

**REDACTED**  
**COPY**

~~2776~~

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# COURT-MARTIAL RECORD

NAME CRUZ, ARMIN J. SPC

SSN (b)(6)-5, (c)-5

**ACTIONS CODED:**

INITIAL FEB 17 2005

ACCA \_\_\_\_\_

FINAL \_\_\_\_\_

**ASSIGNED TO:**

PANEL 4

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

COMPANION(S): SEE REVERSE SIDE

## RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL I OF II VOL(S)

ARMY 20040973

B

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

OF

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

(b)(6)-5; (7)(c)-5  
(Social Security Number)

Specialist  
(Rank)

US Army  
(Branch of Service)

Victory Base, Iraq  
(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL  
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq  
(Place or Places of Trial)

ON

11 September 2004  
(Date or Dates of Trial)

COMPANION CASES:

*(b)(6) 5; (7)(c) 5*

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

Allied papers through transcript

US ARMY JUDICIARY

2005 FEB 14 P 1:59

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

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

# CHRONOLOGY SHEET<sub>1</sub>

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

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

Date record forwarded to The Judge Advocate General: <sup>2</sup> \_\_\_\_\_  
(Enter Date)

\_\_\_\_\_  
 COL, JA, Staff Judge Advocate (b)(6)2;(7)(C)-2  
(Signature and Rank of Staff Judge Advocate or Legal Officer)

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

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

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

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

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

**6** Only this item may be deducted

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

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

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

**REMARKS**

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

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

UNITED STATES

ARMY 20040973

v.

SPC ARMIN J. CRUZ

(b)(6)(5)-(7)(c)-5

REFERRAL AND DESIGNATION  
OF COUNSEL

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

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

Date: 16 February 2005

PANEL 4

FOR THE CLERK OF COURT:

[REDACTED]

(b)(6)(4)(7)(c)-4

Paralegal Specialist

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

2005 FEB 16 P 1:39

DEFENSE APPELLATE  
DIVISION/USALSA

2005 FEB 16 P 1:43

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

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

11 September 2004

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

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

APPELLATE EXHIBIT 14

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RECOGNIZED R. 151

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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.)

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

AC b. I would like a copy of the record of trial served on [REDACTED]. (b)(6)(7)(C)-4

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

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

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

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

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

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: \_\_\_\_\_

(b)(6)5; (7)(C)-5

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

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

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# COURT-MARTIAL DATA SHEET

1. OJAG NUMBER

2. NAME (Last, First, Middle Initial)  
CRUZ, Armin J.

3. SOCIAL SECURITY

(b)(6)-5; (7)(C)-5

4. RANK  
SPC

5. UNIT/COMMAND NAME

HHSC, 502d MI Bn, 504th MI Bde

## INSTRUCTIONS

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

## KEY TO USE

**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?	/	/			/	/		
b. If not: Did the accused waive his/her right to such representation?	/	/			/	/		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?	X				X			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?	X				X			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?	X				X			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805)?	/	/			/	/		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?	X				X			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?	/	/			/	/		
9. Were the reporter and interpreter, if any, sworn or previously sworn?	X				X			
10. a. Was the military judge properly certified (RCM 502(c))?	X				X			
b. Was the military judge properly detailed (RCM 503(b))?	X				X			
c. Was the military judge present during all open sessions of the court?	X				X			
11. a. Was the accused advised that:								
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?	X				X			

## COURT-MARTIAL DATA SHEET

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

**COURT-MARTIAL DATA SHEET**

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

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**COURT-MARTIAL DATA SHEET**

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

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**COURT-MARTIAL DATA SHEET**

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

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**COURT-MARTIAL DATA SHEET**

55. REMARKS (Continued):

*all  
(b)(6)2; (b)(7)(D)-2*

**56. TRIAL COUNSEL**

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

**57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE**

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

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

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

**59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL**

a. ACTION:

**b. INDIVIDUAL COMPLETING DATA SHEET**

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

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

SPECIAL COURT-MARTIAL ORDER  
NUMBER 2

18 January 2005

Specialist Armin J. Cruz, (b)(6)(b)(7)(C)-5 Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Baghdad, Iraq, was arraigned at Victory Base on the following offenses at a special court-martial convened by the Commander, III Corps.

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

Specification: At or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with Corporal [REDACTED] Staff Sergeant [REDACTED] Specialist [REDACTED] Specialist [REDACTED] and others, to commit an offence under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Corporal [REDACTED] forces detainees to conduct various physical exercises while the detainees were naked and the said Specialist [REDACTED] poured water on the detainees. Plea: Guilty. Finding: Guilty. *adl (b)(6)S; (7)(C)-5*

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

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

SENTENCE

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

ACTION

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

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

BY COMMAND OF LIEUTENANT GENERAL METZ:

*see*

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



MAJ, JA  
Chief, Military Justice

DISTRIBUTION:

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

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

AFZF-CG

JAN 18 2005

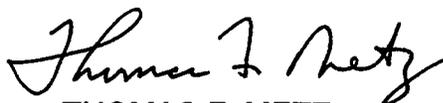
MEMORANDUM THRU

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

FOR Specialist Armin J. Cruz, (b)(6);(b)(7)(C), Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

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

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



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

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

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

December 1, 2004

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

SUBJECT: Request for Discharge in Lieu of Approving Court-Martial Sentence- SPC Armin J. Cruz, (b)(6)5, (7)(C)-5 Headquarters and Headquarters Service Company, 502<sup>nd</sup> Military Intelligence Battalion, 504<sup>th</sup> Military Intelligence Brigade, III Corps, Victory Base, Iraq

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

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

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

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

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

  
ARMIN J. CRUZ  
SPC, U.S. Army

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Having been advised by me of:

a. The basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice;

b. The possible effects of an Under Other Than Honorable Discharge if this request is approved (including but not limited to reduction to the lowest enlisted grade (Private E-1) by operation of law and the loss of benefits administered by both the Army and other Federal agencies as indicated on a copy of DA Poster 635-1, which was provided to the soldier); and

c. The procedures and rights available to him;

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



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

Civilian Defense Counsel

002795



JAN - 1 2005

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

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

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

Encl  
Defense Counsel Submission  
with Enclosures



COL, JA  
Staff Judge Advocate

(b)(6)(b)(7)(D)-2

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NOV 11 2004

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

SUBJECT: Post-Trial Recommendation in the Court-Martial of the United States v. Specialist Armin J. Cruz, (b)(6)-(c)(5) Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq – ACTION MEMORANDUM

1. Purpose. To obtain action in the special court-martial of the United States v. Specialist Armin J. Cruz.
2. Recommendation. Approve the sentence as adjudged and, except for the part of the sentence extending to bad-conduct discharge, order the sentence executed.
3. Discussion. Pursuant to RCM 1104(e) and 1106, the record of trial in the United States v. Specialist Armin J. Cruz has been referred to me for my recommendation prior to your action. Forwarded herewith is a copy of the court-martial record of trial.
  - a. Trial: On 11 September 2004, the accused was tried by a special court-martial.
  - b. Summary of the Charges, Specifications, Pleas, and Findings:

<u>CHARGE</u>	<u>ART UCMJ</u>	<u>SPEC</u>	<u>GIST OF OFFENSE</u>	<u>PLEA</u>	<u>FINDING</u>
I	81	The	Did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with CPL [REDACTED] SSG [REDACTED] SPC [REDACTED] SPC [REDACTED] and others, to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said CPL [REDACTED] forced detainees to conduct various physical exercises while the detainees were naked and the said SPC [REDACTED] poured water on the detainees.	G	G

*all (b)(6)-(c)(5)*

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20040973

AFZF-JA-MJ

SUBJECT: Post-Trial Recommendation in the Court-Martial of the United States v. Specialist Armin J. Cruz, (b)(6)-5;(b)(7)(C)-5 Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq -- ACTION MEMORANDUM

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

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

d. **Pretrial Confinement:** None.

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

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

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

(2) *Date of Birth:*

(3) *Awards and Decorations:*

(4) *Nonjudicial Punishment or Previous Convictions:*

(5) *Dependents:*

(6) *GT Score:*

(7) *MOS:*

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AFZF-JA-MJ

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

(8) *BASD*:

(9) *PEBD*:

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

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

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

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



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

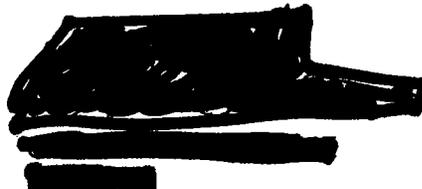
COL, JA  
Staff Judge Advocate

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

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

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

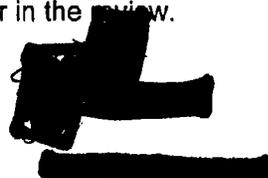


(b)(6)-2, (7)(C)-2

NCOIC, Criminal Law Division

CERTIFICATE OF SERVICE

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



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

Civilian Defense Counsel

15 Nov 04  
(date)

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[REDACTED]  
ATTORNEY AT LAW  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] B1

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

December 11, 2004

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

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

Dear LTG Thomas F. Metz:

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

(b)(6)-2(1)(C)-2

Yours truly,

[REDACTED]  
[REDACTED]

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

Enclosure

002801

20040973

11 December 2004

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

SUBJECT: Recommendation for Clemency for Private Armin J. Cruz

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

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

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

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

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

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

  
MAJ, JA

(S)(G)4;(7)(G) -4  
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[REDACTED]  
ATTORNEY AT LAW  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

December 8, 2004

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

SUBJECT: Post-Trial Submissions, Request for Chapter 10 Discharge, US v. Armin J. Cruz, SPC, U.S. Army, (b)(6)2, (7)(C)-2 Headquarters and Headquarters Service Company, 502<sup>nd</sup> Military Intelligence Battalion, 504<sup>th</sup> Military Intelligence Brigade, III Corps, Victory Base, Iraq

### Introduction

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

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

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

### Summary

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

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

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

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

A. Civilian life.

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

(b)(6) 5;  
(7)(C)-5

B. Military service prior to the incident.

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

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

C. His actions during the incident.

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

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

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

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

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

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

THERE ARE NO PAGES ASSOCIATED WITH THESE BATES  
NUMBERS

(b)(6)2;(7)(C)2  
his duty at the highest levels of dedication and competence. From November 2003 to March 2004, he worked for SSG [REDACTED] in the JIDC at Abu Ghraib. SSG [REDACTED] stated SPC Cruz was "my right hand man. SPC Cruz's attitude and work ethic were amazing... [SPC Cruz] was and is an outstanding analyst and soldier... was one of my best soldiers... will have no problems with his rehabilitation... anyone who was close to him will tell you the same. SPC Cruz is a soldier who has definitely separated himself from the rest... was by far one of the best soldiers with whom I have ever had the privilege of working." (See Stipulation of Expected Testimony).

(b)(6)3;  
(7)(C)-3  
In January 2004, SPC Cruz flew to Dallas for 15 days leave. He was given the last available seat on the plane, which was in first class. After having been in Iraq for the better part of nine months, SPC Cruz, true to his moral character, gave his seat to an elderly gentleman on the flight in exchange for the man's coach seat. (See letter from Mr. [REDACTED]). Even in such an ordinary, everyday moment, SPC Cruz is thinking of others. In fact, SPC Cruz never told me of this incident. I only learned of it when Mr. [REDACTED] e-mailed me after he saw SPC Cruz's case in the news.

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

(b)(6)2;(7)(C)-2  
According to the testimony of CPT [REDACTED] Headquarters Service Company, 502<sup>nd</sup> MI Battalion, SPC Cruz continued to "soldier on" even under the uncomfortable circumstance of being investigated. He stated: "[SPC Cruz] did an excellent job... He is very well disciplined... [How does Specialist Cruz treat his superiors?]... With dignity and respect; it's never wavering... [So, how would you describe his military bearing overall?]... excellent... [His attitude?]... Professional." (TT p. 79 - 81).

(b)(6)2;(7)(C)2  
SFC [REDACTED] also worked with SPC Cruz during this time: "[SPC Cruz]... did all the tasks that we would give him in an outstanding fashion. Everything he did he took some kind of initiative to either make sure it got done or improve... on what we expected... he was an outstanding soldier. (TT p. 69 - 75).

(b)(6)2;(7)(C)-2  
SFC [REDACTED] states: "[SPC Cruz] always executed his duties very professionally... he always tries to improve things rather than just go with what's already happening... he's always stepped up." (TT p. 84 - 87).

F. While in confinement.

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

Conclusion

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

Yours truly,

[Redacted signature]

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

Enclosures

1. DVD
2. Good Soldier packet
3. November 16, 2004 statement by SPC Cruz
4. Request for Chapter 10
5. Letter from SSG [Redacted] - (b)(6)(2)-(7)(C)-2
6. Letter from [Redacted] LPC (b)(6)4; (7)(C)-4
7. Letter from [Redacted] (b)(6)3; (7)(C)3
8. Letter from [Redacted] (b)(6)4; (7)(C)-4

002818

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

(75 TOTAL PAGES)

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

(b)(6)(7)(c)-4

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

AFZF-CG

JAN 18 2005

MEMORANDUM THRU

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

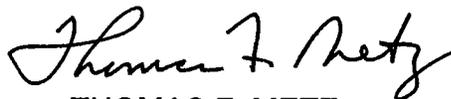
Commander, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

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

FOR Specialist Armin J. Cruz, <sup>(b)(2), (D)C-2</sup> ██████████ Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

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

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



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

002894

20040973



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

REPLY TO  
ATTENTION OF

AFZF-JA-MJ

MEMORANDUM FOR Mr. [REDACTED] (b)(6)-4/(X)(C)-4  
Law Offices of [REDACTED]

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

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

[REDACTED] (b)(6)-2/(X)(C)-Z  
[REDACTED]  
LTC, JA  
Acting Staff Judge Advocate  
16 Nov 04

002895

20040973

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

[REDACTED] MNC-I OSJA DET OPS

From: [REDACTED] (b)(6)(7)(C)-4

Sent: Monday, November 15, 2004 19:39

To:

Subject: RE: US v. Cruz 1105

SSG [REDACTED] (b)(6)(7)(C)-2

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

Thanks,  
[REDACTED] (b)(6)(7)(C)-4  
Attorney at Law

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

From:  
Sent: Sunday, November 14, 2004 12:53 AM  
Subject: US v. Cruz 1105 (b)(6)-4,(7)(C)4

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

002896

20040973

PRETRIAL ALLIED PAPERS

002897

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

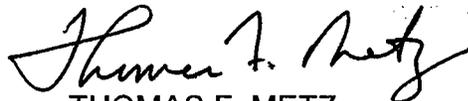
AFZF-CG

SEP 5 2004

MEMORANDUM FOR Staff Judge Advocate

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

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

  
THOMAS F. METZ  
Lieutenant General, USA  
Commanding

002898

SEP 5 2004

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

SUBJECT: Advice on Disposition of the Court-Martial Charges Preferred Against Specialist Armin J. Cruz (b)(6) (7)(C)-2 -ACTION MEMORANDUM

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

2. Recommendations.

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

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

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

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

a. The specifications allege offenses under the UCMJ;

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

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

4. POC is CPT [redacted] at

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

[redacted signature]

COL, JA  
Staff Judge Advocate

Encls

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

002899



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
Headquarter, 504<sup>th</sup> Military Intelligence Brigade  
Task Force Ready  
APO AE 09342

AFVQ-CDR

4 September 2004

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

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

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, (b)(6)2, (C)-2 Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

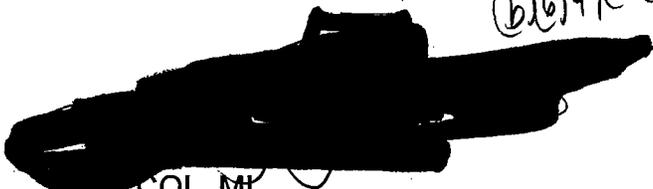
( ) Summary Court-Martial

( ) Special Court-Martial

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

General Court-Martial

Encls  
nc

  
COL, MI  
Commanding

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

002900

AFZH-MIE-CDR

4 September 2004

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

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

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

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, (b)(6)-2(D)(2) Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

( ) Summary Court-Martial

( ) Special Court-Martial

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

 General Court-Martial

Encls  
nc

  
MAJ, MI  
Commanding

(b)(6) 2i  
(D)(2)

002901



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

REPLY TO  
ATTENTION OF:

AFZH-MIE (600-20)

1 September 2004

MEMORANDUM FOR SEE DISTRIBUTION

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

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

*(b)(2), (1)(c) - 2*  
[Redacted Signature]  
MAJ, MI  
Acting Commander

DISTRIBUTION:  
1 - 504<sup>th</sup> MI Bde  
1 - A Co  
1 - B Co  
1 - C Co(P)  
1 - HHSC

002902

AFZH-HHSC-CDR

4 September 2004

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

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

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

1. I have reviewed the attached court-martial charges, and allied documents against Specialist Armin J. Cruz, (b)(6)2, (7)(C)2 Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, Victory Base, Iraq APO AE 09342.

