

COURT-MARTIAL RECORD

NAME FREDERICK, IVAN L., II SSG

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL 4

EXAM. DIV. _____

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL VI OF VIII VOL(S)

ARMY 20041129

JALS-CC FORM 24, 1 OCTOBER 2000

019306

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

FREDERICK, Ivan L., II

(NAME: Last, First Middle Initial)

HHC, 16th MP Bde (ABN)

III Corps

(unit/Command Name)

[REDACTED]
(Social Security Number)

US Army

(Branch of Service)

Staff Sergeant

(Rank)

Victory Base, Iraq

(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

TRIED AT

Baghdad and Victory Base, Iraq

(Place or Places of Trial)

ON

19 May, 21-22 Jun; 24 Aug;

20-21 Oct 04

(Date or Dates of Trial)

COMPANION CASES:

SPC AMBUHL, Megan M., [REDACTED]

SGT DAVIS, Javal S., [REDACTED]

SPC GRANER, Charles A., Jr. [REDACTED]

SPC HARMAN, Sabrina D., [REDACTED]

SPC SIVITS, Jeremy C., [REDACTED]

SPC CRUZ, Arman J., [REDACTED]

PFC ENGLAND, Lynndie R., [REDACTED]

Appellate Exhibit I through Appellate Exhibit IX

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.

APPELLATE EXHIBITS

019308

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

CPT MNC-I -Senior Defense Counsel**From:** [REDACTED], COL (C5 SJA CHIEF MILITARY JUDGE) [REDACTED]@us.army.mil]**Sent:** Monday, May 10, 2004 12:11 PM**To:** [REDACTED]@aol.com; [REDACTED] COL (C5 SJA CHIEF MILITARY JUDGE)**Cc:** [REDACTED]@[REDACTED].hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil**Subject:** RE: 802 points in U.S. v. Frederick

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

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

Mr. [REDACTED] (b)(6)-4; (7)(C)-4

Your email notice of appearance is satisfactory.

I plan to simply arraign SSG Frederick, put his counsel requests on the record, and set some suspenses for motions. I doubt it makes much sense to set a trial date since at this point it is unclear where and when (if at all) the trial will take place. In any event, I intend to be back in Iraq in mid-June to litigate what we can. As a starting point, I expect your initial discovery request to be filed (understanding more may follow) and the government to respond. If possible, I'd also like to do the 32 motion since, if granted, that will necessarily abate the court-martial proceedings.

Trial counsel:

I expect an expeditious written response to each and every defense discovery request.

Both sides:

I recognize the logistical challenges in this case and will work with both sides. My general rule is not to do motions by email though I do want a copy of all motions sent to me via email. That being said, I have no problem using email for administrative and scheduling matters. Just as a reminder, all email to me must be cc to the other side.

If there are any questions, let me know.

COL [REDACTED] (b)(6)-2; (7)(C)-2

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

From: [REDACTED]@aol.com [mailto:[REDACTED]@aol.com] (b)(6)-4; 7(c)-4**Sent:** Sunday, May 09, 2004 5:24 PM**To:** [REDACTED]@us.army.mil**Cc:** [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil**Subject:** 802 points in U.S. v. Frederick

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

Your Honor,

(b)(6)-4; (7)(C)-2

This is [REDACTED] I am providing you and opposing counsel preliminary information from the defense perspective to assist in the orderly administration of this case. The arraignment date is fine. I have sent you an e-mail appearance. If that is not satisfactory, please advise. I will not be at the arraignment with my client's agreement.

We will reserve on all points at the arraignment. We anticipate preliminary motions asking for a change of venue and for a new 32 proceeding. Discovery will be extensive and most probably contentious. I anticipate many motions to compel. There will be an involved UCI motion.

Dilatory tactics are offensive to me, but given all that I believe must go before, I cannot even estimate a trial date in good conscience.

Respectfully,

019309

APPELLATE EXHIBIT IRecognized R. 13

6/20/2004

ACLU-RDI 1757 p.4

DOD-042403

[REDACTED]

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

[REDACTED]

This is an attorney/client or privileged communication. If you have received it in error, please delete.

6/20/2004

019310

ACLU-RDI 1757 p.5

DOD-042404

United States

v.

Ivan L. Frederick

) Motion for
) Appropriate Relief
) Telephone Appearance
) By Civilian Counsel
) At 39a Sessions
) 16 Jun 04

I. Request for Relief

The Accused, by counsel, hereby moves to allow civilian defense counsel to appear telephonically at the 39a Session in the above styled matter scheduled for 21 Jun 04.

II. Facts

1. A 39a session is scheduled for 21 Jun 04 where matters critical to the defense of this case will be heard.
2. The hearing will last no more than two hours.
3. The Accused cannot afford to bring civilian counsel from the United States to Iraq for this brief proceeding.

III. Applicable Law

1. Sixth Amendment, the Constitution of the United States.
2. R.C.M. 506.

IV. Argument

The United States has arbitrarily chosen to keep these proceedings in Iraq for what has become purely political reasons. The United States has done so in the face of ever escalating violence to include the recent mortar attack on Camp Victory. These decisions

019311

APPELLATE EXHIBIT II

Recognized R. 14

have had and are having a chilling effect upon the prospects of a truly public and all encompassing proceeding.

The Accused has a right to civilian counsel. The Accused should not be penalized by the government's venue selection. The cost of travel is prohibitive. Telephonic appearances in non-Conus cases are a regular and ordinary event for Article 39a proceedings. It is not reasonable to expect that a military accused can afford to bring civilian counsel to every Article 39a in a non-Conus setting.

There should be, of course, ground rules for such an appearance to include limitations on examination of witnesses. Those reasonable ground rules, given the presence of military counsel, will not substantially impair Sixth Amendment considerations. The total preclusion of civilian defense counsel would infringe upon the Sixth Amendment right to counsel.

When the United States chooses to try a case in an inherently dangerous war zone, thousands of miles from CONUS, great deference should be afforded Sixth Amendment considerations. To do otherwise would be a defacto denial of right to counsel.

It is, after all, not as though this case could not be tried in CONUS. PFC England is ample evidence of that simple truth. She is represented by civilian counsel who are unfettered by distance or danger. She is an alleged co-conspirator of the Accused. This raises serious questions as to whether the Accused is receiving equal protection on several levels, but for purposes of this motion the equal protection issue is one of right to the appearance of counsel.

At the incipient stage of these proceedings, a telephonic appearance will cure the equal protection problem with regard to right to counsel.

V. Witnesses and Evidence

None.

Respectfully submitted,

(b)(6)-Z

/s/

(b)(7)(C)-Z

Civilian Defense Counsel

(b)(6)-Z

(b)(7)(C)-Z

Cpt, JA
Defense Counsel

██████████ L CPT MNC-I -Senior Defense Counsel

From: (b)(6)-4;(7)(C)-4 ██████████@aol.com
Sent: (b)(6)-2;(7)(C)-2 ██████████ Wednesday, June 16, 2004 9:02 PM
To: (b)(6)-2;(7)(C)-2 ██████████@us.army.mil
Cc: ██████████@vcmain.hq.c5.army.mil; ██████████@vcmain.hq.c5.army.mil;
██████████@vcmain.hq.c5.army.mil
Subject: U.S. v. Frederick



Frederick Motion for
Telephone...

Your Honor,

Please see attached motion.

Regards,

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

This electronic message contains information that is confidential or privileged. This information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately at 800-355-1095.



Close

(b)(6)-2, (b)(7)(C)-2
From: [REDACTED], COL (C5 SJA CHIEF MILITARY JUDGE)
To: b-6-4, [REDACTED]@aol.com, [REDACTED] COL (C5 SJA CHIEF MILITARY JUDGE)
Cc: b-6-2, [REDACTED]@vcmain.hq.c5.army.mil, [REDACTED]@vcmain.hq.c5.army.mil
Subject: RE: 802 Update U.S. v. Frederick
Sent: 6/14/2004 5:38 AM (b)(6) 2-7(C)-2

Importance: Normal

Mr. [REDACTED] (b)(6)-4, (7)(C)-4

Your request to appear telephonically is denied.

If the motion for a new 32 is granted, that will obviously delay the trial. However, if the motion is denied and since the defense has no other motions, I assume defense will be ready to set a trial date after the motions hearing next week.

COL [REDACTED] (b)(6)-2, (7)(C)-2

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

From: [REDACTED]@aol.com (b)(6)-4, (7)(C)-4
To: [REDACTED]@us.army.mil
Cc: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil
Sent: 6/13/2004 1:43 PM
Subject: Re: 802 Update U.S. v. Frederick

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

Your Honor,

This is a formal request for me to be telephonically present on 21 June 2004 for the motions hearing in the above-styled case. I expect the motions practice on our one motion for a new Article 32 to last no more than one to one and a half hours. Cost considerations as well as location make my physical appearance impossible. I have previously appeared telephonically in Judge [REDACTED] Court in Korea for 39a sessions. If you approve of this, be advised that I will make myself available at any time, the time spread notwithstanding.

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

I do not believe this request requires a formal motion, but rather falls within the discretion of the Court in its procedural administrative capacity.

Respectfully,

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

APPELLATE EXHIBIT IIIRecognized R. 14

019315

<https://c5hdgowa.hq.c5.army.mil/exchange/forms/IPM/NOTE/read.asp?command=open&obj=0...> 6/14/2004



Close

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

From: [REDACTED] L., COL (C5 SJA CHIEF MILITARY JUDGE)
 To: [REDACTED]@aol.com; [REDACTED] COL (C5 SJA CHIEF MILITARY JUDGE)
 Cc: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil

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

Subject: RE: U.S. v. Frederick

Sent: 6/21/2004 4:22 PM

Importance: Normal

All:

The next Frederick 39a is set for 22 July in Baghdad, Iraq. Attorneys who wish to participate MUST appear in person. Absent good cause, failure to personally appear will constitute waiver.

COL [REDACTED] (b)(6)-2; (7)(C)-2

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

From: [REDACTED]@aol.com (b)(6)-4; (7)(C)-4
 To: [REDACTED]@us.army.mil (b)(6)-2; 7(c)-2
 Cc: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;
 [REDACTED]@vcmain.hq.c5.army.mil

Sent: 6/16/2004 7:01 PM

Subject: U.S. v. Frederick

Your Honor,

Please see attached motion.

Regards,

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

This electronic message contains information that is confidential or privileged. This information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately at [REDACTED]

APPELLATE EXHIBIT 1V

Recognized R. 34

019316

<https://c5hdgowa.hq.c5.army.mil/exchange/forms/IPM/NOTE/read.asp?command=open&...> 6/22/2004

<<Frederick Motion for Telephone Appearance.doc>>

019317

<https://c5hdgowa.hq.c5.army.mil/exchange/forms/IPM/NOTE/read.asp?command=open&...> 6/22/2004



From: [REDACTED]@aol.com [SMTP: [REDACTED]@aol.com]

To: [REDACTED]@us.army.mil

Cc: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;
[REDACTED]@vcmain.hq.c5.army.mil

$$(b)(6)Z - 7(c)(2)$$

Subject: Re: U.S. v. Frederick

Sent: 6/21/2004 4:51 PM

Importance: Normal

Your Honor,

I have received your message. I will not appear on 22 July. My client will waive my appearance so that the matters before the court can proceed without interruption.

Respectfully,

[REDACTED]



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

This is an attorney/client or privileged communication. If you have received it in error, please delete.

[REDACTED]

This is an attorney/client or privileged communication. If you have received it in error, please delete.

APPELLATE EXHIBIT V

Recognized R. 34

019318

<https://c5hdgowa.hq.c5.army.mil/exchange/forms/IPM/NOTE/read.asp?command=open&...> 6/22/2004

V.

Victory Base, Iraq

))))))))

14 JUNE 2004

4. The Investigating Officer, in his notification to SSG Frederick, included just the single CID agent as the sole witness, known to him, who he will ask to testify. (IOE 55). SFC [REDACTED] a paralegal for the prosecution, provided this notification to the Investigating Officer. (MAJ [REDACTED] testimony). (b)(6)-2; (7)(C)-2

5. On March 27, SFC [REDACTED] notified the Investigating Officer that the Government intended to call just one witness—SA [REDACTED] of CID. (Id.) This agent was not an eyewitness, victim, member of the chain of command, or a significant investigator in the case. He read the case file. (b)(6) 2; 7(C)-2 (b)(6) 1 - 7(C)-1

5. On 30 March 2004 at 0906 the Defense submitted a timely, comprehensive witness and request for documentary evidence to the Investigating Officer. (Article 32 Investigation, Continuation Sheet, Chronology of Events, page 2; and IOE 19.)

6. On 30 March 2004, at 0936, the Investigating Officer notified SFC [REDACTED] whether it would be possible to get the defense requests for documents and witnesses by the 2 April 2004 hearing date. The Investigating Officer further stated that, "Some of these requests are very valid." (IOE 23) (b)(6) 2; (7)(C) 2

7. On 31 March 2004, at 0950, the Defense notified the Investigating Officer that all the requested witnesses were either eyewitnesses, alleged victims, co-accused, or members of the chain of command. The Defense urged the Investigating Officer to compel the government to respond to its request for information so that the investigating officer could have a full and impartial hearing. (IOE 27)

8. The Defense objected to any and all alternatives to testimony and evidence.

9. The sole CID Agent who testified at the hearing interviewed one co-conspirator (who invoked), he was not an eyewitness to any of the photographs, not present during any riots, did not take any photographs, and does not know much about computers. He testified that the Accused was present in only two prosecution exhibit photographs but he could not offer any knowledge as to the context surrounding the photographs.

10. No co-accused testified at the Article 32 investigation.

11. No alleged victim testified at the Article 32 investigation due to "security reasons".

12. Fifty-five defense witnesses were declared unavailable to testify by the government. The Defense objected to the unavailability of these witnesses. (Continuation Sheet, Block 21, DD Form 451, page 14).

13. The Defense requested that the Government pursue due diligence in locating defense witnesses. (Id.). No evidence exists that the Investigating Officer made the Government utilize due diligence.

14. The Defense requested that CPT [REDACTED] be granted testimonial immunity for CPT [REDACTED] LTC [REDACTED] and 1SG [REDACTED] (Id.) (b)(6) - 2, 7(c)(2)

15. The Defense objected to the Government's lack of production of documents and miscellaneous information requested pursuant to RCM 405 and requested that the Investigating Officer compel the Government to produce the information. (Continuation Sheet, Block 21, DD Form 451, page 16).

019321

(b)(6)-4; 7C14; (b) 6-2-7C12

16. The Government claimed that defense requests Mr. [REDACTED] SGT [REDACTED] and CPT [REDACTED] could not be found. (Id.).

17. Defense requested government to provide for telephonic testimony to the scores of witnesses deemed "not reasonably available" the government declared telephonic testimony was impossible. (Art. 32 MP3 file).

18. Government claimed, with respect to its failure to provide any documents other than the AR 15-6 investigation, that the prosecution did not possess the documents. No evidence of due diligence provided. (Art. 32 MP3 file).

19. According to the Government, witnesses previously unavailable to testify (alleged victims and Specialist Sivits) are now available to testify at trial

20. Defense requested witnesses are at locations throughout Iraq, Germany and the United States.

III. APPLICABLE LAW

1. RCM 906(b)(3) Correction of defects in the Article 32 investigation is a ground for appropriate relief.

2. The Military Judge should ordinarily grant a continuance so the defects may be corrected. RCM 906(b)(3) discussion.

3. RCM 405(a) “[N]o charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation . . . has been made in substantial compliance with [RCM 405 Pretrial Investigation].”

4. Failure to substantially comply with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. RC 405(a) discussion.

5. RCM 405(h)(2). Any objection alleging failure to comply with [RCM 405] . . . shall be made to the investigating officer promptly upon discovery of the alleged error.”

6. Failure to produce reasonably available defense requested witnesses is a denial of a substantial pretrial right of the Accused. *U.S. v Chestnut*, 2 MJ 84 (CMA 1976).

7. Rights of the Accused are outlined in RCM 405(f)(1)-(12) to include the right to cross-examine witnesses, have witnesses produced, and have evidence (to include documents) within the control of military authorities produced, and to present anything in defense, extenuation or mitigation.

8. *U.S. v. Ledbetter*, 2 M.J. 37 (CMA 1976); *U.S. v. Simoy*, 46 M.J. 592 (A.F. CT. Crim. App. 1996), *U.S. v. Marrie*, 39 M.J. 993 (A.F. C.M.R. 1994); *aff’d*, 43 M.J. 35 (1995).

IV. ARGUMENT

This motion involves two distinct inquiries:

019323

1. Whether the Defense was improperly denied an opportunity to examine witnesses at the Article 32 proceeding.
2. Whether the Defense was improperly denied an opportunity to engage in document discovery at the Article 32 proceeding.

The Defense asserts that both opportunities were denied and specifically asserts that such denials are interfering and have interfered with preparation for trial by denying access to critical exculpatory and explanatory facts and leads. U.S. v. Stockman, 43 M.J. 856 (N.M. CT. Crim. App. 1996); U.S. v. Cumberledge, 6 M.J. 203, 206 (CMA 1979).

The Defense recognizes that the statutory right to confront witnesses in an Article 32 proceeding is more relaxed than the Constitutional standard at trial. Nonetheless, the Defense has the right to examine on cross-examination witnesses who are “reasonably available.” R.C.M. 405 (f)(8) and (g)(1)(A).

The availability of witnesses in an Article 32 setting was first addressed in U.S. v. Ledbetter, 2 M.J. 37 (CMA 1976). This case examined the import of Article 32(b). There the Court said:

“[W]e believe the concept of availability embodied in Article 32 requires a balancing of two competing interests. The significance of the witness’s testimony must be weighed against the relative difficulty and expense of obtaining the witnesses testimony at the investigation.” Ibid at 44.

After Ledbetter, Chapter V. of the M.C.M. was amended to include the "100 mile" concept to assist in making a determination of availability. But that amendment was merely procedural in nature and not a "bright line." U.S. v. Simoy, 46 M.J. 592 (A.F. CT. Crim. App. 1996), U.S. v. Marrie, 39 M.J. 993 (A.F. C.M.R. 1994); aff'd, 43 M.J. 35 (1995). Ledbetter remains the law.

In Ledbetter the Article 32 investigation was reopened because the key prosecution witness was requested and denied. Here all the alleged victims were requested and denied. All investigatory CID agents were requested and denied. The chain of command was requested and invoked. Multiple other witnesses were requested and the Government said they could not be found. Telephonic testimony was requested and denied.

The Article 32 proceeding was essentially a presentation of the CID Report of Investigation which the Defense was forced to accept at face value with no opportunity for discovery under R.C.M. 405(a). In the "Discussions" portion of R.C.M. 405(a) the M.C.M. specifically says, "The investigation also serves as a means of discovery." That was not allowed to occur here.

The failure of discovery went beyond witnesses. The AR 15-6 investigation relating to this matter was provided, but that was all. The Government said it was not in possession of any other documents but there was no indication of any due diligence on the part of the government to seek out such documents which is its duty to do.

It is essential that the Defense be permitted to engage in full discovery at a new Article 32 proceeding as a means of threshold trial preparation and the development of legal theories of defense. Witnesses are now dispersed in multiple locations. The 205th MI Brigade is in

Germany. The CID agents and some elements of the 205th are in CONUS. The chain of command is in CONUS and Iraq. The alleged victims are in Iraq.

It is a reasonable solution to cause one investigating officer to hold a new Article 32 in all three locations such that live testimony can be taken. Trying to return the multiple witnesses to Iraq at great expense, inconvenience and danger is not a practical, common sense result.

This is an unusual remedy but no more unusual than the facts and circumstances of the case. Further such a solution is the most cost effective and requires the minimum amount of travel.

Lastly, the Defense notes that every effort was made by the Defense to affect a proper Article 32 proceeding.

- Timely and numerous requests for the production of documents and evidence were made.
- Timely and numerous objections to the failure of the government to produce witnesses and evidence were made.
- The investigating officer noted that the Defense requests for witnesses and evidence were “very valid,” yet the government took no steps to produce documentary evidence or witnesses.

V. WITNESSES AND EVIDENCE

The Defense requests the following personnel be made available to testify:

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

1. SFC [REDACTED] He can also establish the foundation for both the Article 32 verbatim tapes (verbatim transcript request denied by the SJA) and for the authenticity of the summarized transcript of the proceedings.

2. SSG Frederick Article 32 MP3 files.

3. SSG Frederick Article 32 Investigation Report

4. SSG Frederick Article 32 Summarized Transcript

Respectfully submitted,

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

[REDACTED]
Counsel for the Accused

/s/ [REDACTED]

[REDACTED]
CPT, JA
Defense Counsel

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

019327

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Appropriate Relief was served upon the government and the military judge via email on 14 June 2004.

/s/ [REDACTED]
[REDACTED]

(b)(6) 2-70-2

CPT, JA

Defense Counsel

019328

From: [REDACTED] L CPT CJTF7 -Senior Defense Counsel (b)(6) -2-7C-2
Sent: Wednesday, April 28, 2004 9:02 AM
To: [REDACTED] CPT CJTF7 16MP
Cc: [REDACTED]@aol.com' (b)(6) -4; 7(C) -4
Subject: RE: 32 Frederick

We, as well as everyone else around here, have had email problems for the past several days (b)(6) -4; 7C)
(and electricity problems, and DNVF problems, etc). I will double check with Mr [REDACTED] The
Article 32 objections are outlined in the Art. 32 and the Defense requests that the Investigating
Officer reopen the Article 32 investigation and at least consider alternative forms of testimony be
considered (telephonic, email/IRC, etc.) for those scores of witnesses declared unavailable. The
Defense's position is that one CID agent who just happened to have read the CID report is not
sufficient to adequately "substantially" comply with RCM 405 requirements for a full and fair
hearing.

Respectfully,

[REDACTED] (b)(6) -2; (7)(C) -2
CPT, JA
Senior Defense Counsel
U.S. Army Trial Defense Service
Baghdad, Iraq Field Office
[REDACTED]@s.army.mil

-----Original Message-----
From: [REDACTED] CPT CJTF7 16MP
Sent: Tuesday, April 27, 2004 4:21 PM
To: [REDACTED] L CPT CJTF7 -Senior Defense Counsel
Cc: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Subject: 32 Frederick

Sir,

Do you have any objections to the Article 32 packet before I get COL [REDACTED]
recommendation? 5 days has past.

[SFC [REDACTED]] (b)(6) -2; (7)(C) -2

CPT [REDACTED]
16th MP BDE (ABN)
Trial Counsel
[REDACTED]
AIRBORNE!

019329

APPELLATE EXHIBIT V 11

Recognized R. 39

Article 32 Investigation

U.S. VS Frederick

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DD Form 457, Investigating Officer's Report

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Testimony

Appendix C, Discussion of the Evidence

Appendix D, Chronology of Investigation Events

Appendix E, Catalog of Objections

Appendix F, Court Martial Essential Witness Availability

Appendix G, Exhibits

Annex A, Prosecution Exhibits

Annex B, Defense Exhibits

Annex C, Investigating Officer's Exhibits

019330

APPELLATE EXHIBIT VIII

Recognized R. 40

INVESTIGATING OFFICER'S REPORT

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

1a. FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED] (b)(6)-2, 7(c)-2	b. GRADE O-4	c. ORGANIZATION HHC, 57th Signal Battalion 3rd Signal Brigade Victory Base, Iraq APO AE 09342	d. DATE OF REPORT 17 April 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) [REDACTED]	b. TITLE Commander	c. ORGANIZATION 16th Military Police Brigade (Airborne) Victory Base, Iraq APO AE 09342	
3a. NAME OF ACCUSED (Last, First, MI) Frederick, Ivan L. II	b. GRADE E-6	c. SSN [REDACTED]	d. ORGANIZATION HHC, 16th MP Brigade (Airborne) Victory Base, Iraq APO AE 09342
			e. DATE OF CHARGES 20 March 2004

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	<input checked="" type="checkbox"/>	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	<input checked="" type="checkbox"/>	

7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED] (b)(6)-2-7(c)-2	b. GRADE O-3	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) Mr. [REDACTED] (b)(6)-4-7(c)-4	b. GRADE N/A
c. ORGANIZATION (If appropriate) HHC, 16th MP Brigade (Airborne) Victory Base, Iraq APO AE 09342		c. ORGANIZATION (If appropriate)	
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)	

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

a. PLACE	b. DATE
----------	---------

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

c. SIGNATURE OF ACCUSED

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

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

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

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	SA	10th MP BN (CID)	X	
[REDACTED] } (b)(6)-2; 7(c)-2	E-9	418th MP DET, 81st EPW RSC	X	
[REDACTED]	E-4	372nd MP Company, Abu Ghraib Prison, Baghdad Iraq	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
CID Investigation CD, CPV Exam	16th MP BDE HQS			
AR 15-6 Investigation Results of the 800th MP BDE conducted by MG Taguba	BLDG 0, Victory Base, CPT Kobs, POC			
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				X
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				X
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY. <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.) See attached Continuation Sheets				
22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION		
[REDACTED] (b)(6)-2; 7(c)-2	O-4	HHC, 57th Signal Battalion, 3rd Signal Brigade, Victory Base, Iraq APO AE 09342 019332		
d. SIGNATURE OF INVESTIGATING OFFICER	[REDACTED]		e. DATE 18 APR 04	

Investigating Officer's Conclusions and Recommendations on Charges and Specifications

U.S. vs Frederick

Charge I. Violation of Article 81, Conspiracy Uniform Code of Military Justice UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 24 October 2003, conspire with CPL Charles A. Graner and PFC Lynndie R. England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick handcuffed three detainees together and directed said PFC England to photograph the detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with SGT Javal S. Davis, CPL Graner, SPC Jeremy C. Sivits, SPC Sabrina D. Harman, SPC Ambuhl and PFC England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick did place naked detainees in a human pyramid and photographed the pyramid of naked detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Charge II. Violation of Article 92, Failure to obey order or regulation, UCMJ

The Specification: In that SSG Frederick, II, U.S. Army, who knew of his duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 20 October 2003 to, on or about, 1 December 2003, was derelict in the performance of those duties in that he willfully failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to.

The Charge and Specification are in the proper form. The **burden of proof**, to include all three elements of the crime, for reasonable grounds that the accused committed the offense identified in this Specification, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A,
Summary of Conclusions and Recommendations

Charge III. Violation of Article 93, Cruelty and maltreatment, UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by participating in and allowing the placing of wires on the detainee's hands while he stood on a Meals Ready to Eat (MRE) box with his head covered and allowing the detainee to be photographed.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by placing naked detainees in a human pyramid and photographing the pyramid of naked detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by ordering the detainees to strip, and then ordering the detainees to masturbate in front of the other detainees and soldiers, and then placing one in a position so that the detainee's face was directly in front of the genitals of another detainee to simulate fellatio and photographing the detainees during these acts.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 4: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by posing for a photograph sitting on top of a detainee who was bound by padded material between two medical litters.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 4, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A,
Summary of Conclusions and Recommendations

Specification 5: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat two detainees, persons subject to his orders, by grabbing the hands and arms of the said detainees and ordering them to strike or punch each other, with the detainees then striking or punching each other.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 5, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Charge IV. Violation of Article 128, Assault, UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully strike several detainees by jumping and impacting the bodies within a pile of said detainees with his shoulder or upper part of his body.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully stomp on the hands and bare feet of several detainees with his shod feet.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, commit an assault upon a detainee by striking him with the means or force likely to produce death or grievous bodily harm, to wit, by punching the detainee with a closed fist in the center of his chest with enough force to cause the detainee to have difficult breathing and require medical attention.

The Charge and Specification are in the proper form. The **burden of proof**, to include the four primary elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A,
Summary of Conclusions and Recommendations

Charge V. Violation of Article 134, Indecent Acts with another, UCMJ

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

This Charge and Specification need to be re-written to reflect the true nature of the offense and the acts committed. The following is the revised Specification.

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by influencing/instigating a group of detainees to begin masturbating, or attempting to masturbate, and setting the detainees in sexually provocative positions, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

The **burden of proof**, to include the 3 elements of the crime, for reasonable grounds that the accused committed the offense identified in the revised Specification, **would be met**. I would recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

The Article 32 Proceedings were called to order at 1000 hours, 2 April 2004, at Victory Base, Iraq.

PERSONS PRESENT (Throughout all of the proceedings)

MAJ [REDACTED] Investigating Officer
CPT [REDACTED] Government Counsel
1LT [REDACTED] Assistant Government Counsel
CPT [REDACTED] Defense Counsel
SSG [REDACTED] Accused *Ivan Frederick*
SFC [REDACTED] Recorder

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

PERSONS ABSENT

[REDACTED] Civilian Attorney for the Accused

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

The Government Counsel made a Motion for the Investigating Officer to excuse co-accused spectators from the courtroom under M.R.E. 615.

With no objection by the Defense Counsel, the Investigating Officer granted the Government Counsel's Motion.

Defense Counsel stated that he wanted the Investigating Officer to consider R.C.M. 405 when considering the CID Investigation Packet, and that he would submit written objections at the conclusion of the hearing.

The Defense Counsel conducted a *voire dire* of the Investigating Officer, [Defense Counsel shows the Investigating Officer a Stars and Stripes newspaper article, and a Kuwaiti Times newspaper article announcing the preferral of charges against soldiers charged with detainee abuse]; and made no objection to the Investigating Officer being detailed to the hearing.

The Investigating officer stated that this was a formal investigation and that he had been detailed as the Article 32 Investigating Officer by order of Colonel [REDACTED] Commander, 16th Military Police Brigade (Airborne).

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

The investigating officer informed the accused that his sole function as the Article 32 investigating officer was to determine thoroughly and impartially all of the relevant facts of the case, to weigh and evaluate those facts, and to determine the truth of the matters stated in the charges.

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence,

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

(b)(6)2; 7(c)-2 The Investigating Officer advised the accused of his right to counsel.

The Accused stated the he would be represented by Mr. [REDACTED] (civilian counsel) and CPT [REDACTED] and was ready to proceed without Mr. [REDACTED] present. (b)(6)-4; (7)(C)-4

The Defense Counsel waived the reading of the charges.

The Investigating Officer notified the accused of his rights during the Article 32 Investigation.

The accused stated he understood his rights.

The Investigating Officer stated that the following witnesses would be present:

SA [REDACTED] 10th MP BN (CID) (b)(6)1-7(c)11
SGM [REDACTED] r, 418th MP Det, 81st EPW RSC
[REDACTED], Titan Corp (b)(6)-4; 7(c)-4
CPT [REDACTED] 372d MP CO
SFC [REDACTED] 372d MP CO
SSG [REDACTED] 372d MP CO

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

Government Counsel clarified for the Investigating Officer and Defense Counsel, that some witnesses would not be present, and it was up to the Investigating Officer whether to determine witnesses as available or unavailable.

The Government Counsel made an Opening Statement.

The Defense Counsel made an Opening Statement.

THE GOVERNMENT'S CASE

SA (b)(6)-1; (7)(C)-1 [REDACTED] 10th MP BN (CID), Prisoner Interrogations, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

(b)(6)-2; (7)(C)-2 I have been a CID agent for 4 years. I was assigned at Abu Ghraib Prison in the beginning of January 2004. I was assigned to the detainee abuse case.

The investigation started after SPC [REDACTED] came back from emergency leave, and had heard of a shooting at the prison and wanted pictures from CPL Grainer. He got a CD from CPL Grainer, and began to view and copy photos on his CPU. He came across pictures of naked detainees naked. SPC [REDACTED] is an MP in 372d MP CO. The detainees were naked and piled

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

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Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

(b)(6) - 2; 7(c) - 2
up on the floor in a pyramid, there were pictures of detainees masturbating and other very humiliating pictures. SPC [REDACTED] initially put an anonymous letter under our door, and then he later came forward and gave a sworn statement. He felt very bad about it and thought it was very wrong. SPC [REDACTED] turned the disc over to [REDACTED], the Agent-in Charge at that time. We then issued an investigation, briefed the Battalion, and identified who was in the pictures for questioning.

(b)(6) - 1 - 7(c) - 1
The Government Counsel hands the Witness Prosecution Exhibit 1 for Identification.

This is a copy of the Original CD we collected as evidence. It is marked with "CPU Exam" and has instructions on how to access the files on the CD. The original is with CID. It contains file numbers and all the pictures we got from the CPU and the disc we got from SPC (b)(6) - 2; 7(c) - 2. [REDACTED] I have reviewed the pictures on this CD several times.

The Government Counsel requested that Prosecution Exhibit 1 be entered into evidence.

Prosecution Exhibit 1 was admitted into evidence with objection; Defense Counsel requested that the AIR on the disc and the CID Report not be considered.

We interviewed the seven soldiers identified in the photos--SSG Frederick, CPL Grainer, and SPC Ambuhl requested legal counsel; SPC Harman, SGT Davis, SPC Sivits, and PFC England gave sworn statements. SSG Frederick was the NCOIC of the hard site; he is the accused here in the case today. We advised them all of their rights. Some waived their rights and gave detailed sworn statements two or three times. We wanted to know who was taking pictures, who was there, who was being abused, who did the abusing-- basically what was taking place in the prison. SPC Harman, PFC England, SPC Sivits, and SGT Davis gave statements; SSG Frederick, SPC Ambuhl, and CPL Grainer did not.

The Defense Counsel objected and asked that the Investigating Officer not consider the fact that SSG Frederick decided to seek legal counsel and not give a statement.

I only interviewed SPC Ambuhl, she requested legal counsel. When I read through the statements, SPC Harman and SPC England described the details of incidents where SSG Frederick punched a detainee in the chest so hard that the detainee almost went into cardiac arrest. Another incident was of a detainee standing on top of a MRE box with wires tied to his hands; others piled in a pyramid, and who was present during the pyramid.

The Defense Counsel objected to the witness' testimony as a substitute to the availability of witnesses who could testify instead of the agent's recollection of the CID case file.

The Government Counsel stated that the witnesses the agent was referencing were unavailable.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

I helped conduct this investigation. I was called from BIAP to assist with gathering the evidence and interviewing personnel. I am familiar with all of the contents of the report, and have read it thoroughly.

SSG Frederick, CPL Grainer, came up the most. Other names were SPC Harman, SPC Ambuhl, SGT Davis, SPC Sivits, and PFC England. All seven soldiers are from the night shift.

The Government Counsel hands the Witness Prosecution Exhibit 2 for Identification.

This is a sketch of Tier 1A and 1B of the prison hard site. There are two pages. [Witness points to the sketch as he describes the layout of the area] These are the first tiers you come up the steps into the guard shack in the center, there are numbered cells on the top and bottom floor. I have been in this area at least ten times. This is how the hard site looked during our investigation.

Prosecution Exhibit 2 was admitted into evidence with objection; Defense Counsel stated that the sketch was a description and not an accurate depiction, asked that the Investigating Officer not consider the exhibit.

The Government Counsel hands the Witness Prosecution Exhibit 3 for Identification.

In this picture is tier 1A. I see the lower isolation area doors. [The witness steps to the I.O.'s stand as he explains sketch of tier 1A and 1B as he references the picture] The picture shows 3 detainees on the floor bound together. I have been at the prison since January. There are several guards surrounding the detainees on the floor. I recognize one of the interpreters, named [REDACTED] in the picture. (b)(6)-4, (7)(C)-4

Prosecution Exhibit 3 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 4 for Identification.

This is a picture of the three detainees on the floor naked. Same location as the other picture, except a different angle. [The witness steps to the I.O.'s stand as he explains sketch of tier 1A and 1B as he references the picture]

They are down towards the guard area. I think CPL Grainer with his hands on his hips, is in this picture, but I am not certain.

Prosecution Exhibit 4 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 5 for Identification.

This is another picture with detainees on the floor and CPL Grainer kneeling on top of them. I recognize the isolation doors.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 5 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 6 for Identification.

This is the same location of lower tier 1A. The three detainees are still on the floor, and there is a football in the photo as well. There are no dates on the photos, but the CPU had dated folders when they were retrieved.

Prosecution Exhibit 6 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 7 for Identification.

Now the football appears to be bouncing. It appears to be the same event as described in the sworn statements.

Prosecution Exhibit 7 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 8 for Identification.

This is a picture of the seven detainees brought over from Ganci formed into a pyramid or dog pile. CPL Grainer and SPC Harman are posing with a thumbs up. The area is the hard site, but I cannot tell which location in the site.

The hard site is the indoor cells of about seven tiers. The worst prisoners are kept there. MPs work tier 1. Other MPs supervise Iraqi Guards who work the other tiers.

1A contains MI holds, coalition criminals, and security detainees. 1B holds juveniles and females.

Prosecution Exhibit 8 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 9 for Identification.

This is the lower level of tier 1A. That is CPL Grainer and PFC England posing near the pyramid of naked detainees. The detainees were brought in because they started a riot at Ganci. There are three sections at the prison-- Ganci, Vigilant, and the Hard Site. Those seven were starting a riot, and they were brought to the hard site, stripped, and the guards started the pyramid and all kinds of acts with them.

There are specific interrogation SOPs, but a naked pyramid is not part of it.

Prosecution Exhibit 9 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 10 for Identification.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

This the same pyramid of naked detainees. During our investigation, we matched up pictures with statements. SPC Harman and PFC England's statements matched the pictures and videos very well. Victims' statements matched pictures and videos also. I remember one where a detainee was standing on a MRE box, with wires on his fingers, and was told he would be electrocuted if he fell off of the box.

Prosecution Exhibit 10 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 11 for Identification.

This is the detainee standing on the MRE box in the shower room. They nicknamed him Gilligan, but don't know why. He said he had wires on his fingers and penis. You can see the wires on his hand, but not on his penis. SSG Frederick is in this picture. The detainee has some sort of blanket over him and sandbag over his head.

Prosecution Exhibit 11 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 12 for Identification.

This is the same MRE box picture, except a little distorted. SSG Frederick is not in this one. [The Government Counsel hands the witness prosecution Exhibit 11.] This is just a different shot of the same incident.

Prosecution Exhibit 12 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 13 for Identification.

This is the detainee masturbation incident. PFC England's statement describe that SSG Frederick motioned the detainee's hands back and forward on its penis to coax the detainee to masturbate himself. He then made PFC England pose in a picture next to the detainee. She said she didn't want to pose, but she did it anyway. Looks like lower tier 1A.

There is no SOP, MI or MP, which outlines masturbating detainees. The MI SOP outlines what they are allowed to do, like sleep deprivation.

The Defense Counsel objects to the classification of MI interrogations SOPs.

Prosecution Exhibit 13 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 14 for Identification.

That is two of the detainees from the pyramid --one kneeling with his face to the groin of another detainee standing and masturbating. That picture corresponds with some of the statements.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 14 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 15 for Identification.

These are the same two detainees masturbating--only the standing detainee is wearing a sandbag this time. This is a better view of the kneeling individual with his head against the penis of the standing detainee.

Prosecution Exhibit 15 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 16 for Identification.

This is SSG Frederick sitting on top of two litters with a detainee bound between the litters. [The witness approaches the I.O. stand to depict the area the photo was taken in relation to the 1A/1B sketch.] SSG Frederick is just posing in this picture. This is not a military function.

Prosecution Exhibit 16 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 17 for Identification.

This is a picture of the seven detainees right after they were transferred from Ganci. They are still clothed. They were piled on the floor, and later stripped. Some of the guards took turns jumping into the pile for no apparent reason. CPL Grainer also punched one so hard that detainee was knocked out. SSG Frederick also punched one in the chest.

Prosecution Exhibit 17 was offered into evidence.

CROSS EXAMINATION

[The Defense Counsel hands the witness the CID file which all parties present have a copy of.]

I have seen this 3-½ inch file before. This is our investigation file; I don't know how many pages, certainly over 10 pages. I interviewed one alleged co-conspirator. All of the other agents have redeployed to the United States. They are still in the Army.

The Government Counsel objects to the Defense Counsel's legal definition of available, as the witness does not make the determination of who is available.

I worked approximately 30% of the file, I can't be certain though. I was not an eyewitness of any of the photos, nor was I present during any of the riots. I did not take any of the photos. I do not know much about computers, but when the pictures were retrieved, there were folders dated 7 and 8 November, with the pictures inside.

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Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

There is a classified book of detainees that MI maintains. There were detainees being held by CID and MI for crimes against the Coalition, and others for security reasons.

I don't think there was a SOP in the prison when this stuff happened. Everybody was questioned about what happened, including the Battalion Commander. I don't remember if the Judge Advocate was questioned. SA Arthur interviewed the chain of command.

The Defense Counsel shows the witness Prosecution Exhibit 3.

I do not See SSG Frederick in this photo. I do not see any maltreatment, just a pile on the floor.

The Defense Counsel shows the witness Prosecution Exhibit 4.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 5.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 6.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 7.

I do not See SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 8.

Neither of these two soldiers is SSG Frederick.

The Defense Counsel shows the witness Prosecution Exhibit 9.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 10.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 11.

I recognize SSG Frederick in this photo, looking at a camera. He is not touching the detainee.

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The Defense Counsel shows the witness Prosecution Exhibit 12.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 13.

I recognize PFC England in this photo. She stated that she did not want to be in it, but she appears to be enjoying this photo. SSG Frederick is not in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 15.

SSG Frederick is not in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 16.

SSG Frederick is in this photo sitting on top of a detainee. I do not know why he is sitting on top of the detainee.

The Defense Counsel shows the witness Prosecution Exhibit 17.

SSG Frederick is not identifiable in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 12.

This picture is a little distorted.

The Defense Counsel shows the witness Prosecution Exhibit 14.

I recognize these guys from the pyramid because they were the only ones on the floor naked. I can't be certain if it was before or after the pyramid.

The Defense Counsel shows the witness Prosecution Exhibit 16.

This is not a military function, SSG Frederick sitting on top of the detainee wrapped between two litters.

The Defense Counsel shows the witness Prosecution Exhibit 17.

This appears to be the pictures of a pile of detainees when they were transferred from Ganci and placed in a big pile. The guards later jumped onto the pile, according to the statements given. There isn't anyone jumping in this picture.

There were several detainees listed as victims in our report. [Defense counsel hands the witness the CID file] SA [REDACTED] was responsible, overall for the case. On this list, if it says

(b)(6) - 1, (b)(7)(C) - 1

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"detainee", then they are still at Abu Ghraib. If it says, "released", then they are somewhere in Iraq. I am stationed at Abu Ghraib; it is about 30 minutes away from here.

Nothing depicted in the photos follows SOP. The prisoners were stripped naked, whether it was SOP or not. Most of their SOP was verbal decisions. We interviewed all members of the chain of command. No one knows what was told to the guards. SSG Frederick was the NCOIC and managed all of the tiers.

I did not review any SIGACTs, OPORDs, WARNOs. I know of no training guidelines.

What I got is that SSG Frederick and CPL Grainer were road MPs and were put in charge because they were civilian prison guards and had knowledge of how things were supposed to be run.

I was not at MP prior to being a CID Agent.

I believe the soldiers working in Abu Ghraib, are not the same that would work at the prison at Ft Leavenworth. I never reviewed the regulation on detainee operations, nor do I know if any of the chain of command reviewed it.

Everyone being held at Abu Ghraib was called a "detainee"

The Government Counsel objects to the Defense Counsel attempting to have the witness determine who was a detainee/EPW/POW; as the witness did not know the definitions, nor did the witness classify the detainees as such

I do not know who authorized CID to call these people "detainees" in the report. I guess it was a JAG Attorney during the inprocessing.

Prosecution Exhibits 3 thru 17 admitted into evidence with objection; the Defense Counsel stated that all photos in which SSG Frederick was not pictured, and also the description of events depicted in the pictures should not be considered.

REDIRECT EXAMINATION

~~(b)(6)~~ (b)(7)(C) - I
I have been on this case for 3 months. I was transferred from BIAP to be Agent in Charge. SA [REDACTED] handled most of this case. I am familiar with the file, it contains a lot of information -- cannot recall all of it.

I am not an MP or MI. No MI or MP SOP would authorize masturbation. No MP or Army regulation would allow masturbation or jumping onto a pile of detainees. No MP or Army policy would allow masturbation or wrongfully assaulting detainees.

A picture is a still shot of what is occurring at a specific time.

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The Government Counsel shows the witness Prosecution Exhibit 16.

There is no MP or Army regulation that would allow anyone to sit on top of a person who is bound between two litters. There appears to be no apparent military duty being performed here, just SSG Frederick posing for a photo sitting on top of the detainee bound between two litters. SSG Frederick does not appear to be in any danger.

The Government Counsel shows the witness Prosecution Exhibit 11.

SSG Frederick is in this picture.

The Government Counsel shows the witness Prosecution Exhibit 12.

SSG Frederick is not in this picture, but it doesn't mean that he wasn't there. We know the event happened, and that he didn't prevent it.

After this all happened, it was put out by the chain of command to not allow any photographs be taken IAW the Geneva Conventions.

RECROSS EXAMINATION

I am stationed at Abu Ghraib. I have walked throughout the prison. I have not seen the Geneva Convention posted.

REDIRECT EXAMINATION

If you told me the Geneva Convention was available at the prison, it would not surprise me.

QUESTIONS BY THE INVESTIGATING OFFICER

This copy of an SOP from our CID file is from the MI folks. There was no SOP on how the tiers were to be run. There was no SOP for the prison guards. The hard site had no SOP. Vigilant is the outside tent camp. It does not apply to where SSG Frederick worked.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Government Counsel discussed the availability of co-accused, due to their rights invocation, and introduced the following exhibits for Identification:

Prosecution Exhibit 18 (Statements of SPC Sivits)

Prosecution Exhibit 19 (Statements of SGT Davis)

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Prosecution Exhibit 20 (Statements of SPC Harman)

Prosecution Exhibit 21 (Statements of PFC England)

The Article 32 proceeding recessed at 1140, 2 April 2004.

The Article 32 proceeding reconvened at 1153, 2 April 2004, with all parties present.

Prosecution Exhibits 18, 19, 20, and 21 admitted into evidence with objection; the Defense Counsel stated that even though he also received emails from the co-accused's counsel stating the invocation, it was up to the I.O. to determine unavailability.

The Government Counsel discussed the unavailability of detainees due to security reasons at their being held at the prison; and introduced the following exhibits for Identification:

Prosecution Exhibit 22 (Statements of [REDACTED])

Prosecution Exhibit 23 (Statements of [REDACTED])

Prosecution Exhibit 24 (Statements of [REDACTED])

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

Prosecution Exhibits 22, 23, and 24 admitted into evidence.

The Article 32 proceeding recessed at 1200, 2 April 2004.

The Article 32 proceeding reconvened at 1205, 2 April 2004, with all parties present.

The Government Counsel discussed the availability of [REDACTED] Titan Corp, due to his rights invocation, and introduced Prosecution Exhibit 25 for Identification.

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

Prosecution Exhibit 25 admitted into evidence with no objection.

THE DEFENSE'S CASE

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

SGM [REDACTED] 418th MP Det, 81st RSC, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

We are an EPW/POW CI team. I have been involved with the prison since 1 February. I do not know anything about a CID report; CID never questioned me.

The Government Counsel objected to the Defense counsel referencing a report that the witness knows nothing about; and unless the Defense Counsel can show the witness where his name is listed in the report, he cannot answer any questions about it.

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We made assessments on the facilities and procedures. I have been through all 3 camps on the prison. We make sure the conditions are IAW the Geneva Conventions, i.e. medical care, living conditions, and food for the prisoners. Our main goal is the repatriation of the detainees to their homeland. I do not know who our predecessors were. We set up detainee release boards to get the detainees released. We arrange the releases and pay the released detainees a \$10.00 stipend.

There are 12 members on our team-- ½ is at Victory Base with the 16th MP BDE (ABN) the other ½ at Abu Ghraib. We have a commander, medical personal, supply, clerical and MP personnel on our team. I go to the prison a few days each week.

We perform more of a detainee release business, since there is no real POW/EPW camp.

When we got there, MPs were providing security. We addressed deficiency reports to our commander thru the proper channels. We are just an advisory team. There are typical security detainees throughout the prison. The hard stand holds criminal detainees. Vigilant and Ganci also hold personnel that could have committed crimes against the coalition, and who were possibly "in the wrong place at the wrong time."

I am not qualified to answer whether a detainee is insane or not.

