Jr.

UNIT:

615th MP Company

TYPE:

GCM

DATES:

9 Jun and 1 Jul 04

TC:

[REDACTED]

DC:

[REDACTED]

MJ:

To MJ:

MJ:

NA

To TC: 22 Oct 04

To DC: 22 Oct 04

To 2nd MJ:

NA

Returned: 12 Dec 04

Returned:

Returned:

Authenticated:

CORRECTIONS:

Page	Line	Change From:	Change To:	Remarks:
58	13	[REDACTED]	[REDACTED]	N/A
63	6	You	Your	N/A
208	13	engine	equal	N/A
209	13	plaque	play	N/A
209	17	plaque	play	N/A

NO OTHER CHANGES

RECORD OF TRIAL

Of

NILES, Glenn A. Jr.
(Name: Last, First, Middle Initial)

(Social Security Number)

First Lieutenant
(Rank)

615th MP Co
(Unit/Command Name)

U.S. Army
(Branch of Service)

APO AE 09114
(Station or Ship)

BY

GENERAL

COURT-MARTIAL

Convened by COMMANDER

(Title of Convening Authority)

Headquarters, 7th Army Training Command
(Unit/Command of Convening Authority)

Tried at

Wuerzburg and Vilseck, Germany

ON

9 Jun and 1 Jul 04

(Place or Places of Trial)

(Date or Dates of Trial)

INDEX	RECORD
Article 39(a) Sessions:	
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TESTIMONY

Name of Witness (Last, First, Middle Initial)	Direct and Redirect	Cross and Recross	Court
Prosecution N/A			
Defense			
████████████████████	92, 110	102	--
████████████████████	112, 116	115	--
████████████████████	118	123	127
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COPIES OF RECORD 1

_____ copy of record furnished the accused or defense counsel as per attached certificate or receipt.
_____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD 2

I hereby acknowledge receipt of a copy of the record of trial in the case of Unites States v. _____,

Delivered to me at _____ this _____ day of _____, 20____,

(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of Unites States v. _____,

Delivered to me at _____ this _____ day of _____, 20____,

(Signature of accused)

1 For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 2000.

2 If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM 2000

There were no Court-Martial Convening Orders for the year 2003.

CORRECTED COPY

**DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
UNIT 28130
APO AE 09114-8130**

**COURT-MARTIAL CONVENING ORDER
NUMBER 1**

25 February, 2004

A general court-martial is convened with the following members:

[REDACTED], HHC, 11th Avn Regt
[REDACTED], Spt Co, 7th Army CATC
[REDACTED], 6-52 ADA
[REDACTED], 7th ATC
[REDACTED], HHC, 98th ASG
[REDACTED], Rear Det, 280th PSB
[REDACTED], HHC, 12th Avn Bde
[REDACTED], CMTC
[REDACTED], HHC, 98th ASG
[REDACTED], Co B, 17th Sig Bn
[REDACTED], HHB, 1-6 FA
[REDACTED], HHC, 100th ASG

If the accused submits a request pursuant to Article 25(c), UCMJ, that enlisted members serve on the court-martial, the above named officer members not named below are excused, and the members will be as follows:

[REDACTED], HHC, 11th Avn Regt
[REDACTED], Spt Co, 7th Army CATC
[REDACTED], HHC, 6-52 ADA
[REDACTED], HHC, 7th ATC
[REDACTED], HHC, 98th ASG
[REDACTED], HHC, CMTC
[REDACTED], HHC, 11th Avn Regt
[REDACTED], HHC, 1-6 AR
[REDACTED], 7th ATC NCO ACADEMY
[REDACTED], Spt Co, 7th Army CATC
[REDACTED], HHC, 100th ASG
[REDACTED], HHC, 100th ASG

BY COMMAND OF BRIGADIER GENERAL WILLIAMS:

DISTRIBUTION:

Each Individual Concerned (1)
CDR, 7th ATC, ATTN: AETV-BGJA-CLD (1)
Record of Trial (1)
Reference Set (1)

[REDACTED]
[REDACTED]
[REDACTED]
Chief, Military Justice

003397

DEPARTMENT OF THE ARMY
HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND
UNIT 28130
APO AE 09114-8130

COURT-MARTIAL CONVENING ORDER
NUMBER 8

23 June 2004

The following members are detailed to the general court-martial convened by Court-Martial Convening Order Number 1, same headquarters, dated 25 February 2004:

[REDACTED], 7th ATC
[REDACTED], HHC, CMTC
[REDACTED], HHC, 7th CSG
[REDACTED] CMTC

VICE:

[REDACTED], HHC, 12th Avn Bde
[REDACTED], HHC, CMTC
[REDACTED], HHC, 1-6 FA
[REDACTED] HHC, 100th ASG

For the trial of United States v. 1LT Glenn A. Niles, Jr., 615th Military Police Company, APO AE 09114.

BY COMMAND OF BRIGADIER GENERAL WILLIAMS:

DISTRIBUTION:

Each Individual Concerned (1)
Record of Trial (1)
Record Set (1)
Reference Set (1)

[REDACTED]
[REDACTED]
[REDACTED]
Chief, Military Justice

003398

1 MJ: Please be seated. This Article 39(a) session is called to
2 order.

3 TC: This court-martial is convened by Court-Martial Convening
4 Order Number 1, Headquarters, Seventh Army Training Command, dated 25
5 February 2004, copies of which have been furnished to the military
6 judge, counsel, and the accused and which will be inserted at this
7 point in the record.

8 The charges have been properly referred to this court for
9 trial and were served on the accused on 2 June 2004.

10 The prosecution is ready to proceed with the arraignment in
11 this case of United States versus First Lieutenant Glenn A Niles.

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

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

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

16 [REDACTED], **ASSISTANT TRIAL COUNSEL; and**

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

18 The members are absent.

19 [REDACTED] has been detailed as the reporter for
20 this court and has previously been sworn.

21 All members of the prosecution have been detailed to this
22 court-martial by the acting staff judge advocate [REDACTED].

23 All members of the prosecution are qualified and certified under

1 Article 27(bravo) and sworn under Article 42(alpha), Uniform Code of
2 Military Justice. No member of the prosecution has acted in any
3 manner that might tend to disqualify us in this court-martial.

4 MJ: Thank you.

5 Good afternoon, Lieutenant Niles.

6 ACC: Good afternoon.

7 MJ: You are represented, currently, by [REDACTED]. He is
8 your detailed military defense counsel, and he is provided to
9 represent you free of charge at this court-martial. You also have
10 the right to request a different military lawyer to represent you,
11 and if that person were reasonably available, then he or she would be
12 also detailed to your case to represent you free of charge. If your
13 request for another military lawyer were granted, however, you would
14 not normally have the right to keep the services of [REDACTED]
15 because you're normally entitled to only one military lawyer. You
16 could ask [REDACTED] boss to allow you to keep him on the case
17 with the other military lawyer, but your request would not have to be
18 granted.

19 In addition, you, of course, have the right to hire a
20 civilian attorney. A civilian lawyer would have to be provided by
21 you at no expense to the government. If you were represented by a
22 civilian lawyer, you could keep [REDACTED] on your case to assist

1 your civilian lawyer, or you could release [REDACTED] and be
2 represented solely by your civilian attorney.

3 Those are basically your rights to counsel. Do you
4 understand all of those?

5 ACC: Yes, Your Honor.

6 MJ: Do you have any questions about them?

7 ACC: Not at this time, Your Honor.

8 MJ: By whom do you wish to be represented?

9 ACC: By [REDACTED] at this time, Your Honor.

10 MJ: By [REDACTED] alone then?

11 ACC: At this time, Your Honor.

12 MJ: All right.

13 [REDACTED], please indicate your detailing and
14 qualifications for the record.

15 DC: Yes, Ma'am.

16 I've been detailed to this court-martial by [REDACTED]
17 [REDACTED] the senior defense counsel. I am qualified and certified
18 under Article 27(bravo), sworn under Article 42(alpha) of the Uniform
19 Code of Military Justice. I have not acted in any manner, which
20 might tend to disqualify me from this court-martial.

21 MJ: Thank you, and let me just tell you, Lieutenant Niles,
22 given those rights that I've just told you, if you do choose to
23 request another individual military counsel or to hire a civilian

1 attorney, then just please notify the court at some point so that I
2 can understand who will be at the court-martial. All right?

3 ACC: Yes, Your Honor.

4 MJ: Thanks.

5 All right, I too have been properly certified, sworn, and
6 detailed to this court-martial. Counsel for both sides appear to
7 have the requisite qualifications and all personnel required to be
8 sworn have been sworn.

9 Trial Counsel, please announce the general nature of the
10 charges in this case.

11 TC: Your Honor, the general nature of the charges in this case
12 are one charge and three specifications of a violation of Article 93
13 for cruelty and maltreatment; one charge and one specification of a
14 violation of Article 133, conduct unbecoming an officer and a
15 gentlemen. The charges were preferred by [REDACTED]
16 [REDACTED] forwarded with recommendations as to disposition by [REDACTED]
17 [REDACTED], and investigated by [REDACTED]
18 [REDACTED].

