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003412

COURT-MARTIAL RECORD

NAME NILES, GLENN A., JR. ILT

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ACTIONS CODED:

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COMPANION(S):

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VOL II OF II VOL(S)

ARMY 20040683

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

NILES, Glenn A., Jr.
(NAME: Last, First Middle Initial)
615th Military
Police Company
(unit/Command Name)

66-5
(Social Security Number)

First Lieutenant
(Rank)

US Army
(Branch of Service)

APO AE 09114
(Station or Ship)

BY

GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

Headquarters, Seventh Army Training Comand
(Unit/Command of Convening Authority)

TRIED AT

Wuerzburg and Vilseck, Germany
(Place or Places of Trial)

ON

9 Jun and 1 Jul 04
(Date or Dates of Trial)

COMPANION CASES:

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¹ Insert "verbatim" or summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records only.)
² See inside back cover for instructions as to preparation and arrangement.

1 to all the charges and specifications, and we would hold a trial even
2 in your absence.

3 Do you understand all that?

4 ACC: Yes, Your Honor.

5 MJ: All right. I don't expect that you're going to go AWOL, in
6 fact, quite the contrary. I tell that to everyone who has been
7 arraigned because I want you to understand that you're kind of in the
8 final stretch now. It's critical that you stay in close contact with
9 Captain Stelle between now and the date we set for trial so that you
10 can be here to assist in your defense. All right?

11 ACC: Yes, Your Honor.

12 MJ: Now, I note from the charge sheet that Lieutenant Niles is
13 not under any form of restraint. Is that right, Captain Stelle?

14 DC: That's correct, Your Honor.

15 MJ: All right. Is there anything else we can take up here
16 today?

17 TC: Your Honor, just the--I understand we've handled the
18 motions part, but the date plea and forum will be due?

19 MJ: Oh okay. Let's figure that out. All right, if your
20 hearing is on the 14th of June, she's in trial the next 2 days. I
21 expect you'll have an answer at least by the 17th, so let's make
22 close of business Friday the 18th when plea and forum can be given.
23 All right?

1 DC: Yes, Your Honor.

2 TC: Yes, Ma'am.

3 MJ: Clearly though, that is already within the 2 week window,
4 Captain ^{bb-2} [REDACTED], so to the extent that there are any overseas
5 witnesses that ^{Lieutenant Niles} [REDACTED] desires to call on his behalf, please
6 get that information to the government now. All right?

7 DC: Absolutely, Ma'am, thank you.

8 MJ: Thanks. And obviously, Government, to the extent that you
9 intend to deny any of those witnesses and you all need a 39(a) to
10 litigate, then you just get back in touch with Colonel [REDACTED] and
11 she'll set a date, all right? ^{bf2}

12 TC: Understood, Ma'am.

13 DC: Yes, Ma'am.

14 MJ: Court is in recess.

15 [The session recessed at 1230, 9 June 2004.]

16 [END OF PAGE]

17

003416

1 [The court-martial was called to order at 1004, 1 July 2004 in
2 Vilseck, Germany pursuant to the orders previously inserted in the
3 record and Court-Martial Convening Order Number 8 dated 23 June 2004
4 Headquarters, 7th Army Training Command, APO Army Europe.]

5 [All parties present when the court recessed were again present with
6 the exception of the military judge Lieutenant Colonel [REDACTED] who
7 was replaced by Colonel [REDACTED] ^{bb-2} and the court reporter Mrs.
8 ^{bb-2} [REDACTED] who was replaced by Mr. [REDACTED].]

9 MJ: This Article 39(a) session is called to order. You may be
10 seated.

11 TC: Your Honor, the accused has already been arraigned.

12 MJ: All right, and at the last hearing in this trial,
13 Lieutenant Niles, you were advised that you could be represented by
14 Captain ^{bb-2} [REDACTED]. Do you recall that?

15 ACC: Yes, Ma'am.

16 MJ: Are you still happy to be represented by him?

17 ACC: Yes, Ma'am.

18 MJ: All right and also at the last hearing in this case, which
19 I believe was on 9 June, Colonel ^{bb-2} [REDACTED] told you about your forum
20 rights. Do recall that discussion?

21 ACC: Yes, Ma'am.

22 MJ: Are you ready to tell me what forum you choose?

23 DC: Yes--yes, Your Honor.

1 MJ: All right.

2 DC: The accused requests a trial by officer panel for
3 sentencing only, and we have a written request.

4 MJ: All right then, if you've submitted that, I guess we'll
5 make that an appellate exhibit whatever the next one is.

6 [The CR marked the notice of forum and plea as AE II.]

7 MJ: All right, that's Appellate Exhibit II.

8 At this time, will the accused and defense counsel please
9 rise?

10 [The accused and his counsel did as directed.]

11 MJ: Lieutenant Niles, how do you plead, before receiving your
12 plea, I advise you that any motions to dismiss or grant other
13 appropriate relief should be made at this time. Your defense counsel
14 will speak for you.

15 DC: Thank you, Your Honor. The motion previously filed on 9
16 June for dismissal in violation of Rule 707 lack of speedy trial the
17 defense withdraws that motion. Formally I would withdraw that
18 motion, and as far as pleas, Your Honor, the accused pleads as
19 follows:

20	To Specification 1, 2 and 3, of	
21	Charge I the accused pleads:	Not Guilty.
22	To Charge I:	Not Guilty.
23		
24	To The Specification and	
25	Charge II the accused pleads:	Guilty.

bb-2 all

1 MJ: Thank you, you may be seated.

2 [The accused and his counsel did as directed.]

3 MJ: All right, we should note for the record that all parties
4 present at the last session are again present in court with the
5 exception of Lieutenant Colonel [REDACTED] who was the military judge at
6 the prior hearing and [REDACTED] the court reporter. Instead we
7 have Mr. [REDACTED] present as the court reporter who's previously been
8 sworn, and I'm Colonel [REDACTED] as military judge. I am not
9 aware of any matter, which might be a ground for challenge against
10 me. Does either side desire to question or challenge me?

11 TC: No, Ma'am.

12 DC: No, Ma'am.

13 MJ: All right, Lieutenant Niles, your counsel has entered a
14 plea of guilty for you to one of the charges and its specification.
15 Your plea of guilty will not be accepted unless you understand its
16 meaning and effect. I'm going to discuss with you your plea of
17 guilty. You may wish to consult with your defense counsel prior to
18 answering any of my questions. If at anytime you have questions,
19 feel free to ask them. If at anytime you need to consult with
20 Captain [REDACTED], you tell me and I'll let you do that.

21 Do you understand?

22 ACC: Yes, Ma'am.

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

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

11 ACC: Yes, Ma'am.

12 MJ: By your plea of guilty, you give up three important rights,
13 but you give up these rights only as to that offense to which you've
14 pled guilty:

15 First, the right against self-incrimination, that is, the
16 right to say nothing at all;

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

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

23 Do you have any questions about any of those rights?

1 ACC: No, Ma'am.

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

4 ACC: Yes, Ma'am.

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

9 Do you understand that?

10 ACC: Yes, Ma'am.

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

14 Do you understand that?

15 ACC: Yes, Ma'am.

16 MJ: At this time, I want you to stand and face trial counsel,
17 and Trial Counsel, will you please place the accused under oath.

18 [The accused was sworn.]

19 MJ: Now do we have a stipulation of fact?

20 TC: Yes, Your Honor. It's been previously marked.

21 [The CR handed PE 1 for ID to the MJ.]

22 [END OF PAGE]

23

1 MJ: All right, Lieutenant, I have a stipulation of fact, which
2 has been marked as Prosecution Exhibit 1 for identification, in front
3 of me. Do you have a copy of that in front of you?

4 ACC: Yes, Ma'am.

5 MJ: I'd like you to take a look at the second page. Is that
6 your signature on the page?

7 ACC: Yes, Ma'am.

8 MJ: Did you read this document thoroughly before you signed it?

9 ACC: Yes, Ma'am.

10 MJ: Do both counsel agree to the stipulation and that your
11 signatures appear on the document?

12 TC: Yes, Ma'am.

13 DC: Yes, Your Honor.

14 MJ: Now, Lieutenant Niles, a stipulation of fact is an
15 agreement among the trial counsel, your defense counsel, and you that
16 the contents of the stipulation are true, and if entered into
17 evidence, are the uncontradicted facts in this case. No one can be
18 forced to enter into a stipulation, so you should enter into it only
19 if you truly want to do so.

20 Do you understand this?

21 ACC: Yes, Ma'am.

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

1 ACC: Yes, Ma'am.

2 MJ: Now if I admit this stipulation into evidence, it will be
3 used in two ways:

4 First, I will use it to determine if you are, in fact,
5 guilty of the offense to which you pled guilty;

6 Second, the trial counsel may read it to the court members
7 and they will have it with them when they decide upon your sentence.

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

10 ACC: Yes, Ma'am.

11 MJ: Do both counsel also agree?

12 TC: Yes, Ma'am.

13 DC: Yes, Your Honor.

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

19 Do you understand that?

20 ACC: Yes, Ma'am.

21 MJ: At this time, I want you to read your copy of the
22 stipulation silently to yourself as I read it to myself. When you're
23 finished reading it, please look up at me.

1 ACC: Yes, Ma'am.

2 [The MJ and ACC read PE 1 for ID.]

3 [Long pause.]

4 MJ: Lieutenant Niles, have you finished reading it?

5 ACC: Yes, Ma'am.

6 MJ: Is everything in that stipulation true?

7 ACC: Yes, Ma'am.

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

10 ACC: No, Ma'am.

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

14 ACC: Yes, Ma'am.

15 MJ: Defense Counsel, do you have any objections to Prosecution
16 Exhibit 1 for identification?

17 DC: No objection, Your Honor.

18 MJ: All right, then, Prosecution Exhibit 1 for identification
19 is admitted into evidence subject to my acceptance of the accused's
20 guilty plea.

21 Now, Lieutenant Niles, I'm going to explain the elements of
22 the offense to which you've pled guilty. By "elements", I mean those
23 facts, which the prosecution would have to prove beyond a reasonable

1 doubt before you could be found guilty if you had pled not guilty.

2 When I state each element, ask yourself two things:

3 First, is the element true; and

4 Second, whether you wish to admit that it's true.

5 After I list the elements for you, be prepared to talk to
6 me about the facts regarding the offense.

7 First of all, though, I'd like to get a little background
8 on you. When did you first come into the service?

9 ACC: November 2000--2001, no 2000, correction.

10 MJ: All right, do you remember the day?

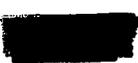
11 ACC: No, I just remember that it was November 2000 when I left
12 or arrived at Fort Benning for basic training.

13 MJ: Okay let's see the stipulation says 7 November 2000.

14 ACC: That would be correct, Your Honor.

15 MJ: Okay.

16 DC: The initial----

17 MJ: Captain  66-2

18 DC: I'm sorry. The initial date on the charge sheet is May--10
19 May 2001, that reflects his commissioning date.

20 MJ: All right.

21 DC: Because he enlisted and went to OCS. That time does not
22 reflect on the charge sheet.

1 MJ: Since 7 November 2000 and today, have you been continuously
2 on active duty?

3 ACC: Yes, Ma'am.

4 MJ: Have you had any breaks in service at all?

5 ACC: Negative, Ma'am.

6 MJ: All right. When did you come to Germany?

7 ACC: October of 2001. I believe it was October 5th.

8 MJ: And what unit were you assigned to when you got here?

9 ACC: 615th Military Police Company.

10 MJ: Is that the unit you're assigned to today?

11 ACC: Yes, Ma'am.

12 MJ: All right. All right, I want you to take a look at The
13 Specification of Charge II. There you are charged with the offense
14 of conduct unbecoming an officer due to cruelty and maltreatment of
15 prisoners and that would be a violation of Article 133 of the Uniform
16 Code of Military Justice. The elements of that offense are:

17 One, that [REDACTED] and [REDACTED]
18 [REDACTED] were subject to your orders; 66-5

19 Two, that on or about 30 July 2003, at or near Al Taji
20 Police Station, Baghdad, Iraq, you maltreated [REDACTED] 66-4
21 [REDACTED] and [REDACTED] by striking and kicking them; and

22 Three, that under the circumstances, your conduct was
23 unbecoming an officer and a gentleman.

1 Subject to the orders of includes persons under the direct
2 or immediate command of the accused. Cruel and maltreatment refers
3 to treatment that when viewed objectively under all the circumstances
4 is abusive or otherwise unwarranted, unjustified, and unnecessary for
5 any lawful purpose and that results in physical or mental harm or
6 suffering or reasonably could have caused physical or mental harm or
7 suffering. Assault or improper punishment may constitute this
8 offense.

9 "Conduct unbecoming an officer and a gentleman" means
10 behavior in an official capacity, which in dishonoring or disgracing
11 the individual as a commissioned officer. "Unbecoming conduct" means
12 misbehavior more serious than slight and of a material and pronounced
13 character. It means conduct morally unfitting and unworthy rather
14 than merely inappropriate or unsuitable misbehavior, which is more
15 than opposed to good taste or propriety.

16 Now do you understand the elements and definitions as I've
17 read them to you?

18 ACC: Yes, Ma'am.

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

20 ACC: No, Ma'am.

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

23 ACC: Yes, Ma'am.

1 MJ: Do you believe and admit that the elements and definitions
2 taken together correctly describe what you did?
3 ACC: Yes, Ma'am.
4 MJ: In your own words, I'd like you to tell me why you're
5 guilty of this offense.
6 ACC: Ma'am, I'm guilty of this offense because I did behave in a
7 manner unbecoming an officer. I did strike these personnel.
8 MJ: Well I need you to tell me a little bit more. First of all
9 this was on 30 July 2003?
10 ACC: Yes, Ma'am.
11 MJ: Where were you?
12 ACC: At the [REDACTED] ⁶²⁻² Police Station in Baghdad, Iraq.
13 MJ: Okay and what was your position at that time?
14 ACC: At that time, I was the platoon leader for 1st Platoon.
15 MJ: And what was your position with regard to any of the
16 prisoners there?
17 ACC: At that time, I was the supervisor for both the soldiers
18 and the police station.
19 MJ: And so what were your duties as they applied to any of the
20 prisoners at the police station?
21 ACC: The duties there were to provide oversight for prisoners in
22 the police station provide them with security, clothing, and food.
23 MJ: Okay and who were the three individuals that I named?

1 ACC: I believe they were personnel arrested by the Iraqi police
2 and placed into the detention cell there.

3 MJ: Well do you have any reason to think that those weren't
4 prisoners at the ^{b2-2} [REDACTED] Police Station on 30 July 2003?

5 ACC: Can you repeat that, Ma'am?

6 MJ: Do you have any reason to think that those three named
7 individuals were not prisoners at the ^{b2-2} [REDACTED] Police Station on 30
8 July 2003?

9 ACC: No, Ma'am. At the time, I didn't know their names, if
10 that's what you're asking.

11 MJ: All right. Have you since seen information that told you
12 what their names were?

13 ACC: Just in the statements given by the soldiers in the charge
14 sheet.

15 MJ: Okay do you have any reason to doubt that those are the
16 names of the men who were prisoners at ^{b2-2} [REDACTED] Police Station on that
17 day?

18 ACC: No, Sir [sic], if my soldiers say they were the men, they
19 were the men.

20 MJ: All right, now what was your contact with each of those ^{b6-4}
21 individuals? First of all, let's talk about what happened to [REDACTED]
22 [REDACTED], and you can refer to the stipulation of fact if you wish,

1 but I want you to tell me what exactly you did, if anything, to that
2 individual, and I assume that's a man.

3 ACC: Ma'am, as stated in the statements given by the soldiers in
4 the charge sheet, that's the gentleman that I struck in the D-Cell.

5 MJ: Okay tell me how you struck him.

6 ACC: With a closed fist, I believe I hit him in the stomach.

7 MJ: Why?

8 ACC: That's a question I've been asking myself for the last year
9 and a half. Out of anger, Ma'am.

10 MJ: Okay had he attacked you?

11 ACC: No, Ma'am.

12 MJ: So there was--you weren't defending yourself?

13 ACC: No, Ma'am.

14 MJ: Were you defending another soldier?

15 ACC: No, Ma'am.

16 MJ: As to [REDACTED] ^{b6-4}, tell me what happened with him.

17 ACC: Once again, Ma'am, I struck him with a closed fist in the
18 stomach.

19 MJ: And tell me why.

20 ACC: It would be the same as before, Ma'am, I believe out of
21 anger.

22 MJ: All right. Had he attacked you?

23 ACC: No, Ma'am.

1 MJ: Had he given you any sense that he was going to attack you?
2 ACC: No, Ma'am.
3 MJ: Had he attacked any of your soldiers?
4 ACC: No, Ma'am.
5 MJ: Had he attacked another prisoner?
6 ACC: I don't know that, Ma'am.
7 MJ: Okay, but I mean to your knowledge---
8 ACC: To my knowledge----
9 MJ: ----had he attacked another prisoner?
10 ACC: ----no, I received no reports on that.
11 MJ: Okay. Would that be true of the first gentleman, [REDACTED]
12 [REDACTED] b6-4
13 ACC: To my knowledge, I received no reports that he attacked
14 anyone.
15 MJ: All right. How about [REDACTED] b6-4
16 ACC: That's the gentleman that I struck by kicking him, Ma'am.
17 MJ: And where did you kick him?
18 ACC: In the shoulder.
19 MJ: And why did you kick him in the shoulder that day?
20 ACC: Out of anger, Ma'am.
21 MJ: Again, had he attacked you?
22 ACC: No, Ma'am.
23 MJ: Had he sought to attack you?

1 ACC: No, Ma'am.

2 MJ: To your knowledge, had he attacked any of your soldiers?

3 ACC: No, Ma'am.

4 MJ: Had he tried to?

5 ACC: No, Ma'am.

6 MJ: Had he tried to attack any other prisoner?

7 ACC: I received no reports of that, Ma'am.

8 MJ: Okay. To your knowledge had he tried to attack any other
9 prisoner?

10 ACC: No, Ma'am.

11 MJ: Now as an MP officer, do you receive training as to how to
12 deal with prisoners or detainees?

13 ACC: Yes, Ma'am.

14 MJ: Is striking them with a closed fist in either the stomach
15 or kicking them in the shoulder, is that----

16 ACC: No, Ma'am, that is not part of the training.

17 MJ: Okay, so that's not appropriate behavior for an MP officer
18 when dealing with prisoners?

19 ACC: No, Ma'am.

20 MJ: Now you're charged with doing these things and that these
21 things amounted to conduct unbecoming an officer and a gentleman. Do
22 you remember the definition I gave you of conduct unbecoming an
23 officer and a gentleman?

1 ACC: I believe so, Ma'am.

2 MJ: Okay tell me why this conduct was conduct unbecoming an
3 officer and a gentleman.

4 ACC: As stated, Ma'am, it's because it disgraces the individual,
5 um, it disgraced the individual personally, distracted from the
6 conduct of my fellow--of my soldiers at the time, and it's conduct
7 morally unfitting or worthy and it's inappropriate and unsuitable.

8 MJ: Okay. Did these actions by you with respect to any of the
9 prisoners, were there other United States soldiers present when you
10 did this?

11 ACC: Yes, Ma'am.

12 MJ: Were they your subordinates?

13 ACC: Yes, Ma'am.

14 MJ: So was this appropriate behavior by you in front of
15 subordinates?

16 ACC: No, Ma'am.

17 MJ: How do you think that that made your subordinates feel
18 about you in particular as an officer?

19 ACC: [No response.]

20 MJ: At least your behavior that day.

21 ACC: I believe they felt I was a disgrace.

22 [END OF PAGE]

23

1 MJ: If members of the public, either American or Iraqi, learned
2 of your behavior that day, how do you think they'd feel about an
3 officer in the United States Army behaving that way?

4 ACC: The same.

5 MJ: In your mind, did you have any legitimate reason for
6 striking any of these individuals?

7 ACC: No, Ma'am.

8 MJ: I'm sorry, say again.

9 ACC: No, Ma'am.

10 MJ: I think you said earlier that you were angry. Is that
11 right?

12 ACC: Yes, Ma'am.

13 MJ: Can you tell me why you were angry?

14 ACC: Um, just--just the events, Ma'am, just----

15 MJ: Tell me what the events were.

16 ACC: Just--I'd received reports that they attempted to break out
17 of the detention cell.

18 MJ: Go ahead.

19 ACC: I received reports that they attempted to break out of the
20 detention cell.

21 MJ: Had you gotten those reports that day?

22 ACC: No, Ma'am.

23 MJ: When did you get them?

1 ACC: The night before.

2 MJ: Okay, and did you have some reason to think that any of
3 these three individuals had anything to do with that?

4 ACC: Um, I believe that I was told that these were the three
5 that attempted to break out.

6 MJ: Okay. Did that have anything to do with why you struck any
7 of them?

8 ACC: Ma'am, all I can say is that I was angry. Just the fact
9 that they tried to break out it----

10 [Long pause.]

11 MJ: Since you were the platoon leader and supervisor for the
12 police station, were you responsible for the health and safety of any
13 detainees or prisoners that were held there?

14 ACC: Yes, Ma'am.

15 MJ: How many folks could the police station hold as far as
16 prisoners or detainees?

17 ACC: Ah, we tried to keep a minimum, if I recall, we tried to
18 keep it under 20. We were under orders to maybe the second or third
19 day try to empty out our D-Cells by sending them to a higher
20 detention facility by doing the paperwork. Sometimes that did not
21 occur because you know of transportation or logistics means, so I
22 mean we tried to keep the number fairly low for their safety and our
23 safety, Ma'am.

1 MJ: Okay is it fair to say, then, that you were a short-term
2 holding facility?

3 ACC: Yes, Ma'am.

4 MJ: Okay. All right do you admit that [REDACTED] ^{b6-5}
5 [REDACTED], and [REDACTED] were subject to your orders?

6 ACC: They were subject to my care. I didn't give them orders,
7 Ma'am. I gave my soldiers orders for the care and the treatment of
8 them.

9 MJ: Well were they under your jurisdiction?

10 ACC: Yes, Ma'am.

11 MJ: If you walked into their cell and told them to do
12 something, did you expect that they would do it?

13 ACC: Yes, Ma'am.

14 MJ: So were they subject to your orders?

15 ACC: Yes, Ma'am.

16 MJ: All right. Do you admit that on or about 30 July 2003, at
17 or near ^{b2-2} [REDACTED] Police Station in Baghdad, Iraq, you maltreated
18 [REDACTED], [REDACTED] and [REDACTED] by ^{b6-4}
19 striking and kicking them?

20 ACC: Yes, Ma'am.

21 MJ: Do you admit that under the circumstances, your conduct was
22 unbecoming an officer and a gentleman?

23 ACC: Yes, Ma'am.

1 MJ: Does either counsel believe that any further inquiry is
2 required?

3 TC: No, Ma'am.

4 DC: No, Ma'am.

5 MJ: Trial Counsel, what do you calculate to be the maximum
6 punishment authorized in this case based solely on the accused's
7 guilty plea?

8 TC: Your Honor, a dismissal, 1-year confinement, total
9 forfeiture, and a fine.

10 MJ: Defense?

11 DC: Defense agrees, Your Honor.

12 MJ: All right. Lieutenant Niles, the maximum punishment
13 authorized in this case based solely on your guilty plea is dismissal
14 from the service, total forfeitures, confinement for 12 months, and a
15 fine may also be adjudged. On your plea of guilty alone, this court
16 could sentence you to the maximum punishment, which I've just stated.
17 Do you understand this?

18 ACC: Yes, Ma'am.

19 MJ: Do you have any questions as to the sentence that could be
20 imposed as a result of your guilty plea?

21 ACC: No, Ma'am.

22 MJ: Do we have a pretrial agreement in this case?

1 TC: Yes, Ma'am, it's been given to the court reporter and has
2 been previously marked.

3 [The CR handed AE I to the MJ.]

4 MJ: All right. Lieutenant Niles, do you have a copy of your
5 plea agreement in front of you?

6 ACC: Yes, Ma'am.

7 MJ: All right, that's been marked as Appellate Exhibit I, and
8 that includes both the offer portion and the quantum portion of your
9 plea agreement. Now I want you to look at each of these, that would
10 be page two of the quantum portion and page one of the quantum, I'm
11 sorry, page two of the offer.

12 Did you sign each of these documents?

13 ACC: Yes, Ma'am.

14 MJ: Did you read them thoroughly before you signed them?

15 ACC: Yes, Ma'am.

16 MJ: Do you understand the contents of your pretrial agreement?

17 ACC: Yes, Ma'am.

18 MJ: Now Lieutenant Niles, did anyone force you in anyway to
19 enter into this agreement?

20 ACC: No, Ma'am.

21 MJ: Does this agreement contain all of the understandings or
22 agreements that you have in this case?

23 ACC: Yes, Ma'am.

1 MJ: Has anyone made any promises to you that are not written
2 into this agreement in an attempt to get you to plead guilty?

3 ACC: No, Ma'am.

4 MJ: Counsel, is Appellate Exhibit I the full and complete
5 agreement in this case, and are you satisfied that there are no other
6 agreements?

7 TC: Yes, Ma'am.

8 DC: Yes, Your Honor.

9 MJ: Now Lieutenant Niles, basically a pretrial agreement means
10 that you agree to plead guilty, and in return, the convening
11 authority agrees to take some favorable action in your case usually
12 in the form of a limitation on your sentence.

13 Do you understand that?

14 ACC: Yes, Ma'am.

15 MJ: Now the law requires that I discuss the conditions of your
16 agreement with you, so let's look at the offer portion, that is, the
17 first two pages.

18 Now paragraph 1a says first of all that you've gotten the
19 benefit and advice of your defense counsel and you've--you know that
20 you have a legal and a moral right to plead not guilty, but that you
21 offer to plead ~~guilty~~ ^{bb-2} to the specifications of Charge I and Charge I,
22 Not Guilty, and to The Specification of Charge II and Charge II,
23 Guilty, and you've done that.

1 Do you have any questions about your agreement as it
2 concerns how you're going to plead?

3 ACC: No questions, Ma'am.

4 MJ: Okay. In 1b, you've agreed to enter into a written
5 stipulation of fact with the trial counsel as to the circumstances of
6 the offenses to which you're pleading guilty, and you've done that as
7 well.

8 Do you have any questions at all about what the stipulation
9 means or your agreement to enter into it?

10 ACC: No, Ma'am.

11 MJ: 1c says, you waive the right to request personal appearance
12 of overseas witnesses to testify on your behalf at trial. Now first
13 of all, did you understand that you could have asked the convening
14 authority, that is, the government to produce witnesses at this trial
15 for you today?

16 ACC: Yes, Ma'am.

17 MJ: And if the convening authority had said no, that you could
18 have then come to the Court, and if the Court had found that the
19 witnesses were relevant and material and necessary, the Court could
20 have said those witnesses should be here.

21 Did you understand that?

22 ACC: Yes, Ma'am.

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1 MJ: And absent this agreement, you didn't have to give up that
2 right.

3 ACC: Understood, Ma'am.

4 MJ: Now are there actually any witnesses that you wanted here
5 today that aren't going to be here today because of this provision?

6 ACC: No, Ma'am.

7 MJ: Okay. Did you also know that there are other ways to get
8 witness information in front of the court, for example, by telephone
9 or by what we call stipulations of expected testimony or just
10 letters?

11 ACC: Yes, Ma'am.

12 MJ: Are you satisfied that whatever means you and Captain
13 [REDACTED] ⁶⁶⁻² have chosen that will get the appropriate information in front
14 of the panel for them to make an appropriate decision as to your
15 sentence?

16 ACC: Yes, Ma'am.

17 MJ: Now in 1d, you waive the right to make a motion to dismiss
18 all the charges for a violation of Rule for Court-Martial 707, that
19 is, the speedy trial act and withdraw that motion, which was filed on
20 9 June 2004. Now first of all, again, absent this agreement, you're
21 entitled to file any kind of motions you want to file.

22 Do you understand that?

23 ACC: Yes, Ma'am.

1 MJ: Some of the motions you gave up automatically when you
2 didn't make them prior to entering your plea of guilty. Do you
3 remember me saying that?

4 ACC: Yes, Ma'am.

5 MJ: Okay, some motions, however, such as motions to dismiss for
6 lack of jurisdiction or failure to state an offense, can never be
7 given up.

8 Do you understand that this term of your pretrial agreement
9 means that you give up the right to make this particular motion, that
10 is, the one for speedy trial when you pled guilty?

11 ACC: Yes, Ma'am.

12 MJ: In particular, do you understand that this term of your
13 pretrial agreement precludes this court, or any appellate court, from
14 having the opportunity to determine if you're entitled to any relief
15 based upon this particular motion?

16 ACC: Yes, Ma'am.

17 MJ: Now when you elected to give up the right to litigate this
18 motion, did your defense counsel explain this term of your pretrial
19 agreement and the consequences to you?

20 ACC: Yes, Ma'am.

21 MJ: Did anyone force you to enter into this term of your
22 pretrial agreement?

23 ACC: No, Ma'am.

b6-2

1 MJ: Captain [REDACTED] which side originated the waiver of this
2 motion provision?

3 DC: I--Your Honor, it was part of discussions with the
4 government. Honestly, I truthfully cannot recall which side
5 mentioned it first as far as the waiver goes.

6 MJ: All right.

7 TC: I concur on that, Your Honor. We had discussed the issue
8 for weeks prior to that. I'm not sure which one actually brought it
9 up first, Your Honor.

10 MJ: All right. Lieutenant Niles, do you freely and voluntarily
11 agree to this term of your pretrial agreement in order to receive
12 what you believe to be a beneficial pretrial agreement?

13 ACC: Yes, Ma'am.

b6-2

14 MJ: Captain [REDACTED] what do you believe to be the factual basis
15 of the motion covered by this term of the pretrial agreement?

16 DC: Yes, Your Honor, as the motion that was previously filed
17 indicated, the passage of time from the original preferral of
18 charges, my evaluation of my research has indicated, however, that
19 there were some significant defense delays that accounted for many of
20 those days, which subtracting those days brought the clock to less
21 than 120 days.

22 MJ: So are you, in effect, telling me that you no longer think
23 that there was a legitimate basis for a speedy trial motion?

1 DC: Yes, Your Honor. I believe it would not have been a
2 frivolous motion, but I believe that our chances of prevailing, as I
3 have explained to Lieutenant Niles, were very, very minor.

4 MJ: All right.

5 DC: Based on the research and the facts that I have been able
6 to collect.

7 MJ: All right, Lieutenant Niles, do you understand that if this
8 motion were made and granted by me then a possible ruling could have
9 been that all the charges against you would have been dismissed, and
10 did you discuss that with Captain [REDACTED]?

11 ACC: Yes, Ma'am.

b6-2

12 MJ: Now knowing what your defense counsel and I've told you, do
13 you want to give up making this motion in order to get the benefit of
14 your pretrial agreement?

15 ACC: Yes, Ma'am.

16 MJ: All right, do you have any questions about this particular
17 provision of your pretrial agreement?

18 ACC: No, Ma'am.

19 MJ: Now paragraph 2 says in exchange for what we've just talked
20 about, the things that are covered in paragraph 1, the convening
21 authority will take the actions specified in the enclosure, that is,
22 the quantum portion.

1 Paragraph 3 says the offer to plead guilty will not be
2 affected if the military judge amends any specification or charge
3 based upon a motion of the defense, the government, or sua sponte by
4 the military judge. That means if for some reason I modify any of
5 the specifications, this agreement between you and the convening
6 authority is still good.

7 Do you understand that?

8 ACC: Yes, Ma'am.

9 MJ: Do you have any questions?

10 ACC: No, Ma'am.

11 MJ: Paragraph 4 says that there are no promises, conditions, or
12 understandings regarding your proposed plea of guilty that are not
13 contained within these three pages, that is, the offer portion and
14 the quantum portion.

15 Any questions?

16 ACC: No, Ma'am.

17 MJ: Paragraph 5 says you're satisfied with the advice that
18 you've gotten from your defense counsel, that he's advised you of the
19 meaning and effect of your guilty plea, and you fully understand that
20 meaning and effect.

21 Now we've also talked about the meaning and effect of your
22 guilty plea. Do you have any questions at all?

23 ACC: No, Ma'am.

1 MJ: Paragraph 6 says you understand that you may request to
2 withdraw your plea of guilty at any time before it's accepted, but if
3 you do, this agreement's cancelled. This agreement may also be
4 cancelled if:

5 A) You fail to plead guilty;

6 B) You fail to arrive at an agreement with the government
7 on the contents of the stipulation of fact or if that stipulation
8 were modified without your consent; or

9 C) The military judge either refused to accept your guilty
10 plea or changed your guilty plea at some point during the trial.

11 Now none of those things has happened, but if any one of
12 them were to happen, this agreement would be cancelled. It would be
13 gone.

14 Do you understand that?

15 ACC: Yes, Ma'am.

16 MJ: Do you have any questions about any of it?

17 ACC: No, Ma'am.

18 MJ: And paragraph 7 says if before or during trial any
19 specification is amended, consolidated, or dismissed with your
20 consent, this agreement will remain in effect.

21 Any questions about that?

22 ACC: No, Ma'am.

1 MJ: All right. Now the last page of Appellate Exhibit I is the
2 quantum portion of your pretrial agreement, and it states that the
3 convening authority agrees to disapprove any confinement adjudged in
4 excess of 45 days, but he may approve any other lawful punishment.

5 Is that a correct statement of what you and the convening
6 authority agreed to?

7 ACC: Yes, Ma'am.

8 MJ: Now, Lieutenant Niles, you get the benefit of whichever is
9 less each element of the sentence of the court or that contained in
10 your pretrial agreement. If the sentence adjudged by this court is
11 greater than the one provided in the pretrial agreement, the
12 convening authority must reduce the sentence to one no more severe
13 than the one in your pretrial agreement. On the other hand, if the
14 sentence of this court is less than the one in your agreement, the
15 convening authority cannot increase the sentence that he adjudges
16 [sic].

17 Do you understand that?

18 ACC: Yes, Ma'am.

19 MJ: Now if your ETS date arrives while you are servicing  ^{b6-2}
20 confinement as part of your sentence, then all of your military pay
21 and allowances will stop on your ETS date. Do you understand that?

22 ACC: Yes, Ma'am.

1 MJ: I'm not sure that that actually would apply here given the
2 quantum provision, but I just wanted to make sure you're aware of
3 that. All right? —

4 ACC: Yes, Ma'am.

5 MJ: Now, Lieutenant Niles, have you had enough time to discuss
6 this agreement with your defense counsel?

7 ACC: Yes, Ma'am.

8 MJ: Are you satisfied with your defense counsel's advice
9 concerning this pretrial agreement?

10 ACC: Yes, Ma'am.

11 MJ: Did you enter into the agreement of your own free will?

12 ACC: Yes, Ma'am.

13 MJ: Has anyone tried to force you to make this pretrial
14 agreement?

15 ACC: No, Ma'am.

16 MJ: Do you have any questions about your pretrial agreement?

17 ACC: No, Ma'am.

18 MJ: Do you fully understand all the terms of the pretrial
19 agreement and how they affect your case?

20 ACC: Yes, Ma'am.

21 MJ: Lieutenant Niles, are you pleading guilty not only because
22 you hope to receive a lighter sentence, but because you are convinced
23 that you are, in fact, guilty?