Our concern is that the proper paperwork is done when someone is brought in. MI personnel are located in the in-processing complex at Abu Ghraib. When the detainees are brought in, they are screened according to the Geneva Convention. I am not sure of interrogations --that is not our role. I do not know the CACI Corp. There are KBR contractors running the DFAC.

QUESTIONS BY THE INVESTIGATING OFFICER

The term detainee is "universal," and is used if someone is not classified as an EPW.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1225, 2 April 2004.

The Article 32 proceeding reconvened at 1316, 2 April 2004, with all parties present.

(b)(6)-2; (7)(C)-2
CPT [REDACTED] 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of his rights under Article 31, signed DA Form 3881, invoked his rights, and was excused.

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The Defense Counsel requested the I.O. grant Testimonial Immunity for CPT [REDACTED] and the Article 32 be reconvened when CPT [REDACTED] could provide his testimony. (b)(6)-2;

The Government Counsel stated that only the Convening Authority could grant immunity; and that CPT [REDACTED] LTC [REDACTED] and 1SG [REDACTED] be declared unavailable because they already have, or would invoke their rights. 7CJ-2

Defense Counsel argues his theories on how the incidents and investigation took place.

Government Counsel argues why an Article 32(b) Investigation is supposed to be used.

The Article 32 proceeding recessed at 1335, 2 April 2004.

The Article 32 proceeding reconvened at 1341, 2 April 2004, with all parties present.

Government Counsel clarified for both the Investigating Officer and Defense Counsel, which of the requested defense witnesses were available and would be present for testimony and that there was no possibility of telephonic testimony.

Defense Counsel requested that the Government pursue due diligence in locating defense witnesses.

The Defense Counsel requested that the Government also try to locate CPT [REDACTED] an MI officer at the prison. (b)(6)-2; (7)(C)-2

The Article 32 proceeding recessed at 1400, 2 April 2004, so that the Investigating Officer could consult with his Legal Advisor.

The Article 32 proceeding reconvened at 1415, 2 April 2004, with all parties present.

The following requested defense witnesses were determined to be unavailable for testimony:

BG Janis Karpinski, Cdr, 800th MP BDE (377th TSC)
CPT [REDACTED] 372d MP CO
MAJ [REDACTED] 320th MP BN
S-3, 320th MP BN
CPT [REDACTED]
CPT [REDACTED]
CPT [REDACTED]
ICRC Representatives...
CPL Grainer
PFC England
SPC Ambuhl
SGT Davis

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

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SPC Harman

SPC Sivits

SPC [REDACTED]

SPC John Cruz

SPC [REDACTED], 325th MI BN

[REDACTED]

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

Mr. [REDACTED] CACI Corp (b)(6)-2 (7)(C)-2 (b)(6)-4; (7)(C)-4

SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]

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

The Defense Counsel objected to the unavailability of witnesses.

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The Government Counsel discussed the availability and status of documents and miscellaneous information the Defense Counsel requested in Discovery.

Defense Counsel objected to the Government's production of documents and miscellaneous information requested in Discovery; and requested that the Investigating Officer compel the Government to produce the information.

The Article 32 proceeding recessed at 1438, 2 April 2004.

The Article 32 proceeding reconvened at 1005, 9 April 2004, with all parties present.

SSG (b)(6)-2, (7)(C)-2 [redacted] 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of his rights under Article 31, signed DA Form 3881, and was excused.

Defense Counsel stated that he still stood by his 30 March request that the Government produce the AR 15-6 Investigation on the 800th MP BDE.

Government Counsel stated that Mr (b)(6)-4, 7(C)-4 [redacted], Agent [redacted] SGT [redacted], and CPT (b)(6)-2, 7(C)-2 [redacted] could not be located; and that the 15-6 Investigation was now available at the Administrative Law Division, OSJA, CJTF-7.

The Government Counsel stated that the 15-6 would be picked up at the next available recess.

The Government Counsel requested to reopen its case and present an additional witness.

THE GOVERNMENT'S CASE

SPC (b)(6)-2, 7(C)-2 [redacted] 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

I run part of the hard site at the prison. I work night shift, tier 4. Now I work different tiers daily.

I ran a tier or cell block, consisting of about 10 cells of 8 people. I make sure everything is okay medically and make sure the prisoners get food.

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I had very little training. They only told us how to do counts and how to handle certain situations. We did a RIP, or tag team with a couple of the soldiers we replaced to see how things worked. I am not aware of any policies or SOPs. We counted the prisoners at least once per night.

We were to protect and make sure everything was in good order.

The people before us taught us how to care for the prisoners. Common sense wouldn't say it was okay to beat up on a prisoner.

We received seven new prisoners from Ganci because they tried to start a riot. They were escorted to tier 1, to be placed in isolation for about 10 days. I helped escort the prisoners. They were zip-tied behind their backs, and had sandbags on their heads. The guards would lead them into the walls and cell bars. This was no self-defense as I saw it.

(b)(6)-2; 7(c)-2
SFC [REDACTED] grabbed my prisoner and threw him into a pile with the others. I was the last one in the line with a prisoner. I do not think it was right to put them in a pile.

I saw SSG Frederick, SGT Davis, and CPL Grainer walking around the pile hitting the prisoners. I remember SSG Frederick hitting one prisoner in the side of its ribcage. The prisoner was no danger to SSG Frederick. They were still flex-cuffed and sandbagged. I left after that.

I returned later because someone wanted me to get SSG Frederick for something. I went down to tier 1, and when I looked down the corridor, I saw 2 naked detainees, one masturbating to another kneeling with its mouth open. I thought I should just get out of there. I didn't think it was right, as it seemed like the wrong thing to do. I saw SSG Frederick walking towards me, and he said, "Look what these animals do when you leave them alone for two seconds".

I heard PFC England shout out, "he's getting hard".

(b)(6)-2; 7(c)-2
I told my team leader, SGT [REDACTED] what I saw, and SSG Frederick was moved to work the towers. I told my chain of command, and I think the issue was taken care of. I just didn't want to be part of anything that looked criminal.

CROSS EXAMINATION

I am a Reservist. My unit is a law and order unit. I don't know if there are MP units that work detainee operations.

[The Defense Counsel hands AR 190-8 to the I.O.]

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All I know is that the prisoners were from Ganci, and there is a mixture of prisoners in tier 1A and 1B. I remember a little about "Shitboy". He would spread feces all over himself. I didn't try to get involved in tier 1 stuff.

I am not familiar with my unit's METL. I received MP training at AIT --no training in detainee operations in AIT or at unit drills.

I think the interrogators were civilians. I don't know anything about the CACI Corp. I didn't get involved with the civilian stuff. I don't know who would give instruction on how to treat prisoners.

Everyday, a General or other VIP could visit the prison. I saw a Lieutenant General once. I know photography was strictly prohibited. The Commander told everyone.

I saw SSG Frederick punch a detainee. I did not see him jump on a detainee. I did not see him stomp on a detainee's feet. I did not see him place detainees in a pyramid. I did not see him tell a detainee standing on top of an MRE box he would be electrocuted.

I saw the two detainees masturbating, and SSG Frederick was walking towards me. They were behind him. I did not see him tell them to masturbate.

This was the only time I was at tier 1. I never saw SSG Frederick order detainees to hit each other. The detainee SSG Frederick punched did not die, he only screamed in pain. I only saw SSG Frederick punch one detainee.

We were subject to attacks from outside -- mortars, rockets, gunfire. Then it happened once a week. Now, it happens once every two weeks. We had no background info on the 7 transfers, only that they started a riot.

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

I was told about a detainee that shot SGT [REDACTED]. The detainee was shot. This happened in tier 1.

QUESTIONS BY THE INVESTIGATING OFFICER

I never saw any other behavior. I distinctly remember SSG Frederick hitting a detainee. I also remember CPL Grainer punching a detainee in the face and SGT Davis stomping on a detainee's toes. Those are just incidents that I just cannot forget.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Government Counsel discussed the unavailability of detainees, due to security reasons at their being held at the prison; and introduced the following exhibits for Identification:

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 26 (Statements of [REDACTED])
Prosecution Exhibit 27 (Statements of [REDACTED])
Prosecution Exhibit 28 (Statements of [REDACTED])
Prosecution Exhibit 29 (Statements of [REDACTED])
Prosecution Exhibit 30 (Statements of [REDACTED])
Prosecution Exhibit 31 (Statements of [REDACTED])
Prosecution Exhibit 32 (Statements of [REDACTED])
Prosecution Exhibit 33 (Statements of [REDACTED])
Prosecution Exhibit 34 (Statements of [REDACTED])
Prosecution Exhibit 35 (Statements of [REDACTED])
Prosecution Exhibit 36 (Statements of [REDACTED])
Prosecution Exhibit 37 (Statements of [REDACTED])
Prosecution Exhibit 38 (Statements of [REDACTED])

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

Prosecution Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 were admitted into evidence.

THE GOVERNMENT RESTS

The Article 32 proceeding recessed at 1045, 9 April 2004, so that the Investigating Officer consult with his Legal Advisor, and the Government Counsel could retrieve the 15-6 Investigation.

The Article 32 proceeding reconvened at 1125, 9 April 2004, with all parties present.

All parties received copies of the 15-6 Investigation, and the Article 32 recessed at 1130, 9 April 2004, to allow all parties review the document.

The Article 32 proceeding reconvened at 1302, 10 April 2004, with all parties present.

The Defense Counsel entered the 15-6 Investigation as Defense Exhibit 1 for Identification.

Defense Exhibit A was entered into evidence with no objection.

The Government Counsel made a Closing Statement.
The Defense Counsel made a Closing Statement.

The Government Counsel made a Rebuttal Statement.

The Defense Counsel motioned for the Government Counsel to provide a copy of its Closing Statement PowerPoint presentation, verbatim transcript, and tapes so that he could share it with co-counsel.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

The Government Counsel objected to providing his closing statement presentation, and stated the verbatim transcript was not an issue for the Investigating Officer to decide, and the SJA had already denied such a request.

The Article 32 proceeding adjourned at 1354, 10 April 2004.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

1. The Process.

I will review the Uniform Code of Military Justice (UCMJ) definitions from the Manual for Courts-Martial United States (2002 edition) for each Article that the accused has been charged with. I will establish and discuss the evidence and credibility of witness testimony as they apply to each of the UCMJ Charges and the specific Specifications and determine if the burden of proof has been met that reasonable grounds exist that the accused has committed the offenses IAW R.C.M. 405(j)(2)(h).

2. Discussion of MG Taguba's 15-6 Investigation.

First, I would like to address the overarching theme of the defense, that of a greater failure in the higher leadership, to condone, and possibly encourage, this heinous type of conduct and behavior. The defense was adamant about this leadership failure and sought the discovery of the 15-6 investigation that was initiated on the 800th M.P. Brigade, conducted by MG Taguba. On 9 April 2004, this document was entered into evidence. Once this occurred, I recessed the investigation to allow all parties the opportunity to become familiar with it. Once in evidence, no objections were made on it and both parties moved to their closing arguments.

Upon reading this document, I fail to see where the document validates or supports the defense's claims that the leadership condoned, and possibly encouraged, the actions of the accused. Quite the contrary, as the report explains, it was the failure of the leadership to **supervise** their respective units, i.e., to not allow these types of events to occur. It was not the leadership being there and encouraging these acts, quite the contrary, they were not there to ensure these acts were not being committed, period.

MG Taguba makes it a point to reference several units within the Brigade that performed their duties splendidly and without incident. If this failure in leadership was so widespread and the proximate cause for these incidents, how were these units able to maintain standards and act properly?

As to the individual offenses allegedly committed by SSG Frederick, I find no substantial relationship between these charges and the actions, or inaction, of his higher chain of command.

3. Discussion of Evidence.

Charge I. Violation of Article 81, UCMJ

The definition of Article 81, Conspiracy, from the Manual for Courts-Martial United States (2002 edition)

a. Text. "Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court - martial may direct."

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

b. Elements.

(1) That the accused entered into an agreement with one or more persons to commit an offense under the code;

(2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 24 October 2003, conspire with CPL Charles A. Graner and PFC Lynndie R. England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick handcuffed three detainees together and directed said PFC England to photograph the detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. In Prosecution Exhibit 21, Sworn Statement from PFC England, she states that CPL Graner and SSG Frederick asked her to throw down handcuffs and then was requested to take pictures of the detainees. These acts meet the requirements of both elements supporting this specification. Photographs, Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with SGT Javal S. Davis, CPL Graner, SPC Jeremy C. Sivits, SPC Sabrina D. Harman, SPC Ambuhl and PFC England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick did place naked detainees in a human pyramid and photographed the pyramid of naked detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. In Prosecution Exhibits 20 - 21, Sworn Statements from SPC Harman and PFC England, they both corroborate the actions of SSG Frederick that support this Specification charge of conspiracy. SPC Harmon identifies SSG Frederick as being present while the Pyramid Event was unfolding. PFC England notes that SSG Frederick was taking pictures of the human pyramid while it was occurring as well. Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, also corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Charge II. Violation of Article 92, Failure to obey order or regulation, UCMJ

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

The definition of Article 92, Failure to obey order or regulation from the Manual for Courts-Martial United States (2002 edition)

a. *Text*. "Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

b. *Elements*.

(1) *Violation of or failure to obey a lawful general order or regulation.*

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

(2) *Failure to obey other lawful order.*

- (a) That a member of the armed forces issued a certain lawful order;
- (b) That the accused had knowledge of the order;
- (c) That the accused had a duty to obey the order; and
- (d) That the accused failed to obey the order.

(3) *Dereliction in the performance of duties.*

- (a) That the accused had certain duties;
- (b) That the accused knew or reasonably should have known of the duties; and
- (c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

Further definition from the Manual for Courts-Martial United States (2002 edition)

(3) *Dereliction in the performance of duties.*

(a) *Duty*. A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.

(b) *Knowledge*. Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

(c) **Derelict.** A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person's duties or when that person performs them in a culpably inefficient manner. "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. "Negligently" means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. "Culpable inefficiency" is inefficiency for which there is no reasonable or just excuse.

(d) **Ineptitude.** A person is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished. For example, a recruit who has tried earnestly during rifle training and throughout record firing is not derelict in the performance of duties if the recruit fails to qualify with the weapon.

The Specification: In that SSG Frederick, II, U.S. Army, who knew of his duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 20 October 2003 to, on or about, 1 December 2003, was derelict in the performance of those duties in that he willfully failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to.

The **burden of proof**, to include all three elements of the crime, for reasonable grounds that the accused committed the offense identified in the Specification, for all elements **has been met.** In Prosecution Exhibit 21, Sworn Statement from PFC England, she states that SSG Frederick is the NCOIC for the nightshift at the Hardsite with the 372nd MP Company. As the NCOIC, he was responsible for health and welfare of, not only his soldiers, but all of the detainees under his charge as well. In Prosecution Exhibits 18 - 21, Sworn Statements from SGT Sivits, SGT Davis, SPC Harman and PFC England, as well as the testimony of SPC Wisdom, corroborate the actions of SSG Frederick that support this Specification, the charge of Dereliction in the Performance of his Duties. Prosecution Exhibits 3 - 17, photos from the CID CD Prosecution Exhibit 1, provide graphic pictorial evidence of exactly what was allowed to occur in the confines of the Hardsite under the supervision of SSG Frederick. Even in the absence of clearly defined SOP's and TTP's, it would be reasonable to assume that SSG Frederick knew that these particular events/activities were not within the scope of his duties and inherently wrong/illegal. I recommend that the charge and specification be referred to a General Court Martial.

Charge III. Violation of Article 93, Cruelty and maltreatment, UCMJ

Definition of Article 93, Cruelty and maltreatment from the Manual for Courts-Martial United States (2002 edition)

a. Text.

"Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct."

b. Elements.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

- (1) That a certain person was subject to the orders of the accused; and
- (2) That the accused was cruel toward, or oppressed, or maltreated that person.

c. *Explanation.*

(1) *Nature of victim.* "Any person subject to his orders" means not only those persons under the direct or immediate command of the accused but extends to all persons, subject to the code or not, who by reason of some duty are required to obey the lawful orders of the accused, regardless whether the accused is in the direct chain of command over the person.

(2) *Nature of act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense. Sexual harassment includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both.

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by participating in and allowing the placing of wires on the detainee's hands while he stood on a Meals Ready to Eat (MRE) box with his head covered and allowing the detainee to be photographed.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met.** In Prosecution Exhibit 20, Sworn Statement, SPC Harman, she admits to the effect that SSG Frederick was present; in fact, taking pictures of the event. In Prosecution Exhibit 19, Sworn Statement from SGT Davis, corroborates the statement made by SPC Harmon, implicating SSG Frederick in the event. Prosecution Exhibits 11 and 12, photos from the CID CD Prosecution Exhibit 1, capture this event. In fact, SSG Frederick is actually in Prosecution Exhibit 11, photo of detainee on MRE box, examining a camera. SA [REDACTED] in his testimony states, "I recognize SSG Frederick in this photo, looking at a camera. He is not touching the detainee." I recommend that the charge and specification be referred to a General Court Martial.

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

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by placing naked detainees in a human pyramid and photographing the pyramid of naked detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met.** In Prosecution Exhibits 20 - 21, Sworn Statements from SPC Harman and PFC England, they both corroborate the actions of SSG Frederick that support this Specification charge of maltreatment. SPC Harmon identifies SSG Frederick as being present while the Pyramid Event was unfolding. PFC England notes that SSG Frederick was taking pictures of the

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

human pyramid while it was occurring as well. Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, also corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by ordering the detainees to strip, and then ordering the detainees to masturbate in front of the other detainees and soldiers, and then placing one in a position so that the detainee's face was directly in front of the genitals of another detainee to simulate fellatio and photographing the detainees during these acts.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. In Prosecution Exhibits 18, 20 and 21, Sworn Statements from SPC Sivits, SPC Harman and PFC England, all individuals corroborate the actions of SSG Frederick that support the Specification 3 charge of maltreatment. SPC Sivits notes that SSG Frederick and CPL Grainer had the detainees strip naked.... and tried to get several of the inmates to masturbate themselves. He further states that SSG Frederick would take the hand of a detainee and place it on his penis and make his hand go back and forth, as if masturbating. A sworn statement by PFC England corroborates almost exactly what SPC Sivits stated. According to her statement, "SSG Frederick thought it was amusing and told CPL Grainer and SPC Ambuhl to come see." SPC Harman identifies SSG Frederick as being present at this event. Prosecution Exhibits 13 - 15, photos from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event as well. I recommend that the charge and specification be referred to a General Court Martial.

Specification 4: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by posing for a photograph sitting on top of a detainee who was bound by padded material between two medical litters.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 4, **has been met**. Prosecution Exhibit 16 clearly shows SSG Frederick posing for a picture sitting atop a detainee. I can find no military purpose for this act and photograph other than the wanton disregard and malice treatment toward a detainee. I recommend that the charge and specification be referred to a General Court Martial.

Specification 5: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat two detainees, persons subject to his orders, by grabbing the hands and arms of the said detainees and ordering them to strike or punch each other, with the detainees then striking or punching each other.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 5, **has been met**. In Prosecution Exhibit 18, Sworn Statement from SPC Sivits, states that "SSG Frederick had two of the inmates punch each other in the head. SSG Frederick showed them by using his hands and fist that he wanted one inmate to punch the other inmate...they hit each other once." Detainee [REDACTED] supports this accusation in his sworn statement, Prosecution Exhibit 22. In his statement, he claims "they make [REDACTED] stand in front of me and they forced me to slap him on the face, but I refused because he is my friend. After this they asked [REDACTED] to hit me, so he punched my stomach." I recommend that the charge and specification be referred to a General Court Martial.

(S)(6)-4;
7(C)-4

Charge IV. Violation of Article 128, Assault, UCMJ

Definition of Article 128, Assault from the Manual for Courts-Martial United States (2002 edition)

a. Text.

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon; is guilty of aggravated assault and shall be punished as a court-martial may direct."

b. Elements.

(2) *Assault consummated by a battery.*

(a) That the accused did bodily harm to a certain person; and

(b) That the bodily harm was done with unlawful force or violence

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully strike several detainees by jumping and impacting the bodies within a pile of said detainees with his shoulder or upper part of his body.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. In Prosecution Exhibits 19 and 21, Sworn Statements from SGT Davis and PFC England, both individuals corroborate the actions of SSG Frederick that support the Specification 1 charge

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

of Assault. SGT Davis, in his sworn statement states that, "The evening that the Vigilant Camp riot starters were brought in I saw SSG Frederick jump on inmates, hit them." Further more, he states in a question and answer format:

Q. "Did anyone else jump on the prisoners?"

A. "SSG Frederick, CPL Grainer, SPC Ambul, SPC Harmon and SPC England all jumped on them... these same people are the ones who stepped on the prisoner's hands and feet."

"A sworn statement by PFC England corroborates what SGT Davis claims. According to her statement:

Q. "During the event of the 7 detainees that were brought over from the riot, do recall if anyone ran and jumped on top of them while they were lying in the floor?"

A. "Yes, I remember Davis, Grainer and Frederick did.... Frederick did for sure once but I do not recall if he did more than once."

I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully stomp on the hands and bare feet of several detainees with his shod feet.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. In Prosecution Exhibits 19 and 21, Sworn Statements from SGT Davis and PFC England, both individuals corroborate the actions of SSG Frederick that support the Specification 2 charge of Assault. SGT Davis, in his sworn statement states that, "The evening that the Vigilant Camp riot starters were brought in I saw SSG Frederick jump on inmates, hit them." Further more, he states in a question and answer format:

Q. "Did anyone else jump on the prisoners?"

A. "SSG Frederick, CPL Grainer, SPC Ambul, SPC Harmon and SPC England all jumped on them... these same people are the ones who stepped on the prisoner's hands and feet."

A sworn statement by PFC England corroborates what SGT Davis claims. According to her statement:

"Davis would stand on the toes and feet of the detainee. The prisoner would groan and grunt that it was causing pain and discomfort... Frederick had done this as well, to the same prisoners feet that me and Davis stepped on... Davis, Grainer and Frederick were the ones telling the prisoners what to do."

In Prosecution Exhibit 22, sworn statement from [REDACTED] claims "they were laughing, taking pictures, and they were stepping on our hands and feet." This

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

statement directly supports the other two statements previously discussed with reference to this particular specification. Prosecution Exhibit 17 is a photograph depicting the pile of detainees as they lay on the ground that day. It has not been determined if this photograph was taken prior to, or after the assaults on the detainees. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, commit an assault upon a detainee by striking him with the means or force likely to produce death or grievous bodily harm, to wit, by punching the detainee with a closed fist in the center of his chest with enough force to cause the detainee to have difficult breathing and require medical attention.

Definition of Article 128, Aggravated Assault from the Manual for Courts-Martial United States (2002 edition)

(4) *Aggravated assault.*

(a) *Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.*

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm. (Note: When a loaded firearm was used, add the following element)

(v) That the weapon was a loaded firearm.

The **burden of proof**, to include the four primary elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. In Prosecution Exhibits 21, 18, and 19, Sworn Statements from PFC England, SPC Sivits, and SGT Davis, all individuals corroborate the actions of SSG Frederick that support the Specification 3 charge of aggravated assault by means or force likely to produce death or grievous bodily harm. PFC England, stated in her statement:

"Frederick was marking a fake X on his chest of this detainee with his finger, and then drew back with a closed fist and hit the detainee in the chest. It hit him so hard it knocked the detainee backward, and he grunted in pain, the detainee then went to his knees, and was breathing heavy, like he was having problems breathing. We uncuffed the detainee at that point. The detainee was motioning to his chest."

019365

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

Asked why SSG Frederick hit the detainee, PFC England responded, "I guess just because he wanted to hit him. He just said watch this, and he drew the X and then hit him." SPC Sivits noted on the incident,

"SSG Frederick about this point struck one of the detainees in the chest with a closed fist. The detainee was standing in front of Frederick and for no reason Frederick punched the detainee in the chest. The detainee took a real deep breath and kind of squatted down. The detainee said he could not breath. They called a medic to come down to try and get the detainee to breath right."

SGT Davis adds, in his sworn statement, "I saw SSG Frederick hit a prisoner in the chest." All of these statements corroborate the actions of SSG Frederick as they relate to this particular charge. SSG Frederick acted viciously, with total disregard for the health and welfare of the detainees that he was charged to protect. I recommend that the charge and specification be referred to a General Court Martial.

Charge V. Violation of Article 134, UCMJ

Definition of Article 134, Indecent acts with another from the Manual for Courts-Martial United States (2002 edition)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused committed a certain wrongful act with a certain person;

(2) That the act was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Indecent" signifies that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations.

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

This Charge and Specification need to be re-written to reflect the true nature of the offense and the acts committed. The following is the revised Specification.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by influencing/instigating a group of detainees to begin masturbating, or attempting to masturbate, and setting the detainees in sexually provocative positions, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

The **burden of proof**, to include the 3 elements of the crime, for reasonable grounds that the accused committed the offense identified in the revised Specification, **would be met**. In Prosecution Exhibits 18, 20 and 21, Sworn Statements from SPC Sivits, PFC England and SPC Harman, all individuals corroborate the actions of SSG Frederick that support the Specification charge of indecent acts. SPC Sivits notes that, "CPL Grainer and SSG Frederick had the detainees strip naked.... and tried to get several of the inmates to masturbate themselves. He further states that, "SSG Frederick would take the hand of a detainee and place it on the detainees penis and make the detainee's hand go back and forth, as if masturbating." A sworn statement by PFC England corroborates almost exactly what SPC Sivits stated and added, "SSG Frederick thought it was amusing and told CPL Grainer and SPC Ambuhl to come see." Furthermore, according to her statement:

"SSG Frederick and I took the guy standing next to the one masturbating. We positioned him so that he was sitting down directly in front of the other guy masturbating... SSG Frederick and I then turned the prisoner sitting down around to actually face the other prisoner masturbating."

SPC Harman, in her sworn statement, identifies SSG Frederick as being present at this event. Prosecution Exhibits 13 - 15, from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event as well. I would recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix
D, Chronology of Investigation Events

all (b)(6)-2, 7(c)-2

Chronology of Events, Article 32 Investigation, U.S. vs Frederick

22 March 2004, 0336: Read email traffic from my Brigade Commander, COL [REDACTED] that I had been nominated to be an Article 32 Investigation Officer. (Investigating Officer (IO) Exhibit 1)

23 March 2004, 0808: Sent an email to COL [REDACTED] acknowledging receipt of my new duty. (IO Exhibit 2)

23 March 2004, 1316: Sent an email to COL [REDACTED], III Corp JAG, providing my contact information and seeking additional information about my duties. (IO Exhibit 3)

23 March 2004, 0920 : Received an email back from COL [REDACTED] informing me that CPT [REDACTED] would be contacting me shortly. (IO Exhibit 4)

23 March 2004, 1035: Sent an email to COL [REDACTED], letting him know I went down to bldg 94 and was advised that CPT [REDACTED] would be my legal Advisor. (IO Exhibit 5)

25 March 2004, 1626 : Received email correspondence from SFC [REDACTED] my identified Administrative and Paralegal Assistant, notifying me that he will be coming by my office to drop off the Case File and let me know that the Art 32 investigation was set for 6 April 2004. He also provided me with a PDF file of the initial Charge Sheets and Article 32 Notice that would be provided to the defendant, SSG Ivan L. Frederick II. (IO Exhibit 6)

25 March 2004, 1653 : Received email correspondence from SFC [REDACTED] with an adjusted Article 32 Investigation date for 2 April, instead of the 6 April as stated in the previous email. (IO Exhibit 7)

25 March 2004, 1719: Sent an email to SFC [REDACTED] letting him know where I was located in order to drop off the file. (IO Exhibit 8)

26 March 2004, 1030: I received the CID Case file and CD from SFC [REDACTED] At this point in time, I provided him a signed copy of the Article 32 Notice that would be provided to SSG Frederick.

27 March 2004: Conducted an initial interview with CPT [REDACTED] my designated Legal Advisor. I had made a copy of the case file and provided the original to her. She provided me with a III Corp handout on the Article 32 process and we discussed the road ahead.

27 March 2004, 1237: I sent an email to SFC [REDACTED] requesting a witness list and asking about evidence and the options for a closed or open hearing. (IO Exhibit 9)

29 March 2004, 1625: I was CC'd on an email from SFC [REDACTED] stating that there is currently one witness scheduled to testify, SA [REDACTED] (IO Exhibit 10)

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

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

29 March 2004, 1648: I was informed through SFC [REDACTED] that the defendant has chosen a civilian attorney, Mr. [REDACTED], as co-defense. A defense delay was hinted, but never requested. (IO Exhibit 11) (b)(6)-4; (7)(C)-4

29 March 2004, 1701: I was informed by SFC [REDACTED] that he will record the entire proceedings, as well as forward the defense witness list when available. (IO Exhibit 12)

(b)(6)-2;

7(C)-2

29 March 2004, 1702: I sent an email to SFC [REDACTED] asking if there was a deadline by which the defense must submit a request to delay and if it must be in writing. (IO Exhibit 13)

29 March 2004, 2148: I sent an email to SFC [REDACTED] asking if any of the prisoners, and other individuals who provided statements, would be reasonably available to testify. (IO Exhibit 14)

30 March 2004, 0806: Received an email from CPT [REDACTED], officially notifying everyone that Mr. [REDACTED] is coming on board as lead defense counsel, and requested a delay in submission of his witness list until he has had a chance to speak to Mr. [REDACTED] (IO Exhibit 15)

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

30 March 2004, 0843: Received an email from CPT [REDACTED] requesting that I have defense clarify if they are asking for a delay or not, and for how long, due to new counsel. (IO Exhibit 16)

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

30 March 2004, 0855: I sent an email to CPT [REDACTED] counsel for the defense, attempting to validate whether or not he will be requesting a delay due to the defendant bringing on new lead counsel. (IO Exhibit 17)

30 March 2004, 0901: Received an email from CPT [REDACTED] stating he can't answer the question about the delay, but will comply and release his witness request list. (IO Exhibit 18)

30 March 2004, 0906: Received witness list from CPT [REDACTED] via email. (IO Exhibit 19)

30 March 2004, 0907: I sent an email to CPT [REDACTED] letting her know I had no issue with granting a delay, but was not specifically asked for. (IO Exhibit 20)

30 March 2004, 0910: Received an email from CPT [REDACTED] revising a witness request from "all members of the 372 MP Company and 800 MP Brigade to "any and all members OF THE CHAIN OF COMMAND of the 372 MP Company and 800 MP Brigade...". (IO Exhibit 21)

30 March 2004, 0924: Received an email from CPT [REDACTED] requesting that I have defense clarify what each witness will provide, so as to avoid cumulative testimony. (IO Exhibit 22)

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

30 March 2004, 0935: I sent an email to CPT [REDACTED] asking who coordinates getting the people and documents that the defense had asked for. (IO Exhibit 23)

30 March 2004, 0939: Received an email from CPT [REDACTED] anticipating an objection to any and all alternatives to testimony pursuant to R.C.M. 405(g)(4). He further anticipates an anticipated objection to any and all alternatives to evidence pursuant to R.C.M. 405(g)(5). He further asked that I delineate for the record the determination of "reasonably available" witnesses and evidence pursuant to R.C.M. 405(g). (IO Exhibit 24)

30 March 2004, 0958: I sent an email to CPT [REDACTED] counsel for the defense, requesting that he outline the potential testimony of all of his witnesses so as to not contribute to the "cumulative effect." (IO Exhibit 25)

30 March 2004, 1531: I sent an email to SFC [REDACTED] requesting the status of the document and witness gathering. (IO Exhibit 26)

31 March 2004, 0950: Received an email from CPT [REDACTED] clarifying the intent of his witness list and further stating he is ready to proceed with the Article 32 investigation. (IO Exhibit 27)

31 March 2004, 1048: I sent an email to CPT [REDACTED] confirming the date/time and location of the Article 32 Investigation and once again attempting to confirm that no delay is required. (IO Exhibit 28)

31 March 2004, 1054: I sent an email to CPT [REDACTED] advising her that I have not heard from SFC [REDACTED] and had concerns about the witness list and evidence. (IO Exhibit 29)

31 March 2004, 1056: I received an email from CPT [REDACTED] stating she would contact Trial Counsel and get a status on the witness list and evidence. (IO Exhibit 30)

31 March 2004, 1447: I received an introductory email from Mr. [REDACTED] the defendant's civilian attorney, requesting an open hearing, honoring the witness list, and requesting a recording of the procedures. (IO Exhibit 31)

31 March 2004, 1457: I sent an email to Mr. [REDACTED] informing him that the Article 32 investigation will be recorded and that the investigation will be an open one. (IO Exhibit 32)

1 April 2004, 1233: Received CC email from SFC [REDACTED] to the attorneys of various individuals from the witness list requesting their presence at the Article 32 Investigation. (IO Exhibit 33)

1 April 2004, 1314: Received an email from CPT [REDACTED] SJA, stating that SPC Ambühl will not be available to testify. (IO Exhibit 34)

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

- 1 April 2004, 1455: Received an email from CPT [REDACTED] SJA, stating that her client, SPC Harmon will not be available to testify. (IO Exhibit 35)
- 1 April 2004, 1527: Received an email from CPT [REDACTED] JA, stating that SGT Davis will not be available to testify. (IO Exhibit 36)
- 1 April 2004, 2136: Received an email from CPT [REDACTED] SJA, stating that SPC Sivits will not be available to testify. (IO Exhibit 37)
- 2 April 2004, 0851: Received an email from CPT [REDACTED] SJA, stating that SPC Graner will not be available to testify. (IO Exhibit 38)
- 2 April 2004, 1000: I convened the Article 32 investigation on SSG Frederick. See **Appendix B for the substance of the testimony.**
- 2 April 2004, 1438: I recessed the Article 32 investigation on SSG Frederick.
- 2 April 2004, 1600: I reviewed the day's events with CPT [REDACTED] to ensure that the process was being conducted properly.
- 5 April 2004, 0858: I sent an email to SFC [REDACTED] requesting he reserve the Court Room for 9 April, 2004 at 1000 hrs. (IO Exhibit 39)
- 5 April 2004, 1622: Received an email from SFC [REDACTED] stating he has reserved the Court Room for 9 April, 2004 at 1000 hrs. (IO Exhibit 40)
- 6 April 2004, 0811: Received an email from CPT [REDACTED] inquiring on what will happen at the reconvened Article 32 investigation and the status of the defense requests for additional witnesses and products. He also requested support in getting material copied and mailed. (IO Exhibit 41)
- 5 April 2004, 0858: I sent an email to CPT [REDACTED] responding that the intent of the reconvened Article 32 investigation was to allow additional evidence and witnesses not available prior. (IO Exhibit 42)
- 6 April 2004, 0811: Received an email from CPT [REDACTED], stating that SPC [REDACTED] will be able to testify and no success with any of the others. (IO Exhibit 43)
- 9 April 2004, 1000: I re-convened the Article 32 investigation on SSG Frederick, during this session a document of substantial volume was introduced, that being the 15-6 investigation results of the 800th M.P. Brigade that was spearheaded by MG Antonio M. Taguba (Defense Exhibit 1). **See Appendix B for the substance of the testimony.**
- 9 April 2004, 1130: I recessed the investigation until 1300 hrs the following day, 10 April 2004, to allow all parties the opportunity to review the AR 15-6 document.

all (b)(6)-2
7c)-2

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

10 April, 2004, 1302: I reconvened the Article 32 investigation on SSG Frederick. At approximately 1430 hrs on 10 April, 2004, after hearing closing arguments from both sides, I closed the Article 32 hearing. See Appendix B for the substance of the testimony.

10 April, 2004, 1300: The Article 32 proceeding adjourned.

12 April, 2004, 1934: I sent a note to SFC [REDACTED] inquiring on the AR 15-6 CD ROM and if it was to be distributed. I also inquired about the status of the summarization notes. (IO Exhibit 45)

(6)(6)-2,

12 April, 2004, 2052: I emailed my draft DD 457 to CPT [REDACTED] and SFC [REDACTED] for review. (IO Exhibit 44)

7(c)-2

13 April 2004, 1430: I called SFC [REDACTED] and inquired when the transcript would be available. He stated that he would have it completed the following day.

15 April 2004, 1519: Received Article 32 investigation transcript from SFC [REDACTED] (IO Exhibit 46)

16 April 2004, 1122: Received an email from SFC [REDACTED] making me aware that there was not an unclassified CD from the AR 15-6 investigation. (IO Exhibit 47)

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix E, Catalog of Objections**

The following objections were noted throughout the Article 32 investigation process.

1. Defense Counsel stated that he wanted the Investigating Officer to consider R.C.M. 405 when considering the CID Investigation Packet, and that he would submit written objections at the conclusion of the hearing.

Noted

2. Prosecution Exhibit 1 was admitted into evidence with objection; Defense Counsel requested that the AIR on the disc and the CID Report not be considered.

Legally sufficient evidence under the rules of R.C.M. 405(g)(4)(B)(i)

3. The Defense Counsel objected and asked that the Investigating Officer not consider the fact that SSG Frederick decided to seek legal counsel and not give a statement.

Noted

4. The Defense Counsel objected to the testimony of CID SA [REDACTED] as a substitute to the availability of witnesses who could testify instead of the agent's recollection of the CID case file.

Legally sufficient evidence under the rules of R.C.M. 405(g)(4)(B)(i)

5. The Defense Counsel objects to the classification of MI interrogations SOPs.

Noted

6. The Government Counsel objects to the Defense Counsel's legal definition of available, as the witness does not make the determination of who is available.

Noted

7. The Government Counsel objects to the Defense Counsel attempting to have the witness determine who was a detainee/EPW/POW; as the witness did not know the definitions, nor did the witness classify the detainees as such.

Noted

019373

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix E, Catalog of Objections

8. Prosecution Exhibits 3 thru 17 admitted into evidence with objection; the Defense Counsel stated that all photos in which SSG Frederick was not pictured, and also the description of events depicted in the pictures should not be considered.

Noted

9. The Defense Counsel stated that even though he also received emails from the co-accused's counsel stating the invocation, it was up to the I.O. to determine unavailability.

Noted

10. The Government Counsel objected to the Defense counsel referencing a report that the witness knows nothing about; and unless the Defense Counsel can show the witness where his name is listed in the report, he cannot answer any questions about it.

Noted

11. The Defense Counsel objected to the unavailability of witnesses. Defense Counsel objected to the Government's production of documents and miscellaneous information requested in Discovery; and requested that the Investigating Officer compel the Government to produce the information.

I made a ruling on the availability of witnesses for the purposes of this Article 32 investigation. If they were outside the 100 mile radius or were either a detainee or former detainee, they were considered unavailable due to the extraordinary security and operational measures and concerns associated with providing their testimony.

12. The Defense Counsel motioned for the Government Counsel to provide a copy of its Closing Statement PowerPoint presentation, verbatim transcript, and tapes so that he could share it with co-counsel.

The Closing Statement was provided, as well as the summarized testimony, IAW R.C.M 405(j)(2)(B).

13. The Government Counsel objected to providing his closing statement presentation, and stated the verbatim transcript was not an issue for the Investigating Officer to decide, and the SJA had already denied such a request.

The Closing Statement was provided by the Government Counsel.

The following witnesses were declared unavailable for the Article 32 investigation and will more than likely be unavailable for the Court Martial.

ACLU-RDI 1757 p.70

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix F, Court Martial Essential Witness Availability

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

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

Detainee - Unavailable
Detainee - Unavailable
Detainee - Unavailable

SGT [REDACTED] (b)(6)-2-7(c)-2
CID [REDACTED]
Mr [REDACTED] CACI Corp (b)(6)-4;
SA [REDACTED] 7(c)-4
SA [REDACTED]
SA [REDACTED] (b)(6)-2 7(c)-2
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]

Detainee - Unavailable
Detainee - Unavailable
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius

Detainee - Unavailable

019376

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex A,
Prosecution Exhibits, to Appendix G, Exhibits**

List of Prosecution Exhibits

P Exhibit 1: CD ROM of the compiled CID investigation on the Abu Ghraib Prison detainee abuse

P Exhibit 2: Sketch of Tier 1A and 1B of the Abu Ghraib Prison Hard Site

P Exhibit 3: Photo of Tier 1A, shows 3 detainees on the floor bound together

P Exhibit 4: Photo of Tier 1A, shows 3 detainees on the floor bound together

P Exhibit 5: Photo of Tier 1A, shows 3 detainees on the floor bound together

P Exhibit 6: Photo of Tier 1A, shows 3 detainees on the floor bound together

P Exhibit 7: Photo of Tier 1A, shows 3 detainees on the floor bound together

P Exhibit 8: Photo of Tier 1A, shows human pyramid of detainees with 2 soldiers posing for the photo

P Exhibit 9: Photo of Tier 1A, shows human pyramid of detainees with 2 soldiers posing for the photo

P Exhibit 10: Photo of Tier 1A, shows human pyramid of detainees

P Exhibit 11: Photo of Tier 1A, shows detainee standing on MRE box, sandbag on head, wires connected to fingers

P Exhibit 12: Photo of Tier 1A, shows detainee standing on MRE box, sandbag on head, wires connected to fingers

P Exhibit 13: Photo of Tier 1A, shows naked detainees standing, one with hand on penis, sandbags on their heads, one soldier pointing at the detainee with his hand on his penis

P Exhibit 14: Photo of Tier 1A, shows three naked detainees standing, sandbags on their heads, one in close proximity to another on his knees, his head near the other's groin

P Exhibit 15: Photo of Tier 1A, shows two naked detainees standing, sandbag on one their heads, one in close proximity to another on his knees, his head near the other's groin

P Exhibit 16: Photo of Tier 1A, SSG Frederick sitting on top of two litters with a detainee bound between the litters.

P Exhibit 17: Photo shows seven detainees, clothed, piled on the floor, handcuffed with zip ties

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex A,
Prosecution Exhibits, to Appendix G, Exhibits**

P Exhibit 18: Sworn Statement of SPC Sivits

P Exhibit 19: Sworn Statement of SGT Davis

P Exhibit 20: Sworn Statement of SPC Harman

P Exhibit 21: Sworn Statement of PFC England

P Exhibit 22: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 23: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 24: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 25: Sworn Statement of [REDACTED] former Titan Corp employee

P Exhibit 26: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 27: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 28: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 29: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 30: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 31: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 32: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 33: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 34: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 35: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 36: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 37: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

P Exhibit 38: Sworn Statement of [REDACTED] Abu Ghraib Prison detainee

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

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex C,
Investigating Officer's, to Appendix G, Exhibits

List of Investigating Officer's Exhibits

IO Exhibit 1: Email from COL [REDACTED]
IO Exhibit 2: Email to COL [REDACTED]
IO Exhibit 3: Email to COL [REDACTED] III Corp JAG
IO Exhibit 4: Email from COL [REDACTED]
IO Exhibit 5: Email to COL [REDACTED]
IO Exhibit 6: Email from SFC [REDACTED]
IO Exhibit 7: Email from SFC [REDACTED]
IO Exhibit 8: Email to SFC [REDACTED]
IO Exhibit 9: Email to SFC [REDACTED]
IO Exhibit 10: Email from SFC [REDACTED]
IO Exhibit 11: Email from SFC [REDACTED]
IO Exhibit 12: Email from SFC [REDACTED]
IO Exhibit 13: Email to SFC [REDACTED]
IO Exhibit 14: Email to SFC [REDACTED]
IO Exhibit 15: Email from CPT [REDACTED]
IO Exhibit 16: Email from CPT [REDACTED]
IO Exhibit 17: Email to CPT [REDACTED]
IO Exhibit 18: Email from CPT [REDACTED]
IO Exhibit 19: Email from CPT [REDACTED]
IO Exhibit 20: Email to CPT [REDACTED]
IO Exhibit 21: Email from CPT [REDACTED]
IO Exhibit 22: Email from CPT [REDACTED]
IO Exhibit 23: Email to CPT [REDACTED]
IO Exhibit 24: Email from CPT [REDACTED]
IO Exhibit 25: Email from CPT [REDACTED]
IO Exhibit 26: Email to SFC [REDACTED]
IO Exhibit 27: Email from CPT [REDACTED]
IO Exhibit 28: Email to CPT [REDACTED]
IO Exhibit 29: Email to CPT [REDACTED]
IO Exhibit 30: Email from CPT [REDACTED]
IO Exhibit 31: Email from Mr. [REDACTED]
IO Exhibit 32: Email to Mr. [REDACTED]
IO Exhibit 33: Email from SFC [REDACTED]
IO Exhibit 34: Email from CPT [REDACTED] SJA
IO Exhibit 35: Email from CPT [REDACTED] SJA
IO Exhibit 36: Email from CPT [REDACTED] SJA
IO Exhibit 37: Email from CPT [REDACTED] SJA
IO Exhibit 38: Email from CPT [REDACTED] SJA
IO Exhibit 39: Email to SFC [REDACTED]
IO Exhibit 40: Email from SFC [REDACTED]
IO Exhibit 41: Email from CPT [REDACTED]
IO Exhibit 42: Email to CPT [REDACTED]
IO Exhibit 43: Email from CPT [REDACTED]

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

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

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

019379

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex C,
Investigating Officer's, to Appendix G, Exhibits

IO Exhibit 44: Email from CPT [REDACTED]
IO Exhibit 45: Email to SFC [REDACTED]
IO Exhibit 46: Email from SFC [REDACTED]
IO Exhibit 47: Email from SFC [REDACTED]
IO Exhibit 48: Personal notes from MAJ [REDACTED] investigation
IO Exhibit 49: Personal notes from MAJ [REDACTED] investigation on testimony
IO Exhibit 50: Personal notes from MAJ [REDACTED] investigation on potential questions
IO Exhibit 51: Personal notes from MAJ [REDACTED] investigation on potential witnesses
IO Exhibit 52: Personal notes from MAJ [REDACTED] investigation
IO Exhibit 53: DA Form 3881, Rights Warning Procedure/Waiver Certificate, CP [REDACTED]
IO Exhibit 54: DA Form 3881, Rights Warning Procedure/Waiver Certificate, SSG [REDACTED]
IO Exhibit 55: Notification to SSG Frederick of Article 32 Investigation
IO Exhibit 56: Defense's Request for Verbatim Transcript denial signed by COI [REDACTED]
SJA

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

019330

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

[REDACTED] MAJ CJTF7-BN XO

From: [REDACTED] COL CJTF7-BDE CDR
Sent: Monday, March 22, 2004 3:36 AM
To: [REDACTED] COL CJTF7-SJA; Formica, Richard P. BG CJTF7-III Corps Artillery Commander;
 [REDACTED] A CJTF7-C7 ENGINEER/420 EN BDE CDR; [REDACTED] BG CJTF7-C4;
 [REDACTED] COL CJTF7-C1; [REDACTED] COL CJTF7-89MP; [REDACTED] MG CJTF-7 C3;
 [REDACTED] A. COL CJTF7-C8; [REDACTED] COL CJTF7-C5
Cc: [REDACTED] COL CJTF7 16MP BDE CDR; [REDACTED] CPT CJTF7-CHIEF OF
 MILITARY JUSTICE; [REDACTED] CPT CJTF7-16th MP BDE JAG; [REDACTED] COL;
 [REDACTED] COL CJTF7-C9 Chief of Plans; [REDACTED] MAJ CJTF7-BN XO;
 [REDACTED] LTC CJTF7-57th SIG BN CDR
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

We're team players. I will nominate one of my best. MAJ [REDACTED] XO, 57th Signal Battalion (in the "CC").