19 MJ: So there was an Article 32 investigation held in this case?

20 TC: Yes, Your Honor.

21 MJ: All right, I'm not aware of any matter that may be a ground
22 for challenge against me. Does either side desire either to question
23 me or challenge me?

1 TC: No, Ma'am.

2 DC: No, Ma'am.

3 MJ: All right. What I want to do now, Lieutenant Niles, is go
4 over with you your rights as to how you can be tried at this court-
5 martial. You have the right to be tried by a court consisting of at
6 least five officer members. None of those officers would come from
7 your company and none of them would be junior in rank to you.

8 Do you understand what I've said?

9 ACC: Yes, Your Honor.

10 MJ: All right. If you were tried by a court with members, the
11 members will vote by secret written ballot and two-thirds of the
12 members must agree before you could be found guilty of any offense.
13 If you were found guilty, -then two-thirds must also agree in voting
14 on a sentence, and if that sentence included confinement for more
15 than 10 years, then three-fourths would have to agree.

16 You also have the right to request a trial by military
17 judge alone, and if approved, there will be no court members and the
18 judge alone will decide whether you are guilty or not guilty, and if
19 you are found guilty, the judge alone will determine your sentence.

20 Do you understand the difference between trial before
21 members and trial before a military judge alone?

22 ACC: Yes, Your Honor.

1 MJ: [REDACTED], are you prepared to enter a choice of forum
2 today?

3 DC: No, Your Honor, we ask that we be allowed to defer that
4 until a later date.

5 MJ: All right, your request to defer choice of forum is
6 granted. What that means, Lieutenant Niles, is I'll allow you to
7 continue to talk with your counsel, but at sometime prior to the date
8 that we set for trial, I'll expect that your counsel will notify the
9 court and the government of your choice as to how you want to be
10 tried. All right?

11 ACC: Yes, Your Honor.

12 MJ: The accused will now be arraigned.

13 TC: All parties to the trial have been furnished with a copy of
14 the charges. Does the accused want them read?

15 DC: Your Honor, the accused waives reading of the charges.

16 MJ: The reading may be omitted.

17 **[THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]**

18 **[END OF PAGE]**

19

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) NILES, Glenn A., Jr.		2. SSN 09114 dmc 25 MAY 04	3. GRADE OR RANK ILT	4. PAY GRADE O-2
5. UNIT OR ORGANIZATION 615th Military Police Company, APO AE 09302			6. CURRENT SERVICE	
			a. INITIAL DATE 10 May 01	b. TERM 4 yrs
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	N/A	
\$ 2864 dmc 25 MAY 04 3421.50	\$ 225 dmc 25 MAY 04	\$ 3089 dmc 25 MAY 04 3421.50		
			9. DATE(S) IMPOSED N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 93

SPECIFICATION 1: In that 1LT Glenn A. Niles, Jr., U.S. Army, at or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.

SPECIFICATION 2: In that 1LT Glenn A. Niles, Jr., U.S. Army, at or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.

SPECIFICATION 3: In that 1LT Glenn A. Niles, Jr., U.S. Army, at or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 133

THE SPECIFICATION: In that 1LT Glenn A. Niles, Jr., U.S. Army, did, at or near Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, while a platoon leader in the 615th Military Police Company, and in the presence of [REDACTED], [REDACTED], and [REDACTED], wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by [REDACTED], wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE [REDACTED]	c. ORGANIZATION OF ACCUSER 615th Military Police Company
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 30 SEP 03

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 30th day of September, 2003, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

18th Military Police Brigade

Organization of Officer

Grade

Article 136(a), UCMJ - Trial Counsel

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

Signature

003405

12.

On 30 September, 2003, 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

615th Military Police Company

Organization of Immediate Commander

[Redacted]

Grade

[Redacted]

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1245 hours, 30 September, 2003 at

Warrior Palace, 709th Military

Designation of Command or

Police Battalion, Baghdad, Iraq, APO AE 09302

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

FOR THE: 1

[Redacted]

Typed Name of Officer

Battalion Commander

Official Capacity of Officer Signing

[Redacted]

Grade

[Redacted]

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Headquarters, 7th Army Training Command

Grafenwoehr, Germany

2 June 2004

Referred for trial to the General court-martial convened by Court-Martial Convening Order Number 1

dated 25 February 20 04, subject to the following instructions: 2 none

By COMMAND of BRIGADIER GENERAL ROBERT M. WILLIAMS:

Command or Order

[Redacted]

Typed Name of Officer

Chief, Military Justice

Official Capacity of Officer Signing

[Redacted]

Grade

[Redacted]

Signature

15.

On 2 JUNE, 20 2004, I (caused to be) served a copy hereof on (each of the above named) accused.

[Redacted]

Typed Name of Trial Counsel

[Redacted]

Grade or Rank of Trial Counsel

[Redacted]

Signature

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

1 TC: The charges are signed by [REDACTED] a
2 person subject to the Code as accuser and are properly sworn to
3 before a commissioned officer of the armed forces authorized to
4 administer oaths and are properly referred to this court-martial by--
5 for trial by Brigadier General Robert Williams, the convening
6 authority.

7 MJ: Very well. Before I ask for motions and plea, let me put
8 on the record the substance of an 802 held in chambers just a few
9 minutes ago. Present were all three counsel and myself.

10 We discussed potential trial dates in this case, and I was
11 told by the defense that they intend, today, to file a speedy trial
12 motion.

13 DC: That's correct, Your Honor.

14 MJ: Right, and government and defense know my policy on a
15 speedy trial motion is to hold a hearing as quickly as possible since
16 we don't want the court to be responsible for the delay. Given that,
17 I will be on leave starting Monday, therefore, the judge that will
18 hear the speedy trial motion will be [REDACTED].
19 She will hear your speedy trial motion on Monday at 1000 hours in
20 Vilseck.

21 We also discussed setting a potential trial date in the
22 event that that motion is denied, and agreed on 1 July as the trial
23 date. Given that [REDACTED] will be the judge for purposes of

1 the pretrial motion, she will also be the judge for trial on the 1st
2 of July.

3 I was told by counsel that the three Iraqis are not likely
4 to be produced for trial, but that the government hopes to prove the
5 case with other eyewitnesses, and I was told by both counsel that
6 there is an issue with regard to multiplicity given United States
7 versus Cherukuri in that either the Charge I specifications will
8 merge into the 133 offense or vice versa.

9 That's all my notes show as to what we discussed. Do
10 counsel have anything to add?

11 TC: Just one point, Your Honor. We are still looking for the
12 three Iraqi alleged victims of this crime. I just--most likely they
13 will not be found, but we are still making attempts to locate them.

14 MJ: Got it.

15 DC: Nothing to add, Your Honor, based on your synopsis.

16 MJ: All right.

17 Lieutenant Niles, Counsel, please rise.

18 [The accused and his counsel did as directed.]

19 MJ: First Lieutenant Glenn A. Niles, Jr., how do you plead?
20 Before receiving your plea, I advise you that any motions to dismiss
21 or to grant any other appropriate relief should be made at this time.
22 Your defense counsel will speak for you.

1 DC: Thank you, Your Honor. We've already discussed the issue
2 with the motion we plan to present later on this afternoon, and we
3 ask that we be allowed to defer entrance of pleas until a later date
4 as well.

5 MJ: Very well. Please be seated.

6 [The accused and his counsel did as directed.]

7 MJ: Your request is granted. So the way I see it, there are
8 two potential motions. Certainly there will be a speedy trial motion
9 litigated on Monday, but there may also be a multiplicity argument if
10 you and the government cannot agree on action, correct?

11 DC: That's correct, Your Honor.

12 MJ: All right, so those are the two dates you all are working
13 with, 14 June, Monday, in Vilseck beginning at 1000 will be the
14 speedy trial motion. Defense I'll hold you to your word to get it
15 to--to get the motion to--better get it to me and Colonel Browne
16 tonight.

17 DC: Yes, Ma'am.

18 MJ: Government, get your response as quickly as possible. I
19 know she'll be in over the weekend, so even if it's Saturday get it
20 to her, okay?

21 TC: Yes, Ma'am.

22 DC: And I'll file that electronically, Your Honor, is that the
23 best way?

1 MJ: Yes, and include with it, please, a time line.

2 DC: Yes, Ma'am.

3 MJ: All right?

4 DC: Absolutely.

5 MJ: And then on the 1st of July, we're setting it for 0900
6 given that I think I was told by counsel that it may be a panel case,
7 so go ahead and start early in the morning. All right?

8 DC: Yes, Your Honor.

9 TC: Yes, Ma'am.

10 MJ: All right.

11 All right, Lieutenant Niles, what we've done here today is
12 called an arraignment, that's the legal term for the first pretrial
13 session of any court-martial. As the accused in a court-martial, you
14 have an absolute right to be present at every session of your court
15 and that's whether it's a pretrial session, like we held this
16 morning, or the trial itself, which we've set for the 1st of July or
17 even any post trial sessions. The one exception to your right to be
18 present is if you were to absent yourself without leave, that is, go
19 AWOL between now and the dates that we've set for trial, then the
20 government could go ahead and opt to try the case even though you are
21 absent. That'd be a very bad situation for Captain Stelle. He'd be
22 defending an empty chair. I would enter a plea of not guilty for you

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PAGE

003411

REDACTED
COPY

003412

COURT-MARTIAL RECORD

NAME NILES, GLENN A., JR. ILT

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL _____

~~EXAM-DIV.~~ ✓

ACCA CLERK OF COURT

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL II OF II VOL(S)

ARMY 20040683

20040683

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

NILES, Glenn A., Jr.

