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COURT-MARTIAL RECORD

NAME CRUZ, ARMIN J. SPC

SSN _____

ACTIONS CODED:

INITIAL FEB 17 2005

ACCA _____

FINAL _____

ASSIGNED TO:

PANEL 4

EXAM. DIV. _____

COMPANION(S): SEE REVERSE SIDE

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL I OF II VOL(S)

ARMY 20040973

B

JALS-CC FORM 24, 1 OCTOBER 2000

FEB 16 2005

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VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

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

(Social Security Number)

US Army
(Branch of Service)

Specialist
(Rank)

Victory Base, Iraq
(Station or Ship)

BY
SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

11 September 2004
(Date or Dates of Trial)

COMPANION CASES:

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

Allied papers through transcript

US ARMY
JUDICIARY

2005 FEB 14 P 1:59

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

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

CHRONOLOGY SHEET¹

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

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

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

COL, JA, Staff Judge Advocate

(Signature and Rank of Staff Judge Advocate or Legal Officer)

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

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

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

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

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

⁶ Only this item may be deducted

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

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

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

REMARKS

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

DD FORM 490, MAY 2000

Inside of Front Cover

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

UNITED STATES

ARMY 20040973

v.

SPC ARMIN J. CRUZ

REFERRAL AND DESIGNATION
OF COUNSEL

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

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

Date: 16 February 2005

PANEL 4

FOR THE CLERK OF COURT:



Paralegal Specialist

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

2005 FEB 16 P 1:39

DEFENSE APPELLATE
DIVISION/USALSA

2005 FEB 16 P 1:43

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UNITED STATES OF AMERICA

v.

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

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

11 September 2004

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

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

APPELLATE EXHIBIT 1V

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RECOGNIZED R. 151

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NAME: Armin J. Cruz

STREET: _____

CITY/ STATE / ZIP CODE: _____

AREA CODE/ TELEPHONE NUMBER: _____

DATED: 11 Sep 04

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

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

DATED: 11 Sep 04

[REDACTED]
[REDACTED]
Defense Counsel

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COURT-MARTIAL DATA SHEET						1. OJAG NUMBER							
2. NAME (Last, First, Middle Initial) CRUZ, Armin J.		3. SOCIAL SECURITY		4. RANK SPC		5. UNIT/COMMAND NAME HHSC, 502d MI Bn, 504th MI Bde							
INSTRUCTIONS													
When an item is not applicable to the record of trial being reviewed, mark the proper block with a diagonal line similar to the ones which appear in the SPCMCA blocks for items 6a and b.													
KEY TO USE													
TC - Trial Counsel. This column will be completed in all cases in which a finding of guilty is returned. SPCMCA - Special Court-Martial Convening Authority who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his/her designated representative.		GCM or JA - General Court-Martial Convening Authority or Judge Advocate. This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to The Judge Advocate General of the branch of service concerned. If the record is reviewed under Article 64(a), UCMJ, this column will be completed by the judge advocate accomplishing the review		OJAG - Appropriate appellate agency in the Office of The Judge Advocate General of the branch of service concerned. This column will be disregarded if a record of trial was reviewed under Article 64, UCMJ, and in cases where there are no approved findings of guilty. References - All references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, United States (MCM), 1984.									
SECTION A - PRETRIAL AND TRIAL PROCEDURE						TC		SPCMCA		GCM or JA		OJAG	
						YES	NO	YES	NO	YES	NO	YES	NO
6. a. If a general court-martial: Was the accused represented in the Article 32 investigation by civilian or military counsel of his/her own selection or by counsel qualified within the meaning of Article 27(b), UCMJ?						/	/			/	/		
b. If not: Did the accused waive his/her right to such representation?						/	/			/	/		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?						X				X			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?						X				X			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?						X				X			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805)?						/	/			/	/		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?						X				X			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?						/	/			/	/		
9. Were the reporter and interpreter, if any, sworn or previously sworn?						X				X			
10. a. Was the military judge properly certified (RCM 502(c))?						X				X			
b. Was the military judge properly detailed (RCM 503(b))?						X				X			
c. Was the military judge present during all open sessions of the court?						X				X			
11. a. Was the accused advised that:													
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?						X				X			

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COURT-MARTIAL DATA SHEET

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

COURT-MARTIAL DATA SHEET

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

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COURT-MARTIAL DATA SHEET

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

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COURT-MARTIAL DATA SHEET

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

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COURT-MARTIAL DATA SHEET

55. REMARKS (Continued):

56. TRIAL COUNSEL

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

57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

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

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

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

59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

a. ACTION:

b. INDIVIDUAL COMPLETING DATA SHEET

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

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

SPECIAL COURT-MARTIAL ORDER
NUMBER 2

18 January 2005

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

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

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

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

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

SENTENCE

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

ACTION

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

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

BY COMMAND OF LIEUTENANT GENERAL METZ:

DISTRIBUTION:

SPC Cruz (1)

MJ, [REDACTED] (1)

TC, [REDACTED] (1)

ATC, [REDACTED] (1)

CDC, [REDACTED] (1)

ADC, [REDACTED] (1)

Cdr, HHSC, 502d MI Bn (1)

Cdr, 502d MI BN (1)

Cdr, 504th MI BDE (1)

Cdr, III Corps, ATTN: SJA (2)

Cdr, III Corps (1)

Cdr, Det D, 15th Fin Bn, ATTN: FAO (1)

Cdr, 15th PSB, ATTN: Records Section (1)

Cdr, USAEREC, ATTN: PCRE-FS, Indianapolis, IN 46249 (1)

Clerk of Court, ATTN: 901 N. Stuart St., Suite 1200, Arlington, VA 22203-1837 (10)


MAJ, JA
Chief, Military Justice

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

AFZF-CG

JAN 18 2005

MEMORANDUM THRU

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

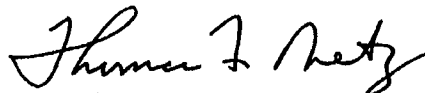
Commander, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, APO AE 09342

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

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

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

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



THOMAS F. METZ
Lieutenant General, USA
Commanding

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

December 1, 2004

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

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

1. I, SPC Armin J. Cruz, hereby voluntarily request discharge in lieu of trial by court-martial under AR 635-200, chapter 10. I understand that I may request discharge in lieu of trial by court-martial because of the charges which were preferred against me under the Uniform Code of Military Justice, one of which or a combination of which authorizes the imposition of a bad conduct or dishonorable discharge:

2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offenses charged, which also authorize the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.

3. Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel for consultation. I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the Uniform Code of Military Justice, the elements of the offenses with which I am charged, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment in my case. Although he has furnished me legal advice, this decision is my own.

4. I understand that, if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge (including but not limited to reduction to the lowest

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

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

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

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


ARMIN J. CRUZ
SPC, U.S. Army

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Having been advised by me of:

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

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

c. The procedures and rights available to him;

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



Civilian Defense Counsel

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JAN - 1 2005

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

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

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

Encl
Defense Counsel Submission
with Enclosures


COL, JA
Staff Judge Advocate

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

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

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

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

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

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

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

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

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

d. **Pretrial Confinement:** None.

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

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

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

(2) *Date of Birth:*

(3) *Awards and Decorations:*

(4) *Nonjudicial Punishment or Previous Convictions:*

(5) *Dependents:*

(6) *GT Score:*

(7) *MOS:*

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AFZF-JA-MJ

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

(8) *BASD*:

(9) *PEBD*:

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

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

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

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





COL, JA
Staff Judge Advocate

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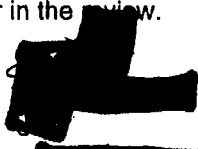

UNITED STATES)	
)	SERVICE OF POST TRIAL
v.)	
)	RECOMMENDATION AND A
Specialist CRUZ, Armin J.,)	
Headquarters and)	POST TRIAL RECORD ON
Headquarters Service Company, 502d)	
Military Intelligence Battalion, 504th)	DEFENSE COUNSEL
Military Intelligence Brigade, III Corps,)	
Victory Base, Iraq, APO AE 09342-1400)	

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



NCOIC, Criminal Law Division

CERTIFICATE OF SERVICE

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



Civilian Defense Counsel
15 Nov 04
(date)

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

December 11, 2004

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

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

Dear LTG Thomas F. Metz:

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

Yours truly,
[REDACTED]
[REDACTED]

Enclosure

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11 December 2004

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

SUBJECT: Recommendation for Clemency for Private Armin J. Cruz

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

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

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

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

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

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


MAJ, JA

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

December 8, 2004

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

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

Introduction

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

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

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

Summary

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

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

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

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

A. Civilian life.

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

B. Military service prior to the incident.

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

C. His actions during the incident.

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

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

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

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

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

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

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

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

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

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

F. While in confinement.

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

Conclusion

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

Yours truly,



Stephen P. Karns

Enclosures

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

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

(75 TOTAL PAGES)

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

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

AFZF-CG

JAN 18 2005

MEMORANDUM THRU

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


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

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

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

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

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



THOMAS F. METZ
Lieutenant General, USA
Commanding

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

REPLY TO
ATTENTION OF

AFZF-JA-MJ

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

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

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

[REDACTED]
[REDACTED]
LTC, JA
Acting Staff Judge Advocate
16 Nov 04

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MNC-I OSJA DET OPS

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

SSG [REDACTED]

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

Thanks,
[REDACTED]
Attorney at Law

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

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

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

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11/16/2004

PRETRIAL ALLIED PAPERS

002897

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

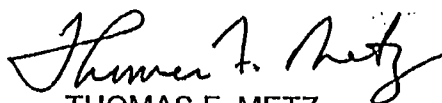
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SEP 5 2004

MEMORANDUM FOR Staff Judge Advocate

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

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




THOMAS F. METZ
Lieutenant General, USA
Commanding

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SEP 5 2004

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

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

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

2. Recommendations.

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

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

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

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

a. The specifications allege offenses under the UCMJ;

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

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

4. POC is CPT  at

Encls

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


COL, JA
Staff Judge Advocate

002899



REPLY TO
ATTENTION OF:

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

AFVQ-CDR

4 September 2004

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

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

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

2. I recommend trial by:

() Summary Court-Martial

() Special Court-Martial

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

☒ General Court-Martial

Encls
nc

COL, MI
Commanding

002900

AFZH-MIE-CDR

4 September 2004

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

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

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

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

2. I recommend trial by:


() Summary Court-Martial

() Special Court-Martial

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

 General Court-Martial

Encls
nc

 MAJ, MI
Commanding

002901



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

REPLY TO
ATTENTION OF:

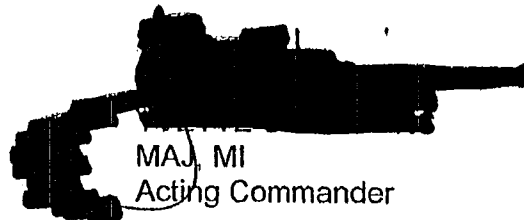
AFZH-MIE (600-20)

1 September 2004

MEMORANDUM FOR SEE DISTRIBUTION

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

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


MAJ. MI
Acting Commander

DISTRIBUTION:

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

002902

AFZH-HHSC-CDR

4 September 2004

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

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

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

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

2. I recommend trial by:


() Summary Court-Martial

() Special Court-Martial

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

(X) General Court-Martial

Encls
nc


CPT, MI
Commanding

002903

UNITED STATES OF AMERICA

v.

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

CONDITIONAL WAIVER OF
PRETRIAL INVESTIGATION UNDER
ARTICLE 32, UCMJ

4 September 2004

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


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

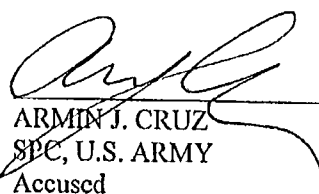
I understand that no charge against me may be tried at a general court-martial without first being investigated at an Article 32 investigation unless I waive that investigation. I understand that I have a right to have that investigation and to have a fair and impartial officer inquire into the truth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

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

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

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


Defense Counsel


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

002904

017A-04-00022

ATZM-DPS-C

27 May 2004

MEMORANDUM FOR RECORD

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

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

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

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

Ex. 157

002905

ATZM-DPS-C

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

0129-04-40022

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

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

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

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

Ex 157

002906

ATZM-DPS-C

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

6129-04-610022

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

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

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

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

11. POC is the undersigned ([REDACTED])

SGT, [REDACTED]

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

(13 TOTAL PAGES)

DOCUMENTS CONSIST OF SWORN STATEMENTS PROVIDED TO
CID IN CONNECTION WITH THE REPORT OF INVESTIGATION
CONTAINED WITHIN SPC CRUZ' RECORD OF TRIAL

AND REFERRED TO CID ON 31 MARCH 2005



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PAULA ZAHN NOW

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

Aired August 26, 2004 - 20:00 ET

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

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

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

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

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

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

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

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

(BEGIN VIDEOTAPE)

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

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

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

<http://edition.cnn.com/TRANSCRIPTS/0408/26/pzn.01.html>

8/30/2004
002921

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

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

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

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

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

DAVIS: Oh, yes.

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

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

He said, well, you are the MP.

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

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

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

DAVIS: Correct.

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

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

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

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

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

He said what?

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

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

ZAHN: And who was this you spoke to?

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

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

DAVIS: mm-hmm.

ZAHN: Are you saying he's lying?

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

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

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

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

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

(END VIDEOTAPE)

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

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

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

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

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

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

ZAHN: Who would you ask that of?

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

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

ZAHN: Describe to us what you saw?

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

ZAHN: We're looking at that picture now.

What do you allege is happening now?

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

ZAHN: Where are you standing?

DAVIS: I am number 2 in that picture.

ZAHN: And number 1 you allege is whom?

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

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

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

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

DAVIS: Yes.

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

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

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

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

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

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

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

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

DAVIS: Very troubled.

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

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

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

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

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

DAVIS: Thank you.

(END VIDEOTAPE)

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

(COMMERCIAL BREAK)

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

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

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

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

ZAHN: Describe that atmosphere to us tonight.

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

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ZAHN: Were you forced to do that?

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

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

KROL: Yes, I was.

ZAHN: Is that something you were trained to do?

KROL: No, I wasn't.

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

KROL: Yes.

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

KROL: One word, Indifference.

ZAHN: Indifference?

KROL: Yes.

ZAHN: Were you shocked?

KROL: No.

ZAHN: Why Indifference?

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

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

KROL: No, I wasn't.

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

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

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

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

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

KROL: It's wrong, but it happened.

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

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

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

KROL: OK.

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

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

002925

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

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

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

KROL: I believe so. OK.

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

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

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

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

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

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

ZAHN: That's correct.

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

KROL: I'm right here.

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

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

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

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

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

KROL: OK.

ZAHN: And he describes the scene quite differently.

KROL: OK.

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

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

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

KROL: Because of the lack of the MPs.

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

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

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

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

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

(COMMERCIAL BREAK)

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

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

KROL: Yes.

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

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

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

KROL: No.

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

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

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

KROL: He's wrong, of course.

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

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

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

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

ZAHN: Now these prisoners weren't being interrogated.

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

ZAHN: But why were you there?

KROL: Well...

ZAHN: Did you need to be there?

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



other reasons to do it.

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

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

ZAHN: So you deny ever physically abusing a prisoner?

KROL: Of course.

ZAHN: Did you see any of your colleagues?

KROL: Military intelligence, no.

ZAHN: Hurt a prisoner?

KROL: Hurt a prisoner? No.

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

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

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

KROL: None.

ZAHN: You are at peace?

KROL: Yes.

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

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

ZAHN: Is it hard for you?

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

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

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

ZAHN: Do you think you will be?

KROL: I think so, yes.

ZAHN: You think you will be charged?

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

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

KROL: I can't.

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

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

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

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

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

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

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

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

KROL: Thank you.

ZAHN: Good luck to you.

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

(COMMERCIAL BREAK)

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

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

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

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

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

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

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

MILLER: There's a lot of gray area there. It certainly doesn't look like anybody was totally in charge or totally responsible. I mean, one of the striking things to me, having written a book about a prison in Afghanistan, is just that the situation is much greater here. In Afghanistan, the largest prisons held 500, 600 prisoners at most, and at Abu Ghraib many as 8,000. It was just a much more chaotic and large and sort of amok facility than anything I had ever prepared for.

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

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

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

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

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

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

MILLER: Thank you, Paula.

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

(COMMERCIAL BREAK)

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

(BEGIN VIDEOTAPE)

MARIA HINOJOSA, CNN CORRESPONDENT (voice-over): In New York City, not all protests look alike.

A group of women shoot this video as they sneak into Grand Central Station to send a very public message.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(COMMERCIAL BREAK)

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

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

(BEGIN VIDEOTAPE)

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

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

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

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

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

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A year later, President Kennedy was dead.

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

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

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

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

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

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

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

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

ZAHN: Many Democratic presidential candidates before Kerry have tried to capture the magic of JFK. Whether through personal or political inadequacy, most of those efforts have fallen short except the 1992 year-old at this White House handshake.

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

(END VIDEOTAPE)

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

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

John F. Kennedy was a kind of reluctant hero. When his boat was cut in half by a Japanese destroyer he wasn't too comfortable with being called a hero. John Kerry, he's more like JFK's older brother was the anointed, the golden one in the Kennedy family. He was brought up to be president of the United States. He thought he would be president. He was opposed to World War II, but he entered because he thought president, I've got to be a hero. So he was a self-conscious hero and he sought the hero's medals in a mouth and in the summer of 1944, he volunteered for a very risky mission and he was killed. And that's a more similar case.

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

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

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

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RECORD OF PROCEEDINGS OF COURT-MARTIAL

002933

RECORD OF TRIAL

OF

CRUZ, Armin J.

(Name: Last, First, Middle Initial)

SPC

(Rank)

HHS, 502d MI Bn

504th MI Bde

(Unit/Command Name)

U.S. Army

(Branch of Service)

Victory Base, Iraq

(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

Convened by: Commander

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

Tried at

Baghdad, Iraq

(Place or Places of Trial)

on

11 September 2004

(Date or Dates of Trial)

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TESTIMONY

NAME OF WITNESS	DIRECT/ REDIRECT	CROSS/ RECROSS	COURT
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PROSECUTION:

None.

DEFENSE:

SFC [REDACTED]	69	
CPT [REDACTED]	76	
SFC [REDACTED]	83	
1SG [REDACTED]	88	
SSG [REDACTED]	92	
SSG [REDACTED]	93	
Accused (unsworn)	106	

COURT:

None.