2. I recommend trial by:

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

[REDACTED]

(b)(6)2, (7)(C)2

[REDACTED]

Encls  
nc

CPT, MI  
Commanding

002903

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.  
SPC, U.S. Army, (b)(6)(7)(C)-2  
SVC Co., 502<sup>nd</sup> MI BN, 504<sup>th</sup> MI BDE  
APO AE 09342

CONDITIONAL WAIVER OF  
PRETRIAL INVESTIGATION UNDER  
ARTICLE 32, UCMJ

4 September 2004

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

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

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

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

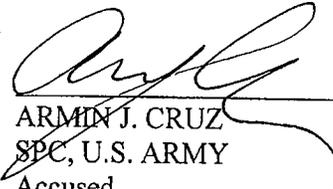
I understand that I would have the right to attempt to have the investigating officer recommend a disposition of the charges other than a trial by general court-martial.

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

[Redacted signature area]

Defense Counsel

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

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

27 May 2004

012A-04-00022

## MEMORANDUM FOR RECORD

*all*  
*(b)(6)-2 (7)(C) 2 except as noted*

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

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

*(b)(6), (7)(C) - 5*  
2. During the last week of October at approximately 2200 hours I went over to the BCF hard-site in order to speak with SPC [REDACTED], my driver. I found SPC [REDACTED] at Tier 1A speaking with his cellmate, CPL [REDACTED]. When I approached Tier 1A, I observed two (2) service members (the first service member wore black PT shorts, brown t-shirt, and shower shoes; the second service member wore DCU pants and brown t-shirt). I perceived both service members to be military intelligence (MI). I saw both MI soldiers handcuff two (2) naked Iraqi detainees to the bars of cells on opposite sides. I then witnessed the same MI soldiers handcuff the detainees together, face to face. The MI soldier dressed in black PT shorts and brown t-shirt approached me and asked me in a sarcastic tone of voice: "Do you think we crossed the line?" or words to that effect. I responded: "I am not sure, you are MI" or words to that effect. The MI soldier then stated that they were interrogating 2 detainees and said: "We know what we are doing," or words to that effect.

3. Subsequently, both MI soldiers walked back to the detainees, separated them, and then re-cuffed them to the bars. The MI soldier wearing PT shorts tapped one of the detainees on his buttocks with a plastic water bottle. Then both MI soldiers re-cuffed the detainees together. Throughout this incident, both MI soldiers, via an interpreter, ordered the detainees to confess. When the detainees failed to cooperate, both MI soldiers yelled at them and ordered CPL [REDACTED] *(b)(6), (7)(C) - 5* to yell at the detainees. At this time another MI soldier (wearing DCU pants and brown t-shirt) came in and the others seemed to look to him with respect and sought his approval. I asked him: "Is this how you interrogate detainees?" or words to that effect. The MI soldier responded "there are different ways to get it done," or words to that effect. The MI soldiers escorted the naked detainees around Tier 1A.

Ex. 157

002905

all (b)(6) 2, (7)(C) - 2  
except as noted

0129-01-00022

ATZM-DPS-C

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

(b)(6), (7)(C)-5

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

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

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

(b)(6)-5, (7)(C)-5

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

(b)(6), (7)(C)-5

Ex 157

ATZM-DPS-C

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

0129-04-00022

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

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

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

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

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

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

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

11. POC is the undersigned ([REDACTED])

[REDACTED SIGNATURE] (b)(6)2-7(C)-2

SGT, [REDACTED]

EX 157

002907

# RIGHTS WAIVING 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 38th Military Police Detachment (CID), Camp Victory	2. DATE 4 June 2004	3. TIME 0751 <del>13</del>	4. FILE NO.
5. NAME (Last, First, MI) [REDACTED] (b)(6)5-7(c)5	8. ORGANIZATION OR ADDRESS HHD, 5th MI BN		
6. SSN [REDACTED]	7. GRADE/STATUS SPC/Res		

## 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 Criminal Investigation Division and wanted to question me about the following offense(s) of which I am

~~suspected~~ ~~accused~~ Dereliction of Duty, Failure to Obey an Order or Regulation [REDACTED]

Before he/she asked me any questions about the offenses, 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)

Have you been advised of your rights in the past 30 days? No [REDACTED] (b)(6)5-7(c)5

### 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. [REDACTED] (b)(6)5;7(c)5

WITNESSES (if available)		3. SIGNATURE OF INTERVIEWEE [REDACTED] (b)(6)5;7(c)5	
1a. NAME (Type or Print)	[REDACTED]	SIGNATURE OF INVESTIGATOR [REDACTED] (b)(6)1;7(c)1	
1b. ORGANIZATION OR ADDRESS AND PHONE	[REDACTED]	5. TYPED NAME OF INVESTIGATOR SA [REDACTED]	
2a. NAME (Type or Print)	[REDACTED]	6. ORGANIZATION OF INVESTIGATOR Prisoner Interrogation Team (PIT)(CID) 75th Military Police (DET) (CID)(-), BCCF	
2b. ORGANIZATION OR ADDRESS AND PHONE	[REDACTED]		

### 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

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

2708

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION 38th Military Police Detachment (CID)	DATE 4 Jun 2004	TIME 1203	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME (b)(6)5, (7)(C)-5	SOCIAL SECURITY NUMBER (b)(6)5, (7)(C)-5		GRADE/STATUS SPC
ORGANIZATION OR ADDRESS HHD, 504 MIDDE			

I, SPC (b)(6)5, (7)(C)-5 WANT TO MAKE THE FOLLOWING STATEMENT UNDER OAT

On or about the 24<sup>th</sup> of October 2003, was invited by SPC Armin Cruz 7 witness the punishment of three (3) detainees suspected of raping / sexually assaulting another male detainee in Camp Visitant B (Gen. population). Accepting his invitation, he and I walked to the isolation bay. Inside were SPC (b)(6)5, (7)(C)-5, SPC (b)(6)5, (7)(C)-5, and a civilian interpreter, (b)(6)5, (7)(C)-5. There (b)(6)5, (7)(C)-5, another SPC, ~~was~~ unidentified, but wearing green BDUs. He was holding a speaker box, shouting into a dark room, dubbed as "the h.k." The SPC in green DDVS shouted profanities and insults to (3) three naked detainees. SPC Cruz spoke with SPC (b)(6)5, (7)(C)-5 the detainees were brought out and instructed to crawl on their stomachs and crawl dragging their genitalia on the floor. They were told to roll left to right. SPC (b)(6)5, (7)(C)-5 would sprinkle / pour water as the detainees rolled. He then grabbed a football, climbed to the second tier and pelted the detainees below. Below the detainees were hand cuffed together in such a way to mimic homosexual relations. Cruz + the mps (b)(6)5, (7)(C)-5 the SPC in green (b)(6)5, (7)(C)-5 asked for a confession, promising to stop this punishment if the detainees confessed. They using their feet, Cruz + the mps shoved the detainees' hips to further mimic sexual relations. The instructions / requests were sided in full by the interpreter (b)(6)5, (7)(C)-5. At some point one of the detainees began to bleed from his knee - possibly the right. SPC Cruz asked if the punishment should be stopped. SPC (b)(6)5, (7)(C)-5 answered to continue. Keeping witnessing about 15 minutes up the incident, I tell Cruz that I am ready to leave.

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT (b)(6)4, (7)(C)-4	PAGE 1 OF 7 PAGES
---------	--	-------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_ TAKEN AT \_\_\_ DATED \_\_\_ CONTINUED THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE \_\_\_ OF \_\_\_ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

(b)(6)S, (7)(C)S

FILE NUMBER: [REDACTED]

STATEMENT OF SPC RIVERA, TAKEN AT 38th MP DET (CID) DATED 4 June 2004 CONTINUED

SPC Cruz asks me, " [REDACTED] you are not going to tell anyone?" I stay in and exit. The next day I tell SPC [REDACTED] (b)(6)2, (7)(C)2 about the incident. She then tells the MP N161C [REDACTED] (b)(6)2, (7)(C)2 about the incident, and tells me. The issue is never pursued higher through the MI chain of command, as they were never informed.

Q: SA [REDACTED] (b)(6)1, (7)(C)1

A: SPC [REDACTED] (b)(6)5, (7)(C)5

Q: Prior to this statement, were you advised of your right to legal counsel?

A: Yes, I was.

Q: Other than the incident detailed above, were you present at any other incidents where detainees were forced into a "human pyramid"?

A: Never

Q: Was this the only incident you witnessed?

A: Yes

Q: Why did you not report this to your commander?

A: Utilized poor judgment, tried to take care of issue at a low-level.

Q: What was the purpose for you being present during this incident?

A: I was invited for entertainment, to enjoy the show of force against detainees.

Q: Did you ever take any photographs of the detainees?

A: Never

Q: Who was present during the above incident?

A: SPC [REDACTED] (in charge), SPC [REDACTED], SPC Armin Cruz, SPC Ronda [REDACTED] (interpreter), an unidentified SPC in green, and myself, SPC [REDACTED]. (b)(6)5, (7)(C)5

Q: Who was throwing the football at the detainees? (b)(6)5, (7)(C)5

A: [REDACTED] was the only person I recall throwing the ball.

Q: Did you ~~part~~ participate in the above incident, in any way?

A: As a witness, instruction in the carrying out of any instruction was never carried out by myself.

Q: Was any other organization (FBI, CIA, etc) present during the abuse?

A: No, only the MP and MI unit had soldiers present that night.

Q: Did you or any other MI person (civilian or military) tell the MP's to

INITIALS OF PERSON MAKING STATEMENT [REDACTED] (b)(6)5, (7)(C)5

2910

All (b)(6)5; (7)(C)5 except

FILE NUMBER: [REDACTED]

STATEMENT OF SPC RIVERA TAKEN AT 38th MP DET (CID) DATED 4 June 2004 CONTINUED

"soften up" a detainee?

A: Never

Q: Is it common to have MP's assist in interrogations?

A: Only at the special request of MI, with proper authorization. MPs ~~are~~ asked for assistance (ie change of environment / or sleep deprivation)

Q: at the above incident, did anyone, hit, punch or otherwise assault the detainees on the floor?

A: Aside from the use of the football by SPC [REDACTED], No.

Q: Did you know who the detainees were, their, ISN etc?

A: No, I don't recall names or identification numbers.

Q: Who was taking the pictures?

A: ~~No~~ I don't know.

Q: Who routinely took pictures within the cell blocks?

A: No, there were standing orders against pictures of detainees.

Q: Who appeared to be the leader / Instigator of this incident?

A: SPC [REDACTED] gave the orders, followed by those present, and to a lesser extent by Adel.

Q: Did this appear to be part of an interrogation (MI) or security matter (MP)?

A: No, SPC was described to me as a prisoner when he was invited to, SPC Cruz.

Q: To whom did you report / inform about this incident which happened as a result of a review?

A: I informed SPC [REDACTED] who told Sgt [REDACTED] (b)(6)4; (7)(C)-4

Q: Were there any other incidents such as the one you described?

A: I never witnessed any other incident so the one related in statement.

Q: Did you observe, know of, or hear about detainees wearing only underwear, women's underwear or only a blanket?

A: Never

Q: Were dogs used for interrogation, if so, under what circumstances?

A: Yes, they were. With the proper authorization, special interest detainees were transferred to the "breaker" team. The dogs were used to sedate the detainee into confessing or provide intelligence.

INITIALS OF PERSON MAKING STATEMENT: [REDACTED]

(b)(6)5;  
(7)(C)5

PAGE 3 OF 7

2911

STATEMENT OF SPC RIVERA TAKEN AT 38th MP DET (CID) DATED 4 June 2004 CONTINUED

- Q: Approval to use dogs was by whom and at what level?  
 A: Col [REDACTED] was aware of the use of dogs, but I don't know what he was the final authority.
- Q: Were the dogs muzzled?  
 A: I don't know
- Q: Were the dogs present or actively used to "Fear up" at detainees?  
 A: I was told the dogs were used to bark and growl at detainees to induce a collection of intelligence or confession.
- Q: Did you use sleep deprivation or know others using it as an interrogation method and who approved it, at what level?  
 A: I ~~remembered~~ being an analyst, I never used it, and don't specifically recall who or when the method was used. However, ~~parents~~ I remember hearing that it was done. I do recall the approach used at the Corp Interrogation Facility @ Bagram International Airport, Abu under the jurisdiction of 325 MI + 519 MI.
- Q: Did you work with OGA or have knowledge of OGA "Ghost detainees"?  
 A: [REDACTED] and Chief [REDACTED] are several of the interrogators that at any time or another helped in the interrogations conducted by OGA. (b)(6)4, (b)(7)(C)4
- Q: Did you witness or hear about circumstances of OGA abuse/humiliation of detainees?  
 A: Never
- Q: Describe the leadership, control + oversight of you and your section?  
 A: I do not recall my section sergeant and above him the leadership and who was in the was loosely defined & confusion. I know that at the top are CPT [REDACTED] Chief [REDACTED] and Maj [REDACTED] (b)(6)4, (b)(7)(C)4
- Q: Did they know about what was being done to the detainees?  
 A: I can't say about the rest of the incident. But the one that I was present at, no, the ~~MI~~ leadership was unaware. [REDACTED]
- Q: Were they 1) "In the loop" 2) "looking the other way" 3) "oblivious"?  
 A: Judging from the incident I was present at, the leadership seems oblivious.
- Q: Did you observe detainees kept naked for periods of time in the cells?  
 A: Yes, initially, when the DDIC was first stood up detainees were

INITIALS OF PERSON MAKING STATEMENT: [REDACTED]

2912

all (b)(6), (7)(C) 5

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

STATEMENT OF SPC [REDACTED] TAKEN AT 38th MP Det (CID) DATED 4 June 2004

9. STATEMENT (Continued)

Kept naked to "humble them." This was a practice instituted by MPs. Later, the ~~known~~ <sup>MI</sup> MI [REDACTED] forbade the use of this practice. (b)(6), (7)(C) 4

Q: Was it standard practice to strip some upon arrival and keep them naked and to offer clothing as an inducement to cooperate?

A: Yes, initially, as related above the practice was utilized to "humble" detainees. Later, about a month after the DOJ came into existence, the practice was forbidden. Any interrogator or MI operative known to use the practice would have received the proper punishment.

Q: Were some stripped as part of their "inprocessing" to 1A or was this done only at the inprocessing / screening center?

A: They were stripped and kept naked at isolation after in-processing.

Q: Were some stripped for short periods by either MI or MPs, if so, who approved such actions?

A: As described above only during inprocessing.

Q: Did you ever discuss or witness a discussion with any supervisors or receive verbal/written approval to strip a detainee?

A: No

Q: Who within MI, knew of the practice to strip detainees, CPT [REDACTED] CW2 [REDACTED]? (b)(6), (7)(C) - 4

A: The individual interrogators and analysts for sure. As far as higher, I don't know.

Q: Outside of scheduled interrogations, how tight were procedures for access to Tier 1A?

A: Anyone could walk in at any time, as long as the MPs allowed it. Although the leadership forbade it, it was easily circumvented.

Q: Were logs maintained or could one circumvent procedures?

A: There was a log kept, but access was granted by MPs, one could always just walk in.

Q: Was it common practice, and by whom, to visit the cell block off duty or off shift?

2913

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

STATEMENT OF SPC [REDACTED] TAKEN AT 36<sup>th</sup> MP Det (CID) DATED 4 June 2004

9. STATEMENT (Continued)

A: No, entering in IA was by authorization for interrogation only. Although, as stated before, this could be easily circumvented.

Q: Describe the interaction, both professional & personal (social / off duty) between the MI and MP personnel?

A: Professionally: There was a lack of communication between us often "lost" or "misplaced."

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

Personally: Anxiety existed after an incident where Col [REDACTED] found out ~~about~~ about a liquor / prostitution operation by the MPs. However, there was friendly / unfriendly interaction on case by case scenario.

Q: Did you ever hear about an interpreter who sexually assaulted a detainee?

A: Never.

(b)(6)-5, (7)(c)-5

Q: Did you ever witness / hear about CPL [REDACTED] having sex with a female detainee?

A: Never

Q: Do you have anything else to add to this statement?