(NAME: Last, First Middle Initial)

615th Military

Police Company

(unit/Command Name)

(Social Security Number)

US Army

(Branch of Service)

First Lieutenant

(Rank)

APO AE 09114

(Station or Ship)

BY

GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL

(Title of Convening Authority)

Headquarters, Seventh Army Training Comand

(Unit/Command of Convening Authority)

TRIED AT

Wuerzburg and Vilseck, Germany

(Place or Places of Trial)

ON

9 Jun and 1 Jul 04

(Date or Dates of Trial)

COMPANION CASES:

RECEIVED
CLERK OF COURT
2005 MAR -7 A 11:48
US ARMY JUDICIARY

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

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

1 to all the charges and specifications, and we would hold a trial even
2 in your absence.

3 Do you understand all that?

4 ACC: Yes, Your Honor.

5 MJ: All right. I don't expect that you're going to go AWOL, in
6 fact, quite the contrary. I tell that to everyone who has been
7 arraigned because I want you to understand that you're kind of in the
8 final stretch now. It's critical that you stay in close contact with
9 Captain Stelle between now and the date we set for trial so that you
10 can be here to assist in your defense. All right?

11 ACC: Yes, Your Honor.

12 MJ: Now, I note from the charge sheet that Lieutenant Niles is
13 not under any form of restraint. Is that right, Captain Stelle?

14 DC: That's correct, Your Honor.

15 MJ: All right. Is there anything else we can take up here
16 today?

17 TC: Your Honor, just the--I understand we've handled the
18 motions part, but the date plea and forum will be due?

19 MJ: Oh okay. Let's figure that out. All right, if your
20 hearing is on the 14th of June, she's in trial the next 2 days. I
21 expect you'll have an answer at least by the 17th, so let's make
22 close of business Friday the 18th when plea and forum can be given.
23 All right?

1 DC: Yes, Your Honor.

2 TC: Yes, Ma'am.

3 MJ: Clearly though, that is already within the 2 week window,
4 Captain [REDACTED], so to the extent that there are any overseas
5 witnesses that [REDACTED] desires to call on his behalf, please
6 get that information to the government now. All right?

7 DC: Absolutely, Ma'am, thank you.

8 MJ: Thanks. And obviously, Government, to the extent that you
9 intend to deny any of those witnesses and you all need a 39(a) to
10 litigate, then you just get back in touch with Colonel [REDACTED] and
11 she'll set a date, all right?

12 TC: Understood, Ma'am.

13 DC: Yes, Ma'am.

14 MJ: Court is in recess.

15 [The session recessed at 1230, 9 June 2004.]

16 [END OF PAGE]

17

1 [The court-martial was called to order at 1004, 1 July 2004 in
2 Vilseck, Germany pursuant to the orders previously inserted in the
3 record and Court-Martial Convening Order Number 8 dated 23 June 2004
4 Headquarters, 7th Army Training Command, APO Army Europe.]
5 [All parties present when the court recessed were again present with
6 the exception of the military judge Lieutenant Colonel ██████████ who
7 was replaced by Colonel ██████████ and the court reporter Mrs.
8 ██████████ who was replaced by Mr. ██████████.]

9 MJ: This Article 39(a) session is called to order. You may be
10 seated.

11 TC: Your Honor, the accused has already been arraigned.

12 MJ: All right, and at the last hearing in this trial,
13 Lieutenant Niles, you were advised that you could be represented by
14 Captain ██████████. Do you recall that?

15 ACC: Yes, Ma'am.

16 MJ: Are you still happy to be represented by him?

17 ACC: Yes, Ma'am.

18 MJ: All right and also at the last hearing in this case, which
19 I believe was on 9 June, Colonel ██████████ told you about your forum
20 rights. Do recall that discussion?

21 ACC: Yes, Ma'am.

22 MJ: Are you ready to tell me what forum you choose?

23 DC: Yes--yes, Your Honor.

1 MJ: All right.

2 DC: The accused requests a trial by officer panel for
3 sentencing only, and we have a written request.

4 MJ: All right then, if you've submitted that, I guess we'll
5 make that an appellate exhibit whatever the next one is.

6 [The CR marked the notice of forum and plea as AE II.]

7 MJ: All right, that's Appellate Exhibit II.

8 At this time, will the accused and defense counsel please
9 rise?

10 [The accused and his counsel did as directed.]

11 MJ: Lieutenant Niles, how do you plead, before receiving your
12 plea, I advise you that any motions to dismiss or grant other
13 appropriate relief should be made at this time. Your defense counsel
14 will speak for you.

15 DC: Thank you, Your Honor. The motion previously filed on 9
16 June for dismissal in violation of Rule 707 lack of speedy trial the
17 defense withdraws that motion. Formally I would withdraw that
18 motion, and as far as pleas, Your Honor, the accused pleads as
19 follows:

20	To Specification 1, 2 and 3, of	
21	Charge I the accused pleads:	Not Guilty.
22	To Charge I:	Not Guilty.
23		
24	To The Specification and	
25	Charge II the accused pleads:	Guilty.

1 MJ: Thank you, you may be seated.

2 [The accused and his counsel did as directed.]

3 MJ: All right, we should note for the record that all parties
4 present at the last session are again present in court with the
5 exception of Lieutenant Colonel [REDACTED] who was the military judge at
6 the prior hearing and [REDACTED] the court reporter. Instead we
7 have Mr. [REDACTED] present as the court reporter who's previously been
8 sworn, and I'm Colonel [REDACTED] as military judge. I am not
9 aware of any matter, which might be a ground for challenge against
10 me. Does either side desire to question or challenge me?

11 TC: No, Ma'am.

12 DC: No, Ma'am.

13 MJ: All right, Lieutenant Niles, your counsel has entered a
14 plea of guilty for you to one of the charges and its specification.
15 Your plea of guilty will not be accepted unless you understand its
16 meaning and effect. I'm going to discuss with you your plea of
17 guilty. You may wish to consult with your defense counsel prior to
18 answering any of my questions. If at anytime you have questions,
19 feel free to ask them. If at anytime you need to consult with
20 Captain [REDACTED], you tell me and I'll let you do that.

21 Do you understand?

22 ACC: Yes, Ma'am.

1 MJ: Now a plea of guilty is equivalent to a conviction and is
2 the 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 offense to which you pled guilty. Your plea will not be accepted
5 unless you realize that by your plea you admit every act or omission
6 and the element of the offenses [sic] to which you have pled guilty
7 and that you are pleading guilty because you actually are, in fact,
8 guilty. If you do not believe that you are guilty, then you should
9 not for any reason plead guilty.

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

11 ACC: Yes, Ma'am.

12 MJ: By your plea of guilty, you give up three important rights,
13 but you give up these rights only as to that offense to which you've
14 pled guilty:

15 First, the right against self-incrimination, that is, the
16 right to say nothing at all;

17 Second, the right to a trial of the facts by this court,
18 that is, your right to have this court-martial decide whether or not
19 you are guilty based upon the evidence the prosecution would present
20 and on any evidence you may introduce;

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

23 Do you have any questions about any of those rights?

1 ACC: No, Ma'am.

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

4 ACC: Yes, Ma'am.

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

9 Do you understand that?

10 ACC: Yes, Ma'am.

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

14 Do you understand that?

15 ACC: Yes, Ma'am.

16 MJ: At this time, I want you to stand and face trial counsel,
17 and Trial Counsel, will you please place the accused under oath.

18 [The accused was sworn.]

19 MJ: Now do we have a stipulation of fact?

20 TC: Yes, Your Honor. It's been previously marked.

21 [The CR handed PE 1 for ID to the MJ.]

22 [END OF PAGE]

23

1 MJ: All right, Lieutenant, I have a stipulation of fact, which
2 has been marked as Prosecution Exhibit 1 for identification, in front
3 of me. Do you have a copy of that in front of you?

4 ACC: Yes, Ma'am.

5 MJ: I'd like you to take a look at the second page. Is that
6 your signature on the page?

7 ACC: Yes, Ma'am.

8 MJ: Did you read this document thoroughly before you signed it?

9 ACC: Yes, Ma'am.

10 MJ: Do both counsel agree to the stipulation and that your
11 signatures appear on the document?

12 TC: Yes, Ma'am.

13 DC: Yes, Your Honor.

14 MJ: Now, Lieutenant Niles, a stipulation of fact is an
15 agreement among the trial counsel, your defense counsel, and you that
16 the contents of the stipulation are true, and if entered into
17 evidence, are the uncontradicted facts in this case. No one can be
18 forced to enter into a stipulation, so you should enter into it only
19 if you truly want to do so.