Sincerely,

COL [REDACTED]
 3D Signal Brigade

From: [REDACTED] COL CJTF7-SJA
Sent: Sunday, March 21, 2004 14:03
To: Formica, Richard P. BG CJTF7-III Corps Artillery Commander; [REDACTED] A CJTF7-C7 ENGINEER/420
 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] CPT COL CJTF7-C1; [REDACTED] COL CJTF7-BDE CDR;
 [REDACTED] COL CJTF7-89MP; [REDACTED] MG CJTF-7 C3; [REDACTED] COL CJTF7-C8; [REDACTED]
 COL CJTF7-C5
Cc: [REDACTED] COL CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF MILITARY JUSTICE;
 [REDACTED] CPT CJTF7-16th MP BDE JAG; [REDACTED] COL; [REDACTED] COL CJTF7-C9 Chief of
 Plans
Subject: (U) Article 32, UCMJ, Investigating Officers

Gentlemen,

Yesterday, charges were preferred against six (6) Military Police soldiers for various charges relating to the maltreatment of detainees at the Abu Ghraib Prison (Baghdad Central Confinement Facility). These soldiers, originally assigned to units which have left theater, were attached to the 16th Military Police Brigade for the processing of actions. At this time it is necessary to secure six (6) Article 32, UCMJ, Investigating Officers, to review the cases against these soldiers and make recommendations on case disposition to LTG Metz, CG, III Corps, who will serve as the General Court-martial Convening Authority. Given the complexity of the cases, Article 32 Investigating Officers should be in the grade of Major or higher, Army officers, possess excellent reasoning and analytical skills, and possess maturity and a judicious temperament.

COL [REDACTED] and BG Formica have each volunteered to provide an Article 32 Investigating Officer, leaving a requirement for four (4) Article 32 Investigating Officers. I am soliciting the help of the Staff Principals, and Brigade Commanders on Camp Victory to secure nominations for this duty. Based on my analysis of this case and other on-going investigations, I am not soliciting nominations from COL [REDACTED] or MG Fast.

While I cannot predict the duration of this duty or the time involved in completing the Article 32 Investigations, I can assure you that this is a vital step in the adjudication of these cases. Please tell me by COB, 22 MAR 03, if you will be able to provide an Article 32 Investigating Officer, and the name of the nominated officer.

Thank you in advance,

V/R,

COL [REDACTED]

019381

4/17/2004

IOEL

MAJ CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Tuesday, March 23, 2004 8:08 AM
To: [REDACTED] COL CJTF7-BDE CDR
Cc: [REDACTED] BN CDR Hensley (E-mail); [REDACTED] COL CJTF7-SJA
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

Sir,
 Understand the mission. I am prepared to execute.

V/R

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-555-[REDACTED]
"MAGNUM 5"

Call (6)(6)-2-76)-2

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

From: [REDACTED] COL CJTF7-BDE CDR
Sent: Monday, March 22, 2004 3:36 AM
To: [REDACTED] COL CJTF7-SJA; Formica, Richard P. BG CJTF7-III Corps Artillery Commander; [REDACTED] A CJTF7-C7 ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] COL CJTF7-C1; [REDACTED] D COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; Toner, [REDACTED] COL CJTF7-C8; [REDACTED] M. COL CJTF7-C5
Cc: [REDACTED] COL CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF MILITARY JUSTICE; [REDACTED] M. CPT CJTF7-16th MP BDE JAG; [REDACTED] COL [REDACTED] L COL CJTF7-C9 Chief of Plans; [REDACTED] MAJ CJTF7-BN XO; [REDACTED] LTC CJTF7-57th SIG BN CDR
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

We're team players. I will nominate one of my best. MAJ [REDACTED] XO, 57th Signal Battalion (in the "CC").

Sincerely,

[REDACTED]
 3D Signal Brigade

From: [REDACTED] COL CJTF7-SJA
Sent: Sunday, March 21, 2004 14:03
To: Formica, Richard P. BG CJTF7-III Corps Artillery Commander; [REDACTED] A CJTF7-C7 ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] COL CJTF7-C1; [REDACTED] COL CJTF7-BDE CDR; [REDACTED] COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; [REDACTED] COL CJTF7-C8; [REDACTED] COL CJTF7-C5
Cc: [REDACTED] CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF MILITARY JUSTICE; [REDACTED] CPT CJTF7-16th MP BDE JAG; [REDACTED] COL; [REDACTED] 19382

4/17/2004

ACLU-RDI 1757 p.77

I OF 2

CJTF7-C9 Chief of Plans

Subject: (U) Article 32, UCMJ, Investigating Officers

Gentlemen,

Yesterday, charges were preferred against six (6) Military Police soldiers for various charges relating to the maltreatment of detainees at the Abu Ghraib Prison (Baghdad Central Confinement Facility). These soldiers, originally assigned to units which have left theater, were attached to the 16th Military Police Brigade for the processing of actions. At this time it is necessary to secure six (6) Article 32, UCMJ, Investigating Officers, to review the cases against these soldiers and make recommendations on case disposition to LTG Metz, CG, III Corps, who will serve as the General Court-martial Convening Authority. Given the complexity of the cases, Article 32 Investigating Officers should be in the grade of Major or higher, Army officers, possess excellent reasoning and analytical skills, and possess maturity and a judicious temperament.

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While I cannot predict the duration of this duty or the time involved in completing the Article 32 Investigations, I can assure you that this is a vital step in the adjudication of these cases. Please tell me by COB, 22 MAR 03, if you will be able to provide an Article 32 Investigating Officer, and the name of the nominated officer.

Thank you in advance,

V/R,

COL [REDACTED]

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

019383

4/17/2004

ACLU-RDI 1757 p.78

DOD-042477

AJ CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Tuesday, March 23, 2004 1:16 PM
To: [REDACTED]@iraq.centcom.smil.mil
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

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

Sir,
 What is my next step here?

V/R

MAJ [REDACTED]
 Executive Officer, XO
 57th Signal Battalion, 3rd SIG BDE
 Victory Base, IRAQ
 PHONE (MSE) 302-[REDACTED]
 "MAGNUM 5"

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

From: [REDACTED] COL CJTF7-BDE CDR
Sent: Monday, March 22, 2004 3:36 AM
To: [REDACTED] COL CJTF7-SJA; Formica, Richard P. BG CJTF7-III Corps Artillery Commander; [REDACTED]
 [REDACTED] A CJTF7-C7 ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] COL CJTF7-C1;
 [REDACTED] COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; [REDACTED] CJTF7-C8;
 [REDACTED] COL CJTF7-C5
Cc: [REDACTED] David E COL CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF MILITARY
 JUSTICE; [REDACTED] M. CPT CJTF7-16th MP BDE JAG; [REDACTED] COL [REDACTED] COL
 CJTF7-C9 Chief of Plans; [REDACTED] MAJ CJTF7-BN XO; [REDACTED] C CJTF7-57th SIG BN
 CDR
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

We're team players. I will nominate one of my best. MAJ [REDACTED] 57th Signal Battalion (in the "CC").

Sincerely,

[REDACTED]
 3D Signal Brigade

From: [REDACTED] COL CJTF7-SJA
Sent: Sunday, March 21, 2004 14:03
To: Formica, Richard P. BG CJTF7-III Corps Artillery Commander; [REDACTED] CJTF7-C7
 ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] COL CJTF7-C1; [REDACTED] COL
 CJTF7-BDE CDR; [REDACTED] COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; [REDACTED]
 COL CJTF7-C8; [REDACTED] COL CJTF7-C5
Cc: [REDACTED] COL CJTF7 16MP BDE CDR; [REDACTED] CPT CJTF7-CHIEF OF MILITARY
 JUSTICE; [REDACTED] CPT CJTF7-16th MP BDE JAG; Warren, Marc L., COL [REDACTED] COL
 CJTF7-C9 Chief of Plans
Subject: (U) Article 32, UCMJ, Investigating Officers

019384

TOF 2

4/17/2004

ACLU-RDI 1757 p.79

Gentlemen,

Yesterday, charges were preferred against six (6) Military Police soldiers for various charges relating to the maltreatment of detainees at the Abu Ghraib Prison (Baghdad Central Confinement Facility). These soldiers, originally assigned to units which have left theater, were attached to the 16th Military Police Brigade for the processing of actions. At this time it is necessary to secure six (6) Article 32, UCMJ, Investigating Officers, to review the cases against these soldiers and make recommendations on case disposition to LTG [REDACTED] CG, III Corps, who will serve as the General Court-martial Convening Authority. Given the complexity of the cases, Article 32 Investigating Officers should be in the grade of Major or higher, Army officers, possess excellent reasoning and analytical skills, and possess maturity and a judicious temperament.

COL [REDACTED] and BG Formica have each volunteered to provide an Article 32 Investigating Officer, leaving a requirement for four (4) Article 32 Investigating Officers. I am soliciting the help of the Staff Principals, and Brigade Commanders on Camp Victory to secure nominations for this duty. Based on my analysis of this case and other on-going investigations, I am not soliciting nominations from COL [REDACTED] or MG Fast.

While I cannot predict the duration of this duty or the time involved in completing the Article 32 Investigations, I can assure you that this is a vital step in the adjudication of these cases. Please tell me by COB, 22 MAR 03, if you will be able to provide an Article 32 Investigating Officer, and the name of the nominated officer.

Thank you in advance,

V/R,

COL [REDACTED]

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

019385

4/17/2004

ACLU-RDI 1757 p.80

DOD-042479

MAJ CJTF7-BN XO

From: [REDACTED] COL CJTF7-SJA
Sent: Tuesday, March 23, 2004 9:20 AM
To: [REDACTED] C. MAJ CJTF7-BN XO; [REDACTED] COL CJTF7-BDE CDR
Cc: [REDACTED] LTC CJTF7-57th SIG BN CDR
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

MAJ [REDACTED]
 CPT [REDACTED] Chief, Military Justice, will contact you shortly.
 I appreciate your speedy response.
 COL [REDACTED]

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

From: [REDACTED] C. MAJ CJTF7-BN XO
Sent: Tuesday, March 23, 2004 00:12
To: [REDACTED] CJTF7-BDE CDR
Cc: BN CDR [REDACTED] (E-mail); [REDACTED] COL CJTF7-SJA
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

Sir,
 Understand the mission. I am prepared to execute.

V/R

MAJ [REDACTED]
 Executive Officer, XO
 57th Signal Battalion, 3rd SIG BDE
 Victory Base, IRAQ
 PHONE (MSE) 302-[REDACTED]
 "MAGNUM 5"

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

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

From: [REDACTED] COL CJTF7-BDE CDR
Sent: Monday, March 22, 2004 3:36 AM
To: [REDACTED] COL CJTF7-SJA; Formica, Richard P. BG CJTF7-III Corps Artillery Commander;
 [REDACTED] A CJTF7-C7 ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4;
 [REDACTED] COL CJTF7-C1; [REDACTED] COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; Toner,
 [REDACTED] COL CJTF7-C8; [REDACTED] M. COL CJTF7-C5
Cc: [REDACTED] E COL CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF
 MILITARY JUSTICE; [REDACTED] CPT CJTF7-16th MP BDE JAG; [REDACTED] L, COL;
 [REDACTED] L COL CJTF7-C9 Chief of Plans; [REDACTED] MAJ CJTF7-BN XO; [REDACTED]
 [REDACTED] TC CJTF7-57th SIG BN CDR
Subject: RE: (U) Article 32, UCMJ, Investigating Officers

We're team players. I will nominate one of my best. MAJ [REDACTED] 57th Signal
 Battalion (in the "CC").

Sincerely,

019386

IOE 4

COL [REDACTED]
3D Signal Brigade

From: [REDACTED] L CJTF7-SJA

Sent: Sunday, March 21, 2004 14:03

To: Formica, Richard P. BG CJTF7-III Corps Artillery Commander [REDACTED] CJTF7-C7

ENGINEER/420 EN BDE CDR; West, Scott BG CJTF7-C4; [REDACTED] L CJTF7-C1; [REDACTED]

COL CJTF7-BDE CDR; [REDACTED] COL CJTF7-89MP; Miller, Thomas G. MG CJTF-7 C3; [REDACTED]

[REDACTED] COL CJTF7-C8; [REDACTED] COL CJTF7-C5

Cc: [REDACTED] COL CJTF7 16MP BDE CDR; [REDACTED] C. CPT CJTF7-CHIEF OF
MILITARY JUSTICE; [REDACTED] CPT CJTF7-16th MP BDE JAG; [REDACTED], COL;

[REDACTED] COL CJTF7-C9 Chief of Plans

Subject: (U) Article 32, UCMJ, Investigating Officers

Gentlemen,

Yesterday, charges were preferred against six (6) Military Police soldiers for various charges relating to the maltreatment of detainees at the Abu Ghraib Prison (Baghdad Central Confinement Facility). These soldiers, originally assigned to units which have left theater, were attached to the 16th Military Police Brigade for the processing of actions. At this time it is necessary to secure six (6) Article 32, UCMJ, Investigating Officers, to review the cases against these soldiers and make recommendations on case disposition to LTG Metz, CG, III Corps, who will serve as the General Court-martial Convening Authority. Given the complexity of the cases, Article 32 Investigating Officers should be in the grade of Major or higher, Army officers, possess excellent reasoning and analytical skills, and possess maturity and a judicious temperament.

COL [REDACTED] and BG Formica have each volunteered to provide an Article 32 Investigating Officer, leaving a requirement for four (4) Article 32 Investigating Officers. I am soliciting the help of the Staff Principals, and Brigade Commanders on Camp Victory to secure nominations for this duty. Based on my analysis of this case and other on-going investigations, I am not soliciting nominations from COL [REDACTED] MG Fast.

While I cannot predict the duration of this duty or the time involved in completing the Article 32 Investigations, I can assure you that this is a vital step in the adjudication of these cases. Please tell me by COB, 22 MAR 03, if you will be able to provide an Article 32 Investigating Officer, and the name of the nominated officer.

Thank you in advance,

V/R,

COL [REDACTED]

019387

4/17/2004

ACLU-RDI 1757 p.82

DOD-042481

MAJ CJTF7-BN XO

To: MAJ CJTF7-BN XO

Subject: Article 32, UCMJ, Investigating Officers

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

From: MAJ CJTF7-BN XO

Sent: Tuesday, March 23, 2004 10:35 PM

To: COL CJTF7-SJA

Cc: CPT CJTF7-CHIEF OF MILITARY JUSTICE

Subject: RE: (U) Article 32, UCMJ, Investigating Officers

Sir,

Roger, standing by. Went down to Bldg 94 today and got the name of CPT [REDACTED] who will possibly be my legal counsel. Will wait for contact by [REDACTED]

V/R

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]
"MAGNUM 5"

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

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

From: COL CJTF7-SJA

Sent: Tuesday, March 23, 2004 9:20 AM

To: MAJ CJTF7-BN XO; COL CJTF7-BDE CDR

Cc: LTC CJTF7-57th SIG BN CDR

Subject: RE: (U) Article 32, UCMJ, Investigating Officers

MAJ [REDACTED]

CPT [REDACTED], Chief, Military Justice, will contact you shortly.

I appreciate your speedy response.

COL [REDACTED]

019388

4/17/2004

ACLU-RDI 1757 p.83

TOE 5

MAJ CJTF7-BN XO

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, March 25, 2004 4:26 PM
To: [REDACTED] C. MAJ CJTF7-BN XO
Cc: [REDACTED] PT CJTF7 16MP; [REDACTED] CPT CJTF7 -Senior Defense Counsel;
[REDACTED] CPT CJTF7-Admin Law Attorney; [REDACTED] MAJ CJTF7-
REGIONAL DEFENSE COUNSEL

Importance: High

Sir,

See attached.

I will bring the entire case file to you on Friday 26 Mar, and get your signature on the notification to the SM.

32 Inv is scheduled for 6 Apr 04.

I will coordinate everything else.



frederick.pdf

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

V/R

SFC [REDACTED]
Senior Paralegal
16th MP BDE (ABN)
VICTORY BASE, IRAQ
DNVT 302-[REDACTED]

cell [REDACTED]

019389

IOE 6

[REDACTED] AJ CJTF7-BN XO

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, March 25, 2004 4:53 PM
To: [REDACTED] MAJ CJTF7-BN XO
Cc: [REDACTED] CPT CJTF7 16MP; [REDACTED] L CPT CJTF7 -Senior Defense Counsel;
[REDACTED] L CPT CJTF7-Admin Law Attorney; [REDACTED] MAJ CJTF7-
Subject: REGIONAL DEFENSE COUNSEL
Art 32 US v Frederick

Importance: High

Sir,

See attached.

I will bring the entire case file to you on Friday 26 Mar, and get your signature on the notification to the SM.

32 Inv is scheduled for 2 Apr 04.

I will coordinate everything else.



frederick.pdf

(6)(6)-2, (7)(9)-2

V/R

SFC [REDACTED]
Senior Paralegal
16th MP BDE (ABN)
VICTORY BASE, IRAQ
DNVT [REDACTED]

cell 9 [REDACTED]

019390

IOE 7

MAJ CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Thursday, March 25, 2004 5:19 PM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: Art 32 US v Frederick

SFC [REDACTED]
I am in Bldg 117 across the street from the North LSA, adjacent to where they are paving the new LSA.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]

NIPR: [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]@c5main.hq.c5.army.smil.mil

"MAGNUM 5"

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, March 25, 2004 4:53 PM
To: [REDACTED] C. MAJ CJTF7-BN XO
Cc: [REDACTED] CPT CJTF7 16MP; [REDACTED] CPT CJTF7 -Senior Defense Counsel; [REDACTED] CPT CJTF7-Admin Law
Attorney [REDACTED] W. MAJ CJTF7-REGIONAL DEFENSE COUNSEL
Subject: Art 32 US v Frederick
Importance: High

Sir,

See attached.

I will bring the entire case file to you on Friday 26 Mar, and get your signature on the notification to the SM.

32 Inv is scheduled for 2 Apr 04.

I will coordinate everything else.

<< File: frederick.pdf >>

V/R

SFC [REDACTED]
Senior Paralegal
16th MP BDE (ABN)
VICTORY BASE, IRAQ
DNVT 302 [REDACTED]
cell [REDACTED]

(6)(6)-2; 7c)-2

019391

IOE 8

CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Saturday, March 27, 2004 12:37 PM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: Art 32 US v Frederick

SFC [REDACTED]

I say down with CPT [REDACTED] this morning. I provided her with the copy of the case you gave me. I reproduced it so that I could write, tab and highlight on it. I just need clarification on a few points:

- a. Will you provide me the witness list upon the suspense of 30 March 04?
- b. What are my recording options for the hearing? I would like as much as we can possibly have.
- c. Is there a problem with me conducting a closed hearing?

Thanks for the support.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]

NIPR: [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]ain.hq.c5.army.smil.mil

"MAGNUM 5"

all (6)S-2, (7)S-2

019392

MAJ CJTF7-BN XO

Subject: RE: FW: Art 32 US v Frederick

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, March 29, 2004 4:25 PM
To: [REDACTED]@us.army.mil
Cc: [REDACTED] CPT CJTF7 16MP; [REDACTED] C. MAJ CJTF7-BN XO
Subject: RE: FW: Art 32 US v Frederick

all (6) (6) - 2;
7(c) - 2

Sir,

Right now, that is the only witness scheduled. More may be added, if so, you will be notified.

v/r

SFC [REDACTED]

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Saturday, March 27, 2004 7:41 AM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Subject: Re: FW: Art 32 US v Frederick

SFC [REDACTED]

Got it, thanks.

I think I have the wrong notification or I am missing a second page from the IO. The IO only listed one witness (CID Agent) on the first page. Is there a second page that I am missing?

CPT [REDACTED]

019393

IOE 10

[REDACTED] MAJ CJTF7-BN XO

Subject: RE: FW: Art 32 US v Frederick

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

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, March 29, 2004 4:48 PM.
To: [REDACTED]@us.army.mil
Cc: [REDACTED] CPT CJTF7 16MP; [REDACTED] MAJ CJTF7-BN XO;
[REDACTED] L CPT CJTF7-Admin Law Attorney
Subject: RE: FW: Art 32 US v Frederick

all
(b)(6)-2; 7(c)-2

Sir,

You should send this info to the TC and IO. I have Cc'd them. For now, we are still set for 2 Apr.

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Monday, March 29, 2004 10:51 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Subject: Re: FW: Art 32 US v Frederick

SFC [REDACTED] *(b)(6)-4; 7(c)4 (except)*

SSG Frederick has notified me that he has acquired the services of Mr. [REDACTED] (civilian criminal defense attorney). I believe he coordinate with him logistical issues. Since it appears I will no longer be lead counsel, I anticipate the necessity for a defense delay so that Mr. [REDACTED] can get acquainted with his client, the issues, etc. prior to his arrival in theater for both the Article 32 investigation and, if necessary, any is based out of Washington, D.C. I am attempting to follow on actions.

Once I have established contact with Mr. [REDACTED] I will forward his email address and other contact information.

Respectfully,

CPT [REDACTED]

019394

MAJ CJTF7-BN XO

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, March 29, 2004 5:01 PM
To: [REDACTED] C. MAJ CJTF7-BN XO
Cc: [REDACTED] M CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Subject: RE: Art 32 US v Frederick

Importance: High

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

Sir,

I will record the entire proceeding via tape recorder, and my handwritten notes. You may also take notes.

I will fwd the defense witness list to you as soon as I receive it (if it doesn't come directly to you first). Unless you want to call someone else, we only have one witness scheduled.

If either counsel do not object, you can have a closed hearing. Your IO advisor can assist you in more detail.

W/r

SFC [REDACTED]

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Saturday, March 27, 2004 12:37 PM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: Art 32 US v Frederick

SFC [REDACTED]

I say down with CP [REDACTED] this morning. I provided her with the copy of the case you gave me. I reproduced it so that I could write, tab and highlight on it. I just need clarification on a few points:

- Will you provide me the witness list upon the suspense of 30 March 04?
- What are my recording options for the hearing? I would like as much as we can possibly have.
- Is there a problem with me conducting a closed hearing?

Thanks for the support.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]

NIPR: [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]main.hq.c5.army.smil.mil

"MAGNUM 5"

019395

IOE 12

MAJ CJTF7-BN XO

Subject: RE: FW: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Monday, March 29, 2004 5:02 PM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: FW: Art 32 US v Frederick

all
(b)(6)-2, 7(c)-2

SFC [REDACTED]

Thanks for the head's up. Is there a deadline by which, the defense must submit a request to delay the proceedings or can it occur at any time? Must it be in writing? Thanks.

MAJ [REDACTED]

Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]
NIPR: [REDACTED]@main.hq.c5.army.mil
SIPR: [REDACTED]@main.hq.c5.army.smil.mil
"MAGNUM 5"

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, March 29, 2004 4:48 PM
To: [REDACTED]@army.mil
Cc: [REDACTED] CPT CJTF7 16MP; [REDACTED] MAJ CJTF7-BN XO;
[REDACTED] L CPT CJTF7-Admin Law Attorney
Subject: RE: FW: Art 32 US v Frederick

Sir,

You should send this info to the TC and IO. I have Cc'd them. For now, we are still set for 2 Apr.

019396

MAJ CJTF7-BN XO

Subject: RE: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Monday, March 29, 2004 9:48 PM
To: [REDACTED] C CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] CPT CJTF7-Admin Law Attorney
Subject: RE: Art 32 US v Frederick

SFC [REDACTED]

Are none of the prisoners identified and who provided statements reasonably available to testify? What about the other accused who I have written testimony that they witnessed Frederick commit these offenses? Thanks.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]

NIPR: [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]main.hq.c5.army.smil.mil

"MAGNUM 5"

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, March 29, 2004 5:01 PM
To: [REDACTED] C. MAJ CJTF7-BN XO
Cc: [REDACTED] M CPT CJTF7 16MP; [REDACTED] L CPT CJTF7-Admin Law Attorney [REDACTED]@us.army.mil
Subject: RE: Art 32 US v Frederick
Importance: High

Sir,

I will record the entire proceeding via tape recorder, and my handwritten notes.
You may also take notes.

I will fwd the defense witness list to you as soon as I receive it (if it doesn't come directly to you first). Unless you want to call someone else, we only have one witness scheduled.

If either counsel do not object, you can have a closed hearing. Your IO advisor can assist you in more detail.

v/r

SFC [REDACTED]

019397

IOE 14

MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 8:06 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] CJTF7 16MP;
[REDACTED] L CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

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

Good morning.

I am assisting SSG Frederick for this case. His family has retained the services of a civilian defense attorney, Mr. [REDACTED] of Washington, D.C. . If it is the same [REDACTED] he is a retired Judge Advocate (Marine Corps I believe) who is well versed in these types of proceedings. I just now received his contact information. He will be in his office in approximately 8 hours from now and I would like to speak with him (if he indeed is supposed to be lead counsel) prior to submitting a witness request list for the Article 32 investigation. I apologize in advance for any inconvenience this might cause, unfortunately, working with another defense attorney on the other side of the planet has its problems. Respectfully request a delay in submission of our witness list until I have had a chance to speak directly with Mr. [REDACTED]

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

If this is unacceptable please contact me as soon as possible.

Thank you for your understanding.

Respectfully,

CPT [REDACTED]
Defense Counsel

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

019398

IOE 15

C. MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] CPT CJTF7-Admin Law Attorney
Sent: Tuesday, March 30, 2004 8:43 AM
To: [REDACTED] MAJ CJTF7-BN XO
Subject: FW: RE: Art 32 US v Frederick

all
(6)6-2, (7)61-2

Sir -

Please ask Defense to clarify if they are asking for a delay to the 32 and what date they want it, if so. We want everything very clearly laid out.

v/r

CPT [REDACTED]
Admin. Law Attorney
CJTF-7, OSJA
DSN 318-[REDACTED]

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

From: [REDACTED].army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 08:06
To: [REDACTED] 1 J. SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] Loyd C. MAJ CJTF7-BN XO; [REDACTED] CPT CJTF7 16MP;
Raymond, [REDACTED] CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

Good morning.

I am assisting SSG Frederick for this case. His family has retained the services of a civilian defense attorney, Mr. [REDACTED] of Washington, D.C. . If it is the same Mr. [REDACTED] he is a retired Judge Advocate (Marine Corps I believe) who is well versed in these types of proceedings. I just now received his contact information. He will be in his office in approximately 8 hours from now and I would like to speak with him (if he indeed is supposed to be lead counsel) prior to submitting a witness request list for the Article 32 investigation. I apologize in advance for any inconvenience this might cause, unfortunately, working with another defense attorney on the other side of the planet has its problems. Respectfully request a delay in submission of our witness list until I have had a chance to speak directly with Mr. [REDACTED]

except
(6)61-4, (7)61-4

If this is unacceptable please contact me as soon as possible.

Thank you for your understanding.

Respectfully,

CPT [REDACTED]
Defense Counsel

019399

IOE 16

MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Tuesday, March 30, 2004 8:55 AM
To: [REDACTED] s.army.mil'; [REDACTED] SFC CJTF7-16th MP BDE
SJA NCOIC
Cc: [REDACTED] PT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law
Attorney
Subject: RE: RE: Art 32 US v Frederick

CPT [REDACTED]

Not quite sure what you are asking for here. The witness list
deadline is today. If you converse with the attorney 8 hours from now,
you may very well have the list. Is this not feasible? How long a
delay are you asking for? Does this roll straight into a request to
delay the Art 32 hearing? I am just trying to figure out where this is
heading,

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAO
PHONE (MST) [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]c5main.hq.c5.army.smil.mil
"MAGNUM 5"

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

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]s.army.mil]
Sent: Tuesday, March 30, 2004 8:06 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] C. MAJ CJTF7-BN XO; [REDACTED] CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

Good morning.

I am assisting SSG Frederick for this case. His family has retained the
services of a civilian defense attorney, Mr. [REDACTED] of Washington,
D.C. . If it is the same M [REDACTED], he is a retired Judge Advocate
(Marine Corps I believe) who is well versed in these types of
proceedings. I just now received his contact information. He will be
in his office in approximately 8 hours from now and I would like to
speak with him (if he indeed is supposed to be lead counsel) prior to
submitting a witness request list for the Article 32 investigation. I
apologize in advance for any inconvenience this might cause,
unfortunately, working with another defense attorney on the other side
of the planet has its problems. Respectfully request a delay in
submission of our witness list until I have had a chance to speak
directly with Mr. [REDACTED]

except

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

If this is unacceptable please contact me as soon as possible.

Thank you for your understanding.

019400

MAJ CJTF7-BN XO

Subject: RE: RE: RE: Art 32 US v Frederick

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

From: [REDACTED].army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 9:01 AM
To: [REDACTED] MAJ CJTF7-BN XO
Cc: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
CPT CJTF7 16MP; [REDACTED] L CPT CJTF7-Admin Law Attorney
Subject: Re: RE: RE: Art 32 US v Frederick

Sir:

I do not know what the lead counsel will do so I can't answer the questions regarding the delay. However, given the circumstances, I will comply with your request for a witness list so as to meet the deadline.

CPT [REDACTED]
Defense Counsel

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

From: [REDACTED] MAJ CJTF7-BN XO"
<Loya [REDACTED]@in.hq.c5.army.mil>
Date: Monday, March 29, 2004 11:55 pm
Subject: RE: RE: RE: Art 32 US v Frederick

> CPT [REDACTED]
> Not quite sure what you are asking for here. The witness list
> deadline is
> today. If you converse with the attorney 8 hours from now, you
> may very
> well have the list. Is this not feasible? How long a delay are
> you asking
> for? Does this roll straight into a request to delay the Art 32
> hearing? I
> am just trying to figure out where this is heading,
>
> MAJ [REDACTED]
> Executive Officer, XO
> 57th Signal Battalion, 3rd SIG BDE
> Victory Base, IRAO
> PHONE (MSE) [REDACTED]
> NIPR: [REDACTED]@main.hq.c5.army.mil
> SIPR: [REDACTED]@in.hq.c5.army.mil
> "MAGNUM 5"

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

019401

IOE 18

[REDACTED] MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 9:05 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] CJTF7 16MP;
[REDACTED] L CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

all
(S)(G)-2;
7C-2

The defense requests the following witnesses and evidence be produced for the Article 32 investigation so as to comply with the 1200 (Baghdad, Iraq time) deadline today. As the defense has previously noted, there is another attorney (civilian) that the military counsel has not had an opportunity to speak with.

It is the defense's understanding that the only government witness is a CID agent who participated in the investigation of this case only after the events occurred. As such, and to make this a full and complete investigation, the defense makes the following requests pursuant to Rule for Courts-Martial 405:

The Defense has learned that there was a parallel administrative investigation conducted of the entire chain of command which possibly led to administrative action against several members of the Accused's chain of command--372 MP Company and 800th MP Brigade. Such investigation would be helpful for this current investigation and, therefore, the defense requests that any and all documents related to administrative investigations be produced at the Art. 32 investigation. To include: AR 15-6 investigation and the AR 15-6 investigating officer; any memoranda or other documents appointing an AR 15-6 investigation; recent OERS/NCOERS for members of the Accused chain of command; situation reports/SIGACTS related to the events surrounding the charges facing the accused; public affairs notifications surrounding the charges facing the accused; any adverse administrative actions taken against any of the Accused's chain of command; any awards (and supporting documentation) given to members of the Accused's chain of command.

In addition to administrative investigations and the resulting reliefs for cause or other adverse administrative actions, the defense requests the following documents be produced at the Article 32 as they relate to the charges the Accused faces:

Any and all significant activities reports from 372 MP Company and/or 800th MP Brigade during the applicable time frame.

Any and all OPORDERS from 372 MP Company and/or 800th MP Brigade especially those surrounding the relief in place that occurred in October 2003.

Any and all legal opinions, etc. generated from the 800th MP Brigade Judge Advocate (or its equivalent) office regarding training requirements, regulations governing detainee operations, and law of war/EPW/detainee confinement facilities. Any and all applicable copies of training SOPs, posted notifications, etc. regarding how MPs were to conduct detainee operations.

OPORDERS, SIGACTS, FRAGOS, or other similar documents related to ICRC visits of the prison during the applicable time frame.

019402

In addition to the above documents, the Defense requests the following

T M F 1a

[REDACTED] CJTF7-BN XO

To: [REDACTED] MAJ CJTF7-BN XO
Subject: RE: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Tuesday, March 30, 2004 9:07 AM
To: [REDACTED] CPT CJTF7-Admin Law Attorney
Subject: FW: RE: RE: Art 32 US v Frederick

CPT [REDACTED]
I do not have a problem granting a delay for the witness list, but does this not push everything else to the right if it is granted? Again, I don't have a problem with it, it was just not asked for in detail. Guidance?

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]@c5main.hq.c5.army.smil.mil
"MAGNUM 5"

*All 6X61-2;
7(C)-2*

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 9:01 AM
To: [REDACTED] MAJ CJTF7-BN XO
Cc: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
CPT CJTF7-16MP; [REDACTED] CPT CJTF7-Admin Law Attorney
Subject: Re: RE: RE: Art 32 US v Frederick

Sir:

I do not know what the lead counsel will do so I can't answer the questions regarding the delay. However, given the circumstances, I will comply with your request for a witness list so as to meet the deadline.

CPT [REDACTED]
Defense Counsel

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

From: [REDACTED] MAJ CJTF7-BN XO"
<Loyal [REDACTED]@hq.c5.army.mil>
Date: Monday, March 29, 2004 11:55 pm
Subject: RE: RE: Art 32 US v Frederick

> CPT [REDACTED]
> Not quite sure what you are asking for here. The witness list
> deadline is
> today. If you converse with the attorney 8 hours from now, you
> may very
> well have the list. Is this not feasible? How long a delay are
> you asking
> for? Does this roll straight into a request to delay the Art 32
> hearing? I
> am just trying to figure out where this is heading,
>

019403

IOE 20

> MAJ [REDACTED]
> Executive Officer, XO
> 57th Signal Battalion, 3rd SIG BDE
> Victory Base, IRAQ
> PHONE (MSE) [REDACTED]
> NIPR: [REDACTED]@vcmain.hq.c5.army.mil
> SIPR: [REDACTED]c5main.hq.c5.army.smil.mil
> "MAGNUM 5"

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

019404

MAJ CJTF7-BN XO

all

To: [REDACTED]@us.army.mil
Subject: RE: RE: Art 32 US v Frederick

(b)(6)-2-7(c)-2

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 9:10 AM
To: [REDACTED]@us.army.mil
Cc: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
C. MAJ CJTF7-BN XO; [REDACTED] CJTF7 16MP; [REDACTED] CPT
CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

A typo, "Any and all members of the 372 MP Company and 800 MP Brigade" should read, "any and all members OF THE CHAIN OF COMMAND of the 372 MP Company and 800 MP Brigade to include the Company Commander, CPT [REDACTED], the Battalion Commander LTC [REDACTED] and the Brigade Commander. Defense understands such members may have been relieved, received negative OERs, or may be receiving Memorandums of Reprimand for their participation in the events surrounding these charges.

019405

IOE 21

[REDACTED] AJ CJTF7-BN XO

Subject: RE: RE: RE: Art 32 US v Frederick

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

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

From: [REDACTED] L CPT CJTF7-Admin Law Attorney
Sent: Tuesday, March 30, 2004 9:24 AM
To: [REDACTED] C. MAJ CJTF7-BN XO
Subject: RE: RE: RE: Art 32 US v Frederick

Make them come out and say it, Sir. Also, tell them you expect a synopsis of what the expected testimony is for each witness so you can make a judgment as to cumulative testimony.

v/r

CPT [REDACTED]
Admin. Law Attorney
CJTF-7, OSJA
DSN 318-[REDACTED]

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

From: [REDACTED] L C. MAJ CJTF7-BN XO
Sent: Tuesday, March 30, 2004 09:07
To: [REDACTED]
Subject: FW: RE: RE: Art 32 US v Frederick

CPT [REDACTED]

I do not have a problem granting a delay for the witness list, but does this not push everything else to the right if it is granted? Again, I don't have a problem with it, it was just not asked for in detail. Guidance?

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 3 [REDACTED]
NIPR: [REDACTED]vcmain.hq.c5.army.mil
SIPR: [REDACTED]main.hq.c5.army.smil.mil
"MAGNUM 5"

019406

IOE 22

MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

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

From: [REDACTED]oyal C. MAJ CJTF7-BN XO
Sent: Tuesday, March 30, 2004 9:36 AM
To: [REDACTED] L CPT CJTF7-Admin Law Attorney
Cc: [REDACTED] J. SFC CJTF7-15th MP BDE SJA NCOIC
Subject: RE: RE: Art 32 US v Frederick

OK,

Who coordinates trying to get these documents and people? Is it "reasonable" to assume that they can be produced prior to the 2nd of April? Some of these requests are very valid. At this point in time, should not the defense request an extension in order to procure these documents and witnesses? Again, guidance? Thanks.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]
NIPR: [REDACTED]ke@vcmain.hq.c5.army.mil
SIPR: [REDACTED]ain.hq.c5.army.smil.mil
"MAGNUM 5"

019407

IOE 23

[REDACTED] J CJTF7-BN XO

Subject: RE: Article 32 packet--Anticipated Objections

all

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

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Tuesday, March 30, 2004 9:39 AM
To: [REDACTED]@us.army.mil
Cc: [REDACTED] 1 J. SEC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
C. MAJ CJTF7-BN XO; [REDACTED] PT CJTF7 16MP; [REDACTED] PT
CJTF7-Admin Law Attorney
Subject: Article 32 packet--Anticipated Objections

In order to assist this process, the Defense submits the following in advance of the Article 32 investigation:

This references the CID packet that the defense received in anticipation of this Article 32 investigation. The defense anticipates objecting to any and all alternatives to testimony pursuant to RCM 405(g)(4). The defense further anticipates objecting to any and all alternatives to evidence pursuant to RCM 405(g)(5).

In anticipation of such objections, Defense requests the investigating officer delineate for the record and any all determinations of "reasonably available" witnesses and evidence pursuant to RCM 405(g).

Respectfully,

CPT [REDACTED]
Defense Counsel

019408

MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] C. MAJ CJTF7-BN XO
Sent: Tuesday, March 30, 2004 9:58 AM
To: [REDACTED] mil; [REDACTED] SFC CJTF7-16th MP BDE
SJA NCOIC
Cc: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney
Subject: RE: RE: Art 32 US v Frederick

ool
(56)-2;
7(c)-2

CPT [REDACTED]

I need to understand exactly what each witness you plan to call will provide in support of the Art 32 hearing. How many of these witness will contribute to the "Cumulative testimony" effect as opposed to providing unique and substantive testimony? Please delineate this for every individual on this list so that I can get a clear understanding of who and what you plan to present. Thank you.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAO
PHONE (MSE) 302 [REDACTED]
NIPR: [REDACTED] hq.c5.army.mil
SIPR: [REDACTED] c5main.hq.c5.army.smil.mil
"MAGNUM 5"

019409

ICE 25

MAJ CJTF7-BN XO

Subject: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Thursday, March 30, 2004 3:31 PM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
Subject: FW: RE: Art 32 US v Frederick

SFC [REDACTED]

Where are we with these documents and people? Have we been working them already? Have any of these witnesses been contacted to appear by the Prosecutor? What about the other investigation? Do we have a copy of it and its results 9if applicable) already? Thanks.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]5main.hq.c5.army.smil.mil
"MAGNUM 5"

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

From: [REDACTED] CPT CJTF7-Admin Law Attorney
Sent: Tuesday, March 30, 2004 1:06 PM
To: [REDACTED] C. MAJ CJTF7-BN XO
Subject: RE: RE: Art 32 US v Frederick

Sir -

It is not on the defense if we cannot produce the witnesses on the date specified. Please speak with SFC [REDACTED] and see what he anticipates as a problem. It will be the Prosecuting attorney that provides the documents. Have SFC [REDACTED] check with them to see that they are tracking or are preparing a response to request that you designate them as unavailable.

v/r

TLR

CPT [REDACTED]
Admin. Law Attorney
CJTF-7, OSJA
DSN 318-[REDACTED]

019410

IOE 26

MAJ CJTF7-BN XO

Subject: RE: RE: RE: Art 32 US v Frederick

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Wednesday, March 31, 2004 9:50 AM
To: [REDACTED] C. MAJ CJTF7-BN XO
Cc: [REDACTED]@aol.com; [REDACTED] J. SFC CJTF7-16th MP BDE SJA
NCOIC; [REDACTED] CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin
Law Attorney
Subject: Re: RE: RE: Art 32 US v Frederick

All (b)(6)-2;
7(c)-2

Sir:

Sorry about the delay. I do not have a dedicated computer yet since I arrived in theater just last Sunday. Therefore, my opportunities to respond via email are hit or miss. Tomorrow, especially, TDS is set to move closer to the III Corps Courtroom.

Unfortunately, as you may already realize, the Government's description of the charges have led me to list all the victims as possible Art. 32 witnesses. If you have exactly the same CID packet that I have, you may also have trouble linking the "unnamed Iraqi detainees" with a specific person. Furthermore, I am without any of the evidence that the Defense has specifically requested which may further elaborate on the need for specified chain of command witnesses. The sole government witness, a CID agent, to our knowledge was neither an eyewitness, co-accused or an alleged victim. Yet, the government was not required to outline his purpose in this investigation.

As I mentioned before, all witnesses listed are either eyewitnesses, alleged victims, co-accused, or members of the chain of command. A chain of command that, to my limited belief and knowledge, has been subject to unspecified administrative actions as a result of THEIR involvement with this case. Compel the government to respond to my request for information so that you can have a full and impartial hearing of these very serious charges.

I have included Mr. (b)(6)-4, (b)(7)(C)-4 in the cc: line. He notified me this morning of his representation of SSG Frederick. Please include him on future emails.

The Defense is ready to immediately proceed with the Article 32 investigation. Please forward the exact day, time, and location so that I can inform our client. Any information requested can be given to us via email or in hard copy at the hearing.

Respectfully,

CPT [REDACTED]
Defense Counsel (b)(6)-2; (b)(7)(C)-2

019411

IOE 27

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

MAJ CJTF7-BN XO

Subject: RE: RE: RE: Art 32 US v Frederick

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

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

From: [REDACTED] C. MAJ CJTF7-BN XO
Sent: Wednesday, March 31, 2004 10:48 AM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC';
[REDACTED].com'; [REDACTED] M CPT CJTF7 16MP'; [REDACTED]
CPT CJTF7-Admin Law Attorney; [REDACTED] us.army.mil
Subject: RE: RE: RE: Art 32 US v Frederick

CPT [REDACTED]
The Article 32 hearing is scheduled for 1000 hrs, 2 April, 2004 in Bldg 94. You state you are prepared to immediately continue with the Article 32 investigation. Can you do so given the Art 32 investigation is 48 hours away? Do you know if Mr [REDACTED] is planning on representing SSG Frederick at the Art 32 hearing? Will you be requesting a delay to get Mr [REDACTED] caught up in the case? If so, how long of a delay would you be requesting? Thank You.

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

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]main.hq.c5.army.smil.mil
"MAGNUM 5"

> >
>
>

019412

[REDACTED] MAJ CJTF7-BN XO

Subject: RE: RE: RE: Art 32 US v Frederick

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Wednesday, March 31, 2004 10:54
To: [REDACTED] CAPT CJTF7-Admin Law Attorney
Subject: RE: RE: RE: Art 32 US v Frederick

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

[REDACTED]
I have not heard from SFC [REDACTED] at all. My concern is request the defense made for the other investigation info and the request for the other witnesses. The other investigation, as well as the other5 accused should have relevant testimony, are we going to ensure that they are here for that. Do I, as the IO, request that they be here, based on what I have read so far, or can't I, because I am not supposed to consider that testimony yet? Thanks.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]@hq.c5.army.smil.mil
"MAGNUM 5"

019413

IOE 29

MAJ CJTF7-BN XO

all

Subject: RE: RE: RE: Art 32 US v Frederick

(b)(6)2-7(c)-2

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

From: [REDACTED] CPT CJTF7-Admin Law Attorney
Sent: Wednesday, March 31, 2004 10:56 AM
To: [REDACTED] MAJ CJTF7-BN XO
Subject: RE: RE: RE: Art 32 US v Frederick

I'll contact the Trial counsel, Sir.

CPT [REDACTED]
Admin. Law Attorney
CJTF-7, OSJA
DSN 318-[REDACTED]

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Wednesday, March 31, 2004 10:54
To: [REDACTED] T CJTF7-Admin Law Attorney
Subject: RE: RE: RE: Art 32 US v Frederick

I have not heard from SFC [REDACTED] at all. My concern is request the defense made for the other investigation info and the request for the other witnesses. The other investigation, as well as the other5 accused should have relevant testimony, are we going to ensure that they are here for that. Do I, as the IO, request that they be here, based on what I have read so far, or can't I, because I am not supposed to consider that testimony yet? Thanks.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED].hq.c5.army.smil.mil
"MAGNUM 5"

019414

IOE 30

MAJ CJTF7-BN XO

Subject: RE: Art 32 US v Frederick

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

From: [REDACTED]@aol.com [mailto:[REDACTED]@aol.com]

Sent: Wednesday, March 31, 2004 2:47 PM

To: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;

[REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;

[REDACTED]@us.army.mil

Subject: Re: Art 32 US v Frederick

Please note my appearance in this matter as civilian defense counsel.

Cpt [REDACTED] has been kind enough to forward parts of the case file to me by attachment. Other portions will have to be sent by ground.

I will not attend the 32.

I have two concerns about the 32. Firstly, a verbatim transcript is respectfully requested. Perhaps this has already been done, but because I am leaving for Fort Lewis this a.m., I wanted this thought to be memorialized. Cpt [REDACTED] if he has not already done so, will file the appropriate request with the convening authority. As a bare minimum we will want a reporter present to tape the proceedings, so that if a motion to compel is necessary, there will be a tape to be the subject of that motion. Secondly, the cursory approach taken by the government with respect to witnesses is troubling and is antithetical to the purpose of a 32, which is in part discovery. If the 32 is to have substantive meaning the defense witness list must be honored by live or telephonic testimony.

As a parenthetical point I understand that there is some discussion about closing the 32. Although geographic location and military circumstance may render the point moot, may I say that such a course is philosophically repugnant to our system of justice unless well defined national security interests, to exclude political interests, are at stake. Given the long history of open discourse in such matters as this by the Army beginning with My Lai, I can perceive of no such interests existing here.

My understanding is that this communication is going to all parties. There is no intention on my part of making an ex parte communication. If this communication has not gone to all parties, I request that Cpt [REDACTED] remedy that flaw immediately.

I look forward to participating in this matter.

Regards,

019415

IOE 31

4/17/2004

ACLU-RDI 1757 p.110

DOD-042509

*all (b)(6)-2
except*

MAJ CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO

Sent: Wednesday, March 31, 2004 2:57 PM

To: [REDACTED]@aol.com [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law Attorney;

[REDACTED]@us.army.mil

Subject: RE: Art 32 US v Frederick

I have already requested that the entire proceedings be recorded and was assured this will occur. I will keep the Art 32 hearing open as well. I am still working the witness list, as I, as well as you, have a vested interest in hearing all applicable testimony with regards to these allegations. I am sure CPT [REDACTED] will keep you updated on the progress.

V/R

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302-[REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]@c5main.hq.c5.army.mil
"MAGNUM 5"

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

From: [REDACTED]@aol.com [mailto:[REDACTED]@aol.com] *(b)(6)-4, (b)(7)(C)-4*
Sent: Wednesday, March 31, 2004 2:47 PM
To: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;
[REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;
[REDACTED]@us.army.mil
Subject: Re: Art 32 US v Frederick

Please note my appearance in this matter as civilian defense counsel.

Cpt [REDACTED] has been kind enough to forward parts of the case file to me by attachment. Other portions will have to be sent by ground.

I will not attend the 32.

I have two concerns about the 32. Firstly, a verbatim transcript is respectfully requested. Perhaps this has already been done, but because I am leaving for Fort Lewis this a.m., I wanted this thought to be memorialized. Cpt [REDACTED] if he has not already done so, will file the appropriate request with the convening authority. As a bare minimum we will want a reporter present to tape the proceedings, so that if a motion to compel is necessary, there will be a tape to be the subject of that motion. Secondly, the cursory approach taken by the government with respect to witnesses is troubling and is antithetical to the purpose of a 32, which is in part discovery. If the 32 is to have substantive meaning the defense witness list must be honored by live or telephonic testimony.

As a parenthetical point I understand that there is some discussion about closing the 32. Although geographic location and military circumstance may render the point moot, may I say that such a course is philosophically repugnant to our system of justice unless well defined national security interests, to exclude political interests, are at stake. Given the long history of open discourse in such matters as this by the Army beginning with My Lai, I can perceive of no such interests existing here.

019416

4/17/2004

ACLU-RDI 1757 p.111

TOE 32

(b)(6)-21
7(c)-2

My understanding is that this communication is going to all parties. There is no intention on my part of making an ex parte communication. If this communication has not gone to all parties, I request that Cp[t
[REDACTED] remedy that flaw immediately.