1 ACC: Yes, Ma'am.

2 MJ: Do counsel for both sides agree with the Court's
3 interpretation of the pretrial agreement?

4 TC: Yes, Ma'am.

5 DC: Yes, Your Honor.

6 MJ: Defense Counsel, have you had enough time and opportunity
7 to discuss this case with Lieutenant Niles?

8 DC: I have, Your Honor.

9 MJ: And Lieutenant Niles, have you had enough time and
10 opportunity to discuss this case with your defense counsel?

11 ACC: Yes, Ma'am.

12 MJ: Have you, in fact, consulted fully with your defense
13 counsel and received the full benefit of his advice?

14 ACC: Yes, Ma'am.

15 MJ: Are you satisfied that your defense counsel's advice is in
16 your best interest?

17 ACC: Yes, Ma'am.

18 MJ: And are you satisfied with your defense counsel?

19 ACC: Yes, Ma'am.

20 MJ: Are you pleading guilty voluntarily and of your own free
21 will?

22 ACC: Yes, Ma'am.

1 MJ: Has anyone made any threat or tried in anyway to force you
2 to plead guilty?

3 ACC: No, Ma'am.

4 MJ: Do you have any questions as to the meaning and effect of a
5 plea of guilty?

6 ACC: No, Ma'am.

7 MJ: Do you fully understand the meaning and effect of your plea
8 of guilty?

9 ACC: Yes, Ma'am.

10 MJ: Do you understand that even though you believe you are
11 guilty, you have the legal and moral right to plead not guilty and to
12 place upon the government of proving [sic] your guilt beyond a
13 reasonable doubt?

14 ACC: Yes, Ma'am.

15 MJ: I want you to take a moment now and consult with your
16 defense counsel and then tell me whether you still want to plead
17 guilty.

18 [The accused did as directed.]

19 ACC: Yes, Ma'am.

20 MJ: So you still want to plead guilty?

21 ACC: Yes, Ma'am.

22 MJ: All right. Lieutenant Niles, I find that your plea of
23 guilty is made voluntarily and will full knowledge of its meaning and

1 effect. I further find that you have knowingly, intelligently, and
2 consciously waived your rights against self-incrimination, to a trial
3 of the facts by a court-martial, and to be confronted by the
4 witnesses against you. Accordingly, your plea of guilty is provident
5 and is accepted. However, I advise you that you may request to
6 withdraw your guilty plea at anytime before the sentence is
7 announced, and if you have a good reason for your request, I will
8 grant it.

9 Will the accused and counsel please rise.

10 [The accused and his counsel did as directed.]

11 MJ: Lieutenant Niles, in accordance with your plea of guilty,
12 this court finds you:

13	Of Specification 1 of Charge I:	Not Guilty.
14	Of Specification 2 of Charge I:	Not Guilty.
15	Of Specification 3 of Charge I:	Not Guilty.
16	Of Charge I:	Not Guilty.
17		
18	Of The Specification of Charge II:	Guilty.
19	Of Charge II:	Guilty.

20 You may be seated.

21 [The accused and his counsel did as directed.]

22 MJ: Now Lieutenant Niles, we enter into the sentencing phase of
23 the trial where you have the right to present matters in extenuation
24 and mitigation, that is, matters about the offense or yourself, which
25 you want the court to consider in deciding your sentence. In
26 addition to the testimony of witnesses and the offering of

1 documentary evidence, you may yourself testify under oath as to these
2 matters, or you may remain silent in which case, the court members
3 may not draw any adverse inference from your silence.

4 On the other hand, if you desire, you may make an unsworn
5 statement. Because the statement is unsworn, you cannot be cross-
6 examined on it. However, the government may offer evidence to rebut
7 any statement of fact contained in any unsworn statement. An unsworn
8 statement may be made orally, in writing, or both. It may be made by
9 you, by your counsel on your behalf, or by both.

10 Do you understand these rights?

11 ACC: Yes, Ma'am. ~~***~~

12 MJ: Now counsel, is the personal data on the front page of the
13 charge sheet correct?

14 DC: Your Honor, the only issue is with the pay. These charges
15 were preferred before the first of the year. Since----

16 MJ: All right. What's the pay?

17 DC: The pay, Ma'am, the basic pay is \$3,421.50.

18 MJ: All right.

19 DC: And there is no longer any sea or foreign pay because he's
20 been redeployed back to Germany.

21 MJ: Okay, it would appear to me, at least the copy that I have,
22 that those changes were made.

23 DC: Okay, Ma'am.

1 MJ: Have they been made on the original?

2 TC: They should have been, Your Honor, yes.

3 MJ: All right. Is there anything else that needs to be
4 corrected on the front page of the charge sheet?

5 DC: Yes, Your Honor. The only other issue is with the term in
6 block 6bravo. Lieutenant Niles--his service obligation after OCS was
7 3 years not 4 years; however, when he arrived in Germany, he was
8 extended for several months so that he would have a 3 year term of
9 service from his arrival in Germany, so his ETS is in October of this
10 year 2004. So his original--his term of service is 3 years plus a
11 extension of about 4 months.

12 MJ: Okay, so 3 years 4 months, is----

13 DC: Yes, Your Honor.

14 MJ: ----what you're saying?

15 DC: Yes, Your Honor.

16 MJ: Okay why don't we change it so it reads 3 years 4 months,
17 so anything else?

18 DC: That's all the inaccuracies there, Your Honor.

19 MJ: Okay.

20 DC: Everything else is accurate.

21 TC: And that was, \$3,421.50 for basic and total correct?

22 DC: That's correct.

1 MJ: All right. Now Captain ^{b6-2} [REDACTED] has the accused been
2 punished in anyway prior to trial that would constitute illegal
3 pretrial punishment under Article 13?

4 DC: He has not, Your Honor.

5 MJ: Lieutenant Niles, have you spoken with Captain ^{b6-2} [REDACTED] about
6 Article 13?

7 ACC: Yes, Ma'am.

8 MJ: Do you understand what Article 13 prohibits?

9 ACC: Yes, Ma'am.

10 MJ: Do agree that you've not been punished prior to trial in
11 violation of Article 13?

12 ACC: Yes, Ma'am.

13 MJ: Has your freedom of movement been limited in anyway prior
14 to trial?

15 ACC: No, Ma'am.

16 MJ: Have your pass privileges been withdrawn?

17 ACC: No, Ma'am.

18 MJ: Have you been subject to any sort of sign in requirement?

19 ACC: No, Ma'am.

20 MJ: Captain ^{b6-2} [REDACTED] are you aware of any limitations placed on
21 Lieutenant Niles' liberty that raise the issue of restriction
22 tantamount to confinement?

1 DC: No, Your Honor. One point before you ask the next question
2 is there was a call in requirement where he called in and checked in
3 with his unit, but that doesn't rise to the level of Article 13
4 violation.

5 MJ: All right.

6 DC: It was not a personal, physical requirement. It was a call
7 in requirement.

8 MJ: Okay and when--when was that call in?

9 ACC: Ever since I've redeployed back to the unit.

10 MJ: Okay and how often do you have to call in?

11 ACC: Ah the previous commander required me to actually stop by
12 the company just to check in, and the current commander asks that I
13 call twice a week.

14 MJ: Okay twice a week?

15 ACC: Yes, Ma'am.

16 MJ: All right, now have, Lieutenant Niles, have you spoken to
17 Captain ^{b6-2} [REDACTED] about restriction tantamount to confinement?

18 ACC: Yes, Ma'am.

19 MJ: Do you understand the concept of restriction tantamount to
20 confinement?

21 ACC: Yes, Ma'am.

22 MJ: Do you believe that you've been restricted tantamount to
23 confinement?

1 ACC: No, Ma'am.

2 MJ: Now we've already discussed what the maximum punishment in
3 this case is, and that is, dismissal, total forfeitures, confinement
4 for 12 months, and a fine may also be adjudged. Looking at the
5 charge sheet, it does not appear that the accused has been in any
6 sort of pretrial confinement, and so I don't believe that any days of
7 pretrial confinement credit are due. Is that correct?

8 DC: I'm sorry, Your Honor. Yes, that is correct.

9 TC: Yes, Ma'am.

10 MJ: Has the sentence worksheet been marked as an appellate
11 exhibit?

12 TC: It should have been previously marked, Your Honor.

13 [The CR handed the flyer and sentence worksheet to the MJ.]

14 MJ: All right, the flyer has been marked as Appellate Exhibit
15 III. Have both counsel had an opportunity to review the flyer?

16 DC: Yes, Your Honor.

17 MJ: ~~Any~~ objections?

18 DC: No objection to the flyer, Your Honor.

19 MJ: All right, the sentencing worksheet has been marked as
20 Appellate Exhibit IV. Again, have both counsel had an opportunity to
21 review that?

22 TC: Yes, Your Honor.

23 MJ: Any objections?

1 DC: No objection, Your Honor, although I believe it may not
2 include the language about the fine, which you just read, the
3 possibility or the applicability of a fine.

4 MJ: Oh, you're right.

5 DC: We could add that on a recess before we mark it.

6 MJ: Well does either side believe that a fine is actually
7 appropriate in this case?

8 TC: The government----

9 DC: No, Your Honor. We certainly don't believe that a fine is
10 appropriate.

11 TC: The government does not, Your Honor.

12 MJ: All right, then, I will not instruct on a fine.

13 TC: Yes, Your Honor.

14 Your Honor, one point, if asked to read the maximum
15 sentence in front of the panel, should it just be dismissal, one year
16 of confinement, and don't mention the fine?

17 MJ: Correct.

18 TC: Yes, Your Honor.

19 MJ: All right, does either side have documentary evidence on
20 sentencing, which can be marked, if it hasn't been, and offered at
21 this time?

22 [The CR handed PE 2 and 3 for ID to the MJ.]

23

1 TC: The government has previously marked the ORB and the OER
2 from the timeframe of the crime, and those two documents we wish to
3 be admitted.

4 MJ: Okay. Have you had an opportunity, Captain ^{b6-2} [REDACTED] to
5 review these?

6 DC: Yes, Your Honor.

7 MJ: Any objections?

8 DC: No, Your Honor, not at all.

9 MJ: All right, so Exhibit 2, which is the ORB is admitted, and
10 Exhibit 3, which is an OER for the period 10 July 2003 through 30
11 March 2004, is also admitted.

12 Defense, do you have any?

13 DC: Your Honor, we have Defense Exhibit Alpha, which is a good
14 soldier packet, essentially, divided in four sections. I believe the
15 court has been previously shown a copy of this during an 802 session.
16 [The CR handed DE A for ID to the MJ.]

17 MJ: All right, any objection?

18 TC: Your Honor, just previously based on our 802 sessions we
19 had with you, if witnesses testify in person or via phone, then I ask
20 that the letters would be cumulative regarding Colonel ^{b6-2} [REDACTED] and
21 some of the letters that may be attached in there.

22 DC: Yes, Your Honor, before you even respond, if I may, defense
23 will withdraw those letters assuming--the only witness who is going

1 to present live testimony who has a statement in there is Lieutenant
2 ^{b6-4} [REDACTED] He will be a telephonic witness. If we make
3 contact and present the evidence, as we will seek to do, then we'll
4 withdraw those letters from the packet. [REDACTED]

5 MJ: All right.

6 DC: Otherwise, no other letters in there come from a witness
7 who will be present.

8 MJ: All right, with that proviso, Captain [REDACTED] any
9 objection? ^{b6-2}

10 TC: No, Your Honor.

11 MJ: All right then Defense Exhibit A for identification is
12 admitted.

13 Are those all of the exhibits for sentencing?

14 DC: Yes, Your Honor, I may just--if I may one question just a
15 request that we just be allowed to substitute into the record a black
16 and white copy. There are some original colored photographs in that
17 book, and for the record we have made black and white copies that we
18 would ask just that those personal items--photos be--you know we be
19 able to get those back so the accused does not lose those.

20 MJ: I have no problem with you submitting copies, but I'd
21 prefer you get colored copies made.

22 DC: Yes, Ma'am, we can do that.

1 MJ: All right, but do you want a copy of the entire book made
2 of the exhibit? That's all right, you may do that, but anything
3 that's in there in color needs to be copied in color.

4 DC: Yes, Ma'am, and that's fine. We'll just copy the colored
5 photographs. My only concern is that the accused and his family get
6 those photographs back----

7 MJ: That's fine.

8 DC: ----because those are personal items.

9 MJ: Any objection, Government?

10 TC: No, Your Honor.

11 MJ: Okay, no there's no problem doing that. Just make sure you
12 get colored copies----

13 DC: Thank you.

14 MJ: ----of the photos made.

15 DC: We'll provide those to Mr. [REDACTED] ^{b6-2}

16 MJ: All right. Any other--anything else we need to do before
17 we call the members?

18 TC: No, Ma'am.

19 DC: Nothing from the defense, Your Honor.

20 MJ: Okay Bailiff, would you call the members, please.

21 [The bailiff did as directed.]

22 [The session recessed at 1058, 1 July 2004.]

23

1 [The court-martial was called to order at 1100, 1 July 2004, pursuant
2 to the orders previously inserted in the record and the following
3 orders: Court-Martial Convening Order Number 8 dated 23 June 2004,
4 Headquarters, 7th Army Training Command, APO Army Europe.]

5 MJ: You may be seated. Court is now called to order.

6 TC: The court is convened by Court-Martial Convening Order
7 Number 1, Headquarters, 7th Army Training Command dated 25 February
8 2004, copies of which have been furnished to each court member.

9 The accused and the following persons detailed to this
10 court-martial are present.

11 COLONEL [REDACTED] MILITARY JUDGE; *66-2*
12 CAPTAIN [REDACTED] TRIAL COUNSEL; *all*
13 LIEUTENANT [REDACTED] ASSISTANT TRIAL COUNSEL;
14 CAPTAIN [REDACTED] DEFENSE COUNSEL; and the court

15 members who are:

16 COLONEL [REDACTED]
17 COLONEL [REDACTED]
18 LIEUTENANT [REDACTED];
19 LIEUTENANT COLONEL [REDACTED]
20 LIEUTENANT COLONEL [REDACTED];
21 LIEUTENANT COLONEL [REDACTED]
22 LIEUTENANT COLONEL [REDACTED]
23 MAJOR [REDACTED]

bb-2 all

1 MAJOR [REDACTED]
2 MAJOR [REDACTED]
3 CAPTAIN [REDACTED]
4 CAPTAIN [REDACTED] [sic] [REDACTED] who are the court
5 members.

6 The following persons are absent and have been properly
7 excused:

8 MAJOR [REDACTED]
9 CAPTAIN [REDACTED]
10 CAPTAIN [REDACTED];
11 CAPTAIN [REDACTED] and
12 CW4 [REDACTED]

13 The prosecution is ready to proceed with the trial in the
14 case of United States versus First Lieutenant Glenn A. Niles.

15 MJ: Thank you. The members of the court will now be sworn.

16 All persons in the courtroom please rise.

17 [All persons did as directed and the members were sworn.]

18 MJ: Please be seated.

19 [All persons did as directed.]

20 MJ: The court is now assembled.

21 Members of the court, it is appropriate that I give you
22 some preliminary instructions. My duty as military judge is to
23 ensure that this trial in conducted in a fair, orderly, and impartial

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1 manner in accordance with the law. I preside over open sessions,
2 rule upon objections, and instruct you on the law applicable in this
3 case. You are required to follow my instructions on the law and may
4 not consult any other source as to the law pertaining to this case
5 unless it's been admitted into evidence. This rule applies
6 throughout the trial including closed sessions and periods of recess
7 and adjournment. Any questions you have of me should be asked in
8 open court.

9 At a session held earlier, the accused pled guilty to The
10 Charge and Specification, which you have before you. I accepted that
11 plea and entered findings of guilty. Therefore, you will not have to
12 determine whether the accused is guilty or not guilty as that has
13 been determined by his plea. Your duty is to determine an
14 appropriate sentence.

15 That duty is a grave responsibility requiring the exercise
16 of wise discretion. Your determination must be based upon all the
17 evidence presented and the instructions I will give you as to the
18 applicable law. Since you cannot properly reach your determination
19 until all the evidence has been presented and you have been
20 instructed, it is of vital importance that you keep an open mind
21 until all the evidence and instructions have been presented to you.

22 Counsel soon will be given an opportunity to ask you
23 questions and exercise challenges. With regard to challenges, if you

1 know of any matter that you feel might affect your impartiality to
2 sit as a court member, you must disclose that matter when asked to do
3 so. Bear in mind that any statement you make should be made in
4 general terms so as not to disqualify other members who hear the
5 statement.

6 Some of the grounds for challenge would be if you were an
7 accuser in the case, if you have investigated any offense charged, if
8 you formed a fixed opinion as to what an appropriate sentence or
9 punishment would be for this accused. To determine if any grounds
10 for challenge exist, counsel for both sides are given an opportunity
11 to question you. These questions are not intended to embarrass you.
12 They are not an attack upon your integrity. They are asked merely to
13 determine whether a basis for challenge exists. It is no adverse
14 reflection upon a court member to be excused from a particular case.

15 You may be questioned either individually or collectively,
16 but in either event, you should indicate an individual response to
17 the question asked. Unless I indicate otherwise, you are required to
18 answer all questions.

19 You must keep an open mind throughout the trial. You must
20 impartially hear the evidence, the instructions on the law, and only
21 when you are in your closed session deliberations may you properly
22 make a determination as to an appropriate sentence after considering
23 all the alternative punishments of which I will advise you later.

1 You may not have a preconceived idea or formula as to either the type
2 or the amount of punishment, which should be imposed if any.

3 Counsel are given an opportunity to question all witnesses.
4 When counsel have finished, if you feel that there are substantial
5 questions that should be asked, you will be given an opportunity to
6 do so. The way we handle that is you're required to write out the
7 question and sign legibly at the bottom. This method gives counsel
8 for both sides and me an opportunity to review the questions before
9 they're asked since your questions, like the questions of counsel,
10 are subject to objection, and I believe that there are forms provided
11 for your use there if you desire to question any witness. I will
12 conduct any needed examination.

13 There are a couple of things you need to keep in mind with
14 regard to questioning:

15 First, you cannot attempt to help either the government or
16 the defense;

17 Second, counsel have interviewed the witnesses and know
18 more about the case than we do. Very often they do not ask what may
19 appear to us to be an obvious question because they are aware this
20 particular witness has no knowledge on the subject.

21 Rules of evidence control what can be received into
22 evidence. As I indicated, questions of witnesses are subject to
23 objection. During the trial, when I sustain an objection, disregard

1 the question and answer. If I overrule an objection, you may
2 consider both the question and answer.

3 During any recess or adjournment, you may not discuss the
4 case with anyone, not even among yourselves. You must not listen to
5 or read any account of the trial or consult any source written or
6 otherwise as to matters involved in this case. You must hold your
7 discussion of the case until you are all together in your closed-
8 session deliberations so that all members have the benefit of your
9 discussion. Do not purposely visit the scene of any incident alleged
10 in The Specification or involved in the trial. You must also avoid
11 contact with witnesses or potential witnesses in this case. If
12 anyone attempts to discuss this case in your presence during any
13 recess or adjournment, you must immediately tell them to stop and
14 report the occurrence to me at the next session. I may not repeat
15 these matters to you before every break or recess, but please keep
16 them in mind throughout the trial.

17 We will try and estimate the time needed for recesses or
18 hearings out of your presence. Frequently, your--the duration of
19 those hearings is extended by consideration of new issues that arise
20 during those hearings. Your patience and understanding regarding
21 these matters will contribute greatly to an atmosphere consistent
22 with the fair administration of justice.

1 While you are in your closed-session deliberations, only
2 the members will be present. You must remain together, and you may
3 not allow any unauthorized intrusion into your deliberations.

4 Each of you has an equal voice and vote with the other
5 members in discussing and deciding all issues submitted to you.
6 However, in addition to the duties of the other members, the senior
7 member will act as your presiding officer during your closed-session
8 deliberations and will speak for the court in announcing the results.

9 This general order of events can be expected in this court-
10 martial:

11 Questioning of court members;

12 Challenges and excusals;

13 Presentation of evidence;

14 Closing argument by counsel;

15 Instructions on the law;

16 Your deliberations; and

17 Announcement of the sentence.

18 The appearance and demeanor of all parties to the trial
19 should reflect the seriousness with which the trial is viewed.
20 Careful attention to all that occurs during the trial is required of
21 all parties. If it becomes too hot or too cold in the courtroom or
22 if you need a break because of drowsiness or for comfort reasons,
23 please tell me so that we can attend to your needs and avoid

1 potential problems that might otherwise result. Frankly, I'm not
2 sure how much control we have over the temperature in the courtroom,
3 but if there is a problem, let me know and we'll see what we can do.

4 Each of you may take notes, if you desire, and use them to
5 refresh your memory during deliberations, but they may not be read or
6 shown to other members. At the time of any recess or adjournment,
7 you should take your notes with you for safe keeping until the next
8 session.

9 If at anytime during the trial it is necessary that you
10 make any sort of statement, you need to preface that with your name
11 so that it's clear on the record who is speaking.

12 Now are there any questions?

13 [All members indicated a negative response.]

14 MJ: Apparently not.

15 Please take a moment and read The Charge on the flyer
16 provided to you and to ensure that your name is correctly reflected
17 on a convening order. If not, please let me know.

18 [All members did as directed.]

19 [A member indicated a change.]

20 MJ: Yes.

21 MEMBER [LTC ██████████]: Lieutenant ██████████^{b6-2} It
22 reflects Major ██████████ I've since been promoted.

1 MJ: All right that will be noted on the record, and
2 congratulations.

3 All right it appears that the only question was the one
4 noted by Lieutenant [REDACTED] *bb-2 all*

5 Trial Counsel, you may announce the general nature of The
6 Charge.

7 TC: The general nature of The Charge in this case is one charge
8 and one specification of a violation of Article 133, Uniform Code of
9 Military Justice for conduct unbecoming a United States Army officer.

10 The charges [sic] were preferred by Captain [REDACTED]
11 forwarded with recommendations as to its disposition by Colonel
12 [REDACTED] and investigated by Lieutenant Colonel [REDACTED]
13 [REDACTED] The records of this case disclose no grounds for
14 challenges. If any member of the court is aware of any matter, which
15 he or she believe may be a ground for challenge by either side, such
16 matter should now be stated.

17 Let the record--one person we've got a positive response from
18 Lieutenant [REDACTED], Your Honor. Besides Lieutenant [REDACTED]
19 [REDACTED] I think it was a negative response from the other panel
20 members, Your Honor.

21 MJ: Now remember, please state whatever you're going to say in
22 general terms so as to not infect, if you will, any of the other
23 potential panel members.

bb-2 all

1 MEMBER [LTC ██████████]: Lieutenant ██████████ the
2 investigating officer, and I work in the same organization. We were
3 doing separate Article 32 investigations at the same time, and at one
4 point a few weeks ago I asked him the status of his because he's
5 PCSing in the next few days. He said he'd completed----

6 MJ: All right, don't go any further as to what he told you.

7 MEMBER [LTC ██████████]: Okay.

8 MJ: Your conversation with him, did that--do you believe that
9 that will affect how you can hear the evidence in this courtroom and
10 determine a fair sentence for Lieutenant ██████████

11 MEMBER [LTC ██████████]: No, Ma'am, we did not discuss any
12 details.

13 MJ: All right. That may lead to some more questions further
14 down the road for you specifically, but I'll let that go at that at
15 the moment.

16 Other than that, does any member--is any member aware of
17 any matter, which he or she believes might be a ground for challenge
18 by other side

19 Negative response.

20 Now before counsel ask you questions, I'm going to ask you
21 a few preliminary questions. If any member has an affirmative
22 response to any question, please raise your hand.

23 Does anyone know the accused in this case?

1 Negative response from all members.

2 Does anyone know any person named in The Specification?

3 Again, a negative response.

4 Having seen the accused and read The Charge and The
5 Specification, does anyone feel that you cannot give the accused a
6 fair trial for any reason?

7 Negative response.

8 Does anyone have any prior knowledge of the facts or events
9 in this case?

10 Negative response.

11 Has anyone or any member of your family ever been charged
12 with an offense similar to that charged in this case?

13 Negative response.

14 Has anyone or any member of your family or anyone close to
15 you personally ever been a victim of an offense similar to that
16 charged in this case?

17 Negative response.

18 How many of you are serving as court members for the first
19 time?

20 All right, we have two Captain----

21 MEMBER [CPT ██████████ : ██████████ Ma'am.

22 MJ: --- ██████████ and----

23 MEMBER [MAJ ██████████ : Major ██████████

66-2

1 MJ: All right, as to the remaining members, can each of you who
2 has previously served as a court member put aside anything you might
3 have heard in a previous proceeding and decide this case solely on
4 the basis of the evidence and my instructions as to the applicable
5 law?

6 Affirmative response from all remaining court members.

7 Now has anyone had any specialized law enforcement training
8 or experience to include duties as a military police officer, off
9 duty security guard, civilian police officer, or comparable duties
10 other than the general law enforcement duties common to military
11 personnel of your rank and position?

12 Negative response.

13 Now is any member of the court in the rating chain,
14 supervisory chain, or chain of command of any other member of the
15 court?

16 Negative response.

17 Now has anyone had any dealings with any members, I'm
18 sorry, any parties to the trial to include me and counsel, which
19 might affect your performance of duty as a court member in anyway?

20 Negative response.

21 Does anyone know of anything of either a personal or
22 professional nature, which would cause you to be unable to give your
23 full attention to these proceedings throughout the trial?

1 Negative response.

2 Now it is a ground for challenge that you have an inelastic
3 predisposition toward the imposition of a particular punishment based
4 solely on the nature of the crime for which the accused is to be
5 sentenced. Does any member, having read The Charge and The
6 Specification, believe that you would be compelled to vote for any
7 particular punishment solely because of the nature of The Charge?

8 Negative response.

9 You will be instructed in detail before you begin your
10 deliberations. I will instruct you on the full range of punishments
11 from no punishment up to the maximum punishment. You should consider
12 all forms of punishment within that range. Consider doesn't
13 necessarily mean that you would vote for that particular punishment.
14 Consider means that you think about and make a choice in your mind
15 one way or the other as to whether that's an appropriate punishment.
16 Each member must keep an open mind and not make a choice nor
17 foreclose from consideration any possible sentence until the closed
18 session for deliberations and voting on the sentence. Can each of
19 you follow this instruction?

20 Affirmative response.

21 Can each of you be fair, impartial, and open minded in your
22 consideration of an appropriate sentence in this case?

23 Affirmative response.

1 Can each of you reach a decision on a sentence on an
2 individual basis in this particular case and not solely upon the
3 nature of the offense of which the accused has been convicted?

4 Affirmative response.

5 Is any member aware of any matter, which might raise a
6 substantial question concerning your participation in this trial as a
7 court member?

8 Negative response.

9 Now do counsel for either side desire to question the court
10 members?

11 TC: Yes, Your Honor, the government does.

66-2 all

12 DC: Yes, Your Honor, the defense does as well.

13 MJ: All right, Government, you can go first.

14 TC: Sir, members of the panel. My name is Captain [REDACTED]
15 [REDACTED], that's Lieutenant [REDACTED] We're the prosecutor or
16 the trial counsel in this case. I'm going to ask you a few questions
17 before we start.

18 Now you're going to hear from some witnesses today, and I'm
19 going to start by reading the names of the witnesses and if you know
20 that person, please give us an affirmative response. Okay.

21 Do any members of the panel know a Lieutenant [REDACTED]

22 [REDACTED] Lieutenant [REDACTED]

23 Negative response from the panel members, Your Honor.

bb-2 all

1 Do any of the members know a Major [REDACTED] a Major

2 [REDACTED]

3 Negative response from the panel members, Your Honor.

4 Do any of the members know a Major [REDACTED], Major

5 [REDACTED]?

6 Positive response from----

7 MEMBER [LTC [REDACTED]: Lieutenant [REDACTED]

8 TC: ----Lieutenant [REDACTED] and from Lieutenant [REDACTED]

9 [REDACTED]

10 Let me start with Lieutenant [REDACTED] how do you
11 know [REDACTED] Sir?

12 MEMBER [LTC [REDACTED]: If it's the same Major [REDACTED],
13 he's the 409th BSB [REDACTED]

14 TC: Okay, have you discussed any aspects of the case [REDACTED] with him?

15 MEMBER [LTC [REDACTED]: No, no, no.

16 TC: Okay. Anything on--based on your relationship that would
17 make you give more or less weight to what Major [REDACTED] might say?

18 MEMBER [LTC [REDACTED]: No.

19 TC: Okay. Same questions of you, Sir, how do you know Major

20 [REDACTED]

21 MEMBER [LTC [REDACTED]: He was my next-door neighbor in Bamberg,
22 and a personal friend.

bb-2 all

1 TC: Okay and based on that type of relationship--first of all,
2 have you discussed the case with him?

3 MEMBER [LTC [REDACTED] No.

4 TC: Okay. And based on your relationship, would you give any
5 more or less weight to what he testified to?

6 Negative response from the panel member, Your Honor.

7 Does anybody else know Major Hunt?

8 Negative response, Your Honor.

9 Does anybody know a Captain [REDACTED] a Captain [REDACTED]

10 Negative response from the panel members, Your Honor.

11 Does anybody know a Captain [REDACTED] Captain [REDACTED]

12 [REDACTED]

13 Again, Your Honor, negative response from the panel
14 members.

15 Do any of the panel members know a First Lieutenant [REDACTED]

16 [REDACTED]

17 Affirmative response from Lieutenant [REDACTED]

18 negative response from the other panel members.

19 How do you know Colonel, excuse me, Lieutenant [REDACTED]

20 MEMBER [LTC [REDACTED] He was recently assigned to my
21 organization at range control. He's the range safety officer so it's
22 about 1 month.

23 TC: Okay, so he's worked for you for about 1 month?

bb-2 all

1 MEMBER [LTC ██████████]: Yes.

2 TC: Are you a supervisor of his?

3 MEMBER [LTC ██████████]: Yes.

4 TC: Are you in his rating chain?

5 MEMBER [LTC ██████████]: Yes.

6 TC: What's your relationship in that rating chain?

7 MEMBER [LTC ██████████]: I'm his senior rater.

8 TC: Now based on your--first of all have you discussed the case
9 with him?

10 MEMBER [LTC ██████████]: No.

11 TC: Based--that's a negative response. Based on your
12 relationship with the lieutenant, is there anything that would make
13 you give more or less weight to what he said?

14 MEMBER [LTC ██████████]: No.

15 TC: Negative response from the panel member, Your Honor.

16 Does anyone know a First Lieutenant ██████████

17 Negative response from the panel members, Your Honor.

18 Does anybody know a Staff Sergeant ██████████ Staff
19 Sergeant ██████████

20 Again, Your Honor, negative response from the panel
21 members.

22 Do any of the members of the panel know a Staff Sergeant
23 ██████████ Staff Sergeant ██████████

b6-2 all

1 Again, Your Honor, negative response from the panel
2 members.

3 Do any of the members of the panel know a Sergeant [REDACTED]
4 [REDACTED]

5 Negative response from the panel members.

6 And does anybody know a [REDACTED]

7 Again, negative response from the panel members.

8 Next I'm going to read you a list of officers that have
9 been previously or have had some type of involvement in the case, and
10 please let us know--let the Court know if you know these people.

11 A Captain [REDACTED] does anybody know a Captain
12 [REDACTED]

13 Negative response from all the panel members, Your Honor.

14 Now the next one is regarding Colonel [REDACTED] and just
15 for the record, Colonel [REDACTED] already addressed how he knows
16 Colonel [REDACTED] Do any of the rest of the members of the panel
17 know a Lieutenant [REDACTED]

18 That's a positive response from Colonel [REDACTED]

19 Sir, how do you know Colonel [REDACTED]

20 MEMBER [REDACTED]: He and I have conducted multiple briefings
21 at the--for visitors to Grafenwoehr.

22 TC: Okay, has he actually discussed any particulars of this
23 case with you?

bb-2 all

1 MEMBER [REDACTED]: No, he has not.

2 TC: Okay is there anything based, on your relationship with
3 Lieutenant [REDACTED] that will make you give more or less
4 weight to anything-----

5 MEMBER [REDACTED]: No.

6 TC: Does anybody here know a Colonel [REDACTED] Colonel [REDACTED]
7 [REDACTED]

8 Affirmative response from Colonel-----

9 MEMBER [COL [REDACTED]: [REDACTED]

10 TC: ----Bilafer. Sir, how do you know Colonel [REDACTED]

11 MEMBER [COL [REDACTED]: We worked together at V Corps and now
12 we're deployed in Iraq together [sic].

13 TC: Okay... Did he ever discuss this case with you?

14 MEMBER [COL [REDACTED]: No.

15 TC: Anything, based on your relationship with him, that would
16 affect your ability to be fair and impartial in this case?

17 MEMBER [COL [REDACTED]: No.

18 TC: Lastly, has anyone from the military police corps or any
19 military police officers approached you about this case?

20 That's a negative response from all the panel members, Your
21 Honor.

22 That's all the questions I have. Thank you.

1 MJ: All right, Captain [REDACTED]
2 DC: Thank you, Your Honor.

b6-2 all

3 [REDACTED] Sir, Gentlemen, Ma'am, good morning. My
4 name is Captain [REDACTED] and I'm with the trial defense services
5 office here at Vilseck, and I'd like to introduce to you Lieutenant
6 [REDACTED], he's the accused in this case. I just have a couple
7 of questions briefly to ask--ask you as a group.

8 First of all, I would just like to ask as a general
9 proposition, would all of you agree that when determining an
10 appropriate punishment for any given offense, that it would be
11 necessary to consider the surrounding circumstances in which that
12 offense was committed? Would all of you agree to that proposition?

13 Your Honor, an affirmative response from all panel members.

14 For instance, an incident, which occurs in the midst of
15 combat operations, might be evaluated differently than one committed
16 in the everyday garrison environment. Would all of you agree to that
17 general proposition?

18 Affirmative response from all members, Your Honor.

19 Again, as a general proposition, would all of you agree
20 that combat--the combat environment can be an extremely stressful
21 situation? Would all of you agree to that general proposition?

22 Again, Your Honor, affirmative response from all members.

1 In that same light, would all of you agree that the combat
2 stresses or the stresses that one feels in combat could affect one's
3 judgment and decision making?

4 Affirmative--again affirmative response from all members,
5 Your Honor.

6 As the judge had briefly instructed, so you've already
7 heard this before, but I want to just, again, make sure that everyone
8 understands. You all do understand that one option for this court to
9 consider in granting or deciding a sentence for Lieutenant [REDACTED]
10 would be to consider no punishment. Does everyone understand that
11 that is--the law allows that action by the court?

bb-2 all

12 Affirmative response from all members, Your Honor.

13 And also does each of you understand that based on
14 Lieutenant [REDACTED] plea of guilty at a previous session, which the
15 judge had mentioned, that Lieutenant [REDACTED] now has a federal
16 conviction on his record as a result of that plea of guilty? Does
17 everyone understand that as a matter of law?

18 Again, Your Honor, an affirmative response from all.

19 But does each of you also understand that the mere presence
20 of a conviction on one's record does not mean that a person cannot
21 continue to serve in the Army? Does everyone also understand that as
22 a proposition of law?