20 Do you understand this?

21 ACC: Yes, Ma'am.

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

1 ACC: Yes, Ma'am.

2 MJ: Now if I admit this stipulation into evidence, it will be
3 used in two ways:

4 First, I will use it to determine if you are, in fact,
5 guilty of the offense to which you pled guilty;

6 Second, the trial counsel may read it to the court members
7 and they will have it with them when they decide upon your sentence.

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

10 ACC: Yes, Ma'am.

11 MJ: Do both counsel also agree?

12 TC: Yes, Ma'am.

13 DC: Yes, Your Honor.

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

19 Do you understand that?

20 ACC: Yes, Ma'am.

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. When you're
23 finished reading it, please look up at me.

1 ACC: Yes, Ma'am.

2 [The MJ and ACC read PE 1 for ID.]

3 [Long pause.]

4 MJ: Lieutenant Niles, have you finished reading it?

5 ACC: Yes, Ma'am.

6 MJ: Is everything in that stipulation true?

7 ACC: Yes, Ma'am.

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

10 ACC: No, Ma'am.

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

14 ACC: Yes, Ma'am.

15 MJ: Defense Counsel, do you have any objections to Prosecution
16 Exhibit 1 for identification?

17 DC: No objection, Your Honor.

18 MJ: All right, then, Prosecution Exhibit 1 for identification
19 is admitted into evidence subject to my acceptance of the accused's
20 guilty plea.

21 Now, Lieutenant Niles, I'm going to explain the elements of
22 the offense to which you've pled guilty. By "elements", I mean those
23 facts, which the prosecution would have to prove beyond a reasonable

1 doubt before you could be found guilty if you had pled not guilty.

2 When I state each element, ask yourself two things:

3 First, is the element true; and

4 Second, whether you wish to admit that it's true.

5 After I list the elements for you, be prepared to talk to
6 me about the facts regarding the offense.

7 First of all, though, I'd like to get a little background
8 on you. When did you first come into the service?

9 ACC: November 2000--2001, no 2000, correction.

10 MJ: All right, do you remember the day?

11 ACC: No, I just remember that it was November 2000 when I left
12 or arrived at Fort Benning for basic training.

13 MJ: Okay let's see the stipulation says 7 November 2000.

14 ACC: That would be correct, Your Honor.

15 MJ: Okay.

16 DC: The initial----

17 MJ: Captain [REDACTED]

18 DC: I'm sorry. The initial date on the charge sheet is May--10
19 May 2001, that reflects his commissioning date.

20 MJ: All right.

21 DC: Because he enlisted and went to OCS. That time does not
22 reflect on the charge sheet.

1 MJ: Since 7 November 2000 and today, have you been continuously
2 on active duty?

3 ACC: Yes, Ma'am.

4 MJ: Have you had any breaks in service at all?

5 ACC: Negative, Ma'am.

6 MJ: All right. When did you come to Germany?

7 ACC: October of 2001. I believe it was October 5th.

8 MJ: And what unit were you assigned to when you got here?

9 ACC: 615th Military Police Company.

10 MJ: Is that the unit you're assigned to today?

11 ACC: Yes, Ma'am.

12 MJ: All right. All right, I want you to take a look at The
13 Specification of Charge II. There you are charged with the offense
14 of conduct unbecoming an officer due to cruelty and maltreatment of
15 prisoners and that would be a violation of Article 133 of the Uniform
16 Code of Military Justice. The elements of that offense are:

17 One, that [REDACTED] and [REDACTED]
18 [REDACTED] were subject to your orders;

19 Two, that on or about 30 July 2003, at or near Al Taji
20 Police Station, Baghdad, Iraq, you maltreated [REDACTED]
21 [REDACTED] and [REDACTED] by striking and kicking them; and

22 Three, that under the circumstances, your conduct was
23 unbecoming an officer and a gentleman.

1 Subject to the orders of includes persons under the direct
2 or immediate command of the accused. Cruel and maltreatment refers
3 to treatment that when viewed objectively under all the circumstances
4 is abusive or otherwise unwarranted, unjustified, and unnecessary for
5 any lawful purpose and that results in physical or mental harm or
6 suffering or reasonably could have caused physical or mental harm or
7 suffering. Assault or improper punishment may constitute this
8 offense.

9 "Conduct unbecoming an officer and a gentleman" means
10 behavior in an official capacity, which in dishonoring or disgracing
11 the individual as a commissioned officer. "Unbecoming conduct" means
12 misbehavior more serious than slight and of a material and pronounced
13 character. It means conduct morally unfitting and unworthy rather
14 than merely inappropriate or unsuitable misbehavior, which is more
15 than opposed to good taste or propriety.

16 Now do you understand the elements and definitions as I've
17 read them to you?

18 ACC: Yes, Ma'am.

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

20 ACC: No, Ma'am.

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

23 ACC: Yes, Ma'am.

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

3 ACC: Yes, Ma'am.

4 MJ: In your own words, I'd like you to tell me why you're
5 guilty of this offense.

6 ACC: Ma'am, I'm guilty of this offense because I did behave in a
7 manner unbecoming an officer. I did strike these personnel.

8 MJ: Well I need you to tell me a little bit more. First of all
9 this was on 30 July 2003?

10 ACC: Yes, Ma'am.

11 MJ: Where were you?

12 ACC: At the [REDACTED] Police Station in Baghdad, Iraq.

13 MJ: Okay and what was your position at that time?

14 ACC: At that time, I was the platoon leader for 1st Platoon.

15 MJ: And what was your position with regard to any of the
16 prisoners there?

17 ACC: At that time, I was the supervisor for both the soldiers
18 and the police station.

19 MJ: And so what were your duties as they applied to any of the
20 prisoners at the police station?

21 ACC: The duties there were to provide oversight for prisoners in
22 the police station provide them with security, clothing, and food.

23 MJ: Okay and who were the three individuals that I named?

1 ACC: I believe they were personnel arrested by the Iraqi police
2 and placed into the detention cell there.

3 MJ: Well do you have any reason to think that those weren't
4 prisoners at the [REDACTED] Police Station on 30 July 2003?

5 ACC: Can you repeat that, Ma'am?

6 MJ: Do you have any reason to think that those three named
7 individuals were not prisoners at the [REDACTED] Police Station on 30
8 July 2003?

9 ACC: No, Ma'am. At the time, I didn't know their names, if
10 that's what you're asking.

11 MJ: All right. Have you since seen information that told you
12 what their names were?

13 ACC: Just in the statements given by the soldiers in the charge
14 sheet.

15 MJ: Okay do you have any reason to doubt that those are the
16 names of the men who were prisoners at [REDACTED] Police Station on that
17 day?

18 ACC: No, Sir [sic], if my soldiers say they were the men, they
19 were the men.

20 MJ: All right, now what was your contact with each of those
21 individuals? First of all, let's talk about what happened to [REDACTED]
22 [REDACTED], and you can refer to the stipulation of fact if you wish,

1 but I want you to tell me what exactly you did, if anything, to that
2 individual, and I assume that's a man.

3 ACC: Ma'am, as stated in the statements given by the soldiers in
4 the charge sheet, that's the gentleman that I struck in the D-Cell.

5 MJ: Okay tell me how you struck him.

6 ACC: With a closed fist, I believe I hit him in the stomach.

7 MJ: Why?

8 ACC: That's a question I've been asking myself for the last year
9 and a half. Out of anger, Ma'am.

10 MJ: Okay had he attacked you?

11 ACC: No, Ma'am.

12 MJ: So there was--you weren't defending yourself?

13 ACC: No, Ma'am.

14 MJ: Were you defending another soldier?

15 ACC: No, Ma'am.

16 MJ: As to [REDACTED], tell me what happened with him.

17 ACC: Once again, Ma'am, I struck him with a closed fist in the
18 stomach.

19 MJ: And tell me why.

20 ACC: It would be the same as before, Ma'am, I believe out of
21 anger.

22 MJ: All right. Had he attacked you?

23 ACC: No, Ma'am.

1 MJ: Had he given you any sense that he was going to attack you?
2 ACC: No, Ma'am.
3 MJ: Had he attacked any of your soldiers?
4 ACC: No, Ma'am.
5 MJ: Had he attacked another prisoner?
6 ACC: I don't know that, Ma'am.
7 MJ: Okay, but I mean to your knowledge---
8 ACC: To my knowledge----
9 MJ: ----had he attacked another prisoner?
10 ACC: ----no, I received no reports on that.
11 MJ: Okay. Would that be true of the first gentleman, [REDACTED]
12 [REDACTED]
13 ACC: To my knowledge, I received no reports that he attacked
14 anyone.
15 MJ: All right. How about [REDACTED]
16 ACC: That's the gentleman that I struck by kicking him, Ma'am.
17 MJ: And where did you kick him?
18 ACC: In the shoulder.
19 MJ: And why did you kick him in the shoulder that day?
20 ACC: Out of anger, Ma'am.
21 MJ: Again, had he attacked you?
22 ACC: No, Ma'am.
23 MJ: Had he sought to attack you?