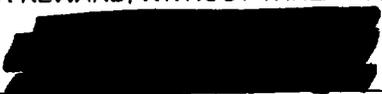
A: Nothing /// END OF STATEMENT /// [REDACTED]

3d)

 All  
 (b)(6), (b)(7)(C) -  
 except as noted  
  
 NOT USED

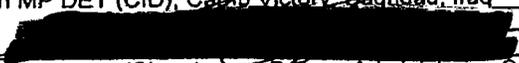
AFFIDAVIT

RIVERA , HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT PAGE 1 AND ENDS ON PAGE 7. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINED. I MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

  
 (Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized to administer oaths, this 4th day of June, 2004, at 38th MP DET (CID), Camp Victory, Baghdad, Iraq

\_\_\_\_\_  
 ADDRESS

  
 (Signature of Person Administering Oath)

\_\_\_\_\_  
 ADDRESS

(b)(6) - 1, (7)(C) 1  
  
 (Typed Name of Person Administering Oath)

Article 136 UCMJ  
 (Authority To Administer Oaths)

STATEMENT MAKING STATEMENT

RIGHTS WARNING PROCEDURE/WAIVER CERTIF. 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.

all (b)(6)S-(7)(C)S except as noted

1. LOCATION [redacted] 2. DATE R.K. 31 JAN 2004 3. TIME R.K. 09:35 4. FILE NO. EDO5-04-CID062
5. NAME (Last, First, MI) [redacted] 6. ORGANIZATION OR ADDRESS 325th MILITARY INTELLIGENCE BN. A COMPANY
7. GRADE/STATUS E-4/RESERVE DEWENS, MA 01432

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 CRIMINAL INVESTIGATION COMMAND and wanted to question me about the following offense(s) of which I am suspected/accused: DERELICTION OF DUTY, INDECENT ASSAULT, FAILURE TO OBEY AN ORDER OR REGULATION, CRUELTY AND MALTREATMENT, CONSPIRACY III

- 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.

(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.

- 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) HAVE YOU EVER REQUESTED A LAWYER AFTER BEING READ YOUR RIGHTS? YES (b)(6) (b)(7)(C)

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) 1a. NAME (Type or Print) 1b. ORGANIZATION OR ADDRESS AND PHONE (b)(6)1; (b)(7)(C)1
3. SIGNATURE OF INTERVIEWEE [redacted]
4. SIGNATURE OF INVESTIGATOR [redacted]
5. TYPED NAME OF INVESTIGATOR SA [redacted]
6. ORGANIZATION OR ADDRESS AND PHONE
8. ORGANIZATION OF INVESTIGATOR NEW ENGLAND BRANCH OFFICE (CID) DEWENS, MA 01432-4424

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

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

- 1. **WARNING** - Inform the suspect/accused of:
  - a. Your official position.
  - b. Nature of offense(s).
  - 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."  
(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)

all (b)(6)S; (7)(C) 5 except as noted

0008-1-61810-00-00

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 [redacted] 2. DATE (YYYYMMDD) 2004/01/31 3. TIME 11:25 4. FILE NUMBER 0005-04-CID062
5. LAST NAME, FIRST NAME, MIDDLE NAME [redacted] 6. SSN 075-86-3252 7. GRADE/STATUS E-4/RESERVE
8. ORGANIZATION OR ADDRESS A COMPANY, 325TH MILITARY INTELLIGENCE BATTALION, DEVENS, MA 01432

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

While I was deployed in Iraq, I was assigned to the 325th Military Intelligence Battalion, 205th Military Intelligence Brigade, and I was working in Abu Ghraib. There was already an Iraqi prison located in Abu Ghraib and when US Forces moved into Iraq they took control of the prison. My job was an interrogator while I was assigned to the prison, I was interrogating Iraqi detainees, some of them were Syrian Iraqis, and I also performed interpretations of Russian speaking detainees. Each interrogation was different, my team leader would assign me a detainee to interrogate and I would perform planning and preparation for each one. When I was ready I would call one of the Military Police (MP) working inside the prison, the guards, I would tell them the number of the detainee that I wanted to talk to and they would bring the detainee into a tent, for about the first two or three weeks outside the facility, and then after the first couple of weeks they were brought into wooden booths outside the prison. Inside the tent or booth with me would be an interpreter, an analyst, and myself. Sometimes there would be two analysts, sometimes no interpreter because the detainee speaks English. When the detainees were brought to me they were in different conditions. Sometimes I would ask the MPs to bring the detainee blindfolded sometimes, handcuffed and for the first couple of weeks they sometimes would be brought without handcuffs but then that stopped and they were always brought handcuffed. I conducted the interrogations in different ways, sometimes we uncuffed them, sometimes not, sometimes we let them stand and sometimes we would let them sit.

- Q. Were you ever present when any detainee was abused?
A. Yes, when I was walking through the isolation cells part of the prison, I saw prisoners being handcuffed to each other naked, having two inmates walking in the isolation section of the cells naked and handcuffed to each other. One of the MPs took a Nerf football and threw it at the detainees and another MP threw water at the detainees. I had never seen anything like that before. I only saw this take place once. It was between the middle and the end of October or the beginning of November. I saw three or four MP Guards in the same area. There were eight or nine Iraqi Police that saw it. All the other detainees appeared normal.
Q. Who were the individuals who abused the detainees?
A. The time that I spoke with one of the detainees, the same night that I saw the detainees handcuffed to each other CPL [redacted] was working, SPC [redacted] was in the female section, and a very overweight interpreter, a TITAN Contractor.
Q. Why were the detainees handcuffed to each nude on the floor and walking around?
A. The MPs were making these two detainees do exercises and "smoking" them. From what I understand these two detainees were in the same cell as a young boy when they came into the prison, the boy was fifteen or sixteen year old, and supposedly the two raped the young boy in the prison. There were also Iraqi guards inside the prison, the Iraqi guard saw it going on and told the MPs about it and the MPs ended up moving the boy to a juvenile cell. Then the two detainees who abused the boy were put in separate cells in isolation and "smoking" them, making them do push-ups and other exercises. After that incident, they didn't let us go to the isolation cells anymore and the MPs kept us out of there. Prior to that I could just go in there when I wanted but if I was going to do a full interrogation I had to let my supervisor know. Like one time when I wanted to bring a Koran into one of the detainees the MPs would not let me take it in and would not take it in for me.
Q. What was the purpose for you being present during this incident?
A. Myself and my interpreter and analyst were asking one of the detainees that was assigned to me questions through the cell door.
Q. What other ways were the detainees abused?
A. Once I saw a detainee being walked on their hands by and knees with a leash by an MP. The MP had a strap from a mattress or some cloth, he was an E-5 Guard, white male, 5'11", medium build, maybe 175 pounds, I'm not sure what unit he was in, he had dark hair, high and tight hair cut.
Q. Did you ever take any photographs of the detainees?
A. No.
Q. Do you know of anybody who took photographs or videotaped the detainees?

10. EXHIBIT 11. INITIALS OF PERSON MAKING STATEMENT [redacted] PAGE 1 OF 2 PAGES

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.

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EXHIBIT 135

2918

0003-0000-0000

0003-0000-0000

0005-04-010062

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

STATEMENT OF [REDACTED] TAKEN AT RANDOLPH, MA DATED 2004/01/31

9. STATEMENT (Continued)

- Q. Have you ever seen any photographs of any detainees?
- A. Not besides the photograph in their personal file.
- Q. Have you ever seen anybody providing any photographs to any other individuals?
- A. No.
- Q. Did you ever see anyone with a camera taking photographs of detainees?
- A. Many of the MPs had cameras but they would take pictures of themselves. I never saw any MP take pictures of any detainees while they were handcuffed.
- Q. Did you ever see CPL [REDACTED], SSG [REDACTED], SPC [REDACTED], PFC AMBHL, SGT [REDACTED], SGT [REDACTED], or SPC [REDACTED] assault any of the detainees?
- A. I saw MPs walking detainees on a leash and handcuffing them together. There were four of five MPs that were involved in these types of things.
- Q. Describe where the two inmates that were handcuffed together naked walked?
- A. They walked out of the isolation section, up onto the second floor, through the whole isolation section, then they went down to where the Iraqi police were and they went back to the first floor. They eventually uncuffed both of them from each other and then separately and that is the last time I saw them. After the two handcuffed detainees were handcuffed individually, there was a third detainee that came from over where the Iraqi Police were, I'm really not sure, and he was not in the isolation cell from the beginning, and he came. The same four of five MPs told the detainee to take his clothes off, he was naked and they made him do push-ups, low crawl on the ground. They were yelling at the detainee while he was doing this. There was no kicking or punching, if they wanted him to go the ground they would move the detainees arm to the ground and push them down.
- Q. Did you ever see any of the listed suspects photograph or videotape any of the detainees?
- A. No.
- Q. Did you ever receive any photographs of the detainees from the listed suspects or other personnel working at the prison?
- A. No.
- Q. Did you receive emailed pictures of detainees or email pictures of detainees?
- A. No.
- Q. Did you ever throw a football at the detainees?
- A. No.
- Q. Who were the detainees abused?
- A. I don't remember the two that were handcuffed. One was about 6', very skinny, 140 or 145 pounds, black hair, beard, mustache, and the other guy was about the same build, about 5'7", black hair, beard and mustache. The guy that was on the leash I don't remember what he looked like, I just remember he was built for an Iraqi, he had a scar that was a couple of inches on the right side of his neck. He was about 5'8" and built, 150 pounds.
- Q. Is it common practice to have MPs assist in interrogations?
- A. It's not common but it happens sometimes.
- Q. Who told the MPs to conduct the interrogations?
- A. No one, they aren't allowed to conduct the interrogations.
- Q. What form of interrogation techniques were the MPs told to use?
- A. We asked them if they could come in and randomly yell at the detainee, sometimes there would be MPs in the booth just to stay with the detainee while myself and my analyst would go outside and talk.
- Q. Were any of the detainees injured during any interrogations by Military Intelligence (MI) with MP personnel?
- A. No.
- Q. Were any MI or MP personnel left alone with female detainees?
- A. No. We only had three or four female detainees and I never had to interrogate one of them.
- Q. Did you ever see a videoclip of CPL [REDACTED] having sex with a female detainee or female at the prison?
- A. No.
- Q. Has anyone discussed with you any incidents that happened to the detainees at the prison?
- A. I never heard anything about anyone hitting or having anything sexual to do with the detainees.
- Q. Can you describe the four of five guards that were present for the two inmates being handcuffed naked?
- A. There were three white males and a black male, that is all I remember.
- Q. Do you have anything else you wish to add to this statement?
- A. No detainees were abused or hurt in my custody.
- Q. Do you have anything else you wish to add to this statement?
- A. No.

//////////////////////////////////////END OF STATEMENT//////////////////////////////////////

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 2 OF 3 PAGES

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EXHIBIT 135

2919



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## PAULA ZAHN NOW

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

Aired August 26, 2004 - 20:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

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

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

UNIDENTIFIED MALE: That's probably their only line of defense, to blame everything on military inte

(END VIDEO CLIP)

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

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

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

When the pictures first appeared, the story focused on one detachment, the military police assigned t prison. Now we know that more than two dozen military intelligence personnel may have been involv

(BEGIN VIDEOTAPE)

ZAHN (voice-over): Under Saddam, the Abu Ghraib Prison was a place where people were tortured & After Saddam's defeat, it became the U.S. Army's own house of horrors. All too familiar pictures like t American image in Iraq.

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

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

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

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

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

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

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

DAVIS: Oh, yes.

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

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

He said, well, you are the MP.

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

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

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

DAVIS: Correct.

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

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

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

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

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

He said what?

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

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

ZAHN: And who was this you spoke to?

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

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

DAVIS: mm-hmm.

ZAHN: Are you saying he's lying?

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

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

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

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

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

(END VIDEOTAPE)

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

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

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

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

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

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

ZAHN: Who would you ask that of?

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

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

ZAHN: Describe to us what you saw?

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

ZAHN: We're looking at that picture now.

What do you allege is happening now?

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

ZAHN: Where are you standing?

DAVIS: I am number 2 in that picture.

ZAHN: And number 1 you to allege is whom?

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

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

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

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

DAVIS: Yes.

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

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

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

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

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

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

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

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

DAVIS: Very troubled.

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

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

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

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

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

DAVIS: Thank you.

(END VIDEOTAPE)

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

(COMMERCIAL BREAK)

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

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

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

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

ZAHN: Describe that atmosphere to us tonight.

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

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ZAHN: Were you forced to do that?

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

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

KROL: Yes, I was.

ZAHN: Is that something you were trained to do?

KROL: No, I wasn't.

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

KROL: Yes.

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

KROL: One word, indifference.

ZAHN: Indifference?

KROL: Yes.

ZAHN: Were you shocked?

KROL: No.

ZAHN: Why indifference?

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

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

KROL: No. I wasn't.

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

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

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

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

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

KROL: It's wrong, but it happened.

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

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

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

KROL: OK.

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

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

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ZAHN: Number 2. And Mr. Cruz is number 3.

KROL: I don't see number 3...

ZAHN: This is Charles Graner over here, number 1.

KROL: I believe so. OK.

ZAHN: Do you think that the treatment of those detainees that night was appropriate?

KROL: No, no, I do not think so. It was definitely inappropriate. It was definitely humiliation. It was jus

ZAHN: But that night you didn't think that way.

KROL: The reason why, I asked the MPs why are they – people being treated that way. They said th  
boy. My feelings were a little different. Basically, the reason...

ZAHN: So because of how venal that alleged crime was, you thought these detainees deserved it?

KROL: I didn't think they deserved it. I didn't think they didn't deserve it. I was also indifferent back th  
reason why I ended up there, because I went to talk to one of my prisoners that were assigned to me  
second floor, and I took my interpreter, which is – I don't believe he's pictured here, and Analyst Cruz  
be this guy right there, but I'm not sure.

ZAHN: That's correct.

KROL: That's correct? ZAHN: OK. So once again, you are right here...

KROL: I'm right here.

ZAHN: ... and Mr. Cruz is there...

KROL: And I'm not sure if this is Cruz, but...

ZAHN: ... and this is Ken Davis, a military police officer. The two of you on the right are with military i

KROL: That's correct. And myself and Cruz went to talk to one of the prisoners that was assigned to  
the second floor. The same block that you are looking at right now. And we talked to them, and we lo  
we see pretty much this, which you can see on this picture. I'm not going to go into details and descri  
happened there, even though I was there for about an hour, for a good hour.

ZAHN: We have also spoken with Ken Davis, who was this military police officer on duty that night.

KROL: OK.

ZAHN: And he describes the scene quite differently.

KROL: OK.

ZAHN: He says that you and Mr. Cruz directed the treatment of the detainees, and you two were the  
handcuffed the detainees.

KROL: Not – did not happen, because neither myself or Cruz are in position to order anything like the  
handcuff detainees while the military intelligence – military police present, excuse me.

ZAHN: So what you are saying, going back to what you said earlier is the only time you claim handcu  
handcuffed detainees when you were alone.

KROL: Because of the lack of the MPs.

ZAHN: What about his accusation that you two directed Charles Graner to get tough on these detain  
refused to take their clothes off.

KROL: When I arrived there, they were naked. So I don't see how that accusation can be considered

ZAHN: Why would he say that? Why would he make that up?

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

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

(COMMERCIAL BREAK)

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

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

KROL: Yes.

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

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

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

KROL: No.

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

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

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

KROL: He's wrong, of course.

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

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

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

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

ZAHN: Now these prisoners weren't being interrogated.

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

ZAHN: But why were you there?

KROL: Well...

ZAHN: Did you need to be there?

KROL: I explained why I went there, to talk to one of my prisoners, and I just -- I stood there like a microphone. I admit that. Rivera said the same thing, I believe. I'd like to say the same thing about Cruz, probably, I



other reasons to do it.

ZAHN: I'm interested in hearing you say that you thought there were clear lines of delineation between police were supposed to do and military intelligence officers because one of the criticisms of the Pentagon out in these reports is the fact that they didn't think the Pentagon gave you clear enough guidelines for and sometimes that the chain of command within the prison was confused.

KROL: The Geneva Conventions for the interrogation was pretty clear. No physical abuse of prisoner say to a prisoner he's going to be tortured or basically general dislike and everybody stayed in those sure.

ZAHN: So you deny ever physically abusing a prisoner?

KROL: Of course.

ZAHN: Did you see any of your colleagues?

KROL: Military intelligence, no.

ZAHN: Hurt a prisoner?

KROL: Hurt a prisoner? No.

ZAHN: So why are there so many accusations flying out there that it was your guys' fault that it turned they were taking orders? Attorneys for some of these seven soldiers are saying quite pointedly...

KROL: I understand -- people that are -- for example, Graner, I believe he's a sergeant and myself and specialists. He is a higher rank than us. We physically cannot give him orders. Legally we cannot give do anything. OK, just, in our position, we cannot give order to anybody to do anything.

ZAHN: How many nightmares have you had about what you witnessed at Abu Ghraib and what you were accused of?