1 Okay, again, Your Honor, an affirmative response from all
2 members.

3 Finally, a last series of questions. I would assume that
4 all of the members are familiar with the investigation of misconduct
5 at the [REDACTED] prison in Iraq. Is that a fair----

6 Affirmative response from all the members, Your Honor.

7 I would further assume, as officers, that all of you are
8 familiar about comments that have been made by President Bush,
9 Secretary of Defense Rumsfeld, and Chairmen of the Joint Chiefs of
10 Staff General Meyers that those who committed offenses at Abu Ghurayb
11 prison will be "brought to justice" or words to that effect. Have
12 all of you heard in the media or in some forum comments like that?

13 An affirmative response from all the members, Your Honor.

14 Now because of these comments from President Bush, the
15 Commander in Chief, and other senior--the most senior military
16 leaders, do any of you feel any pressure to render any certain type
17 of punishment in this case based on those comments?

18 Your Honor, there's a negative response from all members.

19 And finally one last question, and that is, would each of
20 you agree that a single isolated incident of prisoner maltreatment
21 that was committed wholly separate from [REDACTED] prison should be
22 evaluated independently from that which we've been made aware of
23 through the media? Does everyone agree with that?

1 [The session was called to order at 1130, 1 July 2004.]

2 MJ: All right all the members are absent, all other parties are
3 present. You may be seated.

4 Trial Counsel, do you request individual voir dire, and if
5 so, please state the name of the member and the reason. *b6-2 all*

6 TC: Your Honor, only--based on Colonel [REDACTED] response
7 we'd like individual voir dire with Colonel [REDACTED]

8 MJ: Okay you're going to have to be more specific----

9 TC: Based on-----

10 MJ: -----then "based on his response".

11 TC: Based on the question--the answers about Lieutenant
12 [REDACTED], excuse me, First Lieutenant [REDACTED] that he's his
13 supervisor and senior rater, based on his comment about knowing Major
14 [REDACTED] based on his conversations he's had with Colonel [REDACTED]
15 about the case.

16 DC: Your Honor, if I may, I believe that Captain [REDACTED]
17 already asked questions and elicited sufficient responses from
18 Colonel [REDACTED] with regards to him being able to set aside those
19 things.

20 MJ: Well I--I think we probably ought to get a little more on
21 the record as far as what he's--at least what he's heard from
22 Lieutenant Colonel [REDACTED] the 32 officer, just to make clear

1 since I told him, "don't go into anymore details," so we'll bring him
2 back for that if nothing else.

3 Is that--is there anyone else you want, Captain [REDACTED] *b6-2 all*

4 TC: Just Colonel [REDACTED] Ma'am.

5 MJ: All right. Captain [REDACTED] who would you like, if anyone
6 and why?

7 DC: Your Honor, I believe that we have, no--no requests for any
8 individual voir dire.

9 MJ: All right, Bailiff, would you ask Lieutenant [REDACTED]
10 [REDACTED] to come back out, please?

11 BAILIFF: Yes, Ma'am.

12 MJ: Thank you.

13 [LTC [REDACTED] entered the courtroom and was seated.]

14 MJ: All right, Captain [REDACTED], did you have any questions
15 that you wanted to ask Lieutenant Colonel [REDACTED]

16 TC: Just briefly.

17 **INDIVIDUAL VOIR DIRE OF LIEUTENANT COLONEL [REDACTED]**

18 **Questions by the trial counsel:**

19 Q. Sir, you mentioned that you--yourself and Colonel
20 [REDACTED] about the same time were doing Article 32 investigations?

21 A. Yes.

22 Q. And do you guys know each other pretty well?

23 A. Yes.

1 Q. Okay. Did you discuss your 32 investigations and what was
2 going on?

3 A. Not as to what was going on, no.

4 Q. What did he tell you about this case?

5 A. I asked him, because [REDACTED] due to PCS in a few days, I
6 asked him what the progress or status of his investigation was, if he
7 was going to complete it on time, and he informed me that he had
8 turned it in, but when he said that he said also that he had been
9 informed the recommendation that he had made on it was not the one
10 adopted by whoever the appointing authority was.

11 Q. Did he tell you what the recommendation was?

12 A. No, he did not.

13 Q. Okay, but you realize that we're at a court-martial now,
14 right? [REDACTED]

15 A. Yes.

16 Q. Right and Colonel--Lieutenant Colonel [REDACTED] said that
17 he had made a different recommendation then? [REDACTED]

18 A. Yes, I inferred that.

19 TC: Thank you.

20 No further questions, Your Honor.

21 MJ: All right.

22 Captain [REDACTED] would you like to ask Lieutenant Colonel
23 [REDACTED] any questions?

1 DC: If I may, Ma'am.

2 MJ: Of course.

3 DC: Just briefly.

4 **Questions by the defense counsel:**

5 Q. ^{66-2 all} Sir good day. Sir, the conversation that you've had with
6 Colonel [REDACTED] in addition to your relationship with him, as had
7 been asked previously in the group setting, do you feel anyway
8 predisposed to come to any certain decision about punishment versus
9 any other decision based on that?

10 A. No, not at all. No.

11 Q. Okay, Sir, and would it be--do you feel as though--I mean
12 you said that you were able to infer, I think that was your word--the
13 word that you used, I guess what Colonel [REDACTED]-recommendation
14 had been?

15 A. I mean----

16 Q. The question that Captain [REDACTED] had asked you was well,
17 "we're here at a court-martial" I believe you said that you were
18 able--had been able to infer that the recommendation had been for
19 something else?

20 A. No, not at all because in the Article 32 forum it has many
21 different forms of court-martial that you can recommend, so I didn't
22 know if it was another form of court-martial or something lower. He
23 just said it was different.

1 Q. Okay great. Now having had that specific conversation, and
2 maybe just one or two exchanges, does that in anyway affect your
3 ability to come to a fair and impartial decision here?

4 A. No, no, not at all.

5 Q. And are you, in fact, confident that you would be able to
6 come to a fair and impartial decision----

7 A. Yes.

8 Q. ----in this case?

9 A. Yes.

10 DC: Okay thank you, Sir.

11 MEMBER [LTC ██████████]: Yes.

66-2 all

12 MJ: All right. Thank you, Lieutenant Colonel ██████████ you
13 can return to the deliberation room.

14 [LTC ██████████ withdrew from the courtroom.]

15 MJ: Captain ██████████ who else did you want or----

16 TC: Your Honor, I--I did not ask questions--I was mostly
17 concerned about the relationship with Colonel ██████████ and Colonel

18 ██████████

19 MJ: Okay are you satisfied now?

20 TC: Yes, Your Honor.

21 MJ: All right, then do you have any challenges for cause?

22 TC: Yes, Your Honor, we challenge Colonel ██████████ for cause
23 based on his relationship and discussions previously about the case.

66-2 all

1 MJ: I'm sorry with his relationship with whom?

2 TC: Colonel [REDACTED] the 32 officer, and his discussions on
3 the case, Ma'am.

4 MJ: Well he said he doesn't know anything about the case. His
5 only discussion was in a basically are you doing a 32, what's the
6 status of it, and are you going to finish it before you PCS.

7 TC: I believe Colonel [REDACTED] response to one of my
8 questions was that he had sent it up to--that his recommendations to
9 the convening authority had not been approved, and I think based on--
10 --

11 MJ: Well yeah but he--he--what he said was there are a number
12 of choices on the form. All he knows is some recommendation that
13 Lieutenant Colonel [REDACTED] made wasn't followed. He's,
14 Evidently, under the misapprehension that the Lieutenant maybe could
15 have gone to a special court-martial and that--that's okay. He just
16 doesn't know--he doesn't know whether the investigating officer
17 recommended no trial, a different level of trial, he just knows that
18 some recommendation wasn't followed.

19 TC: Well that also gets into what we talked about in the 802
20 session, Ma'am, with regards to Colonel [REDACTED] possible MFR
21 that he might do, and obviously all that Colonel [REDACTED]---

22 MJ: Well but I've already discussed with you that whatever
23 Lieutenant Colonel [REDACTED] might say, he may not discuss what his

1 recommendations were as a 32 officer as far as how this case should
2 have been disposed of because that's irrelevant for our purposes, so
3 you're going to have to tell me again--I don't see how what
4 Lieutenant Colonel [REDACTED] has said about his discussions with
5 Lieutenant Colonel [REDACTED] makes him something other than
6 impartial and willing to follow the instructions of the court, which
7 is what's required of him.

8 TC: Understood, Your Honor, but the government's position is
9 this is that he's previously discussed the case that through the *bb-2 all*
10 evidence or through the discussions he's had with Colonel [REDACTED]
11 it's clear that Colonel [REDACTED] and the General Court-Martial
12 Convening Authority disagreed, and we think that's going to affect
13 how he views the case.

14 MJ: Well Captain [REDACTED] what's your view?

15 DC: Your Honor, if I may respond to that. The rule certainly
16 does not preclude anyone from serving on a panel that has had a
17 discussion. The issue--the question is can they set aside any prior
18 knowledge or any issues, anything outside the process can they set
19 that aside and make a fair and impartial decision in the best
20 interest of justice. I think Colonel [REDACTED] very clearly said on
21 a couple of occasions that he could--could do that. He had not gone
22 into any detail with Colonel [REDACTED], and you yourself, Your
23 Honor, just noted, he is not someone--he's not a lawyer, he's not a

b6-2 all

1 JAG officer, he's not aware of some of the intricacies, and as he
2 said, he had no idea what the recommendation from Colonel [REDACTED]
3 was. He simply knew that the convening authority had done something
4 different to that, and I asked him pointedly would that affect his--
5 would that knowledge affect his ability, he said no, Your Honor. I'm
6 confident in his response that that's true.

7 MJ: All right. There's no information on the record that
8 Lieutenant Colonel [REDACTED] knows anything about the events that
9 have brought Lieutenant [REDACTED] here today, that he discussed the nuts
10 and bolts of the case with Lieutenant Colonel [REDACTED] that he
11 discussed anything with him other than the fact that they were each
12 doing Article 32 investigations at the same time, and what the
13 general status of the 32 investigation was in relationship to
14 Lieutenant Colonel [REDACTED] getting ready to PCS, that is, had
15 he gotten it done and had he sent it forward, and that he learned
16 from Lieutenant Colonel [REDACTED] yes it had been finished and
17 that the convening authority hadn't followed his recommendation. He
18 didn't even know what the recommendation was, so I'm going to deny
19 your request to excuse him for cause.

20 TC: Understood, Your Honor.

21 MJ: Defense Counsel----

22 TC: Just note the government objection for the record.

23 MJ: Well it's on the record, so----

1 TC: Yes, Ma'am.

2 MJ: ----you don't need to ask me to note it.

3 TC: Yes, Your Honor.

4 MJ: It's already there.

5 Defense Counsel, do you have any excusals for cause or

6 challenges for cause I should say?

7 DC: Your Honor, may I have just a moment to consult with the

8 accused----

9 MJ: Yes.

10 DC: ----and members of my staff?

11 [The DC, ACC, and a summer intern conferred.]

12 DC: Your Honor, no casual challenges.

13 MJ: All right, Trial Counsel, peremptory? *bb-2 all*

14 TC: Same one, Your Honor; Lieutenant Colonel [REDACTED] [sic].

15 MJ: All right. I don't think you really mean that. He's the

16 investigating officer. He's not a member of our panel.

17 TC: Oh pardon me. Colonel [REDACTED] Your Honor.

18 MJ: All right. And Defense Counsel?

19 DC: Your Honor, Colonel [REDACTED] is our peremptory challenge.

20 MJ: All right. So that will leave our panel then of--with ten

21 members. Is that correct?

22 DC: That's my count, Your Honor.

23 TC: That's my count as well, Your Honor.

1 MJ: You can be seated.

2 All right, has the bailiff been instructed on how to
3 reorder?

4 TC: Your Honor, if--we'll have my legal clerk, Specialist
5 [REDACTED], reorder if that's okay, Your Honor.

6 MJ: That's fine. He and the bailiff can go back and tell
7 Colonel [REDACTED] and Lieutenant Colonel [REDACTED] they're excused.

8 TC: Yes, Your Honor.

b6-2 all

9 MJ: And reorder the panel.

10 TC: We'll do, Your Honor.

11 MJ: And how long is that going to take?

12 TC: I would guess 5 to 10 minutes, Your Honor.

13 MJ: All right then we'll be in recess while that's done.

14 [The session recessed at 1141, 1 July 2004.]

15 [END OF PAGE]

16

1 [The court-martial was called to order at 1156, 1 July 2004.]

2 MJ: Court is called to order. You may be seated. Call the
3 members.

4 [All the members, except Colonel [REDACTED] and Lieutenant Colonel
5 [REDACTED] who were excused, entered the courtroom and were seated.]

66-2 all

6 MJ: You may be seated.

7 TC: The following data is reflected on the charge sheet:

8 NAME OF THE ACCUSED----

9 MJ: No, no. All parties are present as before now to include
10 the court members with the exception of Colonel [REDACTED] and Lieutenant
11 Colonel [REDACTED] who were each excused.

12 Court members, at this time we will begin the sentencing
13 phase of this court-martial. Trial Counsel, would you please read
14 the personal data concerning the accused as shown on the first page
15 of the charge sheet?

16 TC: Yes, Your Honor.

17 THE NAME OF THE ACCUSED IS: [REDACTED]

Niles, Glenn A. Jr.

18 SOCIAL SECURITY NUMBER:

19 GRADE OR RANK IS: First Lieutenant.

20 PAY GRADE IS: O2.

21 HIS UNIT ORGANIZATION IS: 615th Military Police Company,
22 APO AE 09302.

23 HIS INITIAL DATE IS: 10 May 01.

1 HIS TERM IS: 3 years and 4 months.

2 AND HIS BASIC AND TOTAL PAY IS: \$3,421.50, Your Honor.

3 MJ: Thank you.

4 Now members of the court, I have previously admitted into
5 evidence Prosecution Exhibits 1, 2, and 3, which are a stipulation of
6 fact in this case, the accused's ORB, and an OER for him, and Defense
7 Exhibit A, which is a series of certificates, awards, and letters on
8 his behalf. You will have these exhibits available for you during
9 your deliberations.

10 Trial Counsel, you may read the stipulation of fact into
11 evidence.

12 TC: Yes, Your Honor.

13 [The TC published PE 1 to the members.]

14 MJ: Thank you. Do you have anything else to present at this
15 time, Captain [REDACTED] b6-2all

16 TC: No, Ma'am.

17 MJ: All right. Defense Counsel, you may precede then.

18 DC: Thank you, Your Honor.

19 Members of the court, the defense calls Staff Sergeant
20 [REDACTED] as our first witness.

21 b6-4 [END OF PAGE]

22

b6-4

1 STAFF SERGEANT [REDACTED] U.S. Army, was called as a witness
2 for the defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel:

5 Q. Would you please state your name, rank, and your unit of
6 assignment, please?

b6-4

7 [REDACTED] staff sergeant, 615th MP, Company,
8 Sir.

9 ATC: Thank you, Sergeant, Captain [REDACTED] has a couple of
10 questions for you.

b6-2

11 Questions by the defense counsel:

12 DC: Good day, Sergeant [REDACTED] before I begin, can all the
13 panel members see the witness? Am I blocking your view, Sir?

b6-4

14 [All panel members indicated a positive response.]

15 Q. Good day, [REDACTED] Do you know the accused,
16 Lieutenant [REDACTED]

b6-4

17 A. Yes, Sir.

Niles

18 Q. How do you know Lieutenant [REDACTED]

Niles

19 A. He was my lieutenant while--before we went to Iraq and
20 during part of the time that I was in Iraq, Sir.

21 Q. Okay what was your position then?

22 A. Squad leader in 1st Platoon.

1 Q. Okay so he was your platoon leader and you were one of his
2 squad leaders?

3 A. Yes, Sir.

4 Q. Okay. And we heard a stipulation of fact just read. It's
5 true that you were present at the ^{b2-2} [REDACTED] Police Station and
6 witnessed the incident in question. Is that correct?

7 A. Yes, Sir.

8 Q. Okay. I would, if you can, please just ask you to tell the
9 court members from your recollection what happened.

10 A. There were three prisoners that were there. They were
11 apprehended the night before, and they had tried to escape during the
12 night by digging a hole through one of the walls with one of the
13 pipes from the shower, and the Lieutenant found out about it when we
14 went out there, and he wanted to go check it out, so myself, Sergeant
15 [REDACTED], Sergeant [REDACTED] and Private [REDACTED] went into the D-Cell and we
16 separated the three that--that were in question, and told Private
17 [REDACTED] to watch the other individual prisoners.

18 And we walked into the room in question, and as we were
19 walking, Lieutenant [REDACTED] was asking the prisoners if they're the
20 ones that did, you know, did the digging of the hole trying to dig
21 out. And as we walked in, the prisoners were in front of us and then
22 Lieutenant [REDACTED], then me, and then Sergeant [REDACTED] which was
23 Specialist [REDACTED] at the time, and then Sergeant [REDACTED] behind him.

1 The prisoners stopped right as soon as we got inside the room, and
2 the hole in the wall was towards the backside of the room, and
3 Lieutenant ^{Niles} [redacted] was asking still if they had--if they're the ones
4 that had done this, and of course, they didn't understand. So
5 Lieutenant ^{Niles} [redacted] looked over that way towards the wall and kind of
6 put his hand around the neck of the first prisoner and kind of shoved
7 him over in that direction.

8 Q. Let me ask--sorry to interrupt, but let me just ask you.
9 You said "put his hand around his neck" you mean in a choking manner
10 or from behind?

11 A. No, he was looking at him kind of like I'm looking at you,
12 Sir, and just put his hand like right here and pushed him over that
13 way, Sir.

14 Q. Toward the hole that he was asking about?

15 A. Yes, Sir.

16 Q. Okay please continue.

17 A. Once he did that, the other two individuals realized that
18 he wanted them over in that direction, so the three [sic] went over
19 by the hole in the wall, and Lieutenant ^{Niles} [redacted] walked in, started
20 walking over towards them. Myself and Sergeant [redacted] and Sergeant
21 [redacted] kind of stood back because we didn't know that the--what's in
22 question was going to happen, and Lieutenant [redacted] was still asking,

b6-5 all

1 "Did you do this?" "Did you do this?" And of course, they didn't
2 understand still, so they didn't say anything.

3 And when Lieutenant ^{Niles} [REDACTED] walked up, he--he--the three
4 individuals were in a row kind of like in a row looking at him, and
5 he went up to the right individual first, and he punched the
6 individual in the gut, and then he moved to the next one and punched
7 the second individual in the gut. By this time, I was already
8 starting to move over into him to try to stop him from doing it, and--
9 --and the third guy was kind of afraid of getting hit, so he kind of
10 was kind of getting down on the ground saying, "No, no." And by that
11 time, I was already over there, and put my arms around Lieutenant
12 ^{Niles} [REDACTED] and was starting to pull him back, and then he kind of kicked
13 at the third guy that was on the floor, Sir.

14 Q. Okay. What would you say would be a fair estimate of the
15 amount of time that passed from when he struck the first guy to when
16 you pulled him off, and he struck the third guy?

17 A. Just a few seconds, Sir. Long enough--long enough for me
18 to walk from--not even from the distance from me to you away, Sir,
19 because I was there before he even got to the third guy.

20 Q. So 4 or 5 seconds?

21 A. Yes, Sir.

22 [END OF PAGE] [REDACTED]

23

1 Q. Okay. Had you ever, in your time knowing Lieutenant ^{Niles} [REDACTED]
2 ever seen him do anything like that before?

3 A. No, Sir.

4 Q. Had there been any discussion before hand about, "Hey,
5 we're going to go in here and rough these guys up"?

6 A. No, Sir.

7 Q. Okay. In fact, were you shocked to see what happened?

8 A. Yes, Sir.

9 Q. Okay, and why is it that you were shocked?

10 A. Because it's not something that normally that--that first
11 of all should be done, and I've never seen anybody in our platoon
12 that I worked with that have ever done it, and nobody's ever
13 discussed it, and he's--he was always professional, always, Sir, up
14 until that point, and I just wish--didn't think that it would happen,
15 Sir.

16 Q. Okay, so it's fair to say, then, that that act--that act on
17 his part was completely out of character from the Lieutenant ^{Niles} [REDACTED]
18 that you knew?

19 A. Yes, Sir.

20 Q. Okay. You mentioned previously, just I want to follow up
21 with one point, that is that these three Iraqis had been brought in--
22 had been apprehended the night before?

23 A. Yes, Sir.

1 Q. What is it that they had been apprehended for, if you know?

2 A. They were under suspicion of car theft and murdering the
3 owner of the car, Sir.

4 Q. Okay. Thanks. Now I want to ask you a little bit of a
5 bigger picture question now, and that is, the ¹²⁻² [REDACTED] Police Station,
6 describe for me, if you will, the platoon's mission at the station at
7 the time.

8 A. Our mission, Sir, was to instruct and teach the IPs, the
9 Iraqi Police, that were there to teach them in the different classes
10 on anything from how to respond to traffic accidents all the way up
11 to responding to a rape or a murder and anything in between there,
12 Sir. Also we were pulling force protection. Our soldiers were
13 actually on the roof pulling force protection on the station the
14 entire time we were there, Sir.

15 Q. Okay what were the shifts? How much--how many hours a day
16 were you working typically or was Lieutenant ^{Niles} [REDACTED] working typically?

17 A. At least 12, Sir, 12 to 14 sometimes 16 hours a day.

18 Q. Okay and was that 7 days a week?

19 A. Yes, Sir.

20 [END OF PAGE]

21

1 Q. Okay and how long had you been at that station conducting
2 those types of operations prior to this incident at the end of July?

3 A. It had been a couple of months, Sir. I'm not exactly sure
4 how many at that station because we had been at numerous stations. I
5 would say at least 2 months at that individual station, Sir.

6 Q. So then at least 2 months--a few months of everyday 14, 16
7 hour days. That's a fair----

8 A. Yes, Sir.

9 Q. ----estimate of the mission and the requirements before
10 that?

11 A. Yes, Sir.

12 Q. Okay. What was the--some of the environmental factors like
13 the heat, was that a very particularly hot time?

14 A. Yes, Sir.

15 Q. And what about force protection and the threat that you all
16 were facing, what was that like at that time?

17 A. The--it was pretty bad, Sir. Each individual day we had to
18 travel to and from the station, so we were always worried about IEDs
19 on the way to and on the way from, and also getting ambushed on the
20 way in and on the way back. Also there--different stations were also
21 always getting either mortared or RPGd at all times, Sir, as well.

22 [END OF PAGE]

23

1 Q. Would it be fair to say, then, that based on the threat,
2 the heat, the hours, that it was an extremely stressful time?

3 A. Yes, Sir.

4 Q. Would it also be fair to say that as a leader, as a squad
5 leader yourself, as Lieutenant ^{Niles} [REDACTED] being a platoon leader, that the
6 additional stresses of leadership and taking care of your soldiers
7 was also or added more--even more stress to that?

8 A. Yes, Sir.

9 Q. Is that fair to say? Did you, in fact, yourself feel
10 extremely stressed?

11 A. Yes, Sir.

12 Q. Okay. Now you had mentioned that Lieutenant ^{Niles} [REDACTED] had been
13 your platoon leader for a pretty significant period of time. Is that
14 right?

15 A. Yes, Sir.

16 Q. Okay how often, as one of his squad leaders, did you
17 interact with him? Was it on a daily basis?

18 A. Yes, Sir.

19 Q. Okay and how long of a period of time was it that you were
20 one of his squad leaders if you can tell the court?

21 A. About a year and a half, Sir.

22 [END OF PAGE]

23

1 Q. Okay, so for a year and a half you interacted with him on
2 roughly a daily basis?

3 A. Yes, Sir.

4 Q. Did you have a--in that year and a half, did you have
5 sufficient time to form an opinion about him as a leader?

6 A. Yes, Sir.

7 Q. And did you, in fact, form an opinion?

8 A. Yes, Sir.

9 Q. What is that opinion?

10 A. He was always professional, Sir, always would take care of
11 his platoon. Had a genuine concern for everybody in the platoon, and
12 just--I always thought he was professional. He knew his job well,
13 Sir. He was a great leader.

14 Q. Okay, tactically--as far as the combat tactics, proficiency
15 in the combat operations were you confident with him as your platoon
16 leader?

17 A. Yes, Sir.

18 Q. Going to war with him----

19 A. Yes, Sir.

20 Q. ---as your leader? Okay. Having been present for the
21 incident and knowing what you know about the incident, if you were
22 tasked to go to war yet again with Lieutenant [REDACTED] or maybe Captain

Diles

1 [REDACTED] ^{b6-2} as your company commander, would you be comfortable and
2 confident with him?

3 A. Definitely, Sir.

4 DC: Okay thanks.

5 Your Honor, I pass the witness to the government.

6 MJ: All right, cross?

7 ATC: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **Questions by the assistant trial counsel:**

10 Q. Sergeant [REDACTED] ^{b6-4} in order to get a better understanding of
11 what happened in Cellblock D in Baghdad, will you please step down
12 from the witness chair?

13 A. [The witness did as requested.]

14 Q. Now you described for the record that once you were in the-
15 -once the three detainees were separated that Lieutenant ^{Niles} [REDACTED] made
16 first contact with the detainees, correct?

17 A. Yes, Sir.

18 Q. Would you, please, demonstrate for the panel members, and
19 for the court, the first contact with the three detainees, please?

20 A. Yes, Sir, so you're the detainee?

21 Q. Correct there's three detainees.

22 A. And I'll be Lieutenant ^{Niles} [REDACTED] He walked up and there's a
23 wall right there and on the other side of the wall is a--the room

1 . opens up and the hole that was dug in the wall on the other side over
2 there, and he walked up asking the question, "Did you do this?" "Did
3 you do this?" And he just put his hand on the person like this and
4 then shoved him over like that.

5 Q. Okay and then what?

6 A. And----

7 MJ: Okay we--we need to get a description of this that the
8 record can understand, so----

9 ATC: Yes, Ma'am.

10 MJ: ----the witness indicated that a wall was on his left.

11 WIT: Yes, Ma'am.

12 MJ: And then he placed his right hand at what is approximately
13 the junction of Lieutenant ^{Niles} [REDACTED] neck and shoulder and then with
14 his right hand and then pushed Lieutenant ^{Niles} [REDACTED] to the left.

15 ATC: Correct, Ma'am.

16 MJ: Go ahead.

17 Q. Then what happened, Sergeant?

18 A. Once that happened, the other two realized that he wanted
19 them over there so----

20 Q. And at that point, where were the other two detainees, to
21 his right or to his left?

22 A. The other two at that time were still right there because
23 he threw the first one over to that direction like that.

003506

1 Q. Okay.

2 A. And then as soon as he started--he shoved the other one
3 over that way, they started moving over that way because they
4 realized that----

5 Q. Okay.

6 A. ----he wanted them over there.

7 Q. Did he grab the second detainee----

8 A. Negative.

9 Q. ----by the neck?

10 A. Negative, Sir.

11 Q. Okay so one detainee is over by the wall, and the second
12 two----

13 A. Immediately started ~~moving~~ moving over to that direction, Sir.

14 Q. To his left?

15 A. Yes, Sir.

16 Q. Okay and then what happened?

17 A. Then he walks over like--enters the room like this and
18 myself, the wall would be right here so myself and----

19 ATC: Okay let the record reflect that Sergeant ^{b6-4} [REDACTED] has
20 pointed to his left that there was a wall to his left, correct?

21 WIT: Yes, Sir.

22 [END OF PAGE]

23

1 Q. Okay and then what happened? bb-4

2 A. At that time, that's when myself and Sergeant [REDACTED] and

3 Sergeant ^{bb-4} [REDACTED] walked around to just the entrance of the room.

4 Q. Okay.

5 A. And Lieutenant ^{Niles} [REDACTED] walked over towards the three

6 individuals.

7 Q. Were--were they facing him?

8 A. Yes.

9 Q. Okay and then what happened.

10 A. Asking them, you know, if they had done this, if they had

11 done this, and he walked up to the first one like this.

12 ATC: Okay and just for the record, let the record reflect that

13 Sergeant ^{bb-4} [REDACTED] is grabbing me, Lieutenant ^{Niles} [REDACTED] by the right

14 shoulder, correct?

15 WIT: Yes.

16 ATC: And is making a motion, a swinging motion to my midsection,

17 correct?

18 WIT: Yes.

19 Q. And then what happened?

20 A. At that time, he was already done with that individual.

21 Q. Okay and what--what did he do? What did the first detainee

22 do?

23 A. He just kind of doubled over and kind of backed off.

1 ATC: Okay and let the record reflect that Sergeant ^{b6-4} [REDACTED] is
2 crouched over demonstrating how the first detainee acted.

3 Q. Okay and then what happened to the second detainee?

4 A. Then the second one was still just standing there and he
5 kind of moved over and did the same thing to the second one.

6 ATC: Okay and let the record reflect, once again, that Sergeant
7 ^{b6-4} [REDACTED] is grabbing Lieutenant ^{Niles} [REDACTED] by the shoulder and doing a
8 swinging motion to my midsection, Lieutenant ^{Niles} [REDACTED] midsection,
9 demonstrating how Lieutenant ^{Niles} [REDACTED] struck the second detainee,
10 correct?

11 WIT: Yes, Sir.

12 Q. And how did the second detainee act?

13 A. He just doubled over the same as the first one and moved
14 over to the corner section.

15 Q. Okay and will you face the panel and describe how the third
16 detainee reacted?

17 A. By that time, the third detainee was afraid so he kind of
18 was hid down like this and then----

19 ATC: And let the record reflect that Sergeant ^{b6-4} [REDACTED] has
20 crouched to the floor kind of demonstrating how the third detainee
21 reacted to Sergeant, forgive me, Lieutenant ^{Niles} [REDACTED] correct?

22 WIT: Yes.

23

1 Q. And what did you say [sic]?

2 A. He said, no, Sir. "No, mister. No, mister."

3 Q. Okay.

4 MJ: Okay when you crouched, you crouched down, you used your
5 right hand on the ground, and you held your left hand up in the air
6 as though to ward off someone. Is that a fair description?

7 WIT: Yes, Ma'am.

8 MJ: All right.

9 ATC: You can take a seat.

10 [The witness returned to the witness stand.]

11 Q. Now at that point, you had to grab Lieutenant ^{Niles} [REDACTED]
12 correct?

13 A. Yes, Sir.

14 Q. I mean Lieutenant ^{Niles} [REDACTED] didn't stop himself, correct?

15 A. No, Sir.

16 Q. And I mean even when you held Lieutenant ^{Niles} [REDACTED] I mean he
17 didn't stop, right?

18 A. As--as I was putting my hands around his waist to pull him
19 back, he was already in the process of kicking at the individual
20 because he was down----

21 Q. Okay.

22 A. ----instead of up, so as I pulled him away, he kind of
23 struck him in the--in the chest.

1 Q. Did he make contact as you pulled him back?

2 A. Yes, Sir.

3 Q. What--let's kind of talk about the detainees. Can you
4 describe what they were about 5, 5, 160 pounds? Is that a fair
5 description of---

6 A. Yes, Sir.

7 Q. ----all three detainees? In that cellblock when Lieutenant
8 ^{Niles} [REDACTED] made contact with those three detainees, they weren't a
9 physical threat to him, were they?

10 A. No, Sir.

11 Q. These three detainees weren't a physical threat to the
12 soldiers in that cellblock, right?

13 A. No, Sir.

14 Q. As a matter of fact, Lieutenant ^{Niles} [REDACTED] did not act out of
15 self defense for himself or for any of the other soldiers, is that
16 fair?

17 A. Yes, Sir.

18 Q. Okay. I know on direct you mentioned that these three
19 detainees were accused of crimes, and that's why they were there,
20 correct?

21 A. Yes, Sir.

22 [END OF PAGE]

23

1 Q. But the fact that they were accused of crimes doesn't
2 justify striking them, does it?

3 A. No, Sir.

4 Q. The fact that they attempted to escape doesn't make it
5 right that they were struck, does it?

6 A. No, sir.

7 Q. As a matter of fact, striking those detainees was wrong?

8 A. Yes, Sir.

9 Q. Now I know you discussed some of the stress factors.
10 Everyone was working long hours, correct?

11 A. Yes, Sir.

12 Q. I think at times you mentioned 12 to 14 hour days?

13 A. Yes, Sir.

14 Q. Seven days a week?

15 A. Yes, Sir.

16 Q. In heat of a hundred plus?

17 A. Yes, Sir.

18 Q. You weren't given any special privileges from those fact--
19 those stress factors, were you?

20 A. No, Sir.

21 Q. You didn't work any less than anyone else, did you?

22 A. No, Sir.

1 Q. You didn't have air-conditioned quarters or work in an air-
2 conditioned compound?

3 A. No, Sir, not at that time.

4 Q. And as far as like, you mentioned the transportation and a
5 lot of the dangers, IEDs, the ambushes, you faced those on a daily
6 basis also?

7 A. Yes, Sir.

8 Q. I mean you stressed--you faced not only the stresses of the
9 desert and the dangers, but I mean you also had a leadership
10 position, right?

11 A. Yes, Sir.

12 Q. And so, I mean you faced the same stresses that everybody
13 else who was there, the same stresses that Lieutenant ^{Niles} [REDACTED] faced?

14 A. Yes, Sir.

15 Q. You never struck any of those detainees did you?

16 A. No, Sir.

17 ATC: I have nothing further, Your Honor.

18 MJ: All right, redirect?

19 DC: Yes, Your Honor, very briefly.

20 **REDIRECT EXAMINATION**

21 **Questions by the defense counsel:**

22 Q. Were those three guys hurt?

23 A. No, Sir.

1 Q. In fact they were--there were no injuries at all, right?

2 A. No, Sir.

3 Q. Okay now when you pulled Lieutenant ^{Niles} [REDACTED] off, did you--the

4 next couple events after that is you escorted him out of the room,

5 right?

6 A. Yes, Sir.

7 Q. What happened after that?

8 A. I--we have an actual room that was just ours for the

9 military police. When I--I pulled him off, he walked in front of me,

10 and I basically followed him into that room, Sir.

11 Q. And did you have a discussion at all?

12 A. Yes, Sir. I shut the door behind me, and I told him not to

13 ever put myself or my soldiers into that kind of position, ever again,

14 Sir.

15 Q. Okay was a--what was his response to you?

16 A. There was no response, Sir. He didn't say anything, which

17 was really out of character for him because he normally is--was never

18 at a loss for words, and he just kind of was looking forward to--just

19 kind of a blank stare.

20 Q. Was it fair to say that he was kind of zoning out of it a

21 little bit?

22 A. Yes, Sir.

23 DC: Okay. No further questions.

1 MJ: Recross?

2 ATC: Nothing further, Your Honor.

3 MJ: All right, do any of the panel members have any questions
4 they'd like to ask of this witness?

5 Negative response.

6 Temporary or permanent excusal?

7 DC: Permanent excusal is fine, Your Honor.

8 ATC: Permanent as well, Your Honor.

9 [The witness was duly warned, permanently excused, and withdrew from
10 the courtroom.]