EXHIBITS ADMITTED IN EVIDENCE

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1 PROCEEDINGS OF A SPECIAL COURT-MARTIAL

2

3 The military judge called the Article 39(a) session to order at

4 0923, 11 September 2004, pursuant to the following orders:

5

6 Court-Martial Convening Order Number 2, Headquarters,

7 III Corps, Victory Base, Iraq, dated 14 January 2004, as amended by

8 Court-Martial Convening Order Number 6, dated 24 July 2004.

9 [END OF PAGE]

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

COURT-MARTIAL CONVENING ORDER
NUMBER 6

24 July 2004

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

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

VICE

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

Relieved permanently.

BY COMMAND OF LIEUTENANT GENERAL METZ:



Chief, Criminal Law Division

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

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

COURT-MARTIAL CONVENING ORDER
NUMBER 2

14 January 2004

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

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

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

MEMBERS

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

VICE

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

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

BY COMMAND OF LIEUTENANT GENERAL METZ:

DISTRIBUTION:

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

[REDACTED]
[REDACTED]
MAJ, JA
Chief, Criminal Law Division

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1 MJ: Court is called to order.

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

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

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

13 COLONEL [REDACTED], MILITARY JUDGE;

14 MAJOR [REDACTED], TRIAL COUNSEL;

15 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;

16 MR. [REDACTED], CIVILIAN, DEFENSE COUNSEL; and

17 CAPTAIN [REDACTED], ASSISTANT DEFENSE COUNSEL.

18 The members are absent.

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

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

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

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

8 ACC: I understand that, sir.

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

18 ACC: Yes, sir.

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

1 civilian lawyer. Or, you could excuse your military lawyer and be
2 represented only by your civilian lawyer. Do you understand that?
3 ACC: Yes, sir.
4 MJ: Specialist Cruz, do you understand your rights to counsel?
5 ACC: I understand, sir.
6 MJ: By whom do you wish to be represented?
7 ACC: I wish to be represented by Mr. [REDACTED].
8 MJ: And Captain [REDACTED], also?
9 ACC: Both, yes, sir.
10 MJ: Those two and nobody else?
11 ACC: Yes, sir.
12 MJ: Captain [REDACTED], put your detailing and qualifications on
13 the record.
14 DC: I have been detailed to this court-martial by Lieutenant
15 Colonel [REDACTED]. I'm qualified and certified under Article 27(b)
16 and sworn under Article 42 Alpha, Uniform Code of Military Justice.
17 I have not acted in any manner which might tend to disqualify me in
18 this court-martial.
19 MJ: Mr. [REDACTED] put your qualifications on the record, please.
20 CDC: Yes, Your Honor. I'm an attorney licensed to practice law
21 in the state of Texas. I'm a member in good standing of the state

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

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

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

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

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

13 The charges were preferred by Captain [REDACTED]
14 and forwarded with recommendations as to disposition by Major [REDACTED]
15 [REDACTED] and Colonel [REDACTED]. The Article 32 investigation was
16 waived.

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

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

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

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

10 TC: Yes, sir.

11 CDC: Yes, Your Honor.

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

14 TC: No, Your Honor.

15 DC: No, sir.

16 MJ: Now, Major [REDACTED], you said the Article 32 in this case was
17 waived, but my charge sheet shows this has been referred to a
18 straight special--or to a BCD special?

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

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

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

4 ACC: I understand, sir.

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

10 ACC: I understand, sir.

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

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

17 ACC: Yes, sir.

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

19 ACC: Yes, sir.

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

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

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

4 ACC: It is, sir.

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

7 ACC: I did, sir.

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

9 ACC: Yes, sir.

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

12 ACC: I'm sorry, sir?

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

15 ACC: I am making the request, sir.

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

19 ACC: Yes, sir.

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

21 ACC: Yes, sir.

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

3 CDC: Yes, Your Honor.

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

5 DC: Yes, Your Honor.

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

11 ACC: Yes, sir.

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

15 ACC: I understand, sir.

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

18 ACC: Yes, sir.

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

21 ACC: Did I understand the....

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

3 ACC: Yes, sir.

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

5 ACC: It was, sir.

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

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

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

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

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

13 [END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) CRUZ, ARMIN J.		2. SSN		3. GRADE OR RANK SPC	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, APO AE 09342				6. CURRENT SERVICE	
				a. INITIAL DATE 28 SEP 2000	b. TERM 8 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL			
\$1,726.80	\$ 100.00 N/A	\$1,826.80 \$1,726.80	None		
ADDITIONAL			9. DATE(S) IMPOSED N/A		

II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

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

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93

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

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHSC, 502nd MI Battalion
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 4 SEP 04

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

Typed Name of Officer

HHD, 504th Military Intelligence Battalion

Organization of Officer

Captain

Trial Counsel

Grade

Official Capacity to Administer Oath

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

Signature

DD FORM 458, MAY 2000

PREVIOUS EDITION IS OBSOLETE.

002949

12.

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

[REDACTED]
Typed Name of Immediate Commander

HHSC, 502nd MI Battalion

Organization of Immediate Commander

Captain

Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

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

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

FOR THE ¹

[REDACTED]
Typed Name of Officer

Commanding

Official Capacity of Officer Signing

Major

Grade

[REDACTED]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Headquarters, III Corps

b. PLACE Victory Base, Iraq
APO AE 09342

c. DATE (YYYYMMDD)

SEP 5 2004

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

Empowered to adjudge a bad-conduct discharge.

By COMMAND of LIEUTENANT GENERAL METZ:
Command or Order

[REDACTED]
Typed Name of Officer

Chief, Paralegal NCO

Official Capacity of Officer Signing

Sergeant Major/E-9

Grade

[REDACTED]
Signature

15.

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

[REDACTED]
Typed Name of Trial Counsel

Major
Grade or Rank of Trial Counsel

[REDACTED]
Signature

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

DD FORM 458 (BACK), MAY 2000

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

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

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

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

13 MJ: Please enter a plea.

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

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

21 ACC: I understand.

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

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

11 ACC: Yes, sir.

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

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

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

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

22 ACC: No, I do not, sir.

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

4 ACC: I understand that, sir.

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

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

11 ACC: I understand and agree, sir.

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

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

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

20 ACC: I understand, sir.

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

1 [The accused did as directed.]

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

3 ACC: Yes, sir.

4 MJ: Is everything in the stipulation true?

5 ACC: Yes, sir.

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

8 ACC: No, sir.

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

12 ACC: Yes, sir.

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

15 CDC: No, Your Honor.

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

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

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

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

5 ACC: Yes, sir.

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

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

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

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

1 reasonably could have caused physical or mental harm or suffering.

2 Assault or improper punishment may constitute this offense.

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

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

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

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

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

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

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

20 ACC: I understand, sir.

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

1 ACC: I understand, yes, sir.

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

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

4 sir?

5 MJ: The date?

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

7 MJ: Well, the charge sheet says 2003.

8 ACC: Oh, my apologies, sir.

9 MJ: No, it was my fault, it's my fault. I wrote down 2004, but

10 no, thank you. No, both of these events allegedly occurred on or

11 about 25 October 2003.

12 ACC: Yes, sir.

13 MJ: Do you have any other questions?

14 ACC: No, sir.

15 MJ: Do you believe and admit the elements and definitions taken

16 together correctly describe what you did?

17 ACC: I do, sir.

18 MJ: Specialist Cruz, at this time, I want you to talk about

19 what happened. First of all, how old are you?

20 ACC: I'm 24 now, sir.

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

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

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

1 MJ: Currently.

2 CDC: Yes, sir.

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

4 CDC: There's no issue.

5 MJ: Now let's go back to 23 October of--excuse me, 25 October

6 of 2003, I'll get the dates right. Now, were you working at the

7 prison at Abu Ghraib at the time?

8 ACC: I was, sir.

9 MJ: What was your job?

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

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

12 ACC: 96 Bravo, intelligence analyst.

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

14 area?

15 ACC: Yes, sir.

16 MJ: And you were there in the course of your job, and again, I

17 don't want you to tell me anything that may be classified. What did

18 you do in the day to day, doing the job in your MOS, I know that

19 there's other things that soldiers do.

20 ACC: Roger, sir. During the time that I was at Abu Ghraib on a

21 Tiger Team before I moved to other sections, the job duties would

22 require finding intelligence gaps that an interrogator may find, and

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

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

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

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

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

14 MJ: Okay, now on the 25th of October of 2003, from looking at
15 the stipulation of fact, this event began, at least your involvement
16 was, when Specialist [REDACTED] woke you up?

17 ACC: Roger, sir.

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

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

1 MJ: Now who's Specialist [REDACTED]
2 ACC: He's an interrogator, 97 Echo, assigned to the unit I was
3 assigned to, sir.
4 MJ: Okay, he was an interrogator, but he was also in your
5 military intelligence unit for want of a better term.
6 ACC: Roger, sir.
7 MJ: Okay, go ahead.
8 ACC: And then said that he was--he told me that the MPs were
9 disciplining three detainees that were alleged to have raped a
10 teenager and if I wanted to go see what they were doing. And, I
11 said, "Yes," I walked down there. When I got there, it appeared that
12 they were taking a break. My assumption was that Specialist [REDACTED] was
13 there for the first part because he told me what they were doing, it
14 was--punishing for raping a young man. And then....
15 MJ: When you showed up, there was nothing going on.
16 ACC: It seemed like they were done, yes, sir, a break.
17 MJ: Now, when you said "showed up," where did this occur?
18 ACC: In the hard site, sir.
19 MJ: Now, there's two tiers there?
20 ACC: I always got them confused, sir.
21 MJ: Confused, okay.

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

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

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

12 MJ: Was he an Iraqi civilian?

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

15 MJ: I mean, but was he American?

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

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

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

22 MJ: Pulled them out from where?

1 ACC: Cells, sir.

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

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

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

8 ACC: Yes, sir.

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

10 ACC: Yes, sir..

11 MJ: And the floor is concrete?

12 ACC: Yes, sir.

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

14 ACC: Roger, sir.

15 MJ: What were they wearing?

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

18 MJ: The first time----

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

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

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

1 MJ: Did they eventually become naked?
2 ACC: Yes, they did, sir.
3 MJ: How did that happen?
4 ACC: By orders of me and other people there, sir.
5 MJ: Now, you walk up to the scene, had you heard anything
6 before this about how the MPs sometimes treated the detainees?
7 ACC: I didn't know how they brought their disciplinary
8 procedures or anything, sir.
9 MJ: So you walked up, and then you said, you among others told
10 them to take off all their clothes?
11 ACC: Yes, sir.
12 MJ: Well, why did you do that?
13 ACC: There's no real good reason why that would happen, sir.
14 MJ: Do you have a real bad reason why it happened, though?
15 Were you just going along with what the other guys were doing?
16 ACC: Perhaps that's a part of it. I think a bigger part is I--I
17 think this is in there that....
18 MJ: Specialist Cruz, don't worry about whether it's in the
19 stipulation of fact or not, just tell me in your own words as best
20 you can remember, okay?
21 ACC: I was under the--I didn't really see when I was looking at
22 the three detainees that were rapists when I was looking at them,

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

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

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

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

13 ACC: Yes, sir.

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

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

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

20 ACC: I believe that's correct.

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

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

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

4 ACC: They are, sir.

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

7 ACC: Yes, sir.

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

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

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

17 ACC: Yes, sir.

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

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

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

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

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

5 ACC: Right.

6 MJ: What happened next?

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

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

10 ACC: Roger.

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

12 ACC: No, they were not.

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

16 ACC: They were.

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

19 ACC: Yes, sir.

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

22 ACC: Yes, sir.

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

2 ACC: They were not a threat to us.

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

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

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

11 ACC: Yes, sir.

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

14 ACC: It was humiliating.

15 MJ: What happened next?

16 ACC: At some point right thereafter, Specialist [REDACTED] went to the
17 second floor--before that, actually, there was a time when two of
18 them were handcuffed on the ground. They were both handcuffed on the
19 ground. There was a third detainee off closer to the main exit door.
20 Specialist [REDACTED] was asking that person, "Why did you rape this young
21 man?" And he expressed to him that he did not want him to lie, and
22 to tell him the truth.

1 MJ: Did he say it like you saying it to me, or was it perhaps a
2 lot more forceful?

3 ACC: It was yelling and screaming. He wasn't happy at the time.

4 MJ: Did any of these guys speak English, to your knowledge?

5 ACC: No, sir. The civilian, whose name I can't pronounce
6 correctly----

7 MJ: Was he kind of translating or....

8 ACC: Roger, sir.

9 MJ: Okay, go ahead.

10 ACC: At one point, the first overt act there I saw was
11 Specialist [REDACTED] go grab a detainee by...I don't remember if he was
12 wearing a jumpsuit or just grabbing him by the chest. I remember
13 grabbing this area.

14 MJ: The upper chest area?

15 ACC: Roger, and slapped him and said, "I know you're lying to
16 me. Tell me the truth."

17 MJ: Okay, what happened next?

18 ACC: I think he pulled them over to the two detainees and he
19 walked upstairs.

20 MJ: Okay, was this guy, was he naked, too, then at that point,
21 or had he put his clothes back on?

1 ACC: If he did have clothes on, and I don't think he did, sir.
2 He definitely was instructed to get them off by the time he got to
3 the other two detainees.

4 MJ: So when you say [REDACTED] may have grabbed his shirt, you're
5 just not sure whether he was undressed. Okay, so he goes back
6 and....

7 ACC: Second floor, someone was throwing a Nerf ball, initially.
8 I don't remember who it was. I know I saw Specialist [REDACTED] up there.
9 He took a Nerf ball, football, and threw it down on the detainees.

10 MJ: And threw it down, and what did he do with it?

11 ACC: He just threw it down at the detainees, sir.

12 MJ: Just to hit them?

13 ACC: Roger.

14 MJ: What were the detainees doing at this time?

15 ACC: Nothing, they couldn't do anything, sir. They were
16 helpless, they were handcuffed.

17 MJ: They were handcuffed? Were the handcuffs behind their back
18 or in front, or were they handcuffed together?

19 ACC: They were handcuffed...all of the above, sir.

20 MJ: The Ziploc--cuffs----

21 ACC: Negative, metal----

22 MJ: The metal regular handcuffs.

1 ACC: Right, like the handcuffs used back home in the States, not
2 zip ties, just metal.

3 MJ: What happened next?

4 ACC: One of the senior ranking persons, Sergeant [REDACTED],
5 reorganized the handcuffs. That went on for a little bit. I cannot
6 tell you the logic to that one. Clearly there isn't, it was just a,
7 "I'm gonna handcuff them this way, and then I'm going to handcuff
8 them this way."

9 MJ: Okay.

10 ACC: And then, I went up to the second floor and I grabbed a
11 Nerf football.

12 MJ: Okay.

13 ACC: I threw it, but I also say that I didn't hit the detainees,
14 but it was in the direction.

15 MJ: You were trying to hit them?

16 ACC: Yes, sir.

17 MJ: I'm sorry?

18 ACC: [No verbal response.]

19 MJ: I saw you nod, it's just that the court reporter needs a
20 verbal.

21 What happened after that?

1 ACC: I went downstairs and leaned against the wall and I said,
2 at some point close to this, I noticed that one of the detainees
3 around the handcuffs was starting to bleed. And I looked at Corporal
4 [REDACTED] and I said to him, "Hey, guy, that guy's bleeding. I
5 mean, some of this stuff you're telling me...whatever. This can't be
6 okay. He's bleeding. We've got to loosen those cuffs. We've got to
7 take them off. We've got to put a stop to this now."

8 MJ: Okay.

9 ACC: That went back and forth for a few minutes. It wasn't like
10 just one time, "Hey, he's bleeding," or anything like that.
11 Eventually, he got up, he went over and took the cuffs off. And then
12 pretty shortly thereafter, Specialist [REDACTED] left and I left, and I
13 would assume Specialist [REDACTED] left soon thereafter. I don't know.

14 MJ: During the time you were there, you said you'd...let's kind
15 of back up a little bit. There was a point where you put a foot on
16 them?

17 ACC: Yes, sir.

18 MJ: When was that?

19 ACC: A detainee was low crawling and he tried to stand up, arch
20 up, and I just put my foot down on him.

21 MJ: He was low crawling on all fours?

22 ACC: Negative, like a low crawl.

1 MJ: Okay, like a low crawl, he was dragging himself on his
2 elbows and pulling along, and then he'd try to raise up and you put
3 your foot down, okay.

4 Now, did you tell them to crawl on the floor?

5 ACC: I'm sorry, sir?

6 MJ: Were you part of the group that told them to crawl on the
7 floor?

8 ACC: Yes, sir.

9 MJ: I'm sure that's before you put your foot on him.

10 ACC: Roger, sir.

11 MJ: And that was after the handcuffs had gone on, or before?

12 ACC: Before.

13 MJ: And how did that part of the incident come up?

14 ACC: At the time we just said, you know, "Low crawl."

15 MJ: And were they naked at the time?

16 ACC: In the beginning, no, but eventually, sir, they were.

17 MJ: Were they low crawling naked?

18 ACC: Yes, sir.

19 MJ: And you told them to low crawl?

20 ACC: Yes, sir.

21 MJ: And that was causing their genitals to drag along the
22 floor?

1 ACC: Yes, sir.

2 MJ: Now, when you walked in and you saw [REDACTED] [REDACTED]
3 [REDACTED] and [REDACTED], and there were some others involved in this, also?

4 ACC: Yes, sir.

5 MJ: And I suspect--how long did it take you to realize what was
6 happening here?

7 ACC: Pardon me?

8 MJ: You said you walked in, the detainees were in the cell
9 before [REDACTED] brought them out, right?

10 ACC: Right.

11 MJ: They brought them out, and [REDACTED] had said something to you
12 earlier, "Let's see what the MPs are going to be doing."

13 ACC: Roger.

14 MJ: And then, she brings them out, and then is that when the
15 abuse started when you were there?

16 ACC: Yes, sir.

17 MJ: So at that point, was [REDACTED], [REDACTED] [REDACTED] and [REDACTED]
18 all involved in this?

19 ACC: [REDACTED], [REDACTED], [REDACTED], [REDACTED], yes, sir.

20 MJ: And there were some other people involved, who you don't
21 know their names?

22 ACC: Yes, sir, I'm sorry, I wish I did.

1 MJ: No, no, no, no. The way it's charged, it says those four
2 names and others.

3 ACC: Correct.

4 MJ: So at that point, you realized that they were going to be
5 abusing these detainees?

6 ACC: Yes, sir.

7 MJ: And then did you, by your actions, join in with them in
8 this abuse?

9 ACC: I did, sir.

10 MJ: Now, remember I talked to you about the conspiracy requires
11 an agreement, and that can be in a couple of ways. It could be, for
12 example in this case, you walk in saying, "Hey, I'll go along with
13 you guys, let's abuse the detainees," and that would be a verbal
14 agreement. Do you understand that?

