

COURT-MARTIAL RECORD

NAME FREDERICK, IVAN L., II SSG

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL 4

EXAM. DIV. _____

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VOL VII OF VIII VOL(S)

ARMY 20041129

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] (S)(G)-7
(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] (S)(G)-7
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 IX through Appellate Exhibit XXVII

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

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

1 (5)(b)-1
SPECIAL AGENT [REDACTED]: Same individual known as
2 (5)(b)-4 [REDACTED] with the wires attached to his fingers and,
3 excuse me, around his neck on the MRE box.

4 (5)(b)-2
CAPTAIN [REDACTED]: Now is that the same photo as
5 the other one?

6 SPECIAL AGENT [REDACTED]: I believe so. It's
7 distorted. (5)(b)-1

8 CAPTAIN [REDACTED]: Which means Sergeant Frederick
9 is not in that photograph? (5)(b)-2

10 SPECIAL AGENT [REDACTED]: No, he's not. I believe
11 it's the same ...

12 CAPTAIN [REDACTED]: Let me make sure I ... I'm
13 handing you Prosecution Exhibit 11, you can just
14 compare them.

15 Are these the same photographs?

16 SPECIAL AGENT [REDACTED]: Yes sir. Different
17 photographs. Sorry. (5)(b)-1 (inaudible) picture in this one
18 is the same ... (5)(b)-2

19 CAPTAIN [REDACTED]: Yeah. Different snapshots?

20 SPECIAL AGENT [REDACTED]: Yeah.

21 CAPTAIN [REDACTED]: I'm sorry. I wasn't clear on
22 that. (5)(b)-2

019619

1 SPECIAL AGENT [REDACTED]: I think you can see from
2 12, his foot down lower. (b)(6)-1 Different picture in the
3 same location.

4 CAPTAIN [REDACTED]: Okay. Thank you. That's all
5 for that one. (b)(4)-2 Sorry. Move for Prosecution Exhibit
6 12 for identification as evidence as Prosecution
7 Exhibit 12. Prosecution Exhibit 13 handed to the
8 witness, Prosecution Exhibit 13 for identification,
9 do you recognize that?

10 SPECIAL AGENT [REDACTED]: Yes sir.

11 CAPTAIN [REDACTED]: Okay. And what is that?

12 SPECIAL AGENT [REDACTED]: That is detainees and they
13 were forced to masturbate, masturbate themselves ...

14 CAPTAIN [REDACTED]: Okay. Tell us the story that
15 you know from the investigation of that.

16 SPECIAL AGENT [REDACTED]: I believe it was in Harman
17 or England's statement where they stated Sergeant
18 Frederick grabbed one of the detainees, put his own
19 hand on his penis and made a motion to masturbate and
20 the detainees continue doing this for a while. And
21 that right there is England posing in the picture.
22 From her statement, she said she didn't want to, but
23 she did it anyway.

019620

1 CAPTAIN [REDACTED] Anything else in there that
2 shows how you (S)(b)(2) recognize that or who are they?

3 SPECIAL AGENT [REDACTED] (S)(b)(1): It looks like it's a lower
4 (inaudible) doors, metal doors behind it, again, on
5 the bottom left side of (inaudible).

6 CAPTAIN [REDACTED]: Do you know of any interrogation
7 technique that calls for having masturbation?

8 SPECIAL AGENT [REDACTED]: No sir.

9 CAPTAIN [REDACTED]: Or any other kinds of MP SOP?

10 SPECIAL AGENT [REDACTED] (S)(b)(2): No sir. The MI's would
11 be, when they gave us (S)(b)(1) the copies of, it's very
12 detailed and what they can and can't do as far as,
13 (inaudible) food, monitor food intake, that's also
14 monitored by the (inaudible).

15 CAPTAIN [REDACTED]: Sir at this time, you mentioned
16 that this is classified. Is this classified, and if
17 so, (inaudible).

18 CAPTAIN [REDACTED]: I think he said the details of
19 it are. (S)(b)(2)

20 SPECIAL AGENT [REDACTED] (S)(b)(1) (inaudible) classified and
21 they gave us copies of different pages that have, so
22 we could have (inaudible) SOP is as far as what
23 they're allowed and can and can't do.

019621

1 CAPTAIN [REDACTED] (inaudible)

2 MAJOR [REDACTED]: (b)(4)-2 That's fine sir. You don't need
3 to go any further. Just get the general idea.
4 That's all I'm asking.

5 CAPTAIN [REDACTED] Prosecution moves for
6 Prosecution Exhibit 13 for identification into
7 evidence as Prosecution Exhibit 13. Prosecution
8 Exhibit 14 for identification. I've handed
9 Prosecution Exhibit 14 for identification to the
10 witness, do you recognize that?

11 SPECIAL AGENT [REDACTED]: Yes sir.

12 CAPTAIN (b)(4)-2 [REDACTED] (b)(4)-1 And what is that?

13 SPECIAL AGENT [REDACTED] That is one of the two of
14 the same detainees who were in the naked pyramid and
15 one being forced to have his head pressed into the
16 other individual's ...

17 CAPTAIN [REDACTED]: And how do you recognize that?

18 SPECIAL AGENT [REDACTED] Same area with the metal
19 door behind it, (b)(4)-1 (inaudible) lower level where the
20 isolation cells are at.

21 CAPTAIN (b)(4)-2 [REDACTED]: I'm sorry.

22 SPECIAL AGENT [REDACTED] That also corresponds with
23 some of the statements saying that they were forced

019622

1 to stimulate performing oral sex, which looks like
2 they're doing it in one of the pictures along with
3 statements (inaudible).

4 CAPTAIN [REDACTED]: Okay. Move for Prosecution
5 Exhibit 14 for identification into evidence,
6 Prosecution Exhibit 14. Prosecution Exhibit 15 for
7 identification, hand that to the witness, do you
8 recognize that?

9 SPECIAL AGENT [REDACTED]: Yes sir.

10 CAPTAIN [REDACTED]: And what is that?

11 SPECIAL AGENT [REDACTED]: I believe that's the same
12 two individuals as this one here. There's a better
13 view from the front, bag off his head with his head
14 right against, right near the other individual's
15 penis.

16 CAPTAIN [REDACTED]: Do you recognize anybody else in
17 there, anybody else in that picture?

18 SPECIAL AGENT [REDACTED]: I don't recognize anybody
19 else. That's the lower level again (inaudible) on
20 the left side.

21 CAPTAIN [REDACTED]: Does that appear to be a soldier
22 or ...

23 SPECIAL AGENT [REDACTED]: A detainee sir.

019623

1 CAPTAIN [REDACTED]: They're all detainees?

2 SPECIAL AGENT (b)(6)(2) [REDACTED]: Yes sir.

3 CAPTAIN [REDACTED]: (b)(6)(1) I move for Prosecution Exhibit
4 15 for identification into evidence Prosecution
5 Exhibit 15. Prosecution Exhibit 16 for
6 identification, hand that to the witness, Sergeant
7 Bobeck, do you recognize that?

8 SPECIAL AGENT [REDACTED]: Yes sir.

9 CAPTAIN [REDACTED]: And what is that?

10 SPECIAL AGENT (b)(6)(2) [REDACTED]: This is Sergeant
11 Frederick's (inaudible) with a detainee in between,
12 he's sitting on the back of one without. And that
13 area right there is ... Do you have your sketch sir?
14 This is a hallway right outside here (inaudible) is
15 the very bottom of (inaudible).

16 CAPTAIN [REDACTED]: The witness is indicating on
17 Tier 1 (inaudible) by the steps by the guard, where
18 it's identified as the guard area. Does he appear to
19 be doing any military functions in that picture?

20 SPECIAL AGENT (b)(6)(2) [REDACTED]: No sir.

21 CAPTAIN (b)(6)(1) [REDACTED]: What does he appear to be doing?

22 SPECIAL AGENT [REDACTED]: Just posing for a picture,
23 sitting on a detainee's back.

019624

1 CAPTAIN [REDACTED]: Move for Prosecution Exhibit 16
2 for identification (S)(b)(2) into evidence as Prosecution
3 Exhibit 16. Prosecution Exhibit 17 for
4 identification, Special Agent [REDACTED] do you
5 recognize that?

6 SPECIAL AGENT [REDACTED] Yes sir.

7 CAPTAIN [REDACTED]: (S)(b)(1) And what is that?

8 SPECIAL AGENT [REDACTED] This is when they
9 initially were brought up from Ganci after the riot.
10 They're still bound with custody cuffs. They still
11 have all their clothes on. This is ...

12 CAPTAIN [REDACTED]: Do you recognize the area where
13 that is? (S)(b)(2)

14 SPECIAL AGENT [REDACTED] It looks like the lower
15 left side again, again (S)(b)(1) (inaudible) by the isolation
16 cells.

17 CAPTAIN [REDACTED]: Do you remember any of the
18 interviews regarding laying in the pile, dog pile
19 there?

20 SPECIAL AGENT [REDACTED]: Yes. Initially they were
21 brought up (inaudible) took them one by one and
22 (inaudible). And that's when they started, they got
23 stripped.

019625

1 CAPTAIN [REDACTED]: Do you recall anything that took
2 place before they were naked?

3 SPECIAL AGENT [REDACTED]: Before they were naked,
4 they were piled up and some of the guards took turns
5 jumping into the pile for no apparent reason.

6 CAPTAIN [REDACTED]: Anything else do you recall they
7 did to that pile?

8 SPECIAL AGENT [REDACTED]: Sergeant Graner, when they
9 were initially in this pile, he punched one of the
10 individuals so hard that it knocked him out and there
11 is a statement where Sergeant Frederick punched the
12 gentleman in the chest and he collapsed on the floor.
13 I don't know if it was in this timeframe or not.

14 CAPTAIN [REDACTED]: Okay. Thank you. Prosecution
15 Exhibit 17 for identification move into evidence as
16 Prosecution Exhibit 17. Excuse me, sir ...

17 [END OF FIRST SIDE OF TAPE ONE]

18 CAPTAIN [REDACTED]: (inaudible) Sir, I have no
19 further questions.

20 CAPTAIN [REDACTED]: Special Agent [REDACTED], (inaudible)
21 report (inaudible) packet, CID packet that I believe
22 the investigating officer and the government has.

23 SPECIAL AGENT [REDACTED]: Yes sir.

019626

1 CAPTAIN [REDACTED]: And I believe the majority of
2 this, if not ^{(b)(6)-2} all of it, and correct me if I'm wrong
3 government, the majority of this is double-sided
4 photocopies, approximately 3-1/2 inches, 4 inches.
5 Have you seen this packet before?

6 SPECIAL AGENT [REDACTED] Yes. I've gone through
7 most of it. ^{(b)(6)-1}

8 CAPTAIN [REDACTED]: Can you tell me how many pages of
9 this document ^{(b)(6)-2} is your product?

10 SPECIAL AGENT [REDACTED] How many pages of it?

11 CAPTAIN [REDACTED] Yes. I'm guessing it's 300, 400
12 pages. How many pages?

13 SPECIAL AGENT [REDACTED]: Well, I can't say how many
14 pages exactly sir. ^{(b)(6)-1}

15 CAPTAIN [REDACTED] Under 10?

16 SPECIAL AGENT [REDACTED] ^{(b)(6)-2} Under 10?

17 CAPTAIN [REDACTED] Under 10 pages.

18 SPECIAL AGENT [REDACTED]: Well, it appears more than
19 10 pages are ours. ^{(b)(6)-1}

20 CAPTAIN [REDACTED] ^{(b)(6)-2} Well you mentioned in your
21 testimony that the only person that you interviewed
22 was one alleged co-conspirator, and then that person
23 did not make a statement?

019627

1 SPECIAL AGENT [REDACTED]: Yes. That's right.

2 CAPTAIN [REDACTED]: Is that the extent of your actual
3 participation in this document?

4 SPECIAL AGENT [REDACTED]: No sir. I interviewed a
5 lot of the victim detainees at Ganci who were
6 identified as victims, (inaudible) interviewed the
7 entire unit.

8 CAPTAIN [REDACTED]: And that was just you that did
9 that?

10 SPECIAL AGENT [REDACTED]: Myself and Agent [REDACTED].
11 He's on your list:

12 CAPTAIN [REDACTED]: I've got the following agents.
13 If you can just tell me ... [REDACTED] (inaudible)

14 SPECIAL AGENT [REDACTED]: [REDACTED] redeployed.
15 (inaudible) redeployed.

16 CAPTAIN [REDACTED]: [REDACTED], that's you. [REDACTED]

17 [REDACTED] SPECIAL AGENT [REDACTED]: [REDACTED] (ph),
18 redeployed.

19 CAPTAIN [REDACTED]: [REDACTED]?

20 SPECIAL AGENT [REDACTED]: Redeployed.

21 CAPTAIN [REDACTED]: [REDACTED]?

22 SPECIAL AGENT [REDACTED]: I don't know who that is.

23 CAPTAIN [REDACTED]: [REDACTED]

019628

1 SPECIAL AGENT [REDACTED]: There's no such agent.
 2 CAPTAIN [REDACTED] (b)(6)2: [REDACTED] (ph)? (b)(6)-1
 3 SPECIAL AGENT [REDACTED]: Redeployed.
 4 CAPTAIN [REDACTED]: [REDACTED]
 5 SPECIAL AGENT [REDACTED]: Redeployed.
 6 CAPTAIN [REDACTED]: [REDACTED] (ph)
 7 SPECIAL AGENT [REDACTED] (b)(6)-1: He's not an agent.
 8 CAPTAIN [REDACTED] (inaudible) [REDACTED] (ph)
 9 (inaudible).
 10 SPECIAL AGENT [REDACTED] Neither one of those
 11 agents. (b)(6)-1
 12 CAPTAIN [REDACTED] (b)(6)-2 So, are you the only agent on
 13 that report that is still here ...
 14 SPECIAL AGENT [REDACTED]: Yes sir.
 15 CAPTAIN [REDACTED] Are they still within the United
 16 States Army, do you know?
 17 SPECIAL AGENT [REDACTED] Oh yes.
 18 CAPTAIN [REDACTED] (b)(6)2 And do you know where they were
 19 redeployed to? (b)(6)-1
 20 SPECIAL AGENT [REDACTED]: [REDACTED] (ph) went back to
 21 the 12th, Fort Benning. [REDACTED] (ph) is back at Fort
 22 Bragg. [REDACTED] is at Fort Bragg. [REDACTED] went to Fort
 23 Levert (ph)...

019629

1 CAPTAIN [REDACTED]: Are they outside the theater of
2 operations? (S)(G)-2

3 SPECIAL AGENT [REDACTED]: Outside of Iraq? Yes sir.

4 CAPTAIN [REDACTED]: (S)(G)-1 Are they in Afghanistan?

5 SPECIAL AGENT [REDACTED]: No. They're all back in
6 the U.S. (S)(G)-2

7 CAPTAIN [REDACTED]: Okay. So they would be available
8 via telephone if we could call?

9 CAPTAIN [REDACTED]: Objection. He doesn't know ...
10 It's a legal definition of available (inaudible).

11 CAPTAIN [REDACTED]: You can make a determination of
12 availability. The government has chosen not to have
13 them present or available. And I'm just establishing
14 facts for your determination later, as I outlined in
15 an e-mail of whether not they're available or not
16 available. Just merely facts. I'm not asking for
17 conclusions. So there were several agents working on
18 this and would you have a guess of what percent of
19 this document you worked on? (S)(G)-1

20 SPECIAL AGENT [REDACTED]: 30 percent maybe.

21 CAPTAIN [REDACTED]: 30 percent?
(S)(G)-2

019630

(S)(b)-1
1 SPECIAL AGENT [REDACTED]: I collected ... A lot of it
2 is stuff I collected as evidence, the books, the
3 medical logs, the majority of the files.

4 CAPTAIN [REDACTED]: So if the investigating officer
5 were to go through his document, he would find your
6 name or your (inaudible) directly related to 30
7 percent of these documents?

8 SPECIAL AGENT [REDACTED]: Rough guess. I can't be
9 for certain sure. (S)(b)-1

(S)(b)-2
10 CAPTAIN [REDACTED]: Were you an eyewitness to any of
11 these photos?

12 SPECIAL AGENT [REDACTED]: At the scene they were
13 taken? (S)(b)-1

14 CAPTAIN [REDACTED]: Yes.

15 SPECIAL AGENT [REDACTED]: No sir.

16 CAPTAIN [REDACTED]: Were you present at Abu Ghraib
17 Prison during the riot that you described? (S)(b)-2

18 SPECIAL AGENT [REDACTED]: No. (inaudible).

(S)(b)-1
19 CAPTAIN [REDACTED]: And you did not take any of these
20 photos?

21 SPECIAL AGENT [REDACTED]: No sir.

019631

(S)(b)(2)
1 CAPTAIN [REDACTED] And you testified that you don't
2 know when these photos were taken, only when they
3 were saved?

(S)(b)(1)
4 SPECIAL AGENT [REDACTED]: On the CD itself, I don't
5 know a lot about computers, to be honest right now.
6 There are little folders, you can see the pictures
7 here. It was labeled like 07/November A,
8 05/November. I don't know if that's exact dates of
9 the riots. That's how the picture ... That's how the
10 folders were labeled and you click on the folders and
11 that's where the pictures were at.

(S)(b)(2)
12 CAPTAIN [REDACTED]: You mentioned that there was a
13 classified (inaudible) that Military Intelligence
14 has?

(S)(b)(1)
15 SPECIAL AGENT [REDACTED]: They have certain
16 guidelines that ...

17 CAPTAIN [REDACTED]: And you reviewed that?

18 SPECIAL AGENT [REDACTED]: So much of it. We read
19 some of it, yes. I didn't read all of it.

(S)(b)(2)
20 CAPTAIN [REDACTED]: You mentioned of the detainees
21 that some of them were CID detainees?

(S)(b)(1)
22 SPECIAL AGENT [REDACTED]: Sometimes. The ones on
23 the

019632

1 floor (inaudible) MI. Most are MI but sometimes
2 they're CID detainees on that floor.

3 CAPTAIN [REDACTED]: What do you mean when you say CID
4 detainee? (b)(6)-2

5 SPECIAL AGENT [REDACTED] They're on CID hold. We
6 are holding them for crimes against (inaudible)
7 coalition troops, IADs, (inaudible) things like that.

8 CAPTAIN [REDACTED] You mentioned that when you talk
9 about SOPs, that you didn't think it was available,
10 not available at the time ...

11 SPECIAL AGENT [REDACTED] (b)(6)-1 I don't think there was an
12 SOP. I'm pretty sure, quote me if I'm wrong, but I
13 don't think there was an SOP written anywhere when
14 Sergeant Frederick and the other MP company were
15 there in the prison handling it.

16 CAPTAIN [REDACTED] But subsequently there was not ...

17 SPECIAL AGENT [REDACTED] When things happened, then
18 they started having things in writing, what you can
19 and can't do, how things were going to be run.

20 CAPTAIN [REDACTED] (b)(6)-2: And this is after the fact ...

21 SPECIAL AGENT [REDACTED] (b)(6)-1 Yes.

22 CAPTAIN [REDACTED] In your investigation (inaudible)
23 CID investigation, and I'm only talking about your

019633

1 knowledge of this case, do you know if a commander
2 was questioned about the extent of ...

3 SPECIAL AGENT (b)(6)-1: Everybody was questioned
4 including the battalion commander about what was
5 happening at the tiers.

6 CAPTAIN (b)(6)-2 (inaudible)

7 SPECIAL AGENT (b)(6)-1: I don't know sir.

8 CAPTAIN (b)(6)-2: Did they relate to you that they
9 had a standard operating procedure or any guidelines
10 regarding (inaudible) Sergeant Frederick?

11 SPECIAL AGENT (b)(6)-1: Not that I can remember.
12 I didn't talk to a lot of the higher folks. Mr.
13 (b)(6)-1 handled all the briefings of the colonels and
14 the majors to find out what the SOPs were or if they
15 even had any at the time.

16 CAPTAIN (b)(6)-2: And I'll tell you which one I'm
17 looking at, if you can just follow along. Okay.
18 Prosecution Exhibit 3, this is, you had already
19 described that. Do you see Staff Sergeant Frederick
20 in this photograph?

21 SPECIAL AGENT (b)(6)-1: No.

22 CAPTAIN (b)(6)-2: Do you see any maltreatment of
23 detainees in this photograph?

019634

1 SPECIAL AGENT [REDACTED] Just the pile on the
2 floor.

3 CAPTAIN [REDACTED]: Just the pile on the floor.
4 Prosecution Exhibit 4, do you see Staff Sergeant
5 Frederick in this photograph?

6 SPECIAL AGENT [REDACTED]: No. (b)(6)-1

7 CAPTAIN [REDACTED] Prosecution Exhibit 5, do you see
8 Staff Sergeant Frederick in this photograph? (b)(6)-2

9 SPECIAL AGENT [REDACTED] No.

10 CAPTAIN [REDACTED] Prosecution Exhibit 6, do you see
11 Staff Sergeant Frederick in this photograph? (b)(6)-2

12 SPECIAL AGENT [REDACTED]: No.

13 CAPTAIN [REDACTED] Prosecution Exhibit 7, do you see
14 Staff Sergeant Frederick in this photograph? (b)(6)-1

15 SPECIAL AGENT [REDACTED] No.

16 CAPTAIN [REDACTED] Now there are two clearly
17 identifiable soldiers in Prosecution Exhibit 8. Is
18 either one of them Staff Sergeant Frederick? (b)(6)-2

19 SPECIAL AGENT [REDACTED]: No.

20 CAPTAIN [REDACTED] Prosecution Exhibit 9, is Staff
21 Sergeant Frederick present in that photograph? (b)(6)-1

22 SPECIAL AGENT [REDACTED] No sir.

019635

(S)(b)-2
1 CAPTAIN [REDACTED] Prosecution Exhibit 10, is Staff
2 Sergeant Frederick present in this photograph?

(S)(b)-1
3 SPECIAL AGENT [REDACTED]: No sir.

4 CAPTAIN [REDACTED] You mentioned that you recognized
5 in Prosecution Exhibit 11 Staff Sergeant Frederick?

6 SPECIAL AGENT [REDACTED]: Yes.

(S)(b)-2
7 CAPTAIN [REDACTED] And he's looking at a camera?

(S)(b)-1
8 SPECIAL AGENT [REDACTED]: Yes.

9 CAPTAIN [REDACTED] Is he touching the detainee at
10 all?

11 SPECIAL AGENT [REDACTED]: No.

12 CAPTAIN [REDACTED]: Is Staff Sergeant Frederick
13 present in Prosecution Exhibit 12?

14 SPECIAL AGENT [REDACTED]: Not in this picture.

15 CAPTAIN [REDACTED] Prosecution Exhibit 13, you
16 mentioned in your testimony, that's not Staff
17 Sergeant Frederick, is it?

(S)(b)-1
18 SPECIAL AGENT [REDACTED]: No sir.

19 CAPTAIN [REDACTED] And who did you say that was?

20 SPECIAL AGENT [REDACTED]: That was England.

21 CAPTAIN [REDACTED] Okay. And in your testimony that
22 you gave the government on direct, you mentioned that
23 England did not want to be in this pose?

019636

(b)(6)-1
1 SPECIAL AGENT [REDACTED] That's what she said in
2 her statement.

3 CAPTAIN [REDACTED] But she appears to be enjoying
4 this photograph?

5 SPECIAL AGENT [REDACTED]: She appears to be.

(b)(6)-2
6 CAPTAIN [REDACTED]: And Staff Sergeant Frederick is
7 not in this photograph?

(b)(6)-1
8 SPECIAL AGENT [REDACTED]: No, he is not.

9 CAPTAIN [REDACTED] Yet, she said she didn't want to
10 be in this?

11 SPECIAL AGENT [REDACTED] She didn't want to be but
12 she ...

13 CAPTAIN [REDACTED] Prosecution Exhibit 14, is Staff
14 Sergeant Frederick in this photograph?

15 SPECIAL AGENT [REDACTED]: No sir.

(b)(6)-2
16 CAPTAIN [REDACTED] Prosecution Exhibit 15, is Staff
17 Sergeant Frederick in this photograph?

(b)(6)-1
18 SPECIAL AGENT [REDACTED]: No sir.

19 CAPTAIN [REDACTED] You mentioned in Prosecution
20 Exhibit 16 that Staff Sergeant Frederick is in that
21 photograph. Right?

22 SPECIAL AGENT [REDACTED] Yes sir.

019637

1 CAPTAIN [REDACTED]: And there appears to be a
2 detainee that he's sitting on?

3 SPECIAL AGENT [REDACTED]: Yes sir.

4 CAPTAIN [REDACTED] (b)(6)-2 Do you know anything about the
5 context as to why he is sitting on him?

6 SPECIAL AGENT [REDACTED] (b)(6)-1 No, I do not.

7 CAPTAIN [REDACTED]: I see a couple soldiers' trousers
8 in Prosecution Exhibit 17 but can you identify Staff
9 Sergeant Frederick being in this photograph?

10 SPECIAL AGENT [REDACTED] No.

11 CAPTAIN [REDACTED]: I'll show you again Prosecution
12 Exhibit 12, it's got detainee apparently standing on
13 the ...

14 SPECIAL AGENT [REDACTED] (b)(6)-1 MRE box.

15 CAPTAIN [REDACTED] (b)(6)-2 On the MRE box. Does that
16 picture appear distorted at all?

17 SPECIAL AGENT [REDACTED] Yes sir. It was stretched
18 out.

19 CAPTAIN [REDACTED] You had mentioned and you
20 testified about Prosecution Exhibit 14 that you
21 recognized this guy from the pyramid? How did you do
22 that?

019638

(S)(b)(2)
1 SPECIAL AGENT [REDACTED] Well, I can't be for
2 certain it's the same guy from the pyramid, but the
3 only guys that were on the floor during this
4 timeframe was the detainees.

(S)(b)(2)
5 CAPTAIN [REDACTED] Okay. And then, when you made
6 that conclusion that this is the guy from the
7 pyramid, you stated earlier that you didn't know when
8 the photographs were taken. How do you know that
9 this photograph was taken either before or after the
10 pyramid?

(S)(b)(1)
11 SPECIAL AGENT [REDACTED] I can't be for certain if
12 it was before or after.

13 CAPTAIN [REDACTED] Prosecution Exhibit 16, it's
14 interesting you noted that this was not a military
15 function, sitting on the detainee like this.

16 SPECIAL AGENT [REDACTED]: Yes.

(S)(b)(2)
17 CAPTAIN [REDACTED]: Is that correct?

(S)(b)(1)
18 SPECIAL AGENT [REDACTED]: I've never seen it before.

19 CAPTAIN [REDACTED] You've never seen it before. Do
20 you know the context of this photograph at all?

21 SPECIAL AGENT [REDACTED] No. I don't have any idea
22 why he's wrapped up. There's a blanket or something

019639

1 between the two (inaudible). No, I don't know
2 (inaudible). (b)(6)-2

3 CAPTAIN [REDACTED] Okay. Prosecution Exhibit 17,
4 when you testified about Prosecution Exhibit 17, this
5 is the picture of the pile, and you mentioned that
6 this is related to the guards jumping in the pile. I
7 see two soldiers' trousers (inaudible), one right
8 here and one right here, which of those guys are
9 running into the pile and jumping?

10 SPECIAL AGENT [REDACTED] Not in this picture sir.

11 CAPTAIN [REDACTED] All right. Is there a picture
12 that shows the jumping? (b)(6)-1 (b)(6)-2

13 SPECIAL AGENT [REDACTED]: Some of the statements
14 from the other individuals explained what was
15 happening during this timeframe when they were still
16 dressed.

17 CAPTAIN [REDACTED] But the picture in and of itself
18 does not show ... (b)(6)-2

19 SPECIAL AGENT [REDACTED]: No. There's nobody
20 jumping in the picture, into the pile. (b)(6)-1

21 CAPTAIN [REDACTED] And neither of these folks are
22 running, it doesn't appear to be. (b)(6)-2

23 SPECIAL AGENT [REDACTED] Don't appear to be.

019640

1 CAPTAIN [REDACTED]: (inaudible). In the beginning of
2 the report, (S)(b)(2) I noted that there were several detainees
3 listed as alleged victims in this case. Do you
4 recall that? Would you like to see it?

5 SPECIAL AGENT [REDACTED]: No, I don't. Please.

6 CAPTAIN [REDACTED] (S)(b)(1) Okay. I think it's in the
7 beginning of the ... Before you look at them, were you
8 responsible for making (inaudible) a report?