I look forward to participating in this matter.

Regards,

019417

4/17/2004

ACLU-RDI 1757 p.112

DOD-042511

all
(b)(6)-2; 7(c)-2
[REDACTED] MAJ CJTF7-BN XO

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, April 01, 2004 12:33 PM
To: [REDACTED] CPT; marci.pettay@us.army.mil; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil
Cc: [REDACTED] M CPT CJTF7 16MP; [REDACTED] 1LT CJTF7-OPS OSJA [REDACTED]
Subject: [REDACTED] CJTF7-BN XO
witness availability U.S. v Frederick Art 32
Importance: High

[To]

In the Article 32(b) session in the case of U.S. v Frederick, the Defense requests the following personnel be available for live testimony:

SPC Jeremy Sivits
SGT Javal Davis
SPC Megan Ambuhl
SPC Sabrina Harman
SPC Charles Graner

Request a response as to whether your client mentioned above will be able to comply with the Defense's request.

The 32 will start at 1000, 2 Apr 04 in bldg 94, Victory Base courtroom.

V/R

SFC [REDACTED]
Senior Paralegal
16th MP BDE (ABN)
VICTORY BASE, IRAQ
DNVT [REDACTED]
cell [REDACTED]

019418

[REDACTED] CJTF7-BN XO

all

From: [REDACTED]@us.army.mil
Sent: Thursday, April 01, 2004 1:14 PM
To: J. SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] CPT; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil;
[REDACTED]@us.army.mil; [REDACTED] M CPT CJTF7 16MP [REDACTED] M1LT
CJTF7-QPS OSJA; [REDACTED] MAJ CJTF7-BN XO
Subject: Re: witness availability U.S. v Frederick Art 32

(b)(6) 2-7(c)-2

SPC Ambuhl will not be available to testify. She invokes her right to remain silent.

Thank you.

[REDACTED]
CPT, JA
Trial Defense Counsel
Tikrit Branch Office (FOB Danger)
Region IX
DNVT: [REDACTED]
E-mail: [REDACTED]@us.army.mil

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC"
<[REDACTED]@vcmain.hq.c5.army.mil>
Date: Thursday, April 1, 2004 11:32 am
Subject: witness availability U.S. v Frederick Art 32

> [To]
>
> In the Article 32(b) session in the case of U.S. v Frederick, the
> Defenserequests the following personnel be available for live
> testimony:
> SPC Jeremy Sivits
> SGT Javal Davis
> SPC Megan Ambuhl
> SPC Sabrina Harman
> SPC Charles Graner
>
> Request a response as to whether your client mentioned above will
> be able to
> comply with the Defense's request.
>
> The 32 will start at 1000, 2 Apr 04 in bldg 94, Victory Base
> courtroom.
> V/R
>
> SFC [REDACTED]
> Senior Paralegal
> 16th MP BDE (ABN)
> VICTORY BASE, IRAQ
> DNVT 302-[REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
>

019419

IOE 34

MAJ CJTF7-BN XO

From: [REDACTED]@us.army.mil
Sent: Thursday, April 01, 2004 1:55 PM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] CPT; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil;
[REDACTED]@us.army.mil; [REDACTED] M CPT CJTF7 16MP [REDACTED] M 1LT
CJTF7-OPS OSJA [REDACTED] MAJ CJTF7-BN XO
Subject: Re: witness availability U.S. v Frederick Art 32

My client is NOT available to testify

[REDACTED]
CPT, JA
Defense Counsel
LSA Anaconda
DSN [REDACTED]

[REDACTED]@us.army.mil

all (b)(6)-2; 7(c)-2

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

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC"
[REDACTED]vcmain.hq.c5.army.mil>
Date: Thursday, April 1, 2004 4:32 am
Subject: witness availability U.S. v Frederick Art 32

> [To]
>
> In the Article 32(b) session in the case of U.S. v Frederick, the
> Defense requests the following personnel be available for live
> testimony:
> SPC Jeremy Sivits
> SGT Javal Davis
> SPC Megan Ambuhl
> SPC Sabrina Harman
> SPC Charles Graner
>
> Request a response as to whether your client mentioned above will
> be able to
> comply with the Defense's request.
>
> The 32 will start at 1000, 2 Apr 04 in bldg 94, Victory Base
> courtroom.
> V/R
>
> SFC [REDACTED]
> Senior Paralegal
> 16th MP BDE (ABN)
> VICTORY BASE, IRAQ
> DNV [REDACTED]
>
> cell [REDACTED]
>
>

019420

IOE 35

MAJ CJTF7-BN XO

all (b)(6) Z - 7c) 2

From: [REDACTED]@us.army.mil
 Sent: Thursday, April 01, 2004 3:27 PM
 To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
 Cc: [REDACTED] CPT; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil;
 [REDACTED]@us.army.mil; [REDACTED] M CPT CJTF7 16MP; [REDACTED] 1LT CJTF7-OPS
 OSJA; [REDACTED] MAJ CJTF7-BN XO
 Subject: Re: witness availability U.S. v Frederick Art 32

SFC [REDACTED]

On behalf of SGT Davis, I am invoking his right to remain silent under both Article 31 and under his right to counsel. He will not testify at any companion Article 32 hearing. Thank you.

V/R,

CPT [REDACTED]

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC"
 [REDACTED]@vcmain.hq.c5.army.mil>

Date: Thursday, April 1, 2004 12:32 pm

Subject: witness availability U.S. v Frederick Art 32

> [To]

>

> In the Article 32(b) session in the case of U.S. v Frederick, the

> Defense requests the following personnel be available for live

> testimony:

> SPC Jeremy Sipits

> SGT Javal Davis

> SPC Megan Ambuhl

> SPC Sabrina Harman

> SPC Charles Graner

>

> Request a response as to whether your client mentioned above will

> be able to

> comply with the Defense's request.

>

> The 32 will start at 1000, 2 Apr 04 in bldg 94, Victory Base

> courtroom.

> V/R

>

019421

4/17/2004

IOE 36

MAJ CJTF7-BN XO

From: [REDACTED]@us.army.mil
Sent: Thursday, April 01, 2004 9:36 PM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] CPT [REDACTED]@us.army.mil; [REDACTED]@us.army.mil; [REDACTED] CPT CJTF7 16MP; [REDACTED] 1LT
Subject: CJTF7-OPS OSJA; [REDACTED] MAJ CJTF7-BN XO
Re: witness availability U.S. v Frederick Art 32

all

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

SFC [REDACTED]

SPC Sivits will not testify.

v/r,

CPT [REDACTED]

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

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC"
[REDACTED]@vcmmain.hq.c5.army.mil>
Date: Thursday, April 1, 2004 11:32 am
Subject: witness availability U.S. v Frederick Art 32

> [To]
>
> In the Article 32(b) session in the case of U.S. v Frederick, the
> Defense requests the following personnel be available for live
> testimony:
> SPC Jeremy Sivits
> SGT Javal Davis
> SPC Megan Ambuhl
> SPC Sabrina Harman
> SPC Charles Graner
>
> Request a response as to whether your client mentioned above will
> be able to
> comply with the Defense's request.
>
> The 32 will start at 1000, 2 Apr 04 in bldg 94, Victory Base
> courtroom.
> V/R
>
> SFC [REDACTED]
> Senior Paralegal
> 16th MP BDE (ABN)
> VICTORY BASE, IRAQ
> DNV 302 [REDACTED]
>
> cell [REDACTED]
>
>

019422

IOE 37

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

MAJ CJTF7-BN XO

To: [REDACTED]@us.army.mil

Subject: RE: witness availability U.S. v Frederick Art 32

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]

Sent: Friday, April 02, 2004 8:51 AM

To: [REDACTED]@us.army.mil

Cc: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@us.army.mil;

[REDACTED]@us.army.mil; [REDACTED]@us.army.mil; [REDACTED] CPT CJTF7 16MP; [REDACTED]

1LT CJTF7-OPS OSJA; [REDACTED] MAJ CJTF7-BN XO

Subject: Re: witness availability U.S. v Frederick Art 32

SPC Graner will invoke his right to remain silent and not testify at any co-accused's article 32 hearing.

[REDACTED]
CPT, JA

Trial Defense Counsel

Mosul, Iraq

[REDACTED]@us.army.mil

019423

4/17/2004

IOE 38

MAJ CJTF7-BN XO

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

From: [REDACTED] C. MAJ CJTF7-BN XO
Sent: Monday, April 05, 2004 9:02 AM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com; [REDACTED]
[REDACTED] CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law Attorney; [REDACTED]
[REDACTED]@us.army.mil
Subject: Bldg 94 Court Room Open Friday 9 April?

SFC [REDACTED]
Can you reserve the Bldg 94 Court Room for Friday, 9 April? We need to conduct Part 2 of the Art 32 hearing. I need to know ASAP. If not, when is the next available date? Thank you.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAO
PHONE (MSE) 3 [REDACTED]

NIPR: [REDACTED]vcmain.hq.c5.army.mil

SIPR: [REDACTED]5main.hq.c5.army.smil.mil

"MAGNUM 5"

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

019424

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

MAJ CJTF7-BN XO

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Monday, April 05, 2004 4:22 PM
To: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com; [REDACTED] CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law Attorney; [REDACTED]@us.army.mil
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

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

We are set for 9 April in the courtroom, 1000.

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Monday, April 05, 2004 9:25 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com; [REDACTED] CPT CJTF7 16MP; [REDACTED]@us.army.mil
Subject: Bldg 94 Court Room Open Friday 9 April?

SFC [REDACTED]

Can you reserve the Bldg 94 Court Room for Friday, 9 April? We need to conduct Part 2 of the Art 32 hearing. I need to know ASAP. If not, when is the next available date? Thank you.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]

NIPR [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]@5main.hq.c5.army.smil.mil

"MAGNUM 5"

019425

IOE 40

All (b)(6)-2; 7(c)2

MAJ CJTF7-BN XO

Subject: RE: Bldg 94 Court Room Open Friday 9 April?

except

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

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, April 06, 2004 8:11 AM
To: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
C. MAJ CJTF7-BN XO; [REDACTED]@aol.com; [REDACTED] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

All:

What is going to happen at the reconvened Art. 32? Do we know what information has been gathered by the Government?

I need the government's assistance in getting a copy of the Art. 32 packet (CID packet, charge sheets, etc.) to Mr. [REDACTED]

Are other witnesses from the defense witness list available to testify?
Has the AR 15-6 investigation been completed?

I will be at Baghdad Airport all day with 1AD on other cases. I will be available again this evening to check my email.

Respectfully,

CPT [REDACTED]
Defense Counsel

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

From: [REDACTED] J. SFC CJTF7-16th MP BDE SJA NCOIC
[mailto:[REDACTED]@vcmain.hq.c5.army.mil]
Sent: Monday, April 05, 2004 4:22 PM
To: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] SFC
CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com; [REDACTED] CPT
CJTF7 16MP; [REDACTED] L CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

We are set for 9 April in the courtroom, 1000.

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

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

019426

IOE 41

all (b)(6)-2;
7(c)-2

MAJ CJTF7-BN XO

Subject: RE: Bldg 94 Court Room Open Friday 9 April?

escape

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

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Tuesday, April 06, 2004 9:10 AM
To: [REDACTED] CPT CJTF7 -Senior Defense Counsel; [REDACTED]
J. SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com;
CPT CJTF7 16MP; [REDACTED] CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

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

CPT [REDACTED]
The intent of the reconvened Art 32 is to allow additional evidence and testimony to be introduced, if available, as discussed last Friday. Why do you need the Government's assistance in getting all of the material to [REDACTED] Do you not have a copy of the packet yourself? I do not know where CPT [REDACTED] is on gathering the additional witnesses and evidence. I am sure he will shed some light on this issue soon. Anything else? I will see everyone on Friday.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302 [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]@vcmain.hq.c5.army.mil
"MAGNUM 5"

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

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, April 06, 2004 8:11 AM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]
C. MAJ CJTF7-BN XO; [REDACTED]@aol.com; [REDACTED] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

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

All:

What is going to happen at the reconvened Art. 32? Do we know what information has been gathered by the Government?

I need the government's assistance in getting a copy of the Art. 32 packet (CID packet, charge sheets, etc.) to Mr. [REDACTED]

Are other witnesses from the defense witness list available to testify? Has the AR 15-6 investigation been completed?

I will be at Baghdad Airport all day with 1AD on other cases. I will be available again this evening to check my email.

Respectfully,

CPT [REDACTED]
Defense Counsel

019427

IOE 42

MAJ CJTF7-BN XO

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

Subject: RE: Bldg 94 Court Room Open Friday 9 April?

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

From: [REDACTED] CPT CJTF7 16MP
Sent: Tuesday, April 06, 2004 9:18 AM
To: [REDACTED] CPT CJTF7 -Senior Defense Counsel; [REDACTED]
J. SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED] MAJ CJTF7-BN XO;
[REDACTED]@aol.com; [REDACTED] CPT CJTF7-Admin Law Attorney;
[REDACTED]@us.army.mil
Cc: [REDACTED] CPT CJTF7-Chief of Military Justice OSJA; [REDACTED]
[REDACTED] CJTF7-ORS OSJA
Subject: RE: Bldg 94 Court Room Open Friday 9 April?

CPT [REDACTED] (b)(6)(4); (7)(C)-4

We will reconvene on 9 April at 1000 at the courthouse.

SPC [REDACTED] will be available. SGT [REDACTED] is at Fort Bragg. The other 3 we are still trying to locate, but so far no success.

I suggest you copy the file and mail it to Mr. [REDACTED] (b)(6)-4, 7(C)-4
The 15-6 is not complete to my knowledge.

VR

CPT [REDACTED]
16th MP BDE (ABN)
Trial Counsel
302 [REDACTED]
AIRBORNE!

019428

IOE 43

MAJ CJTF7-BN XO

From: [REDACTED] MAJ CJTF7-BN XO
Sent: Monday, April 12, 2004 8:53 PM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Cc: [REDACTED] CPT CJTF7-Admin Law Attorney
Subject: RE: Art 32 US v Frederick

SFC [REDACTED]
Can you fill in the holes here, i.e. full names for the witnesses and units. Thanks.

CPT [REDACTED] please check format here, I am working on my Block 21.



FRED32.FPK

(b)(6) 2 - 7(c) - 2

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) [REDACTED]

NIPR: [REDACTED]@vcmain.hq.c5.army.mil

SIPR: [REDACTED]c5main.hq.c5.army.smil.mil

"MAGNUM 5"

019429

IOE 44

MAJ CJTF7-BN XO

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

From: [REDACTED] C. MAJ CJTF7-BN XO
Sent: Monday, April 12, 2004 7:34 PM
To: [REDACTED] CPT CJTF7 16MP [REDACTED] CPT CJTF7 -Senior Defense Counsel;
[REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC; [REDACTED]@aol.com'; [REDACTED]
[REDACTED] CPT CJTF7-Admin Law Attorney; [REDACTED]@us.army.mil
Cc: [REDACTED] 1LT CJTF7-OPS OSJA
Subject: Art 32 Due-Outs

except

Importance: High

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

SFC [REDACTED]
I still need you to provide the 15-6 CD to all parties, as well as the summarization notes from the Art 32. Where are we with both of these products? Thank you.

MAJ [REDACTED]
Executive Officer, XO
57th Signal Battalion, 3rd SIG BDE
Victory Base, IRAQ
PHONE (MSE) 302- [REDACTED]
NIPR: [REDACTED]@vcmain.hq.c5.army.mil
SIPR: [REDACTED]c5main.hq.c5.army.smil.mil
"MAGNUM 5"

019430

IOE 45

MAJ CJTF7-BN XO

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, April 15, 2004 3:19 PM
To: [REDACTED] MAJ CJTF7-BN XO
Subject: FW: Transcript
Importance: High

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



U.S. v Frederick 32
Transcript...

Sir,

See attached:

It did not reach you from my AKO

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

From: [REDACTED]@us.army.mil [mailto:[REDACTED]@us.army.mil]
Sent: Wednesday, April 14, 2004 6:04 PM
To: [REDACTED]@vcmain.hq.c5.army.mil
Cc: [REDACTED]@vcmain.hq.c5.army.mil
Subject: Transcript

Sir,

Here's the transcript. I will contact CPT [REDACTED] ref the CD Rom. He is on night shift at the OSJA.

I printed your 457.

My NIPR Outlook is down right now.

019431

IOE 46

MAJ CJTF7-BN XO

To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: Art 32 Due-Outs

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

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Friday, April 16, 2004 11:22 AM
To: [REDACTED] CPT CJTF7-
Cc: [REDACTED] MAJ CJTF7-BN XO; [REDACTED] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7 -Senior Defense Counsel
Subject: RE: Art 32 Due-Outs
Importance: High

Sir,

So you're telling us that there is NO UNCLASSIFIED version of the CD-ROM.

*all 6161-2;
7CJ-2*

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

From: [REDACTED] CPT CJTF7-
Sent: Thursday, April 15, 2004 1:11 PM
To: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Subject: RE: Art 32 Due-Outs

SFC [REDACTED]

CPT [REDACTED] should have a copy of that CDROM and the redacted copy of the investigation. That CDROM is the full unredacted (classified) version. The paper copy is the redacted version.

v/r

CPT [REDACTED]

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

From: [REDACTED] SFC CJTF7-16th MP BDE SJA NCOIC
Sent: Thursday, April 15, 2004 09:35
To: [REDACTED] CPT CJTF7-
Cc: [REDACTED] MAJ CJTF7-BN XO
Subject: FW: Art 32 Due-Outs
Importance: High

Sir,

At the Article 32 for U.S. v Frederick, CPT [REDACTED] led us to believe that you have a unclassified CDrom of the 15- Investigation.

Is this true?

If so, I need to come by and get a copy for the record.

V/R

SFC [REDACTED]

019432

TAF 47

AR 3C Hearing
2 April 2004

1. Record of non-availability
2. 15-6? Permission CID Agent at Prison? *all*
3. [REDACTED] called in to abuse (b)(6) 2; 7(c)-2
4. exclude CID Report from CD
5. Don't consider Fredericks right to self-incrimination
6. SA [REDACTED] testimony - ALTERNATE to primary witnesses
7. Objections to floor plan?
8. Exhibit 11 - picture of accused
9. ~~Change for sitting on detainee? why not?~~
10. SOP - 9 OCT 03
Prison
11. Term "DETAINEE"? what does it mean
12. Geneva Convention in Arabic
13. Prisoner AVAILABILITY? Burden for government too much
Sworn STATEMENT
14. SGM [REDACTED] 418th ^{SPW CTF} MP Attachment - 81st RSC *revised*
DETAINEE A "UNUSUAL" term *381 rid*
"Security Detainee"
15. CAT [REDACTED] invoked his rights *talk to*
 1. scope of duties
 2. SEC Snyder?
 - 3.
16. TESTIMONIAL Immunity for CDT [REDACTED]
Convening Authority
17. Establishment of duties, define scope
18. Next two witnesses unavailable

IOE 48

019433

19. Available Witnesses ICRC?
Gen Karpinsky?

Legal Advisor?

NOTE objections: But declare UNAVAILABLE
100 miles or further
detainees incarcerated or set free

Witnesses within 100 miles -

1. [REDACTED] - Female - MI
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

Compelled to produce documents;
OCT-JAN

15-6 Inv.

OPORD / SIG ACTS / PRAGOS ; RIP in October?
CACI Interrogators

IOE 48

019434

QUESTIONS

1. Why no charges of "Failure to obey an Order" and "obstruction OF JUSTICE"?
2. What is a "status" as referenced in the report?
3. Where is Frederick's thumbdrive?
4. What was the CoCommand structure?
5. What are we doing about [REDACTED] - translator RAPIR boys?
6. Policy Authorized in 1A? (b)(6)-4, (7)(C)-4
7. What are the Authorized interrogation techniques?
- 8.

IOE 50

019435

Testimony

[REDACTED] Put together - CID Report

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CID (b)(6)-1, (7)(C)-1

SPC [REDACTED] (b)(6)-2; (7)(C)-2 - Brought CD. called in Abuse

SGT [REDACTED] - Asked by SSG Ferrelbach to lie about CID being at one of the beatings

IOE 49

019436

WITNESSES

SPC [REDACTED] Joseph M [REDACTED] (b)(6)-2; (7)(C)-2
- brought CD - called CID
[REDACTED] - bitten by MP Dog
(b)(6)-4; 7(c)-4

PFC England - Present when SSG Frederick punched
prisoner in chest

SGT Sivits - Present when prisoners were made to
strip and when Fred, Sgt detainer in chas.

SGT DAVIS - Present when Fred forced detainees to
masturbate

SGT [REDACTED] - Fred tried to convince him to ^{tell} ~~say~~ him
who a CID Agent was

SGT [REDACTED] MP who had dog bite prisoner - asked
by Frederick TO LIE and say CID was at a beating
detainee [REDACTED] (b)(6)-4; 7(c)-4

IOE 51

019437

Call
(b)(6)-2-7(c)-2

SFC [REDACTED] 5-20-A/B

CPT [REDACTED] or [REDACTED]

26 MAR 04

256 Prelock, Evan
MAY WAIVER

Sat down with SFC [REDACTED]

1. Received CASE FILE And CD
2. Provided CONTACT INFORMATION for my Legal aide rep. CPT [REDACTED]
3. Provided him A signed copy of the ART 32 NOTIFICATION to debar

27 MAR:

1. COPIED CASE File
2. Sat down with CPT [REDACTED]
3. Must send NOTE to [REDACTED]
 - A. Waiver List
 - B. recording OPTIONS
 - C. Open or closed?

4 APR PART II

1. 256 [REDACTED] rights
as [REDACTED] terminated
2. [REDACTED] [REDACTED] OGA/Investigator
Lists
3. 600 [REDACTED] Waiver IOE 52

019438

Wilson, O. J.

1. Harkins case, see #71
+ info on evidence base of APTK
2. Ob. do you see a link, do you
see a hit distance
3. do you see a link

Introducing the AOSIS-6
And ANNEXES AS EXHIBIT

Talk about IS-6, to go - counsel
myself, having the IS-6.

'M, Contradictory, ambiguous

M, L. H. S. H.
S. H. S. H.

W. H. S. H.

hit side of chest

L. H. S. H. 101 (b)
S. H. S. H.

IOE 52

019439

RIGHTS \ .RNING PROCEDURE/WAIVER CERTIFIC... E

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <u>VICTORY BASE, Iraq</u>	2. DATE <u>2 Apr 04</u>	3. TIME <u>1319</u>	4. FILE NO.
NAME (Last, First, MI) <u>(b)(6)-2, (7)(C)-2</u>	8. ORGANIZATION OR ADDRESS		
SSN <u>[REDACTED]</u>	7. GRADE/STATUS <u>CPT/03</u>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Article 32(b) Investigation
U.S. v. Frederick and wanted to question me about the following offense(s) of which I am
 suspected/accused: Dereliction of Duty Maltreatment
 Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:
☒ I do not have to answer any question or say anything.
☒ Anything I say or do can be used as evidence against me in a criminal trial.
☒ For personnel subject to the UCMJ I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.
 - or -
 (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
 If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)	3. SIGNATURE OF INTERVIEWEE
NAME (Type or Print)	
ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR
ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

I do not want to give up my rights

☒ I want a lawyer

☐ I do not want to be questioned or say anything

SIGNATURE OF INTERVIEWEE

[REDACTED]

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

019440

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

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPA 2.01

IOE 53

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <u>Victory Base</u>	2. DATE <u>9 Apr 04</u>	3. TIME <u>1007</u>	4. FILE NO.
5. NAME (Last, First, MI) <u>[REDACTED] (b)(6)-2,701-2</u>	8. ORGANIZATION OR ADDRESS <u>372d MP Co</u>		
6. SSN <u>[REDACTED]</u>	7. GRADE/STATUS <u>E6</u>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Article 32 Inv U.S. ✓
Fredrick and wanted to question me about the following offense(s) of which I am suspected/accused: Dereliction of Duty

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- If for personnel subject to the UCMJ I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

- I do not want to give up my rights
☐ I want a lawyer ☒ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE [REDACTED] (b)(6)-2,701-2

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

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPPC V1.00

IOE 54

DEPARTMENT OF THE ARMY
Headquarters
57th Signal Battalion
Victory Base, Iraq APO AE 09342

AFZA-AP-IO

25 March 2004

MEMORANDUM FOR SSG Ivan L. Frederick II, [REDACTED] HHC, 16th MP Bde (Abn),
Victory Base, Iraq APO AE 09342

SUBJECT: Notification of Article 32 Investigation

1. On 2 April 2004, at 1000 hours in the Victory Base Courtroom, Building 94, I will conduct an investigation pursuant to Article 32(b), UCMJ to investigate the facts and circumstances concerning charges preferred against you by CPT [REDACTED] (b)(6) 2-7CJ-2
The charges are:

- Charge I: Conspiracy
- Charge II: Dereliction of Duty
- Charge III: Maltreatment
- Charge IV: Assault
- Charge V: Indecent Acts

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send your decision to me by 1200 hours, 30 March 2004.

3. The names of witness known to me, who will be asked to testify at the hearing, are:

- a. SA [REDACTED] Agent, DNV [REDACTED] (b)(6)-1; 7CJ-1

Additionally, it is my intention to examine and consider all evidence.

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 1200 hours, 30 March 2004. If, at a later time, you identify additional witnesses, inform me of their names, phone numbers and/or addresses.

019442

IOE 55



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

REPLY TO
ATTENTION OF

AFZF-JA

Ivan Frederick
MEMORANDUM FOR Staff Sergeant [REDACTED] Headquarters
and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Camp
Cedar II, Iraq, APO AE 09342-1400

SUBJECT: Request for Verbatim Transcript of Article 32 Hearing

1. Your request for a verbatim transcript of the Article 32 hearing in the case of United States v. Ivan L. Frederick, II is denied. Pursuant to RCM 405(j)(2)(B), a summarized transcript is sufficient for an Article 32 hearing. You have not provided a legally cognizable basis for a verbatim record.

2. POC is Captain [REDACTED] DSN [REDACTED]

[REDACTED]
COL, JA
Staff Judge Advocate
8 APR 04

rel
(b)(6)-2; 7CJ-2

019443

IOE 56

Article 32 Investigation

U.S. VS Frederick

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019444

INVESTIGATING OFFICER'S REPORT

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

1a. FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED] (b)(6) 2-7C-2	b. GRADE 0-4	c. ORGANIZATION HHC, 57th Signal Battalion 3rd Signal Brigade Victory Base, Iraq APO AE 09342	d. DATE OF REPORT 17 April 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) [REDACTED]	b. TITLE Commander	c. ORGANIZATION 16th Military Police Brigade (Airborne) Victory Base, Iraq APO AE 09342	
3a. NAME OF ACCUSED (Last, First, MI) Frederick, Ivan L. II	b. GRADE E-6	c. SSN [REDACTED]	d. ORGANIZATION HHC, 16th MP Brigade (Airborne) Victory Base, Iraq APO AE 09342
			e. DATE OF CHARGES 20 March 2004
(Check appropriate answer)			YES NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)			X
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)			X
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)			X
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED] (b)(6)-2-7C-2	b. GRADE 0-3	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) Mr. [REDACTED] (b)(6)-4-7C-4	b. GRADE N/A
c. ORGANIZATION (If appropriate) HHC, 16th MP Brigade (Airborne) Victory Base, Iraq APO AE 09342		c. ORGANIZATION (If appropriate)	
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE		b. DATE	
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.			
c. SIGNATURE OF ACCUSED			
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)			YES NO
a. THE CHARGE(S) UNDER INVESTIGATION			X
b. THE IDENTITY OF THE ACCUSER			X
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			X
d. THE PURPOSE OF THE INVESTIGATION			X
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			X
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT			X
g. THE RIGHT TO CROSS-EXAMINE WITNESSES			X
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED			X
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION			X
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING			X
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)			X
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL			

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

DD FORM 457, AUG 84

EDITION OF OCT 69 IS OBSOLETE.

USAPPC V1.0

019445

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	SA	10th MP BN (CID)	X	
[REDACTED] (b)(6)-2;	E-9	418th MP DET, 81st EPW RSC	X	
[REDACTED] 7(c)-2	E-4	372nd MP Company, Abu Ghraib Prison, Baghdad Iraq	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
CID Investigation CD, CPV Exam	16th MP BDE HQS			
AR 15-6 Investigation Results of the 800th MP BDE conducted by MG Taguba	BLDG 0, Victory Base, CPT Kobs, POC			
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				X
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				X
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.) See attached Continuation Sheets				
(b)(6)-2; 7(c)-2				
22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION		
[REDACTED]	0-4	HHC, 57th Signal Battalion, 3rd Signal Brigade Victory Base, Iraq APO AE 09342		
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]			18 APR 04	

019446 USAPPC V1.00

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A,
Summary of Conclusions and Recommendations

Investigating Officer's Conclusions and Recommendations on Charges and Specifications

U.S. vs Frederick

Charge I. Violation of Article 81, Conspiracy Uniform Code of Military Justice UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 24 October 2003, conspire with CPL Charles A. Graner and PFC Lynndie R. England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick handcuffed three detainees together and directed said PFC England to photograph the detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with SGT Javal S. Davis, CPL Graner, SPC Jeremy C. Sivits, SPC Sabrina D. Harman, SPC Ambuhl and PFC England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick did place naked detainees in a human pyramid and photographed the pyramid of naked detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Charge II. Violation of Article 92, Failure to obey order or regulation, UCMJ

The Specification: In that SSG Frederick, II, U.S. Army, who knew of his duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 20 October 2003 to, on or about, 1 December 2003, was derelict in the performance of those duties in that he willfully failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to.

The Charge and Specification are in the proper form. The **burden of proof**, to include all three elements of the crime, for reasonable grounds that the accused committed the offense identified in this Specification, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A, Summary of Conclusions and Recommendations

Charge III. Violation of Article 93, Cruelty and maltreatment, UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by participating in and allowing the placing of wires on the detainee's hands while he stood on a Meals Ready to Eat (MRE) box with his head covered and allowing the detainee to be photographed.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by placing naked detainees in a human pyramid and photographing the pyramid of naked detainees.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by ordering the detainees to strip, and then ordering the detainees to masturbate in front of the other detainees and soldiers, and then placing one in a position so that the detainee's face was directly in front of the genitals of another detainee to simulate fellatio and photographing the detainees during these acts.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 4: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by posing for a photograph sitting on top of a detainee who was bound by padded material between two medical litters.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 4, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A, Summary of Conclusions and Recommendations

Specification 5: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat two detainees, persons subject to his orders, by grabbing the hands and arms of the said detainees and ordering them to strike or punch each other, with the detainees then striking or punching each other.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 5, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Charge IV. Violation of Article 128, Assault, UCMJ

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully strike several detainees by jumping and impacting the bodies within a pile of said detainees with his shoulder or upper part of his body.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully stomp on the hands and bare feet of several detainees with his shod feet.

The Charge and Specification are in the proper form. The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, commit an assault upon a detainee by striking him with the means or force likely to produce death or grievous bodily harm, to wit, by punching the detainee with a closed fist in the center of his chest with enough force to cause the detainee to have difficult breathing and require medical attention.

The Charge and Specification are in the proper form. The **burden of proof**, to include the four primary elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. I recommend that the charge and specification be referred to a General Court Martial.

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix A,
Summary of Conclusions and Recommendations**

Charge V. Violation of Article 134, Indecent Acts with another, UCMJ

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

This Charge and Specification need to be re-written to reflect the true nature of the offense and the acts committed. The following is the revised Specification.

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by influencing/instigating a group of detainees to begin masturbating, or attempting to masturbate, and setting the detainees in sexually provocative positions, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

The **burden of proof**, to include the 3 elements of the crime, for reasonable grounds that the accused committed the offense identified in the revised Specification, **would be met**. I would recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

The Article 32 Proceedings were called to order at 1000 hours, 2 April 2004, at Victory Base, Iraq.

PERSONS PRESENT (Throughout all of the proceedings)

MAJ [REDACTED] Investigating Officer
CPT [REDACTED] Government Counsel
1LT [REDACTED] Assistant Government Counsel
CPT [REDACTED] Defense Counsel
SSG Ivan L. Frederick II, Accused
SFC [REDACTED] Recorder

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

PERSONS ABSENT

Mr. [REDACTED] Civilian Attorney for the Accused

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

The Government Counsel made a Motion for the Investigating Officer to excuse co-accused spectators from the courtroom under M.R.E. 615.

With no objection by the Defense Counsel, the Investigating Officer granted the Government Counsel's Motion.

Defense Counsel stated that he wanted the Investigating Officer to consider R.C.M. 405 when considering the CID Investigation Packet, and that he would submit written objections at the conclusion of the hearing.

The Defense Counsel conducted a voir dire of the Investigating Officer, [Defense Counsel shows the Investigating Officer a Stars and Stripes newspaper article, and a Kuwaiti Times newspaper article announcing the preferral of charges against soldiers charged with detainee abuse]; and made no objection to the Investigating Officer being detailed to the hearing.

The Investigating officer stated that this was a formal investigation and that he had been detailed as the Article 32 Investigating Officer by order of Colonel [REDACTED] Commander, 16th Military Police Brigade (Airborne).

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

The investigating officer informed the accused that his sole function as the Article 32 investigating officer was to determine thoroughly and impartially all of the relevant facts of the case, to weigh and evaluate those facts, and to determine the truth of the matters stated in the charges.

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence,

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

The Investigating Officer advised the accused of his right to counsel.

The Accused stated he would be represented by [REDACTED] (civilian counsel) and CPT [REDACTED] and was ready to proceed without [REDACTED] present.

The Defense Counsel waived the reading of the charges.

The Investigating Officer notified the accused of his rights during the Article 32 Investigation.

The accused stated he understood his rights.

The Investigating Officer stated that the following witnesses would be present:

SA [REDACTED] 10th MP BN (CID)
SGM [REDACTED] 418th MP Det, 81st EPW RSC
[REDACTED] Titan Corp
CPT [REDACTED] 372d MP CO
SFC [REDACTED] 372d MP CO
SSG [REDACTED] 372d MP CO

Government Counsel clarified for the Investigating Officer and Defense Counsel, that some witnesses would not be present, and it was up to the Investigating Officer whether to determine witnesses as available or unavailable.

The Government Counsel made an Opening Statement.

The Defense Counsel made an Opening Statement.

THE GOVERNMENT'S CASE

SA [REDACTED] 10th MP BN (CID), Prisoner Interrogations, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

I have been a CID agent for 4 years. I was assigned at Abu Ghraib Prison in the beginning of January 2004. I was assigned to the detainee abuse case.

The investigation started after SPC [REDACTED] came back from emergency leave, and had heard of a shooting at the prison and wanted pictures from CPL Grainer. He got a CD from CPL Grainer, and began to view and copy photos on his CPU. He came across pictures of naked detainees naked. SPC [REDACTED] is an MP in 372d MP CO. The detainees were naked and piled

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

(b)(6)-2,
7(c)-2
up on the floor in a pyramid, there were pictures of detainees masturbating and other very humiliating pictures. SPC [REDACTED] initially put an anonymous letter under our door, and then he later came forward and gave a sworn statement. He felt very bad about it and thought it was very wrong. SPC [REDACTED] turned the disc over to Agent [REDACTED] the Agent-in Charge at that time. We then issued an investigation, briefed the Battalion, and identified who was in the pictures for questioning. (b)(6)1, (7)(C)1

The Government Counsel hands the Witness Prosecution Exhibit 1 for Identification.

This is a copy of the Original CD we collected as evidence. It is marked with "CPU Exam" and has instructions on how to access the files on the CD. The original is with CID. It contains file numbers and all the pictures we got from the CPU and the disc we got from SPC Darby. I have reviewed the pictures on this CD several times.

The Government Counsel requested that Prosecution Exhibit 1 be entered into evidence.

Prosecution Exhibit 1 was admitted into evidence with objection; Defense Counsel requested that the AIR on the disc and the CID Report not be considered.

We interviewed the seven soldiers identified in the photos--SSG Frederick, CPL Grainer, and SPC Ambuhl requested legal counsel; SPC Harman, SGT Davis, SPC Sivits, and PFC England gave sworn statements. SSG Frederick was the NCOIC of the hard site; he is the accused here in the case today. We advised them all of their rights. Some waived their rights and gave detailed sworn statements two or three times. We wanted to know who was taking pictures, who was there, who was being abused, who did the abusing-- basically what was taking place in the prison. SPC Harman, PFC England, SPC Sivits, and SGT Davis gave statements; SSG Frederick, SPC Ambuhl, and CPL Grainer did not.

The Defense Counsel objected and asked that the Investigating Officer not consider the fact that SSG Frederick decided to seek legal counsel and not give a statement.

I only interviewed SPC Ambuhl, she requested legal counsel. When I read through the statements, SPC Harman and SPC England described the details of incidents where SSG Frederick punched a detainee in the chest so hard that the detainee almost went into cardiac arrest. Another incident was of a detainee standing on top of a MRE box with wires tied to his hands; others piled in a pyramid, and who was present during the pyramid.

The Defense Counsel objected to the witness' testimony as a substitute to the availability of witnesses who could testify instead of the agent's recollection of the CID case file.

The Government Counsel stated that the witnesses the agent was referencing were unavailable.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

I helped conduct this investigation. I was called from BIAP to assist with gathering the evidence and interviewing personnel. I am familiar with all of the contents of the report, and have read it thoroughly.

SSG Frederick, CPL Grainer, came up the most. Other names were SPC Harman, SPC Ambuhl, SGT Davis, SPC Sivits, and PFC England. All seven soldiers are from the night shift.

The Government Counsel hands the Witness Prosecution Exhibit 2 for Identification.

This is a sketch of Tier 1A and 1B of the prison hard site. There are two pages. **[Witness points to the sketch as he describes the layout of the area]** These are the first tiers you come up the steps into the guard shack in the center, there are numbered cells on the top and bottom floor. I have been in this area at least ten times. This is how the hard site looked during our investigation.

Prosecution Exhibit 2 was admitted into evidence with objection; Defense Counsel stated that the sketch was a description and not an accurate depiction, asked that the Investigating Officer not consider the exhibit.

The Government Counsel hands the Witness Prosecution Exhibit 3 for Identification.

In this picture is tier 1A. I see the lower isolation area doors. **[The witness steps to the I.O.'s stand as he explains sketch of tier 1A and 1B as he references the picture]** The picture shows 3 detainees on the floor bound together. I have been at the prison since January. There are several guards surrounding the detainees on the floor. I recognize one of the interpreters, named [REDACTED] in the picture.

Prosecution Exhibit 3 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 4 for Identification.

This is a picture of the three detainees on the floor naked. Same location as the other picture, except a different angle. **[The witness steps to the I.O.'s stand as he explains sketch of tier 1A and 1B as he references the picture]** They are down towards the guard area. I think CPL Grainer with his hands on his hips, is in this picture, but I am not certain.

Prosecution Exhibit 4 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 5 for Identification.

This is another picture with detainees on the floor and CPL Grainer kneeling on top of them. I recognize the isolation doors.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 5 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 6 for Identification.

This is the same location of lower tier 1A. The three detainees are still on the floor, and there is a football in the photo as well. There are no dates on the photos, but the CPU had dated folders when they were retrieved.

Prosecution Exhibit 6 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 7 for Identification.

Now the football appears to be bouncing. It appears to be the same event as described in the sworn statements.

Prosecution Exhibit 7 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 8 for Identification.

This is a picture of the seven detainees brought over from Ganci formed into a pyramid or dog pile. CPL Grainer and SPC Harman are posing with a thumbs up. The area is the hard site, but I cannot tell which location in the site.

The hard site is the indoor cells of about seven tiers. The worst prisoners are kept there. MPs work tier 1. Other MPs supervise Iraqi Guards who work the other tiers.

1A contains MI holds, Coalition criminals, and security detainees. 1B holds juveniles and females.

Prosecution Exhibit 8 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 9 for Identification.

This is the lower level of tier 1A. That is CPL Grainer and PFC England posing near the pyramid of naked detainees. The detainees were brought in because they started a riot at Ganci. There are three sections at the prison-- Ganci, Vigilant, and the Hard Site. Those seven were starting a riot, and they were brought to the hard site, stripped, and the guards started the pyramid and all kinds of acts with them.

There are specific interrogation SOPs, but a naked pyramid is not part of it.

Prosecution Exhibit 9 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 10 for Identification.

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This the same pyramid of naked detainees. During our investigation, we matched up pictures with statements. SPC Harman and PFC England's statements matched the pictures and videos very well. Victims' statements matched pictures and videos also. I remember one where a detainee was standing on a MRE box, with wires on his fingers, and was told he would be electrocuted if he fell off of the box.

Prosecution Exhibit 10 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 11 for Identification.

This is the detainee standing on the MRE box in the shower room. They nicknamed him Gilligan, but don't know why. He said he had wires on his fingers and penis. You can see the wires on his hand, but not on his penis. SSG Frederick is in this picture. The detainee has some sort of blanket over him and sandbag over his head.

Prosecution Exhibit 11 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 12 for Identification.

This is the same MRE box picture, except a little distorted. SSG Frederick is not in this one. [The Government Counsel hands the witness prosecution Exhibit 11.] This is just a different shot of the same incident.

Prosecution Exhibit 12 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 13 for Identification.

This is the detainee masturbation incident. PFC England's statement describe that SSG Frederick motioned the detainee's hands back and forward on its penis to coax the detainee to masturbate himself. He then made PFC England pose in a picture next to the detainee. She said she didn't want to pose, but she did it anyway. Looks like lower tier 1A.

There is no SOP, MI or MP, which outlines masturbating detainees. The MI SOP outlines what they are allowed to do, like sleep deprivation.

The Defense Counsel objects to the classification of MI interrogations SOPs.

Prosecution Exhibit 13 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 14 for Identification.

That is two of the detainees from the pyramid --one kneeling with his face to the groin of another detainee standing and masturbating. That picture corresponds with some of the statements.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 14 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 15 for Identification.

These are the same two detainees masturbating--only the standing detainee is wearing a sandbag this time. This is a better view of the kneeling individual with his head against the penis of the standing detainee.

Prosecution Exhibit 15 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 16 for Identification.

This is SSG Frederick sitting on top of two litters with a detainee bound between the litters. [The witness approaches the I.O. stand to depict the area the photo was taken in relation to the 1A/1B sketch.] SSG Frederick is just posing in this picture. This is not a military function.

Prosecution Exhibit 16 was offered into evidence.

The Government Counsel hands the Witness Prosecution Exhibit 17 for Identification.

This is a picture of the seven detainees right after they were transferred from Ganci. They are still clothed. They were piled on the floor, and later stripped. Some of the guards took turns jumping into the pile for no apparent reason.

CPL Grainer also punched one so hard that detainee was knocked out. SSG Frederick also punched one in the chest.

Prosecution Exhibit 17 was offered into evidence.

CROSS EXAMINATION

[The Defense Counsel hands the witness the CID file which all parties present have a copy of.]

I have seen this 3-½ inch file before. This is our investigation file; I don't know how many pages, certainly over 10 pages. I interviewed one alleged co-conspirator. All of the other agents have redeployed to the United States. They are still in the Army.

The Government Counsel objects to the Defense Counsel's legal definition of available, as the witness does not make the determination of who is available.

I worked approximately 30% of the file, I can't be certain though. I was not an eyewitness of any of the photos, nor was I present during any of the riots. I did not take any of the photos. I do not know much about computers, but when the pictures were retrieved, there were folders dated 7 and 8 November, with the pictures inside.

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There is a classified book of detainees that MI maintains. There were detainees being held by CID and MI for crimes against the Coalition, and others for security reasons.

I don't think there was a SOP in the prison when this stuff happened. Everybody was questioned about what happened, including the Battalion Commander. I don't remember if the Judge Advocate was questioned. [REDACTED] interviewed the chain of command.

(b)(6), (7)(C)-1

The Defense Counsel shows the witness Prosecution Exhibit 3.

I do not see SSG Frederick in this photo. I do not see any maltreatment, just a pile on the floor.

The Defense Counsel shows the witness Prosecution Exhibit 4.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 5.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 6.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 7.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 8.

Neither of these two soldiers is SSG Frederick.

The Defense Counsel shows the witness Prosecution Exhibit 9.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 10.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 11.

I recognize SSG Frederick in this photo, looking at a camera. He is not touching the detainee.

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The Defense Counsel shows the witness Prosecution Exhibit 12.

I do not see SSG Frederick in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 13.

I recognize PFC England in this photo. She stated that she did not want to be in it, but she appears to be enjoying this photo. SSG Frederick is not in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 15.

SSG Frederick is not in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 16.

SSG Frederick is in this photo sitting on top of a detainee. I do not know why he is sitting on top of the detainee.

The Defense Counsel shows the witness Prosecution Exhibit 17.

SSG Frederick is not identifiable in this photo.

The Defense Counsel shows the witness Prosecution Exhibit 12.

This picture is a little distorted.

The Defense Counsel shows the witness Prosecution Exhibit 14.

I recognize these guys from the pyramid because they were the only ones on the floor naked. I can't be certain if it was before or after the pyramid.

The Defense Counsel shows the witness Prosecution Exhibit 16.

This is not a military function, SSG Frederick sitting on top of the detainee wrapped between two litters.

The Defense Counsel shows the witness Prosecution Exhibit 17.

This appears to be the pictures of a pile of detainees when they were transferred from Ganci and placed in a big pile. The guards later jumped onto the pile, according to the statements given. There isn't anyone jumping in this picture.

There were several detainees listed as victims in our report. [Defense counsel hands the witness the CID file] SA [REDACTED] was responsible, overall for the case. On this list, if it says

(b)(6) - 1, (b)(7)(C) - 1

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

"detainee", then they are still at Abu Ghraib. If it says, "released", then they are somewhere in Iraq. I am stationed at Abu Ghraib; it is about 30 minutes away from here.

Nothing depicted in the photos follows SOP. The prisoners were stripped naked, whether it was SOP or not. Most of their SOP was verbal decisions. We interviewed all members of the chain of command. No one knows what was told to the guards. SSG Frederick was the NCOIC and managed all of the tiers.

I did not review any SIGACTs, OPORDs, WARNOs. I know of no training guidelines.

What I got is that SSG Frederick and CPL Grainer were road MPs and were put in charge because they were civilian prison guards and had knowledge of how things were supposed to be run.

I was not at MP prior to being a CID Agent.

I believe the soldiers working in Abu Ghraib, are not the same that would work at the prison at Ft Leavenworth. I never reviewed the regulation on detainee operations, nor do I know if any of the chain of command reviewed it.

Everyone being held at Abu Ghraib was called a "detainee"

The Government Counsel objects to the Defense Counsel attempting to have the witness determine who was a detainee/EPW/POW; as the witness did not know the definitions, nor did the witness classify the detainees as such

I do not know who authorized CID to call these people "detainees" in the report. I guess it was a JAG Attorney during the inprocessing.

Prosecution Exhibits 3 thru 17 admitted into evidence with objection; the Defense Counsel stated that all photos in which SSG Frederick was not pictured, and also the description of events depicted in the pictures should not be considered.

REDIRECT EXAMINATION

(b)(6),
(7)(C) I have been on this case for 3 months. I was transferred from BIAP to be Agent in Charge. SA [REDACTED] handled most of this case. I am familiar with the file, it contains a lot of information -- cannot recall all of it.

I am not an MP or MI. No MI or MP SOP would authorize masturbation. No MP or Army regulation would allow masturbation or jumping onto a pile of detainees. No MP or Army policy would allow masturbation or wrongfully assaulting detainees.

A picture is a still shot of what is occurring at a specific time.

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The Government Counsel shows the witness Prosecution Exhibit 16.

There is no MP or Army regulation that would allow anyone to sit on top of a person who is bound between two litters. There appears to be no apparent military duty being performed here, just SSG Frederick posing for a photo sitting on top of the detainee bound between two litters. SSG Frederick does not appear to be in any danger.

The Government Counsel shows the witness Prosecution Exhibit 11.

SSG Frederick is in this picture.

The Government Counsel shows the witness Prosecution Exhibit 12.