15 ACC: Yes, sir.

16 MJ: Or by your actions, saying nothing at all, that could form
17 an agreement, also.

18 ACC: Yes, sir.

19 MJ: Do you believe your actions indicated your affirmative
20 agreement to go along with what they were about to do to maltreat the
21 detainees?

1 ACC: I think it was clear that it was a silent agreement that
2 was expressed through my actions.

3 MJ: And in your mind, that's what you were doing.

4 ACC: Yes, sir.

5 MJ: Now after you had, by your actions, joined in with this,
6 did [REDACTED] make the detainees do something with physical exercise?

7 ACC: Yes, sir.

8 MJ: What did he make them do?

9 ACC: Made them low crawl and a lot of PT, jumping jacks, roll
10 left or right.

11 MJ: And at the time, they were naked?

12 ACC: Both, and yes, there were times that they were naked, yes,
13 sir.

14 MJ: And [REDACTED], did he do anything with some water?

15 ACC: Yes, sir.

16 MJ: What did he do with water?

17 ACC: He poured water on the detainees, sir.

18 MJ: Why did he do that?

19 ACC: I have no idea, sir.

20 MJ: Let me back up. This was October, correct?

21 ACC: Yes, sir.

22 MJ: Even for Iraq, I suspect it was cool.

1 ACC: Yes, sir.

2 MJ: And was cold water being poured on them?

3 ACC: Yes, sir.

4 MJ: Do you believe that was part of the abusive behavior that
5 these guys were doing?

6 ACC: It was, sir.

7 MJ: And you understand the law of conspiracy, is that once you
8 join the agreement, you're responsible for all the acts?

9 ACC: I do, sir.

10 MJ: Now Specialist Cruz, I need to talk a little more about
11 your training and background. You indicated earlier you're an
12 intelligence analyst?

13 ACC: I am, sir.

14 MJ: In your military job.

15 ACC: Yes, sir.

16 MJ: And as such, have you received training in the Geneva
17 Convention?

18 ACC: I did receive Geneva Convention training at basic training.

19 MJ: And have you ever received any specialized training in
20 interrogation, proper interrogation techniques?

1 ACC: In interrogation techniques, the only thing I really
2 received, sir, was like on the job training, sir, but no like
3 schoolhouse training.

4 MJ: Now, at the time, were these guys, the MPs told you that
5 these guys were suspected of raping a 15-year old boy in another part
6 of the prison, correct?

7 ACC: At the time, it went from being a solid, "They did it," to
8 "We think, and suspect." But at first, it was, "These guys raped a
9 kid."

10 MJ: Were these guys, to your knowledge, have any type of
11 intelligence value?

12 ACC: No, sir.

13 MJ: I mean, were they in the facility to begin with because of
14 that, to your knowledge?

15 ACC: To my knowledge, they were never interrogated for any
16 intelligence value whatsoever, sir.

17 MJ: They were simply there for other type of criminal
18 misconduct.

19 ACC: Most likely if they were in the hard site, sir, it was
20 either there was some kind of criminal misconduct or they were a
21 disciplinary problem, which was held on that side.

22 MJ: Okay.

1 ACC: I mean, just from the talks in the interrogation control
2 room, you kind of have a feeling which guys are of intelligence
3 value, and I never heard anything about these guys having any kind of
4 intelligence value.

5 MJ: And in your position, you would have heard that, right?

6 ACC: I believe I would, sir.

7 MJ: I mean, is it usual if someone is going to be coming--an
8 intelligence detainee or a detainee for which there may be some
9 interrogation, I'm assuming there's some type of interrogation plan
10 developed?

11 ACC: Roger.

12 MJ: And they're identified. Are you involved in that part of
13 the plan?

14 ACC: Roger.

15 MJ: So it's not just, all of a sudden people show up and the
16 MPs start interrogating these guys.

17 ACC: MPs don't run interrogations, sir. I mean, they can help
18 with setting conditions, which is like, where are they going to live,
19 which camp, well, maybe in some cases the MI guys decide which camp.
20 But the interrogation process itself is supposed to be done by
21 interrogators.

1 MJ: And the MP's role is simply, for want of a better term,
2 care and custody?

3 ACC: And security.

4 MJ: And security of these guys. So your job----

5 ACC: We're not responsible for feeding them, etceteras.

6 MJ: But the MPs aren't responsible for interrogating them.

7 ACC: They do not interrogate.

8 MJ: They do not interrogate. And at your level, you're at the
9 tactical level down there where the rubber meets the road, and the
10 MPs were not there to interrogate, they were simply to provide
11 security and other types of things.

12 ACC: I never once saw an MP do an interrogation.

13 MJ: Never saw them----

14 ACC: Now, I've seen them in the facilities and I've seen them
15 provide security and walk them to and from. But the interrogation
16 process itself is solely done by either civilian or military
17 interrogators.

18 MJ: Through----

19 ACC: MI or----

20 MJ: You're MI, okay. So then would it be fair to say that to
21 your knowledge, there was no direction from any level to tell the MPs
22 to interrogate these guys?

1 ACC: I can't imagine that happening, sir.

2 MJ: You just find that....

3 ACC: I can't imagine anyone telling an MP to go interrogate.

4 MJ: And then what they were doing to these guys, was it any way
5 or shape--do you believe that they were performing something of a
6 military authorized function of interrogating them, or did they just
7 want to take their chance to abuse detainees?

8 ACC: They wanted to take their chance, sir.

9 MJ: Did anyone make any remarks that would indicate to you that
10 that's what they were doing?

11 ACC: Yes, sir.

12 MJ: And what was that?

13 ACC: At one point, when I asked Sergeant [REDACTED], I mean I
14 asked throughout the night, "Are we within our norms here? I mean, I
15 know what my IROE is," that's interrogation rules of engagement.

16 MJ: And your IROE says you don't do this.

17 ACC: Right, sir. You can't touch them except for handcuffing
18 them, sir. "What's your SOP, and what's your ROE," and he said that
19 he was in the green and he was good. And then right after that in
20 the same conversation, Corporal [REDACTED] said that--well, Sergeant
21 [REDACTED] said that, "Well, the thing is, this kind of thing right
22 here doesn't happen back home." He works in a correctional facility

1 somewhere, I don't remember where, but he said he worked in the jail.
2 And then Corporal [REDACTED] said, you know, he loves this shit. Hey,
3 this is what he lives for.

4 MJ: What was he referring to when he said that?

5 ACC: What's happening to the detainees, sir.

6 MJ: Now, I know you're not an MP, but when you walked in and
7 you saw what was happening, did you know it was wrong?

8 ACC: Yes, sir.

9 MJ: Did you know your participation was wrong?

10 ACC: Yes, sir.

11 MJ: Even though you were upset about what happened to your
12 friend, do you think that gave you a legal reason to do this to these
13 detainees?

14 ACC: No reason, sir.

15 MJ: There's an explanation, but I'm just saying....

16 ACC: There's no way to justify that, sir.

17 MJ: And you knew it was wrong at the time, sir.

18 ACC: Yes, sir.

19 MJ: And today you know it's wrong.

20 ACC: I do, sir.

21 MJ: Does either side believe any further inquiry is required?

22 TC: No, Your Honor.

1 CDC: No, Your Honor.

2 MJ: Trial counsel, I would assume that the maximum permissible
3 punishment in this case is the jurisdictional limit of this court?

4 TC: Yes, sir.

5 MJ: Do you agree?

6 CDC: Yes, Your Honor.

7 MJ: Special Cruz, the maximum punishment authorized in this
8 case based solely on your guilty plea is confinement for one year,
9 reduction to the grade of Private E1; forfeiture of two-thirds pay
10 per month for 12 months, a bad-conduct discharge, and a fine may also
11 be adjudged. Do you understand that?

12 ACC: Yes, sir.

13 MJ: Do you also understand that based on your plea alone, this
14 court could sentence you to the maximum punishment of which I just
15 stated?

16 ACC: I do, sir.

17 MJ: There is a pretrial agreement?

18 TC: Yes, sir.

19 MJ: Mark the offer portion as Appellate Exhibit II, the quantum
20 as Appellate Exhibit III. Defense, have copies of both documents in
21 front of the accused.

1 Specialist Cruz, I have before me what's marked as
2 Appellate Exhibit II, which is the offer portion of your pretrial
3 agreement. You should have both this document and also Appellate
4 Exhibit III. Did you sign this pretrial agreement?
5 ACC: The offer to plead guilty, sir?
6 MJ: Yes.
7 ACC: Yes, I did.
8 MJ: Did you read it thoroughly before you signed it?
9 ACC: I read it, sir, yes, sir.
10 MJ: Do you understand the contents of your pretrial agreement?
11 ACC: I understand, sir.
12 MJ: Did anyone force you in any way to enter into this
13 agreement?
14 ACC: No, sir.
15 MJ: Does this agreement contain all the understandings or
16 agreements that you have in this case?
17 ACC: Yes, sir.
18 MJ: Has anyone made any promises to you that are not written
19 into this agreement in an attempt to get you to plead guilty?
20 ACC: No, sir.

1 MJ: Counsel, are Appellate Exhibits II and III the full and
2 complete agreement in this case and are you satisfied there are no
3 other agreements?

4 TC: Yes, sir.

5 CDC: Yes, Your Honor.

6 MJ: Specialist Cruz, basically, a pretrial agreement means you
7 agree to plead guilty, and in return, the convening authority agrees
8 to take some favorable action in your case, usually in the form of
9 limiting a sentence that he will approve. Do you understand that?

10 ACC: Yes, sir.

11 MJ: The law requires that I discuss the agreement with you.
12 Let's go over Appellate Exhibit II together. The first paragraph
13 said you talked it over with your attorneys and you've decided to
14 plead guilty as you have done, pretty straight forward. Do you have
15 question about that provision?

16 ACC: No, sir.

17 MJ: Paragraph 2 says you agree to do as stated in the offer to
18 plead guilty, and in return, the convening authority will take the
19 actions set forth in Appendix I, which I've now labeled as Appellate
20 Exhibit III. In other words, you do what's in Appellate Exhibit II
21 and they do what's in--or he does what's in Appellate Exhibit III.
22 Is that your understanding?

1 ACC: Yes, Your Honor.

2 MJ: Now paragraph 3 has got a lot of parts to it. The first
3 one, 3 Alpha deals with the stipulation of fact. We've discussed
4 that, what it is and what it can be used for. Do you have any
5 question about the stipulation of fact?

6 ACC: No, sir.

7 MJ: Now 3 Bravo deals with your testimony in other cases, in
8 that the convening authority will give you testimonial immunity, and
9 after he does that, you have to cooperate fully with the trial
10 counsel in the investigation and prosecution of Specialist [REDACTED]
11 Sergeant [REDACTED], Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist
12 [REDACTED], Specialist [REDACTED], PFC [REDACTED], and any other soldier or
13 civilian charged based on misconduct at the Baghdad Central
14 Confinement Correctional--excuse me, Confinement Facility at Abu
15 Ghraib. Now, what testimonial immunity means is that the convening
16 authority will sign a piece of paper saying that anything you say in
17 the course of this cooperation cannot be used against you. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: And Mr. [REDACTED] you've explained to him the difference
21 between testimonial and transactional immunity and he understands
22 what he's getting?

1 CDC: Yes, Your Honor.

2 MJ: And it talks about what "cooperate fully" means. It means
3 full disclosure to the trial counsel of all information known by you
4 relating to the treatment or maltreatment of any alleged abuses at
5 the Abu Ghraib facility; the identifications of anybody that you see
6 in digital photos on a compact disk entitled "CPU Exam," in the Abu
7 Criminal Investigation Division file. I'm assuming, Mr. [REDACTED], you
8 know what that refers to, the CPU Exam, do you know what that means?

9 CDC: No, Your Honor.

10 MJ: No, I'm saying, it says a compact disk titled this.

11 CDC: Oh, yes, sir, yes, sir.

12 MJ: I don't know what it means, but I'm assuming you guys know
13 what it means, some disk that CID has.

14 CDC: Yes, sir.

15 MJ: And then testify at any Article 32 investigation, courts-
16 martial and evidentiary hearings relative to the investigation and
17 prosecution of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or anybody
18 else. Do you understand that?

19 ACC: Yes, sir.

20 MJ: Basically, you get the testimonial grant of immunity, then
21 you fully cooperate. Do you understand that?

22 ACC: I understand, sir.

1 MJ: And although it's not written in here, defense, I would
2 assume that it's also necessarily by implication the accused is also
3 subject to be interviewed by the defense counsel for the various
4 people named here.

5 CDC: Yes, Your Honor.

6 MJ: Do you understand that?

7 ACC: Yes, sir.

8 MJ: Three Charlie talks about the judge alone request, we've
9 already discussed that. Do you have any questions about that
10 provision?

11 ACC: No, Your Honor.

12 MJ: Now, there's also a second three Charlie, which I'm
13 assuming is just a typo. And what this says, the government will not
14 be required to physically produce any witness from the United States
15 to testify on your behalf on sentencing. This simply means is that
16 under R.C.M. 1001, you can have witnesses come and testify on your
17 behalf on the sentencing proceeding. And what you're saying, you're
18 not going to require the government to produce them physically from
19 the United States. Do you understand that?

20 ACC: Yes, sir.

21 MJ: But it does not preclude you from presenting that evidence
22 to the court in all sorts of other ways. You can do it by letters,

1 stipulation of expected testimony, telephonic testimony or something
2 else. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Paragraph 4 says you've talked it over with Mr. [REDACTED]s and
5 you're satisfied with his advice. Have you talked it over with Mr.
6 [REDACTED]?

7 ACC: Thoroughly, sir.

8 MJ: And you're satisfied with his advice?

9 ACC: I am, sir.

10 MJ: Five says the government initiated these negotiations, but
11 you're pleading voluntarily and freely after advice of counsel. Is
12 all that true?

13 ACC: Yes, sir.

14 MJ: Paragraph 6 will not appear to apply to this case, since no
15 specification has been amended or consolidated. I assume that's
16 boilerplate, defense, just included--it doesn't apply, true?

17 CDC: Yes, sir.

18 MJ: Basically 6 is something lawyers put in every one of these
19 things, and nine times out of ten, it doesn't apply, and it doesn't
20 apply to your case. It's just in there.

21 Paragraph 7 has got some things that we'll talk about if
22 the agreement--what could cause the agreement to be canceled. If you

1 withdraw from your guilty plea at any time, the agreement is
2 canceled. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Do you want to withdraw from your guilty plea?

5 ACC: No, sir.

6 MJ: If you change your mind, let me know, okay?

7 ACC: Yes, sir.

8 MJ: Secondly, is if you fail to plead guilty as above, or if
9 the stipulation of fact is modified without your consent or the trial
10 counsel. Now, neither one of those things has happened. If either
11 one of those things were to happen, I'll revisit this provision. Do
12 you understand that?

13 ACC: Yes, sir.

14 MJ: And lastly, in 7 Charlie, it says, if the military judge
15 refuses to accept your plea or changes your plea of guilty during the
16 trial. That means if at any point between now and when sentence is
17 announced, if you tell me anything that is inconsistent with the
18 guilty plea, I will have to reopen this inquiry. And if I can't
19 resolve the inconsistency, I will have to enter a plea of not guilty
20 on your behalf. The case returns to the point when I asked, "How do
21 you plead?" and then proceeds from there forward as a not guilty plea
22 case. Do you understand that?

1 ACC: Yes, sir.

2 MJ: So if that were to happen, you'd lose your pretrial
3 agreement and also the stipulation of fact is canceled. Do you
4 understand that?

5 ACC: Yes, sir.

6 MJ: Again, if that were to come up, we'll talk about it in more
7 detail. So far, that's not, but if it does, understand, that's from
8 now until the sentence is actually announced. Do you understand
9 that?

10 ACC: Yes, Your Honor.

11 MJ: And paragraph 8, it says that Appellate Exhibits II and III
12 are the full and complete agreements in the case and there's no other
13 agreements. Is that your understanding, also?

14 ACC: Yes, sir.

15 MJ: There isn't anything else other than what's in this piece
16 of paper, I'm holding Appellate Exhibit II and Appellate Exhibit III?
17 Is that correct?

18 ACC: They're the same thing, right, sir?

19 MJ: No.

20 ACC: Oh, yes, sir.

1 MJ: What you are holding in your hand is the same thing, but
2 you're looking at something else I'm not going to look at for a
3 while.

4 ACC: I understand, that's correct.

5 MJ: But that's the whole agreement.

6 ACC: Yes, sir.

7 MJ: Now, I'm not going to look at Appellate Exhibit III until
8 after I announce the sentence in your case. But I want you to look
9 at it now and read it silently to yourself and then tell me whether
10 that is what you and the convening authority agreed to.

11 CDC: Your Honor, can I approach the trial counsel?

12 MJ: Sure.

13 [CDC retrieved document from TC.]

14 ACC: [Accused read Appellate Exhibit III.] Yes, sir.

15 MJ: Is that what you agreed to?

16 ACC: That is, Your Honor.

17 MJ: Now, Specialist Cruz, you're going to get the benefit of
18 whichever is less, the sentence adjudged by this court or what the
19 convening authority agreed to in that document. If the sentence
20 adjudged by this court is greater than the one provided in the
21 pretrial agreement, the convening authority must reduce the sentence
22 to one no more severe than the one in your pretrial agreement. On

1 the other hand, if the sentence of this court is less than the one in
2 your agreement, the convening authority cannot increase the sentence
3 adjudged. Do you understand that?

4 ACC: Yes, Your Honor.

5 MJ: Now, have you had enough time to discuss this pretrial
6 agreement with your defense counsel? Have you had enough time to
7 talk this over with----

8 ACC: Yes, I have had enough time, yes, sir.

9 MJ: Are you satisfied with his advice concerning this pretrial
10 agreement?

11 ACC: Yes, sir.

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

13 ACC: I did, sir.

14 MJ: Did anyone try to force you to make this pretrial
15 agreement?

16 ACC: No, sir.

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

18 ACC: No, sir.

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

21 ACC: Yes, sir.

1 MJ: Are you pleading guilty not only because you hope to
2 receive a lighter sentence, but also because you are convinced that
3 you are, in fact, guilty?