9 SPECIAL AGENT [REDACTED] The status report?

10 CAPTAIN [REDACTED] (S)(b)(2) That's right.

11 SPECIAL AGENT [REDACTED]: No sir.

12 CAPTAIN [REDACTED] (S)(b)(1) (inaudible).

13 CAPTAIN [REDACTED] So you were one of the actual
14 officers that was assigned to the case? (inaudible)

15 SPECIAL AGENT [REDACTED] (inaudible) yes.

16 CAPTAIN [REDACTED] (S)(b)(2) Sir, if you can look at it.

17 SPECIAL AGENT [REDACTED]: What was your question?

18 CAPTAIN [REDACTED] And what I was looking at sir, is
19 towards the front there's a giant list and I included
20 those people on my request, if you could just tell me
21 where these folks are, these detainees?

22 SPECIAL AGENT [REDACTED] (S)(b)(1) When you look at them, if
23 they say detainee, they are still in Abu Ghraib

019641

1 somewhere. Okay. If they say former detainee, then
2 they have been released and the whereabouts are
3 probably very hard to determine.

4 CAPTAIN [REDACTED]: Okay. And if they are a detainee
5 they're at Abu. (b)(6)-2 How far away is Abu from here?

6 SPECIAL AGENT [REDACTED]: Give or take 20 minutes.

7 CAPTAIN [REDACTED]: (b)(6)-1 Are there soldiers there?

8 SPECIAL AGENT [REDACTED]: Yes.

9 CAPTAIN [REDACTED]: Are you stationed there?

10 SPECIAL AGENT [REDACTED]: Yes.

11 CAPTAIN [REDACTED]: You came from Abu? You're not
12 stationed here at Victory?

13 SPECIAL AGENT [REDACTED]: (b)(6)-1 No. I'm at Abu.

14 CAPTAIN [REDACTED]: Is there a telephone line at Abu?

15 SPECIAL AGENT [REDACTED]: Yes sir.

16 CAPTAIN [REDACTED]: (b)(6)-2 (inaudible) or both?

17 SPECIAL AGENT [REDACTED]: (inaudible) mostly.

18 CAPTAIN [REDACTED]: Okay. I saw a lot of nude
19 detainees and you mentioned that the (inaudible)
20 photographs, the things being depicted, did not
21 follow an SOP?

22 SPECIAL AGENT [REDACTED]: (b)(6)-1 That's safe to say.

019642

(b)(6)-2
1 CAPTAIN [REDACTED] So, are you telling the
2 investigating officer and us that nudity was not a
3 part of being a detainee at Abu Ghraib?

(b)(6)-1
4 SPECIAL AGENT [REDACTED] The statements I reviewed
5 or that I saw, was that prisoners brought to
6 (inaudible) they stripped them naked. (inaudible)
7 SOP. No one really knew for certain (inaudible)
8 everyone did prior to that. So you just went along
9 with the regular SOP. (inaudible) statements were
10 verbal. There was never really a written, "you will
11 not strip detainee, you will not do this, you will
12 not do this." It was more of a verbal type thing
13 just to try to do what's right. I don't know exactly
14 what they were told.

15 CAPTAIN [REDACTED] (inaudible)
16 SPECIAL AGENT (b)(6)-2 (b)(6)-1 [REDACTED]: Right.

17 CAPTAIN [REDACTED] You mentioned that there was a
18 comprehensive, there was a very comprehensive
19 investigation done where commanders and various
20 people were interviewed. Could you glean from them
21 what exactly Staff Sergeant Frederick was supposed to
22 do with these detainees.

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(S)(b)-1
1 SPECIAL AGENT [REDACTED] I didn't talk to them so I
2 don't know what they said exactly. Basically what I
3 know is that Staff Sergeant Frederick was the NCOIC
4 who managed the whole, all the tiers, but I don't
5 believe, I don't know if there was ever a written SOP
6 during that timeframe. I don't think there was.

7 CAPTAIN [REDACTED] You did not find one?

(S)(b)-2
8 SPECIAL AGENT [REDACTED] At that time, no.

9 CAPTAIN [REDACTED]: In the comprehensive
10 investigation the CID did

(S)(b)-1
11 SPECIAL AGENT [REDACTED] (inaudible)

12 CAPTAIN [REDACTED]: Okay. Good. Were you able to
13 procure any operation orders involving (inaudible)
14 that Staff Sergeant Frederick's unit did in October
15 of 2003?

16 SPECIAL AGENT [REDACTED] I don't remember reviewing
17 it. It might be. I don't know.

(S)(b)-2
18 CAPTAIN [REDACTED] Did you review any significant
19 activity reports (inaudible) that these pictures and
20 these allegations for which Staff Sergeant Frederick
21 were charged ...

(S)(b)-1
22 SPECIAL AGENT [REDACTED] Significant activity
23 reports?

019644

1 CAPTAIN [REDACTED] (inaudible) anything like that?
2 Did you review ^{(b)(6)-2} those?

3 SPECIAL AGENT [REDACTED] (inaudible)

4 CAPTAIN [REDACTED] ^{(b)(6)-1}: Any warning orders put out?

5 SPECIAL AGENT [REDACTED]: I don't know. I have no
6 idea.

7 CAPTAIN ^{(b)(6)-2} [REDACTED] Well, I'm just asking, I just
8 want to know your knowledge and extent of the
9 investigation at this time. To my understanding,
10 there was a parallel investigation done under 15-6
11 and I just want to know where your investigations,
12 where the scope of your investigation stopped?

13 SPECIAL AGENT [REDACTED] I can't testify to the
14 SOP. I didn't review them ^{(b)(6)-1} personally. I don't know
15 if anyone else in the investigation did or not.

16 CAPTAIN ^{(b)(6)-2} [REDACTED] Any training guidelines put out
17 by maybe the S3 of the unit who Staff Sergeant
18 Frederick was a part of?

19 SPECIAL AGENT [REDACTED] Again, I don't know. What
20 I got the most of, is they had Sergeant Frederick and
21 Sergeant Graner, they were not initially prison
22 guards. The MP unit was not trained for the prison
23 activity. They were more road MPs at the time.

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1 CAPTAIN [REDACTED]: Okay. ...

2 SPECIAL AGENT [REDACTED]: They put them in charge
3 from what I understand because they were civilian
4 prison guards (inaudible) was supposed to run.
5 Again, I don't know this. I can't testify exactly.
6 They were hoping that they would be able to do the
7 prison jobs but they weren't really, not trained as
8 correction officer. (inaudible)

9 CAPTAIN [REDACTED] (S)(Q-2): Prior to you being a CID agent,
10 were you an MP?

11 SPECIAL AGENT [REDACTED] (S)(Q-1): No.

12 CAPTAIN [REDACTED]: Do you have any knowledge of the
13 MP (inaudible)?

14 SPECIAL AGENT [REDACTED]: A little bit.

15 CAPTAIN [REDACTED]: You had mentioned that they are
16 not trained as correctional officers.

17 SPECIAL AGENT [REDACTED] (inaudible) is now a
18 correction officer (inaudible).

19 CAPTAIN [REDACTED] (S)(Q-2): So the soldiers that were in the
20 prison were not the same soldiers that would be in
21 Fort Leavenworth, for instance? Someone training to
22 be a correctional officer?

23 SPECIAL AGENT [REDACTED] (S)(Q-1): I don't believe so. No.

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1 CAPTAIN [REDACTED] Would the duties for being the
2 correctional officer and training program, is that
3 readily available from someone?

4 SPECIAL AGENT [REDACTED]: I don't know. I don't
5 know anything about that.

6 CAPTAIN [REDACTED] (S)(G)-2 Have you ever been through
7 (inaudible) operations?

8 SPECIAL AGENT [REDACTED] (S)(G)-1 Negative.

9 CAPTAIN [REDACTED] Did you (inaudible)
10 investigation, review the Army regulation on detainee
11 operations?

12 SPECIAL AGENT [REDACTED] Negative.

13 CAPTAIN [REDACTED] To your knowledge, did any of the
14 soldiers (inaudible) command review the regulation on
15 detainee operations?

16 SPECIAL AGENT [REDACTED] I don't know.

17 CAPTAIN [REDACTED] (S)(G)-2 (S)(G)-1 Did you review any of the judge
18 advocate opinions, because you mentioned several
19 times on these documents, use of the term
20 "detainees." How did the CID make the conclusion
21 that these were detainees?

22 SPECIAL AGENT [REDACTED] (inaudible) answer that.
23 If they were at Abu 'they were called detainees, EPWs

019647

1 or security detainees. I don't know how to
2 differentiate all three of them.

3 CAPTAIN [REDACTED]: So you're telling me that these
4 people could be criminals or EPWs?

5 CAPTAIN [REDACTED]: Sir, again this is (inaudible)
6 Detainees, EPWs, POWs, is a very legal definition,
7 legal grounds. I don't think Special Agent [REDACTED] is
8 qualified to discuss the legal differences between
9 POWs and EPWs. He's already stated that they were
10 detainees, that's what we call them.

11 CAPTAIN [REDACTED]: Sir, I would just note that the
12 CID report, if you'd please read it, and I'm sure you
13 did, (inaudible) as victims and the status in this
14 particular case is very important. The forms and the
15 charges, they specifically noted that this was a case
16 about maltreatment of detainees. That is a fact, a
17 series of facts of which would hopefully through my
18 questioning we can establish that the CID
19 investigation was not the proper, was not the venue
20 for establishing those fact. Indeed we must look at
21 possible 15-6 investigation which may have, that
22 (inaudible) parallel administrative investigation,
23 which would have gone into more of the line of

019648

1 questions. I'm just trying to figure out how much is
2 this testimony really worth.

3 CAPTAIN [REDACTED] Again sir, from the technicality
4 of the charge, how it's written detainees, I don't
5 think Agent [REDACTED] is (inaudible) and specific
6 legalities of those charges (inaudible).

7 (5)(b)(2) CAPTAIN [REDACTED] If I can just clarify one
8 question. Who did you rely on or who did the CID
9 rely
10 upon to make the determination when they put the word
11 detainee in this document? Who did they ask?

12 (5)(b)(1) SPECIAL AGENT [REDACTED] They either asked ... I
13 don't know sir. They usually ... The (inaudible)
14 detainee because there's no other way to describe it.

15 CAPTAIN [REDACTED] Well, I noticed that they're not
16 Iraqi civilians. They're not listed as local
17 nationals or anything else. They're specifically
18 called detainees. Who would have asked that question
19 in order to put that down? I agree with the trial
20 counsel here that it's a legal determination, but who
21 made that legal determination?

22 SPECIAL AGENT [REDACTED] (inaudible) is always
23 there when they process. I don't know if they make

019649

1 the determination if they're detainees or how ... I
2 don't know.

3 CAPTAIN (S)(b)-2 [REDACTED] Okay. Thank you very much. Sir,
4 at this time, I would object to every picture in
5 which the accused, Staff Sergeant Frederick, is not
6 clearly pictured in and I would also object to those
7 descriptions of events depicted in this picture, like
8 running into the pile of detainees, which clearly,
9 given the scope of his knowledge, the fact that he
10 was not an eyewitness, the fact that the (inaudible),
11 we cannot make the conclusion (inaudible) that we
12 are actually seeing what was actually being completed
13 by Special Agent [REDACTED] All right sir. Thank you.

14 CAPTAIN (S)(b)-2 [REDACTED] Special Agent [REDACTED] about how
15 long did you work on this case?

16 SPECIAL AGENT [REDACTED] Beginning of January sir
17 or about. About three weeks total, three months.
18 Three months total.

19 CAPTAIN [REDACTED] Three months. Was the majority
20 of your time spent working on this case?

21 SPECIAL AGENT (S)(b)-1 [REDACTED] Most of January it was,
22 yes sir.

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(b)(6)-2
1 CAPTAIN [REDACTED] And then what happened in
2 February and March.

(b)(6)-1
3 SPECIAL AGENT [REDACTED]: When I got done with the
4 case (inaudible) at the time, I went back to
5 (inaudible) for a week or two then came back up and
6 assumed the duties of (inaudible) and most of the
7 case was at that point was handled by Mr. [REDACTED]
8 (inaudible) and he was just basically wrapping things
9 up. There was not a lot left of investigating work
10 left to be done on that case.

11 CAPTAIN [REDACTED] (inaudible)

12 SPECIAL AGENT [REDACTED] (b)(6)-1 (inaudible)

(b)(6)-2
13 CAPTAIN [REDACTED] You reviewed statements, not
14 every document, almost every document (inaudible).
15 You can't recall every single word in every document,
16 because there's a lot of documents. Right?

17 SPECIAL AGENT [REDACTED]: That's correct sir.

18 CAPTAIN [REDACTED]: (inaudible) SOPs and MP. Okay.
19 Let's talk about... You said you were never an MP and
20 you don't great knowledge of MPs but a little bit
21 working as a CID agent. Let's just talk common
22 sense. Does the MP, SOP call out for detainees to be
23 masturbating, asked to perform masturbating?

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1 SPECIAL AGENT [REDACTED] No sir. Common sense
2 would say no.

3 CAPTAIN [REDACTED] Does any MP or any Army policy
4 or regulation allow soldiers, whether they're MPs,
5 correction officers, any sort of a jump and assault
6 other individuals in a pile?

7 SPECIAL AGENT [REDACTED] No sir. (b)(6)-1

8 CAPTAIN [REDACTED] Are there any MP or Army
9 regulations that would allow for putting people in
10 odd positions and taking photographs for pleasure?

11 SPECIAL AGENT [REDACTED] No sir.

12 CAPTAIN [REDACTED] Let's talk about ... First of
13 all, let me ask you, are you aware of a picture,
14 snapshot or a photograph?

15 SPECIAL AGENT [REDACTED] Yes sir.

16 CAPTAIN [REDACTED] What does it portray? (b)(6)-2

17 SPECIAL AGENT [REDACTED] It's a still photograph of
18 what's occurring at the time. (b)(6)-1

19 CAPTAIN [REDACTED] If someone is not in that
20 picture, does that mean they're not in the area?

21 SPECIAL AGENT [REDACTED] No sir. It means ... They
22 could possibly be there. Sure.

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1 CAPTAIN [REDACTED] So the events happening and
2 they're not in the picture, it doesn't mean they're
3 not there?

4 SPECIAL AGENT [REDACTED] No.

5 CAPTAIN [REDACTED] Just at that specific time.
6 Right? (b)(6)-1

7 SPECIAL AGENT [REDACTED] That's correct.

8 CAPTAIN [REDACTED] And Prosecution Exhibit 16 is
9 the photograph of the accused on top ... Is there any
10 SOP or common sense Army regulation or anything that
11 allows for posing for a picture on top of somebody
12 like that?

13 SPECIAL AGENT [REDACTED] No sir.

14 CAPTAIN [REDACTED] Does it appear that the accused
15 was in any danger there? (b)(6)-1

16 SPECIAL AGENT [REDACTED] No sir.

17 CAPTAIN [REDACTED] I think I've already asked you,
18 there appears to be no military purpose other than
19 posing for a picture? (b)(6)-2

20 SPECIAL AGENT [REDACTED] That's correct sir.

21 CAPTAIN [REDACTED] Okay. And Prosecution Exhibit
22 11, that is the photograph with a guy with the wires

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1 and Sergeant Frederick is in that picture. Okay.

2 He's in that picture?

3 SPECIAL AGENT [REDACTED] (S)(C)-1 Yes, he is.

4 CAPTAIN [REDACTED] Now on Prosecution Exhibit 12,
5 it appears to be the same guy, same event. Correct?

6 SPECIAL AGENT [REDACTED] It appears to be sir.

7 CAPTAIN [REDACTED] (S)(C)-2 He's not in that picture?

8 SPECIAL AGENT [REDACTED] On this picture, no.

9 CAPTAIN [REDACTED] Does that mean he's not there?

10 SPECIAL AGENT [REDACTED] (S)(C)-1 No.

11 CAPTAIN [REDACTED] Does that mean he doesn't know
12 about it?

13 SPECIAL AGENT [REDACTED] Of course not.

14 CAPTAIN [REDACTED] Does that mean he didn't take
15 that picture? (S)(C)-2

16 MAJOR [REDACTED] Point is well taken sir.

17 CAPTAIN [REDACTED] I mean, I think this goes
18 directly to his objection. He objects to any picture
19 that Frederick, that the accused was not in because ...
20 Just because he's not in it, doesn't mean that he
21 wasn't taking the photograph, he wasn't involved in
22 the situation, he's in the area at that time.
23 Because we have a picture of the events, we know the

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1 events took place, and that's direct evidence towards
2 what happened. Now whether or not the accused is
3 actually in that picture I think, and this is just my
4 statement to that objection, this is direct evidence
5 that the events took place and there's other evidence
6 that you'll see sir that place him in the area of
7 these pictures. Along with those pictures sir,
8 there's a lot of statements that correspond with who
9 was in the pictures, who was taking the pictures ...

10 CAPTAIN (b)(6)(7) [REDACTED], (inaudible) defense wants to
11 make, (inaudible) testimony by people that
12 (inaudible) society just one person instead of having
13 live testimony or other evidence. These are all
14 alternatives to evidence which you must rely, rule
15 on, to determine whether not these witnesses that did
16 take these statements were witnesses that made
17 statements, the people that were in fact eyewitnesses
18 to the events are available or not available to
19 testify and you have to weigh that (inaudible). And
20 that's all (inaudible).

21 CAPTAIN (b)(6)(7) [REDACTED]: Are you aware of any the rules
22 about taking photographs at the Hard Site or
23 (inaudible)?

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(S)(b)-2

1 SPECIAL AGENT [REDACTED] When I first came up to
2 Abu, (inaudible) that is very prohibited and against
3 the rules of the Geneva Convention, to be taking
4 pictures of detainees.

5 CAPTAIN [REDACTED] I have no further questions sir.

6 CAPTAIN [REDACTED] Sir, just one follow up. You
7 mentioned the Geneva Convention. It's interesting
8 that you saw that the photographs were in violation
9 of the Geneva Convention. You said earlier that you
10 were stationed at Abu Ghraib Prison?

11 SPECIAL AGENT [REDACTED]: Yes.

(S)(b)-2

12 CAPTAIN [REDACTED] Currently ... Have you had a
13 chance to walk through the areas where the detainees
14 are
15 located?

(S)(b)-1

16 SPECIAL AGENT [REDACTED] Oh yes sir.

17 CAPTAIN [REDACTED] Is there any posting of the
18 Geneva Convention in Arabic in any of the hallways?

19 SPECIAL AGENT [REDACTED] Not that I know of.

(S)(b)-2

20 CAPTAIN [REDACTED] Does it surprise you that that's
21 also a (inaudible) Geneva Convention.

22 CAPTAIN [REDACTED] Are you aware that they have
23 copies of the Geneva Convention in Arabic over there?

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1 SPECIAL AGENT [REDACTED]: I am not aware of that.

2 CAPTAIN [REDACTED]: If I told you they did, would
3 that surprise you? (S)(b)-1

4 SPECIAL AGENT [REDACTED] No. (S)(b)-2

5 CAPTAIN [REDACTED] Okay. No further questions.

6 CAPTAIN [REDACTED] I just have a question or two.
7 You were asked several times about an SOP and not
8 having one at the time but yet the CID provided a
9 packet, there is an SOP at Abu Ghraib Prison. It's
10 dated the 29th of October.

11 SPECIAL AGENT [REDACTED]: Yes, this is (inaudible)
12 interrogation and debriefing (inaudible) for the tier
13 1 (inaudible) Abu Ghraib cells. They really didn't
14 have an SOP on how to run the jail cells apparently.
15 (inaudible) rule and regulations for interrogation
16 and debriefing. (S)(b)-2

17 CAPTAIN [REDACTED] (inaudible) (S)(b)-1

18 SPECIAL AGENT [REDACTED] Yes sir. Military police
19 (inaudible) SOP for how to do things?

20 CAPTAIN [REDACTED] Just at Camp Vigilant operations.

21 SPECIAL AGENT [REDACTED] Vigilant is the outside
22 tent camp that MI ...

019657

1 CAPTAIN [REDACTED] So the Hard site is not included
2 inside Camp Vigilant?

3 SPECIAL AGENT [REDACTED] No sir. Three different
4 camps. (S)(b)-1

5 CAPTAIN [REDACTED] (inaudible) strip search
6 (inaudible) not applicable. (S)(b)-2

7 SPECIAL AGENT [REDACTED]: I don't believe so, no.
8 You'd have to double check with the people at the
9 prison. I don't believe that one is the same one
10 from the Hard Site and Vigilant.

11 CAPTAIN [REDACTED]: Nothing further sir based on
12 your question.

13 MAJOR [REDACTED] Is that all the evidence you're
14 going to provide? Do not discuss this case with
15 anyone except the counsel until the trial is over.
16 Should anyone else attempt to discuss this case or
17 your testimony with you, refuse to do so and report
18 the attempt to me immediately. Do you understand
19 that? (S)(b)-2

20 SPECIAL AGENT [REDACTED] Yes sir. (S)(b)-1

21 MAJOR [REDACTED]: Have a nice day. You are
22 excused.

23 SPECIAL AGENT [REDACTED] Thank you sir.

019658

1 MAJOR [REDACTED]: And obviously you will remain
2 local in case we need to recall you.

3 SPECIAL AGENT [REDACTED] (b)(6)-1: Yes sir.

4 CAPTAIN [REDACTED] (b)(6)-2: Sir at this time, due to the
5 unavailability of Sivits, Harman, England and Davis,
6 who all gave sworn statements to the CID during
7 interviews, these statements ... Did you get the e-
8 mail? Sir, I believe we got an e-mail copy from each
9 of those, saying that they (inaudible) unavailable.
10 So I introduce as Prosecution Exhibit 19, the
11 statement of Specialist Sivits; Prosecution Exhibit
12 20 as statement from Davis, Sergeant Davis;
13 Prosecution Exhibit 21, statement from Specialist
14 Harman; and Prosecution Exhibit 22 as statement from
15 Private First Class England.

16 CAPTAIN [REDACTED] (b)(6)-2: Sir, the government asked that
17 you admit those based on the unavailability but the
18 defense wishes that you make that declaration based
19 on the facts in evidence on whether or not these
20 witnesses are indeed unavailable.

21 CAPTAIN [REDACTED]: I believe they're all pretty
22 much represented by counsel. I think that's pretty
23 evident.

019659

1 MAJOR [REDACTED] Am I missing something here?

2 CAPTAIN [REDACTED] Well, if that's your
3 determination sir, I just wanted it for the record,
4 if that's your decision based on information that the
5 government told you today ...

6 MAJOR [REDACTED] (inaudible)

7 CAPTAIN [REDACTED] If I could also get (inaudible)
8 you shouldn't include that as part of the record
9 (inaudible).

10 MAJOR [REDACTED]: (inaudible)

11 CAPTAIN [REDACTED] Sir, if we could ask for a brief
12 recess, maybe five to ten minutes?

13 MAJOR [REDACTED]: Okay. So, it's 11:15.

14 [END OF SECOND SIDE OF TAPE ONE]

15 CAPTAIN [REDACTED] We're back on the record. It's
16 11:53, 02 April. All parties are once again present.
17 Before the government closes or rests Your Honor or
18 excuse me, sir, there's a few things, a couple items.
19 I have here three sworn statements from detainees
20 that were given. Now, the question is going to be,
21 whether or not they're unavailable or not. I don't
22 know sir if you've made a decision yet or not in that
23 aspect. I can help this way. I can tell you sir

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1 that there is no possible way to bring the detainees
2 over here. That will not happen. The MPs will not
3 bring these guys from Abu Ghraib. It's just ...
4 They're being held for security reasons and they're
5 not going to bring them on Victory Base to testify
6 here. Two, we believe these three guys are
7 (inaudible) at this point, however, the list we got
8 could be subject to change. They may have been
9 released but I believe these three are not. However,
10 I would suggest they are still unavailable because
11 it's too much of a burden and cost for the government
12 to bring in security detainees to be a witness in a
13 case where we already have sworn statements from
14 them. I don't think they'd have anything more than
15 what their sworn statement could be. However, sir,
16 that's going to be your decision to make (inaudible).
17 If you've already made that decision, that we're not
18 going to go out (inaudible) and do that, then I will
19 (inaudible) and I want to submit these sworn
20 statements with them being unavailable and put these
21 in. I think maybe the best way to do it, is I put
22 these in as exhibits, we end up going out there and
23 doing that, then I can hold them back and we'll just

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1 take their testimony. So, (inaudible) It's tough for
2 me to pronounce these names, (S)(G)-4 ... I won't even
3 try sir. They'll be Prosecution Exhibits 22, 23 and
4 24, and they are of the English and the Arabic on all
5 three of these statements. Now, we do have here Mr.
6 (S)(G)-4 and I thought he was going to testify.
7 My understanding was he was going to testify. He has
8 given a statement already by the government, or
9 excuse me, to the CID, that we now want to introduce.
10 My understanding is now he's going to come in here
11 and invoke his self- incrimination rights as well.
12 So if he does that, he will be unavailable and I can
13 ... Do you have a copy of ... (inaudible) changes his
14 mind when the defense calls him, we can pull that
15 too. These are the statements of (S)(G)-7 on 14
16 January and 18 January. These will be Prosecution
17 Exhibit 25. Okay. This is a highlighted copy, so at
18 a later time we'll make a copy of it. With that sir,
19 the government rests.

20 MAJOR (S)(G)-2: Okay. We're going to take a
21 five-minute recess.

22 CAPTAIN (S)(G)-2 Back on the record. It is 12:05
23 and once again all parties are present. The defense

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1 informed me that [REDACTED] wishes to invoke his rights
2 against self-incrimination. So we don't need
3 necessarily to call him just to say that.

4 MAJOR [REDACTED]: I'll take it as face value.
5 (inaudible)

6 CAPTAIN [REDACTED] (inaudible)

7 MAJOR [REDACTED]: Sure. Raise your right hand.
8 Do you swear and affirm that the testimony you're
9 about to give in the case now in hearing will be the
10 truth, the whole truth and nothing but the truth so
11 help you God?

12 SGT. [REDACTED] Yes sir.

13 MAJOR [REDACTED] Please have a seat and state
14 your full name.

15 SERGEANT MAJOR [REDACTED]
16 [REDACTED]

17 MAJOR [REDACTED] Your rank?

18 SERGEANT MAJOR [REDACTED] Sergeant Major.

19 MAJOR [REDACTED] And your current duty
20 assignment?

21 SERGEANT MAJOR [REDACTED] I'm with the 418th MP
22 Detachment. I'm the senior NCO (inaudible).

019663

1 MAJOR [REDACTED] Captain [REDACTED] has some questions
2 for you Sergeant.

3 CAPTAIN [REDACTED] As I mentioned before outside, in
4 the CID report it lists you as being part of the 81st
5 EPW. Could you just explain.

6 SERGEANT MAJOR [REDACTED] We're part of the 81st
7 Regional Support Command which is a higher command
8 for a reserve unit and my (inaudible) unit is the
9 418th EPW CI Team, or Enemy Prisoner of War Detachment
10 Team.

11 CAPTAIN [REDACTED] And are you currently at Abu
12 Ghraib Prison?

13 SERGEANT MAJOR [REDACTED] Sir, we're a 12-man
14 detachment. We have half our team down at Abu Ghraib
15 and half our team up here at Camp Victory. I try to
16 spend a few days out of the week out with our team
17 down at Abu Ghraib.

18 CAPTAIN [REDACTED] And how long have you had a team,
19 yourself been involved with Abu Ghraib?

20 SERGEANT MAJOR [REDACTED] Basically since ... Well,
21 we got in the country (inaudible) Brigade the 1st of
22 February. So pretty much since probably the 3rd or
23 4th of February we've had folks down at Abu Ghraib.

019664

1 CAPTAIN [REDACTED] In the CID report, it mentioned
2 that you had found problems with the prison and how
3 it was being run?

4 SERGEANT MAJOR [REDACTED] Well, we went through some
5 assessments. You say the CID report?

6 CAPTAIN [REDACTED] Yes.

7 SERGEANT MAJOR [REDACTED] Okay. First of all, I've
8 never talked to any of them from CID. So if you're
9 referring to an actual CID report, I didn't talk to
10 anybody with the CID.

11 CAPTAIN [REDACTED] You are mentioned in the
12 documents. I'm just ... Well, let me ask ...

13 CAPTAIN [REDACTED] I would just object. Unless
14 (inaudible) aware of what he's talking about and his
15 name was mentioned or whatever ... I'm not sure I'm
16 aware either. There's a lot of documents.