1 ACC: No, Ma'am.

2 MJ: To your knowledge, had he attacked any of your soldiers?

3 ACC: No, Ma'am.

4 MJ: Had he tried to?

5 ACC: No, Ma'am.

6 MJ: Had he tried to attack any other prisoner?

7 ACC: I received no reports of that, Ma'am.

8 MJ: Okay. To your knowledge had he tried to attack any other
9 prisoner?

10 ACC: No, Ma'am.

11 MJ: Now as an MP officer, do you receive training as to how to
12 deal with prisoners or detainees?

13 ACC: Yes, Ma'am.

14 MJ: Is striking them with a closed fist in either the stomach
15 or kicking them in the shoulder, is that----

16 ACC: No, Ma'am, that is not part of the training.

17 MJ: Okay, so that's not appropriate behavior for an MP officer
18 when dealing with prisoners?

19 ACC: No, Ma'am.

20 MJ: Now you're charged with doing these things and that these
21 things amounted to conduct unbecoming an officer and a gentleman. Do
22 you remember the definition I gave you of conduct unbecoming an
23 officer and a gentleman?

1 ACC: I believe so, Ma'am.

2 MJ: Okay tell me why this conduct was conduct unbecoming an
3 officer and a gentleman.

4 ACC: As stated, Ma'am, it's because it disgraces the individual,
5 um, it disgraced the individual personally, distracted from the
6 conduct of my fellow--of my soldiers at the time, and it's conduct
7 morally unfitting or worthy and it's inappropriate and unsuitable.

8 MJ: Okay. Did these actions by you with respect to any of the
9 prisoners, were there other United States soldiers present when you
10 did this?

11 ACC: Yes, Ma'am.

12 MJ: Were they your subordinates?

13 ACC: Yes, Ma'am.

14 MJ: So was this appropriate behavior by you in front of
15 subordinates?

16 ACC: No, Ma'am.

17 MJ: How do you think that that made your subordinates feel
18 about you in particular as an officer?

19 ACC: [No response.]

20 MJ: At least your behavior that day.

21 ACC: I believe they felt I was a disgrace.

22 [END OF PAGE]

23

1 MJ: If members of the public, either American or Iraqi, learned
2 of your behavior that day, how do you think they'd feel about an
3 officer in the United States Army behaving that way?

4 ACC: The same.

5 MJ: In your mind, did you have any legitimate reason for
6 striking any of these individuals?

7 ACC: No, Ma'am.

8 MJ: I'm sorry, say again.

9 ACC: No, Ma'am.

10 MJ: I think you said earlier that you were angry. Is that
11 right?

12 ACC: Yes, Ma'am.

13 MJ: Can you tell me why you were angry?

14 ACC: Um, just--just the events, Ma'am, just----

15 MJ: Tell me what the events were.

16 ACC: Just--I'd received reports that they attempted to break out
17 of the detention cell.

18 MJ: Go ahead.

19 ACC: I received reports that they attempted to break out of the
20 detention cell.

21 MJ: Had you gotten those reports that day?

22 ACC: No, Ma'am.

23 MJ: When did you get them?

1 ACC: The night before.

2 MJ: Okay, and did you have some reason to think that any of
3 these three individuals had anything to do with that?

4 ACC: Um, I believe that I was told that these were the three
5 that attempted to break out.

6 MJ: Okay. Did that have anything to do with why you struck any
7 of them?

8 ACC: Ma'am, all I can say is that I was angry. Just the fact
9 that they tried to break out it----

10 [Long pause.]

11 MJ: Since you were the platoon leader and supervisor for the
12 police station, were you responsible for the health and safety of any
13 detainees or prisoners that were held there?

14 ACC: Yes, Ma'am.

15 MJ: How many folks could the police station hold as far as
16 prisoners or detainees?

17 ACC: Ah, we tried to keep a minimum, if I recall, we tried to
18 keep it under 20. We were under orders to maybe the second or third
19 day try to empty out our D-Cells by sending them to a higher
20 detention facility by doing the paperwork. Sometimes that did not
21 occur because you know of transportation or logistics means, so I
22 mean we tried to keep the number fairly low for their safety and our
23 safety, Ma'am.

1 MJ: Okay is it fair to say, then, that you were a short-term
2 holding facility?

3 ACC: Yes, Ma'am.

4 MJ: Okay. All right do you admit that [REDACTED],
5 [REDACTED], and [REDACTED] were subject to your orders?

6 ACC: They were subject to my care. I didn't give them orders,
7 Ma'am. I gave my soldiers orders for the care and the treatment of
8 them.

9 MJ: Well were they under your jurisdiction?

10 ACC: Yes, Ma'am.

11 MJ: If you walked into their cell and told them to do
12 something, did you expect that they would do it?

13 ACC: Yes, Ma'am.

14 MJ: So were they subject to your orders?

15 ACC: Yes, Ma'am.

16 MJ: All right. Do you admit that on or about 30 July 2003, at
17 or near [REDACTED] Police Station in Baghdad, Iraq, you maltreated
18 [REDACTED], [REDACTED] and [REDACTED] by
19 striking and kicking them?

20 ACC: Yes, Ma'am.

21 MJ: Do you admit that under the circumstances, your conduct was
22 unbecoming an officer and a gentleman?

23 ACC: Yes, Ma'am.

1 MJ: Does either counsel believe that any further inquiry is
2 required?

3 TC: No, Ma'am.

4 DC: No, Ma'am.

5 MJ: Trial Counsel, what do you calculate to be the maximum
6 punishment authorized in this case based solely on the accused's
7 guilty plea?

8 TC: Your Honor, a dismissal, 1-year confinement, total
9 forfeiture, and a fine.

10 MJ: Defense?

11 DC: Defense agrees, Your Honor.

12 MJ: All right. Lieutenant Niles, the maximum punishment
13 authorized in this case based solely on your guilty plea is dismissal
14 from the service, total forfeitures, confinement for 12 months, and a
15 fine may also be adjudged. On your plea of guilty alone, this court
16 could sentence you to the maximum punishment, which I've just stated.
17 Do you understand this?

18 ACC: Yes, Ma'am.

19 MJ: Do you have any questions as to the sentence that could be
20 imposed as a result of your guilty plea?

21 ACC: No, Ma'am.

22 MJ: Do we have a pretrial agreement in this case?

1 TC: Yes, Ma'am, it's been given to the court reporter and has
2 been previously marked.
3 [The CR handed AE I to the MJ.]
4 MJ: All right. Lieutenant Niles, do you have a copy of your
5 plea agreement in front of you?
6 ACC: Yes, Ma'am.
7 MJ: All right, that's been marked as Appellate Exhibit I, and
8 that includes both the offer portion and the quantum portion of your
9 plea agreement. Now I want you to look at each of these, that would
10 be page two of the quantum portion and page one of the quantum, I'm
11 sorry, page two of the offer.
12 Did you sign each of these documents?
13 ACC: Yes, Ma'am.
14 MJ: Did you read them thoroughly before you signed them?
15 ACC: Yes, Ma'am.
16 MJ: Do you understand the contents of your pretrial agreement?
17 ACC: Yes, Ma'am.
18 MJ: Now Lieutenant Niles, did anyone force you in anyway to
19 enter into this agreement?
20 ACC: No, Ma'am.
21 MJ: Does this agreement contain all of the understandings or
22 agreements that you have in this case?
23 ACC: Yes, Ma'am.

1 MJ: Has anyone made any promises to you that are not written
2 into this agreement in an attempt to get you to plead guilty?

3 ACC: No, Ma'am.

4 MJ: Counsel, is Appellate Exhibit I the full and complete
5 agreement in this case, and are you satisfied that there are no other
6 agreements?

7 TC: Yes, Ma'am.

8 DC: Yes, Your Honor.

9 MJ: Now Lieutenant Niles, basically a pretrial agreement means
10 that you agree to plead guilty, and in return, the convening
11 authority agrees to take some favorable action in your case usually
12 in the form of a limitation on your sentence.

13 Do you understand that?

14 ACC: Yes, Ma'am.

15 MJ: Now the law requires that I discuss the conditions of your
16 agreement with you, so let's look at the offer portion, that is, the
17 first two pages.

18 Now paragraph 1a says first of all that you've gotten the
19 benefit and advice of your defense counsel and you've--you know that
20 you have a legal and a moral right to plead not guilty, but that you
21 offer to plead ~~guilty~~ to the specifications of Charge I and Charge I,
22 Not Guilty, and to The Specification of Charge II and Charge II,
23 Guilty, and you've done that.

1 Do you have any questions about your agreement as it
2 concerns how you're going to plead?

3 ACC: No questions, Ma'am.

4 MJ: Okay. In 1b, you've agreed to enter into a written
5 stipulation of fact with the trial counsel as to the circumstances of
6 the offenses to which you're pleading guilty, and you've done that as
7 well.

8 Do you have any questions at all about what the stipulation
9 means or your agreement to enter into it?

10 ACC: No, Ma'am.

11 MJ: 1c says, you waive the right to request personal appearance
12 of overseas witnesses to testify on your behalf at trial. Now first
13 of all, did you understand that you could have asked the convening
14 authority, that is, the government to produce witnesses at this trial
15 for you today?