11 MJ: Next witness?

12 DC: Your Honor, the defense now calls Sergeant [REDACTED] 66-4

13 [REDACTED] 66-4
14 **SERGEANT** [REDACTED], U.S. Army, was called as a witness for the
15 defense, was sworn, and testified as follows:

16 **DIRECT EXAMINATION**

17 **Questions by the assistant trial counsel:**

18 Q. Would you please state your name, rank, and unit of
19 assignment for the record, please?

20 A. [REDACTED] 66-4 Sergeant, 615th MP Company, Sir.

21 ATC: Thank you. Captain [REDACTED] has a couple of questions for
22 you. 66-2

23

1 **Questions by the defense counsel:**

2 Q. Good day, Sergeant ^{b6-4} [REDACTED] I just want to ask you a few
3 questions. First of all, tell us a little bit about this junction in
4 your career. How long have you been an MP and how long have you been
5 an NCO?

6 A. I've been an NCO since November of 2003, Sir.

7 Q. Okay and how long have you been in the MP Corps?

8 A. I've been in the MP Corps now for 7 years active duty, Sir.

9 Q. Okay and do you know the Lieutenant here, Lieutenant ^{Niles} [REDACTED]

10 A. Yes, Sir.

11 Q. How is that you know him?

12 A. He was my platoon leader in first platoon. I knew him
13 before we went to Iraq and during Iraq.

14 Q. Okay how long was he your platoon leader? How long did you
15 serve under him in his platoon?

16 A. Approximately a year, Sir.

17 Q. Okay how often did you interact with him as your platoon
18 leader, daily, weekly?

19 A. Daily, Sir.

20 Q. Okay. What type of a leader was Lieutenant ^{Niles} [REDACTED]

21 A. He was a hard leader, Sir. He didn't--he wasn't too
22 concerned with what the soldiers thought about him personally. He
23 was concerned about the soldiers and their welfare mainly.

1 Q. Okay how did he feel about mission accomplishment and those
2 kinds of tasks?

3 A. It was--he was always mission first. He was all about
4 taking care of the soldiers and ensuring that they got back from Iraq
5 and preparing to go to Iraq, so he knew that if it was hard on them
6 before we went to Iraq and while we initially got to Iraq that they
7 would all be okay.

8 Q. Okay, in fact, was your platoon all okay?

9 A. Yes, Sir. Everybody come back.

10 Q. Okay. Now you were present also at the ^{b2-2} [REDACTED] Police
11 Station on 30 July and witnessed this incident. Is that correct?

12 A. Yes, Sir.

13 Q. Okay, I'm not going to ask you to go into a lot of detail.
14 We just heard that from a prior witness, but I would ask you this.
15 Having seen what you seen, did it shock you, were you surprised, and
16 was that out of character for Lieutenant ^{Niles} [REDACTED] to do something like
17 that?

18 A. It was out of character for Lieutenant ^{Niles} [REDACTED] to do that,
19 Sir.

20 Q. Okay. At any time after this incident, was there ever--did
21 Lieutenant ^{Niles} [REDACTED] ever ask you or come to you and ask you not to
22 report it or----

23 A. No, Sir.

003517

1 Q. ---or to cover up for it at all?

2 A. No, Sir, never.

3 Q. Okay, so there was never any effort to cover it up, it was-
4 -everyone was always forthright?

5 A. No, Sir, there was no effort to cover it up.

6 Q. Okay and to your knowledge, were these three individuals
7 injured at all, the three Iraqis?

8 A. To my knowledge, no, Sir, there were no injuries. There
9 were no visible injuries at all. All of them seemed to be okay.

10 DC: Okay. All right, thanks.

11 MJ: Cross?

12 **CROSS-EXAMINATION**

13 **Questions by the assistant trial counsel:**

14 Q. Sergeant [REDACTED]^{b6-4} the MP mission in Iraq, was a large part
15 of that basically to train up Iraqi police?

16 A. Yes, Sir.

17 Q. And some of the old Iraqi police tactics that you were
18 trying to change were over aggressive police force, correct?

19 A. Yes, Sir.

20 Q. Police--Iraqi police who reported to duty drunk?

21 A. Quite often, Sir.

22 Q. Iraqi police who whipped prisoners?

23 A. Yes, Sir.

1 Q. Who beat prisoners, and one of the ways the MPs were trying
2 to retrain these police officers was basically to teach them proper
3 arrest methods?

4 A. Correct, Sir.

5 Q. Proper treatment of offenders-----

6 A. Yes, Sir.

7 Q. ----detainees. Basically the MPs were there to lead by
8 example, correct?

9 A. Correct, Sir.

10 Q. Did Lieutenant ^{Niles} [REDACTED] set a bad example?

11 A. No, Sir--yes, Sir, he did, Sir, that is correct.

12 ATC: Nothing further, Your Honor.

13 MJ: Redirect?

14 DC: Yes, Your Honor, briefly.

15 **REDIRECT EXAMINATION**

16 **Questions by the defense counsel:**

17 Q. The bad example he set was just that one occasion, right?

18 A. Yes, Sir.

19 Q. In fact, no Iraqi police witnessed that incident, did they?

20 A. No, Sir.

21 Q. And-----

22 A. No Iraqi police, no Iraqis, no interpreters, nothing.

1 Q. Okay and there was--was there ever anything else, ever,
2 done by Lieutenant ^{Niles} [REDACTED] to set a bad example?

3 A. No, Sir, he was always a good example.

4 Q. Okay now a hypothetical question. If you were promoted,
5 Lieutenant ^{Niles} [REDACTED] gets promoted as well; he's a company commander.
6 You get attached to his unit to deploy to war again. Would you be
7 comfortable and confident in him as your leader----

8 A. I would have----

9 Q. ----if you go to war again?

10 A. ----absolute and total confidence in him as a company
11 commander, Sir.

12 Q. Okay thank you, Sergeant [REDACTED] b6-4

13 A. I'd gladly serve under him.

14 DC: Hooah, thank you, Sergeant [REDACTED]

15 MJ: Recross?

16 ATC: Nothing further, Your Honor.

17 MJ: All right, any members have any questions for this witness?

18 Negative response.

19 Temporary or permanent excusal?

20 DC: Permanent excusal is fine, Your Honor.

21 ATC: No objection, Your Honor.

22 [The witness was duly warned, permanently excused, and withdrew from
23 the courtroom.]

1 MJ: Next witness?

2 DC: Yes, Your Honor, the defense now calls Staff Sergeant
3 Dixon.

4 STAFF SERGEANT ^{bb-4} [REDACTED] U.S. Army, was called as a witness for
5 the defense, was sworn, and testified as follows:

6 DIRECT EXAMINATION

7 Questions by the assistant trial counsel:

8 Q. Please state your name, rank, and unit of assignment for
9 the record, please?

10 A. ^{bb-4} [REDACTED] staff sergeant, 615th MP Company.

11 ATC: Thank you, Captain ^{bb-2} [REDACTED] has a couple of questions for
12 you.

13 Questions by the defense counsel:

14 Q. Good day, Sergeant ^{bb-4} [REDACTED]

15 A. Sir.

16 Q. Do you know Lieutenant ^{Nites} [REDACTED]

17 A. Yes, Sir.

18 Q. How do you know him?

19 A. He was my platoon leader in Iraq, Sir.

20 Q. And what was your position?

21 A. Platoon sergeant, Sir

22 [END OF PAGE]

23

Niles

1 Q. How long did you work under Lieutenant [REDACTED] as his platoon
2 sergeant?

3 A. About 3 months, Sir.

4 Q. Okay and all that time was in the deployed setting, is that
5 correct?

6 A. Yes, Sir.

7 Q. Okay tell us a little bit about the mission of your unit
8 and your platoon, specifically, during those 3 months leading up to
9 this event that we're here today for.

10 A. Sir, our mission was to reestablish the Iraqi police force,
11 get the stations up and running. At that time, we were--we were
12 starting our fourth station reestablishing the force.

13 Q. Okay. What did that mission entail, when you say
14 "reestablishing the Iraqi police force" what did that all entail?

15 A. Training, Sir, force protection on the station, patrolling
16 with them, helping them process cases, all kinds of--all aspects of
17 police operations.

18 Q. What kind of a state were they in as far as--were they in
19 shambles as a force----

20 A. Yes, sir.

21 Q. ----when you guys began that mission?

22 A. Yes, sir.

1 Q. Okay. Now during that 3 month period, did you get to know
2 Lieutenant ^{Niles} [REDACTED] pretty well?

3 A. Yes, Sir.

4 Q. How often did you interact with him----

5 A. Every----

6 Q. ----as his platoon sergeant?

7 A. Everyday, Sir.

8 Q. Okay. Many times a day perhaps also?

9 A. Yes, Sir.

10 Q. Okay did you come to form an opinion about him as a leader,
11 as a platoon leader?

12 A. Yes, Sir.

13 Q. And what is that opinion, if you could please share it with
14 the court?

15 A. A very high standard, stern leader, strong leader. I mean
16 that's basically--he's a very strong, high standard leader.

17 Q. Okay what about proficiency, tactically and technically
18 proficient?

19 A. Very tactically proficient.

20 Q. Okay what about his feelings about his soldiers care for
21 soldiers, taking care of soldiers, those kinds of things? How was he
22 in that regard?

23 A. That's probably his best trait is caring for soldiers.

1 Q. How so?

2 A. Well, even with Red Cross messages, Sir, he--he wanted to
3 issue the Red Cross message. The first sergeant wanted to do that,
4 but he took it personal and he felt that was his job to give his
5 soldiers the Red Cross message. That's how deeply he cared for them.

6 Q. Okay now you weren't present in the room to witness this
7 incident, right?

8 A. No, Sir.

9 Q. But you were in the same station down the hall essentially,
10 right?

11 A. Yes, Sir.

12 Q. Did you come into the room or when did you first encounter
13 Lieutenant ^{Niles} [REDACTED] after the incident, let me ask it that way?

14 A. As he was exiting the D-Cell, Sir.

15 Q. Okay and now did you, then, go on to have a conversation
16 with Lieutenant ^{Niles} [REDACTED] after that?

17 A. I attempted, Sir, but I got no response from Lieutenant
18 ^{Niles} [REDACTED]

19 Q. Why is that, I mean was he--did he hear your question?

20 A. Yes, Sir, he heard and I just--he just shook his head no.
21 He--obviously he did not want us to talk about the incident inside
22 the D-Cell.

1 Q. Okay did he seem kind of out of it, would that be a fair---

2 -

3 A. I would say so. He was never really at a loss for words.

4 If you asked him a question, he would always give you an answer.

5 Q. So this was an extremely extraordinary state of mind for

6 him?

7 A. Yes, Sir.

8 Q. Did he ever--did anyone ever, especially Lieutenant ^{Niles} [REDACTED]

9 did he ever ask you not to report this?

10 A. No, Sir.

11 Q. Was there ever any action to cover it up?

12 A. No, Sir.

13 Q. Any ~~action~~ action to discourage soldiers from speaking about what

14 happened?

15 A. No, Sir.

16 Q. Okay, ^{Niles} in fact, Lieutenant [REDACTED] himself fully cooperated

17 from your knowledge right?

18 A. Yes, Sir.

19 Q. Never denied what happened?

20 A. Never.

21 Q. Were you present here in this courtroom about 15 May for an

22 Article 32----

23 A. Yes, Sir.

1 Q. ----hearing? And do you recall a statement being made to
2 you by Lieutenant ^{Niles} [REDACTED] at that hearing?

3 A. Yes, Sir.

4 Q. Okay where he essentially stood up and talked to you?

5 A. Yes, Sir.

6 Q. Do you remember that?

7 A. Um-hmm [indicated an affirmative response].

8 Q. Okay I just wanted to ask you that. The court will hear
9 more about that later, but I just wanted to ask you about that.

10 One last question and that is, if you were to be put under
11 Lieutenant ^{Niles} [REDACTED] leadership again, if you were to be asked to go to
12 war maybe he's promoted to a company commander position, you're a
13 first sergeant, would you be comfortable with him as your company
14 commander in a deployed combat environment once again?

15 A. Very much so, Sir.

16 DC: Okay thank you very much, Sergeant [REDACTED] b6-4

17 MJ: Cross?

18 **CROSS-EXAMINATION**

19 **Questions by the assistant trial counsel:**

20 Q. Sergeant ^{b6-4} [REDACTED] Lieutenant Niles was the platoón leader,
21 correct?

22 A. Yes, Sir.

1 Q. After this incident occurred, I mean he should have
2 reported it, correct?

3 A. [No response.]

4 Q. Lieutenant ^{Niles} [redacted] should have reported this, not you?

5 A. Yes, Sir.

6 Q. But instead that burden fell upon you, correct?

7 A. Yes, Sir.

8 Q. And that put you in a very compromising position?

9 A. Yes, Sir.

10 Q. Because basically you had to choose between the platoon or
11 Lieutenant ^{Niles} [redacted] correct?

12 A. Yes, Sir.

13 Q. I mean you had, I mean, you had Lieutenant ^{Niles} [redacted] who you
14 were training up, correct, I think you described trying to guide him
15 in his career?

16 A. Yes, Sir. [redacted]

17 Q. Also--and that's just looking out for him?

18 A. Yes, Sir.

19 Q. And I think you described, at the Article 32 hearing, that
20 the incident still to this day bothers you?

21 A. Yes, Sir, I still think about it, yes, Sir.

22 [END OF PAGE]

23

1 Q. That's because, I mean, you feel like you carried this
2 burden with you, I mean, you felt I think you described guilt?

3 A. Yes, Sir.

4 Q. A sense of failure?

5 A. Yes, Sir.

6 Q. And you did nothing, I mean, you didn't partake in that
7 incident but you still carried these feelings because the burden was
8 placed upon you, and as a result, you know, things have happened,
9 correct?

10 A. Yes, Sir.

11 Q. After Lieutenant ^{Niles} [REDACTED] as relieved of duty, who took over
12 as platoon leader?

13 A. I had to, Sir.

14 Q. And you were still acting platoon sergeant?

15 A. Yes, Sir.

16 Q. Counsel--there's been testimony as far as the stressors in
17 Iraq. After you were acting platoon sergeant and platoon leader, you
18 didn't work any less hours did you?

19 A. No, Sir.

20 Q. You were still working those 12 to 14 hours a day?

21 A. Yes, Sir.

22 [END OF PAGE]

23

1 Q. You--they didn't cut your days in half as far as only
2 working 3 or 4 days a week did they?

3 A. No, Sir.

4 Q. You weren't given any special quarters to combat the heat,
5 were you?

6 A. No, Sir.

7 Q. Basically you took on the stresses just like everybody
8 else?

9 A. Yes, Sir.

10 Q. Were you given special transportation to give you extra
11 protection from the additional dangers in Iraq?

12 A. No, Sir.

13 Q. You faced them just like everyone else?

14 A. Yes, Sir.

15 Q. But you were pulling double duty because Lieutenant ^{Niles} [REDACTED]
16 no longer was there?

17 A. Yes, Sir.

18 Q. With everything going on and with these additional duties
19 you were facing, Sergeant [REDACTED] ⁶⁶⁻⁴ did you ever strike any of the
20 detainees?

21 A. No, Sir.

22 ATC: I have nothing further, Your Honor.

23 MJ: Redirect.

1 DC: No redirect, Your Honor.

2 MJ: Do any members of the panel have any questions for the
3 witness?

4 Bailiff will you retrieve that from Lieutenant Colonel, I'm
5 sorry I can't read the nametag from here.

6 MEMBER [LTC ██████████]: ██████████ Ma'am. ⁶⁶⁻²

7 MJ: Thank you. Take it to trial counsel and then defense
8 counsel and back to me.

9 [The bailiff did as directed.]

10 [The CR marked a question by LTC ██████████ as AE V.]

11 **EXAMINATION BY THE COURT-MARTIAL**

12 **Questions by the military judge:**

13 Q. All right, do you know how long it was between the time
14 First Lieutenant ^{Niles} ██████████ was notified of the escape attempt and the
15 incident?

16 A. Ma'am, I believe it was the day before he went out to the
17 station. It happened the day--it happened one day and the very next
18 morning, he went out to the station.

19 MJ: All right, any further questions?

20 [All members indicated a negative response.]

21 MJ: Evidently not.

22 Does either side have any questions based upon the member's
23 question?

1 ATC: No, Your Honor.

2 DC: None from the defense, Your Honor.

3 MJ: All right. Permanent or temporary excusal?

4 DC: Permanent excusal is fine, Your Honor.

5 ATC: Permanent, Your Honor.

6 [The witness was duly warned, permanently excused, and withdrew from
7 the courtroom.]

8 MJ: Next witness.

9 DC: Your Honor, the defense now calls Major [REDACTED] *bb-4 all*

10 MAJOR [REDACTED] U.S. Army, was called as a witness for the
11 defense, was sworn, and testified as follows:

12 DIRECT EXAMINATION

13 Questions by the trial counsel:

14 Q. Can you please state your name for the record?

15 A. [REDACTED].

16 Q. And what is your rank, Sir?

17 A. Major.

18 Q. And what is your current unit of assignment?

19 A. Currently I'm on casual. I was in the 409th here. I'm in
20 route to Korea.

21 TC: The defense has some questions for you, Sir.

22 WIT: Thank you.

23

1 **Questions by the defense counsel:**

2 Q. Good day, Sir.

3 A. How are you?

4 Q. Now you mentioned you are presently on casual, what job did
5 you just recently finish?

6 A. ⁶⁶⁻⁴ [REDACTED] here for the 409th Base Support Battalion.

7 Q. Here in Vilseck, Sir?

8 A. Yes.

9 Q. Now before that position what was--what was your job?

10 A. I was the XO for the 793rd MP Battalion in Bamberg,
11 Germany.

12 Q. Thank you, Sir, and did the 615th MP Company fall under
13 that battalion?

14 A. Yes.

15 Q. So, Sir, do you know Lieutenant ^{Niles} [REDACTED]

16 A. Yes.

17 Q. And do you know him from that previous position with 793rd?

18 A. Yes.

19 Q. Thank you, Sir. Tell us a little bit about, if you will,
20 Sir, your relationship with Lieutenant ^{Niles} [REDACTED] how well did you get to
21 know him?

22 A. I would say from an XO to a platoon leader stand point
23 better than most platoon leaders because he was the maintenance

1 officer and supply officer among other positions and USR officer
2 among all the other "hey you" jobs that lieutenants are given.

3 Q. Yes, Sir. And in the interactions that you had with him,
4 did you have an opportunity to form an opinion? Did you meet with
5 him sufficiently so that you could form an opinion about him as an
6 officer?

7 A. Yes.

8 Q. And, Sir, what is your opinion of him as an officer?

9 A. Very high. I thought very highly of Lieutenant ^{Niles} [REDACTED]

10 Q. Thank you, Sir. In addition to the relationship that you
11 just mentioned, was there also some field exercises when you were
12 involved in evaluating, if I may--if I'm correct, Lieutenant ^{Niles} [REDACTED]
13 performance?

14 A. Yes, the--I was the battalion XO but the battalion proper
15 deployed to Kosovo for about 9 months, and I was also the rear
16 detachment commander. One of the additional missions that we had was
17 to prepare the 615th MP Company for a short notice deployment to
18 Iraq, and we had limited staff in which to do that, so we threw
19 together a Ex-Eval for the 615th MP Company that took place up here
20 in Grafenwoehr in February of '03.

21 [END OF PAGE]

1 Q. Yes, Sir, and that was just right be--immediately before
2 the deployment to Iraq?

3 A. Yes, that's correct. Yeah I was the senior--I was
4 responsible for the exercise and basically the senior observer
5 controller for the company headquarters and the--and the platoons.

6 Q. Okay, Sir. As that observer controller, did you personally
7 supervise Lieutenant ^{Niles} [REDACTED] platoon going through the exercise?

8 A. I--I did on--it was kind of set up as a lane training
9 event, and I--I purposely was involved--closely involved with the
10 platoon leaders particularly Lieutenant ^{Niles} [REDACTED] platoon.

11 It's a side note; I personally wanted to work those guys
12 hard because I knew they were going into a--they were going to war,
13 and I wanted to make sure that, you know, they had the best
14 opportunity to excel in a wartime environment. I wanted to make
15 their training very, very hard, so I personally spent a lot of time
16 stressing the platoon leaders.

17 Q. Yes, Sir. And what was your evaluation of Lieutenant ^{Niles} [REDACTED]
18 during that exercise? How did he--how did he do?

19 A. I--I thought he did very well. He was--he was very--always
20 very calm, very collected in his--in his actions. They--that he
21 thought through them very well. Never--never saw him fly off the
22 handle on anything like, you know, like young lieutenants sometimes
23 have a tendency to do, or you know, misjudge something or be

1 indecisive. I never saw that. He was always--he always thought
2 through the problem and never let it stress him. He just--he
3 accomplished the mission.

4 Q. Yes, Sir. Now would it be fair to say, based on that
5 experience during the X-Eval and also your time as battalion XO you
6 said before that you thought very highly of him as an officer, it's
7 all based on that experience?

8 A. Yes.

9 Q. Thank you, Sir. And what other--what criteria do you use
10 to make a personal opinion about an officer? *What do you base it on?

11 A. I would have to say I fall back to primarily to character,
12 and I once had a senior general officer tell me once he said, you
13 know you can train anyone to be an officer, but he said, if you
14 really, really wanted to judge your success what he would do is he'd
15 like to be able to plug you in a wall like a wall socket, plug you in
16 and check your character meter to see how high you'd read, and then
17 he knew if you would be truly successful based upon how high your
18 character meter came out.

19 I think that's appropriate. I think that, in my opinion,
20 Lieutenant ^{Niles} [REDACTED] has a very high level of character.

21 Q. Sir, in your time supervising him, did he ever do anything
22 at all to cause you to question that--that opinion, that feeling?

23 A. No.

1 Q. Sir, one last question and that is, if you were made a
2 battalion commander given the opportunity to go to combat with an MP
3 battalion, would you be comfortable with [REDACTED] as one of your
4 company commanders? b6-2

5 A. I would use the--I use the foxhole test of measurement.
6 You know would I want [REDACTED] ^{b6-2} in my fighting position with me
7 when the enemy was coming, and the answer is absolutely yes.

8 Q. Yes, Sir.

9 A. And to answer your question, is yes, I'd want him to be one
10 of my company commanders.

11 DC: Thank you, Sir, the defense or the government may have some
12 questions.

13 MJ: Cross?

14 **CROSS-EXAMINATION**

15 **Questions by the trial counsel:**

16 Q. Sir, were you actually in Iraq when the incident happened?

17 A. No.

18 Q. Were you a supervisor or do you have any knowledge of the
19 facts of the actual crime that Lieutenant ^{Nikes} [REDACTED] committed?

20 A. I do not. Not specifics.

21 Q. Okay. So you weren't there when the crime occurred and you
22 don't know the specifics of the crime, correct?

23 A. No, I do not.

1 Q. And yet when you're making your measurement of a person at
2 a sentencing phase at a court-martial, don't you think it's important
3 to have somewhat of a grasp of what happened?

4 A. Yes.

5 Q. But you don't have a good grasp of the facts of what
6 happened, do you?

7 A. Not of the incident in question, no.

8 TC: Thank you.

9 MJ: Redirect?

10 **REDIRECT EXAMINATION**

11 **Questions by the defense counsel:**

12 Q. Sir, if I were to tell you that Lieutenant ^{Niles} [REDACTED] had--had
13 an incident during a 5 second period where he struck two Iraqi
14 detainees, civilians, in the stomach and kicked a third person as he
15 was being pulled away all within a span of about 5 seconds, that they
16 weren't injured, that he readily admitted that he had made a mistake,
17 never denied it, fully cooperated with the investigation, would that
18 change your opinion that you have previously given a few minutes ago?

19 A. I would initially be very surprised that that occurred--
20 that that would have occurred with him, but I would consider it an
21 isolated incident that--that was just that.

22 **[END OF PAGE]**

23

1 Q. Yes, Sir. Would it be fair to say that good people make
2 mistakes sometimes?

3 A. Yes.

4 Q. And good officers sometimes make mistakes?

5 A. Yes.

6 DC: Thank you, Sir.

7 MJ: Redirect, recross I mean.

8 TC: Just briefly, Your Honor.

9 **RECROSS-EXAMINATION**

10 **Questions by the trial counsel:**

11 Q. You ^{take it [redacted] b6-2} talked you were surprised this happened, right?

12 A. Yes.

13 Q. That you never saw it coming, did you?

14 A. I was--I was surprised when I was informed about that--that
15 he was involved in the incident.

16 Q. Okay but when you were--knew him previously before he went
17 to Iraq if someone had come to tell you that this was going to happen
18 when he was downrange in Iraq, what would you have told them?

19 A. I wouldn't have believed them. I would have told them it
20 was BS.

21 **[END OF PAGE]**

22

1 Q. So if you didn't see it coming the first time, can you be
2 sure it won't happen again?

3 A. I--I think that he will be a much better officer for--for
4 what has occurred. I think humility definitely is an attribute.

5 Q. But can you be sure it won't happen again?

6 A. Nothing's for certain.

7 TC: Thank you.

8 MJ: Do any of the panel members have questions for this
9 witness?

10 Negative response.

11 Temporary or permanent excusal?

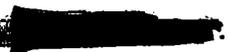
12 DC: Your Honor, permanent excusal is fine.

13 MJ: All right.

14 TC: No objection, Your Honor.

15 [The witness was duly warned, permanently excused, and withdrew from
16 the courtroom.]

17 MJ: Next witness.

18 DC: Your Honor, the government or I'm sorry, the defense calls
19 Lieutenant .

20 *b6-4* [END OF PAGE]

21

bb-4 all

1 **FIRST LIEUTENANT** [REDACTED] **U.S. Army, was called as a**
2 **witness for the defense, was sworn, and testified as follows:**

3 **DIRECT EXAMINATION**

4 **Questions by the trial counsel:**

5 Q. For the record, can you please state your full name?

6 A. [REDACTED]

7 Q. And what is your rank?

8 A. First Lieutenant.

9 Q. And what's your current unit of assignment?

10 A. 7th ATC.

11 TC: Defense has some questions for you.

12 WIT: Yes, Sir.

13 **Questions by the defense counsel:**

14 Q. Good day, Lieutenant [REDACTED]

15 A. Sir.

16 Q. Before being assigned to 7th ATC, what was your job?

17 A. Platoon leader with the 615th MP Company.

18 Q. Okay what timeframe did you serve as a platoon leader?

19 A. From December of 2001 until this past April.

20 Q. Okay now during that time, was Lieutenant [REDACTED] ^{Niles} for a
21 period of time, one of your fellow platoon leaders?

22 A. Yes, Sir, from the time I got to Germany until the time of
23 the incident he was a platoon leader.

1 Q. So that was about a 2-year period roughly?

2 A. Yes, Sir.

3 Q. Okay how often, during those 2 years, did you, you know,
4 have communication dealings with Lieutenant ^{Niles} [REDACTED]

5 A. Pretty much daily, Sir, during the workweek and
6 occasionally on the weekends.

7 Q. Did you know him also away from work on a personal level?

8 A. Yes, Sir, I do to a small extent. Before the deployment, I
9 would go over to his house for barbeques and things like that just
10 every once in a while.

11 Q. Okay. Now how many platoon leaders were there in your
12 company or how many other fellow platoon leaders have you worked
13 with?

14 A. Sir, there were four at a time, and I was a platoon leader
15 for about 2 and a half years, and during that time, there were about
16 seven or eight other platoon leaders that I worked with pretty
17 closely in the company.

18 Q. Okay. Now did your platoon have any kind of special
19 relationship with Lieutenant ^{Niles} [REDACTED] platoon as far as did you--did
20 your platoons work together more often?

21 A. Yes, our platoons were co-located together in Grafenwoehr.
22 The other platoons were in Vilseck and Hohenfels, and also when we
23 went to Iraq, our platoons were co-located together down in southern

1 Iraq about 3 hours away from the company headquarters, and we were
2 the first maneuver units on the ground in the area, so we were pretty
3 much just on our own. We had to rely on each other.

4 Q. Okay. I'm going to ask you, briefly, to articulate a
5 little bit about the mission. Now you said you went to Iraq or when
6 did you first go to Iraq? Let me ask you that first.

7 A. We deployed in--around March 10th, Sir, and we actually
8 went into Iraq about 10 days after the war started.

9 Q. Okay what was the mission that your platoon and Lieutenant
10 ^{Niles} [REDACTED] platoon was conducting during those initial stages?

11 A. It was area security and reconnaissance operations, Sir,
12 and we were staged in the city called Al Hamza between the UN and As
13 Samawah, and we had the entire area in between those two cities.

14 Q. How big was that area?

15 A. I'm not sure exactly, Sir. We--the company had the largest
16 operational area of any company-sized element in the war, and the
17 area that we had was the biggest portion of our company's area.

18 Q. Okay and essentially it was you and Lieutenant ^{Niles} [REDACTED], like
19 you said, your platoons are out there on their own?

20 A. Yes, Sir.

21 Q. Okay now you said you had to rely on each other. Did you
22 feel comfortable relying on Lieutenant ^{Niles} [REDACTED]

23 A. Yes, Sir, completely.

1 Q. Please describe or tell us why it is--why do you feel that
2 way?

3 A. Sir, when you're in that situation, you just want to make
4 sure that the guy that might have to come and bail you out is, you
5 know, completely confident and completely trustworthy, and at the
6 time I was actually very happy that I was co-located with his platoon
7 rather than one of the other ones because, you know, I knew that he
8 would get the job done, and I'm pretty sure all my soldiers felt the
9 same way, and you know, there were just never any issues.

10 When we were to have to call him for something he was
11 always there, and he just always got the job done. And I kind of
12 felt that way, wanted him to be co-located with me, because prior to
13 the deployment he was just always the go to guy in the company not
14 just for myself, but he was kind of the guy all the lieutenants went
15 to even before the commander just if we had a question or problem,
16 and you know, he was the guy. He'd set all his work aside and help
17 you out until--until you really got it, so that was kind of what led
18 me into wanting him to--to be there with me in Iraq.

19 Q. Okay now you said you had worked with other fellow platoon
20 leaders, right?

21 A. Yes, Sir.

22 [END OF PAGE]

23

1 Q. How would you rate Lieutenant Niles with his peers, his
2 other fellow platoon leaders? How would you rate him compared to
3 them?

4 A. Sir, as far as the ones I worked with in the company, he
5 was definitely the best of them, Sir.

6 Q. Okay now after he was removed from his platoon because of
7 the incident, you're aware of that right?

8 A. Yes, Sir.

9 Q. What job did he get after that?

10 A. Night battle captain for the battalion, Sir.

11 Q. Okay now, you being out there as a platoon leader, what did
12 the night battle captain do for you?

13 A. Sir, it was pretty important to me. During that time, we
14 had two platoons in the battalion that were patrolling at night, and
15 at that time in West Baghdad there were no maneuver units out there,
16 so we were the only ones out in West Baghdad, so as the night battle
17 captain, he was the one that, you know, we answered to, we took
18 directives from him, everything had to be funneled through him, and
19 just being on the ground out there was just never something I thought
20 about or questioned. It was just never an issue. It was never
21 brought out among any of the squad leaders saying, "hey what's he
22 doing there" since because of the incident or anything like that. We

1 just all had complete faith and confidence in him. There was just
2 never any problems or anything like that.

3 Q. He never let you down? He never disappointed you?

4 A. No, I mean, absolutely not, Sir, and it wasn't even
5 something that crossed my mind to think, you know, I can't believe
6 he's there or anything like that, and as far as the night battle
7 captain in a battalion, in an MP battalion in that type of situation,
8 that's not a position where you want a--there are positions on a
9 battalion staff where you can hide an officer, and that's just not
10 one of them. You need someone that you trust completely and who is
11 completely competent, you have all your faith in, so obviously the
12 higher ups in the battalion and the people on the ground had that
13 faith and confidence in him as well.

14 Q. Okay now you also, correct me if I'm wrong, but you were
15 his roommate down in Iraq too as well, you shared quarters if you
16 want to call them that?

17 A. Yes, Sir, when we were down in the south we lived together
18 first in an old chicken coop and then in a school, but the main part
19 of our time was in Baghdad, and the commander wanted the lieutenants
20 to live separate from the soldiers to give them some free space. The
21 two other lieutenants lived in one shack, and Lieutenant ^{Niles} [redacted] and I
22 lived in a separate one, and then after the incident when Lieutenant
23 ^{Niles} [redacted] got there, he came and lived with us as well.

1 Q. Okay during that time that you lived together, I'm sure you
2 spent a lot of your off duty time with Lieutenant ^{Niles} [REDACTED] right?

3 A. Yes, Sir.

4 Q. Did you come to know him on a personal level as well even
5 more so than you had in Grafenwoehr?

6 A. Yes, Sir.

7 Q. What is your overall opinion, then, as an officer and as a
8 person of [REDACTED]

9 A. Sir, I just think he's a great guy. I mean when we were in
10 the shack, he would spend a lot of his time talking about his family,
11 how proud he was of his children, how much he loved his wife. He
12 would tell me about just how they met, some of his hopes and dreams
13 for the future, and you know, down there most of the people weren't
14 talking about those kind of things. So I've always just had the
15 impression that he was just a good guy, Sir.

16 Q. Okay if you were to deploy again, would you have confidence
17 in Lieutenant ^{Niles} [REDACTED] on a battalion staff officer or as a fellow
18 company commander if you were to deploy again?

19 A. Absolutely, Sir, yes.

20 DC: Okay thanks.

21 MJ: Cross?

22 [END OF PAGE]

23

CROSS-EXAMINATION

Questions by the trial counsel:

Q. Now you said you were in Iraq with Lieutenant ^{Niles} [REDACTED] as well, correct?

A. Yes, Sir.

Q. You were a platoon leader there?

A. Yes, Sir.

Q. It was hot?

A. Yes, Sir.

Q. It was dangerous?

A. Yes, Sir.

Q. Stressful?

A. Yes, Sir.

Q. How many--how many men or how many soldiers did you lead?

A. Around 30, Sir, 25 to 30.

Q. Around 30, and who--who is--when it comes down to it, who is responsible for that entire platoon?

A. Platoon leader, Sir.

Q. Okay and as a platoon leader is it your job to set the example for your soldiers?

A. Yes, Sir.

[END OF PAGE]

1 Q. So if you're committing misconduct and abusing and beating
2 Iraqis in front of your soldiers, you're not setting a good example,
3 are you?

4 A. No, Sir.

5 Q. Okay with your platoon, did you deal with detainees?

6 A. Yes, Sir.

7 Q. With Iraqis, local nationals?

8 A. Yes, Sir.

9 Q. Did you ever loose your temper and punch or beat an Iraqi?

10 A. No, Sir.

11 Q. To your knowledge, did anyone in your platoon do that?

12 A. No, Sir.

13 Q. Okay, so you're under the same stress as Lieutenant ^{Niles} [REDACTED]
14 was, but you never did those things, did you?

15 A. No, Sir.

16 Q. And you said you were also--we had talked previously last
17 week, you said that you were surprised that this happened with
18 Lieutenant ^{Niles} [REDACTED] correct?