KROL: None.

ZAHN: You are at peace?

KROL: Yes.

ZAHN: With what you saw on one hand but troubled that you didn't react in a more aggressive way or

KROL: Yes, that's correct. That's exactly what I feel.

ZAHN: Is it hard for you?

KROL: I'm trying to forget what I saw back in Iraq. I think I can manage it.

ZAHN: Are you worried you're going to be charged?

KROL: Of course, I'm worried about I'm going to get charged.

ZAHN: Do you think you will be?

KROL: I think so, yes.

ZAHN: You think you will be charged?

KROL: I probably will be charged on not reporting information.

ZAHN: And how will you confront that charge? How do you plan to fight that charge?

KROL: I can't.

ZAHN: You can't? What do you mean?

KROL: Well, I was a witness of what you saw in the picture and there's nothing I can do about it, and

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ZAHN: So you are prepared to spend time in prison for what you describe as your indifference?

KROL: If the penalty for not reporting information that I saw is prison, then, yes.

ZAHN: And do you understand the outrage in the world about the kind of abuse that took place at Abu Ghraib? Of course, I understand the outrage. What else can I say? I am just happy that I wasn't directing the reporting and participating in it. Basically, by not reporting it, I know I also did the wrong thing, but people that were in the pictures are my buddies also. Some of the MPs were my friends, they were my buddies. And also by reporting the information, I guess, you can say by reporting the information I understand that would probably get them in trouble, that they are in right now. And one of their own people went public with the photos, of course I know.

ZAHN: And now you are fully expecting to face a prison sentence, basically, because you were trying to say, your colleagues under very difficult conditions.

KROL: That's not the main reason why I didn't report the information, but that was part of the reason. I was on the same team, even though there were military police and military intelligence, but we work together. And what they did were very disgusting. That was one of the reasons why I did not report the information.

ZAHN: Roman Krol, thank you for spending time with us this evening and telling us what you saw at Abu Ghraib.

KROL: Thank you.

ZAHN: Good luck to you.

When we come back, the perspective on the events at Abu Ghraib from a reporter who has been following the events from day one.

(COMMERCIAL BREAK)

ZAHN: It will take some time to get a complete and accurate picture of what happened at Abu Ghraib. The report heard tonight was chilling. I was struck by the tragedy of two young men confronting a situation even though they were neither emotionally nor professionally prepared for. Small wonder, then, that so many investigators are having trouble getting to the truth.

With that in mind, we turn to a journalist who has written extensively on the abuse at Abu Ghraib. In the "Los Angeles Times" national security correspondent, Greg Miller. He is the co-author of a new book called "Interrogators: Inside the Secret War Against al Qaeda."

Welcome, Greg. You have just heard these two men tell their story. Where does the truth lie?

GREG MILLER, L.A. TIMES: Paula, to me this shows you just how tangled this story is still, and it will take some time. I mean, these two accounts from these two soldiers that you interviewed tonight, as gripping as they are, they are somewhat contradicted by the Fay report. Davis says because the Fay report says — concludes that this incident that MI was not controlling or directing this behavior, and Krol's because he concludes that two military intelligence troops took part in the abuses last night, and other sources interviewed were one of them.

ZAHN: Specialist Krol, as you heard, adamantly denied he had anything to do with neither directing or participating in the abuses. We have a statement for the lawyer for Specialist Armin Cruz, quote: "we adamantly deny that Specialist Krol orchestrated anything." Your response.

MILLER: There — the third military intelligence soldier who was there last night is Specialist Rivera, and he has a different version of events. He has described Krol having taken part in the abuses by climbing up on the balconies in the tier and throwing footballs at the detainees, and Cruz of dumping water on the detainees. So there are contradictions all around here.

ZAHN: The two gentlemen also contradicted each other's accounts of the chain of command. Mr. Krol is now suggesting that it was a very confused situation. The last guest, Roman, saying that that wasn't true, that military police knew what they were supposed to do. They were in charge of the prison. The MI guys were in charge of the interrogations. You see a lot of gray area there, don't you?

MILLER: There's a lot of gray area there. It certainly doesn't look like anybody was totally in charge of the prison. I mean, one of the striking things to me, having written a book about a prison in Afghanistan, is just that the situation is much greater here. In Afghanistan, the largest prisons held 500, 600 prisoners at most, and at Abu Ghraib many as 6,000. It was just a much more chaotic and large and sort of amok facility than anything I had ever been prepared for.

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ZAHN: I know this is early on, and everybody's accounts of what they believe went on in this very case where should most of the blame be pointing right now?

MILLER: That's a tough question. I think that the Fay report makes it clear that this is no longer a case can describe this as confined to a few bad apples taking advantage of their freedom on the night shift also says that there was no indication in many of these instances that this was being ordered or directed mean, I think that what has to happen now is just -- the Pentagon and other agencies need to really sit to reach some -- arrive at some new policies that achieve some clarity that eliminates the possibility of a confusing environment in the future.

ZAHN: Just a final thought, a very personal reflection on the tragedy that both of these men confront account you buy into.

MILLER: Well, it's, you know, one of the things that I try to keep in mind as we write these stories is, it's many readers and many of your viewers think about this as well. What would we have done in those cases that are hard to know. We saw Krol tonight talking about feeling indifferent toward this. He told me much the same in an interview recently several months ago, where he talked about he didn't report it because he simply didn't

And that's hard to understand. But when you talk to people who have worked in these prisons, you know these are debilitating places to be, especially over a long period of time.

ZAHN: I think both of the gentlemen made that clear this evening. Greg Miller, thank you for your addition. We appreciate your time tonight.

MILLER: Thank you, Paula.

ZAHN: Just ahead, we move on to politics, as New York braces for the GOP's big show, and the Democrats are coming with it. That story when we come back.

(COMMERCIAL BREAK)

ZAHN: Well, if you are counting, we are 68 days from the election. In a CNN/"USA Today"/Gallup poll shows President Bush and John Kerry still locked in a statistical dead heat. We are also, of course, focused on the Republican convention here in New York, which was the subject of another poll. This one from University. Well, the survey found President Bush has an approval rating of only 25 percent among New Yorkers. Those same New Yorkers apparently think more highly of themselves. 77 percent of them expect New York to be good hosts for the convention. Still, not everyone is planning such a warm welcome. Maria Hinojosa is

(BEGIN VIDEOTAPE)

MARIA HINOJOSA, CNN CORRESPONDENT (voice-over): In New York City, not all protests look alike. A group of women shoot this video as they sneak into Grand Central Station to send a very public message.

UNIDENTIFIED FEMALE: It seems like people were so overjoyed and relieved to see those words go up.

HINOJOSA: An anti-Bush punching bag standing on a street corner. Self-described anarchists holding meetings. A little flower store turned political rallying spot.

(on camera): What are you hearing from New Yorkers? Are you hearing New Yorkers saying, "I want that protest" or are you hearing New Yorkers saying, "I'm getting away."

UNIDENTIFIED MALE: No. The majority of them are going to be there, I think.

HINOJOSA: In a city where Democrats outnumber Republicans, 5 to 1, protesters want to send a message like these, pro-choice, gay-friendly, anti-war, have nothing in common with Republicans. But inside the city, the Republicans aren't buying into the caricature being painted outside. They are taking advantage of the image of New York, where many top Republicans are Democratic converts and where party labels don't

RUDOLPH GIULIANI, FORMER NEW YORK MAYOR: I believe one of the things we can accomplish is to demonstrate how broad the Republican party really is.

HINOJOSA: Former Republican Mayor Rudy Giuliani is one of the convention's top speakers. Once he has a history of taking more moderate stances on conservative issues.

GIULIANI: There are a substantial number of Republicans who you would describe as moderate Republicans.

that's probably the best way to describe them but who have some very, very strong conservative view economy, on national defense. But on social views we tend to be moderates.

HINOJOSA: The "we" Giuliani is talking about includes Michael Bloomberg, another Democrat who became a Republican and then became mayor of New York. And there's the state's moderate Republican Governor Pataki. Both will be convention speakers.

GOV. GEORGE PATAKI (R), NEW YORK: I've got elected three times in the state of New York because I'm an independent and enough Democrats believe that these principles and policies work for them, too.

HINOJOSA: Going after so-called swing voters means showing that Republican delegates inside the convention can address some of the issues the protesters are raising outside.

GEORGE ARZI, POLITICAL CONSULTANT: It might be a way in which to leverage opposition and to get to the people, the protesters out there. Because I don't know what these people out there are protesting about these moderates we have inside.

HINOJOSA: But demonstrators want to send a message of their own that no matter how moderate a Republican candidate is, it's not enough.

BILL DOBBS, UNITED FOR PEACE AND JUSTICE: The Republicans have brought us four years of civil liberties, immigrant round-ups and now many of us are going to be marching under the banner, that we're against the Bush agenda.

HINOJOSA: So as the opposition welcomes protesters to town, the Republicans are rolling out a more moderate image.

ARZI: If you look at the images outside, with all the protesters and you look at the images inside with the Karl Rove types will try to tell you, you see, we are much more moderate than people are trying to tell you.

(END VIDEOTAPE) ZAHN: And that was Maria Hinojosa reporting for us this evening. And just one week before President Bush accepts his party's nomination for the second time. You can see live prime-time coverage of the Republican National Convention in New York starting Monday night right here on CNN.

Coming up next, a tale of two JFKs. The surprising connections you may not know.

(COMMERCIAL BREAK)

ZAHN: John Fitzgerald Kennedy, John Forbes Kerry. They share the same initials. They're from the same state, both served in the Navy during wartime and they both wanted to be president.

Well, after Kennedy achieved his goal, he made quite an impression on Kerry, even in person 42 years later.

(BEGIN VIDEOTAPE)

ZAHN (voice-over): On an August day in 1962, President John Fitzgerald Kennedy is sailing off New York. One of his passengers is 18-year-old John Forbes Kerry. It is the summer before Kerry starts at Yale. Janet Auchincloss, Jackie Kennedy's half-sister. Auchincloss invited Kerry to Hammersmith Farm where she married Kennedy nine years before.

The politically active Kerry idolizes Kennedy. They chat. They board the 60-foot Manitou for a cruise in the Atlantic. (UNINTELLIGIBLE). A few weeks later, Kerry is invited back, this time to watch an America's Cup race. President Kennedy is there and again they have a private conversation.

"Thank you for a very unforgettable and exciting time," Kerry later would write the president. "I am, to this day, an ardent Kennedy supporter." Indeed he was like so many young Catholic men from Massachusetts. Kerry's political speech in a prep school debate was in support of Kennedy's 1960 presidential run. Kerry voted for Kennedy's first Senate campaign in '62. And when the president campaigned for Democrats in Connecticut, Kerry was in the crowd, a crowd peppered with disruptive hecklers.

JOHN F. KENNEDY, FMR. PRESIDENT OF THE UNITED STATES: But they will learn as this country grows that the Democratic party is best for them as it is for the country.

ZAHN: Kerry, in this October 1962 letter, apologizing for the, quote, "deplorable behavior of some of our undergraduates here at Yale." The young Kerry added, "it is possible that you personally were not here when it happened here, but the insult was made and there is no one here who is not now conscious of it."

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A year later, President Kennedy was dead.

LOUIS DINATALE, UNIVERSITY OF MASSACHUSETTS: Kennedy's shadow on Massachusetts has been big for 30 or 40 years. ZAHN: Political science professor Lou Dinatale describes Kennedy as the Democratic party.

DINATALE: Celebrity, good looks, coat over the shoulder, loosened tie around the neck. You know, it's for Democrats and it's also a standard because it was unfulfilled.

ZAHN: After the late president's brother Bobby also fell to an assassin, Ted Kennedy became the state family mystique and eventually Kerry's mentor. The senator backed his first and unsuccessful run in 1972. The two men have stood side by side for two decades in the Senate, and this year, Kennedy played a key role in Kerry's presidency.

SEN. TED KENNEDY (D), MASSACHUSETTS: Let's give him a great Waterloo reception!

ZAHN: Kerry seems to be tapping into that JFK playbook, sometimes literally following his footsteps, same West Virginia diner Kennedy visited 44 years ago.

KERRY: Well, we're going to get to work on it.

ZAHN: Kennedy had PT 109, the small boat he commanded in the Pacific during World War II, swimmer saving a man after being rammed by an enemy warship. Kerry has PCF 94, the Swift boat he commanded saving a man and winning five medals in combat. Each a decorated veteran when he ran for president would make America safer than the Republican incumbent, whether against the communists or the

DINATALE: The campaign actually is evolving precisely the way the 1960 campaign evolved, which is using his war record is finding himself -- is fighting the fight in the middle of the political spectrum, and a squeaker of an election just like Kennedy was in '60.

ZAHN: Many Democratic presidential candidates before Kerry have tried to capture the magic of JFK. Whether through personal or political inadequacy, most of those efforts have fallen short except the 44-year-old at this White House handshake.

For John F. Kerry the Kennedy era was a sort of golden age and he hopes that the imagery and the legacy will be for him this year.

(END VIDEOTAPE)

ZAHN: For more on the imprint that John Kennedy left on John Kerry, I am joined from Washington by biographer Laurence Leamer. His most recent book is, "Sons Of Camelot, The Fate Of An American Hero." Good to see you.

So the similarities in the two JFKs are certainly hard to ignore. But there are some very distinct differences there? LAURENCE LEAMER, KENNEDY FAMILY BIOGRAPHER: Yes, there certainly are. The idea of some ways it's very similar in that they are both authentic heroes, although there have been aspersions on them, JFK during his lifetime as well. They both saved one of their sailors. They both deserve the title of hero but the motivation is very different.

John F. Kennedy was a kind of reluctant hero. When his boat was cut in half by a Japanese destroyer and he was killed. John Kerry, he's more like JFK's older brother. He was the anointed, the golden one in the Kennedy family. He was brought up to be president of the United States. He thought he would be president. He was opposed to World War II, but he entered because he thought, "I've got to be a hero. So he was a self-conscious hero and he sought the hero's medals and the glory and in the summer of 1944, he volunteered for a very risky mission and he was killed. And that's a more similar case.

ZAHN: Laurence, when you see pictures of John Kerry with Ted Kennedy, for example, you are left with the impression that they are close. But it hasn't always been that way, has it?

LEAMER: No, I mean Ted Kennedy is an 800-pound gorilla in Massachusetts. He doesn't like anybody to get too close to him, and in the -- during the early years, I mean, he was not too comfortable on Kerry and Senator Kerry issues that, you know, didn't get him too close to Kennedy. Kerry wasn't going to have medical issues. He wasn't going to get in the same way. Now, Senator Ted Kennedy sees the election of Kerry as being a triumph. If he can't be in the White House, this is as close to him being in the White House as he can get.

ZAHN: How much do you think John Kerry has studied the life of John F. Kennedy?

002932



**RECORD OF TRIAL**

**OF**

**CRUZ, Armin J.**

**(b)(6)2, (1)(C)-2**

**SPC**

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

**HHS, 502d MI Bn**

**504th MI Bde**

(Unit/Command Name)

**U.S. Army**

(Branch of Service)

**Victory Base, Iraq**

(Station or Ship)

**BY**

**SPECIAL (BCD) COURT-MARTIAL**

**Convened by: Commander**

(Title of Convening Authority)

**Headquarters, III Corps**

(Unit/Command of Convening Authority)

**Tried at**

**Baghdad, Iraq**

(Place or Places of Trial)

**on**

**11 September 2004**

(Date or Dates of Trial)

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------------------------	-----------------------------	----------------------------	--------------

**PROSECUTION:**

**None.**

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

**DEFENSE:**

SFC [REDACTED]	69		
CPT [REDACTED]	76		
SFC [REDACTED]	83		
1SG [REDACTED]	88		
SSG [REDACTED]	92		
SSG [REDACTED]	93		
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**COURT:**

**None.**

**EXHIBITS ADMITTED IN EVIDENCE**

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**APPELLATE EXHIBITS**

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<b>II</b>	<b>Offer to plead guilty</b>	<b>46</b>
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DEPARTMENT OF THE ARMY  
Headquarters, III Corps  
Victory Base, Iraq  
APO AE 09342-1400

COURT-MARTIAL CONVENING ORDER  
NUMBER 6

24 July 2004

The following personnel are detailed as members of the special court-martial convened by Court-Martial Convening Order Number 2, this headquarters, dated 14 January 2004:

COL [REDACTED] HHC, 3d Sig Bde  
LTC [REDACTED], SC, HHC, 57th Sig Bn  
COL [REDACTED] HHC, III Corps  
LTC [REDACTED] HHC, III Corps  
LTC [REDACTED] HHC, III Corps

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

VICE

COL [REDACTED], HHC, III Corps  
COL [REDACTED] HHC, III Corps  
LTC [REDACTED] HHC, III Corps  
MAJ [REDACTED], AR, HHC, III Corps  
MAJ [REDACTED] HHC, III Corps

Relieved permanently.