4 ACC: I am, sir.

5 MJ: Do counsel for both sides agree with the court's
6 interpretation of the pretrial agreement?

7 TC: Yes, sir.

8 CDC: Yes, Your Honor.

9 MJ: Now, Specialist Cruz, I just want to go over one other
10 thing that occurred to me. When you saw the--when you told me
11 earlier about you saw some bleeding on one of the detainee's wrists
12 from the....

13 ACC: The handcuffs, sir?

14 MJ: From the handcuffs. And you said something to the effect
15 is that, "Would you stop doing this?" or something.

16 ACC: I said, "We should loosen them."

17 MJ: You were referring just to the handcuffs?

18 ACC: Yes, sir.

19 MJ: Were you referring to the continuing abuse being done at
20 the time?

21 ACC: I left right after that, sir.

1 MJ: You left right after that. But up to that point, had you
2 said anything to anybody after you joined in with everybody else to
3 indicate you didn't want to participate?

4 ACC: No, sir, I never withdrew.

5 MJ: Until--you left after the handcuff....

6 ACC: Well, that's when I physically....

7 MJ: Physically left, okay.

8 Defense counsel, have you had enough time and opportunity
9 to discuss this case with your client?

10 CDC: Yes, Your Honor.

11 MJ: And Specialist Cruz, have you had enough time and
12 opportunity to discuss your case with your defense counsel?

13 ACC: Yes, sir.

14 MJ: And have you, in fact, consulted fully with your defense
15 counsel and received the full benefit of his advice?

16 ACC: Yes, sir.

17 MJ: Specialist Cruz, I'm going to ask you to speak up a little
18 bit.

19 ACC: I'm sorry, sir.

20 MJ: I think the court reporter may have a tough time hearing
21 you.

22 ACC: Yes, sir.

1 MJ: Are you satisfied that your defense counsel's advice is in
2 your best interest?
3 ACC: Yes, sir.
4 MJ: And are you satisfied with your defense counsel?
5 ACC: I am, sir.
6 MJ: Are you pleading guilty voluntarily and of your own free
7 will?
8 ACC: Yes, sir.
9 MJ: Has anyone made any threat or tried in any way to force you
10 to plead guilty?
11 ACC: No, sir.
12 MJ: Do you have any questions as to the meaning and effect of a
13 plea of guilty?
14 ACC: Do I have any questions?
15 MJ: Do you have any questions about the meaning and effect of a
16 plea of guilty?
17 ACC: No, sir.
18 MJ: Do you fully understand the meaning and effect of a plea of
19 guilty?
20 ACC: I understand, sir.
21 MJ: Do you understand that even though you believe you are
22 guilty, you have the legal and moral right to plead not guilty and to

1 place upon the government the burden of proving your guilt beyond a
2 reasonable doubt?

3 ACC: Yes, sir.

4 MJ: Take one last moment now and consult with your defense
5 counsel and tell me whether you still wish to plead guilty. [Accused
6 conferred with his counsel.]

7 Do you still wish to plead guilty?

8 ACC: I want to plead guilty, sir.

9 MJ: Specialist Cruz, I find your plea of guilty is made
10 voluntarily and with full knowledge of its meaning and effect. I
11 further find that you have knowingly, intelligently and consciously
12 waived your rights against self-incrimination, to a trial of the
13 facts by a court-martial and to be confronted by the witnesses
14 against you. Accordingly, your plea of guilty is provident and is
15 accepted. However, I advise you that you may request to withdraw
16 your guilty plea at any time before your sentence is announced and if
17 you have a good reason for your request, I will grant it. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: Accused and counsel, please rise. [The accused and his
21 counsel stood.]

1 Specialist Armin J. Cruz, in accordance with your plea of
2 guilty, this court finds you:

3 **Of both Charges and their Specifications: Guilty.**

4 Please be seated.

5 Specialist Cruz, we're now entering the sentencing phase of
6 the trial where you have the right to present matters in extenuation
7 and mitigation, that is, matters about the offenses or yourself that
8 you want me to consider in deciding your sentence.

9 In addition to testimony of witnesses and the offering of
10 documentary evidence, you may yourself testify under oath as to these
11 matters or you may remain silent, in which case, I will not draw any
12 adverse inference from your silence.

13 On the other hand, if you desire, you may make an unsworn
14 statement. Because the statement is unsworn, you cannot be cross-
15 examined on it. However, the government may offer evidence to rebut
16 any statement of fact contained in an unsworn statement.

17 An unsworn statement may be made orally, in writing, or
18 both. It may be made by you, by your counsel on your behalf, or by
19 both.

20 Do you understand these rights?

21 ACC: I understand, sir.

1 MJ: Defense counsel, is the personal data on the front page of
2 the charge sheet correct?

3 CDC: Yes, Your Honor.

4 MJ: Has the accused been punished in any way prior to trial
5 that would be illegal punishment under Article 13?

6 CDC: No, Your Honor.

7 MJ: Has he been under any form of pretrial restraint, other
8 than the normal limitation on soldiers' movements in this theater?

9 CDC: No, Your Honor.

10 MJ: Trial counsel, do you have any documentary evidence to
11 present on sentencing?

12 TC: Yes, sir. The government would move to admit the enlisted
13 record brief of the accused.

14 MJ: The ERB of the accused has been marked as Prosecution
15 Exhibit 2 for identification.

16 Defense counsel, have you had an opportunity to review this
17 document?

18 CDC: Yes, Your Honor.

19 MJ: There are some pen and ink corrections you've made?

20 CDC: I'm sorry, sir?

21 MJ: There's been some pen and ink corrections?

22 CDC: Yes, Your Honor.

**REDACTED
COPY**

003003

COURT-MARTIAL RECORD

NAME CRUZ, ARMIN J. SPC

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL 4

EXAM. DIV. _____

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JALS-CC FORM 24, 1 OCTOBER 2000

003004

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

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

(Social Security Number)

Specialist
(Rank)

HHS, 502d MI Bn
504th MI Bde
(unit/Command Name)

US Army
(Branch of Service)

Victory Base, Iraq
(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

11 September 2004
(Date or Dates of Trial)

COMPANION CASES:

[REDACTED]

00300

US ARMY JUDICIARY

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Exhibits

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

1 MJ: Trial counsel, do you have any objection to the pen and ink
2 corrections?

3 TC: No, Your Honor.

4 MJ: Defense Exhibit, do you have any objection to Prosecution
5 Exhibit 2 for identification with the pen and ink corrections?

6 CDC: No, Your Honor.

7 MJ: Prosecution Exhibit 2 for identification is admitted.
8 Government?

9 TC: The government has nothing further, Your Honor.

10 MJ: Defense, do you have any documentary evidence to present on
11 sentencing?

12 CDC: Yes, Your Honor, I've previously handed those to the court
13 reporter.

14 MJ: Defense Exhibit Alpha, Defense Exhibit Bravo and Defense
15 Exhibit Charlie, any objection to these documents?

16 TC: No, Your Honor.

17 MJ: Before I admit them, I want a chance to review them. Are
18 the originals in Defense Exhibit Charlie, are these like computer-
19 generated stuff?

20 CDC: I'm sorry, sir, I'm not sure....

21 MJ: Well, I'm saying, Charlie is the one with the pictures in
22 it. Are there original photos that the accused would want back----

1 CDC: No, those are photocopies, Your Honor.
2 MJ: These are digital colored copies.
3 CDC: Those can go up with the record.
4 MJ: The court will be in recess while I read the documents.
5 [Court recessed at 1031, 11 September 2004, and reconvened at 1111,
6 11 September 2004.]
7 MJ: Court is called to order. All parties are again present
8 that were present when the court recessed.
9 Trial counsel, there's no objections to Defense Exhibits
10 Alpha through Charlie?
11 TC: No objection, Your Honor.
12 MJ: They are admitted.
13 Defense?
14 CDC: Your Honor, before I forget, I'd like to go ahead and offer
15 Defendant's Exhibit D for identification.
16 MJ: And that's a CD?
17 CDC: Yes, Your Honor.
18 MJ: A DVD?
19 CDC: Yes, Your Honor.
20 MJ: Do you want to play it?

1 CDC: It doesn't have to be right now. I was just going to offer
2 it and get it into evidence. We can play it right now, if you'd like
3 to do that.

4 MJ: Let's play it right now.

5 CDC: Okay.

6 TC: Your Honor, just for clarification sake, we're going to
7 play the video, VCR version of that same information. So I'm not
8 sure if you want to enter the CD, as well. Again, just to clarify
9 that.

10 MJ: We're using different technology here there, Major [REDACTED]?

11 TC: Yes, sir. There is a DVD and a VCR copy of the same
12 footage.

13 MJ: And you have VCR capability?

14 TC: Yes, sir, and the VCR is ready to go.

15 MJ: We'll play the VCR. Is it okay if we use the VCR as the
16 exhibit?

17 CDC: Yes, Your Honor.

18 MJ: Is that in your hand the exact same thing that's on the
19 VCR?

20 CDC: Yes, Your Honor.

21 MJ: Could you give that to the court reporter for insertion n
22 the record of trial, and it's easier to make copies off of that than

1 it is off the other one. It's the same. The exhibit itself will be
2 the videotape.

3 TC: Yes, sir.

4 MJ: Any objection to Defense Exhibit Delta?

5 TC: No, Your Honor.

6 MJ: Defense Exhibit Delta is admitted.

7 TC: Play the video. [Defense Exhibit D was played in open
8 court. The following is a transcript of the audio.]

9 AUDIO: The Honorable Judge [REDACTED] We thank you for the
10 opportunity to address the court regarding the sentencing of our son,
11 Specialist Armin John Cruz. We appreciate you taking the time to
12 hear us. And so out of respect of your time, we are reading a
13 prepared statement as a way to keep on track. Our purpose is merely
14 to share with you our full and substantial experience of our son's
15 character as his parents. Please consider the following about our
16 son during your deliberations.

17 Armin volunteered to serve his country, postponing his
18 education to do so. He could have chosen to complete his education
19 first, joining the Army through ROTC. However, he chose to join as
20 an enlisted soldier. He is a young man who has put his country's
21 interests in winning the war on terror before his career and his
22 interest of completing his bachelor's degree. He has done this for

1 his own deeply personal reasons not complaining or expecting special
2 treatment for his sacrifices, but also because he's a first
3 generation American and born and raised in an Army family.

4 Armin has served admirably, earning a Purple Heart and a Bronze
5 Star. He was wounded in a mortar attack and despite his heroic
6 efforts, could not save the life of his best friend and mentor in
7 Iraq. He has never refused a request that entailed putting his own
8 interests behind those of someone else. On the whole, he has been a
9 selfless, compassionate, bright, dedicated and loyal team player for
10 the Army. Please do not lose sight of the unique character of our
11 son or his service record by lumping him in with other soldiers
12 accused of wrongdoing. Contrary to some of these other soldiers,
13 Armin did not enjoy his participation in the incident. Armin has
14 taken responsibility for his mistakes. He is not passing the buck.
15 We know that Armin views this as a personal failing and regrets not
16 having the courage or conviction in the moment he chose to
17 participate in the abuse of detainees. Even though we know that our
18 son was suffering from the lingering effects of stress from combat
19 trauma and enormous pressure from being overworked in his MOS, he
20 still blames only himself for failing to follow his personal moral
21 code and Army training. Even though we know that had the proper
22 support system been made available to our son to help him deal with

1 his traumatic combat experiences, he would not now be in this
2 position. Our son, nevertheless, takes full and complete
3 responsibility for his choices without pointing fingers or lamenting
4 if only....

5 Armin's attorney, [REDACTED], has pointed out many
6 considerations for your deliberation on sentencing. We understand
7 the Army's reasoning for punishing Armin, but the Army will not
8 punish Armin more than he is punishing himself. It is our further
9 wish and prayer that you realize that Armin's choice to participate
10 in the abuse of detainees does not define his character, but only
11 contrasts it. He's a good man and a good soldier who was put under
12 enormous pressure and made a bad decision. But he has learned from
13 his experience and has vowed to overcome the poisonous effects it has
14 had on his spirit and he will overcome it.

15 What happened to the detainees at Abu Ghraib is a tragedy,
16 but we hope you see that to saddle our son with a bad-conduct
17 discharge for the rest of his life is a further tragedy. Not only do
18 we know that our son is a good man, but we have heard the remorse in
19 his voice over our countless conversations with him since this
20 incident. We respectfully ask that you give due weight to our
21 observations and we thank you for hearing our plea.

22 MJ: Defense?

1 CDC: Yes, Your Honor. We call Sergeant First Class [REDACTED].
2 Sergeant First Class [REDACTED], U.S. Army, was called as a witness
3 for the defense, was sworn, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the trial counsel [Major [REDACTED]]:

6 Q. If you would, please state your full name.

7 A. [REDACTED].

8 Q. And your unit of assignment?

9 A. HHC, 504th MI Brigade.

10 Questions by the defense [Mr. Karns]:

11 Q. Sergeant [REDACTED] if I ask you any questions you don't know the
12 answer to, just let me know, or if you don't understand the question,
13 just let me know and I'll try and rephrase it for you.

14 A. Yes, sir.

15 Q. What's your current unit?

16 A. HHC, 504th MI Brigade.

17 Q. And what's your current duty assignment?

18 A. I'm the [REDACTED]

19 Q. What's your MOS?

20 A. I'm a [REDACTED]

21 Q. And how long have you been in the Army?

22 A. 17 1/2 years.

1 Q. Have you ever been deployed before?

2 A. Yes.

3 Q. How many times?

4 A. Six.

5 Q. And did you say whether or not you're active or Reserve?

6 A. I'm active duty.

7 Q. And do you know Specialist Cruz?

8 A. Yes.

9 Q. How did you come to meet him?

10 A. He was transferred to our unit, I think, in April, and

11 that's how I met him.

12 Q. And you've come into contact with him how often since that

13 time?

14 A. Pretty much on a daily basis up until about a month ago, a

15 month and a half when he was transferred to one of the battalions,

16 but I see him now about four or five times a week.

17 Q. How is that possible?

18 A. Well, he was with HHD, he worked in the building that my

19 office is in, and then when he was with the other battalion, he works

20 in a different office, but his duties, his current duties, I see him

21 every day, or I see him four to five times a week.

22 Q. Okay, basically, what are his current duties?

1 A. He's the MWR monitor, and so I see him like in the barracks
2 or up at MWR all the time.

3 Q. What was your initial impression when you first met him?

4 A. My initial impression was, just a soldier. I didn't really
5 try to form an opinion.

6 Q. What is your opinion of him now?

7 A. As I got----

8 TC: I'd object. I just want clarification as to what type of
9 opinion, what----

10 MJ: Mr. [REDACTED] you need to focus the question, please.

11 CDC: I'll narrow it down.

12 Q. Did you have an opportunity to observe his duties?

13 A. Yes.

14 Q. How do you think he performed his duties?

15 A. He did all the tasks that he would give him in an
16 outstanding fashion. Everything was done on time. He was on time.
17 He was prompt in all the duties that he accomplished.

18 Q. Did you ever see him take initiative on anything?

19 A. Pretty much everything he did he took some kind of
20 initiative to either make sure it got done or improve the way,
21 improve on what we expected. Like we had a lot of--in our building,
22 there was a lot of maintenance issues, so we would put work orders

1 in, but they were kind of slowly getting done. So, certain tasks, I
2 personally told him to go and put the work orders in, and all of a
3 sudden, things started getting done. He built a rapport down there
4 with people who are responsible for fixing some of the stuff and came
5 up with all kinds of ideas to get things done within our building.

6 Q. So do you think he made a difference in that regard, as far
7 as getting things accomplished?

8 A. Yes. On some of the stuff, we had put repeated work orders
9 in for them, and for some reason, they didn't get done. He started
10 to get things done.

11 Q. Why did you choose Specialist Cruz to help you with that?

12 A. I think the soldiers we had to choose from that worked in
13 the MI, I thought he was more responsible.

14 Q. What was his unit's mission? What was Specialist Cruz's
15 unit's mission at that point?

16 A. Well, HHD was the Headquarters and Headquarters Detachment
17 for the brigade, so we housed all of the staff and performed all the
18 staff functions for the brigade.

19 Q. How would you describe his level of dedication to the
20 mission?

21 A. I thought he was pretty dedicated. He never--he was always
22 at work on time and he was always, you know, he was upbeat about

1 everything. He never really complained about some of the stuff that
2 some of the other soldiers were complaining about.

3 Q. How well did he get along with other soldiers?

4 A. He got along pretty well with all the other soldiers. Even
5 one of the soldiers who, they were in the same rank but she was in
6 charge of him, she's not the--she's lacking on some of her leadership
7 skills, he never even argued with her. He would just tell me about
8 some of the issues they had and I would go fix them, or either the
9 first sergeant would go fix them.

10 Q. Was he receptive to learning new things? Did you all talk
11 about those sorts of matters as far as--well, I guess, you've shared
12 some things with me about, just kind of having an NCO-to-soldier
13 talk.

14 A. Right, I would talk with him as I started to learn, you
15 know, more about what was going on. I talked to him about just
16 keeping his head up, and I talked to him as an NCO, a senior NCO
17 about, especially because he had been over here so long, about some
18 of the things that I had went through when I was deployed and I had
19 to be extended and things like that, but just to keep his head up and
20 to stay motivated and to just keep doing the right things that he was
21 doing.

22 Q. And he did that.

1 A. Yes.

2 Q. How does he treat his superiors?

3 A. I think he has an overwhelming respect for his superiors.
4 I think that, in my opinion, just the time he was in HHD, I think
5 he's kind of a reflection of his superiors. We've got some pretty
6 good leaders, the first sergeant and company commander, at the time,
7 the brigade commander and sergeant major, and then I was there. He
8 did--he looked for approval from his superiors, and I would give him,
9 you know, I would tell him, "Hey, you did a good job here." It was
10 almost like, to me, it was like giving a kid a toy at Christmas. It
11 just made him feel good knowing that his superiors said, you know,
12 good things about him.

13 Q. How was his military bearing?

14 A. Outstanding, I mean, he was always at parade rest when he
15 talked to NCOs. He always addressed people properly. He had pretty
16 good military bearing.

17 Q. How was his overall attitude?

18 A. I think he has a positive attitude, I mean, you wouldn't
19 think that he was even going through anything because he was always
20 positive. He would sit and talk about, not only would we talk about
21 military things, but sometimes talk about his civilian life and some
22 of the things he did as far as in civilian life, and how he was

1 looking forward to getting back and doing some of the things with
2 some of the social organizations that he was with.