17 CAPTAIN [REDACTED] Have you had a chance to assess
18 the situation at the prison?

19 SERGEANT MAJOR [REDACTED] I walked through the camps
20 itself. There's basically three individual camps to
21 undergo, Camp Ganci, Camp Vigilant and the Hard Site.
22 I've been through all three of the camps and I guess
23 if I had to explain what role of our team is since

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1 we're an EPW CI team. Our role of our team is we go
2 in the camp and ensure that the conditions are
3 according to the Geneva Convention, i.e., we make
4 sure the detainees/prisoners, EPWs are being treated
5 according to the Geneva Convention. We make sure
6 they're receiving proper medical care. We make sure
7 that the camp is environmentally friendly, taken care
8 of according to environmental conditions. That's
9 basically the goal of the team. And then the final
10 goal for our team is we arrange for repatriation of
11 detainees or prisoners back to their homeland.
12 That's kind of how the role of our team works.

13 CAPTAIN [REDACTED] And who is your predecessor? Who
14 performed that function before you arrived in
15 February?

16 SERGEANT MAJOR [REDACTED] I'm not sure. I can't say
17 ...

18 CAPTAIN [REDACTED]: So there was no relief in place
19 of another unit?

20 SERGEANT MAJOR [REDACTED] We came up under, it was
21 called (inaudible) BLD team, but there was only two
22 or three individuals. They didn't have their whole

019666

1 team here and my understanding is they didn't even
2 have a presence down at Abu Ghraib.

3 CAPTAIN [REDACTED] What kind of training do members
4 of your unit have in order to perform this function?

5 SERGEANT MAJOR [REDACTED]: We have a multitude of
6 MOSs in our detachment who are commanded by, we have
7 a commander, (inaudible) operations officer, but we
8 also have medical personnel, (inaudible) which are
9 environmental control, MPs, clerical, supply, and
10 junior MP. That's the makeup of our team.

11 CAPTAIN [REDACTED]: Who did you receive your ... When
12 did your unit receive their orders to perform this
13 function at Abu Prison?

14 SERGEANT MAJOR [REDACTED]: It would be when we first
15 got ... We got into Kuwait on the 29th of January, our
16 advanced party consisting of myself, Commander XO,
17 and an E795B. We got up here February 1st if I'm not
18 mistaken, and then we took half of our team,
19 (inaudible) officer and some MPs. We got down to Abu
20 Ghraib if I'm not mistaken February 3rd or 4th.

21 CAPTAIN [REDACTED] Of 2004?

22 SERGEANT MAJOR [REDACTED] Yes sir.

019667

1 CAPTAIN [REDACTED] And did you perform an inspection
2 and a training mission or just truly inspection?

3 SERGEANT MAJOR [REDACTED] Well, we're actually
4 working out of our role. We're more involved in
5 detaining operations because there really is no
6 (inaudible) normally operate. So, we were working ...
7 Our mission kind of changed when we got here. So,
8 we're working more on the detainee operations, trying
9 to get the detainees released. For example, our
10 commander sits on the Release Board and they
11 recommend X amount of detainees to be released per
12 day and then it takes a while for those detainees to
13 get through the system. So, usually once or twice a
14 week we receive a release list from CKTF7 and we
15 arrange to have the detainees released, i.e., check-
16 in, ISN numbers of the detainees, arrange for bus
17 transportation, and we arrange, make sure they get
18 like a \$10 stocking fund that gets them from point,
19 you know, from when they're released it gets them
20 back to their home town. So we're more on the
21 detainee release business (inaudible) called EPW
22 Camps, etc.

019668

1 CAPTAIN [REDACTED] Now, when you took over this
2 function in February at Abu Prison, did you notice
3 any deficiencies based on your experience and
4 training in detainee operations?

5 SERGEANT MAJOR [REDACTED] We noticed mainly living
6 conditions of the detainees (inaudible) environmental
7 concerns. We had identified some medical concerns to
8 ensure that the detainees were receiving a proper
9 diet. There's a whole host of chronic medical
10 detainees in there. So we identified to make sure
11 that they were receiving proper medical care,
12 receiving proper prescriptions and that's pretty much
13 what we identify.

14 CAPTAIN [REDACTED] The people, soldiers that were
15 present in February, were they first in detainee
16 operations?

17 SERGEANT MAJOR [REDACTED]: I can't say that sir. I'm
18 not sure if they were. I mean, we were more exposed
19 when we walked through the camps or the Hard Site.
20 The MPs would be on site, you know, guarding the
21 detainees or providing security for those camps or
22 the Hard Site. The dealings that we had, like on the
23 environmental concerns, we found out those issues had

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1 basically already been addressed through previous
2 assessment.

3 CAPTAIN [REDACTED] Who do you take, like reports of
4 deficiencies, who do you address those to?

5 SERGEANT MAJOR [REDACTED] First of all, we were
6 giving them to our commander and then they would go
7 up the proper chain.

8 CAPTAIN [REDACTED] Is there a company level
9 commander?

10 SERGEANT MAJOR [REDACTED] No sir. (inaudible) 12-
11 man detachment, but we're commanded by Lieutenant
12 Colonel (inaudible).

13 CAPTAIN [REDACTED] And whose responsibility would it
14 be then to implement corrections (inaudible) or ...

15 SERGEANT MAJOR [REDACTED] No sir. Typically, we're
16 just, as I said, an advisor team. As you know, down
17 like at Abu Ghraib, for example, you have battalions
18 and there would be a battalion down there that's
19 overseeing detainee operations responsible for the
20 running of the camp.

21 CAPTAIN [REDACTED] Are you aware of any ... With the
22 detainees that are currently there, what kind of
23 detainees? That's the larger ...

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1 SERGEANT MAJOR [REDACTED]: Typically they secure the
2 detainees. The security detainees are kept in Camp
3 Ganci or Vigilant and then the current so-called
4 criminals are actually kept in the Hard Site at PCCF,
5 which is (inaudible) of Abu Ghraib.

6 CAPTAIN [REDACTED] (S) (b) (2) And you mentioned security
7 detainees and another witness mentioned security
8 detainees this morning as well. So what exactly is a
9 security detainee?

10 SERGEANT MAJOR [REDACTED] A security detainee is a
11 detainee, an individual that has been brought in
12 through (inaudible) and until the Release Board
13 reviews their package, they can be accused of
14 anything from being at the wrong place at the wrong
15 time, to acts against coalition forces. There's a
16 whole multitude of charges that there can be.
17 Typically the criminals from what I'm told are like
18 Iraqi crimes and they go to the Hard Site, but the
19 majority of the detainees down at Abu Ghraib would be
20 considered security detainees.

21 CAPTAIN [REDACTED] And the other detainees, are they
22 criminals? (S) (b) (2)

23 SERGEANT MAJOR [REDACTED] I don't have that sir.

019671

1 CAPTAIN [REDACTED] Would there be any prisoners or
2 detainees present at Abu that would be (inaudible)?

3 SERGEANT MAJOR [REDACTED] Sir, I'm not qualified to
4 answer that. (S)1672

5 CAPTAIN [REDACTED] Any knowledge or paperwork which
6 you are aware of describing the demographics of who
7 exactly is being detained at Abu?

8 SERGEANT MAJOR [REDACTED] No sir. That may be at
9 the higher level, when our commander, until the
10 Release Board reviews the packages, that may be all ...
11 Typically what we're concerned, our main concern is
12 when the security detainees are brought in, you know,
13 the paperwork is done by the detainee force or the
14 detainee power that's bringing in. And for example,
15 down at Abu Ghraib, you know, you have US Forces,
16 Army, now that we have arranged on ground the Marines
17 are bringing in security detainees to make sure they
18 have a capture tag and a statement, you know, why
19 they were brought in, i.e. acts against coalition
20 forces, crimes against coalition forces.

21 CAPTAIN [REDACTED] (S)1672 So if you were to have a list of
22 detainees, there should be paperwork of some sort
23 describing why they're being detained?

019672

1 SERGEANT MAJOR [REDACTED] Yes sir.

2 CAPTAIN [REDACTED] And that would be true for every
3 detainee being processed through Abu?

4 SERGEANT MAJOR [REDACTED] Yes sir, it should be.

5 CAPTAIN [REDACTED] Is there Military Intelligence at
6 Abu?

7 SERGEANT MAJOR [REDACTED] Yes sir, MI is part of the
8 processing complex down there. You have MI, you have
9 medical and the detainees who are brought in are
10 getting a brief, I'm not saying physical, but
11 basically a brief rundown according to the Geneva
12 Convention. You know, that's part of the in
13 processing and they have to be given a quick, I won't
14 say physical, but a quick rundown to make sure that
15 they're not injured or something.

16 CAPTAIN [REDACTED] Are they ... Are detainees
17 interrogated at all?

18 SERGEANT MAJOR [REDACTED] I'm not sure sir. That's
19 not part of the role of our team.

20 CAPTAIN [REDACTED] Have you seen ... Are you aware of
21 an entity known as the, and I don't know if I'm
22 pronouncing it right, CACI Corporation, C-A-C-I?

019673

1 SERGEANT MAJOR [REDACTED]: No sir. I'm aware those
2 MI
3 folks within the processing center but I'm not aware
4 ...

5 CAPTAIN [REDACTED] As far as any specific duties,
6 you don't know ...

7 SERGEANT MAJOR [REDACTED] No sir.

8 CAPTAIN SHUCK: Is there other government
9 agencies present at the Abu Prison?

10 SERGEANT MAJOR [REDACTED] There's civilian
11 contractors (inaudible) but I'm not sure of any other
12 contracting firms down there.

13 CAPTAIN [REDACTED] Thank you very much.

14 SERGEANT MAJOR [REDACTED] Yes sir.

15 CAPTAIN [REDACTED] I have nothing sir.

16 CAPTAIN [REDACTED] (inaudible) terminology that
17 you've been using, EPW, detainee. Is the term
18 detainee pretty much the universal term for a
19 prisoner (inaudible)?

20 SERGEANT MAJOR [REDACTED] Yes sir. If they're not
21 classified as an Enemy Prisoner of War.

22 MAJOR [REDACTED] Do not discuss this case with
23 anyone other than counsel and myself until after this

019674

1 trial is over. Should anyone else attempt to discuss
2 this case or your testimony with you, refuse to do
3 so,
4 and report the attempt to me immediately. Do you
5 understand that?

6 SERGEANT MAJOR [REDACTED] Yes sir.

7 MAJOR [REDACTED]: Have a nice. You are excused.

8 SERGEANT MAJOR [REDACTED] Thank you sir.

9 MAJOR [REDACTED] Thank you.

10 CAPTAIN [REDACTED] Sir, I believe First Sergeant
11 [REDACTED] (ph) and Captain [REDACTED] are going to be here
12 at 1300 (inaudible).

13 CAPTAIN [REDACTED] (inaudible)

14 CAPTAIN [REDACTED] I don't think the government has
15 an objection to that sir.

16 MAJOR [REDACTED] It's 1316. We've reconvened and
17 all parties are once again present.

18 CAPTAIN [REDACTED] We wish to call Captain [REDACTED]
19 sir.

20 MAJOR [REDACTED] Before I begin the questioning,
21 I'm going to read you your rights. (inaudible) wants
22 to question you about the following facts which
23 (inaudible) accused maltreatment of detainees and

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1 dereliction of duty. Before I ask you these
2 questions, I'm going to read you the following rights
3 sir. You don't have to answer any question or say
4 anything. Anything you say can be used as evidence
5 against you in a criminal trial. You have the right
6 to talk privately to a lawyer before, during or after
7 questioning and have a lawyer present. The lawyer
8 could be a civilian arranged at no expense to the
9 government or military lawyer detailed for you at no
10 expense. If you're not willing to discuss the events
11 of the investigation without a lawyer present, you
12 have the right to stop answering questions at any
13 time or seek a private lawyer before you answer any
14 questions.

15 CAPTAIN [REDACTED] I wish to say nothing at this
16 time. (S)(6)-2

17 MAJOR [REDACTED] We'll just have you sign that
18 form.

19 CAPTAIN [REDACTED] (S)(6)-2 Sir at this time the defense
20 (inaudible) Captain [REDACTED] request that as part of
21 your investigation officer report that given the
22 nature of the charges against the accused, that
23 testimony immunity be granted as to Captain [REDACTED] (S)(6)-2

019676

1 testimony. And then at a later date we continue
2 Article 32 and that Captain [REDACTED] will testify under
3 testimony immunity.

4 CAPTAIN [REDACTED] (S)(G)-2 Sir, as part of immunity,
5 (inaudible) sworn statement from Captain [REDACTED] which
6 could be entered into the record.

7 CAPTAIN [REDACTED] (inaudible) for a full and
8 complete investigation report. (inaudible) at any
9 time can grant testimony (inaudible) and that can be
10 part of your (inaudible).

11 CAPTAIN [REDACTED] (inaudible) what the testimony
12 is going to be (S)(G)-2 (inaudible). I'm not sure what we're
13 talking about here. (inaudible)

14 CAPTAIN [REDACTED] Sir, as I mentioned before
15 earlier today, (inaudible) for the Army of this case
16 and the other individuals accused of this same crime.
17 It has come to defense's knowledge that repeated
18 requests for guidance, standard operating procedures,
19 SOPs, (inaudible) set up by this commander and his
20 higher commanders, all the way up to general officer
21 level. None was given. (inaudible) military
22 intelligence officer involved in intensive
23 interrogation of detainees, condoned some of the

019677

1 activities and stressed that that was standard
2 procedure but what the accused, (inaudible). He noted
3 that there was a strange (inaudible) by the MI,
4 (inaudible) withholding food and water. Were the
5 Geneva Conventions being followed? All of that will
6 be questioned by the chain of command and denied.
7 (inaudible) Present during some of these happenings,
8 it has come to my knowledge that Lieutenant General
9 Sanchez was even present at the prison during some of
10 these interrogations and/or allegations of the
11 prisoner abuse by the (inaudible). Congressional
12 people (inaudible)

13 CAPTAIN [REDACTED] Are you saying that Captain
14 (b)(6)-2 [REDACTED] is going to testify that General Sanchez was
15 there and saw what was going on?

16 CAPTAIN [REDACTED] We can bring him in sir.
17 Testimony immunity. That's what he told me. I'm an
18 officer of the court and I would not lie. I've got
19 three children at home. I'm not going to risk my
20 career ...

21 CAPTAIN (b)(6)-2 [REDACTED] First of all, what you're saying
22 is that Captain [REDACTED] asked for some (inaudible). So
23 what. Sir, we're talking about specific crimes of

019678

1 assault here and no SOP in the world is going to say
2 that you can assault people (inaudible) lewd acts and
3 maltreatment (inaudible). Unless he's got some
4 testimony as to that, I think this is ridiculous,
5 it's getting ridiculous.

6 CAPTAIN [REDACTED] Sir, the government and
7 (inaudible) is doing a good job of pointing that out.
8 Interestingly enough though, one of the charges is
9 willful dereliction of duty and I urge you to go back
10 to your legal question, look at the definition of
11 willful dereliction of duty. It requires as one of
12 its elements that you need specific knowledge of the
13 duties, and that is (inaudible) that the government
14 has to prove beyond a reasonable doubt. So ...

15 CAPTAIN [REDACTED] Sir, what does this have to do
16 with Captain [REDACTED] If he wants that as his closing
17 argument and he wants to discuss the elements of the
18 case, that's fine, but I don't think this has
19 anything to do with Captain [REDACTED] (5)16-2 If Captain [REDACTED]
20 will come in here and discuss what an NCO has to do,
21 they can bring an NCO in here and decide what an
22 NCO's responsibilities are. We can do that. Captain
23 [REDACTED], First Sergeant [REDACTED], (inaudible) and at

019679

1 the time the commander, Lieutenant Colonel

2 [REDACTED] all can testify to those things. Because
3 remember sir, ...

4 CAPTAIN [REDACTED] They've invoked their right
5 against self-incrimination.

6 CAPTAIN [REDACTED] You're asking for a (inaudible)
7 giving any answer.

8 CAPTAIN [REDACTED] Well, this is why it's so
9 important sir. We can talk about like when I brought
10 the Sergeant Major in when he talked about where some
11 of his training and guides and duties come from.
12 Sir, if you look at my ... Common thinking here is
13 what I'm trying to get at with my request for
14 evidence that the government hasn't produced yet or
15 several of these witnesses that the government hasn't
16 produced yet. (inaudible) scope of duties and what
17 is condoned and what's not condoned. It appears that
18 it was a madhouse at this prison. If you charge a
19 soldier with 20 years of service in with willful
20 dereliction of duty, you better be prepared to
21 describe what those duties are. If it's standard
22 practice for the military intelligence community at
23 Abu Ghraib Prison to utilize (inaudible). Sir, you

019680

1 don't even have to look at testimony. Look at the
2 CID report. In there is an SOP for military
3 intelligence dated October of 2003 which discussed
4 (inaudible) withholding food and water, stuff that at
5 a glance I don't think the U.S. Army now considers
6 was a good idea. But right now, you're charging him
7 with willful dereliction of those duties without
8 telling us what those duties we're describing. It is
9 only fair that we find out. He was asking his chain
10 of command to come back and tell me, what am I
11 supposed to do? Is this right? This does not seem
12 to be right. Now if we have to ask that NCO
13 (inaudible) commander, hey, you know, there's
14 somebody here that's responsible for outlining these
15 duties, and if people are doing it wrong, then the
16 (inaudible). All we have now is the government
17 reacting after the fact with a bunch of pictures
18 (inaudible) whitewash (inaudible) soldiers about this
19 conduct and then hide the fact of what was condoned
20 at the time. It is only fair that we talk about what
21 those soldier duties were. (inaudible) First
22 Sergeant ^{(S) (b)(2)} [REDACTED], he's not going to waive his
23 rights, but he would testify as to his scope of

019681

1 duties as an NCO (inaudible). He will then further
2 testify about what requests he made of his superiors
3 of hey, this does not look right like all these
4 officers, general officers, congressional personnel,
5 other government agencies that go (inaudible)
6 military intelligence officials were saying that
7 (inaudible). This is what we want you to do. Sir,
8 look at some of those (inaudible) statements that are
9 present in the CID packet. It's very interesting to
10 know, especially from the prisoners themselves, the
11 detainees themselves, how we're talking about the
12 classic good copy/bad cop. One guy did come in and
13 beat me or take away my food. The other guy the next
14 morning would give me food and bring my cot back.
15 These were ... I'm not making this stuff up. It's in
16 the packet. It's in the CID packet. We need to
17 (inaudible) into that and find out (inaudible). Sir,
18 that's part of your duties as an investigating
19 officer is to tell (inaudible). Who is responsible?
20 Who is willfully derelict in their duties. That's
21 all (inaudible). (inaudible) there's something going
22 on because we have three people right in a row who
23 (inaudible) at this time and is being accused of this

019682

1 dereliction of duty. Yet Staff Sergeant Frederick
2 sits to my left right now being accused of those
3 crimes. I think that defining the soldier duties,
4 especially as charged, (inaudible) has to prove
5 beyond a reasonable doubt. (inaudible) There's much
6 more.

7 CAPTAIN (S)(G)-2 [REDACTED] I'll keep this brief sir. First
8 of all, we don't have to prove beyond a reasonable
9 doubt. We've already talked about what (inaudible).
10 You are here to look at the truth of each charge, not
11 the charges against (S)(G)-2 [REDACTED] or Captain [REDACTED] or
12 everybody else (inaudible) in the grand scheme of
13 things. Sir, you need to focus on the elements of
14 the charges against the accused, the specific
15 elements, and it has to be by reasonable belief or
16 reasonable grounds that these are true, not beyond a
17 reasonable doubt. And if the defense believes there
18 is something going on because (inaudible) and maybe
19 there is something going on. I don't doubt it.
20 There may be something going on here. These people
21 have chosen not to make statements but if you believe
22 that the evidence that showed something is going on,
23 (inaudible) accused testify under that same standard.

019683

(S)(G)-2

1 But we're not here (inaudible) [REDACTED] and
2 all those other things. Sir, I must ask you to focus
3 on the elements on the offenses that we have here on
4 what the accused did on those days, and once again,
5 we (inaudible) you'll find by a reasonable belief,
6 reasonable grounds that the accused did these
7 charges.

(S)(G)-2

8 CAPTAIN [REDACTED] (inaudible) duties. The CID
9 agent this morning testified that there is no
10 presence of any SOPs, no training guidance at all.
11 That's the evidence so far in this hearing today.
12 So, if that is the fact of the case, then the
13 government has not shown reasonable grounds to prove
14 willful violation of his duties, willful dereliction
15 of duties. If I may, I have more that Captain [REDACTED]
16 can offer as far as the scope of the duties but he
17 can talk, because he's part of this reserve unit, he
18 can also talk about the reserve unit training
19 (inaudible). Once again, (inaudible) is the scope of
20 duties. He can talk about the (inaudible) trained
21 for years and how they were put in the situation by
22 the chain of command in a place without guidance
23 outside the scope of their normal duties. He could

019684

1 also possibly describe other people besides
2 (inaudible) and what their role in this entire
3 investigation. It's an option that the government
4 has to make sure that this is a full and fair
5 proceeding. And we just ask that you go back to the
6 legal advisor and look into the option of the
7 (inaudible) granting testimony immunity (inaudible)
8 prosecution to do once you do bring someone, but the
9 record of testimony immunity for purposes of this
10 Article 32 investigation or further court proceedings
11 seems to be necessary given the proper evidence that
12 (inaudible). Thank you sir. And I'll make the same
13 argument (inaudible) officer and First Sergeant as
14 well.

15 MAJOR [REDACTED]: Do you want to bring them back
16 or do you want to leave on the record to ...

17 CAPTAIN [REDACTED] (inaudible)

18 MAJOR [REDACTED]: (inaudible) rights.

19 CAPTAIN [REDACTED] Once again ... (inaudible) to
20 invoke their rights.

21 CAPTAIN [REDACTED] I would like to take a short
22 recess and bring Sergeant [REDACTED] (ph) back who has
23 been trying to track down these other witnesses. And

019685

1 then at some point we can go on the record and
2 determine who's unavailable (inaudible). So if we
3 can find Sergeant [REDACTED] (ph) (inaudible).

4 MAJOR [REDACTED] (S)(b)-2 Okay. We're back on the record.
5 It's 1341 and all parties are once again present. We
6 have no more witnesses here presently. We have a
7 list from the defense. We just want to go through
8 these and determine who's unavailable and or at least
9 narrow it down to who per the defense wants and of
10 those who is unavailable. General Karpinski is in
11 Kuwait as far as I know and I believe he's in Kuwait.
12 He's in Kuwait on this case. I'm not sure
13 (inaudible). That being over 100 miles, he's
14 unavailable.

15 CAPTAIN [REDACTED] The defense is conducive to the
16 alternative, (S)(b)-2 wants the testimony either by telephone,
17 video teleconference, whatever.

18 CAPTAIN [REDACTED] Well, we don't have any of those
19 assets here in the country right now. We tried to
20 get that. We talked about it. Telephonic is not ...
21 We don't have the proper phone lines or the thing to
22 do that so ...

019686

(b)(6)-2
1 MAJOR [REDACTED]: Sir, have you contacted anybody
2 in the United States since you've been here?

3 (inaudible) 100-mile radius (inaudible) rule that
4 says if they're outside of it, they're unavailable.
5 It's (inaudible) investigation process (inaudible).
6 The inside the 100 rule is where the analysis takes
7 place and whether or not (inaudible). So if these
8 people (inaudible), and it's within your discretion
9 to declare them unavailable at that point at which
10 time (inaudible).

11 (inaudible) recess and go talk to the legal
12 advisor. (inaudible)

13 (inaudible) Well, we're not getting legal advice.
14 We're going through this and he absolutely can, he's
15 going to make a decision whether (inaudible). But
16 before we go to that rule, legal advisor needs to
17 have the list narrowed down to what he (inaudible)
18 decision based on his understanding of the rules.

19 CAPTAIN [REDACTED] Okay. Captain, interrupt me if
20 you got another (b)(6)-2 opinion or someone else (inaudible).
21 I'm just going through this list as I have in this e-
22 mail. Captain [REDACTED].
(b)(6)-2

019687

1 (inaudible) I'm not aware of where Captain
2 [REDACTED] is. I think he's either in the states or in
3 Kuwait. December he went back to the states.

4 CAPTAIN [REDACTED] December he went back to the
5 states? Okay. Major [REDACTED] is in Kuwait. And I
6 assume these are the (inaudible). Is that a name or
7 is that ...

8 (inaudible) That's a duty position sir.

9 CAPTAIN [REDACTED]: Well, I don't know who that
10 person is so ...

11 CAPTAIN [REDACTED] I ask that the government proceed
12 with due diligence (inaudible) in the CID packet.
13 The purpose, and I'll give you the proper (inaudible)
14 offer some guidelines and what kinds of training
15 instructions, whatever, that this Battalion and
16 (inaudible) properly conduct detainee operations at
17 Abu Ghraib Prison during the requisite time period.

18 CAPTAIN [REDACTED] Captain [REDACTED] He's back in the
19 United States. Captain [REDACTED] ... Is it a she?

20 (inaudible) She.

21 CAPTAIN [REDACTED] Is back in ...

22 (inaudible) Germany.

23 CAPTAIN [REDACTED] In Germany?

019688

1 (inaudible) I believe so.

2 CAPTAIN [REDACTED] (5) 6-2 Captain [REDACTED] (ph)

3 (inaudible). He's back. Sergeant Major [REDACTED] has
4 already testified. ICRC representative (inaudible)
5 on site inspection of the prison (inaudible). I
6 don't know who they are either.

7 CAPTAIN [REDACTED] Again sir, I ask that the
8 government (inaudible) due diligence since I did not
9 receive any discovery responses out of request for
10 evidence that they look into finding out whoever that
11 is and present this as being, as you well aware, in
12 the CID packet is references to ICRC, International
13 Red Cross, based (inaudible) for the Red Cross
14 (inaudible) on site inspections. (inaudible)
15 significant activities reports that we thought would
16 be very beneficial for this investigation.

17 (inaudible) Sir, the ICRC (inaudible) government.
18 (inaudible) well aware once (inaudible) in Iraq,
19 (inaudible). So clearly they're outside of the 100-
20 mile radius. We cannot compel any of those
21 individuals from testifying even if they were within
22 the 100-mile radius because they are not U.S. Army
23 personnel. They are ICRC (inaudible). Also, there's

019689

1 nothing in the rules to say that he has to provide
2 him with this discovery prior to 32.

3 CAPTAIN (S) 10-2 [REDACTED] So the discovery request is only
4 (inaudible) to help you, to assist you in your
5 determination. If you decide that the ICRC
6 (inaudible) will not be reasonably available, the
7 defense asks that you look into the request that the
8 defense has made regarding these reports because it
9 is ... The defense (inaudible) has reasonable basis
10 based on the packet that the government presented
11 that there are some discoverable evidence that might
12 be helpful in finding out, determining the facts as
13 they existed in the critical time period and better
14 yet from outside agents, totally outside the U.S.
15 Government and I think that would be very applicable
16 in addition with the AR15-6 investigation which we
17 already have shown this morning through the CID agent
18 who basically was able to delineate the limits and
19 scope of his investigation and the investigation
20 (inaudible). So in order (inaudible) fair
21 determination, as is your duty under (inaudible) 405,
22 we ask that that's what you tell the government to
23 do.

019690

1 CAPTAIN [REDACTED] Corporal Graner has invoked.
2 PFC Lynndie England is in the United States. Ambuhl
3 has invoked. Davis has invoked. Sabrina has
4 invoked. And Sivits has invoked. [REDACTED] was
5 present and invoked his right to remain silent. (b)(6)-4
6 Special [REDACTED] we don't know what unit or who that
7 is. We called, however, at Abu Ghraib and
8 (inaudible) no knowledge of this person. Special
9 John Cruz, same thing, no knowledge of that name.
10 There's no unit here or anything else (inaudible) not
11 sure. We can double check that. Special (inaudible)
12 Krol of the 325th MI has been redeployed to the
13 states. That's my understanding. That's why they
14 have no knowledge of that over at the prison because
15 325th MI I believe is gone. Now, we go through the
16 prisoners sir and again refer to our discussions that
17 are not available to be here. We believe it's too
18 much burden on the government to make them available.
19 We would ask you to consider them unavailable as well
20 due to the security problems and issues over there.
21 But we have [REDACTED]. He is at (inaudible). [REDACTED]
22 [REDACTED] (b)(6)-4 unknown where he's at, he's released.
23 [REDACTED] (ph) has been released. And then the

019691

1 next one, two [REDACTED] (ph) and [REDACTED] (ph),
 2 [REDACTED]
 3 [REDACTED] and (inaudible) are all present
 4 at Abu Ghraib as far as our latest information.
 5 [REDACTED] (ph) is gone, released. [REDACTED] (ph) is gone,
 6 released. [REDACTED] (ph) is gone, released. And then
 7 next, [REDACTED],
 8 [REDACTED] (inaudible), I'm sorry, (inaudible).
 9 Okay. He's gone? Okay. So the next, [REDACTED]
 10 [REDACTED] (ph) and [REDACTED]
 11 are all according to our latest information are still
 12 present at the prison. [REDACTED] has been
 13 released and [REDACTED] (ph) is present. I'm sorry.
 14 Okay. [REDACTED] (ph) is present and [REDACTED] (ph) has
 15 been released. And that's the latest information
 16 (inaudible). But as far as we understand
 17 (inaudible). Okay. Then we get back into Sgt.
 18 [REDACTED] (ph).
 19 (b)(6) (inaudible) MP.
 20 CAPTAIN [REDACTED] 42nd MPs. I'm not sure if
 21 they're still there or not. (b)(6) (b)(6)-2 We'll have to double
 22 check on that. Sergeant [REDACTED] do you know?
 23 SERGEANT [REDACTED] 42nd.