SSG Frederick is not in this picture, but it doesn't mean that he wasn't there. We know the event happened, and that he didn't prevent it.

After this all happened, it was put out by the chain of command to not allow any photographs be taken IAW the Geneva Conventions.

RECROSS EXAMINATION

I am stationed at Abu Ghraib. I have walked throughout the prison. I have not seen the Geneva Convention posted.

REDIRECT EXAMINATION

If you told me the Geneva Convention was available at the prison, it would not surprise me.

QUESTIONS BY THE INVESTIGATING OFFICER

This copy of an SOP from our CID file is from the MI folks. There was no SOP on how the tiers were to be run. There was no SOP for the prison guards. The hard site had no SOP. Vigilant is the outside tent camp. It does not apply to where SSG Frederick worked.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Government Counsel discussed the availability of co-accused, due to their rights invocation, and introduced the following exhibits for Identification:

Prosecution Exhibit 18 (Statements of SPC Sivits)

Prosecution Exhibit 19 (Statements of SGT Davis)

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**Prosecution Exhibit 20 (Statements of SPC Harman)
Prosecution Exhibit 21 (Statements of PFC England)**

The Article 32 proceeding recessed at 1140, 2 April 2004.

The Article 32 proceeding reconvened at 1153, 2 April 2004, with all parties present.

Prosecution Exhibits 18, 19, 20, and 21 admitted into evidence with objection; the Defense Counsel stated that even though he also received emails from the co-accused's counsel stating the invocation, it was up to the I.O. to determine unavailability.

The Government Counsel discussed the unavailability of detainees due to security reasons at their being held at the prison; and introduced the following exhibits for Identification:

**Prosecution Exhibit 22 (Statements of [REDACTED])
Prosecution Exhibit 23 (Statements of [REDACTED])
Prosecution Exhibit 24 (Statements of [REDACTED])**

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

Prosecution Exhibits 22, 23, and 24 admitted into evidence.

The Article 32 proceeding recessed at 1200, 2 April 2004.

The Article 32 proceeding reconvened at 1205, 2 April 2004, with all parties present.

The Government Counsel discussed the availability of [REDACTED] Titan Corp, due to his rights invocation, and introduced Prosecution Exhibit 25 for Identification.

Prosecution Exhibit 25 admitted into evidence with no objection.

THE DEFENSE'S CASE
(b)(6)-2, (7)(C)-Z

SGM [REDACTED], 418th MP Det, 81st RSC, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

We are an EPW/POW CI team. I have been involved with the prison since 1 February. I do not know anything about a CID report; CID never questioned me.

The Government Counsel objected to the Defense counsel referencing a report that the witness knows nothing about; and unless the Defense Counsel can show the witness where his name is listed in the report, he cannot answer any questions about it.

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We made assessments on the facilities and procedures. I have been through all 3 camps on the prison. We make sure the conditions are IAW the Geneva Conventions, i.e. medical care, living conditions, and food for the prisoners. Our main goal is the repatriation of the detainees to their homeland. I do not know who our predecessors were. We set up detainee release boards to get the detainees released. We arrange the releases and pay the released detainees a \$10.00 stipend.

There are 12 members on our team-- ½ is at Victory Base with the 16th MP BDE (ABN) the other ½ at Abu Ghraib. We have a commander, medical personal, supply, clerical and MP personnel on our team. I go to the prison a few days each week.

We perform more of a detainee release business, since there is no real POW/EPW camp.

When we got there, MPs were providing security. We addressed deficiency reports to our commander thru the proper channels. We are just an advisory team. There are typical security detainees throughout the prison. The hard stand holds criminal detainees. Vigilant and Ganci also hold personnel that could have committed crimes against the coalition, and who were possibly "in the wrong place at the wrong time."

I am not qualified to answer whether a detainee is insane or not.

Our concern is that the proper paperwork is done when someone is brought in. MI personnel are located in the in-processing complex at Abu Ghraib. When the detainees are brought in, they are screened according to the Geneva Convention. I am not sure of interrogations --that is not our role. I do not know the CACI Corp. There are KBR contractors running the DFAC.

QUESTIONS BY THE INVESTIGATING OFFICER

The term detainee is "universal," and is used if someone is not classified as an EPW.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1225, 2 April 2004.

The Article 32 proceeding reconvened at 1316, 2 April 2004, with all parties present.

CPT (b)(6)-2; (b)(7)(C)-2 [REDACTED], 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of his rights under Article 31, signed DA Form 3881, invoked his rights, and was excused.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

The Defense Counsel requested the I.O. grant Testimonial Immunity for CPT [REDACTED] and the Article 32 be reconvened when CPT Reese could provide his testimony. (b)(6)-2;

The Government Counsel stated that only the Convening Authority could grant immunity; and that CPT [REDACTED] LTC [REDACTED], and 1SG [REDACTED] be declared unavailable because they already have, or would invoke their rights. (b)(7)(C)-2

Defense Counsel argues his theories on how the incidents and investigation took place.

Government Counsel argues why an Article 32(b) Investigation is supposed to be used.

The Article 32 proceeding recessed at 1335, 2 April 2004.

The Article 32 proceeding reconvened at 1341, 2 April 2004, with all parties present.

Government Counsel clarified for both the Investigating Officer and Defense Counsel, which of the requested defense witnesses were available and would be present for testimony and that there was no possibility of telephonic testimony.

Defense Counsel requested that the Government pursue due diligence in locating defense witnesses. (b)(6)-2, (b)(7)(C)-2

The Defense Counsel requested that the Government also try to locate CPT [REDACTED] an MI officer at the prison.

The Article 32 proceeding recessed at 1400, 2 April 2004, so that the Investigating Officer could consult with his Legal Advisor.

The Article 32 proceeding reconvened at 1415, 2 April 2004, with all parties present.

The following requested defense witnesses were determined to be unavailable for testimony:

BG Janis Karpinski, Cdr, 800th MP BDE (377th TSC)
CPT [REDACTED], 372d MP CO
MAJ [REDACTED], 20th MP BN
S-3, 320th MP BN
CPT [REDACTED]
CPT [REDACTED]
CPT A [REDACTED]
ICRC Representatives...
CPL [REDACTED] her Granger
PFC England
SPC Ambuhl
SGT Davis

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

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B, Substance of the Article 32 Investigation and Testimony

SPC Harman
SPC Sivits
SPC Israel Rivera
SPC John Cruz
SPC Roman Krol, 325th MI BN

[REDACTED]

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

SGT

CID

Mr

SA

SA

SA

SA

SA

SA

SA

SA

SA

SA

SA

CACI Corp

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

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

(b)(6)-2;

(b)(7)(C)-2

The Defense Counsel objected to the unavailability of witnesses.

The Government Counsel discussed the availability and status of documents and miscellaneous information the Defense Counsel requested in Discovery.

Defense Counsel objected to the Government's production of documents and miscellaneous information requested in Discovery; and requested that the Investigating Officer compel the Government to produce the information.

The Article 32 proceeding recessed at 1438, 2 April 2004.

The Article 32 proceeding reconvened at 1005, 9 April 2004, with all parties present.

SSG (b)(6)-2; (7)(C)-(2) 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of his rights under Article 31, signed DA Form 3881, and was excused.

Defense Counsel stated that he still stood by his 30 March request that the Government produce the AR 15-6 Investigation on the 800th MP BDE.

Government Counsel stated that Mr (b)(6)-4; (7)(C)-4 Agen (b)(6)-2; (b)(7)(C)-2 could not be located; and that the 15-6 Investigation was now available at the Administrative Law Division, OSJA, CJTF-7.

The Government Counsel stated that the 15-6 would be picked up at the next available recess.

The Government Counsel requested to reopen its case and present an additional witness.

THE GOVERNMENT'S CASE (b)(6)-2; (7)(C)-2

SPC (b)(6)-2; (7)(C)-2 372d Military Police Company, Abu Ghraib Prison, Iraq, was called as a witness, sworn, and testified in substance as follows:

DIRECT EXAMINATION

I run part of the hard site at the prison. I work night shift, tier 4. Now I work different tiers daily.

I ran a tier or cell block, consisting of about 10 cells of 8 people. I make sure everything is okay medically and make sure the prisoners get food.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

I had very little training. They only told us how to do counts and how to handle certain situations. We did a RIP, or tag team with a couple of the soldiers we replaced to see how things worked. I am not aware of any policies or SOPs. We counted the prisoners at least once per night.

We were to protect and make sure everything was in good order.

The people before us taught us how to care for the prisoners. Common sense wouldn't say it was okay to beat up on a prisoner.

We received seven new prisoners from Ganci because they tried to start a riot. They were escorted to tier 1, to be placed in isolation for about 10 days. I helped escort the prisoners. They were zip-tied behind their backs, and had sandbags on their heads. The guards would lead them into the walls and cell bars. This was no self-defense as I saw it.

(b)(6)-2; (7)(C)-2
SFC [REDACTED] grabbed my prisoner and threw him into a pile with the others. I was the last one in the line with a prisoner. I do not think it was right to put them in a pile.

I saw SSG Frederick, SGT Davis, and CPL Grainer walking around the pile hitting the prisoners. I remember SSG Frederick hitting one prisoner in the side of its ribcage. The prisoner was no danger to SSG Frederick. They were still flex-cuffed and sandbagged. I left after that.

I returned later because someone wanted me to get SSG Frederick for something. I went down to tier 1, and when I looked down the corridor, I saw 2 naked detainees, one masturbating to another kneeling with its mouth open. I thought I should just get out of there. I didn't think it was right, as it seemed like the wrong thing to do. I saw SSG Frederick walking towards me, and he said, "Look what these animals do when you leave them alone for two seconds".

I heard PFC England shout out, "he's getting hard".

(b)(6)-2; (7)(C)-2
I told my team leader, SGT [REDACTED] what I saw, and SSG Frederick was moved to work the towers. I told my chain of command, and I think the issue was taken care of. I just didn't want to be part of anything that looked criminal.

CROSS EXAMINATION

I am a Reservist. My unit is a law and order unit. I don't know if there are MP units that work detainee operations.

[The Defense Counsel hands AR 190-8 to the I.O.]

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All I know is that the prisoners were from Ganci, and there is a mixture of prisoners in tier 1A and 1B. I remember a little about "Shitboy". He would spread feces all over himself. I didn't try to get involved in tier 1 stuff.

I am not familiar with my unit's METL. I received MP training at AIT –no training in detainee operations in AIT or at unit drills.

I think the interrogators were civilians. I don't know anything about the CACI Corp. I didn't get involved with the civilian stuff. I don't know who would give instruction on how to treat prisoners.

Everyday, a General or other VIP could visit the prison. I saw a Lieutenant General once. I know photography was strictly prohibited. The Commander told everyone.

I saw SSG Frederick punch a detainee. I did not see him jump on a detainee. I did not see him stomp on a detainee's feet. I did not see him place detainees in a pyramid. I did not see him tell a detainee standing on top of an MRE box he would be electrocuted.

I saw the two detainees masturbating, and SSG Frederick was walking towards me. They were behind him. I did not see him tell them to masturbate.

This was the only time I was at tier 1. I never saw SSG Frederick order detainees to hit each other. The detainee SSG Frederick punched did not die, he only screamed in pain. I only saw SSG Frederick punch one detainee.

We were subject to attacks from outside – mortars, rockets, gunfire. Then it happened once a week. Now, it happens once every two weeks. We had no background info on the 7 transfers, only that they started a riot.

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

I was told about a detainee that shot SGT [REDACTED] The detainee was shot. This happened in tier 1.

QUESTIONS BY THE INVESTIGATING OFFICER

I never saw any other behavior. I distinctly remember SSG Frederick hitting a detainee. I also remember CPL Grainer punching a detainee in the face and SGT Davis stomping on a detainee's toes. Those are just incidents that I just cannot forget.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Government Counsel discussed the unavailability of detainees, due to security reasons at their being held at the prison; and introduced the following exhibits for Identification:

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

Prosecution Exhibit 26 (Statements of [REDACTED])
Prosecution Exhibit 27 (Statements of [REDACTED])
Prosecution Exhibit 28 (Statements of [REDACTED])
Prosecution Exhibit 29 (Statements of [REDACTED])
Prosecution Exhibit 30 (Statements of [REDACTED])
Prosecution Exhibit 31 (Statements of [REDACTED])
Prosecution Exhibit 32 (Statements of [REDACTED])
Prosecution Exhibit 33 (Statements of [REDACTED])
Prosecution Exhibit 34 (Statements of [REDACTED])
Prosecution Exhibit 35 (Statements of [REDACTED])
Prosecution Exhibit 36 (Statements of [REDACTED])
Prosecution Exhibit 37 (Statements of [REDACTED])
Prosecution Exhibit 38 (Statements of [REDACTED])

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

Prosecution Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 were admitted into evidence.

THE GOVERNMENT RESTS

The Article 32 proceeding recessed at 1045, 9 April 2004, so that the Investigating Officer consult with his Legal Advisor, and the Government Counsel could retrieve the 15-6 Investigation.

The Article 32 proceeding reconvened at 1125, 9 April 2004, with all parties present.

All parties received copies of the 15-6 Investigation, and the Article 32 recessed at 1130, 9 April 2004, to allow all parties review the document.

The Article 32 proceeding reconvened at 1302, 10 April 2004, with all parties present.

The Defense Counsel entered the 15-6 Investigation as Defense Exhibit 1 for Identification.

Defense Exhibit A was entered into evidence with no objection.

The Government Counsel made a Closing Statement.

The Defense Counsel made a Closing Statement.

The Government Counsel made a Rebuttal Statement.

The Defense Counsel motioned for the Government Counsel to provide a copy of its Closing Statement PowerPoint presentation, verbatim transcript, and tapes so that he could share it with co-counsel.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix B, Substance of the Article 32 Investigation and Testimony

The Government Counsel objected to providing his closing statement presentation, and stated the verbatim transcript was not an issue for the Investigating Officer to decide, and the SJA had already denied such a request.

The Article 32 proceeding adjourned at 1354, 10 April 2004.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

1. The Process.

I will review the Uniform Code of Military Justice (UCMJ) definitions from the Manual for Courts-Martial United States (2002 edition) for each Article that the accused has been charged with. I will establish and discuss the evidence and credibility of witness testimony as they apply to each of the UCMJ Charges and the specific Specifications and determine if the burden of proof has been met that reasonable grounds exist that the accused has committed the offenses IAW R.C.M. 405(j)(2)(h).

2. Discussion of MG Taguba's 15-6 Investigation.

First, I would like to address the overarching theme of the defense, that of a greater failure in the higher leadership, to condone, and possibly encourage, this heinous type of conduct and behavior. The defense was adamant about this leadership failure and sought the discovery of the 15-6 investigation that was initiated on the 800th M.P. Brigade, conducted by MG Taguba. On 9 April 2004, this document was entered into evidence. Once this occurred, I recessed the investigation to allow all parties the opportunity to become familiar with it. Once in evidence, no objections were made on it and both parties moved to their closing arguments.

Upon reading this document, I fail to see where the document validates or supports the defense's claims that the leadership condoned, and possibly encouraged, the actions of the accused. Quite the contrary, as the report explains, it was the failure of the leadership to **supervise** their respective units, i.e., to not allow these types of events to occur. It was not the leadership being there and encouraging these acts, quite the contrary, they were not there to ensure these acts were not being committed, period.

MG Taguba makes it a point to reference several units within the Brigade that performed their duties splendidly and without incident. If this failure in leadership was so widespread and the proximate cause for these incidents, how were these units able to maintain standards and act properly?

As to the individual offenses allegedly committed by SSG Frederick, I find no substantial relationship between these charges and the actions, or inaction, of his higher chain of command.

3. Discussion of Evidence.

Charge I. Violation of Article 81, UCMJ

The definition of Article 81, Conspiracy, from the Manual for Courts-Martial United States (2002 edition)

a. Text. "Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court - martial may direct."

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

b. Elements.

(1) That the accused entered into an agreement with one or more persons to commit an offense under the code;

(2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 24 October 2003, conspire with CPL Charles A. Graner and PFC Lynndie R. England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick handcuffed three detainees together and directed said PFC England to photograph the detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. In Prosecution Exhibit 21, Sworn Statement from PFC England, she states that CPL Graner and SSG Frederick asked her to throw down handcuffs and then was requested to take pictures of the detainees. These acts meet the requirements of both elements supporting this specification. Photographs, Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with SGT Javal S. Davis, CPL Graner, SPC Jeremy C. Sivits, SPC Sabrina D. Harman, SPC Ambuhl and PFC England, to commit an offense under the UCMJ, to wit, maltreatment of subordinates, and in order to effect the object of the conspiracy, the said SSG Frederick did place naked detainees in a human pyramid and photographed the pyramid of naked detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. In Prosecution Exhibits 20 - 21, Sworn Statements from SPC Harman and PFC England, they both corroborate the actions of SSG Frederick that support this Specification charge of conspiracy. SPC Harmon identifies SSG Frederick as being present while the Pyramid Event was unfolding. PFC England notes that SSG Frederick was taking pictures of the human pyramid while it was occurring as well. Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, also corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Charge II. Violation of Article 92, Failure to obey order or regulation, UCMJ

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

The definition of Article 92, Failure to obey order or regulation from the Manual for Courts-Martial United States (2002 edition)

a. *Text*. " Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

b. *Elements*.

(1) *Violation of or failure to obey a lawful general order or regulation.*

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

(2) *Failure to obey other lawful order.*

- (a) That a member of the armed forces issued a certain lawful order;
- (b) That the accused had knowledge of the order;
- (c) That the accused had a duty to obey the order; and
- (d) That the accused failed to obey the order.

(3) *Dereliction in the performance of duties.*

- (a) That the accused had certain duties;
- (b) That the accused knew or reasonably should have known of the duties; and
- (c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

Further definition from the Manual for Courts-Martial United States (2002 edition)

(3) Dereliction in the performance of duties.

(a) *Duty*. A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.

(b) *Knowledge*. Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

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(c) Derelict. A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person's duties or when that person performs them in a culpably inefficient manner. "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. "Negligently" means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. "Culpable inefficiency" is inefficiency for which there is no reasonable or just excuse.

(d) Ineptitude. A person is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished. For example, a recruit who has tried earnestly during rifle training and throughout record firing is not derelict in the performance of duties if the recruit fails to qualify with the weapon.

The Specification: In that SSG Frederick, II, U.S. Army, who knew of his duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 20 October 2003 to, on or about, 1 December 2003, was derelict in the performance of those duties in that he willfully failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to.

The **burden of proof**, to include all three elements of the crime, for reasonable grounds that the accused committed the offense identified in the Specification, for all elements **has been met**. In Prosecution Exhibit 21, Sworn Statement from PFC England, she states that SSG Frederick is the NCOIC for the nightshift at the Hardsite with the 372nd MP Company. As the NCOIC, he was responsible for health and welfare of, not only his soldiers, but all of the detainees under his charge as well. In Prosecution Exhibits 18 - 21, Sworn Statements from SGT Sivits, SGT Davis, SPC Harman and PFC England, as well as the testimony of SPC Wisdom, corroborate the actions of SSG Frederick that support this Specification, the charge of Dereliction in the Performance of his Duties. Prosecution Exhibits 3 - 17, photos from the CID CD Prosecution Exhibit 1, provide graphic pictorial evidence of exactly what was allowed to occur in the confines of the Hardsite under the supervision of SSG Frederick. Even in the absence of clearly defined SOP's and TTP's, it would be reasonable to assume that SSG Frederick knew that these particular events/activities were not within the scope of his duties and inherently wrong/illegal. I recommend that the charge and specification be referred to a General Court Martial.

Charge III. Violation of Article 93, Cruelty and maltreatment, UCMJ

Definition of Article 93, Cruelty and maltreatment from the Manual for Courts-Martial United States (2002 edition)

a. Text.

"Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct."

b. Elements.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix C, Discussion of the Evidence

- (1) That a certain person was subject to the orders of the accused; and
- (2) That the accused was cruel toward, or oppressed, or maltreated that person.

c. Explanation.

(1) *Nature of victim.* "Any person subject to his orders" means not only those persons under the direct or immediate command of the accused but extends to all persons, subject to the code or not, who by reason of some duty are required to obey the lawful orders of the accused, regardless whether the accused is in the direct chain of command over the person.

(2) *Nature of act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense. Sexual harassment includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both.

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by participating in and allowing the placing of wires on the detainee's hands while he stood on a Meals Ready to Eat (MRE) box with his head covered and allowing the detainee to be photographed.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met.** In Prosecution Exhibit 20, Sworn Statement, SPC Harman, she admits to the effect that SSG Frederick was present; in fact, taking pictures of the event. In Prosecution Exhibit 19, Sworn Statement from SGT Davis, corroborates the statement made by SPC Harmon, implicating SSG Frederick in the event. Prosecution Exhibits 11 and 12, photos from the CID CD Prosecution Exhibit 1, capture this event. In fact, SSG Frederick is actually in Prosecution Exhibit 11, photo of detainee on MRE box, examining a camera. SA [REDACTED] in his testimony states, "I recognize SSG Frederick in this photo, looking at a camera. He is not touching the detainee." I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by placing naked detainees in a human pyramid and photographing the pyramid of naked detainees.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met.** In Prosecution Exhibits 20 - 21, Sworn Statements from SPC Harman and PFC England, they both corroborate the actions of SSG Frederick that support this Specification charge of maltreatment. SPC Harmon identifies SSG Frederick as being present while the Pyramid Event was unfolding. PFC England notes that SSG Frederick was taking pictures of the

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human pyramid while it was occurring as well. Prosecution Exhibits 3 - 7, photos from the CID CD Prosecution Exhibit 1, also corroborate the activities of this particular event. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by ordering the detainees to strip, and then ordering the detainees to masturbate in front of the other detainees and soldiers, and then placing one in a position so that the detainee's face was directly in front of the genitals of another detainee to simulate fellatio and photographing the detainees during these acts.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. In Prosecution Exhibits 18, 20 and 21, Sworn Statements from SPC Sivits, SPC Harman and PFC England, all individuals corroborate the actions of SSG Frederick that support the Specification 3 charge of maltreatment. SPC Sivits notes that SSG Frederick and CPL Grainer had the detainees strip naked... and tried to get several of the inmates to masturbate themselves. He further states that SSG Frederick would take the hand of a detainee and place it on his penis and make his hand go back and forth, as if masturbating. A sworn statement by PFC England corroborates almost exactly what SPC Sivits stated. According to her statement, "SSG Frederick thought it was amusing and told CPL Grainer and SPC Ambuhl to come see." SPC Harman identifies SSG Frederick as being present at this event. Prosecution Exhibits 13 - 15, photos from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event as well. I recommend that the charge and specification be referred to a General Court Martial.

Specification 4: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by posing for a photograph sitting on top of a detainee who was bound by padded material between two medical litters.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 4, **has been met**. Prosecution Exhibit 16 clearly shows SSG Frederick posing for a picture sitting atop a detainee. I can find no military purpose for this act and photograph other than the wanton disregard and malice treatment toward a detainee. I recommend that the charge and specification be referred to a General Court Martial.

Specification 5: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat two detainees, persons subject to his orders, by grabbing the hands and arms of the said detainees and ordering them to strike or punch each other, with the detainees then striking or punching each other.

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The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 5, **has been met**. In Prosecution Exhibit 18, Sworn Statement from SPC Sivits, states that "SSG Frederick had two of the inmates punch each other in the head. SSG Frederick showed them by using his hands and fist that he wanted one inmate to punch the other inmate...they hit each other once." Detainee [REDACTED] supports this accusation in his sworn statement, Prosecution Exhibit 22. In his statement, he claims "they make [REDACTED] stand in front of me and they forced me to slap him on the face, but I refused because he is my friend. After this they asked [REDACTED] hit me, so he punched my stomach." I recommend that the charge and specification be referred to a General Court Martial.

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

Charge IV. Violation of Article 128, Assault, UCMJ

Definition of Article 128, Assault from the Manual for Courts-Martial United States (2002 edition)

a. *Text.*

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon; is guilty of aggravated assault and shall be punished as a court-martial may direct."

b. *Elements.*

(2) *Assault consummated by a battery.*

(a) That the accused did bodily harm to a certain person; and

(b) That the bodily harm was done with unlawful force or violence

Specification 1: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully strike several detainees by jumping and impacting the bodies within a pile of said detainees with his shoulder or upper part of his body.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 1, **has been met**. In Prosecution Exhibits 19 and 21, Sworn Statements from SGT Davis and PFC England, both individuals corroborate the actions of SSG Frederick that support the Specification 1 charge

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of Assault. SGT Davis, in his sworn statement states that, "The evening that the Vigilant Camp riot starters were brought in I saw SSG Frederick jump on inmates, hit them." Further more, he states in a question and answer format:

Q. "Did anyone else jump on the prisoners?"

A. "SSG Frederick, CPL Grainer, SPC Ambul, SPC Harmon and SPC England all jumped on them... these same people are the ones who stepped on the prisoner's hands and feet."

"A sworn statement by PFC England corroborates what SGT Davis claims. According to her statement:

Q. "During the event of the 7 detainees that were brought over from the riot, do recall if anyone ran and jumped on top of them while they were lying in the floor?"

A. "Yes, I remember Davis, Grainer and Frederick did.... Frederick did for sure once but I do not recall if he did more than once."

I recommend that the charge and specification be referred to a General Court Martial.

Specification 2: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, unlawfully stomp on the hands and bare feet of several detainees with his shod feet.

The **burden of proof**, to include both elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 2, **has been met**. In Prosecution Exhibits 19 and 21, Sworn Statements from SGT Davis and PFC England, both individuals corroborate the actions of SSG Frederick that support the Specification 2 charge of Assault. SGT Davis, in his sworn statement states that, "The evening that the Vigilant Camp riot starters were brought in I saw SSG Frederick jump on inmates, hit them." Further more, he states in a question and answer format:

Q. "Did anyone else jump on the prisoners?"

A. "SSG Frederick, CPL Grainer, SPC Ambul, SPC Harmon and SPC England all jumped on them... these same people are the ones who stepped on the prisoner's hands and feet."

A sworn statement by PFC England corroborates what SGT Davis claims. According to her statement:

"Davis would stand on the toes and feet of the detainee. The prisoner would groan and grunt that it was causing pain and discomfort... Frederick had done this as well, to the same prisoners feet that me and Davis stepped on... Davis, Grainer and Frederick were the ones telling the prisoners what to do."

In Prosecution Exhibit 22, sworn statement from [REDACTED] claims "they were laughing, taking pictures, and they were stepping on our hands and feet." This

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statement directly supports the other two statements previously discussed with reference to this particular specification. Prosecution Exhibit 17 is a photograph depicting the pile of detainees as they lay on the ground that day. It has not been determined if this photograph was taken prior to, or after the assaults on the detainees. I recommend that the charge and specification be referred to a General Court Martial.

Specification 3: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, commit an assault upon a detainee by striking him with the means or force likely to produce death or grievous bodily harm, to wit, by punching the detainee with a closed fist in the center of his chest with enough force to cause the detainee to have difficult breathing and require medical attention.

Definition of Article 128, Aggravated Assault from the Manual for Courts-Martial United States (2002 edition)

(4) *Aggravated assault.*

(a) *Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.*

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm. (Note: When a loaded firearm was used, add the following element)

(v) That the weapon was a loaded firearm.

The **burden of proof**, to include the four primary elements of the crime, for reasonable grounds that the accused committed the offense identified in Specification 3, **has been met**. In Prosecution Exhibits 21, 18, and 19, Sworn Statements from PFC England, SPC Sivits, and SGT Davis, all individuals corroborate the actions of SSG Frederick that support the Specification 3 charge of aggravated assault by means or force likely to produce death or grievous bodily harm. PFC England, stated in her statement:

"Frederick was marking a fake X on his chest of this detainee with his finger, and then drew back with a closed fist and hit the detainee in the chest. It hit him so hard it knocked the detainee backward, and he grunted in pain, the detainee then went to his knees, and was breathing heavy, like he was having problems breathing. We uncuffed the detainee at that point. The detainee was motioning to his chest."

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Asked why SSG Frederick hit the detainee, PFC England responded, "I guess just because he wanted to hit him. He just said watch this, and he drew the X and then hit him." SPC Sivits noted on the incident,

"SSG Frederick about this point struck one of the detainees in the chest with a closed fist. The detainee was standing in front of Frederick and for no reason Frederick punched the detainee in the chest. The detainee took a real deep breath and kind of squatted down. The detainee said he could not breath. They called a medic to come down to try and get the detainee to breath right."

SGT Davis adds, in his sworn statement, "I saw SSG Frederick hit a prisoner in the chest." All of these statements corroborate the actions of SSG Frederick as they relate to this particular charge. SSG Frederick acted viciously, with total disregard for the health and welfare of the detainees that he was charged to protect. I recommend that the charge and specification be referred to a General Court Martial.

Charge V. Violation of Article 134, UCMJ

Definition of Article 134, Indecent acts with another from the Manual for Courts-Martial United States (2002 edition)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused committed a certain wrongful act with a certain person;

(2) That the act was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Indecent" signifies that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations.

The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Graner, SPC Ambuhl and PFC England, by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

This Charge and Specification need to be re-written to reflect the true nature of the offense and the acts committed. The following is the revised Specification.

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The Specification: In that SSG Frederick, II, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with detainees, CPL Grainer, SPC Ambuhl and PFC England, by influencing/instigating a group of detainees to begin masturbating, or attempting to masturbate, and setting the detainees in sexually provocative positions, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainee's actions.

The **burden of proof**, to include the 3 elements of the crime, for reasonable grounds that the accused committed the offense identified in the revised Specification, **would be met**. In Prosecution Exhibits 18, 20 and 21, Sworn Statements from SPC Sivits, PFC England and SPC Harman, all individuals corroborate the actions of SSG Frederick that support the Specification charge of indecent acts. SPC Sivits notes that, "CPL Grainer and SSG Frederick had the detainees strip naked.... and tried to get several of the inmates to masturbate themselves. He further states that, "SSG Frederick would take the hand of a detainee and place it on the detainees penis and make the detainee's hand go back and forth, as if masturbating." A sworn statement by PFC England corroborates almost exactly what SPC Sivits stated and added, "SSG Frederick thought it was amusing and told CPL Grainer and SPC Ambuhl to come see." Furthermore, according to her statement:

"SSG Frederick and I took the guy standing next to the one masturbating. We positioned him so that he was sitting down directly in front of the other guy masturbating... SSG Frederick and I then turned the prisoner sitting down around to actually face the other prisoner masturbating."

SPC Harman, in her sworn statement, identifies SSG Frederick as being present at this event. Prosecution Exhibits 13 - 15, from the CID CD Prosecution Exhibit 1, corroborate the activities of this particular event as well. I would recommend that the charge and specification be referred to a General Court Martial.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

Chronology of Events, Article 32 Investigation, U.S. vs Frederick

22 March 2004, 0336: Read email traffic from my Brigade Commander, COL [REDACTED] that I had been nominated to be an Article 32 Investigation Officer. (Investigating Officer *all* (IO) Exhibit 1)

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

23 March 2004, 0808: Sent an email to COL [REDACTED] acknowledging receipt of my new duty. (IO Exhibit 2)

23 March 2004, 1316: Sent an email to COI [REDACTED] III Corp JAG, providing my contact information and seeking additional information about my duties. (IO Exhibit 3)

23 March 2004, 0920 : Received an email back from COL [REDACTED] informing me that CPT [REDACTED] would be contacting me shortly. (IO Exhibit 4)

23 March 2004, 1035: Sent an email to COI [REDACTED] letting him know I went down to bldg 94 and was advised that CPT [REDACTED] would be my legal Advisor. (IO Exhibit 5)

25 March 2004, 1626 : Received email correspondence from SFC [REDACTED] my identified Administrative and Paralegal Assistant, notifying me that he will be coming by my office to drop off the Case File and let me know that the Art 32 investigation was set for 6 April 2004. He also provided me with a PDF file of the initial Charge Sheets and Article 32 Notice that would be provided to the defendant, SSG Ivan L. Frederick II. (IO Exhibit 6)

25 March 2004, 1653 : Received email correspondence from SFC [REDACTED], with an adjusted Article 32 Investigation date for 2 April, instead of the 6 April as stated in the previous email. (IO Exhibit 7)

25 March 2004, 1719: Sent an email to SFC [REDACTED], letting him know where I was located in order to drop off the file. (IO Exhibit 8)

26 March 2004, 1030: I received the CID Case file and CD from SFC [REDACTED] At this point in time, I provided him a signed copy of the Article 32 Notice that would be provided to SSG Frederick.

27 March 2004: Conducted an initial interview with CPT [REDACTED], my designated Legal Advisor. I had made a copy of the case file and provided the original to her. She provided me with a III Corp handout on the Article 32 process and we discussed the road ahead.

27 March 2004, 1237: I sent an email to SFC [REDACTED] requesting a witness list and asking about evidence and the options for a closed or open hearing. (IO Exhibit 9)

29 March 2004, 1625: I was CC'd on an email from SFC [REDACTED] stating that there is currently one witness scheduled to testify, SA [REDACTED] (IO Exhibit 10)

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

*all (b)(6)-2,
7(c)-2
except*

29 March 2004, 1648: I was informed through SFC [REDACTED] that the defendant has chosen a civilian attorney, Mr. [REDACTED] as co-defense. A defense delay was hinted, but never requested. (IO Exhibit 11) *(b)(6)-4, (7)(c)-4*

29 March 2004, 1701: I was informed by SFC [REDACTED] that he will record the entire proceedings, as well as forward the defense witness list when available. (IO Exhibit 12)

29 March 2004, 1702: I sent an email to SFC [REDACTED] asking if there was a deadline by which the defense must submit a request to delay and if it must be in writing. (IO Exhibit 13)

29 March 2004, 2148: I sent an email to SFC [REDACTED] asking if any of the prisoners, and other individuals who provided statements, would be reasonably available to testify. (IO Exhibit 14)

30 March 2004, 0806: Received an email from CPT [REDACTED] officially notifying everyone that Mr. [REDACTED] is coming on board as lead defense counsel, and requested a delay in submission of his witness list until he has had a chance to speak to Mr. [REDACTED] (IO Exhibit 15) *(b)(6)-4, (7)(c)-4*

30 March 2004, 0843: Received an email from CPT [REDACTED] requesting that I have defense clarify if they are asking for a delay or not, and for how long, due to new counsel. (IO Exhibit 16)

30 March 2004, 0855: I sent an email to CPT [REDACTED] counsel for the defense, attempting to validate whether or not he will be requesting a delay due to the defendant bringing on new lead counsel. (IO Exhibit 17)

30 March 2004, 0901: Received an email from CPT [REDACTED] stating he can't answer the question about the delay, but will comply and release his witness request list. (IO Exhibit 18)

30 March 2004, 0906: Received witness list from CPT [REDACTED] via email. (IO Exhibit 19)

30 March 2004, 0907: I sent an email to CPT [REDACTED] letting her know I had no issue with granting a delay, but was not specifically asked for. (IO Exhibit 20)

30 March 2004, 0910: Received an email from CPT [REDACTED] vising a witness request from "all members of the 372 MP Company and 800 MP Brigade to "any and all members OF THE CHAIN OF COMMAND of the 372 MP Company and 800 MP Brigade...". (IO Exhibit 21)

30 March 2004, 0924: Received an email from CPT [REDACTED] requesting that I have defense clarify what each witness will provide, so as to avoid cumulative testimony. (IO Exhibit 22)

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

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix *except*
D, Chronology of Investigation Events

30 March 2004, 0935: I sent an email to CPT [REDACTED] asking who coordinates getting the people and documents that the defense had asked for. (IO Exhibit 23)

30 March 2004, 0939: Received an email from CPT [REDACTED], anticipating an objection to any and all alternatives to testimony pursuant to R.C.M. 405(g)(4). He further anticipates an anticipated objection to any and all alternatives to evidence pursuant to R.C.M. 405(g)(5). He further asked that I delineate for the record the determination of "reasonably available" witnesses and evidence pursuant to R.C.M. 405(g). (IO Exhibit 24)

30 March 2004, 0958: I sent an email to CPT [REDACTED] counsel for the defense, requesting that he outline the potential testimony of all of his witnesses so as to not contribute to the "cumulative effect." (IO Exhibit 25)

30 March 2004, 1531: I sent an email to SFC [REDACTED], requesting the status of the document and witness gathering. (IO Exhibit 26)

31 March 2004, 0950: Received an email from CPT [REDACTED] clarifying the intent of his witness list and further stating he is ready to proceed with the Article 32 investigation. (IO Exhibit 27)

31 March 2004, 1048: I sent an email to CPT [REDACTED] confirming the date/time and location of the Article 32 Investigation and once again attempting to confirm that no delay is required. (IO Exhibit 28)

31 March 2004, 1054: I sent an email to CPT [REDACTED], advising her that I have not heard from SFC [REDACTED] and had concerns about the witness list and evidence. (IO Exhibit 29)

31 March 2004, 1056: I received an email from CPT [REDACTED] stating she would contact Trial Counsel and get a status on the witness list and evidence. (IO Exhibit 30)

31 March 2004, 1447: I received an introductory email from Mr. [REDACTED], the defendant's civilian attorney, requesting an open hearing, honoring the witness list, and requesting a recording of the procedures. (IO Exhibit 31)

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

31 March 2004, 1457: I sent an email to Mr. [REDACTED] informing him that the Article 32 investigation will be recorded and that the investigation will be an open one. (IO Exhibit 32)

1 April 2004, 1233: Received CC email from SFC [REDACTED] to the attorneys of various individuals from the witness list requesting their presence at the Article 32 Investigation. (IO Exhibit 33)

1 April 2004, 1314: Received an email from CPT [REDACTED] SJA, stating that SPC Ambühl will not be available to testify. (IO Exhibit 34)

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

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

1 April 2004, 1455: Received an email from CPT [REDACTED] JA, stating that her client, SPC Harmon will not be available to testify. (IO Exhibit 35)

1 April 2004, 1527: Received an email from CPT [REDACTED] SJA, stating that SGT Davis will not be available to testify. (IO Exhibit 36)

1 April 2004, 2136: Received an email from CPT [REDACTED], SJA, stating that SPC Sivits will not be available to testify. (IO Exhibit 37)

2 April 2004, 0851: Received an email from CPT [REDACTED] SJA, stating that SPC Graner will not be available to testify. (IO Exhibit 38)

2 April 2004, 1000: I convened the Article 32 investigation on SSG Frederick. See **Appendix B for the substance of the testimony.**

2 April 2004, 1438: I recessed the Article 32 investigation on SSG Frederick.

2 April 2004, 1600: I reviewed the day's events with CPT [REDACTED] to ensure that the process was being conducted properly.

5 April 2004, 0858: I sent an email to SFC [REDACTED] requesting he reserve the Court Room for 9 April, 2004 at 1000 hrs. (IO Exhibit 39)

5 April 2004, 1622: Received an email from SFC [REDACTED] stating he has reserved the Court Room for 9 April, 2004 at 1000 hrs. (IO Exhibit 40)

6 April 2004, 0811: Received an email from CPT [REDACTED] inquiring on what will happen at the reconvened Article 32 investigation and the status of the defense requests for additional witnesses and products. He also requested support in getting material copied and mailed. (IO Exhibit 41)

5 April 2004, 0858: I sent an email to CPT [REDACTED] responding that the intent of the reconvened Article 32 investigation was to allow additional evidence and witnesses not available prior. (IO Exhibit 42)

6 April 2004, 0811: Received an email from CPT [REDACTED] stating that SPC [REDACTED] will be able to testify and no success with any of the others. (IO Exhibit 43)

9 April 2004, 1000: I re-convened the Article 32 investigation on SSG Frederick, during this session a document of substantial volume was introduced, that being the 15-6 investigation results of the 800th M.P. Brigade that was spearheaded by MG Antonio M. Taguba (Defense Exhibit 1). See **Appendix B for the substance of the testimony.**

9 April 2004, 1130: I recessed the investigation until 1300 hrs the following day, 10 April 2004, to allow all parties the opportunity to review the AR 15-6 document.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Appendix D, Chronology of Investigation Events

10 April, 2004, 1302: I reconvened the Article 32 investigation on SSG Frederick. At approximately 1430 hrs on 10 April, 2004, after hearing closing arguments from both sides, I closed the Article 32 hearing. **See Appendix B for the substance of the testimony.**

10 April, 2004, 1300: The Article 32 proceeding adjourned.

12 April, 2004, 1934: I sent a note to SFC [REDACTED] inquiring on the AR 15-6 CD ROM and if it was to be distributed. I also inquired about the status of the summarization notes. (IO Exhibit 45)

12 April, 2004, 2052: I emailed my draft DD 457 to CPT [REDACTED] and SFC [REDACTED] for review. (IO Exhibit 44)

13 April 2004, 1430: I called SFC [REDACTED] and inquired when the transcript would be available. He stated that he would have it completed the following day.

15 April 2004, 1519: Received Article 32 investigation transcript from SFC [REDACTED] (IO Exhibit 46)

16 April 2004, 1122: Received an email from SFC [REDACTED] making me aware that there was not an unclassified CD from the AR 15-6 investigation. (IO Exhibit 47)

all (b)(6)-2; (b)(7)(c)-2

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix E, Catalog of Objections**

The following objections were noted throughout the Article 32 investigation process.

1. Defense Counsel stated that he wanted the Investigating Officer to consider R.C.M. 405 when considering the CID Investigation Packet, and that he would submit written objections at the conclusion of the hearing.

Noted

2. Prosecution Exhibit 1 was admitted into evidence with objection; Defense Counsel requested that the AIR on the disc and the CID Report not be considered.

Legally sufficient evidence under the rules of R.C.M. 405(g)(4)(B)(i)

3. The Defense Counsel objected and asked that the Investigating Officer not consider the fact that SSG Frederick decided to seek legal counsel and not give a statement.

Noted

4. The Defense Counsel objected to the testimony of CID SA [REDACTED] as a substitute to the availability of witnesses who could testify instead of the agent's recollection of the CID case file.

Legally sufficient evidence under the rules of R.C.M. 405(g)(4)(B)(i)

5. The Defense Counsel objects to the classification of MI interrogations SOPs.

Noted

6. The Government Counsel objects to the Defense Counsel's legal definition of available, as the witness does not make the determination of who is available.

Noted

7. The Government Counsel objects to the Defense Counsel attempting to have the witness determine who was a detainee/EPW/POW; as the witness did not know the definitions, nor did the witness classify the detainees as such.

Noted

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix E, Catalog of Objections**

8. Prosecution Exhibits 3 thru 17 admitted into evidence with objection; the Defense Counsel stated that all photos in which SSG Frederick was not pictured, and also the description of events depicted in the pictures should not be considered.

Noted

9. The Defense Counsel stated that even though he also received emails from the co-accused's counsel stating the invocation, it was up to the I.O. to determine unavailability.

Noted

10. The Government Counsel objected to the Defense counsel referencing a report that the witness knows nothing about; and unless the Defense Counsel can show the witness where his name is listed in the report, he cannot answer any questions about it.

Noted

11. The Defense Counsel objected to the unavailability of witnesses. Defense Counsel objected to the Government's production of documents and miscellaneous information requested in Discovery; and requested that the Investigating Officer compel the Government to produce the information.

I made a ruling on the availability of witnesses for the purposes of this Article 32 investigation. If they were outside the 100 mile radius or were either a detainee or former detainee, they were considered unavailable due to the extraordinary security and operational measures and concerns associated with providing their testimony.

12. The Defense Counsel motioned for the Government Counsel to provide a copy of its Closing Statement PowerPoint presentation, verbatim transcript, and tapes so that he could share it with co-counsel.

The Closing Statement was provided, as well as the summarized testimony, IAW R.C.M 405(j)(2)(B).

13. The Government Counsel objected to providing his closing statement presentation, and stated the verbatim transcript was not an issue for the Investigating Officer to decide, and the SJA had already denied such a request.

The Closing Statement was provided by the Government Counsel.