3 Q. Have you formed an opinion as to his rehabilitative
4 potential?

5 A. I don't know if I've formed an opinion, I try not to. I
6 mean, I'm not sure.

7 Q. Would you be willing to, let me ask this, would you be
8 willing to serve with him again?

9 A. If I had a choice, I would definitely serve with him. He
10 would be one of the soldiers that I would definitely choose to work
11 with me because I think he shows initiative. I think he's
12 hardworking. I think he works hard for his leadership. I think with
13 good leadership, he's an outstanding soldier.

14 CDC: No further questions, thank you, Sergeant.

15 MJ: Trial counsel, do you have any questions of Sergeant [REDACTED]

16 TC: No, Your Honor.

17 [The witness was excused and remained in the spectator's gallery.]

18 CDC: Your Honor, we'd like to call Captain [REDACTED]
19 please.

20 [END OF PAGE.]

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

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major [REDACTED]]:

5 Q. State your full name.

6 A. [REDACTED].

7 Q. Your unit of assignment, please.

8 A. [REDACTED], 502d MI
9 Battalion.

10 Questions by the defense [Mr. Karns]:

11 Q. How long have you been in the Army?

12 A. 14 years.

13 Q. Is that active duty time?

14 A. Yes, that's active duty time.

15 Q. Prior enlistment.

16 A. Prior enlisted.

17 Q. Excuse me, prior enlisted. Have you ever been deployed
18 before?

19 A. Yes.

20 Q. How many times?

21 A. Three.

22 Q. And do you know Specialist Cruz?

1 A. I do.

2 Q. How do you know him?

3 A. He came to our unit. We hold formation every day at
4 Headquarters Company. It's at 8:30 in the morning, except for
5 Mondays, we have formation at 8 o'clock. And every morning, I see my
6 soldiers every single day, and on one particular day, I noticed that
7 Specialist Cruz arrived at [REDACTED]
8 [REDACTED] and he showed up and I spoke to [REDACTED]
9 [REDACTED] about, you know, who was this soldier? And he briefly
10 said he'd talk to me offline [REDACTED] which he then went
11 in to say that he was roughly on holdover. He didn't really know the
12 full gist of what the holdover was entailing. And at that point, we
13 found out later that he was going to be assigned to [REDACTED], that he
14 originally came from the HHD, 504th MI Brigade, and that he was in
15 part of [REDACTED]

16 Q. What was your initial impression of him?

17 A. It really wasn't any impression. I look at [REDACTED]
18 equally, and I gave him the courtesy. I went up to him, introduced
19 myself, asked him if he needed anything, you know, where was he going
20 to be staying, where was he staying currently at the time. And then
21 I spoke to [REDACTED] afterwards and said you know, "Let me
22 know if there's any problems, if he needs anything at all." And at

1 the time, we still didn't know. I personally didn't know anything
2 about what was going on.

3 Q. What duties did you assign him?

4 A. Initially, my [REDACTED] said that he was going to the
5 command sergeant major for the 502d MI and they were looking at
6 putting him in some form of position working with 51 Fox; 51 Fox is
7 the building where all the soldiers are mainly housed, a three-story
8 building. And we were trying to create a better quality of life for
9 the soldiers there at 51 Fox, because when we arrived there in
10 January, it was pretty much a gutted out building. It was in
11 shambles, and it needed a lot of attention.

12 Q. Did Specialist Cruz help you in that regard?

13 A. He did. We decided that we were going to go out and
14 purchase some equipment for the soldiers. Part of it was, in this
15 technology today, soldiers rely on email. It's a great thing for
16 soldiers to have. Also, being over here when we first arrived,
17 phones were a hard thing to come by. There was one little trailer.
18 They went up and they purchased some satellite technology, dishes and
19 stuff, and along with my soldiers, the electronic personnel, they put
20 this whole system together along with my sister battalion personnel,
21 and they put that MWR together. And it was isolated in this one room
22 inside 51 Fox, and we primarily did that because we didn't want the

1 soldiers going outside if they didn't have to, everything could just
2 stay there, the fact of--mortar attacks and stuff that was going on
3 when we first arrived.

4 Q. Did you have an opportunity to either observe him perform
5 his duties or to see his work?

6 A. Correct on both. I've seen him work and I've seen what
7 he's done. When they first started out, they initially had the MWR
8 in a really small area, and they moved it to another mezzanine on the
9 second floor to make it much bigger and to give the soldiers more
10 options. When I say "options," we had at one end the computers and
11 the phones, and then they took and they put in a bunch of electronic
12 equipment, amplifiers, speakers and a Proxima so that the soldiers
13 would be able to watch DVDs or VHS movies, they could put them up on
14 the wall and they didn't need a screen.

15 Q. How would you describe his execution of those duties?

16 A. No problems whatsoever.

17 Q. Is it more than just no problems, I mean, did he do it
18 well?

19 A. He did an excellent job. I've never had any single
20 problems since Specialist Cruz has been in my unit. He knows from
21 being in [REDACTED], along with any of my NCOs, [REDACTED] is very well

1 disciplined, and he's had no problems whatsoever, you know, came
2 right into the unit and became one of us.

3 Q. Is he a soldier that just does what he's told to do, or
4 does he take initiative?

5 A. There are times when he has actually gone above what [REDACTED]
6 [REDACTED] has asked him to do, and he's come back and shown the
7 [REDACTED] the stuff that he did. Case in point, that the
8 electronics and the Proximas, he helped out one of my fellow soldiers
9 that I had working up at MWR, was actually one of my cooks, because
10 of the fact when we deployed over here, we weren't really sure what
11 our mission was for our cooks, and we found out there was a lot of
12 contractual bids with different companies that were running the food
13 service. So, we put a couple of our cooks into different areas to
14 help out, to pick up the slack, and one of them was Specialist [REDACTED],
15 and he worked with Specialist Cruz on a daily basis.

16 Q. How well does Specialist Cruz get along with other soldiers
17 in the unit?

18 A. His relationship, what I've seen, what I've observed has
19 been, there's been no issues at all. He's gotten along with
20 everybody in the unit. My unit has taken him in. When he first came
21 to the unit because, again, I look at my unit as every soldier in my

1 [REDACTED] is my family. I'm a little older than most, and I treat it
2 that way. I treat every one of my soldiers as a part of my family.

3 Q. How does Specialist Cruz treat his superiors?

4 A. With dignity and respect; it's never unwavering. Whenever
5 I've approached him, he's popped a salute right away. It wasn't
6 something that was like, you know, very slow motion or anything like
7 that. It was very popped, "Good morning, sir. Good afternoon, sir."
8 It was always a greeting, very respectful.

9 Q. Is your experience that other soldiers don't do that?

10 A. I've had soldiers that are, I can't characterize on their
11 reasoning or why they were doing it, but I mean, I've had soldiers,
12 they could have had a bad day or whatever and they were, "Hey, sir,
13 what's going on?" that sort of stuff like that, but he never
14 exhibited anything like that.

15 Q. So, how would you describe his military bearing overall?

16 A. In the past that he's been under [REDACTED] excellent.

17 Q. His attitude?

18 A. Professional.

19 Q. And have you formed an opinion as to his rehabilitative
20 potential?

21 A. I think that, in light of what's transpired, I think that
22 he can be rehabilitated, I do.

1 MJ: That's all you're permitted to say. Go ahead.

2 Q. Would you be willing to serve with him again?

3 TC: Your Honor, we'd object to that question. It's an Ohrt
4 violation.

5 MJ: The objection is sustained.

6 Q. You are the officer who initially [REDACTED] in this
7 case?

8 A. Correct, I am.

9 Q. And you continue to put Specialist Cruz or keep him in
10 the...he's allowed to have his weapon and continued to serve in your
11 unit, sometimes unsupervised?

12 A. That is correct, because I didn't see the need for taking
13 away the part--for self defense measures, and he never exhibited any
14 type of unprofessionalism that would warrant us to take away his
15 weapon.

16 Q. So you would be willing to be in the foxhole with him?

17 TC: Objection, the same....

18 MJ: Sustained.

19 CDC: No further questions, Your Honor.

20 MJ: Trial counsel, any questions?

21 TC: No, Your Honor.

22 [The witness was excused and remained in the spectator's gallery.]

1 CDC: Your Honor, we'd like to call Sergeant First Class [REDACTED]
2 [REDACTED]
3 Sergeant First Class [REDACTED], U.S. Army, was called as a
4 witness for the defense, was sworn, and testified as follows:

5 DIRECT EXAMINATION

6 Questions by the trial counsel [Major [REDACTED]]:

7 Q. Please state your full name.

8 A. [REDACTED].

9 Q. Unit of assignment?

10 A. HHS, 502d MI.

11 Questions by the defense [Mr. [REDACTED]]:

12 Q. What's your current MOS?

13 A. My current MOS is 33 Whiskey, electronic warfare repair,
14 sir.

15 Q. How long have you been in the Army?

16 A. I've been in 19 years.

17 Q. And that's active duty time?

18 A. All active duty time.

19 Q. And how many times have you been deployed?

20 A. This is my second deployment.

21 Q. Do you know Specialist Cruz?

22 A. Yes, I do, sir.

1 Q. How do you know him?

2 A. I know Specialist Cruz from when he was assigned to our
3 unit in June. Right after he got assigned to the unit, I noticed him
4 out in the formation area, and I asked him who his platoon sergeant
5 was, and he said he hadn't really been assigned to a platoon at that
6 time. Based on my first impression of him, I told him, "Hey, I tell
7 you what, we'll put you in our platoon. I'll assign you a squad
8 leader who will look out for you, and we'll take care of you."

9 Q. So you've known him since June?

10 A. Roger, sir.

11 Q. Have you had an opportunity to observe his duties?

12 A. He works out--in my platoon, he works for us in the MWR
13 room, so I observe his duties every day.

14 Q. How would you describe his execution of those duties?

15 A. He's always executed his duties very professionally, always
16 done them to standard. Usually, he always tries to improve things
17 rather than just go with what's already happening.

18 Q. How receptive is he to you as far as any suggestions that
19 you would make to him?

20 A. He's been very receptive. Anything I've ever asked
21 Specialist Cruz to do, he's been motivated to do, never gave me any
22 issues, always willing to help out.

1 Q. How well does he get along with the other soldiers in the
2 unit?

3 A. I think he gets along excellent with the other soldiers.
4 He's developed a lot of friendships. Once he came into our platoon,
5 he immediately made himself a part of the platoon by showing he has
6 teamwork. He was always motivated to help everybody out. He has a
7 very generous personality, so any time he saw anybody performing any
8 type of detail, even though he might not have been tasked to be
9 involved, he'd always jump in to help out and give somebody a helping
10 hand.

11 Q. You mentioned something, we had talked before and you
12 mentioned something before about him packing. Can you describe that
13 for the court, please?

14 A. Sure. Before the appearance in court, we were to inventory
15 all of Specialist Cruz's gear. This is the second time I've been
16 involved in a court-martial. The other soldiers, I had to inventory
17 their gear, once we went into their area, it was usually trashed, the
18 soldiers were not prepared. Basically, we were boxing up garbage.
19 They were like, "Oh, I want to keep that, Sergeant." So we'd have to
20 pack all their junk up, and it would be totally a waste of time.
21 We'd spend 3 or 4 hours doing it.

1 When we went to do Specialist Cruz's room the other night,
2 he already had all his gear laid out dress right dress. He had got
3 down to the detail where he had his underwear, t-shirt and socks
4 rolled within one bundle so it was just like, it took us about 30
5 minutes to inventory all his gear.

6 Q. How does that make you feel as a platoon sergeant?

7 A. That makes me feel excellent. I didn't give him that
8 direction. I said, "Hey, we're going to come and inspect at this
9 time," and I told him what we'd be looking for. And once again, he
10 excelled above the standard. He took the initiative. He knew what
11 we'd be looking for. He's been in the military a few years. He just
12 went way above what I expected.

13 Q. How would you describe his military bearing?

14 A. It's been excellent ever since I've known him. Like I
15 said, the first time I met him, the first thing he did was pop to
16 parade rest. He addressed me as "Sergeant" every time he talks to
17 me. His bearing has been better than a lot of soldiers that are on
18 active duty. I know he's a Reservist. I know the situation he's
19 been in. He's never shown any disrespect toward anybody.

20 Q. How has his overall attitude been?

21 A. Once again, his attitude has been excellent. When I first
22 met him, I didn't know what the circumstances he was held over for.

1 He just seemed to be held over on some type of admin reason. He was
2 always cheerful. He always had good things to say about everybody.
3 If somebody was down, he was always one of the first guys to step in
4 and try to lighten the mood up and make people feel better. His
5 attitude toward his duties has been excellent. He's never questioned
6 anything we've asked him to do. As a matter of fact, his duties in
7 the MWR room were actually considered kind of an easier job. He's
8 inside all day. He's got computer access, TV access. But instead of
9 just riding those duties and just getting over, he comes out and he
10 volunteers to help us load connexes. He volunteers to be on escort
11 duty out in the sun all day. Anything we've ever needed, he's always
12 stepped up.

13 Q. Have you formed an opinion as to his rehabilitative
14 potential?

15 A. Yes, I have. I know a lot of his future goals are to go
16 back and get his master's degree and eventually become a teacher.
17 He's also--he still wants to remain in the military, and I think he'd
18 still make an excellent soldier. I don't think he's shown anything
19 other than being an excellent soldier. So I think he is fully
20 rehabilitatable.

21 CDC: Thank you, sergeant. Nothing further.

22 MJ: Trial counsel, anything?

1 TC: No questions, sir.

2 [The witness was excused and remained in the spectator's gallery.]

3 CDC: Your Honor, we don't have any more live witnesses, just
4 telephonic.

5 MJ: Are they ready to go?

6 TC: Yes, sir, I believe so.

7 First Sergeant [REDACTED], U.S. Army, was called as a witness for
8 the defense, was sworn, and testified telephonically as follows:

9 DIRECT EXAMINATION

10 Questions by the trial counsel [Major [REDACTED]]:

11 Q. First Sergeant, if you'd please state your full name.

12 A. [REDACTED]

13 Q. And your unit of assignment?

14 A. HHSC, 502d MI Battalion.

15 Questions by the defense [Mr. [REDACTED]]:

16 Q. [REDACTED], are you there?

17 A. Yes, sir, I'm here.

18 Q. This is [REDACTED], we've spoken before.

19 A. Yes, sir.

20 Q. Now, you're presently in Washington?

21 A. That's correct, I'm in Tacoma.

1 Q. And you're otherwise, when you're present here in Iraq,
2 you're Specialist Cruz's [REDACTED]?
3 A. That is correct.
4 Q. How long have you been in the Army?
5 A. I've been in the Army approximately 18 years.
6 Q. And is that active duty time?
7 A. That is active duty time.
8 Q. How many times have you been deployed?
9 A. I have been deployed for [inaudible].
10 Q. Now, what were Specialist Cruz's duties in your unit?
11 A. [Inaudible]
12 Q. Did you have an opportunity to observe him perform his
13 duties or to see his work?
14 A. Yes, I did observe him on a regular basis.
15 Q. And what was your observation of his duties?
16 A. [Inaudible] ...I never had to go back and check and see
17 what he was... [inaudible] ...very responsible, and then any time
18 [inaudible].
19 Q. Did you ever see him take initiative?
20 A. [Inaudible]
21 Q. How was his attitude?
22 A. I never had problems with his attitude.

1 Q. Did he get along well with other soldiers in the unit?
2 A. Yes, he always got along well with soldiers in the unit.
3 Q. Did you feel he was dedicated to the unit's mission?
4 A. [Inaudible]
5 Q. If he weren't pending UCMJ action, would you be willing to
6 assign him to other duties?
7 TC: Your Honor, object.
8 MJ: The objection is overruled.
9 WIT: [Inaudible]
10 TC: Your Honor, I just want to make sure that the court
11 reporter can hear the audio.
12 MJ: [To the reporter] Can you hear it okay?
13 REPT: [Negative response.]
14 MJ: Ask him to speak a little louder.
15 Q. First Sergeant, can you speak a little louder, please?
16 We're having a little trouble hearing you.
17 A. Yes, I can.
18 Q. Thank you. How is Specialist Cruz's military bearing?
19 A. Each time I spoke with Specialist Cruz, [inaudible].
20 CDC: [To the reporter] Are you able to hear that now?
21 REPT: [Negative response.]

1 Q. Has Specialist Cruz been receptive to any suggestions that
2 you've made to him?

3 A. [Inaudible]

4 Q. Compared to other soldiers that you've seen that have been
5 facing UCMJ action, how would you compare his attitude to those
6 soldiers?

7 A. [Inaudible]...Specialist Cruz's attitude has been
8 excellent. [Inaudible] He's maintained his military bearing and has
9 worked through all of this.

10 CDC: Thank you, First Sergeant. No further questions.

11 TC: No questions, Your Honor.

12 [The witness was excused and the phone call terminated.]

13 CDC: Your Honor, would there be any objection to offering also
14 the stipulations of expected testimony just to make sure that....

15 TC: No, Your Honor, not from the government, sir.

16 MJ: No, not at all. Well, you have no objection?

17 TC: Sir, I have no objection.

18 MJ: I have no objection.

19 [END OF PAGE.]

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

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major [REDACTED]]:

5 Q. Please state your full name.

6 A. [Inaudible]

7 Q. Sergeant [REDACTED], we're going to ask you to speak up a
8 little louder so that the military judge can hear your answers.

9 Could you state your unit of assignment, please?

10 A. [Inaudible.]

11 CDC: Your Honor, may I offer a suggestion? It sounds like he
12 may be on a cell phone. Is there a land line that we can call him
13 and ask him that?

14 MJ: Is he on a cell phone?

15 Q. Sergeant [REDACTED] it sounds like you're on a cell phone.
16 Is that the case?

17 A. Yes.

18 Q. We're going to let you talk to our tech guys, and can you
19 give us a good land line that we can call you on?

20 A. This is the only...I have.

21 Q. I'm sorry?

22 A. This is...only I have right now.

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1 MJ: I don't think this is going to work, Mr. [REDACTED].

2 CDC: I agree.

3 MJ: Do you want to use the stipulation of expected testimony
4 for this witness?

5 CDC: Yes, Your Honor, if that's okay with Specialist Cruz.

6 MJ: He's just breaking up, or we could wait until he finds a
7 land line.

8 CDC: I don't think--it's a matter of a phone company coming out
9 for the land line, unless he went out and drove somewhere.