16 ACC: Yes, Ma'am.

17 MJ: And if the convening authority had said no, that you could
18 have then come to the Court, and if the Court had found that the
19 witnesses were relevant and material and necessary, the Court could
20 have said those witnesses should be here.

21 Did you understand that?

22 ACC: Yes, Ma'am.

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1 MJ: And absent this agreement, you didn't have to give up that
2 right.

3 ACC: Understood, Ma'am.

4 MJ: Now are there actually any witnesses that you wanted here
5 today that aren't going to be here today because of this provision?

6 ACC: No, Ma'am.

7 MJ: Okay. Did you also know that there are other ways to get
8 witness information in front of the court, for example, by telephone
9 or by what we call stipulations of expected testimony or just
10 letters?

11 ACC: Yes, Ma'am.

12 MJ: Are you satisfied that whatever means you and Captain
13  have chosen that will get the appropriate information in front
14 of the panel for them to make an appropriate decision as to your
15 sentence?

16 ACC: Yes, Ma'am.

17 MJ: Now in 1d, you waive the right to make a motion to dismiss
18 all the charges for a violation of Rule for Court-Martial 707, that
19 is, the speedy trial act and withdraw that motion, which was filed on
20 9 June 2004. Now first of all, again, absent this agreement, you're
21 entitled to file any kind of motions you want to file.

22 Do you understand that?

23 ACC: Yes, Ma'am.

1 MJ: Some of the motions you gave up automatically when you
2 didn't make them prior to entering your plea of guilty. Do you
3 remember me saying that?

4 ACC: Yes, Ma'am.

5 MJ: Okay, some motions, however, such as motions to dismiss for
6 lack of jurisdiction or failure to state an offense, can never be
7 given up.

8 Do you understand that this term of your pretrial agreement
9 means that you give up the right to make this particular motion, that
10 is, the one for speedy trial when you pled guilty?

11 ACC: Yes, Ma'am.

12 MJ: In particular, do you understand that this term of your
13 pretrial agreement precludes this court, or any appellate court, from
14 having the opportunity to determine if you're entitled to any relief
15 based upon this particular motion?

16 ACC: Yes, Ma'am.

17 MJ: Now when you elected to give up the right to litigate this
18 motion, did your defense counsel explain this term of your pretrial
19 agreement and the consequences to you?

20 ACC: Yes, Ma'am.

21 MJ: Did anyone force you to enter into this term of your
22 pretrial agreement?

23 ACC: No, Ma'am.

1 MJ: Captain [REDACTED] which side originated the waiver of this
2 motion provision?

3 DC: I--Your Honor, it was part of discussions with the
4 government. Honestly, I truthfully cannot recall which side
5 mentioned it first as far as the waiver goes.

6 MJ: All right.

7 TC: I concur on that, Your Honor. We had discussed the issue
8 for weeks prior to that. I'm not sure which one actually brought it
9 up first, Your Honor.

10 MJ: All right. Lieutenant Niles, do you freely and voluntarily
11 agree to this term of your pretrial agreement in order to receive
12 what you believe to be a beneficial pretrial agreement?

13 ACC: Yes, Ma'am.

14 MJ: Captain [REDACTED] what do you believe to be the factual basis
15 of the motion covered by this term of the pretrial agreement?

16 DC: Yes, Your Honor, as the motion that was previously filed
17 indicated, the passage of time from the original preferral of
18 charges, my evaluation of my research has indicated, however, that
19 there were some significant defense delays that accounted for many of
20 those days, which subtracting those days brought the clock to less
21 than 120 days.

22 MJ: So are you, in effect, telling me that you no longer think
23 that there was a legitimate basis for a speedy trial motion?

1 DC: Yes, Your Honor. I believe it would not have been a
2 frivolous motion, but I believe that our chances of prevailing, as I
3 have explained to Lieutenant Niles, were very, very minor.

4 MJ: All right.

5 DC: Based on the research and the facts that I have been able
6 to collect.

7 MJ: All right, Lieutenant Niles, do you understand that if this
8 motion were made and granted by me then a possible ruling could have
9 been that all the charges against you would have been dismissed, and
10 did you discuss that with Captain [REDACTED]?

11 ACC: Yes, Ma'am.

12 MJ: Now knowing what your defense counsel and I've told you, do
13 you want to give up making this motion in order to get the benefit of
14 your pretrial agreement?

15 ACC: Yes, Ma'am.

16 MJ: All right, do you have any questions about this particular
17 provision of your pretrial agreement?

18 ACC: No, Ma'am.

19 MJ: Now paragraph 2 says in exchange for what we've just talked
20 about, the things that are covered in paragraph 1, the convening
21 authority will take the actions specified in the enclosure, that is,
22 the quantum portion.

1 Paragraph 3 says the offer to plead guilty will not be
2 affected if the military judge amends any specification or charge
3 based upon a motion of the defense, the government, or sua sponte by
4 the military judge. That means if for some reason I modify any of
5 the specifications, this agreement between you and the convening
6 authority is still good.

7 Do you understand that?

8 ACC: Yes, Ma'am.

9 MJ: Do you have any questions?

10 ACC: No, Ma'am.

11 MJ: Paragraph 4 says that there are no promises, conditions, or
12 understandings regarding your proposed plea of guilty that are not
13 contained within these three pages, that is, the offer portion and
14 the quantum portion.

15 Any questions?

16 ACC: No, Ma'am.

17 MJ: Paragraph 5 says you're satisfied with the advice that
18 you've gotten from your defense counsel, that he's advised you of the
19 meaning and effect of your guilty plea, and you fully understand that
20 meaning and effect.

21 Now we've also talked about the meaning and effect of your
22 guilty plea. Do you have any questions at all?

23 ACC: No, Ma'am.

1 MJ: Paragraph 6 says you understand that you may request to
2 withdraw your plea of guilty at any time before it's accepted, but if
3 you do, this agreement's cancelled. This agreement may also be
4 cancelled if:

5 A) You fail to plead guilty;

6 B) You fail to arrive at an agreement with the government
7 on the contents of the stipulation of fact or if that stipulation
8 were modified without your consent; or

9 C) The military judge either refused to accept your guilty
10 plea or changed your guilty plea at some point during the trial.

11 Now none of those things has happened, but if any one of
12 them were to happen, this agreement would be cancelled. It would be
13 gone.

14 Do you understand that?

15 ACC: Yes, Ma'am.

16 MJ: Do you have any questions about any of it?

17 ACC: No, Ma'am.

18 MJ: And paragraph 7 says if before or during trial any
19 specification is amended, consolidated, or dismissed with your
20 consent, this agreement will remain in effect.

21 Any questions about that?

22 ACC: No, Ma'am.

1 MJ: All right. Now the last page of Appellate Exhibit I is the
2 quantum portion of your pretrial agreement, and it states that the
3 convening authority agrees to disapprove any confinement adjudged in
4 excess of 45 days, but he may approve any other lawful punishment.

5 Is that a correct statement of what you and the convening
6 authority agreed to?

7 ACC: Yes, Ma'am.

8 MJ: Now, Lieutenant Niles, you get the benefit of whichever is
9 less each element of the sentence of the court or that contained in
10 your pretrial agreement. If the sentence adjudged by this court is
11 greater than the one provided in the pretrial agreement, the
12 convening authority must reduce the sentence to one no more severe
13 than the one in your pretrial agreement. On the other hand, if the
14 sentence of this court is less than the one in your agreement, the
15 convening authority cannot increase the sentence that he adjudges
16 [sic].

17 Do you understand that?

18 ACC: Yes, Ma'am.

19 MJ: Now if your ETS date arrives while you are serving
20 confinement as part of your sentence, then all of your military pay
21 and allowances will stop on your ETS date. Do you understand that?

22 ACC: Yes, Ma'am.

1 MJ: I'm not sure that that actually would apply here given the
2 quantum provision, but I just wanted to make sure you're aware of
3 that. All right? —

4 ACC: Yes, Ma'am.

5 MJ: Now, Lieutenant Niles, have you had enough time to discuss
6 this agreement with your defense counsel?

7 ACC: Yes, Ma'am.

8 MJ: Are you satisfied with your defense counsel's advice
9 concerning this pretrial agreement?

10 ACC: Yes, Ma'am.

11 MJ: Did you enter into the agreement of your own free will?

12 ACC: Yes, Ma'am.

13 MJ: Has anyone tried to force you to make this pretrial
14 agreement?

15 ACC: No, Ma'am.

16 MJ: Do you have any questions about your pretrial agreement?

17 ACC: No, Ma'am.

18 MJ: Do you fully understand all the terms of the pretrial
19 agreement and how they affect your case?

20 ACC: Yes, Ma'am.

21 MJ: Lieutenant Niles, are you pleading guilty not only because
22 you hope to receive a lighter sentence, but because you are convinced
23 that you are, in fact, guilty?