BY COMMAND OF LIEUTENANT GENERAL METZ:

[REDACTED SIGNATURE]

Chief, Criminal Law Division

DISTRIBUTION:  
Each individual indicated (1)  
Cdr, III Corps (SJA) (1)  
Record Set (1)  
Reference Set (1)

002938

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

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

COURT-MARTIAL CONVENING ORDER  
NUMBER 2

14 January 2004

A special court-martial is convened with the following members:

COL [REDACTED], 504th MI Bde  
COL [REDACTED], HHC, III Corps  
LTC [REDACTED], TC, HHC, III Corps  
LTC [REDACTED], HHC, III Corps  
LTC [REDACTED], HHC Corps  
MAJ [REDACTED], AR, HHC, III Corps  
MAJ [REDACTED], HHC, III Corps

In the event an accused requests that the membership of the court-martial include enlisted persons, the following members are detailed to the special court-martial convened by this order:

MEMBERS

CSM [REDACTED], HHC, III Corps  
CSM [REDACTED], 504th MI Bde  
SGM [REDACTED], HHC, III Corps  
MSG [REDACTED], HHC, 89th MP Bde  
MSG [REDACTED], HHC, 3d Sig Bde

VICE

COL [REDACTED], HHC, III Corps  
COL [REDACTED], HHC, III Corps  
LTC [REDACTED], HHC, III Corps  
LTC [REDACTED], HHC Corps  
MAJ [REDACTED], HHC, III Corps

Relieved only for trials in which an accused requests that the membership of the court-martial include enlisted persons.

BY COMMAND OF LIEUTENANT GENERAL METZ:

[REDACTED]

DISTRIBUTION:

Each individual indicated (1)  
Cdr, III Corps (SJA) (1)

[REDACTED]  
MAJ, JA  
Chief, Criminal Law Division

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1 MJ: Court is called to order.

2 TC: This court-martial is convened by Court-Martial Convening  
3 Order Number 2, Headquarters, III Corps, dated 14 January 2004, as  
4 amended by Court-Martial Convening Order Number 6, same headquarters,  
5 dated 24 July 2004, copies of which have been furnished the military  
6 judge, counsel and the accused and which will be inserted at this  
7 point in the record. The charges have been properly referred to this  
8 court for trial and were served on the accused on 5 September 2004.

9 The prosecution is ready to proceed in the case of United  
10 States versus Specialist Armin J. Cruz.

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

13 COLONEL [REDACTED], MILITARY JUDGE;

14 MAJOR [REDACTED], TRIAL COUNSEL;

15 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;

16 MR. [REDACTED], CIVILIAN, DEFENSE COUNSEL; and (b)(6)4, (7)(C)4

17 CAPTAIN [REDACTED], ASSISTANT DEFENSE COUNSEL.

18 The members are absent.

19 Sergeant First Class [REDACTED] has been detailed  
20 reporter for this court and has been previously sworn.

21 All members of the prosecution have been detailed to this  
22 court-martial by Captain [REDACTED] Chief of Justice, III

ALL(b)(6)2;(b)(7)2

1 Corps. All members of the prosecution are qualified and certified  
2 under Article 27(b) and sworn under Article 42(a), Uniform Code of  
3 Military Justice. No member of the prosecution has acted in any  
4 manner which might tend to disqualify us in this court-martial.

5 MJ: Specialist Cruz, you have the right to be represented by  
6 Captain [REDACTED] your detailed military defense counsel. He is  
7 provided to you at no expense to you. Do you understand that?

8 ACC: I understand that, sir.

9 MJ: You also have the right to request a different military  
10 lawyer to represent you. If the person you request is reasonably  
11 available, he or she would be appointed to represent you free of  
12 charge. Now, if your request for this other military lawyer were  
13 granted, however, you would not have the right to keep the services  
14 of your detailed defense counsel because you are entitled only to one  
15 military lawyer. Now, you may ask Captain [REDACTED] superiors to let  
16 him stay on the case, but your request would not have to be granted.  
17 Do you understand that?

18 ACC: Yes, sir.

19 MJ: In addition, you have the right to be represented by a  
20 civilian lawyer. A civilian lawyer would have to be provided by you  
21 at no expense to the government. If you're represented by a civilian  
22 lawyer, you can keep your military lawyer on the case to assist your

1 civilian lawyer. Or, you could excuse your military lawyer and be  
2 represented only by your civilian lawyer. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Specialist Cruz, do you understand your rights to counsel?

5 ACC: I understand, sir.

6 MJ: By whom do you wish to be represented?

7 ACC: I wish to be represented by Mr. [REDACTED]. (b)(6)4, (7)(C)4

8 MJ: And Captain [REDACTED], also? (b)(6)2, (7)(C)-2

9 ACC: Both, yes, sir.

10 MJ: Those two and nobody else?

11 ACC: Yes, sir.

12 MJ: Captain [REDACTED] (b)(6)-2, (7)(C)-2, put your detailing and qualifications on  
13 the record.

14 DC: I have been detailed to this court-martial by Lieutenant  
15 Colonel [REDACTED] (b)(6)2, (7)(C)2. I'm qualified and certified under Article 27(b)  
16 and sworn under Article 42 Alpha, Uniform Code of Military Justice.  
17 I have not acted in any manner which might tend to disqualify me in  
18 this court-martial.

19 MJ: Mr. [REDACTED] (b)(6)4, (7)(C)4 put your qualifications on the record, please.

20 CDC: Yes, Your Honor. I'm an attorney licensed to practice law  
21 in the state of Texas. I'm a member in good standing of the state

1 bar. I have not acted in any manner which might tend to disqualify  
2 me in this court-martial.

3 [The civilian defense counsel was sworn by the military judge.]

4 MJ: I've been properly certified, sworn, and detailed to this  
5 court-martial. Counsel for both sides appear to have the requisite  
6 qualifications and all personnel required to be sworn have been  
7 sworn.

8 Trial counsel will announce the general nature of the  
9 charges.

10 TC: Yes, sir. The general nature of the charges in this case  
11 is one specification of conspiracy to maltreat a subordinate and one  
12 specification of maltreatment of a subordinate.

13 (b)(6)2, (7)(C)2 The charges were preferred by Captain [REDACTED]  
14 and forwarded with recommendations as to disposition by Major [REDACTED]  
15 [REDACTED] and Colonel [REDACTED]. The Article 32 investigation was  
16 waived.

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

19 MJ: As I think both sides are aware of, I am the military judge  
20 in the companion cases involving, at least according to the  
21 Specification, Corporal [REDACTED], Sergeant [REDACTED], and Specialist  
22 [REDACTED]. I have no involvement up to this point with Specialist [REDACTED]

1 and in neither of the other three cases have we done anything in the  
2 case except motions. There has been no entering of findings. The  
3 trials are pending. And I have tried and accepted a guilty plea in a  
4 co-accused's case by the name of Specialist <sup>(b)(5)(7)(C)-5</sup> [REDACTED]. I believe  
5 both sides are aware of that. I made no findings in that case or  
6 credibility determinations. I did enter findings of guilty pursuant  
7 to his plea and sentenced him.

8 I'm assuming both sides are aware of my involvement in the  
9 companion cases?

10 TC: Yes, sir.

11 CDC: Yes, Your Honor.

12 MJ: Does either side desire to question me further or to  
13 challenge me?

14 TC: No, Your Honor.

15 DC: No, sir.

16 MJ: Now, Major <sup>(b)(6)2:(7)(C)2</sup> [REDACTED], you said the Article 32 in this case was  
17 waived, but my charge sheet shows this has been referred to a  
18 straight special--or to a BCD special?

19 TC: Yes, sir, that's correct.

20 MJ: Specialist Cruz, you have the right to be tried by a court  
21 composed of at least three officer members. Also, if you requested,  
22 you would be tried by a court consisting of at least one-third

1 enlisted members, but none of those enlisted members could come from  
2 your company and no member of the court would be junior in rank to  
3 you. Do you understand what I've said so far?

4 ACC: I understand, sir.

5 MJ: Now, if you're tried by court members, the members will  
6 vote by secret, written ballot and two-thirds of the members must  
7 agree before you could be found guilty of any offense. If you were  
8 found guilty, then two-thirds must also agree in voting on a  
9 sentence. Do you understand that?

10 ACC: I understand, sir.

11 MJ: You also have the right to request a trial by military  
12 judge alone. And if approved, there will be no court members, and  
13 the judge alone will decide whether you are guilty or not guilty, and  
14 if found guilty, the judge alone will determine your sentence.

15 Do you understand the difference between trial before  
16 members and trial before military judge alone?

17 ACC: Yes, sir.

18 MJ: Do you understand the choices that you have?

19 ACC: Yes, sir.

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

21 ACC: I wish to be tried by judge alone, sir.

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1 MJ: I have before me what's been marked as Appellate Exhibit I,  
2 a written request for trial by military judge alone. Specialist  
3 Cruz, is that your signature on this document?

4 ACC: It is, sir.

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

7 ACC: I did, sir.

8 MJ: My name was written in there up at the top?

9 ACC: Yes, sir.

10 MJ: Now, is your request a voluntary one? By that, I mean, are  
11 you making this request of your own free will?

12 ACC: I'm sorry, sir?

13 MJ: Is your request a voluntary one? By that, I mean, are you  
14 making this request of your own free will?

15 ACC: I am making the request, sir.

16 MJ: If I approve your request for trial by me alone, you give  
17 up your right to be tried by a court composed of members. Do you  
18 understand that?

19 ACC: Yes, sir.

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

21 ACC: Yes, sir.

**002946**

1 MJ: Defense, I understand there is a pretrial agreement in this  
2 case. Is that correct?

3 CDC: Yes, Your Honor.

4 MJ: Is the judge alone request part of the pretrial agreement?

5 DC: Yes, Your Honor.

6 MJ: Specialist Cruz, we'll talk more about your pretrial  
7 agreement later in the case, but I want to go over this provision  
8 with you now. Your pretrial agreement apparently states that you  
9 agree to waive, that is, give up trial by members and select trial by  
10 military judge alone. Is that correct?

11 ACC: Yes, sir.

12 MJ: Do you understand the difference between trial before  
13 members and trial before military judge alone as I explained them to  
14 you earlier?

15 ACC: I understand, sir.

16 MJ: Did you understand these differences between the various  
17 types of trial at the time you signed your pretrial agreement?

18 ACC: Yes, sir.

19 MJ: Did you understand you were giving up trial with members  
20 when you signed your pretrial agreement?

21 ACC: Did I understand the....

1 MJ: You were giving up trial with members when you signed your  
2 pretrial agreement?

3 ACC: Yes, sir.

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

5 ACC: It was, sir.

6 MJ: The request for trial by military judge alone is approved.  
7 The court is assembled. The accused will now be arraigned.

8 TC: All parties to the trial have been furnished with a copy of  
9 the charges. Does the accused want them read?

10 CDC: The accused waives the reading of the charges.

11 MJ: The reading of the charges may be omitted.

12 **[THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]**

13 **[END OF PAGE]**

## CHARGE SHEET

### I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>CRUZ, ARMIN J.</b>		2. SSN <b>(b)(6)2;(7)(C)-2</b>		3. GRADE OR RANK <b>SPC</b>	4. PAY GRADE <b>E-4</b>
5. UNIT OR ORGANIZATION <b>Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, APO AE 09342</b>				6. CURRENT SERVICE	
				a. INITIAL DATE <b>28 SEP 2000</b>	b. TERM <b>8 years</b>
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC <b>\$1,726.80</b>	b. SEA/FOREIGN DUTY <b>N/A</b>	c. TOTAL <b>\$1,726.80</b>	<b>None</b>		<b>N/A</b>

### II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with Corporal [REDACTED], Staff Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED], and others, to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Corporal [REDACTED] forced detainees to conduct various physical exercises while the detainees were naked and the said SPC [REDACTED] poured water on the detainees.

*(b)(6)5;(7)(C)5*

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, did maltreat several detainees, persons subject to his orders, by forcing naked detainees to crawl on the floor in such a manner as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another.

### III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]		b. GRADE <b>CPT</b>	c. ORGANIZATION OF ACCUSER <b>HHSC, 502nd MI Battalion</b>
d. SIGNATURE OF ACCUSER [REDACTED]		(b)(6)-2;(7)(C)-2	e. DATE <b>4 SEP 04</b>

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of September, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

[REDACTED]  
Typed Name of Officer

**HHD, 504<sup>th</sup> Military Intelligence Battalion**  
Organization of Officer

**Captain**

**Trial Counsel**

Grade

Official Capacity to Administer Oath

(See R.C.M. 307(b) - must be a commissioned officer)

[REDACTED]  
Signature

12.

On 4 September 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[Redacted]  
Typed Name of Immediate Commander

HHSC, 502nd MI Battalion  
Organization of Immediate Commander

Captain  
Grade

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

[Redacted]  
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1350 hours, 4 Sept, 2004 at HQ, 502nd MI BN  
Designation of Command or

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

FOR THE <sup>1</sup>

[Redacted]  
Typed Name of Officer

Commanding  
Official Capacity of Officer Signing

Major  
Grade

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

[Redacted]  
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY  
Headquarters, III Corps

b. PLACE Victory Base, Iraq  
APO AE 09342

c. DATE (YYYYMMDD)  
SEP 5 2004

Referred for trial to the special court-martial convened by Court-Martial Convening Order Number 2, dated 14 January 2004, as amended by Court-Martial Convening Order Number 6, dated 24 July 2004, subject to the following instructions: <sup>2</sup>

Empowered to adjudge a bad-conduct discharge.

By COMMAND of LIEUTENANT GENERAL METZ:  
Command or Order

[Redacted]  
Typed Name of Officer

Chief, Paralegal NCO  
Official Capacity of Officer Signing

Sergeant Major/E-9  
Grade

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

[Redacted]  
Signature

15.

On 05, SEP, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted]  
Typed Name of Trial Counsel

(b)(6)2, (7)(C)2

Major  
Grade or Rank of Trial Counsel

[Redacted]  
Signature

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

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

1 TC: The charges are signed by Captain [REDACTED], a  
2 person subject to the Code as accuser; are properly sworn to before a  
3 commissioned officer of the armed forces authorized to administer  
4 oaths; and are properly referred to this court for trial by  
5 Lieutenant General Thomas F. Metz, the Convening Authority.

6 MJ: Accused and counsel, please rise. [The accused and his  
7 counsel stood.]

8 Specialist Armin J. Cruz, I now ask you, how do you plead?  
9 Before receiving your plea, however, I advise you that any motions to  
10 dismiss or to grant other appropriate relief should be made at this  
11 time. Your defense counsel will speak for you.

12 CDC: Your Honor, the defense has no motions.

13 MJ: Please enter a plea.

14 CDC: **To all charges and their specifications: Guilty.**

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

21 ACC: I understand.

1 MJ: A plea of guilty is equivalent to a conviction and is the  
2 strongest form of proof known to the law. On your plea alone and  
3 without receiving any evidence, this court can find you guilty of the  
4 offenses to which you've pled guilty. Your plea will not be accepted  
5 unless you realize that by your plea, you admit every act or omission  
6 and element of the offenses to which you've pled guilty, and that  
7 you're pleading guilty because you actually are, in fact, guilty. If  
8 you do not believe that you are guilty, then you should not, for any  
9 reason, plead guilty.

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

11 ACC: Yes, sir.

12 MJ: Now by pleading guilty, you give up three important rights,  
13 first, the right against self-incrimination; that is, the right to  
14 say nothing at all.

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

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

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

22 ACC: No, I do not, sir.

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

3 ACC: Yes, sir.

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

8 ACC: Yes, sir.

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

12 ACC: I do, sir.

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

15 Is there a stipulation of fact?

16 TC: Yes, Your Honor.

17 MJ: It's been marked as Prosecution Exhibit 1 for  
18 identification.

19 Specialist Cruz, I have before me what's been marked as  
20 Prosecution Exhibit 1 for identification, a stipulation of fact. Did  
21 you sign this stipulation?

22 ACC: I did, sir.

1 MJ: You did sign it?

2 ACC: Yes, sir.

3 MJ: And did you read it thoroughly before you signed it?

4 ACC: I did, sir.

5 MJ: Do both counsel agree to this stipulation and that your  
6 signatures appear on the document?

7 TC: Yes, sir.

8 CDC: Yes, Your Honor.

9 MJ: Now, Specialist Cruz, a stipulation of fact is an agreement  
10 among the trial counsel, your defense counsel and you, that the  
11 contents of the stipulation are true, and if entered into evidence,  
12 are the uncontradicted facts in this case. No one can be forced to  
13 enter into a stipulation, so you should enter into it only if you  
14 truly want to do so. Do you understand that?