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report,
Appendix F, Court Martial Essential Witness Availability

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

[REDACTED]

Detainee - Unavailable
Detainee - Unavailable
Detainee - Unavailable

(b)(6)-2
7(c)-2

[REDACTED]

(SGT)

CID

Mr [REDACTED], CACI Corp (b)(6)-4;
7(c)-4

(b)(6)-2
7(c)-2

SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]
SA [REDACTED]

Detainee - Unavailable
Detainee - Unavailable
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
Outside of 100 Mile Radius
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Outside of 100 Mile Radius

Detainee - Unavailable

Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex A, Prosecution Exhibits, to Appendix G, Exhibits

List of Prosecution Exhibits

- P Exhibit 1: CD ROM of the compiled CID investigation on the Abu Ghraib Prison detainee abuse
- P Exhibit 2: Sketch of Tier 1A and 1B of the Abu Ghraib Prison Hard Site
- P Exhibit 3: Photo of Tier 1A, shows 3 detainees on the floor bound together
- P Exhibit 4: Photo of Tier 1A, shows 3 detainees on the floor bound together
- P Exhibit 5: Photo of Tier 1A, shows 3 detainees on the floor bound together
- P Exhibit 6: Photo of Tier 1A, shows 3 detainees on the floor bound together
- P Exhibit 7: Photo of Tier 1A, shows 3 detainees on the floor bound together
- P Exhibit 8: Photo of Tier 1A, shows human pyramid of detainees with 2 soldiers posing for the photo
- P Exhibit 9: Photo of Tier 1A, shows human pyramid of detainees with 2 soldiers posing for the photo
- P Exhibit 10: Photo of Tier 1A, shows human pyramid of detainees
- P Exhibit 11: Photo of Tier 1A, shows detainee standing on MRE box, sandbag on head, wires connected to fingers
- P Exhibit 12: Photo of Tier 1A, shows detainee standing on MRE box, sandbag on head, wires connected to fingers
- P Exhibit 13: Photo of Tier 1A, shows naked detainees standing, one with hand on penis, sandbags on their heads, one soldier pointing at the detainee with his hand on his penis
- P Exhibit 14: Photo of Tier 1A, shows three naked detainees standing, sandbags on their heads, one in close proximity to another on his knees, his head near the other's groin
- P Exhibit 15: Photo of Tier 1A, shows two naked detainees standing, sandbag on one their heads, one in close proximity to another on his knees, his head near the other's groin
- P Exhibit 16: Photo of Tier 1A, SSG Frederick sitting on top of two litters with a detainee bound between the litters.
- P Exhibit 17: Photo shows seven detainees, clothed, piled on the floor, handcuffed with zip ties

**Continuation Sheet, Block 21, DD Form 451, Investigating Officer's Report, Annex A,
Prosecution Exhibits, to Appendix G, Exhibits**

P Exhibit 18: Sworn Statement of SPC Sivits

P Exhibit 19: Sworn Statement of SGT Davis

P Exhibit 20: Sworn Statement of SPC Harman

P Exhibit 21: Sworn Statement of PFC England

P Exhibit 22: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 23: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 24: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 25: Sworn Statement of [REDACTED] former Titan Corp employee

P Exhibit 26: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 27: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 28: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 29: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 30: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 31: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 32: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 33: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 34: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 35: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 36: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 37: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

P Exhibit 38: Sworn Statement of [REDACTED], Abu Ghraib Prison detainee

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

**BATES PAGE 19493
HAS BEEN WITHHELD PURSUANT TO FOIA
EXEMPTION (b)(2) – 3**

CPU Exam
1. Open Abu File
2. Open 0003-04
E. Links open internal files

019494

**BATES PAGE 19495
HAS BEEN WITHHELD PURSUANT TO FOIA
EXEMPTION (b)(2) – 3**

**Bates Pages 19496-19510
are photographic exhibits withheld based on 5
USC 552(b)(6), (b)(7)(C), and (b)(7)(F)**

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Baghdad Correctional Facility, Abu Ghraib, APO AE 09335	2. DATE <i>ICS</i> <i>14 Jan 04</i>	3. TIME <i>ICS</i> <i>1134</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>SVITS, Jeremy Charles</i>	8. ORGANIZATION OR ADDRESS <i>372nd MPCo</i> <i>Cumberland Md. 75550</i> <i>Forwarded to Abu GHUAB IRQA</i>		
6. SSN <div style="background-color: black; width: 150px; height: 1.2em;"></div>	7. GRADE/STATUS <i>SPC / AD / Reserve</i>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: Cruelty and Maltreatment, Indecent Acts, Failure to Obey an Order or Regulation, Assault, Dereliction of Duty

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- 1* I do not have to answer any questions or say anything.
- 2* Anything I say or do can be used as evidence against me in a criminal trial.
- 3* (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- 4* If I am now willing to discuss the offense(s) under investigation, with or without lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer after rights advisement in the past 30 days? YES ☒ NO ☐

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)

1a. NAME (Type or Print)

b. ORGANIZATION OR ADDRESS AND PHONE

2a. NAME (Type or Print)

b. ORGANIZATION OR ADDRESS AND PHONE

3. SIGNATURE OF INTERVIEWEE

4. SIGNATURE OF INVESTIGATOR

5. TYPED NAME OF INVESTIGATOR

6. ORGANIZATION OF INVESTIGATOR

10th MIB BN (CTD)
Baghdad, IRAQ

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

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

DA FORM 3881 NOV 80

EDITION OF NOV 80 IS OBSOLETE

019511

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PE 18

EXHIBIT 2.10

(b)(2)

all (b)(6)-2; 7(c)-2

SWORN STATEMENT

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

LOCATION Baghdad Correctional Facility, Abu Ghraib Iraq	DATE JCS 14 Jan 04	TIME JCS 1545	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME SIVITS, Jeremy Charles	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS SPC/AD Reserve
ORGANIZATION OR ADDRESS 372nd MP Co Cumberland MD 21902 JCS			

I, Jeremy C. Sivits JCS

want to make the following statement under oath:

I would like to make the following statement about things that I have participated in or witnessed while I have been stationed at Abu Ghraib correctional facility. Sometime about the end of Oct 03, I was on generated detail and SSG Frederick came by and asked me to come down to the hard site with him. He said that they had some new detainees come in, and wanted me to come bullshit with him. We got to where the detainees were at a holding cell, and I asked FREDERICK if he wanted me to escort one of them to the tier and he said go ahead. So I took one of the detainees down to the tier. After we got to the tier, they put the detainees in a pile on the floor. The detainees were tossed in the middle of the floor together. That is when SGT DAVIS ran across the room and lunged in the air and landed in the middle of where the detainees were. I believe this is when CPL GRANIER told SPC [REDACTED] to come in and "get him some". Meaning to come in and be apart of whatever was going to happen. I believe DAVIS ran across the room a total of two times and landed in the middle of the pile of detainees. A couple of the detainees kind of made an AH sound as if this hurt them or caused them some type of pain when DAVIS would land on them. After DAVIS had done this, DAVIS then stumped on either the fingers or toes of the detainees. When he stumped the detainees they were in pain, because the detainee would scream loudly. I know this happened to at least one detainee; maybe it was a second one as well. I know after DAVIS had done this, SFC [REDACTED] told him that was enough, and DAVIS stopped, and that was when DAVIS left as well. Next GRAINER and FREDERICK had the detainee's strip. GRAINER was the one who told them to strip in Arabic language. During this whole time the detainees had sandbags over their heads. The detainees did not want to take their civilian clothes or jumpsuits off, and were hesitant to strip. There may have been one or two that had a jumpsuit on. GRAINER and FREDERICK would take one of the detainees aside, tell them to strip, and they would strip. After the detainee was stripped, GRAINER would put a sandbag over the head of the detainee, and he would have the detainee sit down. At one point after a couple of the detainees were stripped, and I do not know what provoked GRAINER, but GRAINER knelt down to one of the detainees that was nude and had the sandbag over his head, GRAINER put the detainees head into a cradle position with GRAINER'S arm, and GRAINER punched the detainee with a lot of force, in the temple. GRAINER punched the detainee with a closed fist so hard in the temple that it knocked the detainee unconscious. I walked over to see if the detainee was still alive, I could tell that the detainee was unconscious, because his eyes were closed and he was not moving, but I could see his chest rise and fall, so I knew he was still alive. GRAINER checked on him as well once or twice to make sure he was still alive as well. I do not recall GRAINER saying anything. I do remember GRAINER saying, "Damn that hurt", referring to GRAINER hurting his hand when he punched the detainee. After about two minutes the detainee moved for the first time, like he was coming to. After GRAINER had done this he went over to the pile of detainees that were still clothed and he put his knees on them and had his picture taken. I took this photo. SSG FREDERICK about this point struck one of the detainees in the chest with a closed fist. The detainee was standing in front of FREDERICK and for no reason FREDERICK punched the detainee in the chest. The detainee took a real deep breath and kind of squatted down. The detainee said he could not breath. They called for a medic to come down, to try and get the detainee to breath right. FREDERICK said he thought he put the detainee in cardiac arrest. I also tried to show the detainee how to breathe slowly. It was if

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT JCS	PAGE 1 OF 5 PAGES JCS
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [] TAKEN AT [] DATED [] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [] OF [] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823 (AUTOMATED))

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EXHIBIT 26

was gone

His breath. GRAINER then had the rest of the detainees strip down, and after they were all nude and had sandbags on, GRAINER made them make a tower, by making several detainees be on the bottom, and then the next ones get on top of them, while all of them were in a kneeling position. FREDERICK and GRAINER then tried to get several of the inmates to masturbate themselves. SSG FREDERICK would take the hand of the detainee and place it on the detainees penis, and make the detainee's hand go back and fourth, as if masturbating. He did this to about three of the detainees before one of them did it right. This detainee masturbated himself for about five minutes. FREDERICK finally told him to stop. I do not recall if any pictures were taken of this. I do not remember this detainee ejaculating either. GRAINER had them all get up and get against the wall, and GRAINER positioned one of the detainees on his knees in front of the other detainee, so that from behind the detainee that was kneeling, it would look like the detainee kneeling had the penis of the detainee standing, in his mouth, but he did not. This went on for maybe about two minutes. I do not know about pictures that were taken. SPC HARMAN and SPC ENGLAND had their pictures taken with the detainees. They would stand in front of the detainees and ENGLAND and HARMAN would put their thumbs up and have the picture taken. That is about it for that incident. I left about that time.

Q. How many detainees were involved in the above-mentioned incident?

A. There was seven.

Q. Who is GRAINER?

A. Charles GRAINER, last I heard he is a CPL. He is in 372nd MP Co. Everyone there that night is in the 372nd.

Q. Who is FREDERICK?

A. SSG Ivan FREDERICK, same unit.

Q. Who is DAVIS?

A. SGT Javal DAVIS, same unit.

Q. Who is ENGLAND?

A. SPC Lindy ENGLAND, same unit.

Q. Who is HARMAN?

A. SPC Sabrina HARMAN, same unit.

Q. Who is [REDACTED]?

A. SPC [REDACTED] same unit, but I do not know his first name.

AFFIDAVIT

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

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

(Signature of Person Making Statement)
SUBSCRIBED AND SWORN BEFORE ME, A PERSON BY LAW
TO ADMINISTER OATHS, THIS 14th DAY OF Jan 04
AT Abu Ghayib Correctional Facility, Iraq

(Signature of Person Administering Oath)

SA [REDACTED]
(Name of Person Administering Oath)

ARTICLE 136, UCMJ
(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT

JCS

PAGES 2 OF 5 PAGES

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EXHIBIT 26

STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED: [REDACTED]

(5/2/11)

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

- Q. Who is [REDACTED]?
- A. SFC [REDACTED], same unit.
- Q. Did you see [REDACTED] after he told DAVIS to stop stumping on the detainees?
- A. No, that was the last I saw of him.
- Q. Was this in an area where any of the other detainees could see what was going on?
- A. No, because it was on the bottom floor of isolation where you cannot see out.
- Q. Why did this event take place?
- A. I do not know. I do not know if someone had a bad day or what. It was normal day for me; aside from the stuff I told you about.
- Q. What was GRAINER's attitude during this event?
- A. He was joking, laughing, pissed off a little, acting like he was enjoying it.
- Q. What was FREDERICK's attitude during this event?
- A. Same as always, mellow. He really was not saying too much. Just kind of standing there.
- Q. What was ENGLAND's attitude during this event?
- A. She was laughing at the different stuff that they were having the detainees do.
- Q. What was HARMAN's attitude during this event?
- A. There was a few times she was smiling, there was a few times she had a look of disgust on her face. She did write the word rapist on the side of the leg of one of the inmates. She did this after she had found out from the processing sheets that he had raped someone. She wrote it with a dry erase black marker. She really did not say anything, she just wrote it down.
- Q. What was your attitude during this event?
- A. I was kind of surprised by the actions of GRAINER and FREDERICK. I was laughing at some of the stuff that they had them do. I was disgusted at some of the stuff as well. As I think about it now I do not think any of it was funny.
- Q. What part did you think then was funny?
- A. The tower thing.
- Q. Who took pictures of the events that occurred?
- A. GRAINER, ENGLAND, and I took one photo of GRAINER, when he was cradling one of the detainee's head. Not the one that he punched. I think I am in one picture; it was when I was trying to take the flex cuffs off one of the detainee's because it was too tight.
- Q. Have you ever helped escort other prisoners?
- A. No.
- Q. Are there any other incidents of abuse you witnessed?
- A. Back in I believe December, there was an incident. There was a guy that had got bit by a dog. I am not sure why. GRAINER told me that the detainee came at him, and the dog then bit the detainee. I believe this guy was provoked to go at GRAINER. I based this on what I have seen before with GRAINER.
- Q. Are there any other incidents?
- A. Yes. There was a time that I saw a detainee handcuffed to the bed, and

INITIALS OF PERSON MAKING STATEMENT

JCS

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EXHIBIT 019514

(b) - (2)

GRAINER was in the room with him. This detainee had wounds on his legs from where he had been shot with the buckshot. GRAINER would take the asp and strike the detainee with a half baseball swing, and hit the wounds of the detainee. There is no doubt that this hurt the detainee because he would scream he got hit. The detainee would beg GRAINER To stop by saying, "Mister, Mister please stop", or words to that effect. I saw GRAINER strike him twice. SSG [REDACTED] was in the room as well and witnessed this, and there was one other medic also. [REDACTED] is in 372nd MP Co, and I am not sure about the other. The other medic was kind of heavier set, glasses, E5. The medics were there to check out the guy's wounds, to make sure that they were healing properly.

Q. Why was GRAINER striking this detainee?

A. I think GRAINER was still angry because this detainee had tried to kill one of our soldiers.

Q. Did GRAINER say anything while he was striking this detainee?

A. I think one time GRAINER said in a baby type voice, "Ah, does that hurt"?

Q. Was there anything else that happened the night of the first incident you talked about?

A. Yes, FREDERICK had two of the inmate punch each other in the head. FREDERICK showed them by using his hands and fist that he wanted one inmate to punch the other inmate. A first neither of them would do it, but then one of the inmates punched the other, then the other struck that one back. They hit each other once each.

Q. When GRAINER knocked the detainee unconscious, did any call for a medic?

A. No.

Q. Did any of the mentioned soldiers in this statement, ever say they knew what they were doing was wrong?

A. No.

Q. Do you think the incidents you witnessed were wrong?

A. All of them were.

Q. Why were they wrong?

A. To be honest it was mistreating the prisoners. I know the war has stopped, but I know if they are POW's that is abuse of the Geneva Convention.

Q. Why did you not report this to the Chain of Command?

A. I was asked not to, and I try to be friends with everyone. I see now where trying to be friends with everyone can cost ya.

Q. Who asked you not to tell?

A. GRAINER. He pretty much said, "You did not see shit".

Q. Did anyone say anything to you before you came here today?

A. No.

Q. Is there anything else you want to add to this statement?

A. Yes. There was a night up in an office space they built between 1A and 1B. I was looking at a laptop computer, I do not know whose it was or if the photographs they were showing were on a hard drive or disk, but they had the pictures of the first incident I spoke of that I was present for, and there were pictures of some other time that I do not know when that stuff happened. The pictures were of prisoners from the incident with the dog. There was a picture of the detainee's leg where the dog had bit it,

Exhibit

INITIALS OF PERSON MAKING STATEMENT

EXHIBIT 019515

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Page 4 of 5

before it was sewed up. I was in the wrong when the above incidents happened; I should of said something.///END OF STATEMENT JCS

Exhibit

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019516
EXHIBIT 26
Page 5 of 5

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Abu Gharib Prison, Abu Gharib Iraq	2. DATE 27 Jan 04	3. TIME 0930	4. FILE NO.
5. NAME (Last, First, MI) Sivits, Jeremy C.	8. ORGANIZATION OR ADDRESS 32nd MPCo Abu Gharib, Iraq		
6. SSN [REDACTED]	7. GRADE/STATUS SPC/ADJ RESERVE		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command
SS S Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: Tampering with Evidence, Assault, Obstruction of Justice, Failure to Obey order or regulation, Cruelty and mistreatment
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

581. I do not have to answer any question or say anything.
582. Anything I say or do can be used as evidence against me in a criminal trial.
583. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.
- or -
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
584. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer since being advised of your rights in the past 30 days? NO

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE [Signature]
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR [Signature] (b)(6)-1;
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [Redacted] 7(c)-1
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 10th MPBN CCID APO AE 01135
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-waiver

1. I do not want to give up my rights
☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

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

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EXHIBIT 08
019517

SWORN STATEMENT

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

LOCATION Abu Ghraib, Iraq, APO AE 09335	DATE 27 JAN 04	Time 1035 ICS	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME SIVITS, Jeremy C.	SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS E4/SPC/Reserves	
ORGANIZATION OR ADDRESS 372 nd Military Police Company, Abu Ghraib Correctional Facility, Abu Ghraib, Iraq, APO AE 09335			
<p>1. Jeremy C. SIVITS, want to make the following statement under oath:</p> <p>Q: SA [REDACTED] (b)(6)-1</p> <p>A: SPC SIVITS</p> <p>Q: On the night that 7 detainees were brought into the Hard Site, do you remember how long SSG [REDACTED] was there after he brought the detainees into the area?</p> <p>A: He was there for about 20 seconds or so.</p> <p>Q: To your knowledge, did SSG [REDACTED] see any abuse of the detainees?</p> <p>A: No, I am sure he didn't see any abuse. He was bringing the detainees into Isolation Area from another part of the Hard Site, and then he left. He never went past the wooden partition, and because of that, he couldn't have seen anything.</p> <p>Q: Did you see SSG [REDACTED] abuse any detainees, including hitting them, pushing them into walls or other fixed objects, kicking them, or assaulting them in any way?</p> <p>A: No.</p> <p>Q: How well do you know SSG [REDACTED]</p> <p>A: I know him, sort of. We aren't friends or anything. But from what I hear of him, he is a hell of a nice guy.</p> <p>Q: To your knowledge, is there any reason that SSG [REDACTED] should have know that the detainees would be abused?</p> <p>A: No.</p> <p>Q: Do you believe SSG [REDACTED] would have reported the abuse of the detainees if he knew it was going on?</p> <p>A: Yes. I know he is very honest, and he always make sure things are done the right way. I would be very surprised if he didn't report it if he knew it was going on.</p> <p>Q: How long was SFC [REDACTED] in the area while the abuse was going on?</p> <p>A: From what I saw, he was there for two minutes or less.</p> <p>Q: What type of abuse do you believe SFC [REDACTED] witnessed?</p> <p>A: I know he saw SGT DAVIS stomping on a detainee's foot. When he saw that he ordered SGT DAVIS to stop. I believe that SFC [REDACTED] thought it was an isolated incident and that when he ordered SGT DAVIS to stop, it was over.</p> <p>Q: Did SFC [REDACTED] see SGT DAVIS, or anyone else, abusing the detainees by jumping on them, punching them or any other acts of abuse other than when SGT DAVIS stepped on the detainees foot?</p> <p>A: No. SFC [REDACTED] was upstairs in the office area, and I think he happened to look over the railing when SGT DAVIS was stomping on the detainees foot. I know when he saw that, he immediately told SGT DAVIS to stop. When SFC [REDACTED] told SGT DAVIS to stop, he said it in a very commanding, stern voice. He seemed to be very angry because I have never heard him use that tone of voice before. To be honest, that's why I remember it, because when I heard him say that, I was surprised to hear the tone of voice from him. I know that's the only incident that SFC SNYDER saw because he left shortly afterwards.</p> <p>Q: When SFC [REDACTED] left, did the abuse continue?</p> <p>A: Yes.</p> <p>Q: In your mind, do you believe SFC [REDACTED] thought that no more abuse would continue and that what he witnessed was an isolated incident?</p> <p>A: Yes.</p> <p>Q: Why is that?</p> <p>A: Because he is the Platoon Sergeant, and all his people respect him and do what he tells them. He told SGT DAVIS to stop, and I'm sure he thought that was the end of it. <i>ICS</i></p>			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>ICS</i>		PAGE 1 OF 2 PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED."</p> <p>THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>			

DA FORM 2823, JUL 72

U.S. Government Printing Office: 1993 - 342-027/80494

019518

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EXHIBIT 128

(b)(6)1

STATEMENT JEREMY C. SIVITS OF TAKE AT ABU GHRAIB PRISON COMPLEX, IRAQ DATED 27 Jan 2004 CONTINUED

Q: Why do you think the abuse continued even though SFC [REDACTED] told SGT DAVIS to stop when he saw him stomp on the detainees' foot?
A: I think it continued because the detainees caused the riot at Ganci, and they were found with shanks and were probably going to hurt fellow soldiers.
Q: Did you ever believe that the abuse was sanctioned by anyone in the chain of command?
A: No.
Q: If a member of the chain of command, including SFC [REDACTED] or SSG [REDACTED] was present, would the abuse have happened?
A: Hell no.
Q: Why not?
A: Because our command would have slammed us. They believe in doing the right thing. If they saw what was going on, there would be hell to pay.
Q: Is there anything you wish to add to this statement?
A: Yes. I gave a statement last week where I said that I took a picture of the detainees with GRAINER's camera, but I now remember that although I took a picture of the detainees, I'm pretty sure it wasn't with GRAINER's camera, but someone else's, I don't know whose. I just want to make sure that everything I tell you is 100% accurate, that's why I'm bringing this up.
Q: At the time you said it was GRAINER's camera, did you believe that to be true?
A: At that time, yes. I was thinking about it after I left, and then I started thinking that maybe it wasn't GRAINER's camera, so I wanted to make sure that everything I have said is the truth.
Q: Is there anything else you wish to add to this statement?
A: No. ///END OF STATEMENT/// JCS

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

AFFIDAVIT

I, JEREMY C. SIVITS, HAVE READ OR HAD READ TO ME THIS STATEMENT, WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OR BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFULNCE, OR UNLAWFUL INDUCEMENT. JCS

WITNESSES:

(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by Law to administer oaths, this 27th day of January, 2004 at Abu Ghraib, Iraq, APO AE 09335.

ORGANIZATION OR ADDRESS
10TH Military Police Battalion (CID)
Baghdad, Iraq, APO AE 09335

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

Article 136, UCMJ or 5 USC 903

(Authority to Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT JCS

PAGE 2 OF 2 PAGES

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EXHIBIT D

RIGHTS JARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
 PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
 ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
 DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Abu Gharib Prison, Abu Gharib Iraq		2. DATE 11/19/04	3. TIME 1446 JN	4. FILE NO.
5. NAME (Last, First, MI) DAVIS, JAVAL S.		8. ORGANIZATION OR ADDRESS 372nd MP Co, Cumberland MD Deployed to Abu Gharib, IRAQ		
6. SSN [REDACTED]	7. GRADE/STATUS E-5/AD SES			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command and wanted to question me about the following offense(s) of which I am suspected: Failure to Obey an Order or Regulation, False Statements, Conspiracy, Maltreatment. Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights: AND Cruelty, Assault.

1. ☒ I do not have to answer any question or say anything.
 2. ☒ Anything I say or do can be used as evidence against me in a criminal trial.
 3. ☒ (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. ☒ If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me. ☒

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE [Signature]
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR [Signature]
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [REDACTED]
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 10th MP BN (CID) Baghdad, IRAQ 09335
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-waiver

1. ☐ I do not want to give up my rights
☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

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

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

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PE 2019 EXHIBIT 80

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <u>Baghdad Correctional Facility, Al Ghazia, Iraq</u>	2. DATE <u>92</u> <u>15 Jan 04</u>	3. TIME <u>95</u> <u>1430</u>	4. FILE NO.
5. NAME (Last, First, MI) <u>Davis, David S.</u>	8. ORGANIZATION OR ADDRESS <u>372nd Military Police Company</u>		
6. SSN [REDACTED]	7. GRADE/STATUS <u>E51AD</u>	APO AE 09335	

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation
Command Special Agent and wanted to question me about the following offense(s) of which I am
suspected/accused: Security + Maliciousness, Indecent Acts, Failure to obey orders, assault, Possession of

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- ☒ I do not have to answer any question or say anything.
- ☒ Anything I say or do can be used as evidence against me in a criminal trial.
- ☒ (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- ☒ I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

of Duty; False official statement 11/02

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <u>[Signature]</u>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <u>[Signature]</u>
b. ORGANIZATION OR ADDRESS AND PHONE		<u>(b)(6)-1</u>
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR <u>[Redacted]</u>
b. ORGANIZATION OR ADDRESS AND PHONE <u>Prisoner Interrogation Team (PAIT) TP</u> <u>10th MP BN, APO AE 09335 TP</u>		6. ORGANIZATION OF INVESTIGATOR <u>Prisoner Interrogation Team</u> <u>10th MP BN, APO AE 09335</u>

Section C. Non-waiver

1. I do not want to give up my rights
☐ I want a lawyer ☐ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

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

SWORN STATEMENT

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

LOCATION <u>Baghdad Correctional Facility, Abu Ghraib, Iraq</u>	DATE <u>15 Jan 01</u>	TIME <u>1652</u>	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME <u>Davis, Jason Shawnta</u>	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS <u>E5 / Reserves</u>
ORGANIZATION OR ADDRESS <u>372nd Military Police Company, APO AE 09335</u>			

1st JAWAL S. DAVIS

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Yesterday Jan 14 I was brought in for questioning by (IA). I did not know what for until I was being questioned. I told the agent everything I saw, but was vague about some parts out of fear. Today Jan 15 I was asked to come in for more questioning to elaborate on what I saw during an incident. The evening that the Visilliant Camp riot started I was brought in + saw SSG Frederick jump on inmates, hit them. I saw SFC England, Corporal Graine, SFC Herman, SFC [REDACTED] other people may have been there but, I don't remember. Everything I've stated prior to now, I did do. I did fall on the inmates on purpose and not on purpose. I did step on the inmates hands and feet on purpose and not on purpose while dealing with an inmate. I was very upset at the inmates for wanting to kill some of my fellow soldiers from my company. I wanted to scare them. When SFC [REDACTED] felt that things were out of hand or beyond use of force for me, to let it go and I did. I then left the room. I just want to take this statement and get everything out. I am and was embarrassed about what I did. I did what I shouldn't have at all. However, I did leave the room before going out further. I felt that I needed to leave before I got myself into trouble. I guess I left to late.

Q: [REDACTED] (b)(6) (b)(7)(C)

A: SGT Davis

Q: When you provided a statement yesterday, did you lie and say you never intentionally hurt the prisoners?

A: Yes, I was not honest completely.

Q: Did you know it was wrong to lie?

A: Yes

Q: Why did you not tell the truth in your previous statement but decided to tell the truth today?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <u>[Signature]</u>	PAGE 1 OF <u>22</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___ TAKEN AT ___ DATED ___ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE ___ OF ___ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

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EXHIBIT 11

(b)(6)-1

STATEMENT OF JAWAD S. DAU'S TAKEN AT Abu Ghraib, Iraq DATED 15 January 2004 CONTINUED:

FILE NUMBER:

STATEMENT (Continued)

Q: It bothered me that I did not tell the truth yesterday when I was asked about it today, I decided I needed to be honest and maintain my integrity and admit my fault.

Q: How many times did you intentionally jump on the detainees?

A: Once for sure, but maybe twice. Another time, the first time, it really was an accident.

Q: How many times did you step on detainees hands and feet?

A: I did it once by accident and another time on purpose. I may have stepped on their hands, but I wasn't paying attention and I did not care. As I stepped on one detainee foot on purpose, SFC

(b)(6)-1 [redacted] said "that's enough" and I stopped, and left the room.

Q: Did anyone else jump on the prisoners?

A: Yes, SSG Frederick, CPL Grainer, SPC Ambul, SPC Herman and SPC England all jumped on them. There may have been more, but I don't know. These same people are the ones who stepped on the prisoners hands and feet.

Q: Did anyone hit, kick, punch or strike the prisoners?

A: I saw SSG Frederick hit a prisoner in the chest. I didn't personally see any other guards hit prisoners, but I think CPL Grainer hit a prisoner.

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

A: NO. /// END OF STATEMENT ///

AFFIDAVIT

I, Jawad S. Dau's, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 15th day of January, 2004 at Abu Ghraib, Iraq

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

Art 136, UCMJ
(Authority To Administer Oaths)

PAGE 2 OF 019523

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EXHIBIT 11

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form. see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Baghdad Correctional Complex, Abu Ghraib, APO AE 09335	2. DATE 14 Jan 04 <i>gg</i>	3. TIME 0656	4. FILE NO.
5. NAME (Last, First, MI) <i>DAVIS, JAVAL S.</i>	8. ORGANIZATION OR ADDRESS <i>372ND MP CO Baghdad Correctional Facility Abu Ghraib, APO AE 09335</i>		
6. SSN <i>[REDACTED]</i>	7. GRADE/STATUS <i>E-5/AD</i>		

PART 1 - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused Cruelty and Maltreatment, Indecent Acts, Failure to Obey an Order or Regulation, Assault, Dereliction of Duty///

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer after rights advisement in the past 30 days? YES ☒ NO *gg*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <i>[Signature]</i>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <i>[Signature]</i>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR <i>[REDACTED]</i>
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR Prisoner Interrogation Team (PIT), 10 th Military Police Battalion Abu Ghraib, Iraq, APO AE 09335
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

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

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EXHIBIT 2C

SWORN STATEMENT

For this form, see AR 190-45; the proponent agency JUCSOPS

LOCATION Baghdad Correctional Facility, Abu Ghraib, APO AE 09335	DATE 14 JAN 04	Time 1400	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME DAVIS, Javal Shawnta	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS E-5/AD-RSRV
ORGANIZATION OR ADDRESS 372 ND Military Police Co, Baghdad Correction Facility, Abu Ghraib, APO AE 09335			

I, Javal S. DAVIS, want to make the following Statement under oath:
About two months ago when I worked in the hard site I witnessed prisoners in the MI hold section, wing 1A being made to do various things that I would question morally. I was in charge of wing 3A-B, regular prisoners. In wing 1A we were told that they had different rules and different SOP for treatment. I never saw a set of rules or SOP for that section just word of mouth. I did see paperwork provided by the MI soldiers regulating sleep and meals for some of the MI hold prisoners. I witnessed prisoners come in escorted with sand bags on there heads. They would be sent to 1A to be processed and readied for interrogation. On the night shift FBI, OGA, CID, MI would be in and out of the wing interrogating prisoners, bringing them in, or taking them away to the wood hut behind the hard site or away period. Someone was always there from the other agencies or military personnel it seemed. If anything was going on not within the guidelines of the SOP, if it existed I assume someone would have said something to the MP on duty or NCOIC/OIC. The soldier in charge of 1A was corporal Grainer. He stated that the Agents, and MI soldiers would ask him to do things, but nothing was ever in writing he would complain. I witnessed from time to time friends of Grainer would stop by to say hello or pick something up. I witnessed one time I was coming to the section for some cheese and crackers that an inmate was standing on top of an MRE box, sand bag on his head, wearing a poncho style blanket with his arms outstretched to his sides. Corporal GRAINER and SSG FREDDRICK were there in the shower room with the inmate at that time. On another occasion I witnessed some inmates being in-processed, but I noticed one masturbating against the wall with a sand bag on his head. Another inmate was on the ground in front of him kneeling with a sand bag on his head. The inmate on the floor looked like he was praying. I found the site of that disgusting. I got what I came to get and left the cellblock. Our company did a right seat ride with the 72ND MP CO who we replaced. This being a non EPW MP CO we just continued what they passed on to us.

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

A: DAVIS

Q: Did you write the above statement?

A: Yes.

Q: You mentioned you saw various things you thought were immoral. What things are you referring to?

A: The sleep and food plan that was the majority of the crap. You see inmates stand all day and not get food until they are scheduled to sleep. They stand for 3-4 hours and sleep for 3 hours. I guess it was in their SOP, but I never seen that.

Q: Do you recall when you witnessed the prisoner you described in a poncho-like blanket with his arms outstretched?

A: At nighttime, two months ago. That's all I can remember.

Q: Did you ever transport prisoners to wing 1A/1B?

A: Yes.

Q: Did you ever push, pull, shove, kicked or abuse the prisoners you transport in anyway?

A: We pull them to guide them into the blocked because they have sand bags on their heads and we push them down so they would sit down because of the language barrier. If they resist, we would use the MP arm-bar to

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 5 PAGES
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED."		
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.		

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take down and re-subdued if they are un-handcuffed.

Q: Did you witness any prisoner, which you transported get injured as a result from MP handling?

A: GRAINER tried to put a rape offender down in a kneeling position and he lost his balance and hit the wall and cut his around his eye.

Q: Where is the inmate with the cut eye now?

A: Deceased.

Q: How did this come about?

A: He was killed by an Improvised Explosive Device (IED) coming back from court.

Q: Was the inmate alone when you transported him?

A: There was he and another inmate for the same offense.

Q: Did the second inmate sustain any injuries?

A: No.

Q: Where is he now?

A: I think he was release to go home.

Q: Were there any other inmates whom you transported to 1A/1B?

A: Yes.

Q: How many others?

A: I can't recall. Not a lot. More than 8.

Q: Did any of them sustain injures after you released them to the Wing Guards, other than the rape offender?

A: I wouldn't know because I'm not down there.

Q: Have you ever stayed to witness abuse of the inmates after releasing them to the Wing 1A/1B Guards?

A: I stayed to watch them get processed a couple times. As far as abuse I don't know what was SOP or out of the ordinary. Like I said, Things are different down there.

Q: Why are the rules different in 1A/1B than the rest of the wings?

A: The rest of the wings are regular prisoners and 1A/1B are Military Intelligence (MI) holds.

Q: Other than GRAINER and FREDDRICK, who did you see present during the treatment you deemed immoral and abusive?

A: Nobody, but ENGLAND could have been there. Ambul was on her side and her friends coming in and out. But if anyone, ENGLAND would more than likely be there?

Q: Why did you not inform your Chain of Command about this abuse?

A: Because I assumed that if they were doing anything out of the ordinary or outside the guidelines, someone would have said something. Also the wing belongs to MI and it appeared MI personnel approved of the abuse.

Q: Has anyone asked you to participate in the physical abuse of the inmates?

A: Not directly and I would say no and leave the area.

Q: Who would ask you to participate?

A: GRAINER or FREDDRICK, but like I said, they would not ask directly. They would just tell me about the inmate and try to coax me to physically abuse them. I stayed away from that. Occasionally I yell at them but I would not abuse them.

Q: Did you see anyone take photographs of the inmates while engaged in physical abuse?

A: Yes, GRAINER and FREDDRICK took pictures their digital camera and I've heard rumors that the pictures were bad.

Q: Where are those photographs now?

A: I have no clue.

Q: Do you have any of the photographs you previously spoke of?

INITIALS OF PERSON MAKING STATEMENT

J.S.

PAGE 2 OF 5 PAGES

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A: No.

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

A: Yeah, the MI staffs, to my understanding have been giving GRAINER compliments on the way he has been handling the MI holds. Example being statements like, "Good job, they're breaking down real fast"; "They answer every question"; "They're giving out good information, Finally"; and "Keep up the good work", stuff like that.

Q: Do you recall the names of the MI staff that made these statements?

A: Names, I would remember at this time or they keep changing personnel, and they cover their name with tape.

Q: Did you make any attempts at all to tell your superiors?

A: No.

Q: Have you heard of any other acts of Cruelty, Maltreatment, Indecent Acts, or Assault of inmates?

A: Yes, I heard GRAINER and FREDDRICK, more so GRAINER would strike the inmates.

Q: Would they strike them with a close fist, open palm, or kicked?

A: I heard they did all of that.

Q: What else did you hear?

A: Pictures were taken of the inmates after abusive acts were conducted.

Q: Were any of the acts considered sexually indecent?

A: Yes, it was indecent for them to make the inmate to masturbate in the open bay. Pictures of and with the female prostitutes. It was speculated GRAINER and FREDDRICK might have had sex with the prostitutes.

Q: Did you witness the inmates being placed in sexually indecent positions?

A: No.

Q: Have you heard MI insinuate to the guards to abuse the inmates of any type or manner?

A: Yes.

Q: What was said?

A: "Loosen this guy up for us." "Make sure he has a bad night." "Make sure he gets the treatment."

Q: Who were the MI staff speaking to when the previous comments were made?

A: MP Guard CPL GRAINER and SSG FREDDRICK.

Q: Who would have knowledge of any or additional information pertaining to the previously mentioned incidents?

A: Anybody that work on the nightshift.

Q: Who do you believe would have the most reliable information?

A: The people who work in Wing 1A/1B.

Q: What is the name the MI staff member who made the previously stated comments?

A: I don't know the name because they often don't wear uniforms and if they do they don't have nametapes.

Q: Are there any other person(s) you believed contributed to the abuse and maltreatment of the inmates?

A: Steve.

Q: Who is [REDACTED] b(6)-2

A: I don't know who he works for, I just know that he is an investigator/interrogator.

Q: Describe [REDACTED]

A: White male, dark hair, dark beard, about 6'7 - 6'8 tall.

Q: Who do you hear the rumors from?

A: Various soldiers, but I heard the masturbating thing from SGT [REDACTED] (b)(6)-2, (7)(c)-2

Q: Did you personally photograph any of the inmates during the maltreatment?

A: No, but I did take a picture of the Generals who were coming in for processing into 1A/1B.

INITIALS OF PERSON MAKING STATEMENT

J.D.

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Q: Did you contribute in any way to the photography of the inmates?
A: I let camera be borrowed, but I didn't know they were taking pictures of inmates.
Q: Who did you allow to borrow your camera?
A: Pretty much any of the MP's over there in the office in Wing 1A/1B.
Q: Did you see any other inmates in any provocative, sexual, indecent, or obscene positions directed by the MP guards?
A: No.
Q: Did you dive on top of an inmate while he was on the floor?
A: No. I might have stumbled over a person on the floor trying to get my detainee in to process.
Q: Did you stomp, kick, or grind your boot on any part of an inmate's body?
A: I stepped a guys feet and he didn't have any shoes on.
Q: Did you intend to step on the inmate's feet?
A: No, I didn't intend to step on his feet. The inmate was combative and I restrained him to the ground with the use of an arm bar. I un-intentionally stepped on his foot while trying to restrain him so I could take his flex-cuffs off, sit him up against the wall, calm him down, so he could get process and I can leave, but the language barrier hindered the process.
Q: Who else was present for the processing of inmates
A: SFC [REDACTED] he told me to just let the inmate be and I did.
Q: Where was SFC [REDACTED] standing when he told you to release the inmate?
A: He was on the top tear to look over the cellblock floor.
Q: Who participated in the transport and processing during that day?
A: SSG [REDACTED] SSG FREDDRICK, CPL GRAINER, SFC [REDACTED] SG [REDACTED] and I think SPC AMBUL was there.
Q: Was there anyone helping with the transport or processing who was not an MP?
A: I don't recall, but the most likely people who would be there was SPC ENGLAND, SGT [REDACTED] SPC SIVITS, and SPC [REDACTED].
Q: What are their jobs if they are not MP's, SPC ENGLAND was an admin clerk, SGT [REDACTED] and SPC [REDACTED] were the medics, and SPC SIVITS was a mechanic.
Q: Did you strike any of the inmates for amusement and out of anger?
A: No, I've never struck an inmate for amusement or out of anger.
Q: Other than the masturbation incident, did you witness any of the MP guards place the inmates, while nude, in compromising positions in the center of the cellblock floor?
A: Yes, I've seen the inmates handcuffed to their cells and made to do exercises.
Q: Do you have anything further to add to this statement?
A: ///End of Statement. *JD*

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

INITIALS OF PERSON MAKING STATEMENT

JD

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///NOT USED/// J-2

AFFIDAVIT

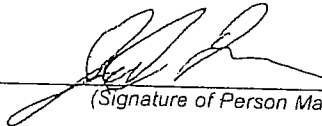
I, Javal S. DAVIS, HAVE READ OR HAD READ TO ME THIS STATEMENT, WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I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

WITNESSES:


ORGANIZATION OR ADDRESS

(b)(6)-1;

7(c) 1


(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by Law to administer oaths, this 14th day of January, 2004 at Prisoner Interrogation Team (PIT)(CID)(FWD), Baghdad Correctional Facility, Abu Ghraib, 09335


(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

Article 136, UCMJ or 5 USC 303

(Authority to Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT J-2

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EXHIBIT 20

RIGTHS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Baghdad Correctional Facility, Abu Ghraib, Iraq APO AE 09335		2. DATE <i>SH</i> 2 Feb 04	3. TIME <i>SH</i> 1506	4. FILE NO.
5. NAME (Last, First, MI) HARMAN, Sabrina D.		8. ORGANIZATION OR ADDRESS 372nd Military Police Company		
6. SSN [REDACTED]	7. GRADE/STATUS E-4/RA	Cumberland, MD Deployed to Abu Ghraib, Iraq, APO AE 09335		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused Dereliction of Duty, Cruelty and Maltreatment, Conspiracy, Failure to Obey an Order or Regulation, Assault///

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer after rights advisement in the past 30 days? ☒ YES *SH* I have come to CID on my own will to discuss the investigation. At no time did CID request me to return and discuss the case. *SH*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <i>S. Harman</i>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR [REDACTED] (S)(6), (7)(C)
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [REDACTED]
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR PRISONER INTERROGATION TEAM BC-F, Abu GHRAIB, 12 APO AE 09335
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

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

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EXHIBIT

133

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PF 20

SWORN STATEMENT

For use with this form, see AR 190-45; the proponent agency is JCSOPS

LOCATION Baghdad Correctional Facility, Abu Ghraib, Iraq APO AE 09335	DATE 2 Feb 04 <i>SH</i>	Time 1904 <i>SH</i>	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME HARMAN, Sabrina Dawn	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS E-4/AD-Res
ORGANIZATION OR ADDRESS 372 nd Military Police Company, Cumberland MD (Deployed to Abu Ghraib, Iraq)			

I, Sabrina D. HARMAN, want to make the following Statement under oath:
Today, 2 Feb 04 of my own free will, I came to speak to CID against the advisement from legal council, on information to the current investigation. At no time after requesting a lawyer did CID call me to discuss the case. I would like to make the following statement. On 24 Dec 03 at 20:04 inmate [REDACTED] from 2A came into the clinic from a dog bite. On 25 Dec 03 at 22:44 inmate 15664 from 2B came into the clinic from a dog bite.

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

A: HARMAN

Q: How do you know the two previously stated inmates were treated for dog bites?

A: On the previously stated dated and time I was working in the clinic as an over watch for the inmates.

Q: You were shown photographs, can you identify any of the individuals in the photographs?

A: CPL GRANER, [REDACTED] Interpreter, and I don't know the MI guy's name.

Q: Why did you take the photographs?

A: To show what was going on?

Q: Whom were you going to show?

A: The media.

Q: Why did you want to give the photos to the media?

A: To show what was going on.

Q: What was your intent for the media to do?

A: Make it stop.

Q: Did you tell anyone in your Chain of Command?

A: My Chain of Command was there. CPL GRANER and SSG FREDRICK were there.

Q: Did you try to tell anyone higher in the Chain of Command?

A: No.

Q: Why didn't you report the incidents?

A: Some rumors were going around and I figure they already knew.

Q: Whom are you referring to when you said, "they already knew?"

A: People higher up.

Q: Did you let anyone other than the Chain of Command know about the incidents in this investigation?

A: My roommate back in the states.

Q: How did you tell your roommate?

A: I told her with letters. When something would happen I would write her.

Q: Where are the letters now?

A: At my house.

Q: At anytime did you attempt to stop the incidents in this investigation?

A: Yes, there was an inmate with a messed up hand, I would not let anyone get close to him because I felt sorry for him.

Q: Why did you choose to return to CID and make this statement?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>SH</i>	PAGE 1 OF 4 PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___ TAKEN AT ___ DATED ___ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE ___ OF ___ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>		

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EXHIBIT 133

A: Because I had more information to give you and by the time the investigation would be over, the inmates would be gone.

Q: Pertaining to the inmates at the clinic, do you recall the circumstances behind the inmates getting bitten by the dogs?

A: No.

Q: Pertaining to photograph with an inmate who appeared to have wires connected to his extremities, who were present for that photo?

A: Myself, CPL GRANER, SSG FREDRICK and another inmate who had a deformity with his hand.

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

A: Yes, I would like to add the following information that was not in my previous statements. An inmate was handcuffed to the front bar gate to the 1A side, behind his back so low that he was bending backwards. No pictures were taken. Further, the inmate known as the "Taxicab Driver," was handcuffed to his bed, naked in his cell with a pair of underwear donned on his head. Another incident with the "Taxicab Driver," was when he was handcuffed against the wall and an interpreter, named "Mike," was doing some karate moves on him and kicked him in the head, which why "Taxicab Driver" needed stitches. [REDACTED] was not allowed in the Tier again. Pictures were taken of "Taxicab Driver" getting stitches. In addition, a prisoner was handcuffed to his door for almost six hours straight. I uncuffed him with AMBUHL; [REDACTED] was removed from 1A for that incident. Pictures were not taken. I recall an occasion when two dogs were brought into 1A to scare an inmate. He was naked against the wall when they let the dogs corner him. They pulled them back enough and the prisoner ran to I think Addle and some else, straight across the floor like he was trying to jump in their arms. The prisoner was cornered and a dog bit his leg. A couple seconds later, he started to move again and the dog bit his other leg. The guy ran straight for the door where they tackled him. I ran up and got the first aid pouch, started cleaning him up; [REDACTED] came down and we gave him a stitch. Pictures were taken, but not by us. The dog handlers have copies. I know that CID went to my house in the states and picked up the CD, which contains the pictures that were downloaded from my computer in November. But, I also have letters and notes, which I sent home to my friend, which documents all the incidents that I saw. I know she still has them because when I went home on leave I saw letters addressed to her from me, in the nightstand in the bedroom. She keeps everything I send her. Also, if you go into 1A, there are tack marks on the wooden wall, which symbolized how many stitches inmates have received in 1A. Further, MI, CID, OGA, etc. have all been involved. Many of the inmates are now at Ganci/Vigilant that was there during these incidents.

Q: How long was the inmate handcuffed to the front gate to 1A.

A: I don't know. That was in the beginning. I think he's still here.

Q: Where is he now?

A: He should be in 2B.

Q: Who stitched up the "Taxicab Driver?"

A: It was an Iraqi doctor. He's pictured on my CD.

Q: Did [REDACTED] handcuff the inmate to his cell door for six hours?

A: Yes. (b)(6)-2

Q: When the dogs were brought into 1A, were they called to come to 1A?

A: I don't know.

Q: When the dogs bit the inmate, were the dog handlers instructed to have their dogs bite the inmate?

A: I don't think so.

Q: Did you order the dog handlers to have the dogs bite the inmate?

A: No.

Q: What was documented in the letters you wrote to your friend?

INITIALS OF PERSON MAKING STATEMENT

SH

PAGE 2 OF 4 PAGES

A: Whatever went on that day.

Q: Are the letters dated?

A: Yes.

Q: You stated MI was involved. What were the names of the MI personnel involved?

A: I don't know names; I only know them by face. I'm pretty sure they went home by now.

Q: How was MI involved?

A: They were there during incidents and even participated in a few.

Q: How did they participate in the incidents?

A: One of the MI guys took two of the inmates naked down to Tier 3. I saw an Iraqi Policeman who told the MI guy that it was an insult for another man to see another man naked like that. I think there was an interpreter with him.

Q: Who was the interpreter?

A: Not sure.

Q: You stated Other Government Agency (OGA) personnel were involved. Can you name them?

A: No.

Q: How were they involved?

A: They present during some incidents. And as soon as International Red Cross came in, OGA wanted the prisoners to have their numbers, mattresses, blankets and clothes back.

Q: You stated CID was involved. What were their names?

A: Agent [REDACTED] (b)(6) - 2; (7)(C) - 2

Q: How was he involved?

A: He was there during an incident.

Q: Do you recall which incident he attended?

A: I believed it was when the dogs bit the prisoner twice, but I'm not sure.

Q: What was his involvement?

A: He was just watching from the top Tier.

Q: How long was he watching?

A: I'm not sure.

Q: Did he make any attempts to stop the incident?

A: No.

Q: Did he know what led to the incident?

A: I don't know.

Q: Did he observe the entire incident?

A: I'm not sure.

Q: Do you know what caused the dog incident?

A: No.

Q: Were you there during the whole dog incident?

A: Yes.

Q: Did he get involved at all?

A: No.

Q: Was he present for any other incident?

A: Not that I can remember.

Q: Why was he there during the dog incident?

A: I have no idea.

Q: Are you 100 percent sure he was there during the dog incident?

INITIALS OF PERSON MAKING STATEMENT

SH

PAGE 3 OF 4 PAGES

U.S. Government Printing Office: 1993 - 342-027/80494

019533

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EXHIBIT 133

A: No, but I've seen him there several times.

Q: Did he ever come to the Tier with the dog handlers and the dogs?

A: No that I'm aware of. The dog handlers came to the Tier by themselves during the dog incident.

Q: Do you know how long he observed the incident?

A: No.

A: No. ///End of Statement/// *SH*

AFFIDAVIT

I, SABRINA D. HARMAN, HAVE READ OR HAD READ TO ME THIS STATEMENT, WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 4. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OR BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLENCE, OR UNLAWFUL INDUCEMENT.

S. Harman

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by Law to administer oaths, this 2ND day of February, 2004 at Baghdad Correctional Facility, Abu Ghraib, Iraq APO 15 00225

ORGANIZATION OR ADDRESS

(b)(6) 1; 7(c) 1

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

Article 136, UCMJ or 5 USC 303

(Authority to Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

SH

PAGE 4 OF 4 PAGES

U.S. Government Printing Office: 1993 - 342-027/80494

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019534
EXHIBIT 133

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Abu Gharib Prison, Abu Gharib Iraq	2. DATE <i>SH</i> 19 JAN 04	3. TIME <i>SH</i> 0952	4. FILE NO.
5. NAME (Last, First, MI) HARMAN, SABRINA, D.	8. ORGANIZATION OR ADDRESS 372nd MP Co Cumberland, MD. Deployed to Abu Gharib Prison		
6. SSN [REDACTED]	7. GRADE/STATUS SPC/AD RES		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command and wanted to question me about the following offense(s) of which I am suspected/accused: False Statements, Failure to Obey an Order or Regulation, Assault, Dereliction of Duty
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights: Cruelty AND maltreatment

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *SH* (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.
- or -
- SH* (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR [REDACTED]
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR [REDACTED] (b)(6)-1, (b)(7)(C)
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR 10th MP BN (CID) APO AE 09335

Section C. Non-waiver

1. I do not want to give up my rights
☒ I want a lawyer ☐ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

S. Harman

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

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPA 2.01

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EXHIBIT 019535

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:

- a. Your official position.
- b. Nature of offense(s).
- c. The fact that he/she is a suspect/accused.

2. RIGHTS - Advise the suspect/accused of his/her rights as follows:

- "Before I ask you any questions, you must understand your rights."
- a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"¹

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

REVERSE OF DA FORM 3881

USAPA V2.01

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019536
EXHIBIT 76

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form. see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

PURPOSE: Title 10, United States Code, Section 3012(g)
ES: To provide commanders and law enforcement officials with means by which information may be accurately identified.
E: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
Disclosure of your Social Security Number is voluntary.