019692

1 CAPTAIN [REDACTED] 42nd? I'm not aware of a 42nd
 2 MP. Okay. Now, CID Agent [REDACTED] Do you know about
 3 him? (S)(G)-1

4 SERGEANT [REDACTED]: Agent [REDACTED] was the one CID
 5 agent that was actually present. (S)(G)-1

6 CAPTAIN [REDACTED] We heard from Special Agent
 7 [REDACTED] Discussed a bunch of these. [REDACTED],
 8 Cruz, [REDACTED] (ph), (inaudible) [REDACTED] and [REDACTED], all
 9 gone, redeployed. [REDACTED] (ph), [REDACTED] (ph),
 10 [REDACTED] (ph) and [REDACTED] (ph), he's never heard of.
 11 [REDACTED] (ph) and (inaudible) are agents (inaudible)
 12 Texas and they're still, (inaudible). (S)(G)-1

13 CAPTAIN [REDACTED] Where's [REDACTED] (ph). (S)(G)-2

14 CAPTAIN [REDACTED] [REDACTED] (ph). Will double check
 15 on that. (inaudible) CID?

16 CAPTAIN [REDACTED] Yeah. He's mentioned several
 17 times in the CID report. (S)(G)-1

18 CAPTAIN [REDACTED] [REDACTED] (ph). (S)(G)-1

19 CAPTAIN [REDACTED] No.

20 CAPTAIN [REDACTED] (inaudible) as the person who
 21 was there by the accused?

22 CAPTAIN [REDACTED] (inaudible)

019693

1 CAPTAIN (b)(6)(2) (inaudible) (b)(6)(1) (inaudible)
2 his last name I recognize. And Mr. (b)(6)(1)
3 (b)(6)(1) TACI corporation, (inaudible). We couldn't
4 find that corporation or ... Are they out there? Yeah.
5 I think ... Again, I don't know if we can tell in any
6 way. Okay. I think that's all (inaudible). Is
7 there anybody else that you want ...

8 CAPTAIN (b)(6)(2) I'd like to add based on
9 conversations I had with Captain (inaudible) military
10 intelligence through due diligence the government did
11 find out what military soldiers (inaudible) sir by
12 the name of Captain (b)(6)(2) who had been present at Abu
13 in the critical timeframe.

14 CAPTAIN (b)(6)(2) I guess either ... Do you want to
15 make a decision now on who's available and who's not
16 or make some decision on who's unavailable at this
17 time. Otherwise, I will suggest you go to talk to a
18 legal advisor, see if you want to pursue that, if we
19 can find some of these people and again because of
20 the travel situation over here, we'll have to
21 reconvene a second day, if that's what you wish to
22 do. Talk to your legal advisor, but you can make a
23 decision based on whether, make sure you have enough

019694

1 evidence to make a decision. If you feel comfortable
2 and you to talk to a legal advisor about that.

3 CAPTAIN [REDACTED] And he or she can talk about the
4 military operations (inaudible) investigating officer
5 (inaudible).

6 CAPTAIN [REDACTED] I believe that's all we have for
7 the day sir. (inaudible)

8 CAPTAIN [REDACTED] Sir, if that's the case, the
9 (inaudible) recess until we're able to, (inaudible)
10 communicate by e-mail or whenever you make your
11 decision or able to procure additional witnesses and
12 continue this Article 32 investigation.

13 MAJOR [REDACTED] I'm going to take an immediate
14 recess now. Let me call (inaudible) and then we'll
15 reconvene today and we can go ahead ...

16 MAJOR [REDACTED] Once again, we're on the record,
17 1415, and all parties are again present. Okay. I
18 have consulted with my legal advisor and here's what
19 we're going to do. Those witnesses that (inaudible),
20 they will be declared unavailable. Detainees that
21 are within 100 miles, they will also be declared
22 unavailable. We've got the three statements, sworn
23 statements (inaudible). Are there any other

019695

1 witnesses within 100 miles that can be considered
2 available that we've discussed, that haven't invoked
3 their rights already?

4 CAPTAIN [REDACTED] Did you say sir that can be
5 considered unavailable?

6 MAJOR [REDACTED] Yes. Anybody within 100 miles
7 who's not a detainee who hasn't been called yet or
8 hasn't invoked their rights?

9 CAPTAIN [REDACTED] The latest being Captain [REDACTED]
10 I'm not certain who that is.

11 (inaudible)

12 CAPTAIN [REDACTED] We can try to find the rest of
13 these names sir. Mr. [REDACTED] So, [REDACTED] (ph),
14 [REDACTED] Sgt. [REDACTED] Captain [REDACTED] and Mr. [REDACTED]

15 are the three names, or excuse me, the four names
16 that we're not certain about at this time where
17 exactly they are. Do you have any other information
18 about any
19 of those guys? Do you know what unit Captain [REDACTED] is
20 in?

21 (inaudible) I do know ... Captain [REDACTED] is an MI
22 officer and she was present during the period in
23 question, but other than that ...

019696

1 CAPTAIN [REDACTED] Female? She?

2 (inaudible) She.

3 CAPTAIN [REDACTED] We will try to track down these
4 four individuals and give you a better answer.

5 CAPTAIN [REDACTED] (inaudible) there could be
6 (inaudible) and then we can focus on the fact that
7 she was between October and December, (inaudible), so
8 that should be enough to determine (inaudible).

219X5) 9 CAPTAIN [REDACTED] I would suspect that since the
10 MI (inaudible) redeployed. We will check but it's
11 likely that (inaudible) sir. (inaudible) verify the
12 location and notify you.

13 MAJOR [REDACTED] (inaudible)

14 CAPTAIN [REDACTED] No sir. Nobody else.

15 MAJOR [REDACTED] Now, the other thing we'll
16 discuss is the immunity. (inaudible) Anything else?

17 CAPTAIN [REDACTED] Yes sir. Along with the
18 defense's request for witnesses, the defense also
19 requested a number of documents to be produced
20 related to the time period in question. I realize
21 that, or the defense met its top deadline and they
22 may not have been able to produce all those
23 documents, but I ask that those be looked into.

019697

1 Maybe you can tell the government to produce those,
2 especially the 15-6 investigation, those operations
3 orders, significant activity reports during this time
4 period (inaudible) majority of these witnesses that
5 the defense call are unavailable, we're missing those
6 pieces of information (inaudible) be present in those
7 documents. (inaudible) CID agent (inaudible) for
8 that time period. We can assume that if a 15-6
9 investigation going on that there might also be
10 adverse actions or reports being made against the
11 personnel that refused to testify and that may also
12 shed some light that is missing and we're talking
13 about the scope of duties during this applicable time
14 period. So I ask that the government be compelled to
15 produce those documents that the defense has
16 requested. (S)(b)-2

17 CAPTAIN [REDACTED]: (inaudible) 15-6 I don't have
18 it. I don't have access to it. It's not completed
19 as far as I know and it's not being released until it
20 is. So, I don't know how I can get a hold of .
21 something that I don't have. As far as (inaudible).
22 I'm not sure where. I guess my question is, what
23 (inaudible)?

019698

1 CAPTAIN [REDACTED] Sir, a lot of this (inaudible)
2 just who was looking at the CID packet itself. We
3 see that there's a lot of interesting things going
4 on. First, there's this ICRC visit being conducted
5 during this timeframe. What are they looking at?
6 Things like detainee abuse. Surely during this
7 timeframe there is a report being generated by
8 several within the chain of command either notifying
9 or (inaudible).

10 MAJOR [REDACTED] (inaudible)

11 CAPTAIN [REDACTED] No sir, but there would probably
12 be an operations order (inaudible) in place. Now,
13 (inaudible) in October and the coordinating
14 instructions should offer some insight into either
15 the (inaudible) or trained that the higher level of
16 commander would have dictated (inaudible), especially
17 given that the Army knew that this unit does not
18 normally do this type of operation. So, once again,
19 I can't as the defense say for certain that those
20 documents will be helpful or those past experiences
21 (inaudible) that these kinds of documents may shed
22 some light on the scope of duties that the Army
23 directed that Staff Sergeant Frederick (inaudible)

019699

1 performed at this prison. So, you know, only the
2 government is in the position of knowing for sure,
3 and until those, until they are produced, (inaudible)
4 but we do know (inaudible) CACI Corporation, that's
5 C-A-C-I, interrogators that the government has hired
6 in this prison. And interesting (inaudible) scope of
7 work documents within those contracts. That's how
8 government contracts work. We can give contractors a
9 scope of work and assign duties and within that it
10 may shed some light on (inaudible) prison what they
11 could have known or seen or done that would be
12 authorized by the U.S. Government, particularly the
13 U.S. Army and its coalition forces during these
14 critical timeframes. So, these documents all should
15 be related to those documents between October and
16 January of this past year and are related to Abu
17 Ghraib prison.

18 CAPTAIN [REDACTED] (5)1672 I'm not aware of any (inaudible)
19 whatsoever but I'll check.

20 MAJOR [REDACTED] Anything else? I guess we'll
21 continue this session. We'll be in recess until we
22 reconvene.

23 [END OF FIRST SIDE OF TAPE TWO]

019700

1 MAJOR [REDACTED] We have reconvened. Reconvened,
2 back on the record at 10:05 on April 9th. All parties
3 once again are present when we broke up. Captain
4 [REDACTED] do you have any further witnesses you want to
5 talk with?

6 CAPTAIN [REDACTED] The government has offered to
7 bring in several members of (inaudible) Battalion.
8 We would like to call Sergeant [REDACTED] (ph). (S)IC-2

9 MAJOR [REDACTED] Please raise your right hand.
10 Do you swear and affirm the testimony you're about to
11 give in the case on hearing is the truth, the whole
12 truth and nothing but the truth so help you God?

13 SERGEANT [REDACTED] (ph): I do sir.

14 MAJOR [REDACTED] Please have a seat right now.
15 I'm Mr. [REDACTED] and I'm the investigating officer
16 for this Article 32 investigation. I'm just going to
17 read you your rights of warning. I believe the
18 offense would be dereliction of duty. Before I ask
19 any questions, you must understand your rights. You
20 don't have to answer my questions or say anything.
21 Anything you say or do can be used as evidence
22 against you in a criminal trial. You have the right
23 to talk privately to an attorney before, during or

019701

1 after questioning and to have a lawyer present with
2 you during questioning. This lawyer can be a
3 civilian at your arrangement for no expense to the
4 government or a military lawyer detailed for you at
5 no expense to you. If you're not willing to discuss
6 the offenses under investigation with or without a
7 lawyer present, you have a right to stop answering
8 questions at any time or speak privately with a
9 lawyer before answering further even if you sign a
10 waiver certificate. Do you understand your rights?

11 SERGEANT [REDACTED] (ph): Yes sir.

12 MAJOR [REDACTED] And do you request a lawyer
13 after being read your rights?

14 SERGEANT [REDACTED] (ph): I have not been to a lawyer
15 sir.

16 MAJOR [REDACTED]: So you have a lawyer at this
17 time?

18 SERGEANT [REDACTED] (ph): No sir. I don't have a
19 lawyer.

20 MAJOR [REDACTED] At this time are you willing to
21 discuss the offenses under investigation and make a
22 statement without talking to a lawyer and without
23 having a lawyer present with you?

019702

1 SERGEANT [REDACTED] (ph): No sir.

2 MAJOR [REDACTED] Okay.

3 CAPTAIN [REDACTED] Sir, I believe at this time
4 there's no further witnesses. (inaudible) March 30,
5 2004 (inaudible) request for documents.

6 CAPTAIN [REDACTED] Sir, as far as those other
7 witnesses, they were not available. We could not
8 find them. Never found Captain [REDACTED] (inaudible)
9 They are unaware of any Captain [REDACTED] that was ever
10 out there at that prison. They are not clear (S)/G-2
11 (inaudible). And as far as Mr. [REDACTED] goes
12 (inaudible), they did not find anything (inaudible)
13 CACI Corporation (inaudible).

14 CAPTAIN [REDACTED] The defense does request
15 (inaudible) military intelligence (inaudible) other
16 government agents and CACI Corporation interrogators,
17 that list be provided to you as the Article 32
18 investigation officer as soon as possible (inaudible)
19 Article 32 investigation given the issue as
20 established by (inaudible) during this relevant time
21 period that could have been described within the
22 scope of duty for Staff Sergeant Frederick
23 (inaudible).

019703

(S)16-2

1 CAPTAIN [REDACTED] (inaudible) address sir, is that
2 15-6 request, as of yesterday I've been made aware
3 that 15-6 (inaudible) copy is available for me at
4 this time (inaudible) classified secret. I don't
5 know what (inaudible). I have no objection to the
6 defense looking at the documents, seeing the
7 document, even having the documents, however, I just
8 want to make sure I abide by the rules as far as what
9 I can do, who do I give a secret document to, we're
10 going to need to know, whatever the requirements are.
11 (inaudible) I'm more than happy to turn that over to
12 you (inaudible) how to handle that.

13 MAJOR [REDACTED] I need to see that document.

(S)16-2
14 CAPTAIN [REDACTED] All right sir. I think we can
15 make that available to you. I think the best thing
16 is to go over and see (inaudible) and she has a copy
17 for me for (inaudible).

18 (inaudible)

19 CAPTAIN [REDACTED] (inaudible) But my only concern
20 is (inaudible) co-counsel in this case (inaudible)
21 and I will urge you to go back to your legal advisor
22 concerning (inaudible). This is an open proceeding
23 right now (inaudible).

019704

1 CAPTAIN [REDACTED] Sir, I have no objection to
2 enter
3 that as evidence (inaudible).

4 MAJOR [REDACTED] Now, do you need to get a hard
5 copy of that introduced into evidence?

6 CAPTAIN [REDACTED] I'm sorry sir?

7 MAJOR [REDACTED] Need to take a recess so you can
8 get a copy of that so you can introduce it into
9 evidence properly?

10 CAPTAIN [REDACTED] Well, sir, the only thing again,
11 the classification, I'm not sure we want to put it
12 into the document, into the 32 because it needs to be
13 secured in a secured area, locked up (inaudible).

14 MAJOR [REDACTED] (inaudible)

15 CAPTAIN [REDACTED] And then again, I'm not the guy
16 that (inaudible) clearance. I'm not sure what you
17 have to satisfy that on. (inaudible)

18 MAJOR [REDACTED] (inaudible) I wish I had the
19 clearance to either say it can be introduced into
20 evidence (inaudible).

21 CAPTAIN [REDACTED] Yeah. We can do that.
22 (inaudible) I can go over there and get a copy
23 (inaudible).

019705

1 MAJOR [REDACTED] Why don't we take a recess now.
2 You get that. I'll call my legal advisors to see how
3 (inaudible).

4 CAPTAIN [REDACTED] The only thing (inaudible) this
5 person, Specialist [REDACTED] was not available the other
6 day and the defense was not going to call him and I
7 would ask if you could call him at this time as a
8 witness.

9 MAJOR [REDACTED] He wasn't available when?

10 CAPTAIN [REDACTED] He wasn't available on ...

11 MAJOR [REDACTED] Sir, I thought he was on your
12 witness list for today.

13 CAPTAIN [REDACTED] I'm sorry. Yes. He was not
14 here on Friday, the last time ... (inaudible)

15 MAJOR [REDACTED]: You want to bring him in here
16 now and then we'll take a recess.

17 CAPTAIN [REDACTED] Yes sir. (inaudible)

18 MAJOR [REDACTED] Are you finished?

19 CAPTAIN [REDACTED] (inaudible) 15-6 and all the
20 other documents that have been requested (inaudible).

21 MAJOR [REDACTED] Right. I think I ruled on it.

22 CAPTAIN [REDACTED] (inaudible)

019706

1 MAJOR [REDACTED]: Now, is he subject to any
2 investigation? (S)(b)-2

3 CAPTAIN [REDACTED]: No.

4 MAJOR [REDACTED]: Please raise your right hand
5 sir. Do you swear and affirm that the testimony
6 you're about to give in this case now at hearing will
7 be the truth, the whole truth and nothing but the
8 truth so help you God?

9 SPECIAL AGENT [REDACTED]: Yes, I do. (S)(b)-2

10 CAPTAIN [REDACTED]: Speak up. Please state your
11 full name for the record.

12 SPECIAL AGENT [REDACTED]: My full name is [REDACTED]
13 [REDACTED].

14 CAPTAIN [REDACTED]: What is your current duty
15 assignment? (S)(b)-2

16 SPECIAL AGENT [REDACTED]: 372nd MP Company. CAPTAIN
17 [REDACTED]: Special Agent, what is your duty at the 372nd
18 MP Company? (S)(b)-2

19 SPECIAL AGENT [REDACTED]: Currently?

20 CAPTAIN [REDACTED]: Yes. (S)(b)-2

21 SPECIAL AGENT [REDACTED]: We were running the Hard
22 Site at Abu Ghraib.

23 CAPTAIN [REDACTED]: And what shift were you working?

019707

1 SPECIAL AGENT [REDACTED] I was working the night
2 shift at the prison. (S)(b)2

3 CAPTAIN [REDACTED] Okay. And what tier at the Hard
4 Site were you working at?

5 SPECIAL AGENT [REDACTED] At the time that these
6 things occurred, I was on Tier 4.

7 CAPTAIN [REDACTED] What tier are you working now?

8 SPECIAL AGENT [REDACTED] Recently it's been
9 changed. It's changed daily. (S)(b)2

10 CAPTAIN [REDACTED] So you were back in, (inaudible)
11 timeframes that you were working in Tier 4? (S)(b)2

12 SPECIAL AGENT [REDACTED] Around the second week of
13 November.

14 CAPTAIN [REDACTED] Okay. Now, did there come a
15 time in that second week of November when you were
16 working ... What were your duties there? What were
17 your responsibilities?

18 SPECIAL AGENT [REDACTED] I ran a tier which is like
19 a cellblock, ten cells that hold eight people on the
20 bottom floor and ten cells that hold eight people on
21 the top tier, and my job was to make sure (inaudible)
22 is all right with the prisoners, any dispute you try,

019708

1 you know, fix, fix the problem, make sure they get a
2 bed during your shift, things like that.

3 CAPTAIN [REDACTED] Did you ever get any training
4 before you started that job?

5 SPECIAL AGENT [REDACTED] A little bit.

6 CAPTAIN [REDACTED] How much?

7 SPECIAL AGENT [REDACTED] (inaudible)

8 CAPTAIN [REDACTED] What did that consist of
9 (inaudible)?

10 SPECIAL AGENT [REDACTED] Yes sir. It was like a
11 (inaudible) show you how to do everything for a
12 couple of days and then you would go ahead and do it
13 on your own. If you had any problems, you would talk
14 with the NCOIC (inaudible).

15 CAPTAIN [REDACTED] Okay. Who was the NCOIC at the
16 time?

17 SPECIAL AGENT [REDACTED] The night shift, it was
18 Sergeant Frederick.

19 CAPTAIN [REDACTED] Okay. Was there any policies or
20 SOPs in place?

21 SPECIAL AGENT [REDACTED] Not that I'm aware of sir.

22 CAPTAIN [REDACTED] Well, you said your
23 responsibilities were medical care (inaudible).

019709

(S)(b)7+
1 SPECIAL AGENT [REDACTED] Medical care, counting,
2 you had to count how many people for the night to
3 make sure the countability is (inaudible) and
4 feeding, make sure they all get fed, medical care.

(S)(b)7-2
5 CAPTAIN [REDACTED] So in other words you were
6 required to protect them or make sure they're,
7 everything is in good order there?

8 SPECIAL AGENT [REDACTED] Yes sir.

9 CAPTAIN [REDACTED] How did you know that? How did
10 you know you (inaudible) maltreated?

11 SPECIAL AGENT [REDACTED] I'm sorry. I don't
12 understand. (S)(b)7-2

(S)(b)7-2
13 CAPTAIN [REDACTED] How did you know? You had a
14 short training period, no SOP. How did you know how
15 to give medical care and make sure they were taken
16 care of and they weren't ever abused or maltreated.
17 How did you know that?

18 SPECIAL AGENT [REDACTED] Well, as far as any
19 medical treatment and things like that, that's where
20 (inaudible)

21 CAPTAIN [REDACTED] If you would have seen someone
22 abused or maltreated, would you say it would be okay
23 or (inaudible), or what would you do?

019710

1 SPECIAL AGENT [REDACTED] (inaudible)

2 CAPTAIN [REDACTED]: Well, what I'm saying, if
3 someone was being beat up or maltreated or strange
4 things were
5 being done to them, did your training say that's okay
6 or it's not (inaudible)? What would you do?

7 SPECIAL AGENT [REDACTED] (5)1672 Go to the chain commander.

8 CAPTAIN [REDACTED] (5)1672 Did there come a time in that
9 November timeframe where you witnessed some events,
10 some strange events.

11 SPECIAL AGENT [REDACTED] Yes sir.

12 CAPTAIN [REDACTED] Okay. Please explain that a
13 little more.

14 SPECIAL AGENT [REDACTED] (5)1672 We did receive, I think it
15 was seven new prisoners from the Ganci, which is the
16 outside prison, and what they had done was rioted,
17 they tried to do a riot. So, when that happens, they
18 bring them to the Hard-Site, where we work, and they
19 bring them down to Tier 1, which is the MI hold and
20 juveniles, and things like that. And what they were
21 going to do is put them in isolation for a period of
22 probably ten days.

019711

1 CAPTAIN [REDACTED] And what was your (inaudible) in
2 bringing them over?

3 SPECIAL AGENT [REDACTED] I was just a transporter.
4 I helped take one of the prisoners all the way down
5 (inaudible)

6 CAPTAIN [REDACTED] And how were the prisoners being
7 transported? What was their condition?

8 SPECIAL AGENT [REDACTED] They had (inaudible)
9 around their back, handcuffed (inaudible) and they
10 had sandbags on their heads.

11 CAPTAIN [REDACTED] Okay. And then what happened
12 when you were bringing them in?

13 SPECIAL AGENT [REDACTED] When I first started this,
14 people started running the inmates, these prisoners,
15 into the wall or the bars because they couldn't see.

16 CAPTAIN [REDACTED] People were running them into
17 the wall?

18 SPECIAL AGENT [REDACTED] I can't specifically
19 remember.

20 CAPTAIN [REDACTED] Okay. What happened? They were
21 still, (inaudible) behind their backs and they had
22 sandbags over their heads.

23 SPECIAL AGENT [REDACTED] Yes sir.

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1 CAPTAIN [REDACTED] Were they ... Was there any sort
2 ... Was there any threat to those transporting them?

3 SPECIAL AGENT [REDACTED] No. We were just walking
4 them down the hall.

5 CAPTAIN [REDACTED] (b)(6)-2: Was there any (inaudible) as
6 they were walking down (b)(6)-2

7 SPECIAL AGENT [REDACTED] No sir, nothing from what
8 I saw.

9 CAPTAIN [REDACTED] Okay. So what happened?

10 SPECIAL AGENT [REDACTED]: After that, (inaudible) at
11 Tier 1 grabbed my prisoners and threw them onto a
12 pile with the other prisoners. I was the last one in
13 the line of the prisoners because we escorted them
14 all the way down. And so by the time I got there,
15 there was a pile with the other six prisoners on the
16 ground, arms, legs all over each other. It was just
17 a pile. My guy got thrown on top of it.

18 CAPTAIN [REDACTED] Did you think that was proper
19 procedure?

20 SPECIAL AGENT [REDACTED] (b)(6)-2 No sir. But then ...

21 CAPTAIN [REDACTED] (b)(6)-2 You weren't sure?

22 SPECIAL AGENT [REDACTED] I wasn't sure.

23 CAPTAIN [REDACTED] What did your gut say?

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1 SPECIAL AGENT [REDACTED] My gut said something was
2 wrong.

3 CAPTAIN [REDACTED] Okay! All right. Then what did
4 you do?

5 SPECIAL AGENT [REDACTED] (S)(b)(7)-2 Then after that I saw
6 Sergeant Frederick, Specialist Graner and Sergeant
7 Davis walking around the pile and hitting the
8 prisoners. (S)(b)(7)-2

9 CAPTAIN [REDACTED] Okay. You saw Sergeant
10 Frederick in on that?

11 SPECIAL AGENT [REDACTED] Yes sir. (inaudible)
12 Sergeant Frederick hitting one in the side in the
13 ribcage.

14 CAPTAIN [REDACTED]: Was that detainee any threat to
15 Sergeant Frederick?

16 SPECIAL AGENT [REDACTED] No sir.

17 CAPTAIN MCCABE: Was he defending himself in any way?

18 SPECIAL AGENT [REDACTED] (S)(b)(7)-2 Not from what I saw.

19 CAPTAIN [REDACTED]: Did it appear that he was in
20 danger in any way by the detainee? (S)(b)(7)-2

21 SPECIAL AGENT [REDACTED] (S)(b)(7)-2 No sir.

22 CAPTAIN [REDACTED]: They were still (inaudible).
23 Right?

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1 SPECIAL AGENT [REDACTED] Yes.
(S)(b)(2)
2 CAPTAIN [REDACTED]: On the floor?
(S)(b)(2)
3 SPECIAL AGENT [REDACTED] Yes sir.
4 CAPTAIN [REDACTED] Okay. What else did you see?
5 SPECIAL AGENT [REDACTED] After that I left. I was
6 only there for a short time. And somebody needed me
7 to go back and get Sergeant Frederick roughly an hour
8 or two hours later and somebody needed me to go get
9 Sergeant Frederick.
(S)(b)(2)
10 CAPTAIN [REDACTED]: You saw Sergeant Frederick
11 hitting the detainee laying in that pile on the
12 ground? When you ... That's all you saw at that
13 point. When you left, you had not seen any other ...
14 SPECIAL AGENT [REDACTED] That's the only thing I
15 saw. (S)(b)(2)
16 CAPTAIN [REDACTED]: So then you leave and then an
17 hour later ... Go ahead.
18 SPECIAL AGENT [REDACTED]: And I was instructed to go
19 get Sergeant Frederick about some matter and I went
20 down to Tier 1 and when I turned my head to the right
21 to look down the corridor of Tier 1, I saw two naked
22 men, one standing up masturbating into another man

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1 who was on his knees under the standing up man and he
2 had his mouth open.

3 CAPTAIN [REDACTED]: What did you think? What was
4 your thought when you saw that?

5 SPECIAL AGENT [REDACTED]: I decided to get out of
6 there. (S)162

7 CAPTAIN [REDACTED]: Why did you have to get out of
8 there?

9 SPECIAL AGENT [REDACTED]: Because I didn't think
10 that was appropriate conduct. (S)162

11 CAPTAIN [REDACTED]: Did it seem like abuse of the
12 detainees?

13 SPECIAL AGENT [REDACTED]: It seemed like ... Yes. It
14 seemed like it was the wrong thing to do.

15 CAPTAIN [REDACTED]: The wrong thing to do. (S)162

16 SPECIAL AGENT [REDACTED]: Yes. (S)162

17 CAPTAIN [REDACTED]: Who was there when you saw that?

18 SPECIAL AGENT [REDACTED]: Specifically, the only
19 person that I saw was Sergeant Frederick. He was
20 walking towards me and he said, look what these
21 animals do when we leave them alone for two seconds.

22 CAPTAIN [REDACTED]: And then what did you do?

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1 SPECIAL AGENT [REDACTED] Then after that I
2 immediately went out to my team leader that was on
3 Tower 5 and I told him what I saw and he had me moved
4 from the prison for a while into Tower 5.