15 ACC: I do, sir.

16 MJ: Now, I want to make sure that you and I have the same  
17 stipulation. I have one that's got eight pages of narrative and then  
18 there's a signature?

19 ACC: Yes, sir.

20 MJ: After that, there's one, two, three, four, five pictures,  
21 five photos.

22 ACC: Yes, sir.

1 MJ: And that's what you have, okay. In this whole document,  
2 the photos and the narrative constitute the stipulation of fact.  
3 That's your understanding?

4 ACC: I understand that, sir.

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

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

11 ACC: I understand and agree, sir.

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

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

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

20 ACC: I understand, sir.

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

1 [The accused did as directed.]

2 MJ: Have you finished reading the stipulation of fact?

3 ACC: Yes, sir.

4 MJ: Is everything in the stipulation true?

5 ACC: Yes, sir.

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

8 ACC: No, sir.

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

12 ACC: Yes, sir.

13 MJ: Defense counsel, do you have any objection to Prosecution  
14 Exhibit 1 for identification?

15 CDC: No, Your Honor.

16 MJ: Prosecution Exhibit 1 for identification is admitted into  
17 evidence, subject to my acceptance of the accused's guilty plea.

18 Specialist Cruz, at this time, I'm going to explain to you  
19 the elements of the offenses to which you have pled guilty. By  
20 "elements," I mean those facts which the government would have to  
21 prove beyond a reasonable doubt before you could be found guilty if  
22 you had pled not guilty. When I state each element, ask yourself two

1 things, first, is the element true; and second, whether you wish to  
2 admit that it's true. After I list the elements for you, be prepared  
3 to talk to me about the facts regarding the offenses.

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

5 ACC: Yes, sir.

6 MJ: I'm going to start with Charge II. In the Specification of  
7 Charge II, you have pled guilty to maltreatment of subordinates, in  
8 violation of Article 93 of the Uniform Code of Military Justice. As  
9 alleged and pled, this offense has the following two elements:

10 One, that several detainees were subject to your orders.

11 And two, that at or near Baghdad Central Confinement  
12 Facility, Abu Ghraib, Iraq, on or about 25 October 2003, you  
13 maltreated the said several detainees by forcing them to crawl on the  
14 floor in such a manner as to cause the detainees' genitals to touch  
15 the floor and by handcuffing the said detainees to one another.

16 "Subject to the orders of" include persons under the direct  
17 or immediate command of you. The maltreatment must be real, although  
18 it does not have to be physical. "Maltreated" refers to treatment  
19 that when viewed objectively under all the circumstances is abusive  
20 or otherwise unwarranted, unjustified and unnecessary for any lawful  
21 purpose and that results in physical or mental harm or suffering or

1 reasonably could have caused physical or mental harm or suffering.  
2 Assault or improper punishment may constitute this offense.

3 Now, turn back to Charge I. In the Specification of Charge  
4 I, you have pled guilty to conspiracy to maltreat subordinates, in  
5 violation of Article 81 of the Uniform Code of Military Justice. As  
6 alleged and pled, this offense has the following two elements:

7 First, that at or near Baghdad Central Correctional  
8 Facility, Abu Ghraib, Iraq, on or about 25 October 2004 [sic], you  
9 entered into an agreement with Corporal [REDACTED], Staff <sup>all</sup> (b)(6)5, (7)(C)5  
10 Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED]  
11 [REDACTED] and others to commit maltreatment of subordinates, an offense  
12 under the Uniform Code of Military Justice.

13 And two, that while the agreement continued to exist and  
14 while you remained a party to the agreement, Corporal [REDACTED] and  
15 Specialist [REDACTED] performed the overt acts alleged, that is, Corporal  
16 [REDACTED] forced detainees to conduct various physical exercises while  
17 the detainees were naked, and Specialist [REDACTED] poured water on the  
18 detainees for the purpose of bringing about the object of the  
19 agreement.

20 Now, the elements of the offense to which you are charged  
21 with conspiracy to commit, namely, maltreatment of subordinates, or  
22 as I told you earlier for Charge I, proof that the offense of

1 maltreatment of subordinates actually occurred is not required.  
2 However, to be guilty of conspiracy, the agreement must have included  
3 every element of the offense of maltreatment of subordinates.

4 Now, the agreement of the conspiracy does not have to be in  
5 any particular form or expressed in formal words. It is sufficient  
6 if the minds of the parties reach a common understanding to  
7 accomplish the object of the conspiracy, and this may be proved by  
8 the conduct of the parties. The agreement does not have to express  
9 the part in which the conspiracy is to be carried out or what part  
10 each conspirator is to play. The overt act required for this offense  
11 does not have to be a criminal act, but it must be a clear indication  
12 that the conspiracy is being carried out. The overt act may be done  
13 either at the time of or following the agreement. The overt act must  
14 clearly be independent of the agreement itself, that is, it must be  
15 more than merely the act of entering into the agreement or an act  
16 necessary to reach the agreement.

17 Specialist Cruz, do you understand the elements and  
18 definitions as I've read them to you and as they apply to each  
19 specification?

20 ACC: I understand, sir.

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

1 ACC: I understand, yes, sir.

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

3 ACC: Yes, sir, I don't know how to bring this up, it's the date,  
4 sir?

5 MJ: The date?

6 ACC: You said 2004, and it's 2003.

7 MJ: Well, the charge sheet says 2003.

8 ACC: Oh, my apologies, sir.

9 MJ: No, it was my fault, it's my fault. I wrote down 2004, but  
10 no, thank you. No, both of these events allegedly occurred on or  
11 about 25 October 2003.

12 ACC: Yes, sir.

13 MJ: Do you have any other questions?

14 ACC: No, sir.

15 MJ: Do you believe and admit the elements and definitions taken  
16 together correctly describe what you did?

17 ACC: I do, sir.

18 MJ: Specialist Cruz, at this time, I want you to talk about  
19 what happened. First of all, how old are you?

20 ACC: I'm 24 now, sir.

21 MJ: And how long have you been in the Army?

22 ACC: In just a couple of weeks, it will be 4 years, sir.

1 MJ: 4 years. Are you a Reserve component soldier?  
2 ACC: I am, sir.  
3 MJ: Are you National Guard or Reserve?  
4 ACC: Reserve, sir.  
5 MJ: Reserve, okay. And were you activated for this deployment?  
6 ACC: I was, sir.  
7 MJ: And when were you activated, approximately?  
8 ACC: March 17th, if memory serves, sir.  
9 MJ: 2003?  
10 ACC: Yes, sir.  
11 MJ: And how long were you activated for?  
12 ACC: There's some confusion as to that from the unit, sir. The  
13 first set of orders we got were for 6 months, but it ended up being  
14 for the one-year tour in Iraq, sir.  
15 MJ: And then have you been extended beyond that pending this  
16 proceeding?  
17 ACC: Pardon me, sir?  
18 MJ: Have you been extended beyond that pending this proceeding?  
19 ACC: Yes, sir.  
20 MJ: Defense, is there any issue that the accused is properly on  
21 active duty for this trial?  
22 CDC: He's properly on active duty, Your Honor.

1 MJ: Currently.

2 CDC: Yes, sir.

3 MJ: There's no issue as to----

4 CDC: There's no issue.

5 MJ: Now let's go back to 23 October of--excuse me, 25 October  
6 of 2003, I'll get the dates right. Now, were you working at the  
7 prison at Abu Ghraib at the time?

8 ACC: I was, sir.

9 MJ: What was your job?

10 ACC: I was an analyst, a member of a Tiger Team.

11 MJ: A Tiger Team, and your MOS is what?

12 ACC: 96 Bravo, intelligence analyst.

13 MJ: That would be in the rubric of the military intelligence  
14 area?

15 ACC: Yes, sir.

16 MJ: And you were there in the course of your job, and again, I  
17 don't want you to tell me anything that may be classified. What did  
18 you do in the day to day, doing the job in your MOS, I know that  
19 there's other things that soldiers do.

20 ACC: Roger, sir. During the time that I was at Abu Ghraib on a  
21 Tiger Team before I moved to other sections, the job duties would  
22 require finding intelligence gaps that an interrogator may find, and

1 then researching the information to prove or disprove whatever  
2 information was extracted in interrogation.

3 MJ: So, somebody else--you weren't an interrogator then.

4 ACC: I was never--I'm not qualified. I didn't go to AIT, sir,  
5 as an interrogator, but there were times that I was asked to  
6 interrogate based on the security clearance level for the  
7 interrogation.

8 MJ: Okay, so your day-to-day activities were to analyze the  
9 intelligence other interrogators got, but occasionally because of  
10 your clearance, you had to ask detainees or the individuals  
11 questions.

12 ACC: Roger, because of the difference between an interrogator's  
13 clearance and the analyst's clearance.

14 MJ: Okay, now on the 25th of October of 2003, from looking at  
15 the stipulation of fact, this event began, at least your involvement  
16 was, when Specialist [REDACTED] woke you up? <sup>all</sup> (b)(6)S;(b)(7)C/S

17 ACC: Roger, sir.

18 MJ: Now, in your own words, just kind of tell me what happened  
19 that day.

20 ACC: I was on my cot. It was late. I was getting ready to rack  
21 out, or I was already racked out. Specialist [REDACTED] came to the hooch  
22 area that I was staying in.

Q02 (b)(6)5; (7)(C)5

1 MJ: Now who's Specialist [REDACTED]

2 ACC: He's an interrogator, 97 Echo, assigned to the unit I was  
3 assigned to, sir.

4 MJ: Okay, he was an interrogator, but he was also in your  
5 military intelligence unit for want of a better term.

6 ACC: Roger, sir.

7 MJ: Okay, go ahead.

8 ACC: And then said that he was--he told me that the MPs were  
9 disciplining three detainees that were alleged to have raped a  
10 teenager and if I wanted to go see what they were doing. And, I  
11 said, "Yes," I walked down there. When I got there, it appeared that  
12 they were taking a break. My assumption was that Specialist [REDACTED] was  
13 there for the first part because he told me what they were doing, it  
14 was--punishing for raping a young man. And then....

15 MJ: When you showed up, there was nothing going on.

16 ACC: It seemed like they were done, yes, sir, a break.

17 MJ: Now, when you said "showed up," where did this occur?

18 ACC: In the hard site, sir.

19 MJ: Now, there's two tiers there?

20 ACC: I always got them confused, sir.

21 MJ: Confused, okay.

all (b)(6)5; (7)(C)5

1 ACC: I'm going to trust that this is right and it was 1B, but I  
2 always had a hard time what that was.

3 MJ: And when you walked into this scene up to the point before  
4 you did anything, who did you see there that you can remember?

5 ACC: I remember seeing a female, Army Specialist [REDACTED] a lady,  
6 a female soldier who I didn't realize her name until later on in the  
7 media and then seeing her picture as PFC [REDACTED]. I might've known  
8 her name that day, but I really didn't know her; Sergeant [REDACTED],  
9 Corporal [REDACTED] Specialist [REDACTED], Specialist [REDACTED], Specialist  
10 [REDACTED]. There was a civilian interpreter there, I can't really  
11 pronounce his name correctly.

12 MJ: Was he an Iraqi civilian?

13 ACC: No, no, sir, he worked for, my belief is that he worked for  
14 the Titan group. He worked with soldiers.

15 MJ: I mean, but was he American?

16 ACC: Yes, sir. Then there was a soldier there that was in green  
17 BDUs. I couldn't tell you his name, sir. That's all that I can  
18 remember, sir.

19 MJ: Now, did you see any detainees when you walked up?

20 ACC: Not initially. Soon after I got there, Specialist [REDACTED]  
21 pulled them out.

22 MJ: Pulled them out from where?

all (b)(6)s, (b)(7)(C)s

1 ACC: Cells, sir.

2 MJ: Were they in three separate cells, or all were in one cell,  
3 if you can remember?

4 ACC: If memory serves right, sir, I believe two were together  
5 and one was brought later, and I don't know from where, sir.

6 MJ: And Specialist [REDACTED] brought them out. Now, you're in a  
7 hallway between cells here?

8 ACC: Yes, sir.

9 MJ: And this is a multi-tiered operation, two tiers?

10 ACC: Yes, sir.

11 MJ: And the floor is concrete?

12 ACC: Yes, sir.

13 MJ: So Specialist [REDACTED], you said, brought the three guys out?

14 ACC: Roger, sir.

15 MJ: What were they wearing?

16 ACC: To be honest, I couldn't remember. The typical garb was  
17 either, an orange jumpsuit, sometimes sheets.

18 MJ: The first time----

19 ACC: They were wearing something, yes, sir.

20 MJ: The first time you saw the three detainees, they were  
21 wearing something.

22 ACC: I believe one of them was just in underwear.

1 MJ: Did they eventually become naked?

2 ACC: Yes, they did, sir.

3 MJ: How did that happen?

4 ACC: By orders of me and other people there, sir.

5 MJ: Now, you walk up to the scene, had you heard anything  
6 before this about how the MPs sometimes treated the detainees?

7 ACC: I didn't know how they brought their disciplinary  
8 procedures or anything, sir.

9 MJ: So you walked up, and then you said, you among others told  
10 them to take off all their clothes?

11 ACC: Yes, sir.

12 MJ: Well, why did you do that?

13 ACC: There's no real good reason why that would happen, sir.

14 MJ: Do you have a real bad reason why it happened, though?  
15 Were you just going along with what the other guys were doing?

16 ACC: Perhaps that's a part of it. I think a bigger part is I--I  
17 think this is in there that....

18 MJ: Specialist Cruz, don't worry about whether it's in the  
19 stipulation of fact or not, just tell me in your own words as best  
20 you can remember, okay?

21 ACC: I was under the--I didn't really see when I was looking at  
22 the three detainees that were rapists when I was looking at them,

1 sir. It was shortly after a mortar attack, and frankly, I saw three  
2 guys that killed two soldiers and injured me, injured my bosses, and  
3 that's not a reason.

4 MJ: No, it's an explanation though. You were saying, and the  
5 mortar attack that occurred about a month earlier that's in the  
6 stipulation of fact of where two soldiers died, including one who  
7 apparently you knew?

8 ACC: He was my boss for a while, sir, he was my NCOIC.

9 MJ: And other people were injured. So when you came onto this  
10 scene, you saw these three Iraqis, you associated them with the  
11 Iraqis who, or similar to the Iraqis who had mortared your friends.  
12 Is that what you're telling me?

13 ACC: Yes, sir.

14 MJ: That in your mind, you knew they weren't the same guys, or  
15 they could be, but you didn't know.

16 ACC: They could've been, I mean, there's no proof. It wasn't a  
17 logical thing.

18 MJ: But did you want then to take out on them what happened to  
19 your friends?

20 ACC: I believe that's correct.

21 MJ: Now, when you walked in, you were clear that these people  
22 were detainees?

1 ACC: Yes, sir, they were in the prison.

2 MJ: And in your role as, I guess, primarily as a soldier, are  
3 they subject to your orders?

4 ACC: They are, sir.

5 MJ: The way the prison runs is that they have to obey what you  
6 tell them to do?

7 ACC: Yes, sir.

8 MJ: Okay, so they come out and then you and others tell them to  
9 take off their clothes. What happened next?

10 ACC: They were told to do various physical exercises such as the  
11 low crawlings. When one of them arched their back up to get up, I  
12 put my----

13 MJ: How did they--we're kind of out of sequence here. They  
14 came out, you told them...Specialist Cruz, take your time. We've got  
15 all the time in the world. They came out, you among others told them  
16 to take off their clothes.

17 ACC: Yes, sir.

18 MJ: And then, what happened right after that?

19 ACC: They were handcuffed together, sir, near--I believe the  
20 first time was standing up next to the actual bars of the cell.

21 MJ: Okay, now did you handcuff them to each other? Did you  
22 help the other ones handcuff----

1 ACC: At this time--I did, yes, I'm not saying I did not, I did,  
2 but not at this particular time.

3 MJ: Okay, it starts out, somebody else is handcuffing them  
4 together, and they're standing up?

5 ACC: Right.

6 MJ: What happened next?

7 ACC: They were instructed to get on the ground, and that's when  
8 I started with the handcuffing.

9 MJ: They got on the ground and then you started handcuffing.

10 ACC: Roger.

11 MJ: Now, were they any threat to you at this time?

12 ACC: No, they were not.

13 MJ: You had a, what, half dozen, at least, soldiers there, if  
14 not more? And these guys, were these guys obeying everything you  
15 guys told them to do?