1. NAME (Type or Print) Abu Ghariab, Correctional Facility Last, First, MI) NAN, SABRINA D	2. DATE 16 JAN 04	3. TIME 1137	4. FILE NO.
7. GRADE/STATUS E4 / AD RES.	8. ORGANIZATION OR ADDRESS 372nd MP Co Cummerblatts, MD. Forward deployed to Abu Ghariab, Iraq		

PART 1 - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

I, Abu Ghariab, Correctional Facility,
gator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command
and wanted to question me about the following offense(s) of which I am

accused OBSTRUCTION, FALSE STATEMENTS
she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:
I have to answer any questions or say anything.
Anything I say or do can be used as evidence against me in a criminal trial.
If I am a person subject to the UCMJ, I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, if I am not a person subject to the UCMJ.

- or -
If I am not a person subject to the UCMJ, I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

COMMENTS (Continue on reverse side)

you requested a lawyer after rights advisement in the past 30 days? YES ☒ NO ☒ SH

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me. SH

WITNESSES (If available)

NAME (Type or Print)

ORGANIZATION OR ADDRESS AND PHONE

NAME (Type or Print)

ORGANIZATION OR ADDRESS AND PHONE

3. SIGNATURE OF INTERVIEWEE

4. SIGNATURE OF INVESTIGATOR

5. TYPED NAME OF INVESTIGATOR

6. ORGANIZATION OF INVESTIGATOR

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I do not want to be questioned or say anything.

☐ I want a lawyer.

2. SIGNATURE OF INTERVIEWEE

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

019537
EXHIBIT 42

0000

PART II - RIGHTS WARNING PROCEDURE
THE WARNING

WARNING - Inform the suspect/accused of:

Your official position

Nature of offense(s).

The fact that he/she is a suspect/accused.

RIGHTS - Advise the suspect/accused of his/her rights as follows:

Before I ask you any questions, you must understand your rights."

"You do not have to answer my questions or say anything."
"Anything you say or do can be used as evidence against you in a criminal trial."

c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."
- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

Do you understand your rights?"

If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

Have you ever requested a lawyer after being read your rights?"

If the suspect/accused says "yes," find out when and where. If the request was recent (i.e. fewer than 30 days ago), obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN THE SUSPECT/ACCUSED REFUSES TO SIGN THE WAIVER CERTIFICATE:

If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:

In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogations, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

COMMENTS (Continued)

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

REVERSE OF DA FORM 3881
871/02685

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*U.S. Government Printing Office: 1990-261-

019538

EXHIBIT

SWORN STATEMENT

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

Baghdad Iraq

E, FIRST NAME, MIDDLE NAME
Sabrina DDATE 16 54
15 Jan 04

TIME 1227 54

FILE NUMBER

GRADE/STATUS
SPC, Ad Res.SOCIAL SECURITY NUMBER
[REDACTED]LOCATION OR ADDRESS
Co, Cumberland, MD, deployed with duty at Abu Ghraib, Iraq

want to make the following statement under oath:

bring D Harman
are you truthful in your first statement to CID?

Q. What did not tell the truth about?

A. Writing rapist on the guy's leg.

Q. Was there anything else that you did not tell CID about?

A. Just stuff I did not remember.

Q. Did you take any of the photographs of the detainee's home during R&R leave?

A. Yes.

Q. Where are the photographs now?

A. In my apartment. The photographs are by the computer. They are on a CD rom. The CD is located in the
CD rack, on the right hand side of the computer. I think it is blue or green case, all of the rest of them are red.

Q. May have the word picture wrote on the outside of it.

Q. Did you show these photographs to anyone while home?

A. [REDACTED] my roommate.

Q. Whose apartment are these photographs in?

A. Mine, I pay the rent for the apartment.

Q. Will you give Army CID consent to retrieve the photographs from the apartment?

A. Yes.

Q. Did you email or show anyone else the photographs?

A. No.

Q. Do you have any more copies of the photographs here or anywhere else?

A. No.

Q. Who else has copies of these photographs?

A. FREDERICK, GRANER, [REDACTED] Ops 4th Platoon, 372nd [REDACTED] and [REDACTED] here are
(b)(6)-2; (7)(C)-2

Q. a brother and sister; I am not sure which one has them.

Q. Who else might have copies of these photographs?

A. I know that people from MI have them because they were swapping pictures.

Q. Who was swapping pictures?

A. FREDERICK and I think GRANER as well. I do not know what type of pictures they were swapping.

Q. Did you ever talk to anyone else while home about the photographs?

A. Just the girl from CNN. We were at a club called Cobalt in DC. Somehow we got introduced and I told her
was I worked. She told me where she worked. She gave me her business card, and we went our separate ways.

Q. DO you have her business card still?

A. Probably not, but [REDACTED] might know her.

Q. Did you tell her the substance of the photographs?

A. I am sure I did, but I do not remember what I said. 54
(b)(6)-2; (7)(C)-2

019539

EXHIB

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Page 1 of 2

2. DO you have anything to add to this statement?

A. No.///End of Statement/// 54

AFFIDAVIT

I, Sabrina D. HARMAN HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OR PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

S. H. HARMAN
(Signature of Person Making Statement)
SUBSCRIBED AND SWORN BEFORE ME, A PERSON BY LAW
TO ADMINISTER OATHS, THIS 16th DAY OF Jan 04
AT Abu Gharib Prison, Iraq

[REDACTED] (b)(6)-1;
(Signature of Person Administering Oath)

[REDACTED] 7(c) 1
(Name of Person Administering Oath)

Article 136, UCMJ
(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT SH

PAGES 2 OF 2 PAGES

DA Form 2823 (AUTOMATED)

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019540

EXHIBIT

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

0003-04-CID149-83130

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Abu Gharaib Prison CID OFFICE	2. DATE 15 JAN 04	3. TIME 1323	4. FILE NO.
5. NAME (Last, First, MI) HARMAN, SABRINA D.	8. ORGANIZATION OR ADDRESS 372nd MP Co Cumberland MD. Deployed to IRAQ		
6. SSN [REDACTED]	7. GRADE/STATUS E4/AD Reserve		

PART 1 - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent

and wanted to question me about the following offense(s) of which I am suspected/accused: Cruelty + maltreatment, Indecent Assault, Failure to Obey an order or regulation, Conspiracy.

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer after rights advisement in the past 30 days? YES NO

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE S. Harman
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR [REDACTED] (b)(6), (b)(7)(C)
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [REDACTED]
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 10TH MP BN (CID) Baghdad, IRAQ
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

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

DA FORM 3881 NOV 80

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only

019541
EXHIBIT 3

SWORN STATEMENT

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

LOCATION Abu Ghraib, Baghdad Iraq	DATE 15 Jan 04 SH	TIME 1609 SH	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME HARMAN, Sabrina D	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS SPC, Ad Res.

ORGANIZATION OR ADDRESS

372nd MP Co, Cumberland, MD, deployed with duty at Abu Ghraib, IraqI, SABRINA HARMAN

want to make the following statement under oath:

Q. At what point did you enter the prison area on the day that the seven detainees were made into the pyramid?

A. I got there about the same time as the detainees.

Q. During the event of the seven detainees that were brought over from the riot, do recall if anyone ran and jumped on top of them while they were lying in the floor?

A. I saw DAVIS step on the detainee's feet, but I did not see him jump into the pile of detainees. I saw him do this maybe twice.

Q. Did this cause injury or pain to the detainees?

A. I am sure it hurt, but I did not hear anything from them.

Q. Did you see anyone else step on the detainee's feet or hands?

A. No.

Q. Were you present when GRAINER punched the detainee in the head?

A. He posed for a picture like he was hitting the detainee, but I do not recall him hitting the detainee.

Q. Did you ever see any of the detainee's unconscious?

A. I did see two of the detainees lying on the floor for a few minutes and they were not moving. I do not know if they were conscious or not.

Q. Were you present when FREDERICK punched the detainee in the chest?

A. I remember FREDERICK hitting the detainee in the stomach or chest, and I remember the detainee slumping over and then he went down. I know a medic came shortly after this but I don't know who called the medic. I do not know why FREDERICK punched this guy.

Q. When FREDERICK punched the guy in the chest, did he have a sand bag over his head?

A. I can't remember.

Q. Did you take any photographs during this incident with the seven detainees?

A. Yes. I took two of GRAINER in the pile of detainees, and some of the pyramid. GRAINER was posing in the picture like he was going to hit them.

Q. Did you have any pictures taken of yourself?

A. Yes. One was of me taking a picture, and someone took a picture of GRAINER and me behind the pyramid.

Q. Do you know who wrote the word rapist on the one detainee?

A. I did.

Q. Where did you write this?

A. On his right side, and I wrote it with a marker.

Q. Why did you write this on his leg?

A. Because that is what his sheet said he was.

Q. Do you recall SFC [REDACTED] being there the night of this incident?

A. He just dropped off the detainees.

SH

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

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019542

EXHIBIT 30

SH 0003-04-CID149-8313

Q. Did SFC [REDACTED] ever tell anyone to quit or knock it off in referring to what was being done to the detainees?

A. I do not recall that, but I do not know how long he was there.

Q. Do you recall anybody doing anything else to the detainees on this night?

A. They made the detainees into a pyramid. GRAINER was the person who did this.

Q. Did anyone do anything else with the detainees?

A. Afterwards two were put so that one was on his knees and the other was standing as if he was jacking off in the other ones mouth, that is the one who was sitting. This is when AMBUHL and I left to go use the phones.

Q. Who put the detainees in the standing and kneeling positions?

A. I do not know. I think [REDACTED] might have been there during this time, I am not sure.

Q. Where there any other incidents you were present for when detainees were not treat correctly?

A. There was one event where someone handcuffed a detainee and the cuffs were not double locked. The detainee was left handcuffed for about 6 hours. I went with AMBUHL to uncuff him. His hands were cold and there were marks on his wrist from the cuffs. SPC [REDACTED] was the person who did this. He is in my unit. I think he was written up for this, but I know he was taken off the tier.

Q. Have you any seen any other photographs of detainees?

A. I know of some with a female detainee and one of a detainee that is standing with wires on his hands.

Q. What is the incident with the female's photographs?

A. There is one with her and me and I have my thumb up. She was a thin and blue clothes. I believe she was in for prostitution.

Q. Describe the incident with the detainee with the wires on his hands?

A. He is nicknamed Gilligan, he is currently on tier 3. He was just standing on the MRE box with the sandbag over his head for about an hour. I put the wires on his hands. I do not recall how. I was joking with him and told him if he fell off he would get electrocuted.

Q. Who took the pictures of this?

A. I took one and FREDERICK took one.

Q. Why did you do this to the detainee "Gilligan"?

A. Just playing with him.

Q. Do you feel it was allowable to do this to the detainee?

<p>I, <u>Sabrina D. Harmon</u> AFFIDAVIT HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE <u>3</u>. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OR PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.</p>	
<p>WITNESSES:</p> <p>_____ ORGANIZATION OR ADDRESS</p> <p>_____ ORGANIZATION OR ADDRESS</p> <p>_____ ORGANIZATION OR ADDRESS</p> <p>_____ ORGANIZATION OR ADDRESS</p>	<p><u>S. Harmon</u> (Signature of Person Making Statement)</p> <p>SUBSCRIBED AND SWORN BEFORE ME, A PERSON BY LAW TO ADMINISTER OATHS, THIS <u>1514</u> DAY OF <u>Jan</u> 04 AT <u>Abu Gharib Prison, Iraq</u></p> <p><u>[REDACTED]</u> (Signature of Person Administering Oath)</p> <p><u>[REDACTED]</u> (Name of Person Administering Oath)</p> <p><u>Article 136, UCMJ</u> (Authority to Administer Oath)</p>
<p>INITIALS OF PERSON MAKING STATEMENT <u>SH</u></p>	<p>PAGES 2 OF <u>3</u> PAGES</p>

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EXHIBIT 30

STATEMENT OF Sabrina HARMAN TAKEN AT Abu Ghraib DATED 15 Jan 04 CONTINUED:

A. We were not hurting him. It was not anything that bad.

Q. Was this your idea?

A. Just the wires part.

Q. Why did you have the detainee in standing on the box?

A. Just to keep him awake.

Q. Did MI ask you to do this?

A. Not me personally. They were talking to GRAINER. MI wanted to get the to talk. It is GRAINER and FREDERICKS job to do these things for MI and OGA to get these people to talk. I do not recall anyone from MI or OGA saying this. I do not recall GRAINER or FREDERICK ever saying that MI or OGA had told them to do this either.

Q. Do you have anything to add to this statement?

A. No.///End of Statement///SH

INITIALS OF PERSON MAKING STATEMENT

SH

PAGES 3 OF 3

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PAGES

EXHIBIT 30

For Official Use

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION Baghdad Correctional Facility, Abu Ghraib, APO AE 09335	2. DATE 14 Jan 04	3. TIME 1114 SH	4. FILE NO.
5. NAME (Last, First, MI) Harman, Sabrina D.	8. ORGANIZATION OR ADDRESS 372nd MPCo APO AE 09355-1322		
6. SSN [REDACTED]	7. GRADE/STATUS E-4/RA		

PART 1 - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused Cruelty and Maltreatment, Indecent Acts, Failure to Obey an Order or Regulation, Assault, Dereliction of Duty///

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you requested a lawyer after rights advisement in the past 30 days? YES NO

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <u>S. Harman</u>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <u>(b)(6), (7)(C)</u>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [REDACTED]
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 3rd MPGRP (CID) APO AE 09335
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

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

DA FORM 3881 NOV 80

EDITION OF NOV 84 IS OBSOLETE

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EXHIBIT 8

SWORN STATEMENT

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

LOCATION <u>Abu Ghraib Prison complex IRAQ</u>	DATE <u>14 Jan 04</u>	TIME <u>1420</u>	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME <u>Harman Sabrina Dawn</u>	SOCIAL SECURITY NUMBER <u>[REDACTED]</u>		GRADE/STATUS <u>E-4/RA</u>
ORGANIZATION OR ADDRESS <u>372nd MPCO, APO AE 09355-1322</u>			

I, Sabrina D. Harman

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

LATE OCTOBER / EARLY NOVEMBER AROUND 12:30AM I WAS THE RUNNER FOR THE NIGHT. I WENT TO 1-B TO GET SPC AMBUHL TO GO USE THE PHONES. WHEN I GOT THERE FIVE PRISONERS WERE CUSTODIED INTO 1A. THEY WERE HANDCUFFED AND BRIGGED FROM GRACI AROUND 12:30AM STARTING A RIOT. FOR SOME TIME THEY WERE LAYING ON THE FLOOR, I ENDED UP TAKING A PICTURE OF CPL GRANNER POSING FOR A PICTURE. THEY WENT TO THE WALL WHERE THEY WERE STRIPPED. I CAME BACK IN WHEN THEY WERE GETTING INTO THE PYRAMID. MYSELF AND GRANNER POSED FOR A THUMBS UP PICTURE. I WENT BACK TO 1B, AMBUHL AND I GOT READY TO LEAVE, CAME DOWN THE STAIRS AND SAW ONE ON HIS KNEES AND THE OTHER STANDING. WE LEFT AND SHE RETURNED ABOUT 1 HOUR LATER. NOTHING FOLLOWS THAT NIGHT. A MAN WAS IN THE SHOWER OF 1B WHEN NIGHTSHIFT ARRIVED. THEY SAID HE WAS DEAD AND ON ICE. HE STARTED TO DEFROST AND WENT OUTSIDE THE SHOWER INTO THE HALLWAY. WE GOT THE KEY AND TOOK PHOTOS OF HIM. NOTHING FOLLOWS THAT DAY. TWO FEMALES WERE BROUGHT INTO 1B. I GOT A PICTURE WITH BOTH. NOTHING FOLLOWS THAT DAY.

Q: DURING THE NIGHT OF THE "PYRAMID" YOU DISCUSSED ABOVE, WHO ORDERED THE FIVE MEN TO STRIP THEIR CLOTHES OFF?

A: I DON'T REMEMBER.

Q: IS IT STANDARD PROCEDURE TO HAVE THEM REMOVE THEIR CLOTHES WHEN THEY ENTER CELL BLOCK 1A?

A: YES.

Q: WHO ORDERED THEM INTO THE HUMAN "PYRAMID"?

A: I LEFT THE BOTTOM FLOOR OF BLOCK 1A WHEN THE PRISONERS WERE TAKING OFF THEIR CLOTHES. WHEN I WALKED UPSTAIRS TO TALK TO SPC AMBUHL, WHEN AND RETURN CPL GRANNER'S DIGITAL CAMERA TO THE OFFICE. SPC AMBUHL AND I TALKED FOR A WHILE AND I LOOKED DOWN STAIRS AND NOTICE THE FIVE PRISONERS WERE NAKED AND PUTTING INTO A HUMAN PYRAMID. I THEN WALKED BACK DOWN STAIRS WITH THE DIGITAL CAMERA BUT SPC

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

SH

PAGE 1 OF 6 PAGES

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

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

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EXHIBIT E

SPC Harman, Sabrina D. Abu Ghraib prison complex,
Abu Ghraib, Iraq

FILE NUMBER:

STATEMENT OF

TAKEN AT

DATED 14 Jan 04

CONTINUED

Ambuhl stayed up stairs. I then took about two pictures of the naked prisoners in the human pyramid with CPL Granner and SPC England in the photos. I do not know who ordered the prisoners into the human pyramid as they were already getting into the position when I walked back down stairs with CPL Granner's digital camera.

Q: who was present when the prisoners got into the pyramid?

(b)(6)-2; (7)(C)-2 A: myself, CPL Granner, SPC England, SSG Frederick, and I think [REDACTED] I can identify the soldiers in the pictures if you show me the pictures.

Q: was anyone talking to the five prisoners when they were getting into the human pyramid?

A: No because the prisoners do not speak english. CPL Granner was "placing" them into position.

Q: was he the only MP who touched the prisoners?

A: I think so. I'm not sure.

Q: Is SPC "Ambuhl" the same person as SPC Ambuhl?

A: Yes.

Q: Are SSG Frederick, CPL Granner, and SPC England all in the 372 MP CO?

A: Yes.

Q: How long did the human pyramid last?

A: From the time I got to cell block 1A until the time I left with SPC Ambuhl was about 35 minutes?

Q: The pyramid lasted about 15 to 20 minutes.

Q: Did you take any photographs prior to the prisoners taking off their clothes and getting into the pyramid?

A: yes. I know I took a photograph of CPL Granner either his right or left arm back (cocked) like he was going to hit one of the prisoners on the floor. The prisoner was laying on the floor, fully clothed (with all the other prisoners) and CPL Granner was holding one down with his hand and

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INITIALS OF PERSON MAKING STATEMENT: AS

PAGE 2 OF 6 PAGES

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EXHIBIT 8

SPC Harman, Sabrina D. Abu Ghraib Prison Complex,
Abu Ghraib, Iraq

FILE NUMBER:

STATEMENT OF

TAKEN AT

DATED 14 Jan 04 CONTINUED

had his other arm back like he was going to hit the prisoner. He never hit any prisoner though. He then started picking them up off the floor and putting them against the wall. That is when the prisoners took off their clothes.

Q: Do you think any of this was wrong?

A: I don't think the human pyramid was wrong, nor CPL Granner posing like he was going to hit the prisoner. He never hit him.

Q: After you took the pictures of the pyramid, what happened?

A: I went back upstairs to get SPC Ambuhl and when we walked back down stairs the second time, I saw ~~the~~ one male prisoner, naked, on the his knees with another prisoner, naked, standing in front of him. I was standing by the doorway and the two prisoners were in the middle of the cell block. They appeared to be about 6 inches from each other. I do not think that was right for the prisoners to have to do.

Q: Who was present at this incident?

A: SSG Frederick, CPL Granner and SPC England.

Q: Did you see any contact between the two prisoners?

A: No.

Q: Which dead prisoners did you pose for photographs?

A: One dead man that the "OGA" brought into the prison and one dead man at the morgue.

Q: When did this happen?

A: The morgue incident was in August or September of 2003 and the dead OGA I can not remember.

Q: Did you ever give any order for any prisoner to do any sex acts?

A: No.

Q: Have you ever physically abused any prisoner?

A: No.

INITIALS OF PERSON MAKING STATEMENT: SH

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EXHIBIT 8

SPC Harman, Sabrina D.

Abu Ghraib Prison complex
Abu Ghraib, Iraq

FILE NUMBER:

STATEMENT OF

TAKEN AT

DATED 14 Jan 04

CONTINUED

Q: other than what you have told me, have you ever witnessed or heard about any prisoner being physically or sexually abused?

A: I heard that the same five prisoners were told to Sgt [REDACTED] entered the room talking about one prisoner on his knees and the other standing above masturbating in front.

Q: who were the prisoners?

A: I assume they were the same five as before.

Q: How do you know this?

A: SGT [REDACTED] just walked into the room I was in and told everyone. SGT Diaz, SPC Brown and myself were in the room.

Q: who is [REDACTED]?

A: He is a mechanic in the 372nd MP Co. I think he is a spc.

Q: what is the procedure to strip search prisoners?

A: If a female is being searched only female guards can be present. If a male is being strip searched both male and female guards can be present and can conduct the search.

Q: How do you know, it is standard operating procedure to strip search all prisoners in cell block 1A?

A: I just heard it from different people.

Q: Have you ever seen this in writing?

A: No.

Q: Has an officer or NCO ever told you this?

A: No officer has not I don't think any NCO has either.

Q: who told you this then?

A: Either MI, SSG Frederick or CPL Greener.

Q: Is it SOP to strip the prisoners then put them into a human pyramid?

A: No.

Q: Is it SOP to have prisoner simulate anal sex,

INITIALS OF PERSON MAKING STATEMENT: SA

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EXHIBIT 8

SFC Harman, Sabrina D.

Abu Ghraib Prison Complex
Abu Ghraib, Iraq

FILE NUMBER:

STATEMENT OF

TAKEN AT

DATED 14 Jan 04

CONTINUED

master hater, or pose for any photographic either
sexually explicit or not?

A: No.

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

A: No. (A) End of statement 11/5/04

INITIALS OF PERSON MAKING STATEMENT: SH

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EXHIBIT 8

SPC Harman, Sabrina D. Abu Ghraib Prison, Iraq

FILE NUMBER:
DATED 14 Jan 04 CONTINUED:

STATEMENT OF
STATEMENT (Continued)

TAKEN AT

[Empty lined area for statement content]

AFFIDAVIT

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

WITNESSES:

S. Harman
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 14 day of Jan, 2004 at Abu Ghraib Prison, Abu Ghraib, Iraq

ORGANIZATION OR ADDRESS

[Redacted Signature] (b)(6);(7)(C) -
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[Redacted Name]
(Typed Name of Person Administering Oath)
Art 136 (b)(4) UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

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EXHIBIT 8

United States)	Motion for
)	Appropriate Relief
v.)	Telephone Appearance
)	By Civilian Counsel
Ivan L. Frederick)	At 39a Sessions
)	16 Jun 04

I. Request for Relief

The Accused, by counsel, hereby moves to allow civilian defense counsel to appear telephonically at the 39a Session in the above styled matter scheduled for 21 Jun 04.

II. Facts

1. A 39a session is scheduled for 21 Jun 04 where matters critical to the defense of this case will be heard.
2. The hearing will last no more than two hours.
3. The Accused cannot afford to bring civilian counsel from the United States to Iraq for this brief proceeding.

III. Applicable Law

1. Sixth Amendment, the Constitution of the United States.
2. R.C.M. 506.

IV. Argument

The United States has arbitrarily chosen to keep these proceedings in Iraq for what has become purely political reasons. The United States has done so in the face of ever escalating violence to include the recent mortar attack on Camp Victory. These decisions

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have had and are having a chilling effect upon the prospects of a truly public and all encompassing proceeding.

The Accused has a right to civilian counsel. The Accused should not be penalized by the government's venue selection. The cost of travel is prohibitive. Telephonic appearances in non-Conus cases are a regular and ordinary event for Article 39a proceedings. It is not reasonable to expect that a military accused can afford to bring civilian counsel to every Article 39a in a non-Conus setting.

There should be, of course, ground rules for such an appearance to include limitations on examination of witnesses. Those reasonable ground rules, given the presence of military counsel, will not substantially impair Sixth Amendment considerations. The total preclusion of civilian defense counsel would infringe upon the Sixth Amendment right to counsel.

When the United States chooses to try a case in an inherently dangerous war zone, thousands of miles from CONUS, great deference should be afforded Sixth Amendment considerations. To do otherwise would be a defacto denial of right to counsel.

It is, after all, not as though this case could not be tried in CONUS. PFC England is ample evidence of that simple truth. She is represented by civilian counsel who are unfettered by distance or danger. She is an alleged co-conspirator of the Accused. This raises serious questions as to whether the Accused is receiving equal protection on several levels, but for purposes of this motion the equal protection issue is one of right to the appearance of counsel.

At the incipient stage of these proceedings, a telephonic appearance will cure the equal protection problem with regard to right to counsel.

V. Witnesses and Evidence

None.

Respectfully submitted,

/s/

[REDACTED] (b)(6)-4; 7(c)-4

Civilian Defense Counsel

[REDACTED]

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

Cpt, JA

Defense Counsel

all (b)(6)-2;
7(c)-2

4. The Investigating Officer, in his notification to SSG Frederick, included just the single CID agent as the sole witness, known to him, who he will ask to testify. (IOE 55). SFC [REDACTED] a paralegal for the prosecution, provided this notification to the Investigating Officer. (MAJ [REDACTED] testimony).

5. On March 27, SFC [REDACTED] notified the Investigating Officer that the Government intended to call just one witness—SA [REDACTED] of CID. (Id.) This agent was not an eyewitness, victim, member of the chain of command, or a significant investigator in the case. He read the case file.

5. On 30 March 2004 at 0906 the Defense submitted a timely, comprehensive witness and request for documentary evidence to the Investigating Officer. (Article 32 Investigation, Continuation Sheet, Chronology of Events, page 2; and IOE 19.)

6. On 30 March 2004, at 0936, the Investigating Officer notified SFC [REDACTED] whether it would be possible to get the defense requests for documents and witnesses by the 2 April 2004 hearing date. The Investigating Officer further stated that, "Some of these requests are very valid." (IOE 23)

7. On 31 March 2004, at 0950, the Defense notified the Investigating Officer that all the requested witnesses were either eyewitnesses, alleged victims, co-accused, or members of the chain of command. The Defense urged the Investigating Officer to compel the government to respond to its request for information so that the investigating officer could have a full and impartial hearing. (IOE 27)

8. The Defense objected to any and all alternatives to testimony and evidence.

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9. The sole CID Agent who testified at the hearing interviewed one co-conspirator (who invoked), he was not an eyewitness to any of the photographs, not present during any riots, did not take any photographs, and does not know much about computers. He testified that the Accused was present in only two prosecution exhibit photographs but he could not offer any knowledge as to the context surrounding the photographs.

10. No co-accused testified at the Article 32 investigation.

11. No alleged victim testified at the Article 32 investigation due to "security reasons".

12. Fifty-five defense witnesses were declared unavailable to testify by the government. The Defense objected to the unavailability of these witnesses. (Continuation Sheet, Block 21, DD Form 451, page 14).

13. The Defense requested that the Government pursue due diligence in locating defense witnesses. (Id.). No evidence exists that the Investigating Officer made the Government utilize due diligence.

14. The Defense requested that CPT [REDACTED] be granted testimonial immunity for CPT [REDACTED], LTC [REDACTED] and 1SG [REDACTED]. (Id.)

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

15. The Defense objected to the Government's lack of production of documents and miscellaneous information requested pursuant to RCM 405 and requested that the Investigating Officer compel the Government to produce the information. (Continuation Sheet, Block 21, DD Form 451, page 16).

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

16. The Government claimed that defense requests Mr. [REDACTED], SGT [REDACTED] and CPT [REDACTED] could not be found. (Id.). (b)(6)-2(7)(C)-2

17. Defense requested government to provide for telephonic testimony to the scores of witnesses deemed "not reasonably available" the government declared telephonic testimony was impossible. (Art. 32 MP3 file).

18. Government claimed, with respect to its failure to provide any documents other than the AR 15-6 investigation, that the prosecution did not possess the documents. No evidence of due diligence provided. (Art. 32 MP3 file).

19. According to the Government, witnesses previously unavailable to testify (alleged victims and Specialist Sivits) are now available to testify at trial

20. Defense requested witnesses are at locations throughout Iraq, Germany and the United States.

III. APPLICABLE LAW

1. RCM 906(b)(3) Correction of defects in the Article 32 investigation is a ground for appropriate relief.

2. The Military Judge should ordinarily grant a continuance so the defects may be corrected. RCM 906(b)(3) discussion.

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3. RCM 405(a) “[N]o charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation . . . has been made in substantial compliance with [RCM 405 Pretrial Investigation].”

4. Failure to substantially comply with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. RC 405(a) discussion.

5. RCM 405(h)(2). Any objection alleging failure to comply with [RCM 405] . . . shall be made to the investigating officer promptly upon discovery of the alleged error.”

6. Failure to produce reasonably available defense requested witnesses is a denial of a substantial pretrial right of the Accused. *U.S. v Chestnut*, 2 MJ 84 (CMA 1976).

7. Rights of the Accused are outlined in RCM 405(f)(1)-(12) to include the right to cross-examine witnesses, have witnesses produced, and have evidence (to include documents) within the control of military authorities produced, and to present anything in defense, extenuation or mitigation.

8. *U.S. v. Ledbetter*, 2 M.J. 37 (CMA 1976); *U.S. v. Simoy*, 46 M.J. 592 (A.F. CT. Crim. App. 1996), *U.S. v. Marrie*, 39 M.J. 993 (A.F. C.M.R. 1994); *aff’d*, 43 M.J. 35 (1995).

IV. ARGUMENT

This motion involves two distinct inquiries:

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1. Whether the Defense was improperly denied an opportunity to examine witnesses at the Article 32 proceeding.
2. Whether the Defense was improperly denied an opportunity to engage in document discovery at the Article 32 proceeding.

The Defense asserts that both opportunities were denied and specifically asserts that such denials are interfering and have interfered with preparation for trial by denying access to critical exculpatory and explanatory facts and leads. U.S. v. Stockman, 43 M.J. 856 (N.M. CT. Crim. App. 1996); U.S. v. Cumberledge, 6 M.J. 203, 206 (CMA 1979).

The Defense recognizes that the statutory right to confront witnesses in an Article 32 proceeding is more relaxed than the Constitutional standard at trial. Nonetheless, the Defense has the right to examine on cross-examination witnesses who are “reasonably available.” R.C.M. 405 (f)(8) and (g)(1)(A).

The availability of witnesses in an Article 32 setting was first addressed in U.S. v. Ledbetter, 2 M.J. 37 (CMA 1976). This case examined the import of Article 32(b). There the Court said:

“[W]e believe the concept of availability embodied in Article 32 requires a balancing of two competing interests. The significance of the witness’s testimony must be weighed against the relative difficulty and expense of obtaining the witnesses testimony at the investigation.” Ibid at 44.

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After Ledbetter, Chapter V. of the M.C.M. was amended to include the “100 mile” concept to assist in making a determination of availability. But that amendment was merely procedural in nature and not a “bright line.” U.S. v. Simoy, 46 M.J. 592 (A.F. CT. Crim. App. 1996), U.S. v. Marrie, 39 M.J. 993 (A.F. C.M.R. 1994); *aff’d*, 43 M.J. 35 (1995). Ledbetter remains the law.

In Ledbetter the Article 32 investigation was reopened because the key prosecution witness was requested and denied. Here all the alleged victims were requested and denied. All investigatory CID agents were requested and denied. The chain of command was requested and invoked. Multiple other witnesses were requested and the Government said they could not be found. Telephonic testimony was requested and denied.

The Article 32 proceeding was essentially a presentation of the CID Report of Investigation which the Defense was forced to accept at face value with no opportunity for discovery under R.C.M. 405(a). In the “Discussions” portion of R.C.M. 405(a) the M.C.M. specifically says, “The investigation also serves as a means of discovery.” That was not allowed to occur here.

The failure of discovery went beyond witnesses. The AR 15-6 investigation relating to this matter was provided, but that was all. The Government said it was not in possession of any other documents but there was no indication of any due diligence on the part of the government to seek out such documents which is its duty to do.

It is essential that the Defense be permitted to engage in full discovery at a new Article 32 proceeding as a means of threshold trial preparation and the development of legal theories of defense. Witnesses are now dispersed in multiple locations. The 205th MI Brigade is in

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Germany. The CID agents and some elements of the 205th are in CONUS. The chain of command is in CONUS and Iraq. The alleged victims are in Iraq.

It is a reasonable solution to cause one investigating officer to hold a new Article 32 in all three locations such that live testimony can be taken. Trying to return the multiple witnesses to Iraq at great expense, inconvenience and danger is not a practical, common sense result.

This is an unusual remedy but no more unusual than the facts and circumstances of the case. Further such a solution is the most cost effective and requires the minimum amount of travel.

Lastly, the Defense notes that every effort was made by the Defense to affect a proper Article 32 proceeding.

- Timely and numerous requests for the production of documents and evidence were made.
- Timely and numerous objections to the failure of the government to produce witnesses and evidence were made.
- The investigating officer noted that the Defense requests for witnesses and evidence were “very valid,” yet the government took no steps to produce documentary evidence or witnesses.

019562

V. WITNESSES AND EVIDENCE

The Defense requests the following personnel be made available to testify:

1. SFC [REDACTED]. He can also establish the foundation for both the Article 32 verbatim tapes (verbatim transcript request denied by the SJA) and for the authenticity of the summarized transcript of the proceedings.
2. SSG Frederick Article 32 MP3 files.
3. SSG Frederick Article 32 Investigation Report
4. SSG Frederick Article 32 Summarized Transcript

Respectfully submitted,

/s/

[REDACTED]

Counsel for the Accused

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

[REDACTED]

CPT, JA
Defense Counsel

(b)(6)-2 ;

7e) 2

019563

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Appropriate Relief was served upon the government and the military judge via email on 14 June 2004.

/s/

A large black rectangular redaction box covering the signature of the Defense Counsel.

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

CPT, JA

Defense Counsel

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b. The defense wishes to contact and interview the multiple Criminal Investigation Division Special Agents, military doctors, and numerous military witnesses who may have evidence and vital information pertaining to the charges that SSG Frederick faces. Further, the defense wishes to contact and interview numerous civilian contract employees and interpreters that were involved in investigating the alleged offenses or were potential witnesses to the alleged offenses. The alleged offenses occurred over a three-month time period with countless potential witnesses coming through the Abu Ghraib detention facility during that time, to include members of the MP and MI commands that ran the facility. Further, a great many of those witnesses were reservists who have since been deactivated and returned to their home units of assignment and/or their civilian jobs.

c. The defense wishes to contact and interview the acquaintances, neighbors, close friends, and relatives of SSG Frederick to prepare a case in defense, extenuation and mitigation. The defense does not have the time, resources, or training to locate and interview all of these potential witnesses.

4. The above-mentioned areas require a great degree of investigative expertise that the defense does not possess.

a. The investigative assistance will allow SSG Frederick to gather exculpatory and mitigating evidence in this case, and attack the veracity of the testimony of the government's witnesses, some of whom may be facing their own criminal charges. The defense is unable to do this on its own. One defense attorney cannot possibly adequately interview witnesses in CONUS and elsewhere, when it has taken twenty CID Special Agents, and numerous other investigators and interpreters working on this case, over eight weeks to collect the evidence. As of the date of this request, multiple investigations are still ongoing.

b. The investigator will assist the defense in rebutting an attack on the accused's credibility, and to assist in the preparation of the defense case and prepare adequate cross-examination for the government witnesses by providing evidence of untruthfulness and bias. Without this assistance, cross-examination will be less effective because the defense will be unable to travel to these distant locations, or effectively interview witnesses to develop the basis for exculpatory, mitigating and character evidence.

5. Only the addition of an investigator, with the capability and resources to track down and interrogate witnesses and potential suspects can properly assist the preparation of the defense of SSG Frederick.

a. For many of the Iraqi, civilian and reservist witnesses, the defense has neither social security numbers nor current telephone numbers or addresses of these potential witnesses, so tracking them down involves far more effort than simply contacting the worldwide locator service or the local telephone book. Moreover, the defense cannot become expert investigators before trial, as it takes these professionals years of training and experience to excel at such skills. Thus, an investigator is vitally important to the defense effort, and the denial of such an expert would result in a fundamentally unfair trial. See, e.g., United States v. Gonzalez, 39 MJ 459, (CMA 1994).

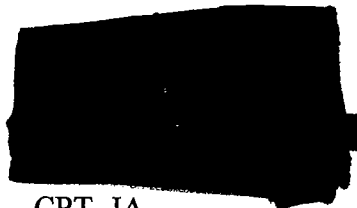
b. The defense points out the government had at least twenty CID special agents, and countless interpreters working on this case. To deny the defense this assistance will make effective representation of SSG Frederick difficult, and denial at this early stage clearly will result in a

fundamentally unfair trial, as SSG Frederick will be unable to discover potentially exculpatory evidence by personally interviewing witnesses familiar with the allegations in this case.

6. The defense further requests that the investigator be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests the individuals assist in the investigation of the case, and be present with SSG Frederick at trial as a member of the defense team.

7. The defense has made bona fide attempts for assistance through the U.S. Army Trial Defense Service. All these requests have been denied. The most recent denial was by BG Black on 17 May 2004. These documents are enclosed. The defense, working in a combat environment, lacks the human resources to conduct an effective, intercontinental criminal defense investigation into this fact-intensive, witness-intensive case.

8. There have been numerous statements by the U.S. Government surrounding a variety of ongoing investigations dealing with this case. The Central Intelligence Agency and the U.S. Army have contacted the defense and made requests for defense's assistance in their ongoing investigations. An expert assistant will help the defense sort through the extensive amount of discoverable information that is relevant to either the defense case-in-chief or the defense's sentencing case.



CPT, JA
Defense Counsel

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request for Expert Assistance was served upon the government and Military Judge by email on 18 May 2004.



CPT, JA
Defense Counsel

019567

USA
vs.
STAFF SERGEANT FREDERICK *

ARTICLE 32 HEARING

019568

APPELLATE EXHIBIT IX

Recognized R. 40

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019569

1 CAPTAIN [REDACTED] Before we get started I've got a
2 few preliminary items that I'd like to address.
3 First of all, (inaudible) all parties. I'm Captain
4 [REDACTED] I am the trial counsel for 16th MP
5 Brigade. And this is Lieutenant [REDACTED], he's
6 assistant trial counsel. We have Captain [REDACTED] and
7 the accused here, (inaudible), the court reporter in
8 this case and Major [REDACTED]. Sir, you are the
9 investigating officer appointed (inaudible) 32. Also
10 sir, I see here that (inaudible). I think Special
11 (inaudible) in the courtroom. I would ask sir that
12 she not be able to sit and attend and listen to these
13 proceedings. One, she is a co-accused in this case.
14 Also, she's a potential witness in this case and in
15 fact she has been undeclared unavailable for this
16 hearing today. So based on MRE 615, which allows for
17 prosecution or defense to object to a witness hearing
18 evidence that they may end up testifying to, I would
19 ask that she be excluded from those proceedings.
20 CAPTAIN [REDACTED] Rule 615 does not apply to
21 Article 32 investigations. The defense has no
22 objections.

019570

1 CAPTAIN [REDACTED] First of all, (inaudible)
2 potential witness (inaudible). Other than that, I
3 think it's an open hearing and I don't have any
4 objection.

5 : Is she going to testify or not testify?

6 CAPTAIN [REDACTED] She will not ... She's
7 unavailable for testimony today. However, she may be
8 a potential witness at the trial and she's also like
9 I said, co-accused in this case.

10 CAPTAIN [REDACTED] She's unavailable but she's
11 sitting in here.

12 CAPTAIN [REDACTED] But she's not available sir
13 because defense counsel has invoked her right against
14 self-incrimination. I believe that's why she's not
15 available. Also sir, in view of the preliminary
16 evidence, I would ask that the defense and yourself
17 sir, I know it's a big packet, but just check your
18 packets and make sure nothing is missing, that you
19 have, that your packets are equivalent. If anybody
20 believes they are missing something, I know it's a
21 lot, usually we'll go through document by document,
22 (inaudible). I just want to make sure everybody is ...

23 CAPTAIN [REDACTED] (inaudible)

019571

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

5

1 CAPTAIN [REDACTED] That he could flip through your
2 packet and you could flip through his packet. It's a
3 (inaudible) page by page. I don't think that's
4 necessary but just a preliminary ... (inaudible). I
5 just want to make sure we're (inaudible).

6 MAJOR [REDACTED] Sir, I agree, but I would just
7 ask that we do this at the end unless during the
8 course of the proceeding we find (inaudible).

9 CAPTAIN [REDACTED] Okay. That's fine.

10 CAPTAIN [REDACTED] I'd also point out at this time
11 sir that that package that you were given is merely
12 background at this point. It is not evidence. The
13 only evidence you'll consider is evidence that we
14 produce to you at the 32 hearing. I just wanted to
15 elaborate on that. Also, at this time I would ask
16 that if the defense has any objections to the 32
17 officer itself, (inaudible).

18 CAPTAIN [REDACTED]: That's okay. All they do sir is
19 given the nature of the charges and some statements
20 already made by this man, (inaudible) ask you some
21 preliminary questions (inaudible) in order to do my
22 job as a trial defense attorney, if I may?

23 MAJOR [REDACTED]: All right sir.

019572

1 CAPTAIN [REDACTED] Also, the defense has some
2 preliminary matters as well. Mr. [REDACTED] of New (b)(6)-4;(7)C
3 Hampshire will not be attending obviously (inaudible) 4
4 circumstances, he has all sorts of conflicts but he
5 is also going to be an attorney of record in this
6 case. (inaudible) I hope that both government
7 (inaudible) you have received by notifications. I've
8 had some problems with my e-mail. I (inaudible)
9 last Sunday. We still don't quite have it up but
10 (inaudible) hope that everybody received (inaudible).
11 We also have already made some preliminary objections
12 to the alternative (inaudible) to give you a heads
13 up, to talk with your legal advisor on that,
14 (inaudible). I'd like to remind you that (inaudible)
15 CID report is an alternative and it is specifically
16 excluded as evidence (inaudible) hearsay (inaudible),
17 although the rules of evidence also said that most
18 (inaudible) do not apply, I do ask that you take that
19 into consideration if at any point in your
20 deliberations you decide to overrule my objections.
21 CAPTAIN [REDACTED] If I could interrupt for a
22 second and address that. (inaudible) in the packet
23 is not evidence at this point. No evidence has been

019573

all

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

7

1 introduced at this time and I would ask the defense
2 to wait until we do introduce the specific pieces of
3 evidence that we have and then he can make those
4 objections at that time.

5 CAPTAIN [REDACTED]: And I agree with the trial
6 counsel sir. All I ask also is as far as objections
7 go that we not only get them on the record but given
8 the opportunity to submit written objections to you
9 at the end of the close of these proceedings and
10 that's usually done as well. And if you would make
11 either on the record today or in your findings make
12 the determinations of the unavailability of witnesses
13 and your decisions on the pertinence to testimony
14 and/or evidence. (inaudible), sir have you discussed
15 this case with anybody since (inaudible)
16 investigating officer (inaudible) investigation?

17 CAPTAIN [REDACTED] (inaudible) Sir, have you
18 discussed this case with anybody since they appointed
19 (inaudible) becoming the investigating officer in
20 this Article 32 investigation?

21 MAJOR [REDACTED] (inaudible)

22 CAPTAIN [REDACTED] How long have you been currently
23 in the country?

019574

1 MAJOR [REDACTED]: Since January 4.

2 CAPTAIN [REDACTED] And so what are your normal
3 duties, day to day?

4 MAJOR [REDACTED]: (inaudible) second in command.

5 CAPTAIN [REDACTED]: Have you ever served as an
6 investigating officer before?

7 MAJOR [REDACTED]: Actually I was (inaudible)
8 Article 32 investigating officer when I was at Fort
9 (inaudible). It was a murder case. I was into it
10 about two weeks (inaudible).

11 CAPTAIN [REDACTED] Sir, have you received any
12 formal training along the lines of the Geneva
13 Convention?

14 MAJOR [REDACTED] Yeah. (inaudible)

15 CAPTAIN [REDACTED] Prior to you being appointed to
16 this case, were you aware of any news media coverage
17 of this case?

18 MAJOR [REDACTED] (inaudible)

19 CAPTAIN [REDACTED] Was it this article?

20 MAJOR [REDACTED]: Yes.

21 CAPTAIN [REDACTED]: And I want (inaudible) into the
22 record (inaudible) Monday, March 22, 2004, titled
23 "Reports of Prison Abuse," (inaudible). I also have

019575

1 another article by the Kuwait Times, "U.S. Military
2 Charges 6 MPS in the abuse of Iraqi detainees."

3 MAJOR [REDACTED]: The Kuwait Times I'm aware of.

4 CAPTAIN [REDACTED] Do you see that sir? Were the
5 statements made by (inaudible) in regard to this
6 case?

7 MAJOR [REDACTED]: (inaudible)

8 CAPTAIN [REDACTED] Okay. Sir, have you received
9 any advice so far by the administrative (inaudible)
10 attorney in this case other than the general Article
11 32 officer?

12 MAJOR [REDACTED] Nothing that I haven't
13 (inaudible).

14 CAPTAIN [REDACTED] Okay. Sir, I've completed my
15 questions. Thank you very much.

16 CAPTAIN [REDACTED] No objections.

17 CAPTAIN [REDACTED] No objections to the (inaudible)
18 officer. Okay. Sir, the only other thing I have is,
19 I just wanted to go over the procedures that we
20 normally do (inaudible) objection (inaudible) proceed
21 this way. We'll both do it in an open statement. If
22 he wishes to do an open statement, we'll do an open
23 statement. I'll bring in my (inaudible) the

019576

1 prosecution will bring in my case first, witnesses
2 and evidence. At that point each witness to the
3 prosecution, I will question first. The defense will
4 have a chance and then you would have a chance in
5 order to make any further questioning at that point.
6 We do that until I close my case and the defense
7 closes his case and have his witnesses again that he
8 would question, I would question and then you would
9 have a chance to question, and then at the end we
10 would do some kind of closing arguments and then
11 submit it to you for a decision. Any objection to
12 that sir? Does that seem fair?

13 MAJOR [REDACTED]: Yes, that's fine.

14 CAPTAIN [REDACTED] Okay. That's all I have as far
15 as preliminary. (inaudible)

16 MAJOR [REDACTED] Again, (inaudible). I'm [REDACTED]
17 [REDACTED] (inaudible) I have been appointed
18 investigating officer under Article 32 (inaudible)
19 Military Justice to investigate certain charges
20 against you. (inaudible) read them all? (inaudible)
21 The names of the witnesses to the best of our
22 (inaudible) are Special [REDACTED], (inaudible)
23 [REDACTED]. I'm now going to advise you of

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

019577

1 your rights in this investigation. You have the
2 right to be present throughout the taking of evidence
3 so long as your conduct is not disruptive. You will
4 have a right at the proper time to cross examine all
5 available witnesses against you, to present anything
6 you might desire on your own behalf either in
7 defense, extenuation or mitigation, to have a lawyer
8 present with you at the investigation, to have me
9 examine all available witnesses requested by you, to
10 make a statement in any form at the proper time, to
11 remain silent or if you refuse to make any statement
12 during any offense that you're accused or suspected
13 of or concerning that which you are being
14 investigated. In addition, you are advised that any
15 statement made by you might be used as evidence
16 against you in a trial by court-martial. Do you
17 understand?

18 STAFF SERGEANT FREDERICK: Yes.

(b)(6)-2
7(c)-2 19 MAJOR [REDACTED] As investigating officer, it's
20 my duty to thoroughly and impartially investigate the
21 charges against you. This investigation shall
22 include inquires as to the truth of the matter set
23 forth in the charges, form of the charges, and a

019578

1 disposition which should be made of the case in the
2 interests of justice and discipline. It is my duty
3 to impartially evaluate and weigh all the evidence.
4 I will examine the available witnesses against you as
5 well as any available witnesses requested by you.
6 You and your counsel will be given full opportunity
7 to cross examine witnesses against you if they're
8 available and to present anything you may desire on
9 your own behalf either in defense or extenuation or
10 mitigation. I can recommend that the charges against
11 you be referred for a trial to a general court-
12 martial or to a different type of court-martial or
13 that the charges be dismissed or disposed of other
14 than by trial by court-martial. It is not my purpose
15 during this investigation to act as a prosecutor but
16 only as an impartial fact finder. Do you understand?