10 MJ: Why don't you excuse the witness?

11 [The witness was excused and the phone call terminated.]

12 You have one more telephonic?

13 CDC: Yes, sir.

14 MJ: Mr. [REDACTED], lead the witness a little bit more and we'll get
15 shorter and maybe "yes" or "no" answers.

16 CDC: No problem, Your Honor.

17 Staff Sergeant [REDACTED], U.S. Army, was called as a witness
18 for the defense, was sworn, and testified telephonically:

19 DIRECT EXAMINATION

20 Questions by the trial counsel [Major [REDACTED]]:

21 Q. State your full name.

22 A. [REDACTED]

1 Q. And Sergeant [REDACTED] if you could spell your last name,
2 please?

3 A. It's spelled [REDACTED]

4 Q. Thank you, and if you would state your unit of assignment.

5 A. It's Delta Company, 321st [inaudible].

6 MJ: Mr. [REDACTED], I recommend you keep the questions short,
7 because I'm having difficulty hearing this guy.

8 CDC: Yes, Your Honor.

9 Questions by the defense [Mr. [REDACTED]]:

10 Q. Sergeant [REDACTED], you've known Specialist Cruz since you all
11 first came in country, or did you all meet in Abu Ghraib?

12 A. He came to Iraq [inaudible].

13 Q. I'm not sure I understood your answer on that. When did
14 you first meet Specialist Cruz?

15 A. I first met Specialist Cruz in Dallas.

16 Q. Oh, okay, my apologies. So you've known him for how long?

17 A. Oh, let's see, about [inaudible].

18 Q. Now, you all served in Abu Ghraib together, and when you
19 were at Abu Ghraib, there was a mortar attack?

20 A. Yes, that's correct.

21 Q. And Specialist Cruz was there with you during the attack?

22 A. Yes, he was.

1 Q. And there were several soldiers injured in that attack,
2 correct?
3 A. Yeah, a couple dozen injuries [inaudible].
4 Q. And two soldiers were killed?
5 A. That's correct.
6 Q. And one of those soldiers was very close, not only a
7 section leader, but Specialist Cruz was very close to that soldier?
8 A. That is correct.
9 Q. And that was Sergeant [REDACTED]
10 A. Yes.
11 Q. Now, when the first mortar hit, you all hit the ground?
12 A. There were three of us, Chief [REDACTED] [inaudible] all in a
13 tent.
14 CDC: Could you hear that, Your Honor?
15 TC: Your Honor, I suggest on this witness, I believe he will
16 have a land line. We could take those 2 minutes and reconnect to a
17 landline.
18 MJ: Let Major [REDACTED] do this, Mr. [REDACTED].
19 TC: Sergeant, this is Major [REDACTED] again. Do you have a
20 landline, don't tell me the number yet, but do you have a land line
21 that we can call you back on?
22 WIT: [Inaudible.]

1 TC: I apologize. [To the witness] Thank you, we're having a
2 little difficulty making out some of your answers just because of the
3 connection. So, if you could speak as clearly and as loudly as
4 possible.

5 WIT: Yes, sir.

6 MJ: Repeat the last question, Mr. [REDACTED]

7 CDC: Frankly, Your Honor, I don't know where I was.

8 MJ: What happened when the mortar hit?

9 CDC: Thank you, sir.

10 **Questions by the defense [continued]:**

11 Q. Sergeant, when the first mortar hit, you all hit the
12 ground?

13 A. Yes, sir.

14 Q. And then you all were scrambling to get your gear?

15 A. Yes.

16 Q. When I say "your gear," your body armor and your helmets
17 were in another tent?

18 A. We were [inaudible].

19 Q. And that night, you all were getting ready to start work
20 and you were without your gear, and then a second mortar hit by the
21 time you all started to get up after the first one?

22 A. That's correct.

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1 Q. Now, before you got up, was Specialist Cruz bringing
2 another injured soldier back to you?

3 A. Right, he was bringing our teammate at the time, Staff
4 Sergeant [REDACTED], back into the tent.

5 Q. And Sergeant [REDACTED] had been hit, as well as Specialist Cruz?

6 A. I'm sorry, sir?

7 Q. Sergeant Cruz [sic] was hit, as well as Sergeant [REDACTED]?

8 A. Yes, correct.

9 Q. And then you began treating Sergeant [REDACTED]

10 A. Yes.

11 Q. And Specialist Cruz then said, "I'm going to go back out
12 there."

13 A. Yes.

14 Q. And when you got done attending to the needs of Sergeant
15 [REDACTED] you went out there and you saw Specialist Cruz attending to
16 Sergeant [REDACTED]

17 A. Yes, Specialist Cruz, along with several other individuals,
18 at that time, I was taking Staff Sergeant [REDACTED] into the building
19 [inaudible].

20 Q. And you observed Specialist Cruz performing chest
21 compressions on Sergeant [REDACTED]

1 A. Yes, I did. When I took Sergeant [REDACTED] over to the medic
2 [inaudible] and Specialist Cruz along with the medic [inaudible]
3 vehicle, and I at that time [inaudible] Specialist Cruz and I were
4 [inaudible] medic, each other as [inaudible], when he could, that he
5 was being attended to and keeping him conscious, alive.

6 Q. Could you briefly describe Sergeant [REDACTED] injuries?

7 A. Yes. [Inaudible], when the mortar hit. Much of the damage
8 that occurred happened to his right side, primarily the upper body.
9 Also, it had roughly [inaudible] hole in his front [inaudible].

10 Q. I'm sorry, Sergeant. He was hit in the head, the neck,
11 approximately how many times?

12 A. It shredded his right upper torso, was very [inaudible].

13 Q. You said his right upper--his lower arm, right arm was
14 blown off, is that correct, and the remainder was shredded?

15 A. I believe that is correct.

16 Q. And you've heard Specialist Cruz saying encouraging things
17 to Sergeant [REDACTED]

18 A. Yes, he was very positive. He was very encouraging. He
19 was with [inaudible].

20 Q. When you're saying it was nonstop, he was telling him,
21 "You're going to make it. You can do this. We're here for you.
22 Hang in there."

1 A. Yes, exactly.

2 Q. And then, you all loaded him up and he was taken away, then
3 you all continued to tend to the other injured soldiers?

4 A. Yes, correct. What he did was he took off with the vehicle
5 that Specialist [REDACTED] was in the back of [inaudible] procedures.
6 He asked to be [inaudible] of that vehicle [inaudible] to the helipad
7 and continued [inaudible] and the others on the helicopter to be
8 EVAC'd to Cropper and BIAP and [inaudible].

9 Q. And then after you all attended to the other soldiers, you
10 went to the hospital or at least at some point learned that he was
11 dead on arrival at the hospital, and then took another chopper ride
12 to the morgue facility where he was?

13 A. Correct, sir.

14 Q. And is that something that Specialist Cruz had wanted to
15 do?

16 A. Yes. Armin wanted very much to see that [REDACTED] had the
17 best possible care given to him and that [inaudible] the deceased.
18 He wanted to follow on and make sure he was put to rest properly in
19 his interim rest place.

20 Q. And was Sergeant [REDACTED] was Specialist Cruz close to
21 Sergeant [REDACTED]

22 A. Yes, very close.

1 Q. I'm sorry?

2 A. Yes, they were.

3 Q. After this, was there a time when Specialist Cruz went to
4 his chain of command, I say specifically Sergeant First Class
5 [REDACTED] to ask him for help to deal with his experience after this
6 mortar attack?

7 A. There was one time, specifically, where Specialist Cruz
8 [inaudible] Sergeant First Class [REDACTED] and [inaudible] spoken with
9 everybody who [inaudible] Specialist Cruz [inaudible].

10 Q. Okay, so he did seek help, but it is my understanding that
11 the combat stress team may have come out, but it was more like they
12 addressed everyone as a group, whereas Specialist Cruz was seeking
13 out more individual attention that was never given to him?

14 A. Correct, as I understand it.

15 Q. Well, you went with him, correct, to ask for that help?

16 A. Yes, I'm his--Sergeant [REDACTED] and myself were along with
17 Specialist Cruz. We were all being mortared. Sergeant [REDACTED] and
18 his folks [inaudible] so we were [inaudible].

19 Q. Okay, but essentially, to put it in your words, you all
20 were laughed off.

21 A. Sorry, sir?

1 Q. I don't want to put words in your mouth, but it's my
2 understanding that your feeling is is that when you all approached
3 the chain of command, that you were essentially, and when I say chain
4 of command, Sergeant First Class [REDACTED] he was the point of contact
5 for that, and you all were, essentially, laughed off.

6 A. I would say as much, sir. [Inaudible] his response perhaps
7 was more like, "Oh, what do you want me to do?" [inaudible] help you
8 or whatever. That was the [inaudible] that was conveyed.

9 Q. Okay, and you all were short of soldiers, at least military
10 analysts, correct?

11 A. I'm sorry, sir?

12 Q. You were short on military analysts, correct?

13 A. Yes, from what I saw [inaudible] very similar [inaudible]
14 and as it turns out, the leadership [inaudible] that we did have and
15 move them to different work schedules [inaudible]. That's how myself
16 and Sergeant [REDACTED] and our team [inaudible] I think at least
17 [inaudible].

18 CDC: Okay, thank you, Sergeant. No further questions.

19 TC: Sir, the government has no questions.

20 [The witness was excused and the phone call was terminated.]

21 MJ: I understand, Mr. [REDACTED] is you have stipulations of
22 expected testimony of all three of these witnesses?

1 CDC: Yes, Your Honor, may I approach the court reporter?
2 MJ: Please.
3 CDC: And I'd like to go ahead and offer these. I believe
4 they've been marked.
5 MJ: Out of an abundance of caution, because on some of the
6 telephonic testimony, at least as far as the two we took, it would
7 appear that most of it the court reporter could get. But Mr. [REDACTED],
8 would it be fair to say these stipulations of expected testimony, in
9 particular, Defense Exhibits Echo and Golf, accurately reflect and
10 actually reiterate what they said over the phone?
11 CDC: Yes, Your Honor. Your Honor, I'd like to call Specialist--
12 yes, Your Honor. No further witnesses, Your Honor.
13 MJ: No, you can call Specialist Cruz. I've just got to go over
14 something with him.
15 CDC: Yes, Your Honor.
16 MJ: I just want to give him a second.
17 CDC: Yes, Your Honor.
18 MJ: Do you want a break, Specialist Cruz?
19 ACC: Yes, Your Honor.
20 MJ: The court will be in recess.
21 [Court recessed at 1206 and reconvened at 1219, 11 September 2004.]

1 MJ: Court is called to order. All parties are again present
2 that were present when the court recessed.

3 Mr. [REDACTED] you wanted just to pick up the stipulation of
4 expected testimony?

5 CDC: I'm sorry, sir, I'd like to....

6 MJ: You wanted to introduce the stipulation of expected
7 testimony?

8 CDC: Yes, Your Honor.

9 MJ: And would it be fair to say, in case there is a slight
10 transcribing problem, that these are accurate, almost substantially
11 verbatim summaries of what the witnesses actually testified over the
12 phone?

13 CDC: Yes, sir.

14 MJ: I need to go over these with Specialist Cruz. Specialist
15 Cruz, did you sign Defense Exhibits Echo, Foxtrot and Golf?

16 ACC: Yes, sir.

17 MJ: Did you read each of these stipulations before you signed
18 them?

19 ACC: Yes, sir.

20 MJ: Do you agree with the contents of the stipulations?

21 ACC: Yes, sir.

1 MJ: Before signing these stipulations, did your defense counsel
2 explain the stipulations to you?

3 ACC: Yes, sir.

4 MJ: Do you understand you have the absolute right to refuse to
5 stipulate to the contents of these documents?

6 ACC: Yes, sir.

7 MJ: You should enter into these stipulations only if you
8 believe it's in your best interest to do so. Do you understand that?

9 ACC: Yes, sir.

10 MJ: Now, I want to ensure you understand how these stipulations
11 are to be used. When counsel for both sides and you agree to a
12 stipulation of expected testimony, you're agreeing that, in Defense
13 Exhibit Echo, First Sergeant [REDACTED], Defense Exhibit Foxtrot,
14 Staff Sergeant [REDACTED], and Defense Exhibit Golf, Staff Sergeant
15 [REDACTED] were present in court and testifying under oath, they would
16 testify substantially as set forth in these stipulations. These
17 stipulations do not admit the truth of the person's testimony. The
18 stipulations can be contradicted, attacked or explained in the same
19 way as if that person was testifying in person. Do you understand
20 that?

21 ACC: Yes, sir.

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1 MJ: Now knowing what I just told you and what your defense
2 counsel earlier told you about these stipulations, do you still
3 desire to enter into the stipulations?

4 ACC: My only question, sir, is for the two that you could
5 understand, they're the same thing, so....

6 MJ: What it will be, Specialist Cruz, is that I will consider
7 both the testimony and also the stipulations, and as some of them may
8 repeat what I heard. In fact, most of it will repeat, I will just
9 consider them both.

10 ACC: Yes, sir, I understand.

11 MJ: Do you have any objection to me doing that?

12 ACC: No, sir.

13 MJ: Trial counsel, do you concur on the contents of the
14 stipulations?

15 TC: We do, Your Honor.

16 MJ: Do you have any objection to the stipulations?

17 TC: No, sir.

18 MJ: Defense Exhibits E through G are admitted.

19 Defense?

20 CDC: Yes, Your Honor, we'd like to call Specialist Cruz for an
21 unsworn statement.

22 MJ: Proceed.

1 [The accused took the stand for an unsworn statement.]

2 **UNSWORN STATEMENT**

3 **Questions by the defense [Mr. [REDACTED]]:**

4 Q. Specialist Cruz, why did you join the Army?

5 A. Sir, I joined the Army because of some privileges I was
6 given at an early age. I was able to travel to Guatemala, Central
7 America and Europe, France and England, Germany, and I noticed that
8 our country is given a lot of freedoms that we take for granted, and
9 I felt a really deep need inside myself to serve. That's the biggest
10 push for it, it was just an inner push. It wasn't for a GI Bill. I
11 joined when I was a junior in college, sir. It wasn't for money. I
12 didn't get a bonus or anything. It wasn't for a kicker or anything
13 like that. I joined because my father served, because my father came
14 from Cuba. I can't say my forefathers served, but I have a very
15 patriotic sense inside me, sir, and I felt I should, and that's the
16 only reason.

17 Q. When did you join?

18 A. I joined the Delayed Entry Program in September of 2000 and
19 went to basic training in January of '01.

20 Q. And you're in school right now when you're not here?

1 A. When I'm back home, I would be a senior at UT Dallas
2 pursuing a double major in history and literature and a minor in
3 American public education.

4 Q. What do you do when you're not doing the Reserves or going
5 to school?

6 A. Of course, because of the Army and other things, I work out
7 a lot. I rock climb, I swim. I used to be a lifeguard, I used to
8 swim. I also have a black belt in Tae Kwon Do; I'm a martial artist,
9 competed in wrestling and football.

10 Q. Now, you went to basic at Fort Leonard Wood and then AIT at
11 Fort Huachuca?

12 A. Yes, sir.

13 Q. Then how did you do on your test at AIT?

14 A. At AIT, all but two tests I maxed out at 100 percent or
15 better.

16 Q. Now, how did you come to Iraq? How did that come about?

17 A. I was on the way to a study group at UT Dallas. My
18 commander called my cell phone and asked if I wanted to go to war.
19 He said that he needed to change so many personnel from his unit to a
20 different unit in New England and asked if I wanted to go, and made
21 clear that, since I was a graduating senior, he wouldn't make me go.
22 I went into the study group, told them what the deal was, I said,

1 "Listen guys. I'm sorry, I just literally got a call. I'm going to
2 accept it." I called my commander and said, "I volunteer." I was
3 eligible for a deployment at that time, approximately 4 months, and I
4 told my commander, "I'm not going to miss out on the first fight the
5 country needs me to be in just because I'm about to graduate. School
6 will be there when I go home, sir."

7 Q. Now, you got cross-leveled to another unit, and that was in
8 March of '03?

9 A. That was in March of '03. It's the 325th MI Battalion.

10 Q. And then you came in country in April of '03?

11 A. Roger.

12 Q. What was your unit then at that point?

13 A. It was the 325th MI Battalion underneath the 205th MI
14 Brigade.

15 Q. And when you came in country, where was your starting point
16 and where did you go first after that?

17 A. We started at Camp Virginia, Kuwait. I wasn't there very
18 long, I believe 2 weeks at the most. And then I volunteered to be on
19 the advanced party as a 60-gunner. It was just three vehicles from
20 our battalion tacked on to another unit's advanced party. We trailed
21 up on them and went straight up to Balad and checked the route. I

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1 wanted to get out there as quick as I can and do my job well, and
2 volunteered to be a gunner, even though I'm MI.

3 Q. How long was the convoy ride up?

4 A. Three days.

5 Q. And so your first stop was Balad?

6 A. No, we first stopped, I don't remember all the stops. We
7 stopped in Scania, which is south of here. We stopped somewhere
8 between Scania and there. It was so long ago, I can't remember the
9 exact stop, but we drove for about 12 hours the first 2 days and then
10 about 5 or 6 hours the third day.

11 Q. And your first assignment, I won't say your first
12 assignment, but your first destination was Balad.

13 A. My first duty position and destination or base was Balad
14 Air Base.

15 Q. And what did you do there?

16 A. I was just part of an analytical cell. It ended up being
17 pretty temporary. I was only there for a few weeks until they pushed
18 me west to Ar Ramadi.

19 Q. And when did you get there?

20 A. Late April, early May, but I'm going to go with late April.

21 Q. And did anything significant happen in May while you were
22 there?

1 A. Yes. It was my first experience with being shot at and
2 insurgencies and war. We all slept up on the roof in Ramadi, tried
3 to beat the heat and escape it. There was one day, I was recovering
4 from a night duty. I was sleeping a little bit in the morning, and I
5 heard a whiz while I was sleeping in my cot up on the roof. I had no
6 idea what it was, and I just passed it off and didn't worry about it.
7 And then I heard another whiz and I looked at another guy that was up
8 there with me, a fellow soldier, and I said, "Did you hear that?"
9 And he said, "Yeah, I have no idea what it was, though." And we both
10 heard it that time, a snap, a very, very, distinct, and I can't
11 describe it except for quoting a movie, "Blackhawk Down," a just very
12 distinct air popping sound. We both rolled over onto the roof, the
13 floor, and crawled up against the retaining wall, and we heard a few
14 more snaps, I believe two, and we were clueless. We were clueless,
15 we didn't know what to do. We started devising a plan to go against
16 this guy, and it later turned out that he was shooting from right
17 across the street from where we were in an elevated position. And
18 while we were planning out a react to contact plan, to be quite
19 honest, I'm glad we didn't. Because in a sniper position, if we
20 would've popped up, I believe we would have just been picked off.
21 Q. So you learned the difference between a whiz and a snap at
22 that point?