5 CAPTAIN [REDACTED] Before we get into that, did you
6 hear anything else? (S)(b)(7)(D)

7 SPECIAL AGENT [REDACTED] Yes sir. I heard
8 Specialist England shout from her room, but I could
9 not see her, a room behind the inmates that were
10 naked. I heard her say, he's getting hard. (S)(b)(7)(D)

11 CAPTAIN [REDACTED] So then that's when you went out
12 and talked to your team sergeant?

13 SPECIAL AGENT [REDACTED] My team leader.

14 CAPTAIN [REDACTED] Team leader. And what did he
15 say?

16 SPECIAL AGENT [REDACTED] I just told him everything
17 that I saw.

18 CAPTAIN [REDACTED] And he reported it? (S)(b)(7)(D)

19 SPECIAL AGENT [REDACTED] Yes sir. (S)(b)(7)(D)

20 CAPTAIN [REDACTED] Okay. What happened next? (S)(b)(7)(D)

21 SPECIAL AGENT [REDACTED] What happened next was,
22 Sergeant Jones was my team leader, (inaudible) and

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1 had me moved into the tower. He told me that he told
2 Sergeant Frederick (inaudible).

3 SPECIAL AGENT [REDACTED] So you told the chain of
4 command and you believed it was taken care of?

5 SPECIAL AGENT [REDACTED] (S)(b)(2) Yes sir.

6 CAPTAIN [REDACTED] (S)(b)(2) Did you want to move out of
7 there because of the nature of what you saw? The
8 difficulty of that or ...

9 SPECIAL AGENT [REDACTED] Sir, I just didn't want to
10 be a part of anything that was criminal in nature.

11 CAPTAIN [REDACTED] Sir, I have no further
12 questions.

13 CAPTAIN [REDACTED] Specialist [REDACTED] if you don't
14 know the answer, is your unit specifically organized
15 to perform long-term functions associated with
16 detainee operations?

17 SPECIAL AGENT [REDACTED] (S)(b)(2) No sir.

18 CAPTAIN [REDACTED] (S)(b)(2) What does your unit do?

19 SPECIAL AGENT [REDACTED] (inaudible) supporting
20 unit that (inaudible) law and order and things like
21 that. We're not designed to do prison work.

22 CAPTAIN [REDACTED] Is there (inaudible) to your
23 knowledge (inaudible)?

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(S)(b)(7)
1 SPECIAL AGENT [REDACTED] Yes sir.

2 CAPTAIN [REDACTED] Sir, at this time, I'd like you
(S)(b)(7)
3 look at AR 190-8. At the top line, it says,
4 commander level. The commanders at all levels ...
5 I've highlighted the applicable portions basically
6 stating the tier manager's responsibility (inaudible)
7 detainee operations are organized to do so and have
8 that particular training provided (inaudible). AR
9 190-8, I believe the highlighted portion are on page
10 100 in the packet. Do you know anything about these
11 detainees?

12 SPECIAL AGENT [REDACTED] All I know is that they
13 were running, they were trying to do a riot or were
14 rioting at Ganci, and thus, they were taken out.

15 CAPTAIN [REDACTED] Did you know if they were
(S)(b)(7)
16 soldiers?

(S)(b)(7)
17 SPECIAL AGENT [REDACTED] No. They were in Ganci
18 which is non-soldiers. Vigilant is the one with
19 Iraqi soldiers and general (inaudible).

20 CAPTAIN [REDACTED] Did you have any soldiers, any
21 soldier detainees while at Abu?

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(b)(6)-2
1 SPECIAL AGENT [REDACTED] In Tier 1 there were some,
2 at the Hard Site there were some generals detained.
3 I don't know anything about it though.

4 CAPTAIN [REDACTED] So there was a mix of groups, mix
5 of personnel? (b)(6)-2

6 SPECIAL AGENT [REDACTED] There was a mix. There's
7 MI hold, there was Tier 1 Alpha and Tier 1 Bravo.
8 And on Tier 1 Bravo site it's juveniles, women, small
9 offenders that they can't put them in population with
10 the others. And then on Tier 1 Alpha, it's an MI
11 hold, which is, you know, whoever.

12 CAPTAIN [REDACTED] In this Tier 1, were there also
13 people that were labeled as insane? (b)(6)-2

14 SPECIAL AGENT [REDACTED] (inaudible)

15 CAPTAIN [REDACTED] So, let me get this straight. In
16 this ... When working at the area, you had a mix of
17 people, insane, criminals, soldiers and other holds
18 all grouped together?

(b)(1)-2
19 SPECIAL AGENT [REDACTED] Well, they were split up
20 by the tiers. There's Tier 1 Alpha, to your right,
21 and Tier 1 Bravo to your left. Like I said, in 1
22 Bravo they had all the women, juveniles, insane.
23 Tier 1 Alpha, they had all the MI holds.

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1 CAPTAIN [REDACTED] And that's where you, the Tier 1
2 that you were talking about?

3 SPECIAL AGENT [REDACTED]: Yes, it is.

4 CAPTAIN [REDACTED] (S)(b)-2 Do you recall (inaudible) but a
5 prisoner named Shit Boy?

6 SPECIAL AGENT [REDACTED] (S)(b)-2 Vaguely.

7 CAPTAIN [REDACTED] Do you recall a prisoner that
8 used to spread feces all over himself?

9 SPECIAL AGENT [REDACTED] Yes sir.

10 CAPTAIN [REDACTED] Do you recall anything else
11 unique about this particular prisoner?

12 SPECIAL AGENT [REDACTED] No sir. (inaudible) Tier
13 1 (inaudible)

14 CAPTAIN [REDACTED] (S)(b)-2 What kind of ... You mentioned
15 that you did receive relief in place training. Are
16 you familiar with what your normal mission of
17 potential conflicts training is?

18 SPECIAL AGENT [REDACTED] (S)(b)-2 I'm sorry?

19 CAPTAIN [REDACTED] (S)(b)-2 For your mission of potential
20 conflicts training. Are you familiar with term
21 (inaudible)? Did you ever conduct any detainee
22 training for (inaudible)?

23 SPECIAL AGENT [REDACTED] No sir.

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1 CAPTAIN [REDACTED] Any time back at home, did you
2 have training? Back in your home unit during drills,
3 did you ever conduct detainee operation training?

4 SPECIAL AGENT [REDACTED] No sir.

5 CAPTAIN [REDACTED] (S)(b)(7) There were three judge advocates
6 on the grounds, at least three judge advocates on the
7 grounds there at the prison, did any of them ever
8 brief you on the roles and responsibilities and
9 regulations regarding detainee operations?

10 SPECIAL AGENT [REDACTED] (S)(b)(7) (inaudible)

11 CAPTAIN [REDACTED] Are you familiar with Prisoner
12 Interview Interrogation Team?

13 SPECIAL AGENT [REDACTED] I think they're civilians.

14 CAPTAIN [REDACTED] They were civilians?

15 SPECIAL AGENT [REDACTED] I'm not sure.

16 CAPTAIN [REDACTED] (S)(b)(7) Are you familiar with the CACI
17 Corporation, C-A-C-I Corporation?

18 SPECIAL AGENT [REDACTED] (S)(b)(7) No sir.

19 CAPTAIN [REDACTED] You mentioned that they are
20 civilians. Is that because they weren't wearing
21 uniforms?

22 SPECIAL AGENT [REDACTED] Yes sir.

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(S)16-2
1 CAPTAIN [REDACTED] Did they identify themselves as
2 civilians?

3 SPECIAL AGENT [REDACTED] I don't know sir. I
4 didn't get myself involved with any of that.

5 CAPTAIN [REDACTED] Or did you think they ... Did you
6 think that they were worked for ... Did you have
7 knowledge that they worked for anybody other than
8 they were civilians? (S)16-2

9 SPECIAL AGENT [REDACTED] I have no knowledge of
10 what they did or where they worked sir.

(S)16-2
11 CAPTAIN [REDACTED] About how many people were there?

12 SPECIAL AGENT [REDACTED] I don't know.

13 CAPTAIN [REDACTED] Did they ever give you directions
14 on how to treat prisoners?

15 SPECIAL AGENT [REDACTED] No sir.

16 CAPTAIN [REDACTED] Did you ever receive any outside
(S)16-2
17 visitors, distinguished guests, distinguished
18 visitors, come to the prison?

(S)16-2
19 SPECIAL AGENT [REDACTED] Yes sir.

20 CAPTAIN [REDACTED] And who are the ... Who are these
21 people?

22 SPECIAL AGENT [REDACTED] Oh, I don't know sir.
23 Every day you could get a general or a congressman,

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1 congresswoman. Any day you could get somebody high
2 maintenance like that.

3 CAPTAIN [REDACTED] And when you say any day, so it
4 was a frequent occurrence while you were there?

5 SPECIAL AGENT [REDACTED] Yes sir.

6 CAPTAIN [REDACTED] Did you ever see a general
7 officer? (S)(b)(2)

8 SPECIAL AGENT [REDACTED] A general? Yes sir. (S)(b)(2)

9 CAPTAIN [REDACTED] What was the highest ranking
10 general you saw?

11 SPECIAL AGENT [REDACTED] I can't remember. I think
12 it was (inaudible).

13 CAPTAIN [REDACTED] Do you know if photography of the
14 detainees was prohibited?

15 SPECIAL AGENT [REDACTED] Yes, it was. (S)(b)(2)

16 CAPTAIN [REDACTED] And who told you?

17 SPECIAL AGENT [REDACTED] I don't remember who told
18 me. I think it was the company commander. He had
19 put out ... (S)(b)(2)

20 CAPTAIN [REDACTED] You mentioned that you
21 specifically saw Staff Sergeant Frederick punch one
22 of the detainees?

23 SPECIAL AGENT [REDACTED] Yes sir.

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1 CAPTAIN [REDACTED] You never saw Staff Sergeant
2 Frederick jump on the detainees though, did you?

3 SPECIAL AGENT [REDACTED] No sir.

4 CAPTAIN [REDACTED] You didn't see him stomp on their
5 hands or feet?

6 SPECIAL AGENT [REDACTED]: No sir.

7 CAPTAIN [REDACTED] Did you ever see Staff Sergeant
8 Frederick put naked detainees in a human pyramid?

9 SPECIAL AGENT [REDACTED]: No sir.

10 CAPTAIN [REDACTED]: Did you ever see Staff Sergeant
11 Frederick put a detainee on an MRE box and put a bag
12 over his head and tell him he was going to be
13 electrocuted?

14 SPECIAL AGENT [REDACTED]: No sir.

15 CAPTAIN [REDACTED]: Did you ever ... You said that you
16 walked by and you saw two detainees, one detainee
17 with his penis out in front of another detainee with
18 his mouth open in front of him. Were both of those
19 detainees, did they have, did they have a hood on
20 their face?

21 SPECIAL AGENT [REDACTED] No sir.

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1 CAPTAIN [REDACTED] Did you see Staff Sergeant
2 Frederick order these detainees to assume this
3 position?

4 SPECIAL AGENT [REDACTED]: No sir. The only thing I
5 saw was Sergeant Frederick walking towards me. They
6 were behind him.

7 CAPTAIN [REDACTED] (b)(6)-2 Were the detainees (inaudible) as
8 well?

9 SPECIAL AGENT [REDACTED] (b)(6)-2: No sir.

10 CAPTAIN [REDACTED] Was it a common fact to have
11 detainees naked in Tier 1?

12 SPECIAL AGENT [REDACTED] I don't know sir. It was
13 the only time I had been down there.

14 CAPTAIN [REDACTED]: The only time you had ever been
15 on it?

16 SPECIAL AGENT [REDACTED] (b)(6)-2: Just one.

17 CAPTAIN [REDACTED] (b)(6)-2: That was the one incident you
18 saw?

19 SPECIAL AGENT [REDACTED] (b)(6)-2: Yes.

20 CAPTAIN [REDACTED] Did you ever see Staff Sergeant
21 Frederick order detainees (inaudible)?

22 SPECIAL AGENT [REDACTED] No sir.

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1 CAPTAIN [REDACTED] What was the reaction there, do
2 you remember of a detainee that was punched, did he
3 die?

4 SPECIAL AGENT [REDACTED] (b)(6)-2 No sir.

5 CAPTAIN [REDACTED] (b)(6)-2 Did he fall over? Was he ...

6 SPECIAL AGENT [REDACTED] They were already on the
7 ground sir. They did scream loudly, detainee.

8 CAPTAIN [REDACTED] You just saw him punch one
9 detainee?

10 SPECIAL AGENT [REDACTED] (b)(6)-2 Yes sir.

11 CAPTAIN [REDACTED] During this time period that you
12 were there at Abu, were you ever subject to attacks
13 by outside forces (inaudible)?

14 SPECIAL AGENT [REDACTED]: Yes sir.

15 CAPTAIN [REDACTED] Mortars?

16 SPECIAL AGENT [REDACTED] Yes sir.

17 CAPTAIN [REDACTED] Rockets?

18 SPECIAL AGENT [REDACTED] (b)(6)-2 Yes sir.

19 CAPTAIN [REDACTED] (b)(6)-2 Machine gun fire?

20 SPECIAL AGENT [REDACTED]: Yes sir.

21 CAPTAIN [REDACTED]: How often was this?

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1 SPECIAL AGENT [REDACTED] (inaudible) probably I
2 would say once a week. Now you get real big attacks
3 about every two weeks.

4 CAPTAIN [REDACTED] Like when it's night here or ...
(S)(G)-2

5 SPECIAL AGENT [REDACTED] Yes sir. Like around 20
6 mortars, 30 mortars.
(S)(G)-2

7 CAPTAIN [REDACTED] Were they fairly close to where
8 you were located? (S)(G)-3

9 SPECIAL AGENT [REDACTED]: Some of them. We've had I
10 think three or four hit the (inaudible) since our
11 stay, since we've been there in November.
(S)(G)-2

12 CAPTAIN [REDACTED]: Other than knowing that these
13 seven were a part of a riot, do you have any other
14 background of what they were there for?

15 SPECIAL AGENT [REDACTED] No sir.
(S)(G)-2

16 CAPTAIN [REDACTED] And what they were trying to do?

17 SPECIAL AGENT [REDACTED] No sir.
(S)(G)-2

18 CAPTAIN [REDACTED] Did you ever hear of a detainee
19 trying to kill an MP? (S)(G)-2

20 SPECIAL AGENT [REDACTED] Yes sir.

21 CAPTAIN [REDACTED] And what did you do?

22 SPECIAL AGENT [REDACTED] I was working Tower 5 and
23 there was supposedly a detainee got a gun and shot

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1 (inaudible) and they handled the situation. They
2 shot the detainee and they (inaudible) some kind of
3 big firefight in the Tier 1.

4 CAPTAIN [REDACTED] Pretty dangerous place?

5 SPECIAL AGENT [REDACTED] It sometimes can be sir.

6 CAPTAIN [REDACTED] (S)(b)(7) I have no further questions.

7 CAPTAIN [REDACTED]: I just have a couple of
8 questions. Had you ever seen this type of behavior
9 before or after this particular incident in any of
10 these tiers?

11 SPECIAL AGENT [REDACTED] (S)(b)(7) No sir.

12 CAPTAIN [REDACTED] (S)(b)(7) Why did you specifically mention
13 or remember (inaudible) hitting the detainee?

14 SPECIAL AGENT [REDACTED]: There's certain things
15 that I distinctly remember that I don't forget,
16 (inaudible) and the other one was Sergeant Graner
17 posing before he punched a prisoner in the face. The
18 other is Sergeant Davis stomping on their toes.
19 These are just things that I can remember.

20 MAJOR [REDACTED] (S)(b)(7) Do not discuss this case with
21 anyone except the counsel or myself until after this
22 trial or this hearing is over. Should anyone else
23 attempt to discuss this case or your testimony with

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1 you, refuse to do so and report the attempt to me
2 immediately. Do you understand that?

3 SPECIAL AGENT [REDACTED]: Yes sir.

4 MAJOR [REDACTED]: Have a nice day. You're
5 excused.

6 CAPTAIN [REDACTED]: Sir, the only other housekeeping
7 thing I have before we break up to go through the
8 other documents is all the detainees have now been
9 declared unavailable. I offer this one packet
10 (inaudible) detainees.

11 MAJOR [REDACTED]: Did you already provide
12 statements?

13 CAPTAIN [REDACTED]: No sir.

14 MAJOR [REDACTED]: Are you not going to enter that
15 in evidence?

16 CAPTAIN [REDACTED]: No. (inaudible) if he was
17 available and he testified. Prosecution Exhibit 26
18 through 38, is the remainder of the detainee
19 statements. (inaudible) They're all in the packet.
20 Other than that sir, I don't have anything further.
21 We can recess.

22 MAJOR [REDACTED]: How much time do you need?

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1 CAPTAIN [REDACTED]: It depends if I get a vehicle or
2 not sir. I want to say ...

3 CAPTAIN [REDACTED]: I get a truck right out here.

4 MAJOR [REDACTED]: Okay. Quarter after 11:00,
5 then?

6 MAJOR [REDACTED]: Back on the record. Is that
7 going to be your exhibit or ... Any determination will
8 be made tomorrow (inaudible). Back on the record
9 11:26, 09/April, and all parties are once again
10 present. We have received a 15-6 document that was
11 requested from the (inaudible). The document itself
12 is classified. They have as of the last day or two I
13 believe, very, very quickly, (inaudible) that
14 document for official use only document. And that is
15 a document that has been given out to defense, to the
16 IO and to myself. It's a secret document. However,
17 it's available. There's no way, you have to limit
18 any information defense or the investigating officer.
19 It's from advice from (inaudible) that the secret
20 document be kept in their central location and then
21 those who have proper clearance (inaudible) see that
22 document to go coordinate with Captain [REDACTED] (ph) and
23 he would make arrangements for whoever wants to see

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1 that document. My understanding is that 85 to 90
2 percent of that document, FOUO document, about 85 to
3 90 percent of the entire secret document. So at this
4 time, I believe the defense is going to have 24 hours
5 to take a look at this document. We're going to
6 reconvene at 1300 tomorrow if the courtroom is
7 available and try to continue at that point. Did I
8 miss anything sir?

9 CAPTAIN (b)(6)-2 Just one comment at this time.
10 If we do decide to enter this (inaudible) only
11 because it's an FOUO, although a classified document,
12 it will become a matter of public record (inaudible).
13 That's an issue that hopefully we can resolve some
14 time before tomorrow but just an issue that
15 (inaudible) especially regards to co-counsel.

16 CAPTAIN (b)(6)-2: I don't think it's that big of
17 an issue for a couple things sir. (inaudible) back
18 to my (inaudible) days, one, 15-6 is a foiled
19 document. Someone could make (inaudible) request for
20 that document and get it. However, this is an
21 investigation document, investigation, criminal
22 investigation, are typically not foiled, not in the
23 Freedom of Information Act. So, I don't think

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1 there's a problem with this document. It's not going
 2 to be released to anybody at this point (inaudible)
 3 32 officer. I may get a request from (inaudible).

4 CAPTAIN [REDACTED] I'd like to share that with co-
 5 counsel.

6 CAPTAIN [REDACTED] (b)(6)-2 (inaudible) already requested it
 7 and those who have it, again (inaudible).

8 MAJOR [REDACTED] Okay. So we'll agree to
 9 reconvene tomorrow (inaudible) unless there's not
 10 another 32 going on (inaudible). Monday at 10:00.
 11 Any more evidence or witnesses for today? So we
 12 agree to reconvene either tomorrow or Monday.

13 [END OF SIDE TWO OF TAPE TWO]

14 MAJOR [REDACTED] We're back on the record. It's
 15 1302 10 April. (b)(6)-2 All parties are once again present
 16 since the last time we recessed.

17 CAPTAIN [REDACTED] Sir, after reviewing the AM 15-6
 18 event documents and a list of annex attachments, the
 19 defense wishes to attach that (inaudible) AR 15-6
 20 investigation as it was handed out (inaudible)
 21 including the attachments and enclosures that are
 22 present. I did speak with Captain [REDACTED] (b)(6)-2 (ph), I
 23 believe, late last night who did say that they were

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1 going to try to make the entire investigation,
2 because it's such a voluminous investigation,
3 available to all the parties (inaudible) after they
4 had a chance to scan in those portions that are not
5 classified. I do ask that you not consider those
6 elements of the AR 15-6 investigation that is
7 classified. The defense is intent on keeping this
8 hearing and its records as open as possible.

9 MAJOR [REDACTED] I haven't looked at anything
10 that's classified.

11 CAPTAIN [REDACTED] Sir, no objection to that.

12 MAJOR [REDACTED]: Anything else?

13 CAPTAIN [REDACTED] Yes sir. (inaudible) are you
14 going to be responsible for getting that CD
15 (inaudible) to all parties.

16 CAPTAIN [REDACTED] Sir, before we get into the
17 closing arguments, just a couple of things. When I
18 did speak with Captain [REDACTED] (ph) he wasn't able to
19 give me a firm answer on my ability to discuss or
20 relay information of this unclassified petition
21 (inaudible) documents to co-counsel in New Hampshire,
22 [REDACTED]. I will need some guidance before that
23 and (inaudible) helpful. I didn't know if you had an

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1 opportunity to speak with your legal advisor on that
2 issue but that is definitely something I have to
3 speak to him about. I know the unclassified still
4 raises an issue as to the extent of which I
5 communicate the contents of these documents. So, if
6 I can either get an e-mail answer ...

7 MAJOR [REDACTED] I'll get you an answer on that.

8 CAPTAIN [REDACTED] (b)(6)-2 Sir, when we first started
9 (inaudible) we just started out talking about the
10 role of the investigating officer and your role as
11 required as to the truth of these allegations, the
12 specific allegations against the accused, consider
13 the form of those charges and today's recommendations
14 on disposition of the charges. In fact, I can also
15 make recommendation as to additional charges and I'll
16 discuss that in a little bit but I think we have an
17 additional charge here that you may want to consider.
18 As we go down, I'll discuss that when I get to that
19 point. I also, sir, talked about how the burden of
20 proof is reasonable grounds, reasonable belief by a
21 reasonable person that these allegations were placed,
22 that these charges are true and that the accused
23 committed, these crimes were committed, and that the

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1 accused committed them. And I said even though it's
2 only a reasonable grounds burden, we would have
3 overwhelming evidence beyond a reasonable doubt, and
4 I believe we've done that sir, and I stand by that
5 because it's happened here in the last three days
6 that we've been here. And I'm going to talk about, I
7 have a slideshow to go through each charge and each
8 specification. I'm going to talk about how we have
9 met that burden. The first as a reasonable grounds ...
10 Let me say that very often in a court of law beyond a
11 reasonable doubt standard, one witness could come in
12 and say, here's the story I saw, here's the events
13 that I saw, here's the crime that took place. One
14 witness. And with that often people get convicted
15 beyond a reasonable doubt with one person who's
16 believable, who's credible and says, this is what
17 happened. Well, sir, in this case we have four
18 statements, Sivits, Harman, England and Davis, who
19 all talk about the accused (inaudible) matter, talked
20 about the events the accused has done. We also have
21 detainees, statements of detainees that say these
22 events happened. Now, are these credible? Are these
23 people, what they say, is it true? Well, we also

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1 have photographs of what happened. So, (inaudible).
2 So, as I said, I think there is overwhelming evidence
3 that each are the reasonable grounds that these
4 events took place, and these events are serious, and
5 these events are (inaudible), and anyone who looks at
6 these photographs and this CD can see that this isn't
7 something that should have been done and it's felt by
8 common sense that it shouldn't have happened.
9 Specialist [REDACTED] (inaudible) and said he knew in
10 this gut that these things weren't right. (5/6/2
11 (inaudible) about the leadership and SOPs and
12 policies, but sir I need you to focus on the accused
13 and his acts and what he did. Not anybody else
14 (inaudible) he's part of that. Just because many
15 people may be culpable in this, they have some
16 responsibility, and those people will be dealt with
17 in their own way, whatever that may be, but that's
18 not what we're here about. We have determined the
19 culpability of the accused, and that's what I'm going
20 to ask you to do. I didn't know if this was improper
21 (inaudible). We look at these pictures, we look at
22 what's going on, we look at what's charged. I didn't
23 know or (inaudible), even if he was ordered to do

019737

1 these things, even if he was ordered, you can't ... If
2 I tell him to go have somebody masturbate, if he's
3 told directly, there's no evidence of that. There's
4 no evidence that he was told directly to have
5 somebody go masturbate (inaudible) that is not a
6 defense to these charges. (inaudible) focused on,
7 there's been no contradicted evidence. We presented
8 the statements, what happened, photographs, and
9 there's nobody that came in here and said, I didn't
10 see him there or he was there but he was not
11 participating. No contradictory evidence of any kind
12 that says these events, these specific events that he
13 didn't do it, participate in some way. With that
14 sir, I'm going to go through the charges. Charge
15 one, spec one, that's a conspiracy charge sir, the
16 first conspiracy charge, and I want to just point
17 out, I'm not going to go through (inaudible). Just
18 bear with me for a second sir. I'm not going to go
19 through every element of every crime. I know you
20 have the elements, but I do want to specifically talk
21 about the conspiracy because there are two specific
22 elements that need to be met for conspiracy. And one
23 is that the accused entered into an agreement. Okay.

019738

1 That's the first one. The second one is that there
2 was some overt act that (inaudible). Now, when we
3 talk about (inaudible) sir, you don't have to decide
4 whether there was a contract written up, it was a
5 handshake where they said, hey ... It doesn't have to
6 be words. It doesn't have to be words that say, we
7 agree, we agree with this. But you can take the
8 actions of what they did, that they were all in
9 agreement of continuing this abuse. And how do we
10 know that? Statement from England, Staff Sergeant
11 Frederick (inaudible) Graner and Staff Sergeant
12 Frederick asked me to throw down some handcuffs. I
13 did. (inaudible) handcuffed, a third guy was brought
14 over handcuffed to the other two. Corporal Graner
15 and Staff Sergeant Frederick then asked her to start
16 taking pictures. That's the overt act. That's an
17 act. But that's also the implied agreement.
18 (inaudible) pictures, they're all in it together,
19 they knew there's abuse going on. Nobody stops it.
20 Nobody said anything. They're all in it together.
21 They're doing it together. That's the agreement.
22 Also, the statement by (b)(6)-4, the civilian, who
23 invoked his rights here and didn't speak. Graner and

019739

1 Frederick interrogated three detainees, participated
2 in interrogation of three detainees at the same time,
3 (inaudible) and they were nude on the floor, and then
4 the interpreter stated that, through the interpreter
5 they were saying, "are you gay, do you like what just
6 happened to you, you must like that position."
7 Again, this is maltreatment. This is abuse. This is
8 an agreement where we know because they're saying
9 words that everybody's understanding as this
10 maltreatment is continuing. It's continuing on.
11 (inaudible). There are some pictures of this event
12 taking place with three people on the floor. Another
13 shot of it. Now, (inaudible) testimony (inaudible)
14 say that was Sergeant Frederick in those pictures. I
15 believe he is in one of those pictures. (inaudible)
16 say that (inaudible) government (inaudible) with
17 certainty, words of people who said he was there.
18 There was no doubt about it. And all those pictures
19 are in the exhibits sir. Okay. Charge one, spec
20 two, the same thing, conspiracy, conspiracy among the
21 others. Frederick had Specialist Sivits escort a
22 detainee from the tier and the statement specifically
23 said, "hey, I want you to escort a guy down."

019740

1 Frederick was present when detainees were placed in a
2 naked human pyramid. Stated by England, (inaudible)
3 prisoners in the pyramid, Frederick was taking
4 pictures. Again, no military purpose here. They're
5 taking pictures. And we know that by looking at the
6 pictures. There it is. We can see, stressed out,
7 didn't know what to do. Look at these people with
8 their thumbs up smiling. Horrible conditions over
9 there? Yes, no doubt. But look at their face. Okay
10 sir. We move into charge two, specification, this is
11 dereliction of duty. Is there a duty? Staff
12 Sergeant Frederick is the NCOIC for the night shift.
13 He's NCOIC for the entire Hard-Site. If he doesn't
14 have a duty, I don't know who does. He's an MP. You
15 don't need to be told. (inaudible) that he has
16 responsibilities for (inaudible) and not the
17 maltreatment of detainees. He's (inaudible) in the
18 United States Army. He knew of that duty. And what
19 went on? Specialist Harman (inaudible) sandbag over
20 his head (inaudible), I put the wires on his hands.
21 I was joking when I told him if he fell he would be
22 electrocuted. Who took the pictures? I took one and
23 Frederick took one. There it is. And that is Staff.