17 STAFF SERGEANT FREDERICK: Yes sir.

(b)(6)-2
7(c)-2
18 MAJOR [REDACTED] Before I begin the formal
19 investigation and examination of any witnesses in
20 this case, I must inform you that you have the right
21 to be represented all times during this investigation
22 by legally qualified counsel. This means that you
23 have the right to be represented by a civilian lawyer

019579

1 of your choice, but at no expense to the United
2 States, by military counsel of your own selection if
3 that counsel is reasonably available, or by counsel
4 detailed by the Trial Defense Service to represent
5 you
6 during this investigation. There's no cost to you
7 for military counsel. (inaudible)?

8 STAFF SERGEANT FREDERICK: Yes sir.

9 MAJOR [REDACTED] I believe that's it.

10 CAPTAIN [REDACTED] Sir, could you go over those
11 witnesses that will be present today.

12 MAJOR [REDACTED] Right now I've got Special Agent
13 [REDACTED] Sergeant [REDACTED], [REDACTED] (b)(6)-4; 7(c)-2
14 pronunciation, and (inaudible).

15 MAJOR [REDACTED] Sir, are these the witnesses
16 that you called or this all the parties' witnesses?

17 CAPTAIN [REDACTED] These are those witnesses that
18 we've got right now. And we're also trying to track
19 down some other people on the list. At some point
20 sir, we're going to have determine ... As you know,
21 we're here and it's a little more difficult to
22 communicate with people and telephonic is going to be
23 pretty much, it's going to be impossible. We're

019580

1 still trying to track down some of these soldiers
2 that you requested. If they're here, we're going to
3 try to get them here. But at some point sir, we're
4 going to have to ask you to make a decision whether
5 what they're going to say is going to be pertinent,
6 relevant to
7 your findings and make a decision about what we need
8 to ...

9 CAPTAIN [REDACTED] Yes sir. And the defense is
10 amenable to whatever recesses are necessary to
11 require witnesses.

12 CAPTAIN [REDACTED]: My point is that at some point
13 we're going to have to say, (inaudible) decision.

14 CAPTAIN [REDACTED]: I'd also add sir at this time,
15 that we just make sure that we go on the record, that
16 the accused is willing to go forward with this 32
17 hearing without the civilian counsel being present.

18 MAJOR [REDACTED] I did ask (inaudible).

19 CAPTAIN [REDACTED] And please attach sir, if you
20 could, just please attach (inaudible).

21 MAJOR [REDACTED] No problem. (inaudible)

22 CAPTAIN [REDACTED] Thank you sir. I just wanted
23 to, I know you spoke a little bit about it in your

019581

1 preliminary there about the purpose of the 32
2 investigation, but I just wanted to reemphasize sir
3 why we're here today and what your job is to do, and
4 that is first to inquire into the truth of these
5 allegations as we have set forth against the accused.
6 Secondly, you consider the form of the charges, and
7 then lastly, you're going to make recommendations as
8 to disposition of the charges. So, one, the truth,
9 and then (inaudible) you would recommend that we go
10 forward. Sir, the standard of proof here today is a
11 very low one. Reasonable grounds exist to believe
12 that the accused committed these crimes, these
13 offenses, reasonable grounds. You as a reasonable
14 person, you have a reasonable belief that these
15 things happened. It's not beyond a reasonable doubt
16 that we have in trial. It's not clear and convincing
17 evidence. It's just reasonable grounds. I just want
18 to keep that in mind as we go through the
19 proceedings. Sir, as we go through this, the accused
20 has been charged of five charges and 12
21 specifications, serious charges that you're going to
22 hear today and you're going to see evidence today on.
23 Conspiracy, two charges; dereliction of duty;

019582

1 maltreatment with five specifications of detainees;
2 assault and battery, two specifications; and then a
3 third specification of assault (inaudible) bodily
4 harm; and then the last charge, indecent acts sir.
5 These are very serious charges and you're going to
6 hear today from a CID agent to come in here who's
7 been investigating this (inaudible) investigation
8 since the beginning. He's going to tell you how that
9 investigation went, and then you're going to see each
10 and every one of these elements are going to be
11 covered through statements of co-accused and in fact
12 sir you're going to see pictures today of exactly
13 what happened. In fact, when we're done today,
14 you're going to see that these are very serious
15 offenses and we're going to be asking you to
16 recommend that these go forward to a general court-
17 martial, the most severe court-martial, because these
18 charges warrant that. After you see all the
19 evidence, it's going to be clear to you. I believe
20 you're going to see a standard beyond a reasonable
21 doubt. Again, you don't need to have that standard,
22 but you're going to be convinced of the truth of

019583

all
(b)(6)-2; 7(c)(2)

17

1 these charges at the end of today after you see the
2 evidence.

3 CAPTAIN [REDACTED] Sir, agree the standard of proof
4 is not a lot for Article 32 investigations. However,
5 under rule R.C.M. 405 which governs the use of
6 investigations of this nature, the rule says that we
7 may substantially comply with the requirements under
8 those rules. The reason is, military justice is more
9 than just (inaudible). This case, especially this
10 case, is going to be perceived by the public as the
11 standard there for what the military justice system
12 is all about. It's already ... Major (inaudible),
13 you've already stated today that you've already been,
14 had a chance to see an article in the Stars and
15 Stripes which is distributed throughout this country.
16 This (inaudible) is chosen prior to this Article 32
17 investigation to define these accused as cancers that
18 must be dealt with completely, already showed the
19 predisposition of how they want to have this case
20 handled. So in order to avoid complete whitewash and
21 the government here has only offered to include one
22 witness, one CID witness that wasn't an eyewitness to
23 the events of this day, even though there was a CID

019584

1 agent present during some of these incidents, it was
2 only a defense and the defense itself wanted the
3 victims to testify, the alleged victims, co-accused
4 and any actual eyewitnesses, not to mention those
5 witnesses that were, those members of the chain of
6 command who, it's the defense's understanding that
7 the government administrative as well as a
8 (inaudible) article, at AR 15-6 investigation, that
9 the defense requested, you also consider which will
10 go into other aspects of this case that's beyond what
11 you've even listed that involves a general officer in
12 charge, (inaudible) and the chain of command) who
13 have all been deemed by the powers that be that they
14 would be administratively processed. The government
15 has made a statement in its initial notification to
16 the defense that it was ready for this hearing on
17 the 2nd of April. Yet today, (inaudible) witnesses
18 that the defense has given you, only five are going
19 to be present? Now surely the government in its
20 attempt to avoid whitewash (inaudible) had the
21 foresight to think that the alleged victims and
22 (inaudible) witnesses would be requested by the
23 government by the defense. The defense is more

019585

1 willing to request recesses until we are able to get
2 as much information as possible including given the
3 15-6 investigation and the defense is also willing to
4 utilize whatever means necessary including e-mail,
5 telephone, whatever we can, given the nature of our
6 surroundings, in order to get as much information as
7 possible to use so that you can make the appropriate
8 decision as to disposition and that you can make a
9 proper recommendation to the higher authorities, even
10 though it appears at this time that those higher
11 authorities have already been predisposed to the
12 outcome of this case. I just want you to get as much
13 information as possible and I agree that a good
14 thorough examination of all witnesses, although we
15 just have four or five today, is necessary for you in
16 order to ensure that Staff Sergeant Frederick, who is
17 facing very serious charges, gets as fair a process
18 as possible.

(b)(6)2-
7C-2 19 CAPTAIN [REDACTED] The government calls Special
20 Agent [REDACTED] Raise your right hand. Do you swear
21 and affirm the testimony you're about to give in the
22 case now at hearing will be the truth, the whole
23 truth and nothing but the truth so help you God?

019586

(b)(6)-1; 7(c) 1

1 SPECIAL AGENT [REDACTED]: I do.

2 CAPTAIN [REDACTED]: Please be seated. State your
(b)(6)-2; 7(c) 2

3 full name please?

(b)(6)-1; 7(c) 1

4 SPECIAL AGENT [REDACTED] [REDACTED]

5 CAPTAIN [REDACTED] Your rank? (b)(6) 2; 7(c) -2

6 SPECIAL AGENT [REDACTED] Sergeant. (b)(6) 1 - 7(c) -1

7 CAPTAIN [REDACTED] And your current duty

8 assignment? (b)(6)-2; 7(c)-2

9 SPECIAL AGENT [REDACTED] CID Special Agent at Abu

10 Ghraib Prison.

11 CAPTAIN [REDACTED]: Special Agent [REDACTED] how long

12 have you been a CID Agent?

13 SPECIAL AGENT [REDACTED] Four years sir.
(b)(6) 1 - 7(c) -1

14 CAPTAIN [REDACTED] And since when were you assigned

15 at Abu Ghraib? (b)(6) 2 - 7(c) -2

16 SPECIAL AGENT [REDACTED] The beginning of January

17 2004. (b)(6) 1 - 7(c) 1

18 CAPTAIN [REDACTED] Okay. In that time when you

19 went over there in January, did there come a time

20 when a certain case became investigated?

21 SPECIAL AGENT [REDACTED] Yes sir.
(b)(6)-1; 7(c) -1

22 CAPTAIN [REDACTED]: And what was that case?

(b)(6) 2 - 7(c) -2

019587

(b)(6)(1)-(7)(c)-1
1 SPECIAL AGENT [REDACTED] It was the detainee abuse
2 case sir.

(b)(6)(2)-(7)(c)-2
3 CAPTAIN [REDACTED] Okay. Please tell Major [REDACTED]
4 [REDACTED] a little bit about how that started out and what
5 took place in that investigation, the very beginning.

(b)(6)(1)-(7)(c)-1
6 SPECIAL AGENT [REDACTED] The investigation started
7 when Specialist [REDACTED] he went on emergency leave in
8 November 03 for several weeks. When he came back
9 from emergency leave, he heard some shooting in the
10 prison. He wanted to get some pictures of that from
11 Corporal Graner. He went to him and gave him a
12 couple of CDs with photographs, took them back to his
13 computer, burnt copies and started viewing through
14 them. When he started going through the files, there
15 were several files with specific dates on them. So
16 he went through those and discovered a bunch of
17 pictures of detainees who were naked ...

18 CAPTAIN [REDACTED] Let me stop you just for a
19 second. Who is Specialist [REDACTED]
(b)(6)(2)-(7)(c)-2

20 SPECIAL AGENT [REDACTED] He was an MP in the 372nd
21 MP Company.
(b)(6)(1)-(7)(c)(1)

22 CAPTAIN [REDACTED] Okay. And what did he find?
(b)(6)(2)-(7)(c)-2

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(b)(6)1-7(c)-1

1 SPECIAL AGENT [REDACTED] The pictures of the files,
2 there were detainees who were naked. They were
3 sitting with each other naked, piled up on the floor
4 in a pyramid naked. They were forced to, pictures of
5 them masturbating, and just various other humiliating
6 and degrading photographs on there.

(b)(6)2-7(c)-2

7 CAPTAIN [REDACTED] How did he originally turn up
8 with that CD?

(b)(6)1; 7(c)-1

9 SPECIAL AGENT [REDACTED] I want to say first he
10 made an anonymous letter, put it in a letter and slid
11 the letter under our door and later he ...

(b)(6)2-7(c)-2

12 CAPTAIN [REDACTED] Did there come a time when he ...
13 What time did he come down, do you know?

(b)(6)-1; 7(c)-1

14 SPECIAL AGENT [REDACTED] I don't know what time
15 exactly but he came forward and gave a sworn
16 statement to our office?

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

17 CAPTAIN [REDACTED] Do you know why he came forward
18 at that point and it was not anonymous anymore?

(b)(6)-1; 7(c)-1

19 SPECIAL AGENT [REDACTED] He felt very badly about
20 it, that it was morally wrong. He was very upset
21 about seeing that type of abuse and didn't want it to
22 happen to any more prisoners.

019589

(b)(6)-2; 7(c)-2
 1 CAPTAIN [REDACTED] Okay. And who did he turn that
 2 CD over to? (b)(6)-1; 7(c)-1

3 SPECIAL AGENT [REDACTED] I believe it was Special
 4 Agent [REDACTED].

(b)(6)-2; 7(c)-2
 5 CAPTAIN [REDACTED] And who is Special Agent [REDACTED]

(b)(6)-1; 7(c)-1
 6 SPECIAL AGENT [REDACTED] He was the SAC, Special
 7 Agent in Charge, of the office at the time.

(b)(6)-2; 7(c)-2
 8 CAPTAIN [REDACTED]: Okay. So now you've got the CD
 9 with ... You look at it, it's got all these different
 10 pictures on it. What happened at that point?

(b)(6)-1; 7(c)-1
 11 SPECIAL AGENT [REDACTED] They initiated an
 12 investigation, briefed our battalion, and went and
 13 got, identified who was in the pictures and started
 14 interviewing, brought them in and started
 15 interviewing them one by one.

(b)(6)-2; 7(c)-2
 16 CAPTAIN [REDACTED]: Okay. These have not been
 17 marked. I guess we'll just start marking these at
 18 this point. Do you have something to mark it with?

(b)(6)-2; 7(c)-2
 19 } MAJOR [REDACTED] Is that the original?

20 } CAPTAIN [REDACTED] No sir. That's a copy of the
 21 original.

22 } MAJOR [REDACTED] (inaudible) original?

019590

1 CAPTAIN (b)(6)2; 7(c)-2: The original is with the CID. I
 2 hand you here what was marked as Prosecution Exhibit
 3 1 for identification. Do you recognize that?

4 SPECIAL AGENT (b)(6)-1; 7(c) 1: Yes sir.

5 CAPTAIN (b)(6)-2; 7(c)-2: What is it?

6 SPECIAL AGENT (b)(6)-1; 7(c)-1: This is a compact disc. I
 7 believe it's a copy of the original we collected as
 8 evidence.

9 CAPTAIN (b)(6)-2; 7(c)-2: How do you know ... How do you
 10 recognize that? How do you know that's a copy of ...

11 SPECIAL AGENT (b)(6)1-7(c)-1: Well it's more of a CPU
 12 exam and bullets 1 through 3 have (inaudible) file
 13 name, different file number and (inaudible) internal
 14 files. It contains all the pictures that were on the
 15 CD on the computer.

16 CAPTAIN (b)(6)-2; 7(c)-2: How many times have you seen
 17 that CD? I mean just the ...

18 SPECIAL AGENT (b)(6)-1; 7(c)-1: The pictures themselves?

19 CAPTAIN (b)(6)-2; 7(c)-2: I mean that CD itself?

20 SPECIAL AGENT (b)(6)1; 7(c) 1: Several.

21 CAPTAIN (b)(6)2-7(c)-2: Okay. And how many times have
 22 you reviewed the pictures on it?

23 SPECIAL AGENT: Reviewed many times.

(b)(6)-1; 7(c)-1

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(b)(6)1, (7)(C) - 1

1 CAPTAIN [REDACTED] Okay. At this time I'd like to
2 introduce Prosecution Exhibit 1 for identification as
3 Prosecution Exhibit 1 ...

4 CAPTAIN [REDACTED] Sir, to my understanding, this is
5 the exact same disc and I trust that it is. On this
6 is both evidence, pictures and also a CID report
7 which links to those pictures. I ask that you do not
8 consider the CID report itself and a description of
9 the evidence not be evidence in itself.

10 CAPTAIN [REDACTED]: That's fine sir. We have no
11 objection to that. We're introducing this for the
12 pictures. Okay. You were saying you saw the
13 pictures and at this point you started interviewing
14 people. Go ahead. Continue on there.

15 SPECIAL AGENT [REDACTED]: They brought them in a
16 couple, like two or three at a time, mostly one at a
17 time though, interviewed Sergeant Frederick, Sergeant
18 Graner, Ambuhl, Harman, Sivits, England.

19 CAPTAIN [REDACTED]: Seven different people?

20 SPECIAL AGENT [REDACTED]: Seven ... The seventh name
21 but ...

22 CAPTAIN [REDACTED] Harman, Davis ...

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(b)(6)1; 7(c)1

1 SPECIAL AGENT [REDACTED] Davis. Yes sir. Harman,
2 England, Davis and Sivits gave sworn statements and
3 Sergeant Frederick, Graner and Ambuhl requested legal
4 counsel.

(b)(6)2-7(c)2

5 CAPTAIN [REDACTED] Okay. So when you reviewed all
6 the pictures, you started seeing people in the photos
7 and this is what led you to bring these seven
8 individuals in?

(b)(6)1; 7(c)1

9 SPECIAL AGENT [REDACTED] Yes sir.

(b)(6)-2-7(c)2

10 CAPTAIN [REDACTED]: You mentioned Sergeant
11 Frederick. Who is Sergeant Frederick?

(b)(6)1; 7(c)1

12 SPECIAL AGENT [REDACTED] He was the NCOIC at the
13 Hard Site at the prison.

(b)(6)2; 7(c)2

14 CAPTAIN [REDACTED] Is he the accused here in the
15 case today?

(b)(6)1; 7(c)1

16 SPECIAL AGENT [REDACTED] Yes sir.

(b)(6)2; 7(c)2

17 CAPTAIN [REDACTED] Okay. So you got sworn
18 statements ... What happened? How did that work out?

(b)(6)1; 7(c)1

19 SPECIAL AGENT [REDACTED] They were advised of their
20 rights. Four waived their rights and gave pretty
21 detailed statements. Some had been interviewed two
22 or three different times and described what was
23 taking place in the prison, who was being abused, how

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1 they were being abused, who was taking pictures, and
2 who was present at the time.

3 CAPTAIN (b)(6)-2; 7(c)-2 [REDACTED] Okay. Do you know who gave
4 statements?

5 SPECIAL AGENT (b)(6)1; 7(c)1 [REDACTED] Harman, England, Sivits
6 and Davis.

7 CAPTAIN (b)(6)2; 7(c)2 [REDACTED]: Okay. So Frederick did not give
8 a statement. Graner ...

9 CAPTAIN (b)(6)2; 7(c)-2 [REDACTED] Sir, (inaudible) I'm going to ask
10 you not consider the fact that Sergeant Frederick
11 decided to seek legal counsel.

12 CAPTAIN (b)(6)2; 7(c)2 [REDACTED] Frederick did not, Graner did
13 not and ...

14 SPECIAL AGENT (b)(6)1; 7(c)1 [REDACTED] Ambuhl did not sir.

15 CAPTAIN [REDACTED] Okay. So what ... By the way,
16 did (b)(6)2; 7(c)2

17 you interview ... Did you interview these people ...
18 Did you interview Sivits, Harman, Davis or anyone?

19 SPECIAL AGENT (b)(6)-1; 7(c)1 [REDACTED] The only one I interviewed
20 was Ambuhl and she requested legal counsel.

21 CAPTAIN (b)(6)2; 7(c)-2 [REDACTED] Okay. But you're familiar with
22 the file. You're familiar with the case. Please
23 tell us generally on those sworn statements, what

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1 kinds of things you found out? And maybe keep it
2 specific to Frederick as much as possible, the
3 accused here. (b)(6)-1; 7(c)-1

4 SPECIAL AGENT [REDACTED] The majority of the
5 statements were read through. They were very
6 detailed of what was going on. Harman and England
7 specifically had a lot of details in theirs and they
8 described several incidents where Sergeant Frederick
9 punched a detainee one time in the chest so hard that
10 he collapsed onto the floor and thought he was having
11 a cardiac arrest, where he hit a guy I believe in the
12 stomach with a football, where they had individuals
13 standing on a MRE box with wires attached to his
14 fingers and photographed during this time, others
15 piled in a pyramid, who was present when they were
16 piled in the pyramid, who was hitting who at the
17 time, and who was kicking who. They were really
18 detailed. (b)(6) 2; 7(c) 2

19 CAPTAIN [REDACTED] Sir, at this time I would like to
20 object to all this line of questioning. Because it
21 is an alternative to the direct testimony of either
22 the agent who took these statements and it's merely
23 describing what is in the report. And sir, you have

019595

1 not made the determination as of yet onto the record
2 of the nonavailability of those witnesses.

3 MAJOR ^{(b)(6)-2; 7(c)-2} [REDACTED]: I think we do have
4 nonavailability statements from all of those accused
5 ...

6 CAPTAIN ^{(b)(6)-2; 7(c)-2} [REDACTED] Sir, if I can just point out, as
7 Captain [REDACTED] pointed out earlier when I mentioned
8 Rule 615, the rules of evidence do not apply here at
9 32 except for some very specific incidents. He can
10 object. It goes on the record. You don't need to
11 rule on those objections. But hearsay will come in,
12 all kinds of different things will come in, and
13 that's all ... You can note his objection. I think we
14 should move on with this. Clearly, in 32
15 investigations, the rules of evidence don't apply.

16 CAPTAIN ^{(b)(6)-2; 7(c)-2} [REDACTED] Sir, as I mentioned before, I
17 agree not all the rules are specific privileges.
18 Some rules, however, are applicable under military
19 rules. You do have as part of your deliberation
20 process after the fact-finding session, you do have
21 to make a determination of a reasonable (inaudible)
22 nonavailability of witnesses prior to accepting
23 alternatives to that testimony. What Agent ^{(b)(6)-1; 7(c) /} [REDACTED] is

019596

1 doing, and the government is trying to do in this
2 case, instead of presenting those agents, which I
3 believe the defense witnesses listed 12 of those
4 agents that were MPs who did take statements. You
5 just heard from Agent (b)(6)-7(c)1 that he didn't even take
6 one of those statements and the one person that he
7 did interview did not, decided at that time not to
8 give a statement. So there is no ... This is entirely
9 an alternative to those testimonies under the rules
10 of a court-martial. And to hear (inaudible).

11 CAPTAIN (b)(6)-2; 7(c)-2 May I continue? Let me just ask
12 Special Agent (b)(6)1-7(c)1, did you help conduct this
13 investigation?

14 SPECIAL AGENT (b)(6)-2; 7(c)-2: Yes.

15 CAPTAIN (b)(6)1-7(c)1 What was your role in the CID
16 investigation?

17 SPECIAL AGENT (b)(6)1; 7(c)1 (inaudible) when this
18 occurred. We were down to 12 at the time, to assist
19 in interviewing the victims identified, the detained
20 victims, (inaudible) the units.

21 CAPTAIN (b)(6)2; 7(c)-2 Did you make conclusions from
22 the report, from the CID report?

019597

(b)(6);(7)(C) 1

1 SPECIAL AGENT [REDACTED] We (inaudible) all of our
2 information together and come up with a ...

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

3 CAPTAIN [REDACTED] You're familiar with the
4 statements that are in the report?

(b)(6); (7)(C)-1

5 SPECIAL AGENT [REDACTED] Yes sir.

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

6 CAPTAIN [REDACTED] All of them. Even though you
7 didn't take some of them?

(b)(6); (7)(C) 1

8 SPECIAL AGENT [REDACTED] Yes. I read it all sir.

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

9 CAPTAIN [REDACTED] And you're familiar with the
10 conclusions of the CID report?

(b)(6); (7)(C)-1

11 SPECIAL AGENT [REDACTED] Yes.

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

12 CAPTAIN [REDACTED]: You're familiar with the entire
13 report?

(b)(6); (7)(C)-1

14 SPECIAL AGENT [REDACTED]: Yes.

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

15 CAPTAIN [REDACTED] Okay. And as you were saying,
16 just to go back to where you were, there was Sivits,
17 Davis, Harman and England came forward and gave all
18 statements about the events and how Frederick was
19 involved. Who was ultimately entirely involved in
20 all
21 of these incidences, most of the maltreatment and
22 abuse incidences?

019598

(b)(6)1, (b)(7)(C)1

1 SPECIAL AGENT [REDACTED] Corporal Graner and
 2 Sergeant Frederick's name came up most with being the
 3 senior people there during the time.

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

4 CAPTAIN [REDACTED] And who else?

(b)(6)-1, (b)(7)(C)-1

5 SPECIAL AGENT [REDACTED] Sergeant Davis' name was
 6 mentioned several times. Ambuhl, Harman, England.

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

7 CAPTAIN [REDACTED] Those seven were involved in
 8 mostly incidences that

(b)(6)1, (b)(7)(C)-1

9 SPECIAL AGENT [REDACTED] Yes. All within the night
 10 shift.

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

11 CAPTAIN [REDACTED]: All right. Let me get this
 12 marked. This is Exhibit 2. (inaudible) Just to
 13 make it easier, everything I'm introducing is in
 14 these packets. (inaudible) Prosecution Exhibit 2 for
 15 identification, it is a rough sketch pertaining to
 16 the witness. Do you recognize that?

(b)(6)1, (b)(7)(C)1

17 SPECIAL AGENT [REDACTED] Yes sir.

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

18 CAPTAIN [REDACTED] And what is this?

(b)(6)1 - (b)(7)(C)1

19 SPECIAL AGENT [REDACTED] This is a sketch of Tier 1
 20 (inaudible) Hard Site.

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

21 CAPTAIN [REDACTED]: And there's two pages there?

(b)(6)1 - (b)(7)(C)-1

22 SPECIAL AGENT [REDACTED] Yes sir.

019599

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

33

1 CAPTAIN [REDACTED] And how do you recognize that
2 sketch?

(b)(6)-1; (7)(C)-1

3 SPECIAL AGENT [REDACTED] (inaudible) first tier as
4 you come in that door, (inaudible) come in this way,
5 between here is a hallway and you come up the steps
6 to the guard shag, and this is looking, this is the
7 top tier, basically looking down to the floor.

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

8 CAPTAIN [REDACTED] And he's indicating in the
9 (inaudible) shower room, shower, and he's indicating
10 that from the center where the guards are and you
11 come in through there. Go ahead.

(b)(6)-1; (7)(C)-1

12 SPECIAL AGENT [REDACTED] As you'll see, this
13 depicts all the numbered cells on the top floor where
14 the showers are located and the steps located to the
15 guard shag.

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

16 CAPTAIN [REDACTED] How many times (inaudible)?

(b)(6)-1; (7)(C)-1

17 SPECIAL AGENT [REDACTED]: At least ten times.

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

18 CAPTAIN [REDACTED]: At least ten times. And does
19 that sketch accurately depict the current status, the
20 status of (inaudible) when you were there when the
21 crimes were committed?

(b)(6)-1; (7)(C)-1

22 SPECIAL AGENT [REDACTED]: Yes.

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

23 CAPTAIN [REDACTED]: At this time I would ask to

019600

1 introduce Prosecutions Exhibit 1, excuse me,
2 Prosecution Exhibit 2 for identification into
3 evidence as Prosecution Exhibit 2.

4 CAPTAIN (b)(6)-2; (7)(C)-2 [REDACTED] Once again sir, this is once
5 again this can be described as a description and not
6 an actual floor plan of the (inaudible) but rather is
7 a depiction of (inaudible) not necessarily actual.
8 It can be useful as an aide in testimony but I'd ask
9 that you not consider this part of your (inaudible).

10 CAPTAIN (b)(6)-2; (7)(C)-2 [REDACTED] I'd have to say that, again,
11 objections, when you go back to your investigating,
12 or excuse me, your advisors, you can discuss that
13 further with them whether or not you should consider
14 it, the foundations that were laid. Again, the
15 evidence (inaudible) but we still lay the foundation.
16 It's an accurate description. He's been there at
17 least ten times. He knows what the site looks like.
18 Again sir, I will say, you can discuss this with your
19 investigating officer, excuse me, the advisor
20 (inaudible). (b)(6)-2; (7)(C)-2

21 CAPTAIN [REDACTED] Sir, the defense agrees with
22 (inaudible) I'll just make an objection under the
23 same rule, and we can just note ...

019601

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

1 CAPTAIN [REDACTED] This is a witness who is
 2 involved in the investigation, he has been out there
 3 who has firsthand knowledge, firsthand knowledge of
 4 this place (inaudible).

5 CAPTAIN [REDACTED] Who built that? Who built that?

(b)(6)2; 7(c)2

6 CAPTAIN [REDACTED]: The sketch?

7 CAPTAIN [REDACTED] Who built that sketch?

(b)(6)1-7(c)1

8 SPECIAL AGENT [REDACTED] It's (inaudible) officer.
 9 He's redeployed.

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

10 CAPTAIN [REDACTED] (inaudible) Is that CID agent
 11 (inaudible)?

(b)(6)1; 7(c)1

12 SPECIAL AGENT [REDACTED] Yes sir.

(b)(6)2-7(c)2

13 CAPTAIN [REDACTED] CID created this?

(b)(6)1-7(c)2

14 SPECIAL AGENT [REDACTED] Yes.

(b)(6)1; 7(c)2

15 CAPTAIN [REDACTED] Again sir, (inaudible) to lay
 16 the foundation for. Again, rules of evidence don't
 17 really apply. I have a slew of pictures to be
 18 Prosecution Exhibit 3 for identification.
 19 Prosecution Exhibit 3 for identification. Do you
 20 recognize that?

(b)(6)1; 7(c)1

21 SPECIAL AGENT [REDACTED] Yes sir.

22 CAPTAIN [REDACTED]: And what is it?

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

019602

(b)(6)1; 7(c)1

1 SPECIAL AGENT [REDACTED] That is Tier 1 (inaudible)
2 of Hard Site.

(b)(6)2; 7(c)2

3 CAPTAIN [REDACTED] These are from a sketch sir. On
4 Tier 1 (inaudible) lower left side has an isolation
5 door (inaudible).

(b)(6)1; 7(c)1

6 SPECIAL AGENT [REDACTED] Isolation. Standing here,
7 looking down at the floor.

(b)(6)2; 7(c)2

8 CAPTAIN [REDACTED] Did you say how you recognized
9 that? I don't mean ...

(b)(6)1; 7(c)1

10 SPECIAL AGENT [REDACTED] Yes. If you're standing
11 looking at the guard shag, looking down at the lower
12 level of (inaudible).

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

13 CAPTAIN [REDACTED] And what does that picture
14 entail? What does it entail?

(b)(6)-1; 7(c)1

15 SPECIAL AGENT [REDACTED] It appears to be two or
16 three detainees on the floor handcuffed and bound
17 together.

(b)(6)2; 7(c)2

18 CAPTAIN [REDACTED] By the way, how long have you
19 been at the prison station there now?

(b)(6)1; 7(c)1

20 SPECIAL AGENT [REDACTED] Full time, basically
21 January, first week of January, then I went back to
22 (inaudible) for about a week and a half, and then
23 back up to Abu.

019603

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

1 CAPTAIN [REDACTED]: So when you say, it looks like
 2 three detainees, I mean, how do you know? How do you
 3 know they're detainees. What's your experience with
 4 ...

(b)(6)1; (7)(C)1

5 SPECIAL AGENT [REDACTED]: Well, it's hard to tell
 6 that the detainees are on the floor but it's what it
 7 is.

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

8 CAPTAIN [REDACTED]: What makes you think there are
 9 detainees on the floor?

(b)(6)1; (7)(C)1

10 SPECIAL AGENT [REDACTED]: Well, there's several
 11 guards around as well as an interpreter, the big guy
 12 in the middle is an interpreter, he's translating for
 13 them.

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

14 CAPTAIN [REDACTED] (inaudible) photograph, do you
 15 recall any of those?

(b)(6)1; (7)(C)1

16 SPECIAL AGENT [REDACTED] (inaudible).

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

17 CAPTAIN [REDACTED]: Okay. Anybody else you
 18 recognize in the photographs?

(b)(6)1; (7)(C)1

19 SPECIAL AGENT [REDACTED]: The gentleman standing in
 20 the middle with his hands on his hips is an Egyptian
 21 interpreter named [REDACTED]

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

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

22 CAPTAIN [REDACTED]: Okay. Anybody else you
 23 recognize?

019604

(b)(6)1; (7)(C)1

1 SPECIAL AGENT [REDACTED] I can't be sure if that's
 2 Sergeant Frederick

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

3 CAPTAIN [REDACTED] At this time, (inaudible)
 4 Prosecution Exhibit 3 into evidence as Prosecution
 5 Exhibit 3. Oh by the way sir, these pictures are
 6 included, these are just (inaudible) specific
 7 pictures that refer to the accused. Prosecution
 8 Exhibit 4 for identification, and that, do you
 9 recognize that?

(b)(6)-1; (7)(C)1

10 SPECIAL AGENT [REDACTED] Yes sir.

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

11 CAPTAIN [REDACTED] And what is it?

(b)(6)-1; (7)(C)1

12 SPECIAL AGENT [REDACTED] That is three detainees
 13 naked on the floor with their legs shackled
 14 (inaudible) bound together ...

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

15 CAPTAIN [REDACTED] Where is it?

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

16 SPECIAL AGENT [REDACTED] Same location, just
 17 looking ... Do you have the sketch sir? They're
 18 standing on this side looking back down (inaudible).
 19 They're standing right here looking this way.

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

20 CAPTAIN [REDACTED]: And he's indicating that they're
 21 down towards the guard area.

(b)(6)1; (7)(C)1

22 SPECIAL AGENT [REDACTED] This is towards the guard
 23 area. This picture here is toward the far end ...

019605

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

1 CAPTAIN [REDACTED] So Prosecution Exhibit 4 is
2 towards the far end and Prosecution Exhibit 3 is the
3 towards the guard area. Anything else you recognize
4 in that photograph?

(b)(6)-1;(7)(C)-1

5 SPECIAL AGENT [REDACTED] It appears to be Corporal
6 Graner standing there with his hands on his hips, but
7 I can't be certain ...

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

8 CAPTAIN [REDACTED]: Can't be certain. Okay.

9 Prosecution Exhibit 4 into evidence, Prosecution
10 Exhibit 4. Okay. Prosecution Exhibit 5. Again,
11 we've marked Prosecution Exhibit 5 for
12 identification. Do you recognize that?

(b)(6)-1;(7)(C)-1

13 SPECIAL AGENT [REDACTED] Yes sir.

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

14 CAPTAIN [REDACTED]: And what is it?

(b)(6)-1-(7)(C)-1

15 SPECIAL AGENT [REDACTED] That is the same three
16 detainees on the floor with I think it's Corporal
17 Graner kneeling on the chest of one of them, by the
18 isolation cells, again you can see the metal doors at
19 the isolation cells.

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

20 CAPTAIN [REDACTED] And how do you recognize all
21 that?

(b)(6)-1;(7)(C)-1

22 SPECIAL AGENT [REDACTED] Just from the isolation
23 doors.

019606

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

40

1 CAPTAIN [REDACTED] Prosecution Exhibit 5 into
2 evidence as Prosecution Exhibit 5. I'll show you
3 what's marked as Prosecution Exhibit 6 for
4 identification. And do you recognize that?

5 SPECIAL AGENT (b)(6)-1;(7)(C)-1 [REDACTED] Yes sir.

6 CAPTAIN (b)(6)-2;(7)(C)-2 [REDACTED] What is it?

7 SPECIAL AGENT (b)(6)(1)-(7)(C)-1 [REDACTED] It's the same location,
8 lower level there in the Tier 1 (inaudible) by the
9 isolation cells with three detainees. There appears
10 to be a football in the background. Someone is
11 walking ...

12 CAPTAIN (b)(6)2;(7)(C)2 [REDACTED]: Okay. And how do you recognize
13 all that?

14 SPECIAL AGENT (b)(6)1-(7)(C)1 [REDACTED] Just from the area sir.

15 CAPTAIN (b)(6)-2;(7)(C)2 [REDACTED]: I'm sorry?

16 SPECIAL AGENT (b)(6)(1)-(7)(C)1 [REDACTED] From the area to the cell
17 and tier. That's (b)(6)-4-(7)(C)-4 [REDACTED] sitting in the chair.

18 CAPTAIN [REDACTED]: Do these photographs have dates
19 stamped on them? (b)(6)-2;(7)(C)-2

20 SPECIAL AGENT (b)(6)1-(7)(C)-1 [REDACTED]: No sir.

21 CAPTAIN (b)(6)2-(7)(C)2 [REDACTED]: When these were taken.

22 SPECIAL AGENT (b)(6)1;(7)(C)1 [REDACTED] On the CD, the little
23 folders have like 07/November. They were marked just

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1 like with a date on the little folder but as far as
 2 the pictures, I don't know how those were date
 3 stamped.

4 CAPTAIN (b)(6)-2; (7)(C) (2) [REDACTED] Prosecution Exhibit 6 for
 5 identification as Prosecution Exhibit 6. Prosecution
 6 Exhibit 7 for identification handed to the witness.
 7 Do you recognize that? (b)(6)-1; (7)(C) (1)

8 SPECIAL AGENT [REDACTED] Yes sir.

9 CAPTAIN (b)(6)-2; (7)(C) (2) [REDACTED]: What is it?

10 SPECIAL AGENT (b)(6)-1; (7)(C) (1) [REDACTED] Same three detainees on
 11 the floor, same location, and the football appears to
 12 be bouncing to the right of the ...

13 CAPTAIN [REDACTED] All seven of these pictures are
 14 very similar? (b)(6)-2; (7)(C) (2)

15 SPECIAL AGENT (b)(6)-1; (7)(C) (1) [REDACTED] Yes, it is.

16 CAPTAIN (b)(6)-2; (7)(C) (2) [REDACTED]: Appears to be the same events?

17 SPECIAL AGENT (b)(6)-1; (b)(6) (1) [REDACTED] Yes sir. (inaudible) on
 18 the floor, someone was throwing a football at them.

19 CAPTAIN (b)(6)-2; (7)(C) (2) [REDACTED] Okay. Move Prosecution Exhibit
 20 7 for identification as Prosecution Exhibit 7.

21 Prosecution Exhibit 8 for identification. And do you
 22 recognize that?

23 SPECIAL AGENT (b)(6)-1; (7)(C) (1) [REDACTED] Yes sir.

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

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1 CAPTAIN [REDACTED]: And what is it?

(b)(6)1; (7)(C)1

2 SPECIAL AGENT [REDACTED] That is the seven
3 detainees (inaudible) because they started a riot at
4 Ganci. It's formed into a pyramid or dog pile and
5 that is Corporal Graner and Specialist Harman with a
6 thumbs-up picture. (b)(6)2; (7)(C)-2

7 CAPTAIN [REDACTED] Do you recognize that area?

(b)(6)-1; (7)(C)1

8 SPECIAL AGENT [REDACTED] The area is the Hard Site
9 but I don't know what location in the Hard Site that
10 is.

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

11 CAPTAIN [REDACTED] You can't tell by that
12 photograph where exactly in the Hard Site it is?

(b)(6)1; (7)(C)-1

13 SPECIAL AGENT [REDACTED] No sir.

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

14 CAPTAIN [REDACTED] Explain please what do you mean
15 by Hard Site?

(b)(6)1; (7)(C)-1

16 SPECIAL AGENT [REDACTED] The Hard Site is the
17 indoor cells of the prisoners, seven tiers of indoor
18 concrete normal jail cells. Tier 1 is where Military
19 Intelligence or CID holds are kept, they're the worst
20 of the worst. And Tiers 2 through 5 are for Iraqi
21 prisoners for Iraqi problems, i.e. burglaries, rape,
22 robbery, whatever. And the MPs, most MPs work on
23 Tier 1 (inaudible) as the sketch depicts.

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1 (inaudible) work on other tiers to supervise the
 2 Iraqi correction officers to make sure they're doing
 3 the right thing. (b)(6)2;(7)(C)2

4 CAPTAIN [REDACTED] So the first, Prosecution
 5 Exhibits 1 through 6, oh I'm sorry, that's 7, 1
 6 through 7 so far have been (inaudible) which were
 7 identified as ... (b)(6)1-(7)(C)1

8 SPECIAL AGENT [REDACTED] Yes. Mostly (inaudible).
 (b)(6)-2;(7)(C)2

9 CAPTAIN [REDACTED]: Now this one you can't
 10 necessarily determine whether it's one area
 11 (inaudible) Hard Site? (b)(6)-1;(7)(C)-1

12 SPECIAL AGENT [REDACTED] Yes sir.
 (b)(6)-2;(7)(C)2

13 CAPTAIN [REDACTED]: Now when you say ... Who was at
 14 1A and 1B? (b)(6)1;(7)(C)1

15 SPECIAL AGENT [REDACTED] Military Intelligence
 16 holds security detainees, people who have killed US
 17 troops. (b)(6)-2;(7)(C)2

18 CAPTAIN [REDACTED] Some of the most serious
 19 offenders? (b)(6)1;(7)(C)1

20 SPECIAL AGENT [REDACTED] Yes sir.

21 CAPTAIN [REDACTED] Okay. Who else is there? Is
 (b)(6)2;(7)(C)2
 22 there anybody else (inaudible)?

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(b)(6);(7)(C)1

1 SPECIAL AGENT [REDACTED] Normally not. Normally ...
2 They put other folks there, they transfer them up
3 there, but mostly it's just security detainees, MI,
4 other (inaudible). The CID might have a few
5 individuals there (inaudible) bad.

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

6 CAPTAIN [REDACTED] Are you aware of any juveniles
7 or females?

(b)(6)-1;(7)(C)-1

8 SPECIAL AGENT [REDACTED] Females are there some
9 time because there's no other place to put them.

(b)(6)-1;(7)(C)-2

10 CAPTAIN [REDACTED] Why do they keep the females
11 there?

(b)(6);(7)(C)1

12 SPECIAL AGENT [REDACTED] They just kind of keep
13 segregating them. There's no female wing of the
14 prison. They just keep them up there, away, and
15 monitor them, there's more MPs and guards, and make
16 sure they're safeguarded in the locations.

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

17 CAPTAIN [REDACTED] Okay. I move Prosecution
18 Exhibit 8 for identification into evidence,
19 Prosecution Exhibit 8. Prosecution Exhibit 9 for
20 identification handed to the witness. Do you
21 recognize that?

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

22 SPECIAL AGENT [REDACTED] Yes sir. That is the
23 lower level of Tier 1 (inaudible). You can tell by

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1 the steel doors for the isolation cells. And that is
2 ...

3 CAPTAIN (b)(6)-2; (7)(C)-2 [REDACTED] And what is it?

4 SPECIAL AGENT (b)(6)-1; (7)(C)-1 [REDACTED] That's Graner and England
5 posing in there with both the pyramid or dog pile.

6 CAPTAIN (b)(6)-2; (7)(C)-2 [REDACTED] Okay. I think you've already
7 described how you recognized that. Do you remember
8 any of the stories from the statements about, just
9 generally about the pyramid or the dog pile?

10 SPECIAL AGENT (b)(6)-1; (7)(C)-1 [REDACTED] Yes sir. They were
11 basically, they were put in there because they were
12 starting a riot in one of the Ganci prisons. And if
13 you don't know what that means, there's three
14 sections of Abu Prison. There's the Hard Site,
15 there's the Vigilant which is the MI olds, there's
16 about 700 people there, and there's Ganci, which
17 would be described as the general population,
18 everybody else. And apparently those seven were
19 starting a riot at the time in Ganci and they brought
20 them up to the Hard Site and that was the same night
21 the riot or the same day the riot started. The
22 brought them up there, stripped them, starting doing
23 the naked pyramid and other acts with them.

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

1 CAPTAIN [REDACTED] Are you familiar from your
 2 investigation any of the policies or SOPs in either
 3 the Hard Site or the interrogation room, how they
 4 treat prisoners?

(b)(6) 1; (7)(C) - 1

5 SPECIAL AGENT [REDACTED] There are specific rules
 6 for interrogation. At the time, I don't know if they
 7 had anything written in paper. (inaudible) as far as
 8 SOPs of the prison, SOPs for interrogators. I can't
 9 quote them off hand.

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

10 CAPTAIN [REDACTED] Do you know whether or not
 11 putting detainees in naked human pyramids are part of
 12 the SOP?

(b)(6) 1 - (7)(C) - 1

13 SPECIAL AGENT [REDACTED] It's not part of the SOP
 14 sir.

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

15 CAPTAIN [REDACTED] Is it part of any interrogation
 16 process?

(b)(6) - 1; (7)(C) 1

17 SPECIAL AGENT [REDACTED] Negative sir.

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

18 CAPTAIN [REDACTED] I would introduce Prosecution
 19 Exhibit 9 into evidence as Prosecution Exhibit 9.
 20 Prosecution Exhibit 10 for identification. Do you
 21 recognize that?

(b)(6) - 1; (7)(C) - 1

22 SPECIAL AGENT [REDACTED] Yes sir.

23 CAPTAIN [REDACTED] What is it?

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

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(b)(6)1; (7)(C) 1

1 SPECIAL AGENT [REDACTED] Same pyramid, similar
2 pyramid of the naked, the guys who started the riot
3 in the Ganci, and it's down in the lower level
4 (inaudible) isolation doors.

5 CAPTAIN [REDACTED] (b)(6)2; (7)(C) -2 And how do you recognize that?

6 SPECIAL AGENT [REDACTED] (b)(6)1; (7)(C) -1 Just from being at the
7 site.

8 CAPTAIN [REDACTED] (b)(6)-2; (7)(C) -2 Now, as you were going through
9 your investigation, you started matching up
10 statements with pictures. Were there discrepancies,
11 or was it matching up (inaudible). Tell us a little
12 bit about that.

13 SPECIAL AGENT [REDACTED] (b)(6)1; (7)(C) 1 The statements
14 (inaudible), there's more than four, but the
15 statements that Harman, England, Sivits and Davis
16 gave very well corroborated the stories with the
17 pictures and who was doing. There was little MPEG
18 videos showing the beginning when the pyramid
19 started, it was placing them into position to form
20 the pyramid, and most all statements that we've taken
21 that I remember taking have corroborated the story
22 very good.

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

1 CAPTAIN [REDACTED] How about from the victims as
2 well that you've interviewed?

(b)(6)1; (7)(C)1

3 SPECIAL AGENT [REDACTED] I interviewed the victim,
4 who remembered the most about was the gentleman who
5 was standing on MRE box, he was naked but he had a
6 blanket or rug over him with a sandbag on his head
7 and wires were attached to his fingers. His
8 statements said his fingers, toes and penis, and he
9 was told if he got off the box he'd be electrocuted.
10 They weren't apparently (inaudible) with electricity,
11 but he didn't
12 know this. So he was under the impression that if he
13 moved he would be electrocuted and killed.

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

14 CAPTAIN [REDACTED] So that statement matched up
15 with some pictures as well?

(b)(6)-1; (7)(C)1

16 SPECIAL AGENT [REDACTED] Yes sir.

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

17 CAPTAIN [REDACTED] The story was consistent?

(b)(6)-1; (7)(C)1

18 SPECIAL AGENT [REDACTED] Yes sir.

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

19 CAPTAIN [REDACTED] Okay. I think I forgot to say,
20 Prosecution Exhibit 10 for identification move into
21 evidence as Prosecution Exhibit 10. At this point
22 Prosecution Exhibit 11 for identification, and do you
23 recognize that?

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(b)(6)1-(7)(C)1

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1 SPECIAL AGENT [REDACTED] Yes sir.

2 CAPTAIN [REDACTED] (b)(6)-2, (7)(C)-2
What is that?

3 SPECIAL AGENT [REDACTED] (b)(6)1, (7)(E)1
That is the (inaudible)
4 described. He's in the shower room. I'm not sure if
5 it's on (inaudible). Those showers look pretty much
6 the same from the doorway. He goes by the nickname
7 of Gilligan. I don't know why. But wires were
8 attached to his neck and his fingers. He said ... He
9 told me there was one attached to his penis but you
10 can't really tell in the photograph whether it was or
11 not. And Sergeant Frederick is standing there with a
12 digital camera to the right of it.

13 CAPTAIN [REDACTED] (b)(6)-2, (7)(C)-2
And how do you recognize
14 Sergeant Frederick? (b)(6)1 - 7(E)1

15 SPECIAL AGENT [REDACTED] Just, because he's in the
16 courtroom and his picture is right there.

17 CAPTAIN [REDACTED] (b)(6)-2, (7)(C) 2
Move for Prosecution Exhibit 11
18 for identification into evidence Prosecution Exhibit
19 11. Prosecution Exhibit 12 for identification handed
20 to the witness. Do you recognize that?

21 SPECIAL AGENT [REDACTED] (b)(6)1, (7)(E)1
Yes sir.

22 CAPTAIN [REDACTED] (b)(6)-2, (7)(C) 2
What is that?

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