19 A. Yes, Sir.

20 Q. Didn't see it coming?

21 A. No, Sir, not with him.

22 [END OF PAGE]

23

1 Q. If you didn't see it coming the first time, how can you be
2 sure that it's not going to happen again?

3 A. I'm sure it's not going to happen again, Sir.

4 Q. But you were sure the first time too, weren't you?

5 A. I didn't say I was sure, Sir, I was just surprised that it
6 happened.

7 Q. Okay.

8 A. It never even crossed my mind that something like that
9 would happen.

10 Q. But it surprised you?

11 A. It surprised me, Sir.

12 TC: No further questions.

13 MJ: Redirect?

14 DC: Yes, Ma'am, thanks.

15 **REDIRECT EXAMINATION**

16 **Questions by the defense counsel:**

17 Q. You're confident that it would never happen again because
18 he--this has had a serious impact on him, right? He's learned a lot--
19 --

20 A. Yes, Sir, that was one of the things he talked about in
21 that small shack there, I mean, he was very remorseful for it. He
22 fully understood that he let his soldiers down, and his actions--he
23 let his family down, and he got emotional about it on more than--more

1 than a few times, and he was--I can say he was very remorseful and
2 there's absolutely no doubt in my mind that he would never do
3 something like that again.

4 DC: Okay thanks, Lieutenant [REDACTED] b6-4

5 MJ: Recross?

6 TC: Just briefly.

7 **REXCROSS-EXAMINATION**

8 **Questions by the trial counsel:**

9 Q. You said he was remorseful about what happened and the
10 position he put his troops in and for his family, correct?

11 A. Yes, Sir, he was remorseful about the example he set for
12 his soldiers and letting his family down.

13 Q. Anything else he was remorseful for that he expressed to
14 you?

15 A. He was remorseful about his actions, Sir, in general.

16 Q. Was he remorseful for the victims he beat; did he express
17 that to you?

18 A. He said he felt that he did wrong--what he did was wrong.

19 Q. Okay did he express remorse for the victims he beat?

20 A. Not--not in those words, Sir, no.

21 TC: Thank you.

22 MJ: Any questions by the panel members?

23 [All members indicated a negative response.]

1 MJ: All right permanent or temporary excusal?

2 DC: Permanent excusal is fine, Your Honor.

3 [The witness was duly warned, permanently excused, and withdrew from
4 the courtroom.]

5 MJ: Next witness?

6 DC: Your Honor, the defense now calls Lieutenant [REDACTED]

7 FIRST LIEUTENANT [REDACTED] U.S. Army, was called as a
8 witness for the defense, was sworn, and testified as follows:

*bb4
all*

9 DIRECT EXAMINATION

10 Questions by the trial counsel:

11 Q. Please state your full name for the record.

12 A. My name is First Lieutenant [REDACTED]

13 Q. Okay and for the record what is your full rank?

14 A. First Lieutenant.

15 Q. And what is your unit of assignment?

16 A. Sir, currently I'm assigned to 793rd MP Battalion with
17 duties to the 279th BSB [REDACTED]

18 TC: Thank you, defense has some questions for you.

19 Questions by the defense counsel:

20 Q. Good afternoon.

21 A. Good afternoon, Sir.

22 [END OF PAGE]

1 Q. Before your present duty assignment or present position you
2 were with the ^{b22} [REDACTED] office in Bamberg, right?

3 A. Correct, Sir.

4 Q. In Bamberg, what was your job?

5 A. Sir, I was assigned to 1st Platoon, platoon leader for the
6 615th MP Company forward deployed to Iraq.

7 Q. Okay, do you know Lieutenant ^{Niles} [REDACTED] here?

8 A. Yes, I do, Sir.

9 Q. How is that you know him?

10 A. Sir, I known Lieutenant ^{Niles} [REDACTED] personally when we first
11 arrived to the battalion socially and personally through many of the
12 functions that we did. We were sister platoon leaders within the
13 battalion. We knew each other from numerous exercises that we did
14 very competitive within each other and then even more personally as
15 my roommate down in Iraq.

16 Q. Okay now, correct me if I'm wrong, but you took over his
17 platoon, right----

18 A. That's correct, Sir.

19 Q. ----after this incident that happened at Al Taji?

20 A. Yes, Sir.

21 [END OF PAGE]

22

1 Q. Tell us, if you will, the state that you found the platoon.
2 What readiness; caliber of the soldiers, what kind of state did you
3 find this platoon in?

4 A. Well, Sir, I found the platoon very well disciplined and
5 prepared to do its mission. Initially when I deployed to Iraq, I was
6 told that the platoon was very shaken, very fragile, and I needed to
7 concentrate a lot of my efforts on the reestablishment of the
8 platoon. But counter to that belief, that platoon was very well
9 trained, very well prepared.

10 I attribute a lot to the NCOs as far as their stamina to
11 endure. However, the preparation for it, I heavily attribute it to
12 *Glenn* [REDACTED]

13 Q. Okay now when you became his roommate after you'd taken
14 over the platoon, did you continue to have a friendship, a personal
15 relationship with Lieutenant *Niles* [REDACTED]

16 A. Yes, I did, Sir.

17 Q. Did you have sufficient opportunity to work with him and be
18 around him to form an opinion about him as a person and as an
19 officer?

20 A. Yes, Sir. Yes, Sir.

21 Q. What is your opinion of him as a person and as an officer?

22 A. Sir, as a person, I find him an incredibly approachable
23 individual, very well liked, very friendly. He was always very

1 considerate of his roommates through his different operations that he
2 had. Mostly he worked a lot of the night operations and we were
3 going back and forth, and he was very considerate and everything.

4 I--when I first deployed, being a single officer, I did not
5 receive much packages or mail or anything, and he'd always share
6 different items for comforts of the soldiers. And even with that,
7 we'd always have nightly discussions on tactics and best ways to
8 administer the platoon, so very considerate and very--very passionate
9 about his profession and his desire to remain in the military.

10 Q. How do you feel about him confidence wise, I mean, would
11 you have confidence serving with him----

12 A. Yes, Sir, without a doubt.

13 Q. ----again---

14 A. Yes, Sir.

15 Q. ----based on a combat environment?

16 A. Yes, Sir. Without a doubt through our relationship in the
17 battalion and the preparation of the platoons both being fellow MP
18 officers, I have no doubt that he would excel in this craft.

19 DC: Okay great. Thank you very much.

20 MJ: Cross?

21 [END OF PAGE]

22

CROSS-EXAMINATION

Questions by the trial counsel:

Q. When did you go to Iraq?

A. Sir, deployed in--the actual date we were preparing to-- that I prepared to leave was the 11th of September. I knew it because it was the same date as the attacks on the World Trade Center.

Q. Of 2003?

A. Of 2003, but it was the exact same date when I flew.

Q. Okay and what'd you do in Iraq?

A. Sir, I was the platoon leader for 1st Platoon. *b6-2*

Q. Okay and was that formerly Lieutenant *Niles* platoon?

A. Correct, Sir.

Q. Okay, you said that you had heard that it was "shaky". Who did you hear that it was shaky from?

b6-2 A. We heard--I heard it initially from my S3, my boss, Major *Niles* saying that there was a situation involving Lieutenant *Niles* not sure of all the facts, but that the platoon was not in great states because of the fact that the platoon leader was relieved.

Q. When you took over the platoon, who was your platoon sergeant?

b6-2 A. It was Staff Sergeant *Niles*

66-2

1 Q. Was Staff Sergeant [REDACTED] a good platoon sergeant?

2 A. Yes, Sir.

3 Q. Now from--how long from when Lieutenant [REDACTED] ^{Niles} was removed
4 until you took over, how long of a gap was there?

5 A. I don't know per say specifically because I don't know
6 exactly the exact date, but I would say roughly around a month and a
7 half, 2 months around timeframe.

8 Q. So for that time Staff Sergeant [REDACTED] ⁶⁶⁻² was platoon leader
9 and platoon sergeant, correct?

10 A. That's correct, Sir.

11 Q. Do you attribute a lot of the fact that that platoon was
12 held together, is much of that due to Staff Sergeant [REDACTED] ⁶⁶⁻²

13 A. Without a doubt, Sir.

14 Q. Now the government's interviewed you prior to this, and you
15 stated before that you--you weren't clear on the facts of the actual
16 assault, were you?

17 A. Correct, Sir.

18 Q. Okay we've also discussed that in your opinion that
19 Lieutenant [REDACTED] ^{Niles} has a temper. Is that correct?

20 A. Can't really--I never witnessed it or any of it, but I
21 would infer it due to the fact that he's a very passionate
22 individual, but I would say that you could--you could infer, you can

1 reference that he is very passionate and when he does attack any
2 task, he's very aggressive on it.

3 Q. So on previous occasions, you have stated Lieutenant Niles
4 has a temper?

5 A. Not--not specifically, Sir, I mean I never witnessed
6 anything specific, but I would infer, yes, Sir.

7 TC: All right, thank you.

8 **REDIRECT EXAMINATION**

9 **Questions by the defense counsel:**

10 Q. Just to clarify one point on redirect. This rumor, if you
11 will, that the platoon was shaky, that was not true when you got down
12 there and found the platoon, was it?

13 A. No, not at all, Sir.

14 Q. In fact they were tight and squared away, right?

15 A. Yes, Sir.

16 DC: Okay thanks.

17 MJ: Recross?

18 TC: No, Ma'am.

19 MJ: Any questions from any of the panel members?

20 [All members indicated a negative response.]

21 MJ: Evidently not. Temporary or permanent excusal?

22 DC: Permanent excusal is fine, Your Honor.

23 MJ: All right any objection?

1 TC: No, Your Honor.

2 [The witness was duly warned, permanently excused, and withdrew from
3 the courtroom.]

4 MJ: Next witness.

5 DC: Ma'am, before we call the next witness, we've been going
6 for a while, it's after 1300, do we want--do the members want to take
7 a break or we can drive on. It's really up to the court.

8 MJ: Well members, would you like to take a lunch break?

9 PRES: How many more witnesses, Your Honor.

10 MJ: That's a good question.

11 How many more witnesses, Captain [REDACTED] *b6-2*

12 DC: Your Honor and members, we have two more officers that are
13 present. Lieutenant *b6-4* [REDACTED] the battalion commander, is
14 stateside on leave, we're going to connect with him via the
15 telephone, at roughly 1400, and you're going to hear from the
16 accused's wife and the accused and then that would be it.

17 PRES: Would like to take a break, Your Honor.

18 MJ: Okay why don't we take a break for whatever reason until
19 1400, then we can put Lieutenant *b6-4* [REDACTED] on the phone,
20 because that's when he's ready to talk to us, and then we'll hear the
21 other remaining witnesses.

22 [END OF PAGE]

23

1 DC: Thank you, Your Honor.

2 MJ: So we'll be in recess until then.

3 [The court-martial recessed at 1307, 1 July 2004.

4 [END OF PAGE]

5

1 [The session was called to order at 1404, 1 July 2004.]

2 MJ: Court is called to order. You may be seated. Let the
3 record reflect that all parties present at the time of the recess are
4 again present with the exception of the members.

5 Now I understand that there were a couple more exhibits,
6 Captain ^{b6-2} [REDACTED] that you needed to mark.

7 DC: Yes, Your Honor, they've been previously marked. There's
8 an audiocassette tape that we discussed previously in an 802 session.
9 It's a tape recording of the unsworn statement made by the accused at
10 the Article 32 hearing in this case. We'd like to offer that as--
11 previously marked as Defense Exhibit Bravo [for identification] as
12 discussed during the 802, we plan to play his unsworn statement to
13 the members as an unsworn statement through counsel at this hearing.

14 MJ: All right, any objection?

15 TC: No, Your Honor, just per our 802 my understanding that the
16 sequence will be short explanation, play the tape, and then

17 Lieutenant ^{Niles} [REDACTED] will do his unsworn in person to the court.

18 Correct, Your Honor?

19 DC: That's my understanding as well, that's why I asked the
20 foundational question earlier of one of the witnesses who was
21 present.

22 MJ: Right, okay. That's fine, then----

23 DC: I'll just introduce it very briefly.

1 MJ: Defense Exhibit B for ID is admitted.

2 TC: No objection, Your Honor.

3 MJ: And is it cued up to the----

4 DC: It is, Your Honor.

5 MJ: ----appropriate place?

6 DC: ~~It is~~, yes, Your Honor.

7 MJ: All right, and you said you had another one?

8 DC: Yes, Your Honor, there's a document previously marked as

9 Defense Exhibit Charlie for identification. It's a letter--character
10 support letter from Lieutenant ^{b64} [REDACTED] Again, as

11 discussed during the 802 session this morning and just off the record

12 previously during this recess, the appropriate portions have been

13 redacted, and we would offer that as Defense [Exhibit] ^{charlie} [REDACTED]

14 MJ: Any objection?

15 TC: Your Honor, we--the government does object, based on the

16 fact that the panel's already heard from the script and from voir

17 dire that Colonel ^{b6-2} [REDACTED] the 32 officer, and in that memo

18 he's making a recommendation basically a code in there for, you know,

19 no dismissal in there, and he'd like to continue further service, so

20 the government does object, Your Honor. We do not think the 32

21 officer's opinion on the sentence in this case, he didn't know

22 Lieutenant ^{Niles} [REDACTED] at the time of the incident, he never knew him

23 before the 32, we think this MFR is irrelevant, Your Honor.

§6-2 all

1 DC: Just in response, Your Honor, we've redacted those portions
2 that suggest a certain sentence. The rest is very similar to what
3 we've previously discussed and other witnesses have testified to,
4 their willingness to serve with this officer in the future. That is
5 essentially his point there, and there were several--several names
6 mentioned earlier during voir dire, and I--you know apart from
7 Lieutenant Colonel [REDACTED] who has been excused, I doubt any of the
8 other members are going to recall Colonel [REDACTED] name among
9 the many of them.

10 MJ: Well and, Government, you're welcome, in rebuttal, to put
11 on evidence that shows that Lieutenant Colonel [REDACTED] or any
12 other witness that's testified on the accused's behalf, doesn't
13 really know him very well, so I'm going to admit the document.

14 Any other evidence we can premark?

15 DC: None from the defense, Your Honor.

16 TC: No, Your Honor.

17 MJ: All right. All right, now as I understand it, we're going
18 to have some telephonic testimony. Is that true?

19 DC: Yes, Your Honor, that's correct. One witness Lieutenant
20 Colonel [REDACTED] the battalion commander for 709th MP Battalion.

21 MJ: All right now----

22 DC: He is standing by.

003561

Niles

1 MJ: Lieutenant [REDACTED] this court has a speaker telephone
2 capability, which allows the counsel's questions and the witness's
3 answers from the other end of the telephone to be heard by yourself
4 and all the parties. This witness will be sworn over the telephone,
5 and the witness will testify as if he were physically present in the
6 courtroom. Now I advise you that if I had found this witness to be
7 relevant and necessary for your defense and the other requirements
8 under rules for court-martial were met, then you would be entitled to
9 have the personal presence of this witness at this hearing.

10 Do you understand that?

11 ACC: Yes, Ma'am.

12 MJ: Do you expressly consent to proceeding with the witness's
13 testimony over the telephone rather than having him physically
14 present?

15 ACC: Yes, Ma'am.

16 MJ: Has anybody forced you to give your consent?

17 ACC: No, Ma'am.

18 MJ: All right, would you bring the panel in please?

19 DC: Your Honor, if I may before he does that, I'm sorry. If we
20 could just get him on the phone first that way we won't have to be
21 fumbling around----

22 MJ: All right that's fine.

1 DC: ----with the equipment. Just in case it's busy or
2 something crazy like that.
3 [The DC made sure the next witness was on the phone and ready to
4 testify.]

5 MJ: Call the members.

6 [The session recessed at 1409, 1 July 2004.]

7 [END OF PAGE]

8

1 [The court-martial was called to order at 1410, 1 July 2004.]

2 MJ: You may be seated.

3 [All parties present when the court recessed were again present to
4 include the panel members.]

5 MJ: All right, Captain ^{b6-2} [REDACTED] would you swear the witness,
6 please? Members of the panel, we have Lieutenant Colonel----

7 DC: ^{b6-4} [REDACTED] Ma'am.

8 MJ: ----Garrity on the telephone.

9 **LIEUTENANT COLONEL** ^{b6-4} [REDACTED] **U.S. Army, was called as a**
10 **witness for the defense, was sworn, and testified telephonically as**
11 **follows:**

12 **DIRECT EXAMINATION**

13 **Questions by the trial counsel:**

14 Q. Sir, can you please state your full name for the record?

15 A. My name is Lieutenant Colonel ^{b6-4} [REDACTED]

16 Q. And, again, Sir, what's your full rank for the record?

17 A. Lieutenant Colonel.

18 Q. And what's your current unit of assignment, Sir?

19 A. I'm currently assigned to the 709th Military Police
20 Battalion.

21 TC: Okay, defense is going to ask you some questions, Sir, and
22 just for the record, this is an open court. We have the judge here,
23 the court reporter, defense, the accused, myself and assistant

1 prosecutor, the members, and some people in the gallery here.

2 Defense will have some questions for you, Sir.

3 WIT: Thank you.

4 DC: Members is the volume adequate, can everyone hear Colonel

5 [REDACTED] *bb-4*

6 [All members indicated an affirmative response.]

7 **Questions by the defense counsel:**

8 Q. Good afternoon, Sir, or should I say good morning, Sir.

9 A. Good morning.

10 Q. I just wanted to ask you a few questions. As Captain

11 *bb-2* [REDACTED] as just said, we're here before the court-martial panel

12 members. I'd like to first of all, by means of introduction, I'd

13 like to ask what your present duty position is. You said you're with
14 the 709th, Sir, what is your duty position there?

15 A. I am currently the battalion commander of the 709th
16 Military Police Battalion.

17 Q. Sir, and how long have you held that position?

18 A. It is now 1 year as of June 26th.

19 Q. Yes, Sir. And, Sir, do you know Lieutenant *Niles* [REDACTED]

20 A. Yes, I do. Lieutenant *Niles* [REDACTED] served as the platoon leader
21 for me during Operation Iraqi Freedom and also as a member of my
22 battle staff while we were in Baghdad, Iraq.

1 Q. Yes, Sir. Before we get into a lot of details about your
2 relationship with Lieutenant ^{Miles} [REDACTED], I want to ask you some background
3 questions first. Tell us, Sir, briefly about your military career.
4 First of all, how long have you been on active duty in the Army?

5 A. I've been on active duty for 18 years. I was commissioned
6 in 1986.

7 Q. Sir, what are some of the previous duty assignments that
8 you filled prior to your battalion command?

9 A. Prior to battalion command, I served as the chief of
10 officer training at the U. S. Army Military Police School at Fort
11 Leonardwood, and that was for about 2 years. Previous to that, I
12 served as the Deputy Brigade Commander of the 89th MP Brigade,
13 Brigade S3 for the 89th MP Brigade headquartered at Fort Hood, Texas,
14 and also as the S3 and XO of the 720th Military Police Battalion also
15 at Fort Hood, Texas. Prior to that, I attended the College of Naval
16 Command and Staff at the Naval War College in Newport, Rhode Island,
17 and previous to that, I served as the Aide de Camp to the commanding
18 general of ^P personnel ^C command. ^{b6-2}

19 I've commanded two military police companies one at Fort
20 Meyer, Virginia for 2 years, and then one, the 984th headquartered at
21 Fort Carson, Colorado where I took command in Desert Storm and
22 commanded that unit during Operation Desert Storm.

1 Q. So you were a company commander during Desert Storm and a
2 battalion commander during Iraqi Freedom, right, Sir?

3 A. That is correct.

4 Q. Okay, Sir. Now in your 18 years of service in the
5 military, I assume that it would be a fair statement to say that you
6 dealt with a lot of officers, had a lot of junior officers work for
7 you?

8 A. That is a fair statement. That is correct. Also as the
9 Chief of Officer Training for the Military Police School, I was
10 responsible for the Officer Basic Course and Captain's Career Course
11 for all military police officers for 2 years, so I got to see a good
12 portion of the MP Corps Regiment go through their training----

13 Q. Thank you, Sir.

14 A. ----on the officer side.

15 Q. Yes, Sir, and now during the year that Lieutenant [REDACTED] ^{Wiles}
16 worked for you when he was a member of your battalion or attached to
17 your battalion, did you--what was the nature of your relationship?
18 How often did you interact with him?

19 A. Well once he served as a--as the nighttime battle captain
20 on my battle staff, I dealt with him quite frequently. He would
21 routinely brief me on actions that took place in the sector. He was
22 responsible for updating the SIG-X boards and briefing me on
23 information at night and early in the morning before we went out into

1 the cities, so I mean I saw him daily once he served on the battle
2 staff.

3 Previous to that when he was a platoon leader, he was one
4 of probably about 27 platoon leaders that I had at that time in July,
5 and I saw him maybe once or twice before he moved to the battle
6 staff.

7 Q. Yes, Sir, now you mentioned 27 platoon leaders. That
8 sounds like a lot for a typical battalion. Was your battalion
9 reorganized for deployment?

10 A. My battalion, yes, it was. We had--at one point, I had
11 eight military police companies task organized under the battalion,
12 and normally we operate between six and seven corps MP companies
13 under the battalion headquarters. You know with four--between--
14 normally four platoons task organized under each of the company
15 headquarters, so between 24 and 27, I think at one point we had like
16 28 or 29 platoon leaders actually operating inside the 709th MP
17 Battalion.

18 Q. Sir, now the 615th MP Company specifically, can you tell
19 the members what their mission was, Sir?

20 A. The 615th MP Company, which is assigned to the 793rd MP
21 Battalion a sister battalion of mine in Germany, the company was
22 attached over to me for Operation Iraqi Freedom. They were
23 responsible for training the Iraqi police and also patrolling,

1 providing law and order, and area security patrols in different
2 sectors in Baghdad.

3 They spent most of their time in the Con la Mia District of
4 Baghdad although they were also responsible for the Monsieur District
5 at certain points during the operation.

6 Q. Yes, Sir.

7 A. When I talk about training Iraqi police, they would occupy
8 Iraqi police stations with--with a platoon of military police and
9 then the platoon leader would serve as the counterpart to the station
10 commander. One of the squad leaders, platoon sergeant would serve as
11 the counterparts to the shift supervisors for the Iraqi police and
12 then they would show them how to administer the station, how to keep
13 paperwork and records, and then train--specifically train the Iraqi
14 police on how to conduct law and order operations, how to patrol, how
15 to conduct interviews, things like that.

16 Q. Yes, Sir. Now Lieutenant ^{Nike's} [REDACTED] as a--when he was a platoon
17 leader, he served in that role as essentially the liaison, the chief
18 of that police station that he was in charge of at any given time.
19 Is that correct?

20 A. That's correct. Now that's a--that's a job that military
21 police lieutenants are not normally trained to do. Military police
22 lieutenants are trained to serve as duty officers for law
23 enforcement, but not as provost marshals and really in the role that

1 my platoon leaders were serving in in Baghdad, they were more provost
2 marshals because they had--they were responsible for the
3 administration of desk operations, they were responsible for the
4 physical security and force protection of the stations, as well as
5 the training and payment of the Iraqi police, so it was pretty--
6 pretty extensive as far as what I required of the platoon leaders, as
7 well as the platoon sergeants and the squad leaders. I mean it was--
8 they're certainly working in areas that they didn't have a great deal
9 of experience in although, you know, most of them with law
10 enforcement experience understood the basics of law enforcement.
11 That's pretty much the same in any country.

12 Q. Yes, Sir, and as you said, though, the Lieutenants, the
13 platoon leaders acting as a provost marshal, they really had not
14 specific or specialized training prior to getting that task, I mean
15 they were just put into the job, and they had to learn on the job.
16 Is that correct?

17 A. Well that's correct, and certainly platoon leaders from
18 Germany are at a disadvantage from their counterparts in the United
19 States in that officers--military police officers in CONUS normally,
20 on most federal installations, serve as military police duty
21 officers. That's not done in Germany, not in the 18th MP Brigade, so
22 his experience with law enforcement for the time that he served in
23 Germany, would be, you know, seeing his military police working on

1 patrol and if he'd stopped in at one of the MP stations to check on
2 them, but I don't know if he has any law enforcement experience as
3 far as working as a military police duty officer or as an assistant
4 [REDACTED] see that's not the way it's done in Germany. There
5 is one [REDACTED] assigned, normally a captain, either prior to
6 or just after company command, so.

7 Q. Yes, Sir.

8 A. Now that's not to say that we didn't take the time to train
9 and that the company commanders, myself we were out there helping
10 them because, of course, you know after 4 or 5 years in the Army as
11 an MP, you do have some law enforcement experience, so Captain
12 [REDACTED] ^{bb-2} the commander of 615th; myself; my S3; my command
13 sergeant major; you know, we spent time out at those police stations
14 helping the platoon leaders and platoon sergeants work through some
15 of the issues with the Iraqi police.

16 Q. Yes, Sir. Now, obviously, Sir, you're familiar with the
17 incident that Lieutenant ^{Niles} [REDACTED] has been charged with. Is that
18 correct?

19 A. I am. I directed an inquiry officer to conduct a
20 commander's inquiry after I heard the allegations. I suspended
21 Lieutenant ^{Niles} [REDACTED] from his platoon leader duties as soon as Captain
22 [REDACTED] ^{bb-2} came and told me what the allegations were, and then
23 from the time of the inquiry until the inquiry closed out, I had

Niles

1 Lieutenant [REDACTED] moved from the 615th MP Company to work on the 709th
2 MP Battalion staff, and then following the outcome of the inquiry, I
3 kept him on the battle staff.

4 Q. Yes, Sir.

5 A. So I just moved him as a change of duty from suspended as
6 platoon leader to serving as the nighttime battle captain on the
7 709th Staff.

8 Q. Yes, Sir. I want to ask you a few questions, in a moment,
9 about the battle staff--the time on the battle staff, but before we
10 get to that, Sir, back, you know, at the Al Taji station and the
11 other stations that Lieutenant ^{Niles} [REDACTED] worked at, apart from this one
12 incident that we're here today to deal with, did you ever have any
13 reason or any issues, problems with Lieutenant ^{Niles} [REDACTED] any reason to
14 doubt his ability to conduct the mission?

15 A. No, I did not, not at all. Prior to the incident, and
16 quite frankly after the incident, Lieutenant ^{Niles} [REDACTED] you know,
17 performed admirably. I mean there--it is a one-time incident. It as
18 an anomaly for him certain--now, you know, in fairness as the
19 battalion commander, I didn't have daily contact with him like his
20 company commander did, but certainly if there was a problem with one
21 of the officers in a company, any one of my company commanders would
22 have notified me, but no, there is no reason for me to doubt

1 Lieutenant ^{Niles} [REDACTED] ability to perform his duties and to lead his
2 platoon.

3 Q. Yes, Sir, thank you. Now when he moved to the battalion
4 staff, you said, please correct me if I'm misquoting you, but you
5 said that you dealt with him on a more regular basis at that point?

6 A. That's correct, I mean, you know, as a member of the battle
7 staff, he served inside the Tactical Operations Center, which is
8 located in the Vice Presidential Palace in downtown Baghdad, well
9 that was my headquarters, so I was there everyday for briefings. I
10 was there for meetings. My battle update brief was conducted there
11 every single day, and when I went into and out of the sector, I
12 always checked in with the Tactical Operations Center, so especially
13 at night when I came in off patrol after checking the police stations
14 and checking with the Iraqi police, you know, I had contact because
15 the nighttime battle captain's primary function when I came into the
16 TOC was to brief me on all actions going on inside the battalion's
17 area of operation, so you know, I saw Lieutenant ^{Niles} [REDACTED] quite
18 frequently especially, you know, late at night, early in the morning
19 before I racked out.

20 I mean, I would talk to him, and you know, just get an
21 update on what was going on. I mean he and the battle staff NCOs
22 would show me anything that had happened or any reports that were
23 coming in from any of the other battalions because I had pretty good

1 situational awareness of what was going on inside my sector just by
2 listening to the command net, but as far as what was going on in
3 other battalion's sections or what brigade was monitoring the Corps,
4 that's, you know, the battle captain's also responsible for tracking
5 that.

6 He did an exceptional job. I mean great, you know,
7 briefing skills, and you know, very calm and collected. There's, you
8 know, a lot of stuff going on in Baghdad. I mean you've got to
9 consider the time--times we're talking about are July through--I mean
10 we left Baghdad in February. There's some--there's some pretty rough
11 times especially in August/September timeframe that we were involved
12 in, so he did a great job.

13 Q. Thank you, Sir. Now were you also able to, Sir, to form an
14 opinion of him as an officer in general other than just his duty
15 performance, other characteristics, the seven Army values, loyalty,
16 honor, integrity, those kinds of things, have you been able to form
17 an opinion about Lieutenant ^{Niles} [REDACTED] in that area?

18 A. I have. Certainly from the time he served as a--as a
19 battle captain he--you know over time, you know, obviously you get to
20 spend more and more time with your officers, you know, as the
21 situation sort of develops, you know the tactical situation, so as
22 things started to quiet down in Baghdad, I could spend more time
23 inside the TOC, spend more time with my officers as opposed to being

1 out at all the stations, so I was impressed with Lieutenant ^{Niles} [REDACTED]
2 foremost because of his sense of duty and his integrity.

3 He, you know, he was accused of doing something wrong at
4 the Al Taji police station, and he, you know, he accepted
5 responsibility for his actions. He cooperated with the investigating
6 officer. At no time did he, you know--you know, try to hide from or
7 not take responsibility from--from what he did. You know, I was
8 impressed by that especially, you know, I mean I've seen in 18 years
9 of service, a lot of times that, you know, people will, you know, not
10 take responsibility for their actions or try to blame it on someone
11 else. Lieutenant ^{Niles} [REDACTED] at no time did he blame anyone else for what
12 took place in the Al Taji station. He took full responsibility
13 exactly what I would expect.

14 I don't condone his behavior or the actions he took, but I
15 certainly applaud the fact that he took responsibility and didn't,
16 you know, hide behind, you know, invoking his--I mean he has the
17 right to invoke his rights and not make a statement. He chose to
18 waive his rights and make a statement. He chose to cooperate with
19 the investigating officer. He chose to cooperate with everyone
20 involved in this investigation, so you know I was--I was very
21 impressed with that, and continue to be impressed with that.

22 Lieutenant ^{Niles} [REDACTED] can work for me anytime, anywhere that I
23 go, and certainly as a promotable first lieutenant right now, when he

1 gets promoted to captain if he's--if he's going to command a company,
2 he can certainly command a company in any unit that I'm responsible
3 for.

4 DC: Hooah, Sir. Thank you very much. I believe the government
5 may have some questions for you. Please stand by, Sir.

6 MJ: Cross?

7 TC: Yes, Ma'am.

8 **CROSS-EXAMINATION**

9 **Questions by the trial counsel:**

10 Q. Sir, can you hear me?

11 A. I can.

12 Q. Would it be fair to say, you said that you only talked to
13 him once or twice as a platoon leader, would that be correct?

14 A. That's correct. I took command on June 26th and then
15 within the first week or so saw every one of my police stations,
16 every one of my platoon leaders, and then Al Taji was, you know, kind
17 of a backwater area of Baghdad as far as--as far as insurgent
18 activity. It was a very dangerous place don't get me wrong. There's
19 no safe place in Baghdad, but I was more concerned with areas on the
20 Western edge of the Al Monsieur District and then the--especially the
21 area in Kadamia near the Kadamia Shrine, so I mean I went to the
22 locations where I felt they needed the most amount of leadership.

1 Taji was, you know, a police station. It was the Northern
2 most police station in our area, so I would guess you know, before I
3 suspended him I probably saw him two times maybe three at the Taji
4 police station.

5 Q. So it's fair to say, Sir, you're basing your opinion on
6 knowing Lieutenant ^{Niles} [REDACTED] after the incident. Would that be correct?

7 A. Oh, that's correct. That is correct.

8 Q. And it would be fair to say that his company commander was
9 his supervisor and he would know him better than you would. Is that
10 correct, Sir?

11 A. That's a fair statement, but I would argue that any company
12 commander should know his platoon leaders better than the battalion
13 commander given the level and the scope of responsibility of the
14 company commander compared to the battalion commander, but yes,
15 you're correct.

16 Q. Do you know Staff Sergeant [REDACTED] Sir? *66-4*

17 A. I do. Staff Sergeant [REDACTED] serves as a, I believe, well I
18 know he's the platoon sergeant, and I think he still is the platoon
19 sergeant of 615th MP Company.

20 Q. Okay how would you rate Staff Sergeant [REDACTED] as a platoon
21 sergeant?

22 A. Well first of all he's a staff sergeant in a sergeant first
23 class position, so he's certainly the best of the staff sergeants in

1 the company. I would rate him at the high end of the platoon
2 sergeants that I was responsible for in my battalion, so you're
3 talking probably, you know, at the high end 27, 28 platoons that I
4 had in the battalion and he would be--I would put him in the top five
5 or six within my battalion.

6 Q. And when--after Lieutenant ^{Niles} [REDACTED] was removed from platoon
7 leader until the new platoon leader, Staff Sergeant ^{b6-4} [REDACTED] was both
8 the platoon sergeant and the platoon leader for a time, correct?

9 A. That's correct. Now that's not unusual in any tactical
10 operation. If the platoon leader, for any reason's, not available,
11 then the platoon sergeant steps in and takes over as the platoon
12 leader.

13 Q. But you would say he did a good job at that, correct, Sir?

14 A. I would say he did a good job of it. I don't--I don't
15 recall any issues with the platoon while they were in Taji after
16 Lieutenant ^{Niles} [REDACTED] was moved.

17 Q. So that's, "yes", Sir?

18 A. What's that?

19 Q. Was that a "yes", Sir?

20 A. Yes.

21 [END OF PAGE]

22

1 Q. Now you said that while you were down in Iraq you were
2 supervising or had under your command somewhere between 27 and 29
3 platoon leaders, would that be correct?

4 A. At the high end that's correct. Normally--I think the most
5 I ever had was 29 and I had four, five, usually about 20 for the
6 majority of the time that I was in command. The task organization
7 changed from--sometimes from week to week but normally month-to-
8 month, so but yes, I think the most I ever had was 29 platoon leaders
9 that I was responsible for.

10 Q. And out of those 29 platoon leaders, how many of those
11 platoon leaders got in trouble for beating up Iraqis?

12 A. There--none that I know of that were--got in trouble for
13 beating up Iraqis.

14 Q. So Lieutenant ^{Niles} [REDACTED] would be the only one, right, Sir?

15 A. Lieutenant ^{Niles} [REDACTED] was accused of striking a criminal
16 detainee inside the Taji Police Station's jail.

17 Q. But he's the only one, right, Sir?

18 A. He's the only one that was accused of that, that's correct.

19 Q. And in fact he's pled guilty of doing that here today,
20 correct, Sir?

21 A. That's correct.

22 TC: Thank you.

23 MJ: Redirect.

1 DC: No redirect, Your Honor.

2 MJ: All right, do any members of the panel have any questions?

3 [Several members indicated an affirmative response.]

4 MJ: All right looks like we have a couple. If the bailiff
5 would collect those.

6 Just stand by, please, Lieutenant [REDACTED] *b6-4*

7 DC: Sir, were you able to hear the military judge just then?

8 WIT: I only heard--I only heard stand by Lieutenant [REDACTED]

9 [REDACTED] *b-6-4*

10 DC: Yes, Sir, there will be----

11 MJ: That's close enough.

12 DC: ----a few questions from the panel members.

13 [The CR marked questions from COL [REDACTED] and MAJ [REDACTED] as AES
14 VI and VII respectfully.] *b6-2*

15 **EXAMINATION BY THE COURT-MARTIAL**

16 **Questions by the military judge:**

17 Q. All right, Lieutenant [REDACTED], can you hear me?

18 A. I can. *b6-4*

19 Q. All right, how was the incident reported to you?

20 A. The incident was reported to me first by the company *b6-4*

21 commander. Captain [REDACTED] notified me at first I think by

22 radio and asked to see me, and then I met him at the battalion

23 headquarters. It was followed up, I believe, by command--I'm pretty

1 sure that a commander's incident report was sent up immediately, but
2 certainly if not immediately it was followed up with a commander's
3 incident report up to brigade.