1 A. I learned the difference between a whiz and a snap.

2 Q. The difference....

3 A. The whiz is, as it was explained to me when I was with 3d
4 Cavalry, is when it's in your general area and it's just going by.
5 But the snap is when, they said, is breaking the sound barrier near
6 your ears. So, it's kind of like a mini sonic boom in a bullet, it's
7 just right next to you. That's how you know you're being engaged,
8 they say.

9 Q. And then June, was there another incident that you would
10 like to share with the court?

11 A. In June, I was on a convoy back from BIAP going towards,
12 back to home in Ar Ramadi. It was the first time I went on a convoy
13 that I had a bad feeling, and I went on convoys often. I was part of
14 a team that went out three, four times a week, minimum. And it was
15 the first time I looked at the 203 gunner, I believe it is, with the
16 grenades that go under the M-16, and I said, "Hey, man, I don't have
17 a good feeling about this one. Why don't you pop an HE round in
18 there, a high explosion." And everyone, you know, was razzing me a
19 little bit saying, "When was the last time you felt good about a
20 convoy? The threat is there," etceteras. But I didn't have a good
21 feeling, and I can't explain why it is. That's the only time I've
22 been on a convoy when I didn't have a good feeling. And never since

1 has that same feeling come back. Anyway, on the way back, I'm
2 sitting on the back driver's side near the tailgate of a 5-ton, and I
3 feel this heat slap on the back of my neck. I mean, the only way I
4 can describe it is if your hand was really hot and you just hit me
5 really hard on the back of the neck. I turned. I didn't realize
6 what it was, and I saw an explosion to the front and left of the
7 front vehicle. I put two and two together later on and figured out
8 it was an RPG that flew right by us and exploded just off the road.
9 I turned, and on a firing position on my knee and was scanning trying
10 to find the target, and I found him. He was semi-concealed behind a
11 sand berm, and he fired another RPG. It was a four-vehicle convoy
12 and it barely missed the trail vehicle. The front vehicle and the
13 trail vehicle both had a little bit of shrapnel on the doors. I got
14 my sight picture. I rose my weapon up, and I've gotta tell you, I
15 had a perfect sight picture. I wasn't hitting anything, and I didn't
16 know why. So what I did was I dropped my weapon down and found my
17 line of fire in the sand, and I rose it up until I saw the target
18 fall down. And then I picked up, I looked around. I knew we were
19 taking small arms fire, but I didn't know from where. I couldn't
20 find that target. To this day, I can't tell you where he was. But
21 in effect, when I hit him and he fell down, he had another RPG tube

1 on his shoulder, and I was able to take him out before he shot it off
2 at us.

3 And I want to take a quick second, I know it's
4 understandable and whatnot, talking about the attacks and talking
5 about my buddy dying is something to this day that was really hard,
6 and I apologize.

7 Q. At Ramadi, did you all ever encounter any other mortar or
8 RPG attacks?

9 A. It was often, and at that point, it was the most I've ever
10 seen. It was every few nights; it wasn't every night. And it was
11 three or four at a time, rockets, mortars, bombs. We've seen suicide
12 bombers come up to the gate, and luckily, I was nowhere near the gate
13 at the time. There's been holes blown in our walls, really big holes
14 from like 122s. It was intense. We saw a lot of HMMWVs right
15 outside where our building was just get destroyed. We saw a mortar
16 land on the building next to us that was housed by MPs. We saw our
17 water blivits get destroyed and us have to go without water for a
18 while. It was already rationed, and then it got rationed even more
19 when water--I don't know what the proper term is, but the plastic
20 blivit that goes on the back of the truck, that was our water supply
21 at the time. We didn't have water bottles or anything, and
22 everything around us was getting blown up.

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1 Q. Specialist Cruz, were you still able to, or at this point,
2 did you start performing duties under your MOS?

3 A. Close to MOS, it wasn't my MOS. I was assigned to an
4 operational management team, which is known to--who supported
5 tactical HUMINT teams. I went out with the teams and worked with the
6 teams, they were talking to people that wanted to help us, give us
7 information. The part that was my job was, I was in an analytical
8 cell, and my duties were to evaluate the threat, do predictive
9 analysis on the threat, and give that to the teams and the team
10 chiefs so they can better do their job and find who they need to be
11 talking to about what subversive groups to save our lives.

12 Q. And after Ramadi, you went to BIAP?

13 A. After Ramadi, and actually, one of the documents there they
14 got published there when I went to BIAP.

15 Q. And was there an incident there that you want to share with
16 the court?

17 A. Pardon me?

18 Q. I said incident, was there a time where you assisted with
19 some other soldiers who had come under attack?

20 A. At Ramadi?

21 Q. At BIAP.

22 A. At BIAP?

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1 Q. Where you radioed.

2 A. There was one incident. I just got to BIAP and I was put
3 on a nightshift in the analytical cell again supporting the Corps
4 Interrogation Facility, or the CIF. My duty there was to help
5 establish and to find intelligence gaps. Whatever the interrogator
6 needed to know about any given subject, our job as analysts was to
7 research and find it and then disprove or prove whatever the detainee
8 or source, depending, was saying. One night on night duty, our job
9 on nightshift was, in addition to that, check the commander's emails
10 and make sure nothing is popping up on a SITREP, monitor the radio
11 and telephone if anything comes through to wake him up. Well, I
12 heard this call come in on the radio and it was one of our guys in
13 the headquarters battalion got ambushed. His vehicle got hit by an
14 IED, and they weren't able to get any help. Either no one could or
15 no one would--no one could hear what they were saying on the radio.
16 I got on the radio and I asked who they were. I found out it was our
17 guys. I called up to HQ up north in Balad, arranged with a CW5 that
18 was in the office at the time who worked dayshift. He was just
19 coming in, rescue operations, got the nine-line. I called up and got
20 helicopter support, air support because they were still taking fire,
21 and called the HQ to call--because I couldn't do this myself, to get
22 flatbeds and a ground force out there to secure the perimeter and get

1 the truck that was completely disabled the heck out of there and get
2 our Jo's away from being fired at. I wasn't there, but you could
3 hear a lot of things in the background, and it was terrible.

4 Q. After BIAP, you went to Abu Ghraib?

5 A. I went to Abu Ghraib after BIAP.

6 Q. And it was about mid-September?

7 A. Mid-September.

8 Q. And you were in Abu Ghraib from that time to about....

9 A. Mid-January when I went home on leave.

10 Q. You all were under constant mortar attacks?

11 A. For a long time, it was almost every day. You can look
12 that up in the news or in the reports or anything. It was way more
13 intense than Ramadi, and I thought that's about as bad as it can get.
14 It was during combat operations in Ramadi; the war was actually going
15 on. When I got to Abu Ghraib, I knew that we were getting hit a lot.
16 I didn't realize how much until I got there. The first day we got
17 there, I unpacked my stuff. It was like an hour later after I walked
18 around where my living area is, found out where the showers, if there
19 was any, and the port-a-johns were. And I noticed a tail fly over
20 right outside our door, and it was hitting the guard towers and the
21 MPs were firing back. They fired several RPGs, three or four.
22 Mortars were going off. I ran and grabbed my crap, my body armor, my

1 helmet and my weapon and I just stood there in case someone told me
2 what to do. I didn't have a clue. The base was attacked the first
3 day I got there and then all the time, all the time.

4 Q. Now, testimony has already been presented regarding the one
5 mortar attack where you were injured. After that mortar attack, did
6 you do anything to ask for help?

7 A. Sergeant [REDACTED]--I'm sorry, Sergeant [REDACTED] talked about
8 how Sergeant [REDACTED] death affected him. I went up with Sergeant
9 [REDACTED] and I asked for help. I asked to speak with a combat stress
10 team. I asked to speak to a psychologist. I asked to speak to
11 anyone to tell me that these things I was feeling, these dreams I was
12 having, even things I was seeing when I was wide awake were normal.
13 And I said to him, Sergeant [REDACTED] I was like, "I know where I'm
14 going. This is not a good place. I want to talk to somebody."

15 Q. And did you ever get that help?

16 A. I didn't, and in fact, the first couple times, he just
17 laughed at me. He said, "What do you need this for? What am I
18 supposed to do?" He was, at the time, the senior enlisted person at
19 AG that I could report to, very senior. After a while, I started to
20 wonder to myself if this was about duty performance and him worrying
21 about losing someone that can write reports or do work or anything
22 and I approached him and I said, "Sergeant, if you're worrying about

1 me wanting to leave AG, if you're worried about me, you know, not
2 working or anything, I'll do this on my down day. If you send me on
3 a convoy to BIAP, I'll do this on my down day. I don't want to leave
4 AG, I don't want to stop working. I need to talk to somebody about
5 what's going on," and I was still shot down.

6 Q. Specialist Cruz, on October 25th, the incident there with
7 the detainees, the next day, what did you do?

8 A. The next morning after a brief about, as I just said,
9 numbers of reports and how we're not producing, took a break and I
10 went straight down to the hard site, found the dayshift NCOIC,
11 Sergeant [REDACTED], and reported what happened the previous day.

12 Q. Now, when did you first learn that you were under
13 investigation?

14 A. Late January, January 22d, plus or minus.

15 Q. And so that was when you were on R&R?

16 A. I was on leave at home. If I remember right, I left on the
17 17th and I was called for an investigation a few days later.

18 Q. And that's when you got in contact with me.

19 A. I went and met the investigator, had an interview with him
20 the first day, expressed my willingness and desire to help with this
21 investigation, to get it over quickly. We talked for a few hours,
22 and then I said I wanted to get an attorney and could we continue

1 this investigation tomorrow, the rest of it. It was on a weekend, I
2 think it was a Saturday, the first day, and the second day would be
3 on a Sunday. I went home. I retained [REDACTED]. I went in the
4 second day, ensured that the investigator had fax number, telephone
5 number, email, every contact method possible to get a hold of Mr.
6 [REDACTED] my email address, my unit information. And then I expressed
7 again, "I want to be talked to. I want to help you out. The only
8 thing is I just want a lawyer next to me, but I want to tell you
9 anything."

10 Q. Now, that was in January, and then you came back to Iraq in
11 January?

12 A. I think it was late January, it would be 2 weeks, so yeah.

13 Q. And then you gave me your chain of command contact
14 information.

15 A. I did.

16 Q. Then we contacted your chain of command to let them know
17 that I represented you in regard to the allegations and that you were
18 willing to cooperate and to tell us who the trial counsel was on the
19 case?

20 A. Right.

21 Q. And then changing the units a couple times, and we
22 continued to make that contact.

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1 A. Every time I changed units, I went through the same mission
2 template. I got the entire chain of command's emails from--if I had
3 a platoon sergeant like I do this time, first sergeant, commander,
4 battalion commander, now that I have one, but when I was at HHD, I
5 didn't have one, just the brigade commander, and brigade sergeant
6 major. I emailed every single one of them, expressed my willingness
7 to help in this investigation, expressed my willingness and desire to
8 make this as quick as possible.

9 Q. And then early on, we got an email back from Colonel
10 ██████ the brigade commander as well as the brigade judge advocate
11 that basically just said, or either didn't respond or they'd just
12 say, "We'll get back with you."

13 A. Right, it was Colonel ██████, though, and yeah, the response
14 was, to use a military term, standby to standby.

15 Q. And then it wasn't until July 9th that we got an email from
16 the government stating, asking if you wanted to cooperate.

17 A. This is correct.

18 Q. And that's when you were allowed to begin your cooperation.

19 A. Yes.

20 Q. Okay. Now, Specialist Cruz, your unit left in March?

21 A. March 17th.

22 Q. 2004.

1 A. Right.

2 Q. And you've been extended.

3 A. Yes.

4 Q. Moving away from that, can you tell us some people that are
5 important to you?

6 A. Very clearly, Sergeant [REDACTED] is very close to me. We had a
7 very traumatic event together. We, on many levels, are almost like
8 brothers, even though he's old enough to be my father. He's one of
9 the few people I can talk openly, still emotionally, but openly about
10 what happened that night. Of course my father, he's like a hero to
11 me, an extremely intelligent man. He's a West Pointer. I admire
12 him, my mother and sister. But there's this little boy that I serve
13 a godfather-type role to. His name is [REDACTED], and I've been with
14 him since he was approximately just around 2 years until now, he's 5,
15 turning 6 in January.

16 Q. Specialist Cruz, what are your future goals?

17 A. As soon as I get home, I want to finish that undergrad
18 degree in history and lit. I want to pursue a minor in education; I
19 want to teach. I feel I can turn people on to education. I've been
20 working with kids for community service since I was 11 years old,
21 1991. I also want to apply to grad school, and there's still two
22 routes I'm still debating between. One is, honestly, legal, and the

1 other is graduate school and postgraduate and the history, humanities
2 and education field. I feel that's my calling. I've worked with
3 kids since I was a kid.

4 Q. Would you like to continue in the Reserves?

5 A. I would very much so. Coming to Iraq, when I came into
6 Iraq, I was dead set on joining ROTC. And even a long time into the
7 Iraq conflict, I was dead set on going to ROTC, but while that view
8 has changed, the view of me being in the Army has not. I think I'd
9 be better suited as an NCO, as a sergeant. I love being with the
10 troops. I love motivating them. I love taking care of them. I've
11 made decisions under really stressful conflicts, on react to contact,
12 as we say. I think I can really be a good NCO.

13 Q. Is there a statement that you'd like to read to the court?

14 A. There is a statement. The events that occurred are clearly
15 outlined in detail in the stipulation of fact that I signed, and I
16 accept full and total responsibility for my actions. As far as my
17 actions are concerned, the buck will stop here. I clearly recognize
18 the fact that I was in the wrong and have had since last October to
19 think about it. I assure you that not one day has gone by that this
20 tragedy has not haunted me. The statement reads double true since
21 January until now, as this is the time that I was approached and
22 asked to make a statement. I have been until a short while ago been

1 in a virtual black hole, not knowing my fate or what would happen,
2 and all I had were my thoughts and my shame to face. Believe me, in
3 nearly every conversation to my parents back home this came up. I'm
4 deeply apologetic for the actions that took place on that night in
5 the prison. And I assure you, sir, that over 10 months of thinking
6 about one event creates an unbelievable amount of sorrow, shame and
7 regret.

8 An immense amount of the guilt I felt within myself derives
9 from the very reason most of us joined the Army to begin with, and
10 that is to protect and fight for those who cannot fight for
11 themselves. Of course, this is not the sole purpose we're here in
12 Iraq, however, as liberators in Iraq, this is a major goal and
13 mission for all service members here in Iraq. I clearly had an
14 opportunity to fight for those who cannot defend themselves and do
15 not. Rather, I showed a lack of leadership, discipline, respect,
16 personal courage, integrity and honor, some of the very values our
17 Army is built upon.

18 I had something everyone dreams of, a chance to make a
19 difference. I took that chance, however, and failed to make a
20 positive difference in other human beings' life. Rather, a few
21 soldiers and I subjected detainees to hardship and humiliation. The
22 events that transpired on that night in question depicted a person

1 that I, myself, are not familiar with, one that, as Specialist [REDACTED]
2 said in a news article, something close to these lines, "The Cruz I
3 know is always a calm and reserved Cruz. He never gets mad. The
4 Cruz I saw that night was a different Cruz." This is true in my
5 opinion. I was always a calm and reserved person. However that
6 night, I did not see three detainees. In honesty, I saw three people
7 who tried to kill me and who killed my section leader and my friend.
8 The amount of time I spent in the tier, in the hard site that night
9 was without a doubt, the darkest hour of my life. I turned my back
10 on my country and my Army and myself. I no longer fought for and
11 upheld the values that I strived to uphold my entire life. I was a
12 different person for that time. I assure you I'm not making any
13 excuses and I have said and continue to say that the events that
14 transpired held no honor and were clearly wrong.

15 I want to ensure that the intent of my statement is clear.
16 I accept full and complete responsibility for my actions that night,
17 which include humiliating detainees by viewing them naked,
18 handcuffing, throwing a ball in their direction, and watching others
19 on occasion pour water on them, poke and prod them and subject them
20 to a great deal of humiliation. I accept full and complete
21 responsibility for the actions indicated in this stipulation of fact
22 concerning the night in question. Furthermore, I would like to call

1 upon every noncommissioned officer and commissioned officer alike to
2 do the same. This clearly imprints a blemish in our clear and
3 honorable name in the United States Army and every soldier serving
4 proudly and honorably under Operation Iraqi Freedom. I apologize to
5 the detainees that felt the wrongdoing and to the soldiers in the
6 service that have lived the stigma of this wrongdoing.

7 Q. Specialist Cruz, I told you that you would have an
8 opportunity to write a statement. That was the exact same statement
9 that you wrote and prepared without any----

10 A. This is it. There's no editing done. I wrote it, sent it,
11 and this it.

12 CDC: No further questions.

13 MJ: You may return to your seat, Specialist Cruz.

14 CDC: Your Honor, the defense rests.

15 MJ: Government, do you have any rebuttal?

16 TC: No, sir.

17 MJ: Trial counsel, you may argue first on sentencing.

18 TC: Thank you, sir.

19 Sir, on behalf of the Government of the United States, we
20 respectfully submit three general points for your consideration as
21 you fashion an appropriate sentence for the accused, Specialist Armin
22 Cruz.

1 These points are, first, the nature of these offenses.
2 Second, the logical consequences of this type of misconduct. And
3 third, the necessity for severe punishment under these circumstances.
4 The points are submitted in order to assist in fashioning a sentence
5 based on reason, and not emotion.

6 First, the nature of these offenses. Let's begin with an
7 examination of the basic facts. We know that the accused was present
8 at the hard site on the night of 25 October out of curiosity, nothing
9 more, nothing less. We know that SPC [REDACTED] informed the accused that
10 the military police had an alleged rapist in the hard site and asked
11 the accused if he wanted to see how the MP handled the situation. At
12 that point, the accused made his first decision, to go and see what
13 was happening in the hard site. He didn't have to go, but he did.