1 ACC: Yes, Ma'am.

2 MJ: Do counsel for both sides agree with the Court's
3 interpretation of the pretrial agreement?

4 TC: Yes, Ma'am.

5 DC: Yes, Your Honor.

6 MJ: Defense Counsel, have you had enough time and opportunity
7 to discuss this case with Lieutenant Niles?

8 DC: I have, Your Honor.

9 MJ: And Lieutenant Niles, have you had enough time and
10 opportunity to discuss this case with your defense counsel?

11 ACC: Yes, Ma'am.

12 MJ: Have you, in fact, consulted fully with your defense
13 counsel and received the full benefit of his advice?

14 ACC: Yes, Ma'am.

15 MJ: Are you satisfied that your defense counsel's advice is in
16 your best interest?

17 ACC: Yes, Ma'am.

18 MJ: And are you satisfied with your defense counsel?

19 ACC: Yes, Ma'am.

20 MJ: Are you pleading guilty voluntarily and of your own free
21 will?

22 ACC: Yes, Ma'am.

1 MJ: Has anyone made any threat or tried in anyway to force you
2 to plead guilty?

3 ACC: No, Ma'am.

4 MJ: Do you have any questions as to the meaning and effect of a
5 plea of guilty?

6 ACC: No, Ma'am.

7 MJ: Do you fully understand the meaning and effect of your plea
8 of guilty?

9 ACC: Yes, Ma'am.

10 MJ: Do you understand that even though you believe you are
11 guilty, you have the legal and moral right to plead not guilty and to
12 place upon the government of proving [sic] your guilt beyond a
13 reasonable doubt?

14 ACC: Yes, Ma'am.

15 MJ: I want you to take a moment now and consult with your
16 defense counsel and then tell me whether you still want to plead
17 guilty.

18 [The accused did as directed.]

19 ACC: Yes, Ma'am.

20 MJ: So you still want to plead guilty?

21 ACC: Yes, Ma'am.

22 MJ: All right. Lieutenant Niles, I find that your plea of
23 guilty is made voluntarily and will full knowledge of its meaning and

1 effect. I further find that you have knowingly, intelligently, and
2 consciously waived your rights against self-incrimination, to a trial
3 of the facts by a court-martial, and to be confronted by the
4 witnesses against you. Accordingly, your plea of guilty is provident
5 and is accepted. However, I advise you that you may request to
6 withdraw your guilty plea at anytime before the sentence is
7 announced, and if you have a good reason for your request, I will
8 grant it.

9 Will the accused and counsel please rise.

10 [The accused and his counsel did as directed.]

11 MJ: Lieutenant Niles, in accordance with your plea of guilty,
12 this court finds you:

13	Of Specification 1 of Charge I:	Not Guilty.
14	Of Specification 2 of Charge I:	Not Guilty.
15	Of Specification 3 of Charge I:	Not Guilty.
16	Of Charge I:	Not Guilty.
17		
18	Of The Specification of Charge II:	Guilty.
19	Of Charge II:	Guilty.

20 You may be seated.

21 [The accused and his counsel did as directed.]

22 MJ: Now Lieutenant Niles, we enter into the sentencing phase of
23 the trial where you have the right to present matters in extenuation
24 and mitigation, that is, matters about the offense or yourself, which
25 you want the court to consider in deciding your sentence. In
26 addition to the testimony of witnesses and the offering of

1 documentary evidence, you may yourself testify under oath as to these
2 matters, or you may remain silent in which case, the court members
3 may not draw any adverse inference from your silence.

4 On the other hand, if you desire, you may make an unsworn
5 statement. Because the statement is unsworn, you cannot be cross-
6 examined on it. However, the government may offer evidence to rebut
7 any statement of fact contained in any unsworn statement. An unsworn
8 statement may be made orally, in writing, or both. It may be made by
9 you, by your counsel on your behalf, or by both.

10 Do you understand these rights?

11 ACC: Yes, Ma'am.

12 MJ: Now counsel, is the personal data on the front page of the
13 charge sheet correct?

14 DC: Your Honor, the only issue is with the pay. These charges
15 were preferred before the first of the year. Since----

16 MJ: All right. What's the pay?

17 DC: The pay, Ma'am, the basic pay is \$3,421.50.

18 MJ: All right.

19 DC: And there is no longer any sea or foreign pay because he's
20 been redeployed back to Germany.

21 MJ: Okay, it would appear to me, at least the copy that I have,
22 that those changes were made.

23 DC: Okay, Ma'am.

1 MJ: Have they been made on the original?

2 TC: They should have been, Your Honor, yes.

3 MJ: All right. Is there anything else that needs to be
4 corrected on the front page of the charge sheet?

5 DC: Yes, Your Honor. The only other issue is with the term in
6 block 6bravo. Lieutenant Niles--his service obligation after OCS was
7 3 years not 4 years; however, when he arrived in Germany, he was
8 extended for several months so that he would have a 3 year term of
9 service from his arrival in Germany, so his ETS is in October of this
10 year 2004. So his original--his term of service is 3 years plus a
11 extension of about 4 months.

12 MJ: Okay, so 3 years 4 months, is----

13 DC: Yes, Your Honor.

14 MJ: ----what you're saying?

15 DC: Yes, Your Honor.

16 MJ: Okay why don't we change it so it reads 3 years 4 months,
17 so anything else?

18 DC: That's all the inaccuracies there, Your Honor.

19 MJ: Okay.

20 DC: Everything else is accurate.

21 TC: And that was, \$3,421.50 for basic and total correct?

22 DC: That's correct.

1 MJ: All right. Now Captain [REDACTED] has the accused been
2 punished in anyway prior to trial that would constitute illegal
3 pretrial punishment under Article 13?

4 DC: He has not, Your Honor.

5 MJ: Lieutenant Niles, have you spoken with Captain [REDACTED] about
6 Article 13?

7 ACC: Yes, Ma'am.

8 MJ: Do you understand what Article 13 prohibits?

9 ACC: Yes, Ma'am.

10 MJ: Do agree that you've not been punished prior to trial in
11 violation of Article 13?

12 ACC: Yes, Ma'am.

13 MJ: Has your freedom of movement been limited in anyway prior
14 to trial?

15 ACC: No, Ma'am.

16 MJ: Have your pass privileges been withdrawn?

17 ACC: No, Ma'am.

18 MJ: Have you been subject to any sort of sign in requirement?

19 ACC: No, Ma'am.

20 MJ: Captain [REDACTED] are you aware of any limitations placed on
21 Lieutenant Niles' liberty that raise the issue of restriction
22 tantamount to confinement?

1 DC: No, Your Honor. One point before you ask the next question
2 is there was a call in requirement where he called in and checked in
3 with his unit, but that doesn't rise to the level of Article 13
4 violation.

5 MJ: All right.

6 DC: It was not a personal, physical requirement. It was a call
7 in requirement.

8 MJ: Okay and when--when was that call in?

9 ACC: Ever since I've redeployed back to the unit.

10 MJ: Okay and how often do you have to call in?

11 ACC: Ah the previous commander required me to actually stop by
12 the company just to check in, and the current commander asks that I
13 call twice a week.

14 MJ: Okay twice a week?

15 ACC: Yes, Ma'am.

16 MJ: All right, now have, Lieutenant Niles, have you spoken to
17 Captain [REDACTED] about restriction tantamount to confinement?

18 ACC: Yes, Ma'am.

19 MJ: Do you understand the concept of restriction tantamount to
20 confinement?

21 ACC: Yes, Ma'am.

22 MJ: Do you believe that you've been restricted tantamount to
23 confinement?

1 ACC: No, Ma'am.

2 MJ: Now we've already discussed what the maximum punishment in
3 this case is, and that is, dismissal, total forfeitures, confinement
4 for 12 months, and a fine may also be adjudged. Looking at the
5 charge sheet, it does not appear that the accused has been in any
6 sort of pretrial confinement, and so I don't believe that any days of
7 pretrial confinement credit are due. Is that correct?

8 DC: I'm sorry, Your Honor. Yes, that is correct.

9 TC: Yes, Ma'am.

10 MJ: Has the sentence worksheet been marked as an appellate
11 exhibit?

12 TC: It should have been previously marked, Your Honor.

13 [The CR handed the flyer and sentence worksheet to the MJ.]

14 MJ: All right, the flyer has been marked as Appellate Exhibit
15 III. Have both counsel had an opportunity to review the flyer?

16 DC: Yes, Your Honor.

17 MJ: ~~Any~~ objections?

18 DC: No objection to the flyer, Your Honor.

19 MJ: All right, the sentencing worksheet has been marked as
20 Appellate Exhibit IV. Again, have both counsel had an opportunity to
21 review that?

22 TC: Yes, Your Honor.

23 MJ: Any objections?

1 DC: No objection, Your Honor, although I believe it may not
2 include the language about the fine, which you just read, the
3 possibility or the applicability of a fine.

4 MJ: Oh, you're right.

5 DC: We could add that on a recess before we mark it.

6 MJ: Well does either side believe that a fine is actually
7 appropriate in this case?

8 TC: The government----

9 DC: No, Your Honor. We certainly don't believe that a fine is
10 appropriate.

11 TC: The government does not, Your Honor.

12 MJ: All right, then, I will not instruct on a fine.

13 TC:-- Yes, Your Honor.

14 Your Honor, one point, if asked to read the maximum
15 sentence in front of the panel, should it just be dismissal, one year
16 of confinement, and don't mention the fine?