4 Once notified by Captain ^{b6-4} [REDACTED] then I notified my
5 brigade commander.

6 Q. Do you know how long after the incident occurred that you
7 got your report?

8 A. I don't recall the exact time. I know it--I believe that
9 the incident was reported to Captain ^{b6-4} [REDACTED] within I want to
10 say, and I'd be guessing, but I'd say within 24 hours, and then
11 Captain [REDACTED] notified me right afterwards. I think that's
12 how I remember it, and ^{b6-4} then once--once I--once I got the report, I
13 had Captain [REDACTED] first collect the details that he had, so I
14 could send up a commander's incident report to brigade, and then
15 after speaking with Captain ^{b6-4} [REDACTED] I directed a commander's
16 inquiry.

17 Q. Now did Lieutenant ^{Niles} [REDACTED] receive a Relief for Cause OER
18 when you moved him to the battalion staff?

19 A. No he did not. I did not direct, at any time, the relief
20 of Lieutenant ^{Niles} [REDACTED]. I suspended him from his platoon leader duties,
21 and then I directed a change of rater OER, which he--which it would
22 have been Captain [REDACTED] as his--the rating chain is a little
23 convoluted. It was Captain ^{b6-4} [REDACTED] as his rater, and I believe

1 Lieutenant Colonel ^{b6-4} [REDACTED] as his senior rater for the time period
2 up through July, and then I had him fall into the rating chain of my
3 S3, Major ^{b6-3, b6-2} [REDACTED] as his rater, then me as his senior rater, which I
4 carried him through, I want to say, the end of this February or early
5 March. But I did never--I never--neither Captain ^{b6-3} [REDACTED]
6 myself, or Colonel ^{b6-3} [REDACTED] ever directed his relief.

7 MJ: All right, any other panel questions?

8 [A member indicated an affirmative response.]

9 MJ: We've got at least one more, so hold tight there.

10 [The CR marked a question from LTC [REDACTED] as AE VIII.]

11 Q. Was the change of rater OER a referred report? ^{b6-2}

12 A. The change of rater report was not a referred report. I do
13 not believe any derogatory information was placed in either the rater
14 or the senior rater's portion. I don't know that a hundred percent
15 for sure, but I'm almost positive it was a standard change of rater
16 report. Now I do know for sure that my--that my change of rater
17 report where I served as senior rater was not a derogatory report and
18 was not referred, and I carried him from the time of suspension
19 through either February or March 2004 where he served--that was the
20 rating he received as the--as one of the members of the battle staff.

21 Q. All right just so I'm clear, neither OER that you just
22 mentioned refers to this incident?

23 A. I'm sorry, Ma'am.

1 Q. Do--does the OER that ended with his--at the time he
2 stopped being a platoon leader, does that refer to the incident?

3 A. I do not believe that--I mean his time as platoon leader
4 ended upon suspension based on the incident, correct, but I do not
5 believe, and I'd have to see the OER in front of me, I do not believe
6 there is any mention of the incident in the OER because it was under
7 investigation, and the thought that I--and certainly what I thought
8 was at least in accordance with the OER regulation if you find
9 derogatory information later that's substantiated, you can go back
10 and put that into the report, you know as a--or you can put it in a
11 subsequent report, so there was no mention of it in the report that
12 carried him from the time that he was a platoon leader up until his
13 suspension, and I know that I didn't place anything in my portion as
14 the senior rater in the--his time as a battle staff officer.

15 MJ: All right. Any more members' questions?

16 [All members indicated a negative response.]

17 MJ: No. Does either side have any questions based upon mine---

18 -

19 TC: Just quickly, Your Honor.

20 MJ: ----or the members?

21 TC: Just quickly.

22 MJ: Captain [REDACTED] *bb-4*

23

1 Q. But it was a serious incident, right?

2 A. It was--it was a serious incident not which I felt required
3 the relief of an officer.

4 Q. You moved him to battle staff and never moved him back, but
5 that's not a relief for cause?

6 A. That is not. Not in accordance with the regulation, I
7 mean, if I relieve him of his duties, then I'm required to direct an
8 OER stating such, which makes the referred report.

9 Q. Why--why was he moved to battle staff?

10 A. He was moved to battle staff because he was the subject of
11 an investigation.

12 Q. Okay and the commander's inquiry was done shortly
13 thereafter, wasn't it?

14 A. It certainly was.

15 Q. So the investigation was completed shortly thereafter,
16 correct?

17 A. That--you know, the battalion level of the investigation
18 was completed very quickly, that's correct, and then it was sent from
19 Brigade to Corps with recommendations on actions, and nothing
20 happened, and so I waited and after consulting with my brigade
21 commander I told--my concern was that I didn't want, you know,
22 certainly something like this where either an Article 32 or anything

1 really coming up later on if I put him back into the platoon, and
2 there was no action taken by the Corps SJA for a number of months.

3 Q. Okay, so----

4 A. So as time went on, I continued to keep him in the battle
5 staff and then it was--by this point, I had already requested and
6 received a platoon leader from Germany to fill the position.
7 Lieutenant ^{bb-3} [redacted] [sic] had moved down from Germany and taken over
8 the platoon. I had no other position in the 615th MP Company, and so
9 I kept Lieutenant ^{Niles} [redacted] on the battle staff. It was the function of
10 timing.

11 You know if the question is would I have put him back in
12 the platoon leader position, I probably would have if it had been
13 cleaned up and closed up and there was a final action. But it never
14 got finalized.

15 Q. Okay so was there an OER done aft--right after the incident
16 happened?

17 A. There is an OER done I want to say, I'm pretty sure that
18 the OER--I think Lieutenant ^{Niles} [redacted] annual OER took place. I want to
19 say it would have been like mid, maybe the end, of June, so his
20 annual report took place right before this incident or within 30 days
21 of the incident I think. I'm not sure of the exact dates, which
22 means there could be no comment on that OER anyway because it was
23 outside the rating period.

1 Q. So, Sir, if I've talked to the G1, and his name is Major
2 ^{b6-3} [REDACTED] and he stated that based on the facts as this then you
3 should have given him a relief for cause NCOER [sic], G1 would be
4 wrong?

5 A. Did--I don't think that--I mean I would have to check the
6 regulation. I'm not sure that any staff officer can say whether an
7 officer can be relieved or not. I'm pretty sure that's reserved to
8 only commanders.

9 Q. Okay.

10 A. As a commanding officer, I did not direct his relief. Now
11 my commander and his commander and his commander can direct the
12 relief, but the last time I checked, staff officers can only
13 recommend, they can't direct.

14 Q. Okay, but the G1's telling me, based on the facts of this
15 incident, that there should have been a relief for cause NCOE--OER
16 done, he must be wrong or he's correct or he's wrong?

17 A. I don't know.

18 TC: All right, thank you, Sir.

19 MJ: Redirect.

20 DC: Just one question, Your Honor.

21 [END OF PAGE]

22

1 **REDIRECT EXAMINATION**

2 **Questions by the defense counsel:**

3 Q. Sir, the fact is--this is Captain ^{b6-2} [REDACTED] again.

4 A. Yes.

5 Q. The fact is he never got a relief for cause OER because you
6 didn't think that was necessary, right, Sir?

7 A. That's exactly correct. I never relieved Lieutenant ^{Niles} [REDACTED]
8 of duty, ever.

9 DC: Thank you, Sir. Please stand by.

10 MJ: Anything further from the members?

11 [All members indicated a negative response.]

12 MJ: All right temporary or permanent excusal?

13 DC: Permanent excusal is fine, Your Honor.

14 TC: No objection, Ma'am.

15 [The witness was duly warned, permanently excused, and hung up the
16 phone.]

17 MJ: All right, Defense, what else have you got?

18 DC: Yes, Your Honor, the defense next calls Captain ^{b6-4} [REDACTED]
19 [REDACTED]

20 MJ: All right.

21 **[END OF PAGE]**

22

b6-4

1 CAPTAIN [REDACTED] U.S. Army, was called as a witness for the
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. Can you please state your full name for the record?

6 A. [REDACTED] b6-4

7 Q. And your rank?

8 A. Captain.

9 Q. And what's your current unit of assignment?

10 A. 709th MP Battalion.

11 TC: Defense has some questions for you.

12 MJ: Captain, you need to speak up.

13 WIT: Yes, Ma'am.

14 Questions by the defense counsel:

15 Q. Good afternoon, Captain [REDACTED] b6-4 I just want to ask you a
16 few brief questions. First of all, do you know Lieutenant [REDACTED] Nikes
17 here?

18 A. Yes, I do.

19 Q. How is it that you know him?

20 A. I met Lieutenant [REDACTED] Nikes last year in November in Iraq.

21 [END OF PAGE]

22

1 Q. Okay. What was the context of that meeting? What was your
2 position, what was his position?

3 A. I was coming in and he was the night battle captain, and he
4 was the first officer I met in our battalion in Iraq.

5 Q. So he worked in the S3 shop?

6 A. Yes, he did.

7 Q. And now you're presently still with the S3 shop?

8 A. Yes, I am.

9 Q. Okay what was your job as part of the S3 team when he was
10 the night battle captain?

11 A. I was the incoming night battle captain. He was
12 transitioning to the liaison for the battalion.

13 Q. Okay. If you will, please, tell us how well you got to
14 know Lieutenant ^{Niles} [REDACTED] I mean how often did you interact with him
15 and how well did you get to know him?

16 A. Well I interacted with him on a daily basis, well a nightly
17 basis for about 2 weeks, so I got to know him a lot, talked to him a
18 lot, talked to him about, you know, somewhat about his issue or the
19 action that was pending against him.

20 Q. Okay, now did he essentially train you on the job as night
21 battle captain?

22 A. Yes, you could say that.

23

1 Q. You said you were coming in to take that job, right?

2 A. Yes, I was.

3 Q. Okay how, as far as like tactical proficiency, technical
4 knowledge, those kinds of things how did you--what was your
5 evaluation of Lieutenant ^{Niles} [REDACTED] Were you confident in him?

6 A. Yes, I was. Outstanding officer. Always gave a hundred
7 percent.

8 Q. Okay what about--if you were just--a hypothetical question.
9 If you were to be deployed, put into a combat situation again and
10 knowing Lieutenant ^{Niles} [REDACTED] as you do, would you be comfortable with him
11 as another member of your staff or as a commander?

12 A. Yes, I would, I would take him under my command in a
13 heartbeat.

14 DC: Okay thank you very much. The government may ask you some
15 questions.

16 MJ: Cross?

17 TC: Yes, Ma'am.

18 **CROSS-EXAMINATION**

19 **Questions by the trial counsel:**

20 Q. Now when the government talked to you previously, you
21 stated that you weren't actually at the incident, correct?

22 A. No, I wasn't.

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1 Q. And you said, "You had no idea what happened at the
2 incident," correct?

3 A. No, I had no idea.

4 TC: Thank you.

5 MJ: Redirect?

6 DC: No redirect, Your Honor.

7 MJ: Questions by any of the panel members?

8 [All members indicated a negative response.]

9 MJ: Apparently not.

10 Temporary or permanent excusal?

11 DC: Permanent excusal is fine, Your Honor.

12 TC: No objection, Ma'am.

13 [The witness was duly warned, permanently excused, and withdrew from
14 the courtroom.]

15 MJ: Captain ^{bb-2} [REDACTED] what else have you got?

16 DC: Yes, Your Honor, our last military witness is Captain [REDACTED]

17 ^{bb-4} [REDACTED]

18 CAPTAIN [REDACTED] U.S. Army, was called as a witness for the
19 defense, was sworn, and testified as follows:

20 DIRECT EXAMINATION

21 Questions by the trial counsel:

22 Q. For the record, could you please state your full name?

23 A. My full name is ^{bb-4} [REDACTED]

1 Q. And your rank?

2 A. My rank is Captain.

3 Q. And what is your current unit of assignment?

4 A. 709th Military Police Battalion.

5 TC: Thank you. Defense has some questions for you.

6 **Questions by the defense counsel:**

7 Q. Good afternoon, [REDACTED] *b6-4*

8 A. Good afternoon, Captain.

9 Q. First question is, do you know Lieutenant *Niles* [REDACTED] here?

10 A. Yes, I do.

11 Q. How is it that you know him?

12 A. I worked with him downrange at Iraq during the deployment

13 as a battle staff, the battle captain.

14 Q. Okay what was your job during that time?

15 A. My job was the day battle captain he was the night battle

16 captain. He was my counterpart.

17 Q. Okay.

18 A. We basically interacted every 12 hours.

19 Q. You would pass onto him when you went off shift----

20 A. Correct.

21 Q. ----and then he would do the same when----

22 A. Correct.

23

1 Q. -----you came on shift, right?

2 A. Correct.

3 Q. How long did that relationship go on? How long were you

4 two doing that?

5 A. Roughly 5 to 6 months.

6 Q. Okay.

7 A. I can't give a precise date, but----

8 Q. Of course.

9 A. -----roughly in that ballpark.

10 Q. But about 5 or 6 months?

11 A. Correct.

12 Q. Okay during that time, did you get to know Lieutenant ^{Niles} [REDACTED]

13 pretty well?

14 A. Professionally, yes.

15 Q. Right.

16 A. Personally not so well, correct.

17 Q. But professionally you did?

18 A. Yes.

19 Q. Okay did you get to know him well enough professionally to

20 form an opinion about him as an officer?

21 A. Absolutely.

22 [END OF PAGE]

23

1 Q. And what is that opinion?

2 A. My professional opinion of Lieutenant ^{Niles} [REDACTED] is that he is a
3 great outstanding military officer. He embodies the Army values
4 based off of what I know of him. I couldn't think of anyone more
5 that I would rather serve with, go to war with, protect my life, and
6 who I would rather count on than Lieutenant [REDACTED] ^{Niles}

7 Q. Okay now are you aware of the incident that we're here
8 about today?

9 A. I have been made aware of it, yes, correct.

10 Q. Okay so you--you weren't there, but you know what happened
11 essentially?

12 A. Correct.

13 Q. Now the fact that that happened does that change your
14 opinion about what you just said about him?

15 A. None whatsoever.

16 DC: Okay great. Thank you.

17 MJ: Cross?

18 TC: Just quickly, Your Honor.

19 **CROSS-EXAMINATION**

20 **Questions by the trial counsel:**

21 Q. So let's be clear, you weren't ever actually at the
22 incident, correct?

23 A. No.

1 Q. Lieutenant ^{Niles} [REDACTED] never talked to you about the incident?

2 A. Never. The entire time during our deployment downrange, he
3 only told me that he was under review and that was all.

4 Q. Okay and basically you're basing your opinion, your
5 testimony, solely on your observations as Lieutenant [REDACTED] as a
6 battle captain? ^{Niles}

7 A. Correct our interaction between the two.

8 Q. As a battle captain?

9 A. Correct.

10 TC: Thank you.

11 MJ: Redirect?

12 DC: No redirect, Your Honor.

13 MJ: Any of the panel members have questions?

14 [All members indicated a negative response.]

15 MJ: Evidently not. Permanent or temporary excusal?

16 DC: Permanent, Your Honor, is fine.

17 MJ: Any objection?

18 TC: No objection, Your Honor.

19 [The witness was duly warned, permanently excused, and withdrew from
20 the courtroom.]

21 DC: Thank you, Your Honor. Next the defense calls Mrs. [REDACTED]

22 [REDACTED] ^{b6-4}

23 MJ: All right.

1 DC: The accused's wife.
2 MRS. [REDACTED] ^{b6-4} civilian, was called as a witness for the
3 defense, was sworn, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the trial counsel:

6 Q. Would you please state your name for record?

7 A. [REDACTED] ^{b6-4}

8 Q. Okay and you're the wife of the accused in this case?

9 A. Yes, I am.

10 TC: Thank you very much.

11 Questions by the defense counsel:

12 Q. Good afternoon [REDACTED] ^{b6-4}

13 A. Hello.

14 Q. Thank you for your testimony today. I just want to ask you
15 a few questions, and I want to give you the opportunity to tell the
16 panel members a little bit about ^{Niles} [REDACTED] the man, the husband,
17 and the father apart from all the testimony we've heard about him as
18 the officer up to this point.

19 A. Um-hmm [indicated an affirmative response].

20 [END OF PAGE]

21

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1 Q. First of all I'd just ask you to tell us a little bit about
2 your family. How many children do you have?

3 A. We have three children.

4 Q. And what are their names and ages?

5 A. [REDACTED] is 7, [REDACTED] is 4, and [REDACTED] is 2. 66-3

6 Q. Okay.

7 A. Turned 2 in February.

8 Q. And how long have you and ^{Glenn} [REDACTED] been married?

9 A. We'll be married 8 years September 29th of this year.
10 We've been together for 10 years.

11 Q. Okay. Now before the Army, tell us a little bit about the
12 places that you lived and the things that you did with your family.

13 A. I met my husband in 1994 at the College of Charleston, and
14 I was a freshman, he was an upper classman, and well anyway, we got
15 married. We dated for about 2 years, we got married, started a
16 family. I completed my degree. He went on to the master's course.
17 He graduated with a degree in psychology, went onto Webster
18 University to get his Masters in Counseling.

19 After getting his counseling degree, he worked with--he was
20 a treatment coordinator who worked with foster children who obviously
21 had a lot of problems. His job there was to pretty much plan or
22 coordinate their treatment, meaning if there were problems in school,

1 he was there. If there was a problem at home, he was there, all the
2 stuff that goes along with a counselor.

3 Once he got his--I'm sorry he did that while he was getting
4 his master's degree. Once he got his degree in counseling, he did
5 his internship with drug and alcohol abuse. After completing that
6 and getting his degree, he went on to be a counselor for sexual--
7 juvenile sexual offenders. He worked with, of course, juvenile
8 delinquents that had a lot of problems there, and it was one of those
9 things when we were in college, he always said he was going to be in
10 the military, "I'm going to be in the military." "Okay. We are
11 going to travel the world. Okay." We were young, and once we
12 started having kids, that kind of was put on the back burner for a
13 little while, and one day when I was at home with post partum
14 depression blues after I had my second child, he came and said, "I'm
15 going to take you out to lunch." "Okay." And we ran into the Army
16 recruiter, got to love them, and a few months later, he was in the
17 military.

18 Q. Okay.

19 A. He left November 7th of 2000. I remember that day because
20 it was an election year, and he left to go to basic training. At
21 that time, it was just ^{Glenn} [REDACTED] and ⁶⁶⁻³ [REDACTED] at that time, all of the
22 things that he did up until that point before in the civilian world,
23 as you can see, my husband's a large man, but he was a lot larger in

1 the civilian world. He got healthy, and he was at one time 317
2 pounds and a lot of people can't believe that, but he did a lot of
3 exercise, he lost the weight, and joined the military lost even more
4 weight. I was like, "Oh my gosh, what happened to my husband?" And
5 he made a lot of sacrifices along the road for us.

6 The reason why he joined the military was because he wanted
7 to secure our financial status--our financial state as a family, and
8 we thought that--he thought the best way to do that would be to join
9 the military, and the military does have it's benefits, and I can
10 definitely say that. I have reaped the benefits of Uncle Sam. I
11 have, but at the same time, a lot of sacrifices on all of our part
12 have also come into play.

13 For the 3 years that my husband has been in the service, we
14 might have had him at home in the house for maybe 18 months, so a lot
15 of time was spent away from the kids, and when he came home from
16 Iraq, it was the first time that my 4 year old had his dad home for a
17 birthday party because he was always training or in the field or TDY
18 or whatever, and as a family we accepted that. We did.

19 There is nothing more than--there is nothing more that my
20 husband loves than waking up in the morning and putting on his
21 uniform. He walks taller, he loves the military, he's always wanted
22 to be a police officer, and being an MP officer and in the military
23 is like having his cake and eating it too.

1 I can't think of anything else that he would rather do, and
2 I love my husband very much. I want him to come home with me
3 tonight, and say good night to our children, and our family has been
4 through a lot because of this whole situation.

5 Before he deployed to Iraq, he was--there was a field
6 training for at least the month of January. He came home and I
7 thought for sure that they were going to have 30 days leave before
8 they deployed, but in that situation it didn't happen. They
9 continued to train up until the time that they left. My husband
10 probably has not had a decent night's rest since a year and a half.

11 After the incident occurred, he called me and he apologized
12 to me, and I said, "Honey, what's wrong? What's wrong?" And he
13 said, "I'm so sorry. I'm so sorry, Honey. I messed up, and I'm
14 sorry, and I put my soldiers in a bad position, and I put our family
15 in a bad position." And I told him no matter what we're in this
16 together, and I love him very much, and that I said, "well can you
17 give me--can you let me know what happened?" And if I was in my
18 husband's position, I would have done the same thing if not worst,
19 and I told him that I admired him and that I have so much respect for
20 him and I think that he's so much of a better person than what I was.

21 I thought for sure that after the incident occurred that he
22 would be sent home, and I didn't know everything that had gone on.
23 He just said that something bad happened, and he was sorry for that.

1 I thought that he would come home, we would PCS, go to South
2 Carolina, and that would be the end of it, but instead, my husband
3 completed the entire 11 months of the deployment before he returned
4 home, and for him to get up everyday and go to work and put on a
5 smiling face, and I asked him why, you know. "You're under charges
6 and obviously the military doesn't want you. I don't understand, why
7 do you keep doing it?" And he said, "Because it's not about me, but
8 it's about the soldiers that depend on me, and I have a job to do,
9 and I have a responsibility to them."

10 And I love my husband very much. He is so much of a better
11 person than what I am because I don't think I would have done the
12 same thing. I really wouldn't have. I know I wouldn't have.

13 We've been through a lot, and even after he came home in
14 February, he doesn't sleep quite the same. He gets up two, three
15 times a night. He gets up early in the morning, he goes to the gym,
16 he comes home for lunch, he goes back to the gym, at night he goes to
17 spinning class just to stay busy, and I think that's just the way
18 that he deals with the frustration and the stress, but I've had so
19 many people come up to me and say, "Oh, is your husband still on
20 leave?" "Oh, is he working at battalion?" And not exactly, and why
21 what's going on? Why is it still--it's been a year, and everyday--
22 not a day goes by that he doesn't think about his actions and the
23 things that he has seen and been through.

1 DC: Thank you, Ma'am, very much.

2 ^{bb-2} That's all if have. No further questions. Captain
3 [REDACTED] may have some questions.

4 TC: No questions from the government.

5 MJ: Any of the panel members have questions?

6 [All members indicated a negative response.]

7 MJ: No. Temporary or permanent excusal?

8 DC: Permanent is fine, Your Honor.

9 TC: No objection.

10 [The witness was duly warned, permanently excused, and withdrew to
11 the rear of the courtroom.]

12 MJ: Are you prepared to go forward, Captain ^{bb 2} [REDACTED], or do you
13 need a few minutes.

14 DC: May I just have--Your Honor, we'll go forward.

15 MJ: Okay.

16 DC: The last thing--the next to last thing we'd like to present
17 is the accused would like to make an unsworn statement. He has some
18 things to say to the court.

19 MJ: All right.

20 DC: If it's acceptable to you, Your Honor, and the members if
21 he could just stay--he'll--but if he can just stay here instead of
22 taking the witness chair.

1 MJ: That's fine. Let me tell the panel members a few things
2 first.

3 Now the accused is going to make what we call an unsworn
4 statement, and the court will not draw any adverse inference from the
5 fact that he's elected to make this statement, which is not under
6 oath. An unsworn statement is an authorized means for an accused to
7 bring information to the attention of the court and must be given
8 appropriate consideration. The accused cannot be cross-examined by
9 the prosecution or interrogated by court members or me upon an
10 unsworn statement, but the prosecution may offer evidence to rebut
11 statements of fact contained in it.

12 The weight and significance to be attached to an unsworn
13 statement rests within the sound discretion of each court member.
14 You may consider that the statement is not under oath; it's inherent
15 probability or improbability, whether it is supported or contradicted
16 by evidence in the case, as well as any other matter that may have a
17 bearing upon its credibility. In weighing an unsworn statement, you
18 are expected to use your common sense and your knowledge of human
19 nature and the ways of the world.

20 Captain ^{bb-2} [REDACTED] you may proceed.

21 DC: Your Honor, at this time, we'd like to present an unsworn
22 statement from the accused, Lieutenant ^{Niles} [REDACTED]

23 MJ: All right, Lieutenant ^{Niles} [REDACTED] go right ahead.

UNSWORN STATEMENT

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Niles
LIEUTENANT [REDACTED], the accused, stood at the defense table and made the following unsworn statement:

ACC: Gentlemen, Ma'am, I just want you to know that I'm hearing a lot today, but what I would like to convey is that I did not plan for this incident to happen. I have come to love the Army and the job that I was given to do. If I can't have that, I ask that you leave me in a position where I can support my family and care for them the best way I can. What in essence I'm asking you is that I'm allowed to go home tonight and put my children to bed and wake up and show them that I'm still there. I'm asking you to leave me in a position where I can complete and fulfill my obligations to my wife, to fulfill promises I made to her.

I wish it never happened, but that goes without saying.
That's all I have, thank you.

MJ: Anything else, Captain [REDACTED] *b6-2*

DC: Yes, Your Honor, one last thing and that is that I'd like to play a tape for the members. It's been previously introduced as Defense Exhibit Bravo, and this is a tape recording of the unsworn statement made by the accused at the Article 32 hearing on 15 May.

MJ: And what I advised you, of prior to the statement that Lieutenant *Niles* [REDACTED] has just made concerning it being an unsworn statement is true of this statement as well.

1 [The DC published DE B to the members.]

2 DC: Your Honor, with that, the defense rests.

3 MJ: All right, any rebuttal?

4 TC: No, Your Honor.

5 MJ: All right, I'm going to take, well I'm going to ask the
6 panel to excuse us for actually it should be about 3 minutes tops.
7 The rest of us are going to stay in the courtroom, so if you'd excuse
8 us, I've got to talk to counsel.

9 [The court-martial recessed at 1505, 1 July 2004.]

10 [END OF PAGE]

11

1 [The session was called to order at 1506, 1 July 2004.]

2 MJ: All right, you may be seated. Let the record reflect that
3 the members are absent, but everyone else is still present.

4 Now Captain ⁶⁶⁻² [REDACTED] based on what Lieutenant ^{Niles} [REDACTED] said in
5 his unsworn here in court today, are you going to be arguing for a
6 dismissal rather than jail time?

7 DC: No, Your Honor, not going to argue for a dismissal.

8 MJ: Okay because essentially that's what he asked for in his
9 unsworn.

10 DC: Your Honor, my understanding of essentially what he was
11 saying was that he certainly does not want confinement. I think my
12 take of it was--what I heard him say was that at least no
13 confinement.

14 MJ: Well in my notes he says, "If I can't have the Army, I ask
15 to be left in a position to care for my family, I be allowed to go
16 home tonight."

17 DC: Yes, Your Honor.

18 MJ: Which to me says, "I'd rather have a discharge than go to
19 jail." I just want to make sure.

20 Is that what you're asking for, Lieutenant ^{Niles} [REDACTED], is--is do
21 you want your counsel to argue for a discharge or do you want him to
22 argue no discharge no jail?

23 ACC: No discharge no jail.

1 MJ: Okay that's fine because if you're going to argue for a
2 discharge, there's certain warnings I need to give you.

3 ACC: Roger, Ma'am.

4 MJ: And I wanted to make sure you weren't going there without
5 me giving you the proper warnings that's all. Okay. Mighty fine.
6 Sit down.

7 [The DC did as directed.]

8 MJ: Then in that case, bring the panel back in. Both sides
9 ready for argument?

10 TC: Yes, Your Honor.

11 DC: Yes, Your Honor. We'll argue before the instructions?

12 MJ: I'll give them a little bit but not much.

13 DC: Yes, Your Honor.

14 MJ: Basically that they're going to hear argument.

15 DC: Yes, Ma'am.

16 [The session recessed at 1507, 1 July 2004.]

17 [END OF PAGE]

18

1 [The court-martial was called to order at 1508, 1 July 2004.]

2 MJ: You may be seated. Let the record reflect that the members
3 have rejoined us; so all parties are once again present in court.

4 Members, at this point in time what you're going to hear
5 are the arguments of either side. Arguments are just that,
6 arguments; they are not facts. They are each sides attempt to sway
7 you as to which way you should go concerning the sentence in this
8 case. The government will go first.

9 TC: Sir, members of the panel, this is a tough case. It's a
10 sad case. My job as government counsel is to represent the United
11 States Government, and make no mistake about it, the United States
12 Government and the United States Army is a victim in this case.

13 Your job, as panel members, is to craft the appropriate
14 punishment for what Lieutenant ^{Niles} [REDACTED] did. Let's take a moment and
15 talk about what Lieutenant ^{Niles} [REDACTED] did.

16 You've heard that he was a platoon leader in Iraq. Part of
17 his job was running a police station and coaching and mentoring the
18 IPs, the Iraqi Police, who we heard had a lot of problems.

19 One day, three Iraqi detainees try to break out. They are
20 stopped, and take note, it's not until the next day, the next morning
21 after Lieutenant ^{Niles} [REDACTED] had time to stew about this all night, to
22 think about it that he comes into the police station the next
23 morning, and he goes and grabs his subordinates. He doesn't do it

1 himself. He goes and gets his subordinates and says, "Bring those
2 Iraqis in here."

3 They bring them in, and you heard what happens in front of
4 his subordinates. He takes a guy by the back of the neck, throws him
5 towards the hole, "Did you do this?" and bam [slamming his fist into
6 the palm of his other hand], hits the first one, bam [slamming his
7 fist into the palm of his other hand] hits the second one, and even
8 as one of his NCOs is trying to pull him off, he kicks a third one.

9 He treated those Iraqis like dogs, as if your dog had
10 crapped on your living room floor and you're probably in your family
11 room and said bring that dog in here, and you took that dog and you
12 slapped it around [slapping his hands together] and you took his nose
13 and you rubbed his face in the dog crap. That's equal to what
14 Lieutenant ^{Niles} [redacted] did. He treated those Iraqis like dogs.

15 Now defense is going to get up here, and they're going to
16 want you to consider Lieutenant ^{Niles} [redacted], and the government agrees.
17 You have to consider Lieutenant ^{Niles} [redacted] what his is, what he did, the
18 type of officer he is, and the crime he committed. The fact that
19 he's an officer, a police officer, an MP who in front of his
20 subordinates beats Iraqis, beats prisoners. An MP who had a special
21 trust, a special job to care take detainees, to care take prisoners,
22 and to take care of them not to beat them.

1 himself. He goes and gets his subordinates and says, "Bring those
2 Iraqis in here."

3 They bring them in, and you heard what happens in front of
4 his subordinates. He takes a guy by the back of the neck, throws him
5 towards the hole, "Did you do this?" and bam [slamming his fist into
6 the palm of his other hand], hits the first one, bam [slamming his
7 fist into the palm of his other hand] hits the second one, and even
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10 crapped on your living room floor and you're probably in your family
11 room and said bring that dog in here, and you took that dog and you
12 slapped it around [slapping his hands together] and you took his nose
13 and you rubbed his face in the dog crap. That's akin to what
14 Lieutenant ^{Niles} [redacted] did. He treated those Iraqis like dogs.

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16 want you to consider Lieutenant ^{Niles} [redacted] and the government agrees.
17 You have to consider Lieutenant ^{Niles} [redacted] what his is, what he did, the
18 type of officer he is, and the crime he committed. The fact that
19 he's an officer, a police officer, an MP who in front of his
20 subordinates beats Iraqis, beats prisoners. An MP who had a special
21 trust, a special job to care take detainees, to care take prisoners,
22 and to take care of them not to beat them.

1 But this case is bigger than Lieutenant ^{Niles} [REDACTED] It's bigger
2 than a simple assault--an assault case. It's bigger than
3 maltreatment of prisoners. It's bigger than that. It's bigger than
4 the impact it had on the platoon, the company, the greater unit.

5 Do you want to know why that unit stayed together? You've
6 heard it. It wasn't because of Lieutenant ^{Niles} [REDACTED] He committed a
7 crime; he was gone. It was because of the NCOs, the platoon sergeant
8 who did double duty to keep that unit together. That's why that unit
9 kept going, not because of Lieutenant ^{Niles} [REDACTED] He let his family down,
10 and he let his unit down, and it's bigger than that. It's bigger
11 than the MP mission in Iraq. It's going to affect that. It's going
12 to affect our mission in Iraq.

13 How do you think this is going to play when the Iraqis hear
14 about this? Are they more likely to be waving at us now or shooting
15 at our convoys? This is not good for winning the hearts and minds of
16 Iraqis.

17 How is this going to play on the folks back home? What are
18 they going to think about United States Army officers, of the
19 military police officers? What are they going to think? What are
20 people around the world going to think of military police officers,
21 of U. S. Army officers, of what we're doing in Iraq? What are they
22 going to think?

1 And beyond that, beyond all the factors the government's
2 just mentioned, the government wants you to think about one factor
3 above everything else. Consider all the factors we've just mentioned
4 including Lieutenant ^{Niles} [REDACTED] his crimes, everything, but think about
5 deterrence. When you craft your punishment, take deterrence into
6 your mind. What's it going to take to send a message to Lieutenant
7 ^{Niles} [REDACTED] to all the MPs in this room that his type of conduct is not
8 tolerated, because of right now, the message that's being sent from
9 the MPs outwards is that this is not a big deal. This is a slap on
10 the wrist [slapping his wrist with his open hand].

11 When you get a chance, look at his OERs including the one
12 from the timeframe of the offense. Look on there how they handled
13 this, but there's one problem. In none of the OERs nothing is
14 mentioned about this. It's as if the MPs just want to sweep it away,
15 make it go away, but it hasn't gone away. It's in front of you.

16 What Lieutenant ^{Niles} [REDACTED] did has to have consequences. What
17 MPs do has to have consequences. What we do has to have
18 consequences. What you do here today, it will have consequences not
19 only on Lieutenant ^{Niles} [REDACTED] on all the MPs in this room, but on the MPs
20 outside this courtroom, outside these doors, the ones in Iraq, the
21 ones downrange.

22 The government's asking you for two things. The
23 government's asking you for a dismissal, the government's asking you

1 for confinement time. The confinement time, whatever time the panel
2 thinks is sufficient, in combination with a dismissal sending a
3 message to the Lieutenant ^{Niles} [REDACTED] the MPs in this room, and beyond
4 these doors, beyond this courtroom that this type of conduct is not
5 tolerated. We don't treat detainees, Iraqis, like dogs.

6 Sir, members of the panel, unfortunately rightly or wrongly
7 anything less than a dismissal and confinement time, unfortunately
8 it's going to send the wrong message. It's going to send a message
9 that hey, it's okay to do this. It's just a slap on the wrist, but
10 if you do give a dismissal and the proper time of confinement, you
11 will show Lieutenant ^{Niles} [REDACTED] all the MPs in this room and beyond this
12 courtroom that this type of conduct is not tolerated.