019741

1 Sergeant Frederick in the picture looking at this
2 camera. Same event sir. Okay. By doing those acts
3 sir, he willfully was derelict in those duties which
4 was not by accident. He was purposely taking
5 pictures, purposely putting someone in that position
6 with the electrical wires. All right sir. Now we
7 get into the maltreatment. And we know statement by
8 Harman, again, standing on the MRE box. Who took the
9 pictures? Frederick took one, I took one and
10 Frederick took one. Davis witnessed an inmate
11 standing on top of the MRE box, standing there.
12 Corporal Graner and Staff Sergeant Frederick were
13 there in the shower with the inmate. No doubt what
14 was going on. No doubt they were there when these
15 events took place, when this appalling event took
16 place. Fact two sir, and each one goes to a
17 different maltreatment. This is the one on the
18 pyramid. Three different statements from three
19 different people. Frederick had Specialist Sivits
20 escort a detainee to the tier. Frederick was present
21 when detainee was placed in a naked human pyramid.
22 England, (inaudible) to have prisoners in a pyramid.
23 Frederick was taking pictures. Again, we have those

019742

1 pictures of the pyramid. So we know it happened.
2 Third spec, statement by Specialist Sivits, Graner
3 and Frederick had detainee stripped. Frederick would
4 take the hand of detainee and place it on detainee's
5 penis and make detainee's hand go back and forth as
6 if masturbating. Frederick present when detainee was
7 placed on knees naked (inaudible) fellatio. We also
8 heard from Specialist (b)(6)-2 [REDACTED] who came in here and
9 said what he saw an event with a person with their
10 face in the area of the other person's groin.
11 Frederick came in and said, walked by the two
12 detainees and made a statement, something to the
13 effect about, "you can see what these animals do when
14 they're left alone for a few minutes." Spec three,
15 then he walks up to the first prisoners. England
16 also corroborates this sir. Frederick then walked up
17 to the first prisoner and started moving his left arm
18 in a motion of masturbating. Frederick thought it
19 was amusing and told Corporal Graner and Ambuhl to
20 come and see. Frederick wanted to see if the other
21 six prisoners would do the same. (inaudible)
22 England. Frederick (inaudible) guy standing next to
23 the one masturbating (inaudible) says he was sitting

019743

1 down directly in front of the other guy. Staff
2 Sergeant Frederick (inaudible) sitting down around
3 the (inaudible) prisoner masturbating. (inaudible)
4 masturbating. Once again, Frederick was right there.
5 There is one photo where England and Corporal Graner
6 and Staff Sergeant Frederick wanted (inaudible)
7 masturbating (inaudible). This here is a statement
8 from one of the detainees sir. "They brought me and
9 had me kneel in front of my friends, they told me my
10 friends would masturbate, while they were taking
11 pictures." And there's the picture. Sir, charge
12 three, spec four, (inaudible) photograph of the
13 accused sitting on top posing for a picture of a
14 detainee. There may be some legitimate purpose of
15 putting this guy in all this gear (inaudible) maybe.
16 The government will not (inaudible) that point.
17 There may be some purpose. There certainly is no
18 purpose other than maltreatment abuse to have to pose
19 in a photograph. He doesn't appear to be in any
20 danger or self-defense or any fear for himself. He's
21 posing for a photograph with this person. Spec five,
22 sir, of the maltreatment, Frederick had two inmates
23 punch each other in the head and Frederick showed

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1 them by using their hands and fists, he wanted one
2 inmate to punch the other one, they hit each other
3 once. They make (inaudible) stand in front of me and
4 they force me to slap him on his face and then
5 (inaudible). We have detainee and Sivits who relay
6 the same story. Okay sir. Now this is where we get
7 to the assault charges. There's an assault and
8 battery and there's an aggravated assault. He's
9 charged for specification one, two and three.
10 (inaudible) I think we met our burden. Specialist
11 (b)(6)-2 [REDACTED] talked about a separate punch, that the guys
12 were on the floor with their hands cuffed behind
13 them. He says they were put in no danger, there was
14 no self-defense, they were laying in a dog pile on
15 the floor and Staff Sergeant Frederick came up and
16 punched a guy in the side of the chest. We didn't
17 charge that? I don't think we knew at the time
18 whether or not there may have been some self-defense
19 reason or detainee getting out of hand. But after
20 hearing the testimony of Specialist (b)(6)-2 [REDACTED], I think
21 sir you would recommend another assault and battery
22 charge just from that. Here's the first one of what
23 we did charge so far. Statement from Davis, saw

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1 Frederick jump on the inmates, hit them. England,
2 (inaudible) ran and jump on top of them while they
3 were on the floor. Yes, I remember Davis, Graner and
4 Frederick did. They would just be standing aside and
5 they would just jump in the air and put their body
6 over the top of the pile, and when they came down
7 they would fall on top of the detainees. They would
8 run as soon as the guy would land on them.
9 (inaudible) detainee. Check the elements sir. All
10 these meet all the elements of assault and battery
11 (inaudible) that Specialist (S) (61-2) described as well.
12 Second spec sir of that, I saw Staff Sergeant
13 Frederick jump an inmate, (inaudible) same people,
14 they're being Frederick, Graner, Ambuhl and Harman
15 (inaudible) who stepped on the prisoner's hand and
16 fee. Davis (inaudible) and England goes on to say
17 (inaudible). Frederick has known this as well
18 (inaudible) that he and Davis stepped on. And then
19 we have a statement from the detainee, they were
20 stepping on our hands with their feet. Sir here is
21 the third spec, the aggravated assault, Davis says I
22 saw Frederick hit a prisoner in the chest. England
23 goes on to say Frederick was marking it like a

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1 (inaudible) on his chest of a detainee with his
2 finger, he drew back a closed fist, hit detainee in
3 the chest, he hit him so hard and knocked the
4 detainee backwards (inaudible) detainee. The
5 detainee went to his knees and was breathing heavy as
6 if he was having a problem breathing. Why did he hit
7 him? I guess just because he wanted to. (inaudible)
8 self-defense sir. Staff Sergeant Frederick at this
9 point struck one of the detainees in the chest with a
10 closed fist, the detainee was standing in front of
11 Frederick and for no reason Frederick punches
12 detainee in the chest. Frederick said he thought the
13 detainee had cardiac arrest. And that goes sir to
14 the aggravated assault with a means to force
15 (inaudible) possibly cause death. If someone punches
16 someone in the chest that hard, certainly it means
17 force, the guy couldn't breathe, and it almost
18 appeared that he was in some type of cardiac arrest,
19 from Frederick's own words. Sir, the last charge and
20 specification is the indecent acts. England, Staff
21 Sergeant Frederick then walked up to the first
22 prisoner and started to move his left arm in the
23 motion of masturbating. Frederick thought it was

019747

1 amusing. Frederick wanted to see the other six do
2 the same. Again standing next to the other one
3 masturbating (inaudible) accused and England said
4 that he was sitting down directly in front of the
5 other guy, (inaudible) around to actually face the
6 other prisoner and they (inaudible). Not only was
7 this in a public corridor in the Hard-Site where
8 other soldiers were and other detainees, they also
9 made (inaudible) of that as well and (inaudible)
10 reports which clearly references that. It's not on
11 the slide, but I can tell you that under CG, this is
12 on the CD disc sir, under CG, meaning Corporal Graner
13 I believe - (inaudible) marks clip 10168 and then the
14 masturbation clip, 0160 and 0161, those three clips
15 will show masturbation and this is the recording
16 we're talking about. I believe that's also in
17 evidence, we have these as exhibits as well,
18 photographs of the event as described by four
19 individuals and detainees. Sir, and again, your role
20 is to decide the truth of these matters but also to
21 recommend a disposition and I would think that there
22 wouldn't be any doubt in anyone's mind that this
23 needs to go to a general court-martial. These are

019748

1 the most serious of offenses where MPs, law
2 enforcement individuals, abuse and maltreat and
3 photographs of what we've seen here don't become more
4 appalling than that. These are people who are
5 supposed to protect and defend others and provide law
6 enforcement and treat people with humanity and
7 dignity. They did everything but. And this, the V6
8 who was in charge of the Hard-Site allowed this to go
9 on and participated in these events. We were
10 appalled when we saw photographs of our Prisoners of
11 War captured and making statements in Somalia, Iraq,
12 appalled, by just the photographs of someone making a
13 statement and they were beat up as well too. We
14 could see that. We were appalled by that. These are
15 photographs of a falling event and I don't need to
16 discuss them again sir. You know exactly what these
17 offenses are and you can see them in the pictures and
18 words. I don't think there can be any doubt in your
19 mind sir that this is the most serious of court-
20 martial, a general court-martial be recommended. And
21 I'll just finish sir with what, how we know that the
22 accused knew this was wrong, this was wrong
23 (inaudible). Besides all the other facts about, oh,

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1 they're getting hard, England saying, oh, they're
2 getting hard, let's take some pictures, the jovial
3 atmosphere in the picture you can see, the statements
4 by the other saying we knew this is morally wrong.
5 [REDACTED] said it was a gut feeling, he knew it was
6 wrong, (b)(6)-2 he knew this was wrong. Besides that, PFC
7 England asked the accused at one point, what do you
8 think about all this, and in his own words, his own
9 mouth, the accused said, "this would be 19-1/2 years
10 down the drain." So he knew as well. Thank you sir.
11 CAPTAIN (b)(6)-2 [REDACTED]: Interestingly enough sir,
12 after you received this case and you notified us of
13 the Article 32 investigation and I saw the
14 substantial witness list consisting of one CID agent
15 that the government was going to produce, but it's
16 whitewash. And I call it a whitewash because when
17 you read the packet, you're thinking you have
18 (inaudible), is this a soldier issue, are we talking
19 about criminals or are we talking about situations?
20 We're talking about a situation. We have to take a
21 step back and look at the information and the facts
22 describing the totality of that situation. So I made
23 a request on time prior to your own deadline where I

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1 outlined some of the things I thought would be
2 relevant, and interestingly enough, just yesterday we
3 received redacted AR 15-6 investigation containing
4 many of the conclusions that the request, that the
5 defense made of you. The government has specifically
6 chosen to charge things like willful dereliction of
7 duty, things that create burdens on the government to
8 describe duties. Maltreatment of subordinates, once
9 again describing a specific fact taken completely out
10 of context. I made quite a substantial list of
11 witnesses and evidence of which the government,
12 unavailable, unavailable. CID agents, the only
13 reason I really had that CID agent here is not that
14 he knew or has part of a 30 percent of that document.
15 You know, I trust that he's telling the truth but I
16 seriously doubt that someone who didn't even write
17 the report was involved in 30 percent of that
18 document. There was ten or more agents involved in
19 this case. The only reason why he was sitting there
20 in that witness stand testifying is because he was
21 the only person left in Iraq. All of these
22 witnesses, the only reason why they're not here is
23 because they're back in the United States or they're

019751

1 back in Germany or they're unavailable alleged
2 victims. We have Article 32 investigations not so
3 that we can have, that the government can have a
4 carte blanche trip to general court-martial, but so
5 that we can have (inaudible) officers look at this
6 from a third point of view, not from the defense or
7 not from the government's perspective. You not only
8 look at the form of the charges but also look at the
9 proper disposition. The defense argues that you
10 don't have enough information to make that proper
11 recommendation. We still have probably 1,000 pages
12 of annexes (inaudible). You still have all the
13 requests that the defense made on all the information
14 and issues surrounding these events. Once again,
15 reiterating that the government only produced two
16 witnesses, a CID agent to have claimed 30 percent of
17 all the CID report, did not interview one suspect.
18 He was supposed to interview one but she invoked her
19 rights, so he didn't even interview her. He did
20 (inaudible) the report and in reality he was the only
21 one that was still here in Iraq and he probably just
22 read the report. We could have done that. The co-
23 accused statements implicates Staff Sergeant

019752

1 Frederick is not trustworthy, they were not subject
2 to cross examination. In fact, I was able to cross
3 examine the CID agent on PFC England's own sworn
4 statement where she mentions the fact that in one of
5 the photographs where she's pointing the finger and
6 smiling with a cigarette in her mouth, oh, Staff
7 Sergeant Frederick forced me to (inaudible). And
8 even the CID agent could admit that that didn't look
9 like a forced photo. The majority of the witnesses
10 that were U.S. citizens have already redeployed, out
11 of the country. We made the request that alternative
12 means of testimony, telephone, (inaudible), no, not
13 available, from the trial counsel. We have one
14 specialist who did testify who is an eyewitness to
15 one event but he quickly admitted that he did not
16 have any contact, only that these individuals were
17 involved in a riot. Everything else, including the
18 masturbation, where he says that they were not
19 (inaudible). So, we're talking about another
20 incident, and he could not say anything about
21 implicating Staff Sergeant Frederick, only that he
22 made a comment that these inmates were on their own
23 doing this. I ask that you not consider the hundreds

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1 of (inaudible) photos that are contained in the CD-
2 ROM. There's probably over 1,500 photographs listed
3 on that CD-ROM, a majority of which, including very
4 sexual poses of co-accused, are not relevant in this
5 case. In fact, I ask that we continue to look into
6 due diligence requirements of the government. Their
7 response is, we don't have those present documents.
8 Well, the trial counsel in this case represents the
9 United States of America and the United States Army
10 and as a representative of those organizations should
11 be forced to get the information that should be
12 readily available, much like the 15-6, so that we can
13 look into the context of this. And why is the
14 context so important? The context is so important
15 because as you read the AR 15-6 investigation you
16 find that this is probably one of the most disturbing
17 failures of humanity in recent U.S. Army history.
18 It's very disturbing. Repeatedly, the defense has
19 asked for (inaudible) SOP, operations orders, warning
20 orders, relief in place orders, (inaudible)
21 reprimands and the orders of relief done on the
22 personnel involved in this case. Why is it so
23 important? You only have to look at the 15-6

019754

1 investigation and we look at the equation for
2 disaster. This is an equation for disaster.
3 (inaudible). This is from a Major General
4 (inaudible), page 18, paragraph 10. Military
5 Intelligence interrogators and other government
6 agents interrogators actively requested MP guards to
7 have physical and mental conditions for favorable
8 interrogation of witnesses. Ask Staff Sergeant
9 Frederick. Are the government agencies and MI
10 interrogators, and probably including members of the
11 CACI Corporation including the request of (b)(6)-7
12 who were contracted as interrogators completely left
13 on their own with separate missions. MPs who are
14 established as law and order MPs (inaudible)
15 including a physician where they're not outside their
16 training subject to military intelligence
17 requirements which have different ends and different
18 focus. Page 19, paragraph 2. The 372nd MP Company
19 had no training in detainee operations. No training.
20 Very little Geneva Convention. That's the reason why
21 I requested the judge advocates. There's three judge
22 advocates at least and I find in the 15-6
23 investigation there was actually four including the

019755

1 Lieutenant Colonel, to be present here or via
2 telephone to explain to us why they felt (inaudible).
3 They were not sufficient (inaudible) AR 15-6
4 investigator and they were not adequately trained for
5 the mission. So we have other people taking control,
6 MI, interrogators and other government agencies. We
7 have very poorly trained soldiers placed (inaudible),
8 just coming back from a law and order mission and
9 placed in a detainee operation. And the continuation
10 of the equation. (inaudible). There was no
11 (inaudible). On page 37, the investigating officer,
12 finds that these MPs were overworked, that normally
13 the (inaudible) said that one battalion of
14 specifically trained MPs should be responsible for
15 4,000 inmates. Here we have one battalion of not
16 specifically trained MPs being responsible for at
17 least 6,000 and 7,000 inmates. And these aren't just
18 regular (inaudible). These are, as the specialist
19 testified to, people of all. We have common
20 criminals, we have any Prisoners of War, we have high
21 (inaudible) targets, everybody placed in one big
22 (inaudible). And we are again to finish with the
23 equation. What else do we have? We have a finding

019756

1 by the 15-6 investigator of extremely poor quality of
2 life where soldiers were frequently under attack,
3 they were living under substandard living conditions,
4 psychologically, physically, emotionally trying
5 events for a substantial amount of time. The
6 equation does not yet end there. Coupled with the
7 failure to train, the failure to have these soldiers
8 trained up on the Geneva Convention or even
9 (inaudible) operations, overworked, extremely poor
10 hazardous conditions. We have a failure of
11 leadership. A failure of leadership from a general
12 officer in charge all the way down to the first one.
13 General Officer comments and we still have not, we
14 still have not completed with the equation.
15 Yesterday, I pointed to AR regulation AR-190-8, which
16 outlines the duty of combat commanders in almost a
17 foresight of the problems that we face today. It
18 says, and I quote, "U.S. Army Military Police have
19 units specifically organized to perform the long term
20 functions associated with EPW and CI." (inaudible)
21 And that commanders at all levels are to ensure that
22 (inaudible) CI, Army and (inaudible) are accounted
23 for (inaudible) operations are conducted per this

019757

1 regulation. And then it goes to outline the
2 responsibilities for that commander. A total failure
3 unfortunately by the U.S. Army which led to this
4 event. Now, interestingly enough, the Army is asking
5 you to whitewash this entire proceeding and to agree
6 with the general officer's comment made publicly in
7 front of the press which declared these soldiers as
8 cancers, the cancers that needed to be quickly dealt
9 with. This is what the U.S. Army is saying to these
10 co-accused, to the press, to everyone (inaudible) in
11 a formal setting, soldiers like Staff Sergeant
12 Frederick are cancerous. And what are we doing with
13 the rest of these, these people mentioned in this
14 document? It's utter whitewash. The Army lets you
15 and is standing here today for you to make Staff
16 Sergeant Frederick and the rest of the co-accused
17 statements and whitewash this entire mess by focusing
18 instead of its failures, and multiple failures with
19 leadership. That's evident in this very disturbing
20 report so as to atone for the Army's sins by giving
21 us one CID witness who's only involvement in this
22 case is practically just reading the report, who are
23 stating that there is no possible way that we can

019753

1 have telephonic communications with people in Germany
2 and United States to gather information, very
3 important information, for you to make a complete and
4 impartial decision, for declaring multitudes of
5 people, allowing witnesses to leave the sphere of
6 operations so as to make this a complete whitewash.
7 In conjunction with the statement already made by the
8 chain of command in this case, (inaudible)
9 distributed throughout Iraq in the theater of
10 operation. How is that going to make this
11 proceedings fair? We stated we're currently in an
12 open session but where are we in reality? We are at
13 Camp Victory in Iraq just outside of Baghdad. We're
14 sitting here in a courtroom surrounding by sandbags.
15 There's not a single person in the gallery. We have
16 all the witnesses outside of the country and we're
17 riding on sworn statements by co-accused who are
18 completely self-serving. (inaudible) instead of
19 (inaudible) the government could very well grant
20 immunity, testimony immunity to force these people to
21 testify. They could go out and gather the
22 information instead of just saying, well, we don't
23 have it, I don't have it on my person, so therefore I

019759

1 don't have it. Instead of saying that it's necessary
2 to, it's not possible for us to conduct telephonic
3 interviews of witnesses or any other kinds of
4 interviews, witnesses in this case, it's simple
5 enough just to say, they're outside 100 miles, not
6 available. While you're in deliberations (inaudible)
7 disposition, look at that. Look at the numbers of
8 witnesses that are not currently available. Look at
9 the fact that all these witnesses are outside of the
10 country. Look at the fact of all the culpable
11 members of the chain of command in their total and
12 utter failure to protect soldiers for being placed in
13 this situation. Look at all these facts and
14 determine an appropriate disposition. Instead of
15 looking at just for the facts, the pictures that we
16 have, which in fact have actually no context to them,
17 and in fact the trial counsel would allude to the
18 pictures are evidence enough to go forward. Sit down
19 and read that 15-6 investigation. Sit down and look
20 through it and go through context for whether or not
21 this is a failure due to the situation or is this a
22 failure due to criminals and people that are accused
23 of committing crimes like Staff Sergeant Frederick.

019760

1 Where was the (inaudible)? Where were the commanders
2 in this case? Even the Red Cross in their reports,
3 although sending it through the chain of command and
4 coming back with suggestions, (inaudible). Because
5 there was competing measures, the chain of command in
6 this case led military intelligence and other
7 government agencies a separate agenda to dictate what
8 was going on in Abu Prison. That's what you look at.
9 (inaudible) if this does go to court-martial, that
10 all those witnesses will testify and we will need
11 (inaudible) it will be (inaudible) present in the 15-
12 6 investigation and we ask that you consider the
13 aforementioned appropriate recommendation on
14 disposition. Thank you sir.

15 MAJOR [REDACTED] Anything else?

16 CAPTAIN [REDACTED] No sir. Nothing further.

17 MAJOR [REDACTED] Now you referenced a video clip
18 that was officially entered into evidence.

19 CAPTAIN [REDACTED] No sir, the whole CD-ROM was
20 entered into evidence and that's on the CD-ROM.

21 MAJOR [REDACTED] Okay.

22 CAPTAIN [REDACTED] The CD-ROM was entered ...

019761

(S)(b)-2
1 MAJOR [REDACTED] Well, I thought you introduced
2 these statements (inaudible). Defense?

3 CAPTAIN [REDACTED] The only other thing is that the
4 defense asks that the decision by the government to
5 not have a verbatim transcript made, be reconsidered
6 considering the distance between myself and co-
7 counsel. It's going to take several weeks for the
8 tapes. I believe we will request it to be sent over
9 to New Hampshire. It would just speed the process.
10 If we're getting transcripts, that we (inaudible).
11 Defense also would like you to please exclude the
12 trial counsel's Power Point slideshow into the
13 record.

(S)(b)-2
14 CAPTAIN [REDACTED]: Sir, first of all, on the
15 verbatim transcript, it's not an issue for you to
16 consider sir. (inaudible) the court-martial the
17 authority. It's not really an issue in front of you.
18 Sir, there's already a letter from the SJA denying
19 that request (inaudible) officer's decision
20 (inaudible). Also we'd object to the (inaudible).
21 It's not an exhibit, it's just as part of the
22 final closing argument.

019762

1 MAJOR [REDACTED]: But why do you object to this
2 being entered? What am I missing?

3 CAPTAIN [REDACTED]: Because sir all the evidence
4 has already been put on Prosecution Exhibit defense.
5 It's already been closed at that point. Closing
6 arguments ... And again, this is for court-martial, 32
7 sir, there's no rules of evidence where closing
8 arguments are not really evidence. My word, his
9 word. The only evidence is what's before you. We
10 get a chance to summarize ...

11 MAJOR [REDACTED]: Like I said before, there's been
12 no new evidence introduced.

13 CAPTAIN [REDACTED]: That's correct sir. Everything
14 I talked about is in those documents, in those tapes,
15 in those pictures. The only thing I did was
16 summarize it for you and focus it. I expect you take
17 a look at it, but it should not be as exhibit.

18 MAJOR [REDACTED]: Defense?

19 CAPTAIN [REDACTED]: Nothing further.

20 MAJOR [REDACTED]: Nothing further.

21 CAPTAIN [REDACTED]: That's all we have sir.

22 MAJOR [REDACTED]: Okay. We will consider this

23 Article 32 hearing closed at this point in time. In

019763

1 five to seven days, I will provide my EB form 457 and
2 we'll go to the (inaudible). Anything else?

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019764

1 (b)(6)-2 CERTIFICATE

2 I, [REDACTED] do hereby declare the
3 foregoing transcript has been transcribed by myself
4 true and accurately to the best of my ability.

5 I am neither attorney nor counsel for, nor
6 related to or employed by any of the parties to the
7 action, and further that I am not a relative or
8 employee of any attorney or counsel employed in this
9 matter, nor am I financially interested in the
10 outcome of this action.

11

12

13

TRANSCRIBER'S SIGNATURE

14

15

16

17

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019765

UNITED STATES

v.

FREDERICK, Ivan L.
SSG, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

GOVERNMENT'S RESPONSE
TO DEFENSE MOTION FOR
TO RE-OPEN ARTICLE 32
INVESTIGATION

19 JUNE 2004

RELIEF SOUGHT

The accused requests that this Court order the investigating officer to re-open the Article 32 investigation while claiming that the original Article 32 investigation did not substantially comply with R.C.M. 405. The government objects to the accused's motion and maintains that the accused was afforded a thorough and impartial investigation that did comply with the Rule. Consequently, the government requests that this Court deny the accused's motion to re-open the Article 32 investigation.

BURDEN OF PROOF AND PERSUASION

The defense has the burden of persuasion since it is the moving party. R.C.M. 905(c)(2). The burden of proof that the defense must meet is a preponderance of the evidence. R.C.M. 905(c)(1).

FACTS

The accused, a military police noncommissioned officer (NCO), along with a number of other co-accused, allegedly maltreated and assaulted foreign national detainees while acting as prison guards at the Baghdad Central Correctional Facility (BCCF), Abu Ghraib, Iraq. The maltreatment was brought to light when a fellow soldier, Specialist (SPC) [REDACTED] delivered a compact disk to CID containing multiple pictures of detainee abuse. A co-accused, SPC Charles Graner, had given SPC [REDACTED] the compact disk and the accused appears in a large number of these pictures.

(b)(6)-2
CPT [REDACTED] preferred charges of conspiracy to maltreat subordinates, dereliction of duty, maltreatment of subordinates, indecent acts, and assault consummated by battery against the accused on 20 March 2004. On 24 March 2004, the Special Court-Martial Convening Authority, Colonel (COL) [REDACTED]

APPELLATE EXHIBIT X

019766

Recognized R. 42

(b)(6)-2
[redacted] appointed Major (MAJ) [redacted] as the Article 32 investigating officer.

(b)(6)-1
On 25 March 2004, MAJ [redacted] notified the accused of his intention to convene the Article 32 investigation on 2 April 2004. He stated that he planned on calling Special Agent (SA) [redacted] to testify and solicited requests for defense witnesses by no later than 30 March. In response, defense counsel requested 56 witnesses along with "ICRC representative(s) who conducted on-site inspection of the prison" and "any and all members [of the chain of command] of the 372nd Military Police Company and 800th Military Police Brigade" (See Attachment 1). Due to a variety of reasons, MAJ [redacted] found six of these witnesses reasonably available to testify (See Attachment 2).

(b)(6)-2
The Article 32 investigation was held on 2 April 2004 and was re-opened on 9-10 April. Of the six witnesses who were present for the investigation, three were called to testify and invoked their Article 31, UCMJ rights.¹ MAJ [redacted] then admitted thirty-eight government exhibits into evidence to include sworn statements from four of his fellow co-accused², a copy of the compact disk SPC [redacted] had turned over to CID containing numerous photos depicting the accused and his co-conspirators maltreating Iraqi detainees under their care, and translated sworn statements from the detainees.

LAW

Under R.C.M. 405, no charge or specification can be referred to a general court-martial until it has been thoroughly and impartially investigated by an investigating officer whose function is to inquire into the truth and form of the charges and to make a recommendation as to the disposition of those charges. An Article 32 investigation has a two-fold purpose: to provide the accused with discovery and to ensure that baseless charges do not proceed. *United States v. Garcia*, 59 M.J. 447, *10 (CAAF 2004). When determining whether a witness is "reasonably available", an investigating officer must look to the distance between the location of the witness and the situs of the investigation and perform a balancing test between the significance of the testimony and the difficulty, expense, delay, and effect on military operations of obtaining the witness' appearance. R.C.M. 405(g)(1)(A); *United States v. Marrie*, 43 M.J. 35, 40 (C.A.A.F. 1995).

(b)(6)-2
¹ These witnesses were Captain (CPT) [redacted], Staff Sergeant (SSG) [redacted] and [redacted] (b)(6)-4
² These statements were admitted due to their previous invocation of their Article 31, UCMJ rights.

ARGUMENT

The accused complains that the investigating officer failed to make correct determinations concerning the availability of witnesses and documents prior to accepting alternative forms of testimony and evidence. Given the circumstances found in this case, the investigating officer was correct in his assessments of witness availability.

First, MAJ [REDACTED] was clearly right in finding SPC Jeremy Sivits, SPC Sabrina Harman, Sergeant (SGT) Javal Davis, SPC Meghan Ambuhl, and Private First Class (PFC) Lynndie England were reasonably unavailable to testify. They are all co-accused of SSG Frederick and had previously invoked their Article 31, UCMJ rights through their counsel.³ MAJ [REDACTED] had no legal authority to compel them to testify. Thus, since they were not reasonably available, MAJ [REDACTED] was free to consider their sworn statements. R.C.M. 405(g)(4)(B)(i).
(b)(6)-2

Next, MAJ [REDACTED] found that the significance of personal appearance did not outweigh the difficulty, expense, delay, and effect on military operations of a number of witnesses who were located over 100 miles away from Victory Base, the situs of the Article 32 investigation. In making this determination, he wrote,

"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" (See Attachment 3, p. 2).

This is the exact type of analysis that is called for in R.C.M. 405(g)(1)(A).⁴ MAJ [REDACTED] balanced the need to hear personally from these witnesses and weighed it against the "extraordinary security and operational measures" to determine the availability of the witnesses.
(b)(6)-2

³ This rationale for unavailability applies equally to MAJ [REDACTED], SPC Cruz, SPC Graner, and SPC [REDACTED] (See Attachment 2).