17 MJ: Correct.

18 TC: Yes, Your Honor.

19 MJ: All right, does either side have documentary evidence on
20 sentencing, which can be marked, if it hasn't been, and offered at
21 this time?

22 [The CR handed PE 2 and 3 for ID to the MJ.]

23

1 TC: The government has previously marked the ORB and the OER
2 from the timeframe of the crime, and those two documents we wish to
3 be admitted.

4 MJ: Okay. Have you had an opportunity, Captain [REDACTED] to
5 review these?

6 DC: Yes, Your Honor.

7 MJ: Any objections?

8 DC: No, Your Honor, not at all.

9 MJ: All right, so Exhibit 2, which is the ORB is admitted, and
10 Exhibit 3, which is an OER for the period 10 July 2003 through 30
11 March 2004, is also admitted.

12 Defense, do you have any?

13 DC: Your Honor, we have Defense Exhibit Alpha, which is a good
14 soldier packet, essentially, divided in four sections. I believe the
15 court has been previously shown a copy of this during an 802 session.
16 [The CR handed DE A for ID to the MJ.]

17 MJ: All right, any objection?

18 TC: Your Honor, just previously based on our 802 sessions we
19 had with you, if witnesses testify in person or via phone, then I ask
20 that the letters would be cumulative regarding Colonel [REDACTED] and
21 some of the letters that may be attached in there.

22 DC: Yes, Your Honor, before you even respond, if I may, defense
23 will withdraw those letters assuming--the only witness who is going

1 to present live testimony who has a statement in there is Lieutenant
2 [REDACTED] He will be a telephonic witness. If we make
3 contact and present the evidence, as we will seek to do, then we'll
4 withdraw those letters from the packet. [REDACTED]

5 MJ: All right.

6 DC: Otherwise, no other letters in there come from a witness
7 who will be present.

8 MJ: All right, with that proviso, Captain [REDACTED] any
9 objection?

10 TC: No, Your Honor.

11 MJ: All right then Defense Exhibit A for identification is
12 admitted.

13 Are those all of the exhibits for sentencing?

14 DC: Yes, Your Honor, I may just--if I may one question just a
15 request that we just be allowed to substitute into the record a black
16 and white copy. There are some original colored photographs in that
17 book, and for the record we have made black and white copies that we
18 would ask just that those personal items--photos be--you know we be
19 able to get those back so the accused does not lose those.

20 MJ: I have no problem with you submitting copies, but I'd
21 prefer you get colored copies made.

22 DC: Yes, Ma'am, we can do that.

1 MJ: All right, but do you want a copy of the entire book made
2 of the exhibit? That's all right, you may do that, but anything
3 that's in there in color needs to be copied in color.

4 DC: Yes, Ma'am, and that's fine. We'll just copy the colored
5 photographs. My only concern is that the accused and his family get
6 those photographs back----

7 MJ: That's fine.

8 DC: ----because those are personal items.

9 MJ: Any objection, Government?

10 TC: No, Your Honor.

11 MJ: Okay, no there's no problem doing that. Just make sure you
12 get colored copies----

13 DC: Thank you.

14 MJ: ----of the photos made.

15 DC: We'll provide those to Mr. [REDACTED]

16 MJ: All right. Any other--anything else we need to do before
17 we call the members?

18 TC: No, Ma'am.

19 DC: Nothing from the defense, Your Honor.

20 MJ: Okay Bailiff, would you call the members, please.

21 [The bailiff did as directed.]

22 [The session recessed at 1058, 1 July 2004.]

23

1 [The court-martial was called to order at 1100, 1 July 2004, pursuant
2 to the orders previously inserted in the record and the following
3 orders: Court-Martial Convening Order Number 8 dated 23 June 2004,
4 Headquarters, 7th Army Training Command, APO Army Europe.]

5 MJ: You may be seated. Court is now called to order.

6 TC: The court is convened by Court-Martial Convening Order
7 Number 1, Headquarters, 7th Army Training Command dated 25 February
8 2004, copies of which have been furnished to each court member.

9 The accused and the following persons detailed to this
10 court-martial are present.

11 COLONEL [REDACTED] MILITARY JUDGE;

12 CAPTAIN [REDACTED] TRIAL COUNSEL;

13 LIEUTENANT [REDACTED] ASSISTANT TRIAL COUNSEL;

14 CAPTAIN [REDACTED] DEFENSE COUNSEL; and the court

15 members who are:

16 COLONEL [REDACTED]

17 COLONEL [REDACTED]

18 LIEUTENANT [REDACTED];

19 LIEUTENANT COLONEL [REDACTED]

20 LIEUTENANT COLONEL [REDACTED];

21 LIEUTENANT COLONEL [REDACTED]

22 LIEUTENANT COLONEL [REDACTED]

23 MAJOR [REDACTED]

1 MAJOR [REDACTED]
2 MAJOR [REDACTED]
3 CAPTAIN [REDACTED]
4 CAPTAIN [REDACTED] [sic] [REDACTED] who are the court
5 members.

6 The following persons are absent and have been properly
7 excused:

8 MAJOR [REDACTED]
9 CAPTAIN [REDACTED]
10 CAPTAIN [REDACTED];
11 CAPTAIN [REDACTED] and
12 CW4 [REDACTED]

13 The prosecution is ready to proceed with the trial in the
14 case of United States versus First Lieutenant Glenn A. Niles.

15 MJ: Thank you. The members of the court will now be sworn.

16 All persons in the courtroom please rise.

17 [All persons did as directed and the members were sworn.]

18 MJ: Please be seated.

19 [All persons did as directed.]

20 MJ: The court is now assembled.

21 Members of the court, it is appropriate that I give you
22 some preliminary instructions. My duty as military judge is to
23 ensure that this trial in conducted in a fair, orderly, and impartial

1 manner in accordance with the law. I preside over open sessions,
2 rule upon objections, and instruct you on the law applicable in this
3 case. You are required to follow my instructions on the law and may
4 not consult any other source as to the law pertaining to this case
5 unless it's been admitted into evidence. This rule applies
6 throughout the trial including closed sessions and periods of recess
7 and adjournment. Any questions you have of me should be asked in
8 open court.

9 At a session held earlier, the accused pled guilty to The
10 Charge and Specification, which you have before you. I accepted that
11 plea and entered findings of guilty. Therefore, you will not have to
12 determine whether the accused is guilty or not guilty as that has
13 been determined by his plea. Your duty is to determine an
14 appropriate sentence.

15 That duty is a grave responsibility requiring the exercise
16 of wise discretion. Your determination must be based upon all the
17 evidence presented and the instructions I will give you as to the
18 applicable law. Since you cannot properly reach your determination
19 until all the evidence has been presented and you have been
20 instructed, it is of vital importance that you keep an open mind
21 until all the evidence and instructions have been presented to you.

22 Counsel soon will be given an opportunity to ask you
23 questions and exercise challenges. With regard to challenges, if you

1 know of any matter that you feel might affect your impartiality to
2 sit as a court member, you must disclose that matter when asked to do
3 so. Bear in mind that any statement you make should be made in
4 general terms so as not to disqualify other members who hear the
5 statement.

6 Some of the grounds for challenge would be if you were an
7 accuser in the case, if you have investigated any offense charged, if
8 you formed a fixed opinion as to what an appropriate sentence or
9 punishment would be for this accused. To determine if any grounds
10 for challenge exist, counsel for both sides are given an opportunity
11 to question you. These questions are not intended to embarrass you.
12 They are not an attack upon your integrity. They are asked merely to
13 determine whether a basis for challenge exists. It is no adverse
14 reflection upon a court member to be excused from a particular case.

15 You may be questioned either individually or collectively,
16 but in either event, you should indicate an individual response to
17 the question asked. Unless I indicate otherwise, you are required to
18 answer all questions.

19 You must keep an open mind throughout the trial. You must
20 impartially hear the evidence, the instructions on the law, and only
21 when you are in your closed session deliberations may you properly
22 make a determination as to an appropriate sentence after considering
23 all the alternative punishments of which I will advise you later.

1 You may not have a preconceived idea or formula as to either the type
2 or the amount of punishment, which should be imposed if any.

3 Counsel are given an opportunity to question all witnesses.
4 When counsel have finished, if you feel that there are substantial
5 questions that should be asked, you will be given an opportunity to
6 do so. The way we handle that is you're required to write out the
7 question and sign legibly at the bottom. This method gives counsel
8 for both sides and me an opportunity to review the questions before
9 they're asked since your questions, like the questions of counsel,
10 are subject to objection, and I believe that there are forms provided
11 for your use there if you desire to question any witness. I will
12 conduct any needed examination.

13 There are a couple of things you need to keep in mind with
14 regard to questioning:

15 First, you cannot attempt to help either the government or
16 the defense;

17 Second, counsel have interviewed the witnesses and know
18 more about the case than we do. Very often they do not ask what may
19 appear to us to be an obvious question because they are aware this
20 particular witness has no knowledge on the subject.

21 Rules of evidence control what can be received into
22 evidence. As I indicated, questions of witnesses are subject to
23 objection. During the trial, when I sustain an objection, disregard