13 Thank you.

14 MJ: Captain [REDACTED] ^{bb-2}
15 DC: Colonel [REDACTED] ^{bb-2} Sir, Gentlemen, Ma'am, duty, honor, and
16 courage. Duty, honor, and courage three of the fundamental values
17 part of the seven Army values along with integrity, sacrifice or I'm
18 sorry selfless service. Fundamental Corps principles that we want
19 not only our officers but our soldiers to have, to live, to embody,
20 duty, honor, and courage. Those three words I--I highlight because
21 the tape I just played before I sat down, Lieutenant ^{Niles} [REDACTED] thanked
22 his men, his men, the first time he had gotten to talk to them and it
23 was kind of just hard to understand at the beginning of the tape, he

1 was saying that, "I haven't had a chance to talk to you because I've
2 been pulled from the platoon and there's been an investigation. I
3 haven't had a chance to talk to you." That 32 was his first chance
4 to talk to his men after all those months, Sergeant [REDACTED] Sergeant [REDACTED] ^{b6-2}
5 [REDACTED] Sergeant [REDACTED] were sitting in the back of this very room,
6 he thanked them for their duty, honor, and courage. He told them
7 that they showed him what duty, honor, and courage was all about. I
8 submit to you that that is, in fact, true, but Glenn ^{Niles} [REDACTED] represents
9 those same values, duty, honor, and courage.

10 He went to Iraq, did his duty, deployed in difficult, very
11 difficult circumstances. We heard significant evidence from both
12 platoon leaders, Colonel ^{b6-2} [REDACTED] talked at length about the mission,
13 we heard about the impact it had on his family, you know, being
14 deployed being away from home. He went and he did his mission. He
15 made a mistake. He made a mistake.

16 All of you are officers; you've been commanders or have
17 been around soldiers at least. How many soldiers do you see that
18 make a mistake and they just go, you know, someplace bad. They don't
19 come back from it. They make a mistake, they know they're in
20 trouble, they know they're facing charges, what do they do? They
21 just become a bad soldier. They give up. Lieutenant ^{Niles} [REDACTED] got a new
22 job and soldiered on. He soldiered on. He made a mistake. He made
23 a mistake.

1 Talk about honor and courage. In today's environment in
2 the military in the Officer Corps especially, words like--terms like
3 zero defect, zero tolerance are thrown around. We're human beings.
4 All of--each of you are a human being. ^{Niles} [REDACTED] is a human being.
5 Baghdad Iraq in July 2003 was hell. I don't know if John
6 Wayne said it first or somebody else, but war is hell. It is bad.
7 It's hard. It's stressful. Human beings are just that. They're
8 human beings. We're not robots. Stressors, lack of sleep, it's not
9 an excuse. Please, I don't want you to couch my statements in those
10 terms. Glenn ^{Niles} [REDACTED] has never made an excuse, and I don't offer these
11 things to you today as an excuse. In fact, he pled guilty. He's
12 here today--the first thing we did this morning was he pled guilty.
13 He pled guilty to conduct unbecoming an officer, that's what he did.
14 It happened. He has never denied that this happened. Never asked
15 any of his subordinates to cover it up, and in fact, on that tape,
16 that's what he was doing. He was thanking them, thanking them for
17 doing the right thing. That speaks volumes about the character of
18 this man. So I don't offer these stressors, I don't make these
19 arguments as an excuse because there is no excuse. There is no
20 excuse. That's why this was a guilty plea, and that's why you're
21 here for sentencing only not to find out whether he's guilty or not.
22 But those stressors still should be considered.

1 I asked each of you at the beginning today if you would--if
2 it was a fair question, fair to expect you to consider those
3 extraneous factors, those stressors. What did we hear? Fourteen,
4 16-hour days everyday, 7 days a week, 30, 31 days a month. For
5 months this had gone on.

6 The constant threat of attack, force protection issues,
7 different police stations had been mortared, just us your own
8 knowledge. We've all watched TV, we've all read the paper, we've all
9 been following what's been going on. Police stations are very
10 commonly attacked. There weren't maneuver units out in that area at
11 that time. It was these guys. It was the MPs in their armored
12 HMMWV, no tanks, no Bradleys. They were out there in the middle of
13 Baghdad doing the mission, doing the job.

14 In a 5 second period on 30 July 2003, ^{Niles} [REDACTED] made a
15 mistake. He made a mistake. He never hid from that. He never
16 denied that. He never ran from that, but it is a fundamental
17 principle of our law, of our society that punishment should fit a
18 crime. Punishment should fit a crime.

19 Captain ⁶⁶⁻² [REDACTED] the government representative, today
20 argues that we've got to send a message. What is everybody going to
21 think? What is everybody going to think? I believe he said that
22 many times. What is everybody going to think if we don't hammer this
23 guy? What is everybody going to think? What are Iraqis going to

1 think? What are Americans going to think? What are MPs going to
2 think?

3 They're going to think exactly what is true, and that is
4 that we have a man who made a mistake, he's been punished, and he's
5 being allowed to recover from that. They're going to look at this
6 exactly the way that it should be looked at. That he got his day in
7 court, that a fair and impartial panel of officers reviewed the
8 evidence, they reviewed the mitigating and extenuating circumstances,
9 and they gave him a punishment which was deserved, and that
10 punishment, which is deserved, Gentlemen, Ma'am, is not to go to
11 jail.

12 This event, this incident doesn't warrant jail time. If he
13 was an enlisted soldier, he would have gotten an Article 15 for this.
14 It doesn't deserve dismissal from the service either. Who among us,
15 and obviously I don't know all of your backgrounds we haven't talked
16 in detail, but I bet each and everyone of you, because you're human
17 too, you've made mistakes at different times in your life. You've
18 made mistakes. Maybe not to the same extent as this, maybe not of
19 the same nature, or the same magnitude, but you've made mistakes, and
20 while I don't ask you to excuse them, I would never ask you to excuse
21 what Lieutenant ^{Nikes} [REDACTED] did, all I would ask for you to do is to try to
22 understand, try to understand how it could have happened and why it
23 happened.

1 Lieutenant ^{Niles} [REDACTED] said to you a few minutes ago he never
2 planned for this to happened. It just happened. It just happened.
3 It was a mistake. It was a mistake.

4 But the other thing that I ask you to consider in coming to
5 a fair and appropriate sentence here is everything else that you
6 heard today after Captain ^{b6-2} [REDACTED] read the stipulation of fact to
7 you, after it was explained to you what happened. You heard from a
8 great number of witnesses all across the spectrum. You heard from
9 some of his NCOs, his subordinates, Sergeant ^{b6-4} [REDACTED] and Sergeant
10 ^{b6-4} [REDACTED] who witnessed the incident. These guys weren't hurt. The
11 Iraqis weren't injured; again, that doesn't excuse it. That doesn't
12 make it okay, but it shows that it was not an aggravated incident.
13 It was a simple assault. He crossed the line, made a mistake, and
14 they both would go to war with him again, complete confidence in him.

15 His platoon sergeant, Sergeant ^{b6-4} [REDACTED] same thing,
16 absolutely has complete confidence. Said he was a great officer.
17 Would go to war with him again as well.

18 Then we heard from some of the officers. Major ^{b6-4} [REDACTED] who
19 worked with--was the battalion XO, worked with Lieutenant ^{Niles} [REDACTED]
20 during a platoon exercise out at Grafenwoehr before the deployment.
21 Supervised him as the battalion maintenance officer long before the
22 deployment a significant period of time where as the XO he supervised
23 that platoon leader nothing but great things to say about this man.

b6-4 all

1 Fellow platoon leaders, Lieutenant [REDACTED], Lieutenant
2 [REDACTED] great things to say about this officer. Captain [REDACTED]
3 [REDACTED] and Captain John [REDACTED], two fellow staff officers in the S3
4 shop for 709th. Great things to say about this officer, but most
5 notable, most notable is Colonel--Lieutenant Colonel [REDACTED]
6 the battalion commander. Granted the period of time while Lieutenant
7 [REDACTED] was a platoon leader working for him was not that long of a
8 period of time, but he did have a chance to observe and evaluate the
9 work that that platoon was doing. He said that there was no problem
10 with it.

11 He had 27 platoons, roughly, that he was dealing with. A
12 battalion the size of a typical brigade with so many companies and so
13 many missions and issues going on, so he, of course, is not going to
14 have a lot of specific information about each individual platoon
15 leader out there. He was only in command for a month before this
16 incident. But he knew enough; he had been able to gather enough to
17 say that he was doing a good job. There certainly wasn't any--
18 weren't any reports of any--any problems besides this one incident.

19 But he did get to know him very well when he became a
20 member of his battalion battle staff nothing but glowing remarks from
21 Colonel [REDACTED] about Lieutenant [REDACTED]. Lieutenant Colonel, Military
22 Police Corps Officer, 18 years of service, company commander in
23 Dessert Storm, battalion commander in Iraqi Freedom, and in the

1 middle years worked at the school house at Fort Leonardwood training
2 MP officers, this guy is one of the leaders of the Military Police
3 Corps. He said, "Anywhere anytime I would go with this man."
4 Anywhere, anytime.

66-4

5 Lieutenant Colonel [REDACTED] knows this man. He's worked
6 with him. He's been in Iraq. He's been in Baghdad. He talked about
7 the battalion TOC, that's where he worked. He's been in that
8 situation. Gentlemen, Ma'am, that is what the Army is all about.
9 That is what the Army is all about.

Nites

10 [REDACTED] is a warrior. He's a soldier and officer who
11 represents the seven Army Values. He lives them. In a time, when I
12 mentioned before, zero defect, zero tolerance, those words are thrown
13 around, he had the moral, personal courage, and integrity to stand up
14 and say, "Hey, I did it. I made a mistake." I hope when I look in
15 the mirror at night, I hope that I would have the same moral courage
16 and integrity to do that same thing. I certainly hope that I would,
17 and I'm sure each of you, hopefully none of us will ever be put in
18 that situation, but this man has been put in that situation, and he
19 did the right thing. He did what he was supposed to do. He made a
20 mistake, didn't run from it, didn't hide from it, didn't deny it.

21 There's all sorts of things in that red book over there
22 [indicating the MCM] on my desk, games we could have played, motions
23 we could have filed, arguments we could have made to try to make this

1 thing go away, but we didn't do that. He pled guilty, and he's here
2 before you today seeking an appropriate punishment.

3 Lastly, just want to highlight what we heard about ^{Niles} [REDACTED]
4 [REDACTED] as a man. You heard from his wife. Mrs. [REDACTED] 66-4
5 testified. Clearly this has been a terrible, traumatic event on that
6 family--on the ^{Niles} [REDACTED] family. It's affected him immensely. It's
7 affected her. It's been a difficult time for them.

8 When I ask you or when you consider punishment, please
9 consider the personal difficulties. It's not on his record, you
10 know, the punishment that he's, you know, the difficulties. You
11 can't put that on paper and put that in somebody's file. Okay but
12 that is punishment. It's been a terrible, terrible time for them.
13 He was relieved, although it wasn't a "Relieve-for-Cause" NCOER
14 [sic], he was suspended, essentially stripped of his leadership
15 position, taken away from his men, men that he had sweated and fought
16 and bleed with before the deployment and during the initial phases of
17 combat operations. He was taken from them and put into a battalion
18 staff job. That right there, being stripped of your men in that
19 position, you all have held positions of leadership, that's--you care
20 about your people, and we know he does. We've heard significant
21 evidence that he really cares and has always cared, and that has been
22 of the utmost importance to him. That's also a form of punishment.

1 The judge is going to instruct you. In a few moments,
2 Colonel ██████████^{b6-2} will instruct you of the different options that you
3 have when you go back into the deliberation room. One of the things
4 she's going to tell you is that you have the option to give him no
5 punishment whatsoever. As someone--I certainly would submit to you
6 that that is something to seriously consider. Seriously consider
7 giving him no punishment. He's been through enough.

8 Captain ██████████^{b6-2} talked about this as an aside, sweeping
9 this thing under the rug. We're at a court-martial. We're at a
10 court-martial. I don't think anything has been swept under the rug
11 here. It may not be on his OER, but he has a federal conviction
12 because he was court-martialed, he pled guilty. He's got a federal
13 conviction. Nothing has been swept under the rug, and a conviction
14 also is punishment.

15 He--his--the rest of his life is impacted because of this
16 5-second incident in the heat, in the stress, in the midst of combat
17 operations when he crossed the line. The rest of his life is marked.
18 He'll never, in or out of the Army, never go before a promotion board
19 or a civilian employer without having to deal with this. Never, and
20 that's if you give him no punishment. He's already got that. Never
21 will he be able to walk away from that, and that truly is tragic, but
22 that also is a punishment. That also is a punishment.

1 Now if you don't feel comfortable or whatever--you're not
2 comfortable with the option of no punishment, you also can give, and
3 the sentence instructions will demonstrate this when the judge
4 provides that to you a little bit later, you can also just order that
5 he get a reprimand.

6 There's no requirement, there is no mandatory minimum in
7 the military, and that's a good thing because it allows you to
8 consider all those, extenuating and mitigating factors that must be
9 considered about performance about, you know, outside factors,
10 personal life, the impact on the family, the impact on the Army, and
11 I submit to you, Gentlemen, that the Army is worse off--we're worse
12 off without ^{Nikes} [REDACTED] in our Officer Corps. I submit to you that
13 we are worse off.

14 So please consider, if not no punishment, at worst a letter
15 of reprimand. Let Lieutenant ^{Nikes} [REDACTED] go home tonight and tuck his kids
16 in and be there when they wake up in the morning, and let him put
17 that uniform back on tomorrow and go back to work.

18 Gentlemen, thank you, Ma'am.

19 MJ: All right, members of the court, you're about to deliberate
20 and vote on the sentence in this case. It is the duty of each member
21 to vote for a proper sentence for the offense of which the accused
22 has been found guilty. Your determination of the kind and amount of
23 punishment, if any, is a grave responsibility requiring the exercise

1 of wise discretion. Although you must give due consideration to all
2 matters in extenuation and mitigation as well as those in
3 aggravation, you must bear in mind that the accused is to be
4 sentenced only for the offense of which he has been found guilty.
5 You must not adjudge an excessive sentence in reliance upon possible
6 mitigating action by the convening or higher authority.

7 Now the maximum punishment that may be adjudged in this
8 case is forfeiture of all pay and allowances, confinement for 12
9 months, and a dismissal from the service. This maximum punishment is
10 a ceiling on your discretion. You are at liberty to arrive at any
11 lesser sentence.

12 In adjudging a sentence, you are restricted to the kinds of
13 punishment, which I will describe, or you may adjudge no punishment.
14 There are several matters, which you should consider in determining
15 an appropriate sentence. You should bear in mind that our society
16 recognizes five principle reasons for the sentence of those who
17 violate the law. They are:

18 Rehabilitation of the wrongdoer;
19 Punishment of the wrongdoer;
20 Protection of society from the wrongdoer;
21 Preservation of good order and discipline in the military;
22 and

1 Deterrence of the wrongdoer and of those who know of his
2 crimes and his sentence from committing the same or similar offenses.

3 The weight to be given any or all of these reasons along
4 with all other sentencing matters in this case rests solely within
5 your discretion.

6 Now this court may adjudge a reprimand being in the nature
7 of a censure. The court shall not specify the terms or wording of
8 any adjudged reprimand.

9 This court may adjudge restriction to limits for a maximum
10 period not to exceed 2 months. For such a penalty, it is necessary
11 for the court to specify the limits of the restriction and the period
12 it is to run. Restriction to limits will not exempt an accused from
13 any assigned military duty.

14 As I've already indicated, this court may sentence the
15 accused to confinement for a maximum of 12 months. A sentence to
16 confinement should be adjudged in either full days or full months, or
17 in this case a full year. Fractions such as one-half or one-third
18 should not be employed, so for example, if you adjudge confinement,
19 confinement for a month and a half should instead be expressed as
20 confinement for 45 days. This example should not be taken as a
21 suggestion, only as an illustration of how to properly announce your
22 sentence.

1 This court may sentence the accused to forfeit all pay and
2 allowances. A forfeiture is a financial penalty, which deprives an
3 accused of military pay as it accrues. In determining the amount of
4 forfeiture, if any, the court should consider the implication to the
5 accused and his family of such a loss of income. Unless a total
6 forfeiture is adjudged, a sentence to a forfeiture should include an
7 express statement of a whole dollar amount to be forfeited each month
8 and the number of months the forfeiture is to continue. The accused
9 is in pay grade O2 with over 2 years of service, thus, his total
10 basic pay is \$3,421.50 per month. This court may adjudge any
11 forfeiture up to and included forfeiture of all pay and allowances.

12 Now, any sentence, which includes either confinement for
13 more than 6 months or any confinement and a dismissal will require
14 the accused, by operation of law, to forfeit all pay and allowances
15 during the period of confinement. However, if the court wishes to
16 adjudge any forfeiture of pay and/or allowances, the court should
17 explicitly state the forfeiture as a separate element of the offense.

18 Now there's been some reference, through the testimony of
19 the accused's wife, of him being the, essentially, the breadwinner
20 for the family. When an accused has dependents, the convening
21 authority may direct that any or all of the forfeited--forfeiture of
22 pay, which the accused otherwise by law would be required to forfeit
23 be paid to the accused's dependents for a period not to exceed 6

1 months. This action by the convening authority is purely
2 discretionary. You should not rely upon the convening authority
3 taking this action when considering an appropriate sentence in this
4 case.

5 You are advised that the stigma of a punitive discharge is
6 commonly recognized by our society. A punitive discharge will place
7 limitations on employment opportunities, and will deny the accused
8 other advantages, which are enjoyed by those, I'm sorry, by one whose
9 discharge characterization indicates that he has served honorably.
10 A punitive discharge will affect an accused's future with regard to
11 his legal rights, economic opportunities, and social acceptability.

12 This court may adjudge a dismissal. You are advised that a
13 sentence of a dismissal of a commissioned officer is in general the
14 equivalent of a dishonorable discharge of a noncommissioned officer,
15 a warrant officer who is not commissioned, or an enlisted soldier. A
16 dismissal deprives one of substantially all benefits registered, I
17 mean sorry, administered by the Veteran's Administration and the Army
18 establishment. It should be reserved for those who, in the opinion
19 of the court, should be separated under conditions of dishonor after
20 conviction of serious offenses of a civil or military nature
21 warranting such severe punishment. Dismissal, however, is the only
22 type of discharge the court is authorized to adjudge in this case.

1 Finally, if you wish, this court may sentence the accused
2 to no punishment.

3 In selecting a sentence, you should consider all matters in
4 extenuation and mitigation as well as those in aggravation. You
5 should consider evidence admitted as to the nature of the offense of
6 which the accused stands convicted, plus the evidence you heard
7 concerning his good military character; his record for good conduct
8 and efficiency; the fact that he was in combat; his education, which
9 includes the Masters Degree in Counseling; and the character
10 testimony that you heard from the various witnesses. You should also
11 consider that a plea of guilty is a matter in mitigation, which must
12 be considered along with all other facts and circumstances of the
13 case. Time, effort, and expense to the government usually are saved
14 by a plea of guilty. Such a plea may be the first step toward
15 rehabilitation.

16 During argument, trial counsel and defense counsel
17 recommended that you consider a specific sentence in this case. You
18 are advised that the arguments of counsel and their recommendations
19 are only their individual suggestions and may not be considered as
20 the recommendation or opinion of anyone other than such counsel.

21 Now when you close to deliberate and vote, only the members
22 will be present. I remind you that you all must remain together in
23 the deliberation room during deliberations. I also remind you that

1 you may not allow any unauthorized intrusion into your deliberations.
2 You may not make any communications to or receive communications from
3 anyone outside the deliberation room by telephone or otherwise.
4 Should you need to take a recess or have a question or when you've
5 reached a decision, you may notify the bailiff who will then notify
6 me of your desire to return to open court to make your desires or
7 decision known.

8 Your deliberations should begin with a full and free
9 discussion on the subject of sentencing. The influence of
10 superiority in rank shall not be employed in any manner to control
11 the independence of members in the exercise of their judgment.

12 When you have completed your discussion, then any member
13 who desires to do so may propose a sentence. You do that by writing
14 out on a slip of paper a complete sentence. The junior member
15 collects the proposed sentences and submits them to the president who
16 will arrange them in order of their severity. You then vote on the
17 proposed sentences by secret written ballot. All must vote. You may
18 not abstain. Vote on each proposed sentence in its entirety
19 beginning with the lightest until you arrive at the required
20 concurrence, which is two-thirds, or in this case, seven members.

21 The junior member will collect and count the votes. The
22 count is then checked by the president who shall announce the result
23 of the ballot to the members. If you vote on all of the proposed

1 sentences without arriving at the required concurrence, you may then
2 repeat the process of discussion, proposal of sentences, and voting,
3 but once a proposal has been agreed to by the required concurrence,
4 then that is your sentence.

5 You may reconsider your sentence at any time prior to its
6 being announced in open court. If after you determine your sentence
7 any member suggests you reconsider the sentence, open the court and
8 the president should announce that reconsideration has been proposed
9 without reference to whether the proposed rebalot concerns
10 increasing or decreasing the sentence. I will then give you specific
11 instructions on the procedure for reconsideration.

12 Now as an aid in putting the sentence into proper form the
13 court may use the sentence worksheet, which has been marked as
14 Appellate Exhibit IV, and you will have that to take back into the
15 deliberation room with you.

16 In fact, Bailiff, would you please hand that to the
17 president, Colonel [REDACTED]^{bb-2} No, wrong Colonel.

18 [The bailiff did as directed.]

19 MJ: Now extreme care should be exercised in using this
20 worksheet and in selecting the sentence form, which properly reflects
21 the sentence of the court. If you have any questions concerning
22 sentencing matters, you should request further instructions in open
23 court in the presence of all parties to the trial. In this

1 connection, you are again reminded that you may not consult the
2 Manual for Courts-Martial or any other publication or writing not
3 properly admitted or received during this trial. These instructions
4 must not be interpreted as indicating any opinion as to the sentence,
5 which should be adjudged for you alone are responsible for
6 determining an appropriate sentence in this case.

7 Now in arriving at your determination, you should select
8 the sentence which will best serve the ends of good order and
9 discipline, the needs of the accused, and the welfare of society.
10 When the court has determined a sentence, the inapplicable portions
11 of the sentence worksheet should be lined through. When the court
12 returns, I will examine the sentence worksheet. The president will
13 then announce the sentence.

14 Now do counsel for either side object to the instructions
15 as given or request other instructions?

16 TC: No, Ma'am.

17 DC: No, Your Honor. One issue, though, before the exhibits are
18 passed to the members. Because we were able to make phone contact,
19 we do need to make modification to Defense [Exhibit] Alpha before
20 that gets given to the members.

21 MJ: All right, Bailiff, why don't you hand Defense Exhibit A to
22 Captain [REDACTED] so he can make that modification.

bb-2

1 [The bailiff did as directed and the DC made the modification to DE
2 A.]

3 TC: The other issue, Ma'am, is that we requested copies of the
4 stip of fact and the OER be given to the panel members as well.

5 MJ: Well those are exhibits. They'll go back.

6 TC: Yes, Ma'am.

7 MJ: Now while they're doing that administrative thing, do any
8 of the panel members have any questions based on the sentencing
9 instructions that I've given you?

10 [All members indicated a negative response.]

11 MJ: All right. Now----

12 PRES: Your Honor, I have one. Are we authorized to make any
13 additional recommendations above and beyond what is listed here?

14 MJ: No.

15 PRES: Okay.

16 MJ: Those for good or ill are your choices as far as
17 sentencing. Now you will have the exhibits, I'm sorry if you want to
18 take a recess during your deliberation for any reason, we have to
19 formally reconvene the court and then recess. Now you do have
20 latrine facilities right off your deliberation room and no one else
21 will be going back there. Now knowing that, do you wish, at this
22 time, to take a recess before you begin deliberation or would you
23 like to begin immediately?

1 PRES: Begin immediately, Ma'am.

2 MJ: All right, now Bailiff, would you please give the president
3 of the panel Prosecution Exhibits 1, 2, and 3 and Defense Exhibits A,
4 B, and C.

5 [The bailiff did as directed.]

6 MJ: Oh, I'm sorry. Not B, that's the tape that was played, so
7 you've already heard that.

8 Now please don't mark on any of the exhibits except for
9 that sentence worksheet, and when you do come back after--when you've
10 completed your deliberations, please bring all the exhibits with you.

11 Do you have any questions?

12 [All members indicated a negative response.]

13 MJ: Apparently not. Please go back and begin your
14 deliberations.

15 [The court-martial closed at 1543, 1 July 2004.]

16 **[END OF PAGE]**

17

1 [The session was called to order at 1544, 1 July 2004.]

2 [All parties present when the court recessed were again present in
3 court with the exception of the panel members.]

4 MJ: All right, you may be seated. Is there anything else we
5 need to deal with while the panel is deliberating?

6 DC: Your Honor, the only thing I can think of would be the post
7 trial and appellate rights. The accused has already signed this. I
8 can have it marked by the court reporter.

9 MJ: Yeah, have it marked, but I'll actually go over those with
10 him when they've--after they've given us our sentence and I have sent
11 them on their way.

12 DC: Thank you, Your Honor.

13 MJ: Anything else?

14 TC: No, Ma'am.

15 DC: Nothing from the defense, Your Honor.

16 MJ: All right, then the court will be closed.

17 [The session recessed at 1545, 1 July 2004.]

18 [The session was called to order at 1730, 1 July 2004.]

19 MJ: Court is called to order. You may be seated. Let the
20 record reflect that all parties present with the exception of the
21 members are present.

22 I've been informed that the members have a question.

23 Essentially, I guess, they're asking for written instructions, which

1 [The court-martial opened at 1732, 1 July 2004.]

2 MJ: You may be seated. Let the record reflect that the members
3 have now joined us. *b6-2*

4 Colonel [REDACTED] I've been informed that there's some
5 question that the members have.

6 PRES: Yes, Your Honor, if you could reread your instructions to
7 the members.

8 MJ: All of them or is there some specific question that you
9 have?

10 PRES: All of them, please, Ma'am.

11 MJ: All of them?

12 PRES: Yes, Ma'am, and then we will ask a specific question if
13 it's not answered.

14 MJ: Well----

15 PRES: And if at anytime, could I--if you've answered our
16 question I could just say, "Okay, we understand."

17 MJ: Well I suppose I can, it's just that if you've got a
18 question about a specific form of a punishment or how you're supposed
19 to vote, it would be easier to do that. It's not the norm for us to
20 completely reread instructions. Can you point me at something a
21 little more specific than just all of the instructions?

22 PRES: Yes, Your Honor, okay. Your Honor, could you discuss the
23 types of punishment and their impact?

1 MJ: Yes, that I would be happy to go over with you.

2 The types of punishment this court can impose are as
3 follows:

4 The court may adjudge a reprimand being in the nature of a
5 censure. The court shall not specify the terms or wording of any
6 adjudged reprimand.

7 This court may adjudge restriction to limits for a maximum
8 period not exceeding 2 months. For such a penalty, it is necessary
9 for the court to specify the limits of the restriction and the period
10 it is to run. Restriction to limits will not exempt an accused from
11 any assigned military duty.

12 As I've already indicated, this court may sentence the
13 accused to confinement for a maximum of 12 months. A sentence to
14 confinement should be adjudged in either full days or full months, or
15 in this case one year. Fractions such as one-half or one-third
16 should not be employed, so for example, if you do adjudge
17 confinement, confinement for a month and a half should instead be
18 expressed as confinement for 45 days. This example should not be
19 taken as a suggestion, only as an illustration of how to properly
20 announce your sentence.

21 This court may sentence the accused to forfeit all pay and
22 allowances. A forfeiture is a financial penalty, which deprives an
23 accused of military pay as it accrues. In determining the amount of

1 forfeiture, if any, the court should consider the implications to the
2 accused and his family of such a loss of income. Unless a total
3 forfeiture is adjudged, a sentence to a forfeiture should include an
4 express statement of a whole dollar amount to be forfeited each month
5 and the number of months the forfeiture is to continue. The accused
6 is in pay grade O2 with over 2 years of service, thus, his total
7 basic pay is \$3,421.50 per month. This court may adjudge any
8 forfeiture up to and including forfeiture of all pay and allowances.

9 Any sentence, which includes either confinement for more
10 than 6 months or any confinement and a dismissal will require the
11 accused, by operation of law, to forfeit all pay and allowances
12 during the period of confinement. However, if the court wishes to
13 adjudge any forfeitures of pay and/or pay and allowances, the court
14 should explicitly state the forfeiture as a separate element of the
15 sentence.

16 Now when the accused has dependents, the convening
17 authority may direct that any or all of the forfeiture of pay, which
18 the accused otherwise by law should be or would be required to
19 forfeit be paid to the accused's dependents for a period not to
20 exceed 6 months. This action by the convening authority is purely
21 discretionary. You should not rely upon the convening authority
22 taking this action when considering an appropriate sentence in this
23 case.

1 You are advised that the stigma of a punitive discharge is
2 commonly recognized by our society. A punitive discharge will place
3 limitations on employment opportunities, and will deny the accused
4 other advantages, which are enjoyed by one whose discharge
5 characterization indicates that he has served honorably. A punitive
6 discharge will affect an accused's future with regard to his legal
7 rights, economic opportunities, and social acceptability.

8 This court may adjudge a dismissal. You are advised that a
9 sentence to a dismissal of a commissioned officer is in general the
10 equivalent of a dishonorable discharge of a noncommissioned officer,
11 a warrant officer who is not commissioned, or an enlisted soldier. A
12 dismissal deprives one of substantially all benefits administered by
13 the Veteran's Administration and the Army establishment. It should
14 be reserved for those who, in the opinion of the court, should be
15 separated under conditions of dishonor after conviction of serious
16 offenses of a civil or military nature warranting such severe
17 punishment. Dismissal, however, is the only type of discharge the
18 court is authorized to adjudge in this case.

19 Finally, if you wish, this court may sentence the accused
20 to no punishment.

21 Does that answer your questions, then?

22 PRES: Yes, Ma'am, it does.

23

1 MJ: All right, then, please return to your deliberations.

2 [The court-martial closed at 1738, 1 July 2004.]

3 [END OF PAGE]

4

1 [The session was called to order at 1739, 1 July 2004.]

2 MJ: Let the record reflect that the panel has left us. You may
3 be seated.

4 Do either counsel have any objections to the rereading of
5 the different types of punishment as I've just done it?

6 TC: No, Ma'am.

7 DC: No, Your Honor.

8 MJ: All right, then the court will be closed.

9 [The session recessed at 1740, 1 July 2004.]

10 [END OF PAGE]

11

1 [The court-martial opened at 1822, 1 July 2004.]

2 MJ: Court is called to order. You may be seated. Let the
3 record reflect that all parties present at the time of the recess are
4 again present with the exception of the members.

5 I've been informed that the members have reached a verdict
6 [sic]. Bailiff, would you ask them to come in, please?

7 [The bailiff did as directed and the members entered the courtroom.]

8 MJ: You may be seated. Colonel [REDACTED] have you reached a
9 verdict [sic]? *bb-2*

10 PRES: Yes, Your Honor, we have.

11 MJ: All right is it reflected on the sentence worksheet?

12 PRES: Yes, Ma'am, it is.

13 MJ: Would you fold that in half, and Bailiff, would you
14 retrieve that, please, and give that to me.

15 [The bailiff did as directed.]

16 MJ: Thank you.

17 All right, I've reviewed the sentence worksheet and it
18 appears to be in proper form.

19 Bailiff, would you return that to Colonel [REDACTED], please? *bb-2*

20 [The bailiff did as directed.]

21 MJ: Defense Counsel and Accused, please rise.

22 [The accused and his counsel did as directed.]

23 MJ: Colonel [REDACTED], would you please announce the sentence?

bb-2

1 PRES: Yes, Ma'am. Your Honor, first we'd like to thank the
2 court for their professionalism today. We'd like to thank you
3 personally for your guidance and instruction. We'd like to thank
4 counsel both prosecution and defense for their elegance of
5 presentation. To the military witnesses, we thank you for your
6 service, and we thank you for your sacrifice. To [REDACTED] we
7 thank you for your strength and testimony. We know this was an
8 extremely difficult time for you.

we
66-4

Niles

9 First Lieutenant [REDACTED], Jr. this court-martial
10 sentences you:

11 **To be reprimanded;**
12 **To forfeit \$1,003.00 per month for 12 months.**

13 Your Honor, that concludes our sentence.

14 MJ: Thank you. You may be seated.

15 [The accused and his counsel did as directed.]

16 MJ: All right, Bailiff, would you retrieve the exhibits from
17 Colonel [REDACTED] including the worksheet?

66-2

18 [The bailiff did as directed.]

19 MJ: Now members of the court, before I excuse you, please let
20 me advise you of one matter. If you are asked about your service on
21 this court-martial, I remind you of the oath that you took.

22 Essentially, that oath prevents you from discussing your
23 deliberations with anyone to include stating any members' opinion or

1 vote unless ordered to do so by a court. You may, of course, discuss
2 your personal observations in the courtroom and the process of how a
3 court-martial functions, but not what was discussed during your
4 deliberations.

5 Thank you for you attendance and service. You are excused
6 now. The counsel and the accused will remain.

7 [All the members withdrew from the courtroom.]

8 [The court recessed at 1825, 1 July 2004.]

9 [END OF PAGE]

10

1 [The session was called to order at 1826, 1 July 2004.]
2 MJ: You may be seated. All right, Lieutenant ^{Niles} [REDACTED] we're
3 going to discuss the operation of your pretrial agreement on the
4 sentence of the court. As we discussed earlier today, the pretrial
5 agreement provides that the convening authority would disapprove any
6 confinement adjudged in excess of 45 days, but could approve any
7 other lawful punishment. My understanding of the affect of the
8 pretrial agreement on the sentence, then, is that the convening
9 authority may approve the sentence that the panel just read, that is,
10 he may approve the reprimand, and he may approve the forfeitures of
11 \$1,003.00 per month for 12 months. Do you agree with that
12 interpretation?

13 DC: Yes, Your Honor, the defense agrees with that
14 interpretation.

15 MJ: Well I need to know specifically-----

16 DC: Oh.

17 MJ: -----if Lieutenant ^{Niles} [REDACTED] agrees.

18 ACC: Yes, Ma'am.

19 DC: I'm sorry.

20 MJ: All right, do counsel also agree?

21 TC: Yes, Ma'am.

22 DC: Yes, Your Honor.

b6-2

1 MJ: All right, now Captain [REDACTED] have you advised the accused
2 orally and in writing of his post trial and appellate rights?

3 DC: Yes, Your Honor, I have, and I ask your forgiveness. I
4 left the copies on my desk in the counsel office. If could have a 20
5 second break in place, I'll go retrieve those.

6 MJ: Okay.

7 DC: Thank you, Ma'am.

8 [The DC exited the courtroom.]

9 [The DC reentered the courtroom.]

10 DC: Thank you, Your Honor.

11 MJ: All right, Lieutenant ^{Niles} [REDACTED] I have what's been marked as
12 Appellate Exhibit IX in front of me the post trial and appellate
13 rights. Do you have a copy there in front of you?