⁴ While the Iraqi detainees or former detainees within the 100 mile radius designated by R.C.M. 405(g)(1)(A), MAJ [REDACTED] still performed the correct balancing test. R.C.M. 405(g)(1)(A)'s "100 mile" rule is presented in the conjunctive: "a witness is 'reasonably available' when the witness is located within 100 miles of the situs of the investigation and the significance of testimony...outweighs the difficulty..." (emphasis added). All MAJ [REDACTED] did was perform the necessary balancing test and applied it correctly in a combat zone. Consequently, he was correct in considering the detainees' sworn statements over the objection of the accused. R.C.M. 405(g)(4)(B)(i).
(b)(6)-2

Nor should these "extraordinary security and operational measures" be taken lightly. At the time of the investigation, violence in Iraq was at its worst. April 2004 was one of the deadliest months of the current U.S. deployment in Iraq with a sharp rise in attacks by insurgents (See Attachments 4, 5). There were numerous attacks on convoys along known convoy routes. Consequently, travel around Iraq was greatly hampered. Further complicating the issue of witness availability was the still rudimentary status of communications within Iraq. SFC [REDACTED] the legal NCOIC of 16th MP Brigade, looked into the possibility of securing telephonic testimony via speaker phone for the investigation. He discovered that the courthouse on Victory Base did not have any phone lines, so he ended his search for any telephonic capability and informed the investigating officer of the situation. MAJ [REDACTED] was correct in deciding that these potential witnesses were not required to appear due to the operational situation.

(b)(6)(9)-2

The amount of evidence that MAJ [REDACTED] reviewed, to include the lengthy AR 15-6 investigation completed by Major General (MG) Antonio Taguba, and the detail of his report clearly shows the absolute thoroughness of his investigation. Moreover, the evidence he collected overwhelming supports the charges the accused is facing. MAJ [REDACTED] was able to consider the sworn statements of several co-accused (SPC Sivits, PFC England, SGT Davis, and SPC Harman) implicating the accused in the maltreatment. He was able to consider the eyewitness account of SPC [REDACTED] of the accused assaulting detainees and forcing them to masturbate. Most compelling was the large amount of photos clearly depicting the accused actively engaged in assault and maltreatment of detainees. See R.C.M. 405(g)(1)(B); R.C.M. 405(h)(1)(B). Taken in the context of being in an active combat zone, MAJ [REDACTED] investigation into the charges in this case more than adequately allowed him to ascertain the validity of the charges and their form and provided the accused with a thorough and impartial hearing.⁵


⁵ Furthermore, the statutory standard for reviewing an Article 32 hearing is that an investigation was conducted in "substantial compliance" with R.C.M. 405. MAJ [REDACTED] investigation into these charges, to include the co-accused's inculpatory statements, graphic photo evidence, and an eyewitness account, clearly meets the substantial compliance standard.

CONCLUSION

In sum, the accused received a fair and thorough investigation into the charges that have been brought against him. Therefore, the defense's motion to re-open the Article 32 investigation should be denied.


CPT, JA
Trial Counsel

Delivered to defense counsel, by email, this 19th day of June 2004. (S)(b)-2


CPT, JA
Trial Counsel

MAJ CJTF7-BN XO

Subject:

RE: RE: Art 32 US v Frederick

(b)(6)-2

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] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

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.

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

1

019771
Attachment #1
IOE 19

personnel testify:

Any and all members of the 372 MP Company and 800 MP Brigade

CPT [REDACTED] (Former company commander)

MAJ [REDACTED]

The S-3 for the Brigade/Battalion during the applicable timeframe of these charges (b)(6)-2

CPT [REDACTED] (former Brigade JA)

CPT [REDACTED], CPT [REDACTED] (JAs at the prison)

SGM [REDACTED] 1st EPW

ICRC representative(s) who conducted on-site inspections of the prison during the applicable time periods of the charges.

CPL Charles A. Graner

PFC Lynndie R. England

SPC Megan Ambuhl

SGT Javal Davis

SPC Sabrina D. Harman (b)(6)-7

SPC Jeremy Sivits

SPC [REDACTED] (b)(6)-2

SPC John Cruz

SPC Roman Krol

SGT [REDACTED] (b)(6)-2

CID [REDACTED] (b)(6)-1

Mr. [REDACTED] CACI Corporation

Mr. [REDACTED] Titan Corporation

CID Special Agents: (b)(6)-4

(b)(6)-1

[REDACTED] (S)(G)-1

The above witnesses either investigated these incidents, were alleged victims, were members of the chain of command or staff responsible for the training/supervision of the soldiers involved in this incident or were first-hand witnesses of the events leading to the charges the accused now faces.

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

019774

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

[REDACTED] (S)(b)-4
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Detainee - Unavailable
Detainee - Unavailable
Detainee - Unavailable

SGT [REDACTED] - (S)(b)-2
CID [REDACTED] - (S)(b)-1
Mr [REDACTED] CACI Corp
SA [REDACTED] (S)(b)-4
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
Outside of 100 Mile Radius
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Outside of 100 Mile Radius

(S)(b)-1

Detainee - Unavailable

**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] (S)(b)(1) 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.

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Nation & World

[low-graphic news index](#)

Saturday, May 01, 2004, 12:28 A.M.

Record U.S. death toll in Iraq in April

By Josh White
The Washington Post

WASHINGTON — With the deaths of 12 American soldiers in Iraq over the past two days, more U.S. troops have died in combat in April than in the six weeks of sustained military operations required to take Baghdad last year.

Overall, at least 136 U.S. troops died in April, including more than a dozen whose names have not been released because the Army has not notified their families. That compares with death totals of 50 in March, 21 in February and 46 in January.

The six-week operation to take Baghdad in March and April 2003 killed 115 in combat, and 23 died in nonhostile events, according to Washington Post research.

Defense officials and analysts said the sharp rise in casualties is in large part because of the shifting nature of the fight, as both coalition forces and insurgents have been taking increasingly offensive action. The result is the highest number of U.S. military losses in one month since the waning days of the Vietnam War.

Some experts said they expect the violence to continue or increase as the United States prepares to transfer political power to an interim Iraqi government June 30 and as the United Nations works to organize national elections this winter.

The increase in violence by insurgents, experts said, probably reflects their desire to erode the will and resolve of the American public and its support for the war.

"These are acts of desperation on behalf of the insurgents because they clearly know that the political transfer is inevitable, and they see it as a death knell for them," said retired Gen. Jack Keane, former vice chief of the Army. "I believe they'll try to keep this level of violence through the summer and into the fall and December."

The number of U.S. wounded also has soared. Firm figures were not available, but the total for April exceeded 900, more than triple the number wounded the month before, according to the Pentagon.



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019773

Attachment 4

In all, at least 732 U.S. troops have died in Iraq since the invasion, including those killed in combat and in accidents and other nonhostile situations. That figure, however, does not include at least some of the dozen who have died in the past two days.

The Pentagon says 3,864 troops have been wounded.

The dead Americans ranged from 18 to 49 years old. At least 13 were teenagers, and at least five were 40 years or older.

Most who died this month were regular Army (56) and Marines (50). The rest were members of the Air Force, Navy, Reserves, National Guard and Coast Guard.

The American public could see in coming weeks an increase in the number of Reserve and National Guard troops who are killed in Iraq, since they now make up about 40 percent of the 135,000 troops there.

Defense Secretary Donald Rumsfeld and Gen. Richard Myers, chairman of the Joint Chiefs of Staff, said this week that much of the fighting is isolated to hot spots such as Fallujah and Najaf. The insurgency has no broad popular support, they said, and is caused mainly by thugs and loyalists of former President Saddam Hussein.

Recent attacks have been better planned and organized, and Myers has said it is important for the military to shift to meet a learning, thinking enemy.

Tom Donnelly, a defense and national-security expert at the American Enterprise Institute, said April's casualty rate was not particularly high when compared with major historical conflicts. He said it is unlikely the insurgency will be able to keep up such violence for long, but expects "terrorist-style" attacks to continue indefinitely.

"We did regime removal extremely well and relatively bloodlessly," Donnelly said. "The hard part wasn't going to be getting rid of Saddam, but trying to put Humpty Dumpty back together again."

Washington Post researchers Robert E. Thomason, Madonna Liebling and Lucy Shackelford contributed to this report. It also includes information on the number killed and wounded from *The Associated Press*.

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http://seattletimes.nwsources.com/text/2001917530_deadtrend01.html

6/18/2004

MyrtleBeachOnline.com

Posted on Fri, Apr. 30, 2004

U.S. Death Toll Mounts in Iraq Violence

ROBERT BURNS
Associated Press

WASHINGTON - The deadliest month of the Iraq war for U.S. troops has taken an especially heavy toll on the Army National Guard and Army Reserve.

Overall, at least 136 U.S. troops died in Iraq in April - more than in the previous three months combined - including more than a dozen whose names have not been released because the Army has not notified their families. That compares with death totals of 50 in March, 21 in February and 46 in January.

The dead Americans ranged in age from 18 years to 49 years old. At least 13 were teenagers, and at least five were 40 years or older.

In the same month, up to 1,361 Iraqis were killed, according to an Associated Press tally.

"No doubt that the casualties suffered in April were the most severe casualties that we have suffered in Iraq to date," the top American commander in the Middle East, Gen. John Abizaid, said Friday. He insisted, however, that U.S. forces are on track to defeat the insurgents.

The number of U.S. wounded also has soared. Firm figures were not available, but the total for April exceeded 900, more than triple the number wounded the month before, according to the Pentagon.

The Army National Guard and Army Reserve were hit especially hard in April, with at least 17 deaths. That is more losses for the nation's corps of citizen soldiers than in any other month of the war.

In the past week alone, six National Guard soldiers and one from the Army Reserve were killed in combat. In all, at least 111 National Guard and Reserve members have died in Iraq so far.

The escalating number of killed and wounded coincided with a surge in violence that began in late March, notably in the Sunni Muslim stronghold of Fallujah, where U.S. forces initially had too few troops to establish full control, as well as in Baghdad and south-central Iraq.

Defense Secretary Donald H. Rumsfeld conceded at midmonth that he had not expected so many casualties a full year after Baghdad was taken and four months after Saddam Hussein was captured.

In all, 732 U.S. troops have died in Iraq since the conflict began, according to the Pentagon's official count on Friday. That figure, however, does not include at least some of the one dozen who have died in the past two days.

Most of the deaths have come since President Bush flew aboard a Navy aircraft carrier last May 1 and declared that major combat in Iraq was over. One year later, the insurgency is growing more deadly and shows no sign of collapsing.

Abizaid predicted on Friday that the level of anti-occupation violence will remain high as the June 30 target date for turning over political control to an interim Iraqi government approaches.

He insisted, however, "We are not in any military danger of losing control."

The pattern of U.S. casualties in Iraq has varied widely since the invasion 13 months ago.

In the approximately three weeks it took the invasion force to topple Saddam's statue in downtown Baghdad and capture the capital, about 120 U.S. troops died. The death toll in May was 37, and it fell to 29 in June, before trending upward as the insurgency took hold.

019780

Attachment #5

<http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/nation/8560615.htm?tem...> 6/18/2004

From July through December, when Saddam was captured, the monthly death toll averaged 46.

For a number of weeks in early 2004 it looked as if the insurgency might be on the wane. In February, the U.S. death toll fell to 21, but in March it more than doubled as anti-occupation violence spread, underscored by the March 31 killing in Fallujah and desecration of four private American contractors.

This April was the only month of the war so far in which at least one member of every service died in Iraq, including a Coast Guardsman killed April 24 in a waterborne suicide attack. The Navy had three deaths and the Air Force had one. The Army and Marine Corps had the rest.

In addition to the six National Guard soldiers and one from the Army Reserve killed in combat in the last week, a South Dakota National Guard soldier died of unspecified nonhostile causes.

Another National Guardsman, Pfc. Keith Matthew Maupin of Batavia, Ohio, was captured by Iraqis on April 9 along with fellow Guardsman Sgt. Elmer Krause of Greensboro, N.C., whose remains were recovered April 23. Maupin's status is listed as captured, but his whereabouts are unknown.

Those who died in April hailed from big cities - Houston, San Diego and San Antonio - and from small towns - Valentine, Neb.; Humnoke, Ark.; and Chunky, Miss.

ON THE NET

Defense Department: <http://www.defenselink.mil>

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<http://www.myrtlebeachonline.com>

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<http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/nation/8560615.htm?tem...> 6/18/2004

**Office of the Chief Circuit Judge
5th Judicial Circuit
Unit #29355
APO AE 09014**

UNITED STATES

v.

SSG Ivan L. FREDERICK, II
215-56-8739
US Army

Additional Findings on Defense
Motion to Re-Open Article 32b,
UCMJ, Investigation

23 August 2004

1. The defense had moved to re-open the Article 32b, UCMJ, investigation (Appellate Exhibit VI). The government response is at Appellate Exhibit X. On 22 June 2004, the court denied the motion holding that the government had substantially complied with R.C.M. 405(a).

2. The court makes the following additional findings on the motion:

a. The Article 32b, UCMJ, investigation, (hereinafter, the hearing) was conducted on 2, 9 and 10 April 2004 at Victory Base, Baghdad, Iraq.

b. At the site of the hearing, there was no telephone available to secure telephonic testimony from witnesses not physically present at the hearing.

c. The site of the alleged offenses was the Abu Ghraib Prison which is located approximately 20 miles from the site of the hearing. The defense never requested moving the investigation to the prison.

d. The month of April was a particularly violent month in Iraq.

e. The Investigating Officer (IO) understood that he could call witnesses on his own and was not bound by the government or defense witness lists. It is unclear whether the IO understood the "100 mile rule" in denying witness requests. At one point, he appeared to apply a per se rule, i.e., witnesses more than 100 miles away were automatically unavailable, while at other times, he testified that he considered both distance and relevance of the testimony.

f. There is no evidence that the IO was biased. He conducted a thorough investigation and had sufficient evidence upon which to make informed findings and recommendations. He considered photos of the alleged misconduct, sworn statements of co-accused, and three live witnesses.

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g. The IO did not produce a number of defense requested witnesses. The IO found most of the defense witnesses cumulative.

h. There is no showing by the defense as to what the denied witnesses would have said at the time. At best, the defense proffer was speculative, i.e., the witness might have said something that might be relevant.

i. No relevant, non-cumulative witnesses were denied to the defense. Even if the IO misapplied the 100 mile rule, the defense suffered no prejudice by the failure to produce any witness.


 (b)(6)-2
COL, JA
Military Judge

UNITED STATES

v.

IVAN L. FREDERICK
215-56-8739, HHC, 16th MP BDE
III Corps
Victory Base, Iraq

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)
)
) REQUEST FOR EXPERT ASSISTANCE
)
)
) 18 MAY 2004

EXPERT ASSISTANCE

1. In accordance with Article 46 of the UCMJ, Rule for Courts-Martial 703, and United States v. Toledo, 25 MJ 270 (CMA 1987), the defense hereby requests appointment of an investigator located in the Continental United States and an investigator in Europe to the defense team to assist in the preparation of the above-captioned case.

2. Any suitably qualified and competent investigator is acceptable, provided that he or she:

- a. is willing to accept the assignment,
- b. understands that their role will be to assist the defense and agrees to be bound explicitly by the attorney-client privilege,
- c. has sufficient available time to serve the many potential hours that would be required to conduct sufficient investigation for the defense in this case,
- d. has training and experience as a criminal investigator,
- e. is not currently assigned to any office that is currently investigating this case, or in the rating chain of any CID agent that has been involved in the case investigation,
- f. was not involved in any manner in the investigation of this case.

3. An investigator is needed because this case concerns complicated issues of fact and necessitates interviews with multiple potential witnesses whom the defense is presently unable to contact but who could be vital to SSG Frederick's defense.

a. The defense wishes to contact and interview the multiple Iraqi detainees at Abu Ghraib prison, multiple former detainees at Abu Ghraib prison, multiple alleged Iraqi victims, and Iraqi security guards that were involved with the allegations that span a three-month time period. The information obtained from these individuals could be vital in presenting a defense or extenuation or mitigation evidence on behalf of SSG Frederick.

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APPELLATE EXHIBIT XII

Recognized R. 162

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

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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

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

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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL
600 MASSIE ROAD
CHARLOTTESVILLE, VIRGINIA 22903-1781

May 17, 2004

Mr. [REDACTED]
Attorney at Law
[REDACTED] & Associates
[REDACTED]
Weare, New Hampshire 03281

(b)(6)-4

Dear Mr. [REDACTED]

(b)(6)-2

I have reviewed your May 14, 2004 memorandum concerning your requests raised to, and denied by, Colonel [REDACTED] at the Trial Defense Service. I must concur with Colonel [REDACTED] conclusion that he is unable to assign a number of counsel and a paralegal exclusively to the case of U.S. v. Frederick.

I want you to know that Captain [REDACTED] enjoys a reputation in the Judge Advocate General's Corps as an outstanding officer and attorney. Captain [REDACTED] Regional Defense Counsel, Lieutenant Colonel [REDACTED] has communicated to me his opinion that Captain [REDACTED] is equal in capabilities to the best field grade officers in his region. It is due to that assessment that Lieutenant Colonel [REDACTED] recommended him for deployment to Iraq. I am confident that Sergeant First Class Frederick will receive a first-class defense from Captain [REDACTED].

Sincerely,

Scott C. Black
Brigadier General, US Army
Commanding

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DEPARTMENT OF THE ARMY
U.S. ARMY TRIAL DEFENSE SERVICE
901 NORTH STUART STREET
ARLINGTON VA 22203-1837



REPLY TO
ATTENTION OF

MAY 12 2004

Trial Defense Service

Mr. [REDACTED]

Weare, NH 03281

(S)16-4

Dear Mr. [REDACTED]

I have reviewed your email request for (a) CPT [REDACTED] to be detailed to the Frederick case exclusively, (b) that CPT [REDACTED] and the paralegal working in the Aberdeen TDS office be detailed to the Frederick case exclusively, and (c) that an additional attorney be identified by me and detailed to the Frederick case exclusively. For the reasons set out below, your request must be denied. (S)16-2

On an individual level, CPT [REDACTED] is Senior Defense Counsel in the Baghdad Field Office, the busiest TDS Field Office in Iraq, and his duty position, workload, and management responsibilities are such that he cannot be made available to work exclusively on the Frederick case. Similarly, CPT [REDACTED] is the sole Trial Defense Counsel at Aberdeen Proving Ground. Her many responsibilities in military justice actions, administrative separation actions, and other duties as a soldiers' advocate are such that she cannot be made available to work on the Frederick case. The same conclusion would apply to any additional member of TDS that I might identify.

On an organizational level, TDS is not manned to an extent that would allow us to detail counsel in a manner you propose. Each of our counsel represents numerous clients on various matters. As far as detailing a paralegal, presumably to do legal research or writing for you on this case, no enlisted or civilian paralegals are assigned to TDS. Staff Judge Advocates are responsible under AR 27-10 to provide support to TDS counsel, including office space, equipment, and paralegal personnel.

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If you believe that some form of expert assistance (investigative assistance, e.g.) is necessary, you may want to consider making a request for such from the convening authority or the military judge, should charges be preferred and/or referred.

I wish you and your firm success in your representation. I have every confidence in [REDACTED] and trust that he will provide you with whatever assistance you need.

(b)(6)-2

[REDACTED]
COL, JA
Chief, USATDS

UNITED STATES

v.

IVAN L. FREDERICK
215-56-8739, HHC, 16th MP BDE
III Corps
Victory Base, Iraq

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)
) REQUEST FOR DISCOVERY

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) 16 MAY 2004

FIRST DISCOVERY REQUEST

The Accused, by and through his detailed defense attorney, hereby requests that the Government provide the following information:

1. A written response to this request, and
2. Production of the requested matters, and
3. Notice of any inability or intent not to comply.

The requested evidence is material to the preparation of the defense and/or is exculpatory. The accused cannot properly provide effective assistance of counsel nor prepare for trial without production of the documents and items requested in advance of arraignment. Requested information is information known, or that should, with the exercise of due diligence, be known to the United States or its agents.

Production includes the opportunity to inspect, photograph, photocopy, and scan into digital format.

PRETRIAL CONFINEMENT/RESTRICTION TANTAMOUNT TO CONFINEMENT

1. The scope of any condition on liberty or restriction imposed on the accused and dates thereof.

DOCUMENTS/TANGIBLE

2. All papers which accompanied the charges at preferral and referral, specifically to include, but not be limited to: the charge sheet, Article 32 investigation report, and all allied papers, transmittal documents accompanying the charges from one headquarters to another, all law enforcement reports whether prepared by military or civilian law enforcement personnel, all laboratory reports, copy of all requests for laboratory reports not yet completed or the request has been withdrawn, statement of the accused or witnesses, convening orders and the written advice, pretrial advice, or guidance given by any judge advocate to the convening authority or any intermediate commander during the referral process. R.C.M. 701(a)(1)(A).

3. Audible copies of all Article 32 tapes.

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APPELLATE EXHIBIT XIII

Recognized R. 164

4. Any books, papers, documents, photographs, or copies or portions thereof and the opportunity to view tangible objects, buildings, or places which are in the possession, custody, or control of military authorities, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief, or were obtained from or belong to the accused. R.C.M. 701(a)(2)(A).

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities at all levels, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. R.C.M. 701(a)(2)(B).

6. All written material that will be presented by the government as evidence at the presentencing proceedings, to include the accused's personnel records. R.C.M. 701(a)(5)(A).

7. All writings or documents used by a witness to prepare for trial, to include any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or prior to testifying. M.R.E. 612.

8. Access to inspect and to obtain a copy of the entire CID and other investigative files, to include all case notes, case agent summaries, interim, final and supplemental CID reports, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, and any other information in the CID case file or associated with this case.

STATEMENT/WITNESSES

9. All hand written and typed, or recorded statements about the offenses which are in the possession of the government. This includes all statements of any person, not just the accused or potential government witness, taken by or given to any person or agency to include all civilian or military law enforcement agencies, inspector general investigations, AR 15-6 investigations, and all formal or informal commander's inquiries, or investigations. R.C.M. 7-1(a)(1)(C).

10. All statements made by government witnesses relating to this case, R.C.M. 914(a)(4), 18 U.S.C. 3500 et seq.

11. The names, addresses, and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call in its case in chief, R.C.M. 701(a)(3)(A).

12. The names, addresses, and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call during presentencing, R.C.M. 701(a)(5)(B).

13. All hearsay statements, oral or written, intended to be offered at trial under M.R.E. 803(24), the particulars of the statements and the name, address, and telephone number of the declarants, M.R.E. 803(24).

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14. All hearsay statements, oral or written, intended to be offered at trial under M.R.E. 804(b)(5), the particulars of the statement and the name, address and telephone number of the declarants, M.R.E. 804(b)(5).

15. Notice of any hearsay statements, oral or written, intended to be offered at trial under M.R.E. 803(24), the particulars of the statements and the name, address, and telephone number of the declarants, M.R.E. 803(24).

16. Any immunity or leniency granted or promised by any government witness in exchange for testimony, M.R.E. 301(c)(2); *Untied States v. Webster*, 1 M.J. 216 (C.M.A. 1975).

17. Disclosure of the identity, including name, address, and telephone number, of all informants and/or notice of a governmental exercise of privilege, M.R.E. 507.

18. Disclosure of all evidence affecting the credibility of all government witnesses to include, but not limited to:

a. Prior civilian and court-martial conviction and all arrests, apprehension of, or titling of government witnesses. Request a check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations be made. *United States v. Jenkins*, 18 M.J. 583, 584-585 (A.C.M.R. 1984).

b. Records of nonjudicial punishment. Records of adverse administrative actions (pending and completed) to include discharge prior to expiration of term of service for any reason, relief for cause actions, letters or reprimand or admonition and negative counseling relating to adverse or disciplinary actions concerning any government witness.

c. Disclosure of all investigations of any type or description, pending initiated, ongoing or recently completed which pertain to alleged misconduct of any type or description committed by a government witness *United States v. Stone*, 40 M.J. 420 (C.M.A. 1994).

d. All evidence in control of or known to the United States concerning the mental status of any government witness. *United States v. Green*, 37 M.J. 88 (C.M.A. 1993). Material sought specifically includes medical records reflecting psychiatric diagnosis or treatment or head injury of any type and drug and/or alcohol addiction diagnosis or rehabilitation records. *United States v. Brakefield*, 43 C.M.R. 828 (A.C.M.R. 1971), *United States v. Brickey*, 8 M.J. 757 (A.C.M.R. 1980) affirmed 16 M.J. 258 (C.M.A. 1983), *United States v. Eschalomi*, 23 M.J. 12 (C.M.A. 1985).

e. All evidence of character or conduct or bias bearing on the credibility of government witnesses in the control of or known to the United States. *Giglio v. United States*, 405 U.S. 15, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). This is specifically meant to include information relating to any past, present, or potential future plea agreements, immunity grants, payments of any kind and in any form, assistance to or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and the witness, and any other matters which could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify to color or shape testimony.

f. Copies of the DA Form 2-1 or ORB and DA Form 2A for each government military witness. Copies of the SMIF files of all military witnesses.

g. Copies of the official civilian personnel file of each government witness that is a civilian employee of the United States

19. Notice whether the government intends to impeach a witness with a conviction older than ten years. M.R.E. 609(b).

EVIDENCE REGARDING ACCUSED

20. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel and within control of the armed forces, regardless whether the government intends to use the statements at trial. M.R.E. 304(d)(1); *United States v. Dancy*, 38 M.J. 1,4 (C.M.A. 1993).

21. The contents of all statements, oral or written, made by the accused that were not disclosed prior to arraignment. M.R.E. 304(d)(2)(B).

22. All affidavits supporting requests, which pertain to this case, whether or not granted, for authorization to search and seize or apprehend. This includes all DA Forms 3745-R.

23. Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused which is intended to be offered at trial. M.R.E. 311(d)(1).

24. Notice of government intent to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment. M.R.E. 311(d)(2)(B).

25. All evidence of a prior identification of the accused at a traditional line up, photo line up, show up, voice identification or other identification process which the prosecution intends to offer against the accused at trial. M.R.E. 321(c)(1).

26. Notice of government intent to offer identification evidence that was not disclosed prior to arraignment. M.R.E. 321(c)(1)(B).

27. Any prior civilian or military convictions of the accused which may be offered by the government during the trial on the merits or presentencing phase for any purpose, including impeachment. R.C.M. 701(a)(4).

28. Notice of the general nature of evidence of other crimes, wrongs, or other misconduct, as well as the government's theory of admissibility in this case. M.R.E. 404(b), 413, and 414.

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EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENSE

29. All exculpatory, extenuating, or mitigating evidence known, or, with reasonable diligence should be known, to the trial counsel which reasonably tends to negate the guilt of the accused of any offense charged, reduce the guilt of the accused of an offense charged, or reduce the punishment. R.C.M. 701(a)(6), *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), *United States v. Agurs*, 427 U.S. 97, 93 S.Ct. 2392, 40 L.Ed.2d 342 (1976), *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), *United States v. Simmons*, 38 M.J. 376, 381 (C.M.A. 1993), *United States v. Kinzer*, 39 M.J. 559 (A.C.M.R.. 1994), *United States v. Sebring*, 44 M.J. 805 (N.M. Ct. Crim App. 1996).
30. Notice of all evidence known to the trial counsel that affects the credibility of any defense witness.
31. All evidence in rebuttal which is exculpatory in nature or material to punishment. *United States v. Trimper*, 28 M.J. 460 (C.M.A. 1989), cert. Denied, 110 S.Ct. *United States v. Dancy*, 38 M.J. 1 (C.M.A. 1993).

PANEL SELECTION

32. The defense requests the trial counsel submit to each member the written questions listed at R.C.M. 912(a)(1) and provide the signed responses of each member to the defense. R.C.M. 912(A)(1).
33. All written matters provided to the convening authority concerning the selection of the members detailed to the court-martial. R.C.M. 912(a)(2).
34. The convening order and all amending orders. All requests for excusal of court members and any written documents memorializing the denial or approval of the request. R.C.M. 701(a)(1)(B).

JUDICIAL NOTICE

35. All matters which the government intends to have judicially noticed. M.R.E. 201.

EXPERTS AND PHYSICAL EVIDENCE

36. Pursuant to *United States v. Garries*, 22 M.J. 288, 293 (C.M.A. 1986) cert denied, 479 U.S. 985, 107 S.Ct. 575, 93 L.Ed.2d 578 (1986), *United States v. Mobley*, 31 M.J. 273, 277 (C.M.A. 1990), the defense requests:

- (a) Notification of testing upon any evidence which may consume the only available samples of the evidence and an opportunity to be present at any such testing.
- (b) An opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of a government agency or agents.