14 And then the accused chose to participate. We know that he
15 wasn't compelled to participate in any way. As you can see in
16 paragraph 12 of the stipulation of fact, no one ordered the accused
17 to participate, neither military nor civilian. And you can see that
18 there was no information of value to the military intelligence
19 community to be obtained from these men. What we do know, from the
20 word and actions of Sergeant [REDACTED] and Corporal [REDACTED] and the
21 others, that the military police present were enjoying themselves as
22 evidenced by paragraph 8 of the stipulation. We also know that

1 others, like Specialist [REDACTED] chose not to participate in this
2 abuse. The accused didn't have to participate, but he did.

3 Then, we know that over the course of approximately an
4 hour, the accused and his co-conspirators chose to abuse three men.
5 The accused chose to yell at these men. The accused chose to force
6 these men to crawl along the floor, naked, shaking and frightened.
7 The accused forced these men to crawl, dragging their genitals on the
8 floor, and as the accused did this, he used his foot to press the men
9 back down to the cold concrete floor when they rose too high in his
10 estimation. The accused, this accused sitting here now, chose to
11 terrify these men, to mock them and degrade them like they were
12 animals and not fellow human beings. The accused chose to add his
13 efforts and his ideas as to how to abuse these men to the choices and
14 the actions of those around him in an effort to do what? To magnify
15 the terror and the humiliation of these men. And when he noticed
16 that one of the men was bleeding, what did he do? Despite knowing
17 that the conduct was wrong, he chose to continue. And when he saw
18 another soldier, SPC [REDACTED], throw a football at the bound, exposed,
19 and completely vulnerable fellow human beings on the floor before
20 him, what did he do? He chose to throw the football as well. He
21 chose to handcuff these men together, pressing them together in such
22 a way as to mimic sexual relations. And when the men naturally,

1 reasonably tried to create space between themselves and the naked
2 body of the man now bound to him, the accused chose to press them
3 back together, again using his feet. With contempt and with disdain,
4 the accused chose to do all of this. He did not have to, but he did.

5 He chose, he decided, he made the conscious effort to
6 continue in this abuse along with all of his reveling co-
7 conspirators. And now, Your Honor, the accused is responsible, not
8 only for his own acts, but the acts of all of these men and women who
9 chose to torment rather than to safeguard, to demean rather than to
10 protect. And while his motivations may have been different than were
11 Sergeant [REDACTED] or Corporal [REDACTED] men who clearly took great
12 enjoyment out of the misery of the three detainees lying helpless and
13 hopeless on the hard concrete floor, the accused assisted these
14 military police, joined them in their ultimate purpose and in their
15 terrible work. And now he is responsible for all of their actions,
16 and they of his, all because of his choice.

17 Your Honor, please let me make one final point with regard
18 to the nature of these offenses. The government has consciously
19 chosen not to call the men abused by the accused as witnesses, and I
20 have consciously chosen not to use their names here out of respect
21 for their privacy. In a way, however, the identity of these men is
22 really independent of the misconduct. It doesn't matter that the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MJ: Defense?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 CDC: Well, Yes, Your Honor.

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

19 CDC: Correct, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 MJ: Court is closed.

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

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

1 Defense counsel, have you advised the accused orally and in
2 writing of his post-trial and appellate rights?
3 CDC: Yes, Your Honor.
4 MJ: That's reduced to Appellate Exhibit IV.
5 Specialist Cruz, I have before me what's marked Appellate
6 Exhibit IV, your post-trial and appellate rights form. Is that your
7 signature on this form?
8 ACC: Yes, sir.
9 MJ: And Mr. [REDACTED] that's your signature below his?
10 CDC: Yes, Your Honor.
11 MJ: Specialist Cruz, did your defense counsel explain these
12 post-trial and appellate rights to you?
13 ACC: He did, sir.
14 MJ: Do you have any questions about your post-trial and
15 appellate rights?
16 ACC: No, I don't, sir.
17 MJ: Which counsel will be responsible for the post-trial
18 actions in this case and upon whom is the Staff Judge Advocate's
19 post-trial recommendation to be served?
20 CDC: That would be me, sir.
21 MJ: Mr. [REDACTED] they have your civilian address?
22 CDC: Yes, Your Honor.

1 MJ: And that's your understanding, also, Specialist Cruz?
2 ACC: It is.
3 MJ: Accused and counsel, please rise. [The accused and his
4 counsel stood.]
5 Specialist Armin J. Cruz, this court sentences you:
6 **To be reduced to the grade of Private E1;**
7 **To be confined for 8 months; and**
8 **To be discharged with a bad-conduct discharge.**
9 Please be seated. [The accused and his counsel resumed
10 their seats.]
11 May I see Appellate Exhibit III, please? [Court reporter
12 hands document to MJ.]
13 The way I read the quantum portion of the Appellate Exhibit
14 III is the convening authority is free to approve the adjudged
15 sentence. Is that the understanding of both parties?
16 TC: Yes, sir.
17 CDC: Yes, Your Honor.
18 MJ: And Specialist Cruz, is that your understanding, also?
19 ACC: It is, sir.
20 MJ: Any other matters to take up before this court adjourns?
21 TC: No, Your Honor.
22 CDC: No, Your Honor.

1 MJ: This court is adjourned.

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

3 [END OF PAGE.]

AUTHENTICATION OF RECORD OF TRIAL


IN THE CASE OF

CRUZ, Armin J., Specialist

Headquarters and Headquarters Services Company, 502d MI Battalion

504th Military Intelligence Brigade, APO AE 09342


I received the completed record of trial for review and authentication on
10/15 2004.


COL, JA
Military Judge

15 Oct 2004

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

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


Civilian Defense Counsel

_____ 20____

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

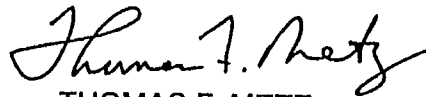
CPT, JA
Chief, Military Justice

003097

ACTION

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

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



THOMAS F. METZ
Lieutenant General, USA
Commanding

JAN 18 2005

003098

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

003099

UNITED STATES

v.

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

STIPULATION OF FACT

4 September 2004

I. NATURE AND USES OF THE STIPULATION:

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

II. THE ACCUSED:

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

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

003100

PROSECUTION EXHIBIT 1 E10

OFFERED R. 13 ADMITTED R. 16

III. THE MISCONDUCT

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

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

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

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

Stipulation of Fact – United States v. Cruz

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

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

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

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

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

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

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

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

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

IV. PROTECTIONS OF CIVILIAN DETAINEES

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

Stipulation of Fact – United States v. Cruz

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

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

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

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

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

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

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

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

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

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

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

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

VII. ADDITIONAL INFORMATION IN AGGRAVATION:

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

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

VIII. EXTENUATION AND MITIGATION:

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

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

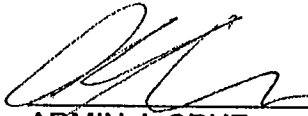
27. The accused has agreed to cooperate with the government in the investigation of misconduct within the BCCF. Additionally, the accused has cooperated with the government by waiving his Article 32 hearing, entering an Offer to Plead Guilty, and agreeing to a trial date convenient to the government.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

IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE

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



Civilian Defense Counsel



ARMIN J. CRUZ
SPC, USA
Accused



MAJ, JA
Trial Counsel

ENLISTED RECORD BRIEF

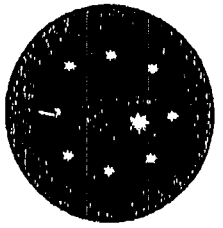
BRIEF DATE 20040719		NAME CRUZ, ARMIN JOHN		RANK - DOR SPC 5PC		PMOS 963		SSN 20060328											
SECTION I - Assignment Information				SECTION II - Security Data				SECTION III - Service Data				SECTION IV - Personal/Family Data							
YR/MO RTN	CTRY	MONTH	TCS	NUMBER OF TOURS	PSI STATUS	TS-SCI	FID Det PS Stat NONE	BASD	20010109	PEBD	20000912	BESD	19900101	Date of Birth	Birthplace KY				
				SHORT	LONG	PSI Invest Control	20011018	ETS	20020409	DIENS	20000901	Reenl Egt/Prtd to	10	Country of Citz US	Sex/Race				
				DROS	DEROS	SECTION V - Foreign Language		# Days Last	PVT	PV2	PFC	SPC	100	No of Dependent	MALE / FEMALE Hisp.				
						Language	Read	Listen	Speak	DOR	SGT	SSG	SFC	MSG	Religion				
										DOR	SGM	CSM		Religion	ROMAN CATH				
										DOR				Spouse Birthplace Citz					
Date Dependents Arrived OS						SECTION VI - Civilian Education				SECTION VII - Awards and Decorations				SECTION VIII - Remarks					
PMOS	963	SCI	0			LEVEL COMPLETED 4 YRS HS				AC	YR	1900	ENRIP DT						
SMOS		PSI/VRMO	1			CEGSG HIGH SCHOOL DIPLOMA							Physical Category						
Bonus MOS		ASI	01			INSTITUTION Calif. State Community College VR 2000							Physical Category						
Bonus Enlist Egt Dt						DISCIPLINE Assoc. of AGS							Last Physical Exam						
Promotion Points/VRMO						INSTITUTION Univ. of Texas at Dallas				AC	YR	Current	MARLB RESISTOR						
Prom Promotion Points/VRMO						DISCIPLINE HHS/CR & L+													
Prom Seq#		Prom Select Dt				NUMBER OF SEMESTER HOURS COMPLETED				109									
Promotion MOS						Course Name				Technical Certification	DT Certified	DT Expires							
ASVAB	Test # / Dt	ASVAB 01 / 20000401				SECTION VIII - Awards and Decorations													
GT	118	ELEC	125	FOOD	107	TECH	118												
ADMIN	118	PA	118	COMMO	111														
ONST	118	MECH	112	MAINT	122														
Delay Separation Reason																			
AEA/Dt																			
Flag Code		Flag Start Dt		Flag Expiration Dt															
Date of Loss				Date of Last PCS				Date of Last INCOER											
				19900101															
ASGT				FROM	MO	UNIT NO	SECTION IX - Assignment Information				STATION	LOG COMG	DUTY TITLE	DMOS	ASST/LANG				
Current				20030410	17	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
1st Prev				20020312	1	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
2nd Prev				20020901	2	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
3rd Prev				20021105	1	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
4th Prev				20021206	3	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
5th Prev				20021115	8	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
6th Prev				20020403	1	WZP-4B0	MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
7th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
8th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
9th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
10th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
11th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
12th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
13th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
14th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
15th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
16th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
17th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
18th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
19th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
20th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
21st Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
22nd Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
23rd Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
24th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			
25th Prev							MI BN	B CO CI CEI	FC	FC	FC	FC	FC	FC	FC	FC			

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DEFENSE EXHIBITS ADMITTED INTO EVIDENCE

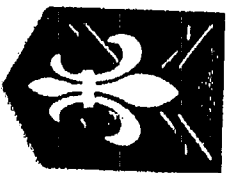
003109



Combined Joint Task Force 7
Joint Interrogation and Debriefing Center

Abu Ghurayb

Baghdad, IRAQ



Certificate of Appreciation

is presented to:

SPC Armin Cruz

October 2003 – February 2004

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

SGT, USA

Fusion Analysis Cell NCOIC

CW2, MI

Fusion Analysis Cell SA

CPT, MI

Fusion Analysis Cell OIC

003110

DEFENSE EXHIBIT A FID

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

003111 DEFENSE EXHIBIT B FID

OFFERED R. 63 ADMITTED R. 64

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

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

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

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

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

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

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

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

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

003112

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

(67 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF
OF SPC CRUZ AND OTHER RECORDS CONTAINING PRIVATE
INFORMATION, WHICH WERE DETERMINED TO BE
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST AND
DUPLICATES OF NONRESPONSIVE DOCUMENTS FOUND AT
BATES 2819 - 2893

3112A

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.
SPC, U.S. Army, 11111 11111
SVC Co., 502nd MI BN, 504th MI BDE
APO AE 09342

STIPULATION OF EXPECTED
TESTIMONY

1SG [REDACTED]

11 September 2004


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


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


DEFENSE EXHIBIT 2 00318

OFFERED R. 103 ADMITTED R. 105

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


MAJ, JA
Trial Counsel


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


Defense Counsel

003181

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED
TESTIMONY

SSG [REDACTED]

11 September 2004

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

1. SPC Armin Cruz was assigned to my section in the Joint Interrogation and Debriefing Center, Fusion Analysis Cell, in November 2003, and did an outstanding job throughout the period of his service with me. When initially assigned to me, he was placed in the Former Regime Elements Cell. A few weeks later, seeing his work ethic, dedication, and attention to detail, I reassigned him as my FRE NCOIC in charge of two other junior enlisted soldiers. Once he was transferred into my section, I had daily contact with him until his departure from the JIDC around Feb-Mar 2004. In addition, we have kept in touch via email since going our separate ways.

2. As the FRE NCOIC, SPC Cruz was responsible for the integration of newly assigned personnel into the FRE teams. He ensured the proficiency and accountability of intelligence collection efforts by intelligence analysts assigned to the FRE Tiger Team. SPC Cruz was also accountable for the timely dissemination of team products to the necessary parties as well as the day-to-day management of the FRE team.

3. Additionally, SPC Cruz was also responsible for all-source analysis and the integration of intelligence products in support of the ICE Tiger Teams and Fusion cell. He was tasked to identify intelligence gaps and provide input to direct collection efforts. SPC Cruz also provided assessments and recommended courses of action, participated to the greatest extent possible to ensure accurate analytical exchanges, and was also responsible for relaying all new information obtained to team members.

4. SPC Cruz maintained knowledge of assigned cases and prioritized detainees based on intelligence value. He also coordinated with the Senior Analyst for the creation of products to assist the team's interrogation efforts. SPC Cruz additionally provided all final intelligence available in order to assist the team assessment and DAB memorandums to support Transfer and Release nominee profiles.

5. While working in the Fusion Analysis Cell, SPC Cruz personally wrote 10 Analytical Assessments, which should normally be executed by senior, Corp or Division level, Analysts. His analytical assessments included, but were not limited to the following areas-- General Security Organization, Special Security Organization, Iraqi Intelligence Service, with special emphasis on the Ghafiqi Project, Mohammeds Army and the Former Regime Elements remnants within Iraq. These analytical assessments were distributed around Iraq, some of which went as high as the Secretary of Defense.

DEFENSE EXHIBIT

003182

OFFERED R. 103 ADMITTED R. 105

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

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


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


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


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

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

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


MAJ, JA
Trial Counsel


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


Defense Counsel

003183

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED
TESTIMONY

SSG [REDACTED]

11 September 2004

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

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

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DEFENSE EXHIBIT G FID


OFFERED R. 103 ADMITTED R. 105

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

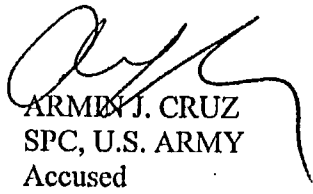

6. SPC Cruz, our teammate and I went to SFC [REDACTED], who was our detachment's NCOIC, and collectively asked for help in the form of counseling and were essentially laughed off. I personally pursued speaking with the Chaplain for the 205th MI Brigade whom I know well and was referred to the Chaplain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

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


003185



MAJ, JA
Trial Counsel



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



Defense Counsel

003186

APPELLATE EXHIBITS

003187

Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States

v.

SPC Armin Cruz

1. ACCUSED

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

CRUZ, ARMIN

SPC

x [Signature]

10 September 2004

2. DEFENSE COUNSEL

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

MAJ^{SK}
Civilian

[REDACTED]

10 September 2004

3. TRIAL COUNSEL

Argument is (not) requested.

MAJ

[REDACTED]

10 September 2004

4. MILITARY JUDGE

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

COL

[REDACTED]

11 Sep 04

1. Delete when accused is a warrant officer or enlisted member.

2. Delete when accused is a commissioned officer or warrant officer.

3. When request is disapproved, the basis for the denial must be put on the record. (See MCM, 1984, RCM 903(c))
DD Form 1722, OCT 84
Replaces Edition of 1 Oct 69 which may be used until supply is exhausted

APPELLATE EXHIBIT I

RECOGNIZED R. 8

003188

UNITED STATES

v.

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

Offer to Plead Guilty

4 September 2004

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

To all Specifications and Charges: Guilty

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

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

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

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

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

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

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

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

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

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

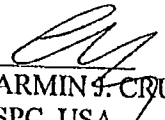
7. I understand that I may request to withdraw the plea of guilty at any time before my plea is accepted and that if I do so, this agreement is canceled. This agreement will also be canceled if:


a. I fail to plead guilty as agreed above;

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

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

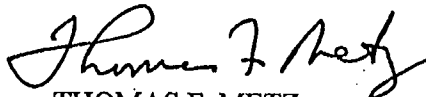
8. This writing, including Appendix I (Quantum), includes all terms and conditions of this Offer to Plead Guilty and contains all promises made to me or by me concerning my plea of guilty. There are no other terms or conditions that are not contained in this writing.


ARMIN J. CRUZ
SPC, USA
Accused


Civilian Defense Counsel

The offer to plead guilty dated 4 September 2004 is:

(accepted) ~~(not accepted)~~



THOMAS F. METZ
Lieutenant General, USA
Commanding

003191

UNITED STATES

v.


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

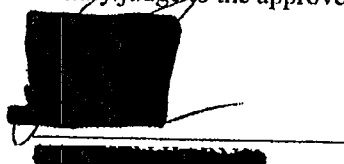
APPENDIX I (QUANTUM)

4 September 2004

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

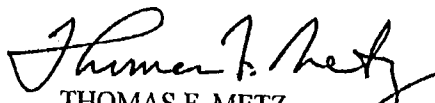
2. Except as limited above, any other lawful punishments can be approved. The Convening Authority will apply any credit given by the military judge to the approved sentence.


ARMIN J. CRUZ
SPC, USA
Accused


Civilian Defense Counsel

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

(accepted) ~~(not accepted)~~


THOMAS F. METZ
Lieutenant General, USA
Commanding

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UNITED STATES OF AMERICA

v.

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

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

11 September 2004

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

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

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APPELLATE EXHIBIT IV

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

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

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

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

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

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

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

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


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

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

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

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

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

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

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


NAME: Armin J. Cruz

STREET: _____

CITY/ STATE / ZIP CODE: _____



AREA CODE/ TELEPHONE NUMBER _____

DATED: 11 Sep 04


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

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

DATED: 11 Sep 04



Defense Counsel

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