16 ACC: They were.

17 MJ: When you told them to take off their clothes, they took off  
18 their clothes?

19 ACC: Yes, sir. (b)(6)S (7)(4)S

20 MJ: When [REDACTED] pulled them out, one female specialist was able  
21 to tell all three to come out?

22 ACC: Yes, sir.

1 MJ: So there was no risk of these guys.

2 ACC: They were not a threat to us.

3 MJ: Why did you handcuff them then? I mean, was this part of  
4 your...I mean, did you do it to protect yourself or did you do it to  
5 mess with the guys, for want of a better term?

6 ACC: I believe it would be the latter, to mess with them, sir.  
7 And they clearly weren't any sort of threat to us. They couldn't  
8 have inflicted any harm to any of us.

9 MJ: And do you think when you did that, that caused them  
10 physical suffering?

11 ACC: Yes, sir.

12 MJ: And in this whole environment, having their clothes taken  
13 off and putting them down----

14 ACC: It was humiliating.

15 MJ: What happened next?

(b)(6)S;(7)C)-5

16 ACC: At some point right thereafter, Specialist [REDACTED] went to the  
17 second floor--before that, actually, there was a time when two of  
18 them were handcuffed on the ground. They were both handcuffed on the  
19 ground. There was a third detainee off closer to the main exit door.  
20 Specialist [REDACTED] was asking that person, "Why did you rape this young  
21 man?" And he expressed to him that he did not want him to lie, and  
22 to tell him the truth. (b)(6)S;(7)C)S

1 MJ: Did he say it like you saying it to me, or was it perhaps a  
2 lot more forceful?

3 ACC: It was yelling and screaming. He wasn't happy at the time.

4 MJ: Did any of these guys speak English, to your knowledge?

5 ACC: No, sir. The civilian, whose name I can't pronounce  
6 correctly----

7 MJ: Was he kind of translating or....

8 ACC: Roger, sir.

9 MJ: Okay, go ahead. (465)(70)5

10 ACC: At one point, the first overt act there I saw was  
11 Specialist [REDACTED] go grab a detainee by...I don't remember if he was  
12 wearing a jumpsuit or just grabbing him by the chest. I remember  
13 grabbing this area.

14 MJ: The upper chest area?

15 ACC: Roger, and slapped him and said, "I know you're lying to  
16 me. Tell me the truth."

17 MJ: Okay, what happened next?

18 ACC: I think he pulled them over to the two detainees and he  
19 walked upstairs.

20 MJ: Okay, was this guy, was he naked, too, then at that point,  
21 or had he put his clothes back on?

All (b)(6)s, (b)(7)(C)s

1 ACC: If he did have clothes on, and I don't think he did, sir.  
2 He definitely was instructed to get them off by the time he got to  
3 the other two detainees.

4 MJ: So when you say [REDACTED] may have grabbed his shirt, you're  
5 just not sure whether he was undressed. Okay, so he goes back  
6 and....

7 ACC: Second floor, someone was throwing a Nerf ball, initially.  
8 I don't remember who it was. I know I saw Specialist [REDACTED] up there.  
9 He took a Nerf ball, football, and threw it down on the detainees.

10 MJ: And threw it down, and what did he do with it?

11 ACC: He just threw it down at the detainees, sir.

12 MJ: Just to hit them?

13 ACC: Roger.

14 MJ: What were the detainees doing at this time?

15 ACC: Nothing, they couldn't do anything, sir. They were  
16 helpless, they were handcuffed.

17 MJ: They were handcuffed? Were the handcuffs behind their back  
18 or in front, or were they handcuffed together?

19 ACC: They were handcuffed...all of the above, sir.

20 MJ: The Ziploc--cuffs----

21 ACC: Negative, metal----

22 MJ: The metal regular handcuffs.

1 ACC: Right, like the handcuffs used back home in the States, not  
2 zip ties, just metal.

3 MJ: What happened next?

4 ACC: One of the senior ranking persons, Sergeant [REDACTED],  
5 reorganized the handcuffs. That went on for a little bit. I cannot  
6 tell you the logic to that one. Clearly there isn't, it was just a,  
7 "I'm gonna handcuff them this way, and then I'm going to handcuff  
8 them this way."

9 MJ: Okay.

10 ACC: And then, I went up to the second floor and I grabbed a  
11 Nerf football.

12 MJ: Okay.

13 ACC: I threw it, but I also say that I didn't hit the detainees,  
14 but it was in the direction.

15 MJ: You were trying to hit them?

16 ACC: Yes, sir.

17 MJ: I'm sorry?

18 ACC: [No verbal response.]

19 MJ: I saw you nod, it's just that the court reporter needs a  
20 verbal.

21 What happened after that?

(b)(6)S; (7)(C)S

all (b)(5), (7)(C) 5

1 ACC: I went downstairs and leaned against the wall and I said,  
2 at some point close to this, I noticed that one of the detainees  
3 around the handcuffs was starting to bleed. And I looked at Corporal  
4 [REDACTED] and I said to him, "Hey, guy, that guy's bleeding. I  
5 mean, some of this stuff you're telling me...whatever. This can't be  
6 okay. He's bleeding. We've got to loosen those cuffs. We've got to  
7 take them off. We've got to put a stop to this now."

8 MJ: Okay.

9 ACC: That went back and forth for a few minutes. It wasn't like  
10 just one time, "Hey, he's bleeding," or anything like that.  
11 Eventually, he got up, he went over and took the cuffs off. And then  
12 pretty shortly thereafter, Specialist [REDACTED] left and I left, and I  
13 would assume Specialist [REDACTED] left soon thereafter. I don't know.

14 MJ: During the time you were there, you said you'd...let's kind  
15 of back up a little bit. There was a point where you put a foot on  
16 them?

17 ACC: Yes, sir.

18 MJ: When was that?

19 ACC: A detainee was low crawling and he tried to stand up, arch  
20 up, and I just put my foot down on him.

21 MJ: He was low crawling on all fours?

22 ACC: Negative, like a low crawl.

1 MJ: Okay, like a low crawl, he was dragging himself on his  
2 elbows and pulling along, and then he'd try to raise up and you put  
3 your foot down, okay.

4 Now, did you tell them to crawl on the floor?

5 ACC: I'm sorry, sir?

6 MJ: Were you part of the group that told them to crawl on the  
7 floor?

8 ACC: Yes, sir.

9 MJ: I'm sure that's before you put your foot on him.

10 ACC: Roger, sir.

11 MJ: And that was after the handcuffs had gone on, or before?

12 ACC: Before.

13 MJ: And how did that part of the incident come up?

14 ACC: At the time we just said, you know, "Low crawl."

15 MJ: And were they naked at the time?

16 ACC: In the beginning, no, but eventually, sir, they were.

17 MJ: Were they low crawling naked?

18 ACC: Yes, sir.

19 MJ: And you told them to low crawl?

20 ACC: Yes, sir.

21 MJ: And that was causing their genitals to drag along the  
22 floor?

all (b)(6)5, (7)(C) - 5

1 ACC: Yes, sir.

2 MJ: Now, when you walked in and you saw [REDACTED], [REDACTED]  
3 [REDACTED] and [REDACTED], and there were some others involved in this, also?

4 ACC: Yes, sir.

5 MJ: And I suspect--how long did it take you to realize what was  
6 happening here?

7 ACC: Pardon me?

8 MJ: You said you walked in, the detainees were in the cell  
9 before [REDACTED] brought them out, right?

10 ACC: Right.

11 MJ: They brought them out, and [REDACTED] had said something to you  
12 earlier, "Let's see what the MPs are going to be doing."

13 ACC: Roger.

14 MJ: And then, she brings them out, and then is that when the  
15 abuse started when you were there?

16 ACC: Yes, sir.

17 MJ: So at that point, was [REDACTED], [REDACTED], [REDACTED] and [REDACTED]  
18 all involved in this?

19 ACC: [REDACTED], [REDACTED], [REDACTED], [REDACTED], yes, sir.

20 MJ: And there were some other people involved, who you don't  
21 know their names?

22 ACC: Yes, sir, I'm sorry, I wish I did.

1 MJ: No, no, no, no. The way it's charged, it says those four  
2 names and others.

3 ACC: Correct.

4 MJ: So at that point, you realized that they were going to be  
5 abusing these detainees?

6 ACC: Yes, sir.

7 MJ: And then did you, by your actions, join in with them in  
8 this abuse?

9 ACC: I did, sir.

10 MJ: Now, remember I talked to you about the conspiracy requires  
11 an agreement, and that can be in a couple of ways. It could be, for  
12 example in this case, you walk in saying, "Hey, I'll go along with  
13 you guys, let's abuse the detainees," and that would be a verbal  
14 agreement. Do you understand that?

15 ACC: Yes, sir.

16 MJ: Or by your actions, saying nothing at all, that could form  
17 an agreement, also.

18 ACC: Yes, sir.

19 MJ: Do you believe your actions indicated your affirmative  
20 agreement to go along with what they were about to do to maltreat the  
21 detainees?

all (b)(6)s, (7)(C)s

1 ACC: I think it was clear that it was a silent agreement that  
2 was expressed through my actions.

3 MJ: And in your mind, that's what you were doing.

4 ACC: Yes, sir.

5 MJ: Now after you had, by your actions, joined in with this,  
6 did [REDACTED] make the detainees do something with physical exercise?

7 ACC: Yes, sir.

8 MJ: What did he make them do?

9 ACC: Made them low crawl and a lot of PT, jumping jacks, roll  
10 left or right.

11 MJ: And at the time, they were naked?

12 ACC: Both, and yes, there were times that they were naked, yes,  
13 sir.

14 MJ: And [REDACTED], did he do anything with some water?

15 ACC: Yes, sir.

16 MJ: What did he do with water?

17 ACC: He poured water on the detainees, sir.

18 MJ: Why did he do that?

19 ACC: I have no idea, sir.

20 MJ: Let me back up. This was October, correct?

21 ACC: Yes, sir.

22 MJ: Even for Iraq, I suspect it was cool.

1 ACC: Yes, sir.

2 MJ: And was cold water being poured on them?

3 ACC: Yes, sir.

4 MJ: Do you believe that was part of the abusive behavior that  
5 these guys were doing?

6 ACC: It was, sir.

7 MJ: And you understand the law of conspiracy, is that once you  
8 join the agreement, you're responsible for all the acts?

9 ACC: I do, sir.

10 MJ: Now Specialist Cruz, I need to talk a little more about  
11 your training and background. You indicated earlier you're an  
12 intelligence analyst?

13 ACC: I am, sir.

14 MJ: In your military job.

15 ACC: Yes, sir.

16 MJ: And as such, have you received training in the Geneva  
17 Convention?

18 ACC: I did receive Geneva Convention training at basic training.

19 MJ: And have you ever received any specialized training in  
20 interrogation, proper interrogation techniques?

1 ACC: In interrogation techniques, the only thing I really  
2 received, sir, was like on the job training, sir, but no like  
3 schoolhouse training.

4 MJ: Now, at the time, were these guys, the MPs told you that  
5 these guys were suspected of raping a 15-year old boy in another part  
6 of the prison, correct?

7 ACC: At the time, it went from being a solid, "They did it," to  
8 "We think, and suspect." But at first, it was, "These guys raped a  
9 kid."

10 MJ: Were these guys, to your knowledge, have any type of  
11 intelligence value?

12 ACC: No, sir.

13 MJ: I mean, were they in the facility to begin with because of  
14 that, to your knowledge?

15 ACC: To my knowledge, they were never interrogated for any  
16 intelligence value whatsoever, sir.

17 MJ: They were simply there for other type of criminal  
18 misconduct.

19 ACC: Most likely if they were in the hard site, sir, it was  
20 either there was some kind of criminal misconduct or they were a  
21 disciplinary problem, which was held on that side.

22 MJ: Okay.

1 ACC: I mean, just from the talks in the interrogation control  
2 room, you kind of have a feeling which guys are of intelligence  
3 value, and I never heard anything about these guys having any kind of  
4 intelligence value.

5 MJ: And in your position, you would have heard that, right?

6 ACC: I believe I would, sir.

7 MJ: I mean, is it usual if someone is going to be coming--an  
8 intelligence detainee or a detainee for which there may be some  
9 interrogation, I'm assuming there's some type of interrogation plan  
10 developed?

11 ACC: Roger.

12 MJ: And they're identified. Are you involved in that part of  
13 the plan?

14 ACC: Roger.

15 MJ: So it's not just, all of a sudden people show up and the  
16 MPs start interrogating these guys.

17 ACC: MPs don't run interrogations, sir. I mean, they can help  
18 with setting conditions, which is like, where are they going to live,  
19 which camp, well, maybe in some cases the MI guys decide which camp.  
20 But the interrogation process itself is supposed to be done by  
21 interrogators.

1 MJ: And the MP's role is simply, for want of a better term,  
2 care and custody?

3 ACC: And security.

4 MJ: And security of these guys. So your job----

5 ACC: We're not responsible for feeding them, etceteras.

6 MJ: But the MPs aren't responsible for interrogating them.

7 ACC: They do not interrogate.

8 MJ: They do not interrogate. And at your level, you're at the  
9 tactical level down there where the rubber meets the road, and the  
10 MPs were not there to interrogate, they were simply to provide  
11 security and other types of things.

12 ACC: I never once saw an MP do an interrogation.

13 MJ: Never saw them----

14 ACC: Now, I've seen them in the facilities and I've seen them  
15 provide security and walk them to and from. But the interrogation  
16 process itself is solely done by either civilian or military  
17 interrogators.

18 MJ: Through----

19 ACC: MI or----

20 MJ: You're MI, okay. So then would it be fair to say that to  
21 your knowledge, there was no direction from any level to tell the MPs  
22 to interrogate these guys?

1 ACC: I can't imagine that happening, sir.

2 MJ: You just find that....

3 ACC: I can't imagine anyone telling an MP to go interrogate.

4 MJ: And then what they were doing to these guys, was it any way  
5 or shape--do you believe that they were performing something of a  
6 military authorized function of interrogating them, or did they just  
7 want to take their chance to abuse detainees?

8 ACC: They wanted to take their chance, sir.

9 MJ: Did anyone make any remarks that would indicate to you that  
10 that's what they were doing?

11 ACC: Yes, sir.

12 MJ: And what was that?

*all*  
*(b)(6)-5; (7)(C)-5*

13 ACC: At one point, when I asked Sergeant [REDACTED], I mean I  
14 asked throughout the night, "Are we within our norms here? I mean, I  
15 know what my IROE is," that's interrogation rules of engagement.

16 MJ: And your IROE says you don't do this.

17 ACC: Right, sir. You can't touch them except for handcuffing  
18 them, sir. "What's your SOP, and what's your ROE," and he said that  
19 he was in the green and he was good. And then right after that in  
20 the same conversation, Corporal [REDACTED] said that--well, Sergeant  
21 [REDACTED] said that, "Well, the thing is, this kind of thing right  
22 here doesn't happen back home." He works in a correctional facility

(b)(5), (7)(C)

1 somewhere, I don't remember where, but he said he worked in the jail.  
2 And then Corporal [REDACTED] said, you know, he loves this shit. Hey,  
3 this is what he lives for.

4 MJ: What was he referring to when he said that?

5 ACC: What's happening to the detainees, sir.

6 MJ: Now, I know you're not an MP, but when you walked in and  
7 you saw what was happening, did you know it was wrong?

8 ACC: Yes, sir.

9 MJ: Did you know your participation was wrong?

10 ACC: Yes, sir.

11 MJ: Even though you were upset about what happened to your  
12 friend, do you think that gave you a legal reason to do this to these  
13 detainees?

14 ACC: No reason, sir.

15 MJ: There's an explanation, but I'm just saying....

16 ACC: There's no way to justify that, sir.

17 MJ: And you knew it was wrong at the time, sir.

18 ACC: Yes, sir.

19 MJ: And today you know it's wrong.

20 ACC: I do, sir.

21 MJ: Does either side believe any further inquiry is required?

22 TC: No, Your Honor.

1 CDC: No, Your Honor.

2 MJ: Trial counsel, I would assume that the maximum permissible  
3 punishment in this case is the jurisdictional limit of this court?

4 TC: Yes, sir.

5 MJ: Do you agree?

6 CDC: Yes, Your Honor.

7 MJ: Special Cruz, the maximum punishment authorized in this  
8 case based solely on your guilty plea is confinement for one year,  
9 reduction to the grade of Private E1; forfeiture of two-thirds pay  
10 per month for 12 months, a bad-conduct discharge, and a fine may also  
11 be adjudged. Do you understand that?

12 ACC: Yes, sir.

13 MJ: Do you also understand that based on your plea alone, this  
14 court could sentence you to the maximum punishment of which I just  
15 stated?

16 ACC: I do, sir.

17 MJ: There is a pretrial agreement?

18 TC: Yes, sir.

19 MJ: Mark the offer portion as Appellate Exhibit II, the quantum  
20 as Appellate Exhibit III. Defense, have copies of both documents in  
21 front of the accused.