14 ACC: Yes, Ma'am.

15 MJ: And I want you to take a look at page five. That's the
16 last page.

17 ACC: Yes, Ma'am.

18 MJ: Did you sign that page?

19 ACC: Yes, Ma'am.

20 MJ: And Captain ^{b6-2} [REDACTED] is that your signature there also?

21 DC: It is, Your Honor.

22 MJ: Lieutenant ^{Niles} [REDACTED] did your defense counsel explain your
23 post trial and appellate rights to you?

1 ACC: Yes, Ma'am.

2 MJ: Do you have any questions about your post trial and
3 appellate rights?

4 ACC: No, Ma'am.

5 MJ: Are there any other matters to be taken up before this
6 court adjourns?

7 TC: No, Ma'am.

8 DC: Nothing from the defense, Your Honor.

9 MJ: All right, then, court is adjourned.

10 [The court-martial adjourned at 1828, 1 July 2004.

11 [END OF PAGE]

AUTHENTICATION OF RECORD OF TRIAL

in the case of

Niles

, First Lieutenant,
615th Military Police Company, APO AE 09114

I received the completed record of trial for review and authentication on 28 December 2004.

Pages 1 - 13


LTC, JA
Military Judge

30 December 2004

66-2 all

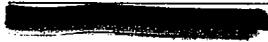
I received the completed record of trial for review and authentication on 30 Dec 2004.

Pages 14 - 245


COL, JA
Military Judge

29 Jan 2004⁵

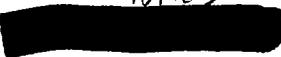
I have examined the record of trial in the foregoing case.


CPT, JA
Defense Counsel

2004

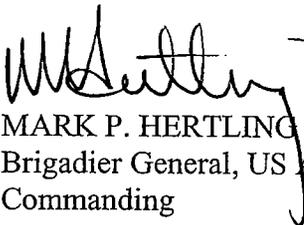
ACTION

DEPARTMENT OF THE ARMY
Headquarters, Seventh Army Training Command
Unit 28130
APO AE 09114-8130

In the case of First Lieutenant *Niles* 

U.S. Army, 615th Military

Police Company, APO AE 09114, (currently attached to Headquarters, Seventh Army Training Command due to the deployment of the 1st Infantry Division to Iraq) the finding of guilty and the sentence is disapproved. The charge is dismissed. The adjudged forfeitures were deferred effective 4 August 2004 until date of convening authority action.


MARK P. HERTLING
Brigadier General, US Army
Commanding

10 Feb 05

003651

PROSECUTION EXHIBITS ADMITTED

003652

United States of America)

v.)

[Redacted] Niles)

First Lieutenant, U.S. Army)
615th Military Police Company)
APO AE 09114-3700)

Stipulation of Fact

17 June 2004

It is hereby agreed by and between Trial Counsel and Defense Counsel with the express consent of the accused that the following facts are true; that these facts are admissible despite any evidentiary rule or Rule for Courts-Martial that might otherwise make them inadmissible; that these facts may be used for the determination of guilt or innocence or any other purpose; that these facts may be considered by the sentencing authority in determining an appropriate sentence even if otherwise inadmissible; and that the accused waives any objection he may have to the admission into evidence of these facts.

1. The accused joined the United States Army on 7 November 2000. He completed Basic Training and Officer Candidate School at Fort Benning, Georgia. He was commissioned into the Military Police Corps on 10 May 2001. He is on active duty in the Army and was on active duty at the time of the charged offenses.
2. In July 2003, the 615th Military Police Company was deployed to Iraq. The accused was responsible for the administration of the Al-Taji Police Station in Baghdad, Iraq, and for the training of the Iraqi Police force.
3. On 29 July 2003, several detainees at the Al-Taji Police Station attempted to escape from the Al-Taji Police Station by knocking a hole through the latrine wall with a pipe. On 30 July 2003, the accused went to the Al-Taji Police Station and requested to see the damage and the prisoners who committed the damage. The accused went to the detention section of the jail and was accompanied by SSG [Redacted], SGT [Redacted], SGT [Redacted] and SPC [Redacted] sh. The three prisoners who attempted to escape were identified and separated from the other prisoners. SPC [Redacted] stayed with the other prisoners as SSG [Redacted], SGT [Redacted] and SGT [Redacted] accompanied the accused as he escorted the three prisoners who attempted to escape into the latrine/shower room.
4. As the three prisoners were escorted into the latrine/shower room, the accused grabbed the first prisoner from behind his head and started yelling, "did you do this?" He swung the prisoner by his head in the direction of the damaged wall, throwing him towards the damaged wall. The accused then grabbed the second prisoner from behind his head and threw him in the same direction. The third prisoner suddenly realized what was happening and moved towards the other prisoners. The accused suddenly stepped towards the prisoners, grabbed one of them, and punched him in the stomach, causing the prisoner to fall down holding his stomach. The accused then grabbed the second prisoner and

66-4

003653

PE / For Id
SB

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S. H. H.

punched him in the stomach and caused him to fall. The third prisoner appeared to be afraid and fell to the ground saying "no mister, please no." SSG [REDACTED] grabbed the accused and attempted to pull him back, however, the accused kicked the third prisoner in the shoulder as he sat on the ground begging the accused not to strike him.

b6-4

5. The accused did not immediately report the incident. However, the incident was immediately reported by the Platoon Sergeant, SSG [REDACTED]

6. The accused did not have a legal reason for striking the three prisoners. He stated that at the time of the incident he did not feel that his, SSG [REDACTED] SGT [REDACTED] or SGT [REDACTED]'s safety was in jeopardy. The prisoners were unarmed and were never perceived as a threat. Therefore, he did not act in self-defense.

b6-4

7. Finally, and in summary, the accused admits the following facts are true:

a. On or about 30 July 2003, the accused, at or near the Al-Taji Police Station, Baghdad, Iraq, was cruel toward and did maltreat [REDACTED] and [REDACTED] persons subject to his orders, by striking them in the stomach with a closed fist. The accused was cruel towards and did maltreat [REDACTED] a person subject to his order, by kicking him in the shoulder.

b. On or about 30 July 2003, the accused did, at or near Al-Taji Police Station, Baghdad, Iraq, while a platoon leader in the 615th Military Police Company, and in the presence of SSG [REDACTED], SGT [REDACTED] an, and SGT [REDACTED] wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by [REDACTED] wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces.

[REDACTED]

CPT, JA [REDACTED] b6-2
Defense Counsel

[REDACTED] *Adiles*

1LT, MP
Accused

[REDACTED]

CPT, JA [REDACTED] b6-2
Trial Counsel

17 June 04

Encl
Sworn Statement on 6 August 03

003654

BGS
Signed
CPJ

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

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

1. LOCATION <i>Orsabad, Iraq</i>	2. DATE (YYYYMMDD) <i>20030706</i>	3. TIME <i>1033L</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS <i>02/1LT</i>	
8. ORGANIZATION OR ADDRESS <i>615th MP Company</i>			

9. *Glenn A. McKee, Jr.* WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
 On 29 July, 2003 I was notified that detainees in the Taji Blue station did attempt to escape. On 30 July, 2003 I did go to the Taji Police Station and requested to be shown the over in which the detainees attempted to escape. SSG [REDACTED] did show me the over & damage made to the wall. At which time I asked that the detainees in question enter the latrine. It is at this time that I became engaged and struck the detainees. I believe that there were four prisoners that I struck in various parts of their body. I was then removed from this over by a soldier. I then went and sat down in the MP office. At this time SSG [REDACTED] came in and expressed his dissatisfaction in my behavior. SSG [REDACTED] then came in and asked what happened. I believe SSG [REDACTED] explained the situation to SSG [REDACTED]. No further incidents occurred during the day. Days later I expressed to SSG [REDACTED] that I was out of line and my behavior was not warranted. The following questions are used to clarify this statement.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF <i>023655</i> PAGES
-------------	---	-------------------------------

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

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

STATEMENT OF [REDACTED] TAKEN AT Brighton, Pa DATED 10 Aug 2003

9. STATEMENT (Continued)

Q. CPT [REDACTED] 66-2

A. 1LT NILES ~~AND~~

Q. WHAT WAS YOUR REACTION WHEN YOU WERE MADE AWARE OF THE ATTEMPTED BREACHS AT THE DETENTION CELL AT AL TASI POLICE STATION ON 29 JUL 03?

A. I WAS VERY ANGRY AND PISSED OFF. ~~AND~~

Q. WHEN YOU WENT TO AL TASI POLICE STATION ON 30 JUL 03 WHAT TIME DID YOU ENTER THE DETENTION CELL?

A. EXACT TIME UNKNOWN. APPROX. TIME WOULD BE AFTER 0900 L ~~AND~~

Q. WHY DID YOU ENTER THE DETENTION CELL AT AL TASI POLICE STATION ON 30 JUL 03?

A. TO ~~SEE~~ see the damage that was done to the cell. ~~AND~~

Q. HOW MANY ~~OF~~ SARCOS ENTERED THE DETENTION CELL WITH YOU AT AL TASI POLICE STATION ON 30 JUL 03?

A. EXACT NUMBER UNKNOWN. ~~AND~~

Q. AT ANY TIME WHILE YOU WERE IN THE DETENTION CELL DO YOU FEEL THAT YOUR SAFETY OR THE SAFETY OF YOUR SARCOS WAS IN JEOPARDY?

A. WHEN I ENTERED THE CELL I DID NOT FEEL THAT MY SAFETY WAS IN JEOPARDY. DURING THE ACTUAL INCIDENT I DO NOT RECALL THINKING ABOUT MY SAFETY. ~~AND~~

Q. HOW MANY DETAINMENTS WERE IN THE DETENTION CELL WHEN YOU ENTERED ON 30 JUL 03?

A. I BELIEVE IT WAS EIGHT. ~~AND~~

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INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 7 PAGES

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

STATEMENT OF

TAKEN AT

Bradford, Iraq

DATED

6 Aug 2007

9. STATEMENT (Continued)

Q WHEN YOU WERE IN THE LATRINE OF THE DETENTION CELL WITH THE DETAINEES THAT ALLEGEDLY ATTEMPTED TO BREAK OUT OF THE DETENTION CELL ON 29 JUL 05 WHERE WERE THE REMAINS OF THE DETAINEES?

A. I believe that they were in the D-cell. YAA

Q WAS A SOLDIER SEARCHING THE DETAINEES WHILE YOU WERE IN THE LATRINE PORTION OF THE DETENTION CELL?

A. I would assume that they were. YAA

Q DO YOU NORMALLY ENTER THE DETENTION CELL?

A. Yes, at times I assist the soldiers in securing prisoners and searching the D-cell. YAA

Q UNDER WHAT CIRCUMSTANCES DID YOU ENTER THE DETENTION CELL?

A. THE REASON FOR ENTERING THE D-CELL WAS TO SEE WHAT DAMAGES WERE DONE TO THE CELL. YAA

Q WERE THERE ANY IPS INAD. POLICE SERVICE PRESENT WHEN YOU ENTERED THE DETENTION CELL?

A. NO. YAA

Q DID YOU HAVE BLACK GLOVES ON WHEN YOU ENTERED THE DETENTION CELL?

A. NO. YAA

Q DID YOU ENTER THE DETENTION CELL WITH THE INTENTION OF STRIKING ANY OF THE DETAINEES?

A. NO. YAA

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INITIALS OF PERSON MAKING STATEMENT

YAA

PAGE 3 OF 7 PAGES

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

STATEMENT OF [REDACTED] TAKEN AT Daguerre, Iraq DATED 6 Aug 2003

9. STATEMENT (Continued)

Q. WHAT WAS YOUR INTENTION WHEN YOU ENTERED THE DETENTION CELL?

A. MY INTENTION WAS TO SEE THE DAMAGES DONE TO THE CELL. ~~XXXX~~

Q. WHEN YOU SAW THE DAMAGE DONE TO THE CELL WHAT DID YOU DO?

A. I ASKED THAT THE DETAINEES BE BROUGHT INTO THE LATRINE TO SEE WHAT DAMAGES THEY DID. ~~XXXX~~

Q. WHEN THE DETAINEES THAT ALLEGEDLY CAUSED THE DAMAGE TO THE DETENTION CELL WERE BROUGHT INTO THE LATRINE WHAT DID YOU DO?

A. I LOST CONTROL AND BEGAN TO STRIKE THEM. ~~XXXX~~

Q. EXPLAIN WHICH DETAINEES YOU STRUCK AND WHERE ON THEIR BODIES YOU STRUCK THEM.

A. I DO NOT REMEMBER WHICH DETAINEE I STRUCK. I REMEMBER STRIKING THEM ON THEIR TORSO. ~~XXXX~~

Q. DID YOU STRIKE MORE THAN ONE DETAINEE?

A. I BELIEVE I DID. ~~XXXX~~

Q. HOW MANY OF THE DETAINEES DID YOU STRIKE?

A. I BELIEVE ALL FOUR. ~~XXXX~~

Q. WHAT IS THE APPROXIMATE HEIGHT AND WEIGHT OF THE DETAINEES THAT YOU STRUCK?

A. UNKNOWN. ~~XXXX~~

Q. DID THE DETAINEES THREATEN YOU IN ANY WAY?

A. NO. NOT IN THE CELL. ~~XXXX~~

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INITIALS OF PERSON MAKING STATEMENT ~~XXXX~~

PAGE 4 OF 7 PAGES

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

STATEMENT OF [REDACTED] TAKEN AT Baghdad, Iraq DATED 6 Aug 2003

9. STATEMENT (Continued)

Q. ON THE DAY IN QUESTION WERE YOU THREATENED BY ANY OF THE DETAINEES?

A. NO. SAID

Q. AFTER YOU STRUCK THE DETAINEES UNDER WHAT CIRCUMSTANCES DID YOU EXIT THE DETENTION CELL?

A. I WAS REMOVED BY A SOLDIER. SAID

Q. DO YOU REMEMBER WHICH SOLDIER REMOVED YOU?

A. NO. SAID

Q. HOW DID THE SOLDIER REMOVE YOU?

A. I WAS GRABBED & PULLED OUT. SAID

Q. WHERE DID YOU GO AFTER YOU WERE REMOVED FROM THE DETENTION CELL?

A. MP OFFICE. SAID

Q. DID YOU EVER CHECK IF THE DETAINEES REQUIRED ANY MEDICAL ATTENTION AS A RESULT OF YOUR ACTIONS?

A. NO. SAID

Q. ~~HOW~~ WHY DID YOU STRIKE THE DETAINEES IN THE CORRIDOR OF THE DETENTION CELL ON 30 JUL 03?

A. I WAS ASSAULTED. SAID

Q. DOES YOUR UNIT HAVE AN STANDING OPERATING PROCEDURE IN PLACE THAT DESCRIBES HOW TO DEAL WITH DETAINEES AND DETAINEE MISCONDUCT?

A. YES, THE DIVISION POLICY AND THE USE OF FORCE. SAID

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INITIALS OF PERSON MAKING STATEMENT

SAID

PAGE 5 OF 7 PAGES

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

STATEMENT OF [REDACTED] TAKEN AT Durham, NC DATED 10 Aug 2003

9. STATEMENT (Continued)

Q. Were your Actions in the Detention Cell on 30 Jul 03 when you struck Sergeant Detainees in Accordance with those Policies?

A. NO. *[Signature]*

Q. Did you bring this incident to the Attention of your Chain of Command?

A. NO. *[Signature]*

Q. Why Didn't you bring this incident to the Attention of your Chain of Command?

A. Unknown, did not think about reporting the incident higher. *[Signature]*

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

A. NO. *[Signature]*

End of statement
[Signature]

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INITIALS OF PERSON MAKING STATEMENT
[Signature]

PAGE 6 OF 7 PAGES

STATEMENT OF

[Redacted]

TAKEN AT

Baldwin, Tex

DATED

6 Aug 2003

9. STATEMENT (Continued)

[Large diagonal line across the page]

Not used
[Signature]

AFFIDAVIT

I, John A. Nicks, Jr., HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 7. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT

[Signature]
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6 day of August, 2003 at Warrior Press, Business Inc

ORGANIZATION OR ADDRESS

[Redacted]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[Redacted]
(Typed Name of Person Administering Oath)
Article 136 (b) (4)
(Authority To Administer Oaths)

b6-2

INITIALS OF PERSON MAKING STATEMENT

PAGE 7 OF 7 PAGES
003661

OFFICER RECORD BRIEF

AR600-8-104

CMAAOF-S1

66-5 all

ORIG TYPE	BREF DATE	CRFLD DESIGNATION	CRFLD DESIG DATE	CNTL BRANCH	MP	COMPONENT	AD GRADE/ADOR	SSN	NAME
2900	20040525			BR DT/EXPIRES		USAR	1LT/P	20021110	NILES GLENN ANTHONY JR

SECTION I - Assignment Information			SECTION II - Security Data			SECTION III - Service Data			SECTION IV - Personal/Family Data		
------------------------------------	--	--	----------------------------	--	--	----------------------------	--	--	-----------------------------------	--	--

YR/MO RTN	CTRY	MONTH	TOS	NUMBER OF TOURS	INVEST	BI	DTP/SCG	20040330	BASD	20001107	Current PPN	U2	Ead Current Tour	20010510	
20040203	IZ	11	N	SHORT 1 LONG	DIET/INV	20040311	DTP/SCG	20040330	Basic Date of Apt	20010510	Basic Yr Go	FY2001	Source of Org Apt	OCS	
			SECTION V - Foreign Language						MED/DAYS APTS			047	Type of Org Apt	USAR	
			Language			Read			Curr Svc Agmt/Expr Date			047	Date of Proj/mand Ret		
			DEROS			NA			OVR (DELEGATED VOL/20081114			211-W01	1LT-CW2	CPT-CW3	MAJ-CW4
			Conus departure date			20041004			PBOR			20010510	20021110	BG	MG

Date Dependents Arrived OS			SECTION VI - Military Education			SECTION VII - Civilian Education			SECTION VIII - Awards and Decorations		
Career Field Information - Commissioned/AM/EDD/Warrant			DLAT			ORC GRAD			LEVEL COMPLETED		
BR Code/Med/Mos1/Fmos			Frnl Area/Med/Mos2/Smos			M P OFFICER BASIC			INSTITUTION		
BRAC/Med/Mos3/Pmos Sqt			Frnl Acad/Smos SQT			2001			MO WEBSTER UNIV		
31			A						INSTITUTION		
Skills			Course			M P OFFICER BASIC			DISCIPLINE		
Basic Branch/P/MOS			MIL POLICE			2001			SC COL OF CHARLESTON		
Functional Area SMOS									DISCIPLINE		
Career Track			X Single						INSTITUTION		
Priority			X Branch						PSYCHOLOGY		
Prev Branch/MOS									SECTION IX - Assignment Information		
Prev Functional Area									ASGT		
Control Career Management Field			31Z						FROM		
Projected Career Management Field			31Z00						MO		
Geographic Orientation									UNIT NO		
AVIATOR QUALIFICATIONS									ORGANIZATION		
ASED			TOFDC AS OF						STATION		
Pilot Status			Aircraft			Qual			Aircraft		
Rating Date			Aircraft			Qual			Aircraft		
Date of Availability			Date of Last PCS			20010522			Date of Last OER		
200410			200410			20010522			20020708		

ASGT	FROM	MO	UNIT NO	ORGANIZATION	STATION	LOC	COMD	DUTY TITLE	DMOS
Current	20040203		3615	MP CO CBT SPT	EAST CAMP GRAFFE	GM	ES	PLATOON LEADER	31A000000
1st Prev	20030310	11	0615	MP CO FORWARD	BAGHDAD	IZ	ES	PLATOON LEADER	31A000000
2nd Prev	20011009	17	0615	MP CO CBT SPT	GRAFENWOH	GM	ES	PLATOON LEADER	31A000000
3rd Prev									
4th Prev									
5th Prev									
6th Prev									
7th Prev									
8th Prev									
9th Prev									
10th Prev									
11th Prev									
12th Prev									
13th Prev									
14th Prev									
15th Prev									
16th Prev									
17th Prev									
18th Prev									
19th Prev									

SECTION X - Remarks		
7th and 8th Prev SERVICE ASSIGNMENT COMPLETION- PERSONAL LIMITATIONS		
DATE LAST T-4370 200-52		
RCPT PAR - 199 CONUS		

SECTION XI - Family Data		
DATE LAST T-4370 200-52		

SECTION XII - Other Information		
DATE LAST T-4370 200-52		

SECTION XIII - Other Information		
DATE LAST T-4370 200-52		

SECTION XIV - Other Information		
DATE LAST T-4370 200-52		

SECTION XV - Other Information		
DATE LAST T-4370 200-52		

PE 2 For [Signature]

OFFICE EVALUATION REPORT

For use of this form, see DA Form 87-10, the proposal agency is 0043PER

SEE PRIVACY ACT STATEMENT ON DA FORM 87-10

PART I - ADMINISTRATIVE DATA

NAME: NILES, GLENN

UNIT: HHD, 709th Military Police Battalion, APO AE 09165

USAREUR

REASON FOR SUBMISSION: 03 Change of Rate

PERIOD COVERED: 2003 07 10 - 2004 03 30

DATE MONITOR: 9

REPORTED CODES

DATE OF EVAL: [Redacted]

DATE OF REPORT: JUN 07 2004

REPORTING OFFICER: [Redacted]

REPORTING OFFICER: [Redacted]

REPORTING OFFICER: [Redacted]

Table with columns for dates: 2003 07 10, 2004 03 30

9

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

UH BUI7

PART II - AUTHENTICATION

NAME: [Redacted]

NAME: MAJ

POSITION: Battalion S3

DATE: JUN 07 2004

[Redacted]

[Redacted]

[Redacted]

[Redacted]

NAME: [Redacted]

NAME: LTC

POSITION: Battalion Commander

DATE: JUN 07 2004

[Redacted]

[Redacted]

[Redacted]

[Redacted]

REPORTING OFFICER: HHD, 709th MP Battalion APO AE 09165

NAME: MP

REPORTING OFFICER: 322-7573

REPORTING OFFICER: [Redacted]

REPORTING OFFICER: [Redacted]

REPORTING OFFICER: [Redacted]

PART III - DUTY DESCRIPTION

POSITION TITLE: Assistant S3 (Operations)

POSITION NUMBER: 31A/MP

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

PART IV - PERFORMANCE EVALUATION - CHARACTER (Optional)

CHARACTER: Description of the leader, coordination of values, attitudes, and skills affecting leader actions

Table with columns for Army Values: 1. HONOR, 2. INTEGRITY, 3. COURAGE, 4. LOYALTY, 5. RESPECT, 6. SELFLESS SERVICE, 7. DUTY. Includes checkboxes for 'Yes' and 'No'.

LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Check one word of the star that best describes the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competency), and three from ACTIONS (Behavior). Place an "X" in the appropriate numbered box with optional comments in PART V. Comments are mandatory in Part Vb for all "No" entries.

Table with columns for Leader Attributes: 1.1 ATTRIBUTES (Mental, Physical, Emotional), 1.2 SKILLS (Conceptual, Interpersonal, Technical, Tactical), 1.3 ACTIONS (Communicating, Decision-Making, Motivating, Planning, Executing, Assessing, Developing, Building, Learning).

UNIT OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATES OF LTJ AND NO IS. WERE DEVELOPMENTAL TABLES RECORDED ON DA FORM 87-10 AND QUARTERLY FOLLOW-UP CORRELATIONS CONDUCTED? YES NO X

PE 3 For ID 03663

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Ratee)

PERIOD COVERED 20030710

20040330

1. EVALUATE THE RATEE'S PERFORMANCE DURING THE RATING PERIOD AND INDICATE POTENTIAL FOR PROMOTION

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

2. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART IV, DA FORM 67-9 AND PART IV, 6, AND 2 DA FORM 67-9-1.

During this short rating period, LT Glenn Niles performed his duties as a Battle Captain and Iraqi Police LNO in an outstanding manner during Operation Iraqi Freedom in Baghdad, Iraq. Glenn approached the job with great enthusiasm and an eagerness seldom seen in an officer of his rank. He quickly grasped the duties of Battle Captain which resulted in smooth TOC operations under his watch. LT Niles was able to calmly direct combat operations making on the spot decisions without hesitation. He embraced the tough job as LNO to the Iraqi Police and did an outstanding job. He coordinated countless meetings between the Military Police and Iraqi Police leadership, which ensured critical communication, resulting in improved policing across West Baghdad. He was instrumental in outfitting and equipping hundreds of Iraqi Police officers and fourteen Iraqi Police stations, allowing the Iraqi Police to do their jobs in a more professional manner. Soldier was unable to take the APFT during this period due to deployment for Combat Operations/Contingency Operations. LT Niles has great potential and will continue to excel; promote him to Captain and send him to the next Captain's Career Course. Consider for Company Command.

PART VI - INTERMEDIATE RATED

PART VII - SENIOR RATED

3. EVALUATE THE RATEE'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Specify Below)

I currently serve this _____ 10 _____ officer(s) in this grade
 A completed DA Form 67-9 I have received with this report and considered in my evaluation and rating
 YES NO IF Unable to

4. POTENTIAL COMPARISON WITH OFFICERS SENIOR RATED IN SAME GRADE (Determined by DA)

ABOVE CENTER OF MASS
(More than 50% in top box; Center of Mass is 50% or lower in top box)

CENTER OF MASS

BELOW CENTER OF MASS
 RETAIN

BELOW CENTER OF MASS
 DO NOT RETAIN

+

5. COMMENT ON PERFORMANCE/POTENTIAL

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

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

Company Commander, Battalion Assistant S3, Battalion S1.

DEFENSE EXHIBITS ADMITTED

003665

**First Lieutenant
Glenn A. Niles, Jr.**

**615th Military Police Company
Grafenwoehr, Germany**

003666

DE A

OER's

**LETTERS OF
SUPPORT**

**ACCOMPLISHMENTS/
FAMILY PHOTOS**

3

615th MP CO in OIF

003667

REMOVED BATES PAGES 3668 - 3697
(RECORD OF TRIAL – 1LT GLENN A. NILES, JR.)

(30 TOTAL PAGES)

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

APPELLATE EXHIBITS

003698

IN THE UNITED STATES ARMY
FIFTH JUDICIAL CIRCUIT

UNITED STATES)

v.)

GLENN A. NILES, JR.)

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

OFFER TO PLEAD GUILTY

10 June 2004

1. I, First Lieutenant Glenn A. Niles, Jr., SSN [REDACTED] ^{bb-5}, 615th Military Police Company, Grafenwoehr, Germany, the accused in the court-martial now pending, having examined the evidence relating to the Charges and Specifications against me, having received the benefit of the advice and counsel of my defense counsel, and understanding that I have a legal and moral right to plead not guilty, hereby offer to:

a. Plead as follows:

To Specification 1 of Charge I: Not Guilty.
To Specification 2 of Charge I: Not Guilty.
To Specification 3 of Charge I: Not Guilty.
To Charge I: Not Guilty.

To The Specification of Charge II: Guilty.
To Charge II: Guilty.

b. Enter into a written stipulation of fact with the trial counsel as to the circumstances of the offenses to which I am pleading guilty.

c. Waive the right to request personal appearances of overseas witnesses to testify on my behalf at trial.

d. Waive the right to make a motion at trial to dismiss all charges for a violation of R.C.M. 707 (Speedy Trial), and to withdraw the motion to dismiss filed on 9 June 2004.

2. In exchange for my actions as stated in paragraph 1, above, the convening authority will take the actions specified in the enclosure to this offer.

3. This offer to plead guilty will not be affected if the military judge amends any specifications or charges based upon a motion by the defense, government or *sua sponte* by the military judge.

4. There are no other promises, conditions, or understandings regarding my proposed plea of guilty that are not contained in this offer and the enclosure.

AE I

003699

5. I am satisfied with the advice of the defense counsel detailed to me. He has advised me of the meaning and effect of this guilty plea, and I fully understand the meaning and effect thereof.

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

a. I fail to plead guilty as agreed above.

b. My failure to arrive at an agreement with the government on the contents of the stipulation of fact, or any modifications to the stipulation fact without my consent.

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

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

Glenn A. Niles, Jr.

GLENN A. NILES, JR.
1LT, MP
Accused

[Redacted Signature]

CPT, JA
Trial Defense Counsel

b6-2

DEPARTMENT OF THE ARMY, Headquarters, 7th Army Training Command, APO AE 09114

DATE: JUN 11 2004

The foregoing offer is (accepted) (not accepted)

[Redacted Signature]

Brigadier General, USA
Commanding

b6-2

003700

Jun 10 04 05:14p

Vilseck Trial Defense

4763354

p. 3

IN THE UNITED STATES ARMY
FIFTH JUDICIAL CIRCUIT

UNITED STATES

v.

GLENN A. NILES, JR.

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

OFFER TO PLEAD GUILTY
(QUANTUM PORTION)

10 June 2004

1. I, First Lieutenant Glenn A. Niles, Jr., SSN [REDACTED] 615th Military Police Company, Grafenwoehr, Germany, the accused in the court-martial now pending, offer to plead guilty to the Charges and Specifications as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority agrees to disapprove any confinement adjudged in excess of 45 days.

2. Any other lawful punishment may be approved.

Glenn A. Niles, Jr.
GLENN A. NILES, JR.
1LT, MP
Accused

[REDACTED]
CPT, JA
Trial Defense Counsel

b6-2

The foregoing offer is (accepted) (not accepted).

[REDACTED]
Brigadier General, USA
Commanding

JUN 11 2004

003701

IN THE UNITED STATES ARMY
FIFTH JUDICIAL CIRCUIT

UNITED STATES)

v.)

GLENN A. NILES, JR.)

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

NOTICE OF PLEA AND
FORUM SELECTION

14 June 2004

COMES NOW THE ACCUSED, 1LT Glenn A. Niles, Jr., by and through defense counsel, providing government counsel and this Honorable Court notice of forum selection and pleas.

1. *Forum Selection.* The accused requests trial before members.
2. *Notice of Pleas.* At trial, the accused will enter the following pleas to the charges, and each of their specifications:

To Specification 1 of Charge I: Not Guilty.
To Specification 2 of Charge I: Not Guilty.
To Specification 3 of Charge I: Not Guilty.
To Charge I: Not Guilty.

To The Specification of Charge II: Guilty.
To Charge II: Guilty.

3. I certify that a copy of this notice was served on COL [REDACTED], Military Judge and CPT [REDACTED], Trial Counsel, by electronic mail on 14 June 2004.

[REDACTED]
CPT, JA
Trial Defense Counsel

bb-2
003702

AE II

UNITED STATES)

v.)

1LT NILES, Glenn A., Jr.)

FLYER)

615th Military Police Company)

APO Army Europe 09114-3700)

CHARGE: VIOLATION OF THE UCMJ, ARTICLE 133.

Specification: In that First Lieutenant Glenn A. Niles, Junior, U.S. Army, at or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, while a platoon leader in the 615th Military Police Company, and in the presence of Staff Sergeant [REDACTED], Sergeant [REDACTED], and Specialist [REDACTED], wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by Staff [REDACTED], wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces.

b6-5

b6-4

003703

AE III

UNITED STATES)

v.)

GLENN A. NILES, JR.)

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

SENTENCE WORKSHEET

1 July 2004

[NOTE: After the court members have agreed on a sentence, the President shall strike out all inapplicable language. After the Military Judge has reviewed the worksheet, the President will announce the findings by reading the remaining language.]

First Lieutenant Glenn A. Niles, Jr, this court-martial sentences you:

To No Punishment. (Strike all remaining language).

Or

(Select all those that apply and strike the remainder).

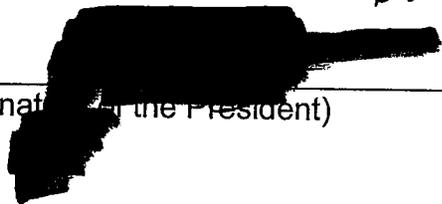
To be reprimanded.

To be confined for _____ (days) (months) (1 year).

(To Forfeit all pay and allowances) or (To Forfeit \$ 1003 per month for 12 months).

To be dismissed from the United States Army.

(Signature of the President)

 66-2

AE IV

003704

COURT MEMBER QUESTION FORM

I. MY QUESTION IS FOR

[REDACTED]

b6-4

(NAME OF WITNESS)

II. MEMBER'S QUESTION(S):

① Do you know how long between 1LT Niles being notified of the escape attempt and the incident?

[REDACTED]

b6-2

(NAME OF COURT MEMBER)

COUNSEL REVIEW

OBJECTION/MRE BASIS

NO OBJECTION

TRIAL COUNSEL:

() _____

(X) [REDACTED]

b6-2

COMMENTS:

I request an Article 39a session: YES / NO.

DEFENSE COUNSEL:

() _____

(X) [REDACTED]

COMMENTS:

I request an Article 39a session: YES / NO.

APPELLATE EXHIBIT

V

003705

COURT MEMBER QUESTION FORM

I. MY QUESTION IS FOR

[REDACTED]

b6-4

(NAME OF WITNESS)

II. MEMBER'S QUESTION(S):

How WAS THE INCIDENT REPORTED TO YOU?

Follow on

How LONG AFTER THE INCIDENT OCCURED DID IT TAKE TO GET REPORTED?

[REDACTED]

b6-2

(NAME OF COURT MEMBER)

COUNSEL REVIEW

OBJECTION/MRE BASIS

NO OBJECTION

TRIAL COUNSEL:

() _____

▷) [REDACTED]

b6-2

COMMENTS: _____

I request an Article 39a session: YES / NO.

DEFENSE COUNSEL:

() _____

(X) [REDACTED]

b6-2

COMMENTS: _____

I request an Article 39a session: YES / NO.

APPELLATE EXHIBIT

VI

003706

COURT MEMBER QUESTION FORM

I. MY QUESTION IS FOR _____

b6-4

(NAME OF WITNESS)

II. MEMBER'S QUESTION(S):

• Did LT Niles receive a relief for cause OER when you moved him to the battalion staff?

(NAME OF COURT MEMBER)

b6-2

COUNSEL REVIEW

OBJECTION/MRE BASIS

NO OBJECTION

TRIAL COUNSEL: () _____

() _____

(X) _____

b6-2

COMMENTS: _____

I request an Article 39a session: YES / NO.

DEFENSE COUNSEL: () _____

() _____

(X) _____

b6-2

COMMENTS: _____

I request an Article 39a session: YES / NO.

APPELLATE EXHIBIT

VII

003707

COURT MEMBER QUESTION FORM

I. MY QUESTION IS FOR

[REDACTED]

b6-4

(NAME OF WITNESS)

II. MEMBER'S QUESTION(S):

WAS THE CHANGE OF RATER OER A
REFERED REPORT

[REDACTED]

b6-2

(NAME OF COURT MEMBER)

COUNSEL REVIEW

OBJECTION/MRE BASIS

TRIAL COUNSEL:

() _____

NO OBJECTION

(X) [REDACTED]

b6-2

COMMENTS:

I request an Article 39a session: YES / NO.

DEFENSE COUNSEL:

() _____

(X) [REDACTED]

b6-2

COMMENTS:

I request an Article 39a session: YES / NO.

APPELLATE EXHIBIT

VIII

003708

APPELLATE EXHIBIT IX
THE POST TRIAL AND APPELLATE RIGHTS
ARE LOCATED IN THE FRONT OF THE ROT IN THE
APPROPRIATE PLACE

APPELLATE EXHIBIT IX

003709

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PAGE

003710