1 Specialist Cruz, I have before me what's marked as  
2 Appellate Exhibit II, which is the offer portion of your pretrial  
3 agreement. You should have both this document and also Appellate  
4 Exhibit III. Did you sign this pretrial agreement?

5 ACC: The offer to plead guilty, sir?

6 MJ: Yes.

7 ACC: Yes, I did.

8 MJ: Did you read it thoroughly before you signed it?

9 ACC: I read it, sir, yes, sir.

10 MJ: Do you understand the contents of your pretrial agreement?

11 ACC: I understand, sir.

12 MJ: Did anyone force you in any way to enter into this  
13 agreement?

14 ACC: No, sir.

15 MJ: Does this agreement contain all the understandings or  
16 agreements that you have in this case?

17 ACC: Yes, sir.

18 MJ: Has anyone made any promises to you that are not written  
19 into this agreement in an attempt to get you to plead guilty?

20 ACC: No, sir.

1 MJ: Counsel, are Appellate Exhibits II and III the full and  
2 complete agreement in this case and are you satisfied there are no  
3 other agreements?

4 TC: Yes, sir.

5 CDC: Yes, Your Honor.

6 MJ: Specialist Cruz, basically, a pretrial agreement means you  
7 agree to plead guilty, and in return, the convening authority agrees  
8 to take some favorable action in your case, usually in the form of  
9 limiting a sentence that he will approve. Do you understand that?

10 ACC: Yes, sir.

11 MJ: The law requires that I discuss the agreement with you.  
12 Let's go over Appellate Exhibit II together. The first paragraph  
13 said you talked it over with your attorneys and you've decided to  
14 plead guilty as you have done, pretty straight forward. Do you have  
15 question about that provision?

16 ACC: No, sir.

17 MJ: Paragraph 2 says you agree to do as stated in the offer to  
18 plead guilty, and in return, the convening authority will take the  
19 actions set forth in Appendix I, which I've now labeled as Appellate  
20 Exhibit III. In other words, you do what's in Appellate Exhibit II  
21 and they do what's in--or he does what's in Appellate Exhibit III.  
22 Is that your understanding?

1 ACC: Yes, Your Honor.

2 MJ: Now paragraph 3 has got a lot of parts to it. The first  
3 one, 3 Alpha deals with the stipulation of fact. We've discussed  
4 that, what it is and what it can be used for. Do you have any  
5 question about the stipulation of fact?

6 ACC: No, sir.

7 MJ: Now 3 Bravo deals with your testimony in other cases, in  
8 that the convening authority will give you testimonial immunity, and  
9 after he does that, you have to cooperate fully with the trial  
10 counsel in the investigation and prosecution of Specialist [REDACTED]  
11 Sergeant [REDACTED], Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist (b)(6)-5  
12 [REDACTED], Specialist [REDACTED], PFC [REDACTED], and any other soldier or (7)(C)5  
13 civilian charged based on misconduct at the Baghdad Central  
14 Confinement Correctional--excuse me, Confinement Facility at Abu  
15 Ghraib. Now, what testimonial immunity means is that the convening  
16 authority will sign a piece of paper saying that anything you say in  
17 the course of this cooperation cannot be used against you. Do you  
18 understand that?

19 ACC: Yes, sir. (b)(6)4, (7)(C)4

20 MJ: And Mr. [REDACTED] you've explained to him the difference  
21 between testimonial and transactional immunity and he understands  
22 what he's getting?

1 CDC: Yes, Your Honor.

2 MJ: And it talks about what "cooperate fully" means. It means  
3 full disclosure to the trial counsel of all information known by you  
4 relating to the treatment or maltreatment of any alleged abuses at  
5 the Abu Ghraib facility; the identifications of anybody that you see  
6 in digital photos on a compact disk entitled "CPU Exam," in the Abu  
7 Criminal Investigation Division file. I'm assuming, Mr. <sup>(b)(6)4, (c)4</sup> [REDACTED], you  
8 know what that refers to, the CPU Exam, do you know what that means?

9 CDC: No, Your Honor.

10 MJ: No, I'm saying, it says a compact disk titled this.

11 CDC: Oh, yes, sir, yes, sir.

12 MJ: I don't know what it means, but I'm assuming you guys know  
13 what it means, some disk that CID has.

14 CDC: Yes, sir.

15 MJ: And then testify at any Article 32 investigation, courts-  
16 martial and evidentiary hearings relative to the investigation and  
17 prosecution of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or anybody  
18 else. Do you understand that? <sup>(b)(6)-5, 7(c)5</sup>

19 ACC: Yes, sir.

20 MJ: Basically, you get the testimonial grant of immunity, then  
21 you fully cooperate. Do you understand that?

22 ACC: I understand, sir.

1 MJ: And although it's not written in here, defense, I would  
2 assume that it's also necessarily by implication the accused is also  
3 subject to be interviewed by the defense counsel for the various  
4 people named here.

5 CDC: Yes, Your Honor.

6 MJ: Do you understand that?

7 ACC: Yes, sir.

8 MJ: Three Charlie talks about the judge alone request, we've  
9 already discussed that. Do you have any questions about that  
10 provision?

11 ACC: No, Your Honor.

12 MJ: Now, there's also a second three Charlie, which I'm  
13 assuming is just a typo. And what this says, the government will not  
14 be required to physically produce any witness from the United States  
15 to testify on your behalf on sentencing. This simply means is that  
16 under R.C.M. 1001, you can have witnesses come and testify on your  
17 behalf on the sentencing proceeding. And what you're saying, you're  
18 not going to require the government to produce them physically from  
19 the United States. Do you understand that?

20 ACC: Yes, sir.

21 MJ: But it does not preclude you from presenting that evidence  
22 to the court in all sorts of other ways. You can do it by letters,

1 stipulation of expected testimony, telephonic testimony or something  
2 else. Do you understand that?

3 ACC: Yes, sir.

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

4 MJ: Paragraph 4 says you've talked it over with Mr. [REDACTED]s and  
5 you're satisfied with his advice. Have you talked it over with Mr.  
6 [REDACTED]?

7 ACC: Thoroughly, sir.

8 MJ: And you're satisfied with his advice?

9 ACC: I am, sir.

10 MJ: Five says the government initiated these negotiations, but  
11 you're pleading voluntarily and freely after advice of counsel. Is  
12 all that true?

13 ACC: Yes, sir.

14 MJ: Paragraph 6 will not appear to apply to this case, since no  
15 specification has been amended or consolidated. I assume that's  
16 boilerplate, defense, just included--it doesn't apply, true?

17 CDC: Yes, sir.

18 MJ: Basically 6 is something lawyers put in every one of these  
19 things, and nine times out of ten, it doesn't apply, and it doesn't  
20 apply to your case. It's just in there.

21 Paragraph 7 has got some things that we'll talk about if  
22 the agreement--what could cause the agreement to be canceled. If you

1 withdraw from your guilty plea at any time, the agreement is  
2 canceled. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Do you want to withdraw from your guilty plea?

5 ACC: No, sir.

6 MJ: If you change your mind, let me know, okay?

7 ACC: Yes, sir.

8 MJ: Secondly, is if you fail to plead guilty as above, or if  
9 the stipulation of fact is modified without your consent or the trial  
10 counsel. Now, neither one of those things has happened. If either  
11 one of those things were to happen, I'll revisit this provision. Do  
12 you understand that?

13 ACC: Yes, sir.

14 MJ: And lastly, in 7 Charlie, it says, if the military judge  
15 refuses to accept your plea or changes your plea of guilty during the  
16 trial. That means if at any point between now and when sentence is  
17 announced, if you tell me anything that is inconsistent with the  
18 guilty plea, I will have to reopen this inquiry. And if I can't  
19 resolve the inconsistency, I will have to enter a plea of not guilty  
20 on your behalf. The case returns to the point when I asked, "How do  
21 you plead?" and then proceeds from there forward as a not guilty plea  
22 case. Do you understand that?

1 ACC: Yes, sir.

2 MJ: So if that were to happen, you'd lose your pretrial  
3 agreement and also the stipulation of fact is canceled. Do you  
4 understand that?

5 ACC: Yes, sir.

6 MJ: Again, if that were to come up, we'll talk about it in more  
7 detail. So far, that's not, but if it does, understand, that's from  
8 now until the sentence is actually announced. Do you understand  
9 that?

10 ACC: Yes, Your Honor.

11 MJ: And paragraph 8, it says that Appellate Exhibits II and III  
12 are the full and complete agreements in the case and there's no other  
13 agreements. Is that your understanding, also?

14 ACC: Yes, sir.

15 MJ: There isn't anything else other than what's in this piece  
16 of paper, I'm holding Appellate Exhibit II and Appellate Exhibit III?  
17 Is that correct?

18 ACC: They're the same thing, right, sir?

19 MJ: No.

20 ACC: Oh, yes, sir.

1 MJ: What you are holding in your hand is the same thing, but  
2 you're looking at something else I'm not going to look at for a  
3 while.

4 ACC: I understand, that's correct.

5 MJ: But that's the whole agreement.

6 ACC: Yes, sir.

7 MJ: Now, I'm not going to look at Appellate Exhibit III until  
8 after I announce the sentence in your case. But I want you to look  
9 at it now and read it silently to yourself and then tell me whether  
10 that is what you and the convening authority agreed to.

11 CDC: Your Honor, can I approach the trial counsel?

12 MJ: Sure.

13 [CDC retrieved document from TC.]

14 ACC: [Accused read Appellate Exhibit III.] Yes, sir.

15 MJ: Is that what you agreed to?

16 ACC: That is, Your Honor.

17 MJ: Now, Specialist Cruz, you're going to get the benefit of  
18 whichever is less, the sentence adjudged by this court or what the  
19 convening authority agreed to in that document. If the sentence  
20 adjudged by this court is greater than the one provided in the  
21 pretrial agreement, the convening authority must reduce the sentence  
22 to one no more severe than the one in your pretrial agreement. On

1 the other hand, if the sentence of this court is less than the one in  
2 your agreement, the convening authority cannot increase the sentence  
3 adjudged. Do you understand that?

4 ACC: Yes, Your Honor.

5 MJ: Now, have you had enough time to discuss this pretrial  
6 agreement with your defense counsel? Have you had enough time to  
7 talk this over with----

8 ACC: Yes, I have had enough time, yes, sir.

9 MJ: Are you satisfied with his advice concerning this pretrial  
10 agreement?

11 ACC: Yes, sir.

12 MJ: Did you enter into the agreement of your own free will?

13 ACC: I did, sir.

14 MJ: Did anyone try to force you to make this pretrial  
15 agreement?

16 ACC: No, sir.

17 MJ: Do you have any questions about your pretrial agreement?

18 ACC: No, sir.

19 MJ: Do you fully understand the terms of the pretrial agreement  
20 and how they affect your case?

21 ACC: Yes, sir.

1 MJ: Are you pleading guilty not only because you hope to  
2 receive a lighter sentence, but also because you are convinced that  
3 you are, in fact, guilty?

4 ACC: I am, sir.

5 MJ: Do counsel for both sides agree with the court's  
6 interpretation of the pretrial agreement?

7 TC: Yes, sir.

8 CDC: Yes, Your Honor.

9 MJ: Now, Specialist Cruz, I just want to go over one other  
10 thing that occurred to me. When you saw the--when you told me  
11 earlier about you saw some bleeding on one of the detainee's wrists  
12 from the....

13 ACC: The handcuffs, sir?

14 MJ: From the handcuffs. And you said something to the effect  
15 is that, "Would you stop doing this?" or something.

16 ACC: I said, "We should loosen them."

17 MJ: You were referring just to the handcuffs?

18 ACC: Yes, sir.

19 MJ: Were you referring to the continuing abuse being done at  
20 the time?

21 ACC: I left right after that, sir.

1 MJ: You left right after that. But up to that point, had you  
2 said anything to anybody after you joined in with everybody else to  
3 indicate you didn't want to participate?

4 ACC: No, sir, I never withdrew.

5 MJ: Until--you left after the handcuff....

6 ACC: Well, that's when I physically....

7 MJ: Physically left, okay.

8 Defense counsel, have you had enough time and opportunity  
9 to discuss this case with your client?

10 CDC: Yes, Your Honor.

11 MJ: And Specialist Cruz, have you had enough time and  
12 opportunity to discuss your case with your defense counsel?

13 ACC: Yes, sir.

14 MJ: And have you, in fact, consulted fully with your defense  
15 counsel and received the full benefit of his advice?

16 ACC: Yes, sir.

17 MJ: Specialist Cruz, I'm going to ask you to speak up a little  
18 bit.

19 ACC: I'm sorry, sir.

20 MJ: I think the court reporter may have a tough time hearing  
21 you.

22 ACC: Yes, sir.

1 MJ: Are you satisfied that your defense counsel's advice is in  
2 your best interest?  
3 ACC: Yes, sir.  
4 MJ: And are you satisfied with your defense counsel?  
5 ACC: I am, sir.  
6 MJ: Are you pleading guilty voluntarily and of your own free  
7 will?  
8 ACC: Yes, sir.  
9 MJ: Has anyone made any threat or tried in any way to force you  
10 to plead guilty?  
11 ACC: No, sir.  
12 MJ: Do you have any questions as to the meaning and effect of a  
13 plea of guilty?  
14 ACC: Do I have any questions?  
15 MJ: Do you have any questions about the meaning and effect of a  
16 plea of guilty?  
17 ACC: No, sir.  
18 MJ: Do you fully understand the meaning and effect of a plea of  
19 guilty?  
20 ACC: I understand, sir.  
21 MJ: Do you understand that even though you believe you are  
22 guilty, you have the legal and moral right to plead not guilty and to

1 place upon the government the burden of proving your guilt beyond a  
2 reasonable doubt?

3 ACC: Yes, sir.

4 MJ: Take one last moment now and consult with your defense  
5 counsel and tell me whether you still wish to plead guilty. [Accused  
6 conferred with his counsel.]

7 Do you still wish to plead guilty?

8 ACC: I want to plead guilty, sir.

9 MJ: Specialist Cruz, I find your plea of guilty is made  
10 voluntarily and with full knowledge of its meaning and effect. I  
11 further find that you have knowingly, intelligently and consciously  
12 waived your rights against self-incrimination, to a trial of the  
13 facts by a court-martial and to be confronted by the witnesses  
14 against you. Accordingly, your plea of guilty is provident and is  
15 accepted. However, I advise you that you may request to withdraw  
16 your guilty plea at any time before your sentence is announced and if  
17 you have a good reason for your request, I will grant it. Do you  
18 understand that?

19 ACC: Yes, sir.

20 MJ: Accused and counsel, please rise. [The accused and his  
21 counsel stood.]

1 Specialist Armin J. Cruz, in accordance with your plea of  
2 guilty, this court finds you:

3 **Of both Charges and their Specifications: Guilty.**

4 Please be seated.

5 Specialist Cruz, we're now entering the sentencing phase of  
6 the trial where you have the right to present matters in extenuation  
7 and mitigation, that is, matters about the offenses or yourself that  
8 you want me to consider in deciding your sentence.

9 In addition to testimony of witnesses and the offering of  
10 documentary evidence, you may yourself testify under oath as to these  
11 matters or you may remain silent, in which case, I will not draw any  
12 adverse inference from your silence.

13 On the other hand, if you desire, you may make an unsworn  
14 statement. Because the statement is unsworn, you cannot be cross-  
15 examined on it. However, the government may offer evidence to rebut  
16 any statement of fact contained in an unsworn statement.

17 An unsworn statement may be made orally, in writing, or  
18 both. It may be made by you, by your counsel on your behalf, or by  
19 both.

20 Do you understand these rights?

21 ACC: I understand, sir.

1 MJ: Defense counsel, is the personal data on the front page of  
2 the charge sheet correct?

3 CDC: Yes, Your Honor.

4 MJ: Has the accused been punished in any way prior to trial  
5 that would be illegal punishment under Article 13?

6 CDC: No, Your Honor.

7 MJ: Has he been under any form of pretrial restraint, other  
8 than the normal limitation on soldiers' movements in this theater?

9 CDC: No, Your Honor.

10 MJ: Trial counsel, do you have any documentary evidence to  
11 present on sentencing?

12 TC: Yes, sir. The government would move to admit the enlisted  
13 record brief of the accused.

14 MJ: The ERB of the accused has been marked as Prosecution  
15 Exhibit 2 for identification.

16 Defense counsel, have you had an opportunity to review this  
17 document?

18 CDC: Yes, Your Honor.

19 MJ: There are some pen and ink corrections you've made?

20 CDC: I'm sorry, sir?

21 MJ: There's been some pen and ink corrections?

22 CDC: Yes, Your Honor.