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37. All chain of custody documents, or litigation packets, generated by any law enforcement or military agency in conjunction with the taking of evidence, or testing of evidence during the investigation of the alleged offenses.

38. Notice of, and the curricula vitae for, all expert witnesses the government intends to call in its case-in-chief and during presentencing. The defense requests the government disclose the number of times each expert has been qualified as an expert witness in a military or civilian court, the types of court each witness has testified in (civilian or military), the locations (city and state) of each of these courts and the civil and criminal docketed number of each of those cases. The defense further requests disclosure of any information, or evidence considered by the expert prior to testifying.

COMMAND INFLUENCE

39. All statements, oral or written, made by the summary, special, general court-martial convening authorities, or any higher authorities (to include the CENTCOM Commander, Secretary of Defense, the Coalition spokesperson(s) and the President of the United States) regarding this case whether written or oral, which:

(a) in any manner, withholds authority from a subordinate commander the authority to dispose of the accused's case under the UCMJ, to impose nonjudicial punishment upon the accused, to order the accused's separation or release from active duty or active duty for training or to order the accused into pretrial confinement.

(b) provides guidance to any subordinate commander concerning appropriate levels of disposition and punishment of the offenses, whether made before or after the offenses at issue in this case.

(c) in any manner indicates that the relevant officer has anything other than an official interest in the matter, *United States v. Jeter*, 35 M.J. 442, 445 (C.M.A. 1992).

40. Disclosure of any information known to government agents, which, in any manner, indicates that a person who forwarded the charges with recommendation now is, or recently has been suspected of committing an offense under the UCMJ, *United States v. Nix*, 40 M.J. 6 (C.M.A. 1994).

INSTRUCTIONS

41. The defense requests the government provide it with all proposed instructions it intends to request that the court use in its instructions to the members and the authority for each instruction.

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CONCLUSION

The defense requests equal and adequate opportunity to interview witnesses and inspect evidence. Specifically, the defense requests the trial counsel to instruct all of the witnesses and potential witnesses under military control, including those on any retired list to cooperate with the defense when contacted by the defense for purposes of interviewing these persons or otherwise obtaining information from them. Art 466, R.C.M. 701(e).


If, before or during the court-martial, the government discovers additional evidence or material previously requested or required to be produced, which is subject to discovery or inspection under R.C.M. 701, the government shall promptly notify the defense of the existence of the additional evidence or material. R.C. M. 701(d).

This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discover is served upon the government. Immediate notification is requested on all items the government is unable or unwilling to produce.

The defense acknowledges that certain of these requests may have been partially complied with prior to this motion. Those matters previously provided, need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests compliance with all of its email discoveries requests (beginning March 30, 2004) and any all requests made by the defense for the Article 32 investigation pursuant to RCM 405. This also includes the email discovery request sent on May 3, 2004.


 (6/11-2

CPT, JA
Defense Counsel

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request for Discovery was served upon the government by email on 16 May 2004.

 (b)(6)-2
CPT, JA
Defense Counsel

019797

CPT MNC-I -Senior Defense Counsel

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Monday, May 03, 2004 3:29 PM
To: [REDACTED] CPT CJTF7 16MP
Subject: (5)161-2
Discovery Request U.S. v. SSG Frederick

CPT [REDACTED]

Pursuant to RCM 701 and in addition to my previous requests (prior to and during the Article 32 investigation pursuant to RCM 405) the Defense requests the following:

- Compliance with the original defense discovery request made prior to and at the Article 32 investigation or evidence of government due diligence during the past several weeks to comply with the Defense's request. If no effort will be made or the U.S. Army refuses to comply with any defense request, the Defense requests immediate notification of such decision or inaction.
- Records of co-accused Art. 32 investigations
- Transcripts or recordings of co-Accused Art.32 investigations
- Unclassified attachments and enclosures to MG Taguba's AR 15-6 investigation. For the classified attachments and enclosures, due diligence is requested for the U.S. Army to redact classified portions as it did for the AR 15-6 findings and recommendations.
- Records of Nonjudicial punishment for soldiers assigned to Abu Ghraib prison during the applicable time period (October through December 2003)
- The CJTF-7 press releases, official statements, transcripts of press conferences, and other notifications in whatever media made to the press or the public concerning the accused or co-accused.
- Any and all reports of investigations, inquiries, hearings (both formal and informal) regarding the treatment of detainees in the Iraq theater of operations to include, but not limited to:
 - Central Intelligence Agency Inspector General investigations
 - Congressional investigations
 - Presidential Inquiries/Investigations
 - Department of Defense Investigations

Respectfully,

(5)161-2
[REDACTED]
CPT, JA
Senior Defense Counsel
U.S. Army Trial Defense Service
Baghdad, Iraq Field Office
[REDACTED]@us.army.mil

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MAJ CJTF7-BN XO

Subject: (b)(6)-2 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] CPT CJTF7 16MP;
[REDACTED] CPT CJTF7-Admin Law Attorney
Subject: Re: RE: Art 32 US v Frederick

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.

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

1

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IOE 19

personnel testify:

Any and all members of the 372 MP Company and 800 MP Brigade

CPT [REDACTED] (Former company commander)

MAJ [REDACTED]

The S-3 for the Brigade/Battalion during the applicable timeframe of these charges

(b)(6)-2
CPT [REDACTED] (former Brigade JA)

CPT [REDACTED] CPT [REDACTED] (JAs at the prison)

SGM [REDACTED] 81st EPW

ICRC representative(s) who conducted on-site inspections of the prison during the applicable time periods of the charges.

CPL Charles A. Graner

PFC Lynndie R. England

SPC Megan Ambuhl

SGT Javal Davis

SPC Sabrina D. Harman

SPC Jeremy Sivits

SPC [REDACTED] (b)(6)-2

SPC John Cruz

SPC Roman Krol

[REDACTED]

(b)(6)-4

SGT [REDACTED]

CID Agent [REDACTED] (b)(6)-1 (b)(6)-4

Mr. [REDACTED] CACI Corporation

Mr. [REDACTED] Titan Corporation

CID Special Agents:

[REDACTED] (b)(6)-1

(S)(C-1)

The above witnesses either investigated these incidents, were alleged victims, were members of the chain of command or staff responsible for the training/supervision of the soldiers involved in this incident or were first-hand witnesses of the events leading to the charges the accused now faces.

CPT MNC-I -Senior Defense Counsel

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, May 04, 2004 2:42 PM
To: [REDACTED] CPT CJTF7 16MP
Subject: (S)G-2 Judge Advocates

CPT [REDACTED]

Pursuant to RCM 701:

1. Defense requests a list of all Active Duty, Reserve and National Guard Judge Advocates (Army, Navy, Marine Corps, Air Force) present at Abu Ghraib prison during the applicable timeframe (October through December 2003) and point of contact information.

2. Please forward request to MAJ [REDACTED] if you do not readily have this information.

Defense would like the opportunity to interview these witnesses.

Thank you for your prompt attention to this matter.

Respectfully,

(S)G-2
[REDACTED]
CPT, JA
Senior Defense Counsel
U.S. Army Trial Defense Service
Baghdad, Iraq Field Office
[REDACTED]@us.army.mil

019802

CPT MNC-I -Senior Defense Counsel

From: (b)(6)-2 [redacted] CPT CJTF7 -Senior Defense Counsel
 Sent: Thursday, May 27, 2004 2:58 PM
 To: [redacted] CPT CJTF7 16MP
 Cc: [redacted]@aol.com' (b)(6)-4
 Subject: FW: Request for Expert Assistance
 Importance: High

CPT (b)(6)-2

Still have not received word from the CG on the Defense's request for expert investigators in the case of U.S. v. Frederick.

1. It is my understanding talking this morning to CPT (b)(6)-2 that the III Corps OSJA is bringing in two Majors and one Captain to assist the prosecution in the case of U.S. v. Frederick. Please confirm or deny. If so, where are these officers going to be located? Are these officers being requested "by name" from the III Corps OSJA or are they being selected by PPT&O--on what basis are they being selected? How many paralegals are being dedicated to the prosecution? If there are any dedicated paralegals to this case, the Defense requests equivalent paralegal support pursuant to AR 27-10, paragraph 6-4. In addition to the regulatory requirement to provide adequate support, the defense makes this request (and all similar requests for OSJA support) pursuant to Art. 46 of the UCMJ and the due process clause of the 5th Amendment in that "equal access" and "due process" entitle my client to the same level of legal support as the government employs.

2. I also make a request to the III Corps OSJA for support IAW AR 27-10, paragraph 6-4(g): the defense of this case is being hindered by a total lack of private communication with civilian co-counsel. Respectfully request a location be provided to the defense wherein I can communicate with co-counsel in a confidential manner. The DNVF recently provided does not allow access for the use of digital calling cards. Respectfully request providing defense counsel with phone cards that do not require the use push-button entry of PIN numbers or a dedicated room with DSN capabilities. Currently, I have to use the Segovia telephones at the MWR building here on Victory South--unacceptable to the defense. Unlike the Government counsel, I cannot simply go across the camp to hold confidential discussions with co-counsel, I have to rely on a telephone. Internet access is also problematic here at the OSJA trailers, coupled with frequent power outages, it is having an adverse affect on my ability to provide an adequate defense to this complicated case.

3. Request the decision documents (to include SJA, PAO, and other staff officer guidance) applicable to yesterday's email message titled "CG, MNC-I Abu Ghraib Message".

4. Still have not received a government answer to my first discovery request. Please see last line on the last page which states:

The defense requests compliance with all of its email discoveries requests (beginning March 30, 2004) and any all requests made by the defense for the Article 32 investigation pursuant to RCM 405. This also includes the email discovery request sent on May 3, 2004.

5. It has come to my knowledge that someone from the Office of the Judge Advocate General may have contacted the prosecution prior to the U.S. v. Sivits trial in order to have the stipulation of fact read into the record or "words to that effect". Can you confirm or deny this? If true, who contacted the III Corps OSJA office and what was their specific request?

Appreciate your assistance in these matters. Please courtesy copy Mr. (b)(6)-4 [redacted] civilian counsel, on all future responses.

019803

APPELLATE EXHIBIT XVI

6/20/2004

Recognized R. 164

Respectfully,

[REDACTED]
CPT, JA
Senior Defense Counsel
U.S. Army Trial Defense Service
Baghdad, Iraq Field Office
[REDACTED]@us.army.mil

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

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, May 18, 2004 6:10 PM
To: [REDACTED] CPT CJTF7 16MP
Subject: FW: Request for Expert Assistance
Importance: High

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

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, May 18, 2004 6:07 PM
To: [REDACTED]@us.army.mil; [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@aol.com; [REDACTED] L CPT
CJTF7 -Senior Defense Counsel
Subject: FW: Request for Expert Assistance
Importance: High

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

From: [REDACTED] CPT CJTF7 -Senior Defense Counsel
Sent: Tuesday, May 18, 2004 5:18 PM
To: 'SMTP:[REDACTED]@us.army.mil'
Cc: 'SMTP:[REDACTED]@vcmain.hq.c5.army.mil'; 'SMTP:[REDACTED]@aol.com';
'SMTP:[REDACTED]@vcmain.hq.c5.army.mil'
Subject: FW: Request for Expert Assistance
Importance: High

Due to a very recent decision (May 17, 2004) by the U.S. Army Trial Defense Service, the Defense requests appointment of an expert assistant in the case of U.S. v. SSG Ivan Frederick.

Respectfully,

[REDACTED] (5)16-2
CPT, JA
Senior Defense Counsel
U.S. Army Trial Defense Service
Baghdad, Iraq Field Office
[REDACTED]@us.army.mil

019804

6/20/2004

UNITED STATES

v.

IVAN L. FREDERICK
215-56-8739, HHC, 16th MP BDE
III Corps
Victory Base, Iraq

)
)
)
)
) REQUEST FOR DISCOVERY
)
)
) 17 MAY 2004

SECOND DISCOVERY REQUEST

DEFINITIONS

With respect to this discovery request the following definitions shall apply:

1. The word "Document(s)" means for the purpose of this Discovery Request all writings, letters, memoranda, notes, reports, summaries, charts, tables, graphs, photographs, pictures, manuscripts, transcripts, drafts of all writings, videotapes, sound tapes, microfiche, compact disks, computer disks, any and all information contained within a computer or other electronic device used for the storage of information, e-mails, phone or answering machine tapes, facsimiles (fax), contracts, agreements, telexes, wires, instructions, forms of any kind, digests, journals, orders, training manuals, regulations, decisional documents, proffered opinions, rosters or tables of organization.
2. The "plural" and the "singular" are interchangeable.
3. "He" and "she" mean both genders.
4. "By, between and among" means generated, sent or received by, between or among any individual party named.
5. Past and present tense are interchangeable.
6. "Or" and "And" mean both conjunctive and disjunctive.

019805

APPELLATE EXHIBIT XVII

Recognized R. 164

7. Detainee(s) shall mean detainees, criminals, enemy prisoners of war, terrorists or civilians.

Please provide the following:

1. All documents showing the dates that the following individuals were physically present in the country of Iraq from July 2003 to November 2003.
 - a. The Secretary of Defense, Donald Rumsfeld.
 - b. The Under Secretary of Defense, Paul Wolfowitz.
 - c. MG Geoffrey D. Miller.
 - d. MG Donald J. Ryder, Provost Marshall of the Army.
 - e. Mr. Stephen Cambone, Under Secretary of Defense for Intelligence.
 - f. General Richard Myers, Chairman of the Joint Chiefs of Staff.
2. All documents showing the dates, times, places and persons present for all meetings held by or with Secretary Rumsfeld during the period identified in 1. above which related to intelligence gathering from detainees and treatment of detainees within Iraq.
3. All documents relating to such meetings described in paragraph 2. above.
4. All documents showing the dates, times, places and persons present for all meetings held by or with MG Geoffrey D. Miller during the period identified in 1. above which related to intelligence gathering from detainees and treatment of detainees within Iraq.
5. All documents relating to such meetings described in paragraph 4. above.
6. The photographs with name and rank shown of all members of the 205th MI Brigade stationed in Iraq for the period 1 September 03 through 14 January 04.

019806

7. All documents regarding the treatment of detainees and the gathering of intelligence from such detainees within Iraq by, between and among personnel within the 205th MI Brigade for the period 1 August 03 through 31 March 04.
8. All documents regarding the treatment of detainees and the gathering of intelligence from such detainees within Iraq by, between and among Col [REDACTED] (S)(G)-2 and any person of equal or greater rank to Col [REDACTED] for the period 1 Aug 03 through 31 March 04..
9. All documents relating to the interrogation of detainees, the treatment of detainees and the gathering of intelligence from detainees within Iraq used by the Central Intelligence Agency of Military Intelligence as training, instructional or regulatory guides for the period 1 July 03 through 14 Jan 04.
10. The names and related photographs of all Titan Corporation and CACI personnel who performed as interrogators, interpreters or translators at Abu Ghraib prison for the period 1 August 03 through 31 March 04.
11. All documents which reflect the contractual relationship by, between or among Titan Corporation, CACI and the United States.
12. All documents by, between and among Titan Corporation, CACI and personnel of the Department of Defense or the United States Army relating to the treatment of detainees or the gathering of intelligence from such detainees within Iraq for the period 1 August 03 through 31 March 04.
13. All documents showing all disciplinary actions, reprimands, Article 15's, and counselings taken against any MP of the 372nd Co MP for failing to obey the order of any Military Intelligence personnel during the period 1 Aug 03 through 30 Jan 04.

14. All documents by, between or among personnel of the 800th MP Brigade and the 205th MI Brigade relating to the treatment of detainees or the gathering of intelligence from such detainees within Iraq for the period 1 August 03 through 31 March 04.
15. All documents by, between or among personnel of CJTF-7, the 800th MP Brigade and the 205th MI Brigade relating to the treatment of detainees or the gathering of intelligence from such detainees within Iraq for the period 1 August 03 through 31 March 04.
16. The names and related photographs of all CIA or FBI agents who performed interrogations at Abu Ghraib prison for the period 1 August 03 through 31 March 04.
17. All documents posted at Abu Ghraib prison during the period 1 August 03 through 15 January 04 which instructed MPs of the 372nd MP Co on detainee treatment or on Geneva Conventions.
18. All documents reflecting actual training of personnel within the 372nd MP Co. on the Geneva Conventions, detainee management or treatment of detainees from six months prior to deployment to 15 January 04.
19. All documents by, between and among the parties named in paragraph 1. above, CJTF-7 personnel, Titan Corporation and CACI relating to the gathering of intelligence information from detainees or the treatment of detainees within Iraq for the period march 2003 and 31 March 2004.

019808

20. All documents by, between or among LTG Sanchez and any person or entity relating to the treatment of detainees or the gathering of intelligence from detainees within Iraq for the period 1 August 2003 to 31 March 2004.

(b)(6)-7
[REDACTED]
Civilian Defense Counsel

(b)(6)-2
[REDACTED]
CPT, JA
Defense Counsel

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request for Discovery was served upon the government by email on 17 May 2004.

(b)(6)-2
[REDACTED]
CPT, JA
Defense Counsel

019809

UNITED STATES

v.

FREDERICK, Ivan L.
SSG, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

COURT ORDER
TO PROSPECTIVE
COURT MEMBERS

RE: PUBLICITY

22 JUNE 2004

TO: All prospective court members for the above-captioned court-martial.

1. This case has been referred to trial by general court-martial. You will be contacted by the Office of the Staff Judge Advocate if you are detailed to be a member for this case. This case most likely will be tried during the fall of 2004. This order is being provided to all persons who are presently identifiable as a potential court member or as an alternate for such duty. References in this order to "prospective court member(s)" refers to you, whether you are a primary or alternate member of a presently existing court-martial panel.

2. The court finds that the following order is necessary and proper in aid of its jurisdiction and in the interests of the fair administration of justice and due process of law for all parties.

3. All prospective court members are ordered and instructed as follows:

I.

As a prospective court member of the court-martial which will try the case named above, it will be your duty to determine the guilt or innocence of the accused as to the charges upon which he is arraigned. Under the law, the accused is presumed to be innocent of the charges against him. Neither the fact that charges have been preferred against the accused nor the fact that charges have been referred to a court-martial for trial warrants any inference of guilt. Your determination of the guilt or innocence of the accused must be based solely upon the evidence and instructions in the case as presented in open court. Thus, it is important that you keep an open mind and not form, or express, any opinion on the case until all the evidence and the instructions on the applicable law are presented to you. Your conclusion as to the guilt or innocence of the accused must not occur until you are in your closed session deliberations after all the evidence and instructions have been received.

II.

A trial by court-martial includes the selection of court members. Court members fulfill duties similar to those of civilian jurors. As a prospective court member in this case, you may be

019810

APPELLATE EXHIBIT XVIII

Recognized R. 175

questioned in open court by counsel for either side and by the military judge to determine whether you should serve. Each side is entitled to a panel of court members who approach the case with an open mind and who are able to keep that open mind until they deliberate on the verdict. You should be as free as humanly possible from any preconceived ideas about the outcome of the case. Therefore, you are instructed and ordered that, from the date of receipt of this order until the trial is concluded (or until you are specifically advised by this court that this order no longer applies to you), you will keep a completely open mind and not discuss the facts of this case, or any publicity concerning the case, with anyone, military or civilian. If you do sit as a court member on the case, you are also ordered not to discuss the case with other court members during the course of the trial until you enter your closed session deliberations. You may not discuss, other than is required to inform your military superiors of your duty status, your prospective detail to this court-martial with anyone.

III.

Because of the prior publicity and the probability for more publicity in the news media about this case, you are instructed and ordered not to listen to, look at, or read any accounts of any incident about the above named accused or any accounts of any alleged prisoner abuse occurring at the Baghdad Central Confinement Facility (Abu Ghraib) during the fall/winter of 2003. You may not consult any source, written or otherwise, as to any matters involved in the alleged incidents. Should anyone attempt to discuss the case with you, or talk to you about your potential or actual participation as a court member in this case, other than in open court, you must immediately forbid them from doing so, and then you must report the occurrence to me in court.

IV.

In the event you have already read, seen, or listened to any media accounts, publicity or other accounts concerning the alleged incident described in paragraph III above, or you inadvertently do so before the conclusion of this court-martial, you are advised that you have a legal duty to disclose that matter to the court when asked to do so. Also, in the event that you have already discussed (or listened to anyone else discuss) any matter related to this case, or inadvertently do so before the conclusion of the court-martial, you have the duty to disclose such matters to the court. You are advised that it is no adverse reflection on you to be excused from duty as a court member; however, as a member of the military, you are expected to follow the instructions in this order and not intentionally do anything which will unnecessarily provide a basis for challenge against you.

V.

Trial Counsel will cause a copy of this court order to be served on each prospective member of the court. Trial Counsel will obtain (and maintain for the court) a written receipt for such service from each prospective court member, showing the date and time this order was received.

019811

4. This order was served on both the trial and defense counsel.

Ordered this 22nd day of June, 2004:

[REDACTED] (b)(7)-2

COL, JA
Military Judge

019812

(S)14-7

TO: COL [REDACTED] Chief Circuit Court Judge, Heidelberg, Germany

SUBJECT: ACKNOWLEDGMENT OF RECEIPT OF COURT ORDER:

At _____ hours, on _____ 2004, I received a copy of the court order, entitled, **"TO PROSPECTIVE COURT MEMBERS RE: PUBLICITY."** I will read it and comply with its terms.

Signed: _____

Printed name: _____

Rank: _____

019813

**Office of the Chief Circuit Judge
5th Judicial Circuit
Unit #29355
APO AE 09014**

UNITED STATES

v.

SSG Ivan L. Frederick II
215-56-8739
US Army

Order Denying Motion to
Move Trial

4 August 2004

1. The defense has moved to change the location of the accused's trial (Motion at Encl 1). The Government response is at Encl 2. The defense reply to the government response is contained in an email message at Enclosure 3. Both sides agreed that this motion could be decided on the submitted briefs and that no hearing was required (See email at Encls 3 and 4).

2. For purposes of this motion the court makes the following findings:

a. The defense motion for a change of the place of trial is fundamentally based on the fact that "no civilian witnesses (will attend the trial in Baghdad) due to safety concerns...." (Encl 1, page 12, para 4).

b. The military justice system has worldwide applicability including combat zones (Art 5, UCMJ).

c. All of the alleged misconduct in this case occurred at or near Baghdad, Iraq. All of the alleged victims were in Iraq at the time of the alleged misconduct. The current place of trial is Baghdad, Iraq. The current posture of the case is that the accused intends to plead guilty with all the requested witnesses to be called for presentencing proceedings only.

d. Currently, there is a great deal of violence in Baghdad. Explosions and gunfire are daily occurrences. Fear for one's personal safety is justified by the situation on the ground in Baghdad.

e. A number of civilian defense witnesses apparently will refuse to attend the trial if held in Baghdad for reasons of personal safety. (See declarations attached to Encl 1.) The court does not have subpoena power to compel civilian witnesses to come to Iraq.

APPELLATE EXHIBIT XIX

Recognized R. 180 019814

f. The court takes judicial notice that civilians are routinely brought into Iraq on US government business. The government has indicated it will make the appropriate travel arrangements for any relevant civilian defense witness. There are no logistical or operational impediments preventing any civilian defense witness from coming to the trial. In essence, the civilian defense witnesses are *choosing* not to attend for purely personal, albeit not totally unfounded, concerns for personal safety.

g. Defense has also listed witnesses who will not testify because they will invoke their Art 31b, UCMJ, and/or their 5th Amendment right against self-incrimination. The court fails to see any relevance of these witnesses refusal to testify to the motion at hand.

h. The government has indicated that it intends to call Iraqi witnesses at trial.

i. The government is willing to enter into stipulations, or other means of presenting testimony, of any witness who refuses to attend.

j. The defense has made no showing that any proffered witness is essential to presentation of the accused case. There is no showing that the weight or credibility of any witnesses testimony is of substantial significance to the determination of an appropriate sentence.

k. There are alternatives to live testimony available to the defense, i.e., affidavits, letters, memoranda, email, DVDs, videotapes, etc, which would be sufficient to meet the needs of the court-martial in determining an appropriate sentence.

l. The defense has failed to show the accused would be prejudiced by the trial occurring in Iraq.

3. Accordingly, the defense motion to change the place of trial in this case is denied.

(s)(6)-2


COL, JA
Military Judge

019815

United States

v.

Staff Sergeant Ivan L. Frederick

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)
)
)
)

Motion to
Change Location
of
Sentencing Proceeding

I. Request for Relief

The Accused, by counsel, hereby moves this Court to change the location of sentencing proceedings in the above styled matter to CONUS or such other place which will meet the ends of justice and provide fairness and the appearance of fairness in the sentencing proceeding.

II. Facts

1. The Accused has voluntarily entered into a pretrial agreement which provides for a guilty plea to certain charged and specified matters.
2. The pretrial agreement is silent on the question of location of the proceedings, alternative methodologies for the appearance of witnesses and testimonial immunity for proposed witnesses.
3. The Accused intends to call the following classes of witnesses:
 - a. Civilians.
 - a. Lay
 - b. Expert
 - c. Government contractor

019816

Encl 1

- b. Former military personnel not on active duty.
 - c. Active duty personnel located in CONUS and Germany.
 - d. Active duty personnel located in Iraq.
4. For reasons of safety, none of the civilian personnel all of whom are material will agree to appear in Iraq.
5. One material former military member not now on active duty will not appear voluntarily in Iraq. Others similarly situated but not yet contacted may fall into that category.
6. Multiple active duty personnel are asserting Article 31 or Fifth Amendment rights. Many of the contemplated military witnesses are in CONUS.
7. The Accused has yet to receive full discovery; has yet to have named an agreed upon MP investigator; and has not been informed of the whereabouts of certain material military witnesses. A companion motion to compel is being filed.
8. The Accused's contemplated witness list to date includes:
 - a. Civilians
 1. [REDACTED] Ph.D.,
Stanford University.
(b)(6)-4
Dr. [REDACTED] will testify as an expert on the social psychology of situational forces and group dynamics associated with prisoner abuse. He is a material witness and will provide the Court with invaluable information regarding the implications of lax rules, absence of

leadership, tacit condonation and encouragement in a prison setting relative to prisoner abuse. He will not go to Iraq. See Declaration at Exhibit A.

2. [REDACTED]
Warden, Buckingham Correctional Center
- Warden [REDACTED] will testify as an expert on proper prison management techniques to include guard – prisoner interaction. He will also testify as to the Accused's job performance with prisoners while serving as a prison guard at the Buckingham institution. He is a material witness who will give the Court knowledge as to how a proper prison is managed. He will not go to Iraq. See Declaration at Exhibit B.

3. [REDACTED]
Prison Guard Lieutenant, Buckingham Correctional Center.
- Mr. [REDACTED] is a co-worker of the Accused. He will testify as to the Accused's treatment of prisoners at the Buckingham institution, his job performance and demeanor as well as his character for peacefulness. He is a material witness. He will not go to Iraq. See Declaration at Exhibit C.

4. [REDACTED]
CACI contractor.

Mr. [REDACTED] was a CACI employee who served as a contract interrogator. He instructed the Accused and gave the Accused encouragement with respect to the Accused "softening up" detainees. He is a material witness as he provides an understanding of the permissive atmosphere which existed at Abu Ghraib and why the Accused would believe that such an atmosphere was condoned and encouraged. His civilian attorney has advised the defense orally that Mr. [REDACTED] will not voluntarily appear in Iraq.

5. Pastor [REDACTED]
Pastor to the Accused and his family.

Pastor [REDACTED] will testify as to the Accused's character, his devotion to family and his demeanor. He is a material witness giving the Court an understanding of the whole man. He will not go to Iraq. See Declaration at Exhibit D.

6. [REDACTED]
Wife of the Accused.

Ms. [REDACTED] will testify as to the Accused's character, his devotion to family and his treatment of others. She is a material witness. She will not go to Iraq. See Declaration at Exhibit E.

- (b)(7)(C)
7. [REDACTED]
Step-daughter of the Accused.

Ms. [REDACTED] a teenager, will testify as to the role her step-father has played and is playing in her life. She is a material witness. She will not go to Iraq. See Declaration at Exhibit F.

8. Inmate [REDACTED] and Inmate [REDACTED]
Buckingham Correctional Center.

These men are prisoners at Buckingham Correctional Center. They will testify as to the manner in which the Accused treated them and other prisoners. They are material witnesses. They cannot go to Iraq.

b. Former military personnel not on active duty:

1. BG Janis Karpinsky,
Commander, 800th MP Brigade.

BG Karpinsky will testify as to her knowledge of command changes which took the Accused out from her control, the involvement of military intelligence at Abu Ghraib, the knowledge of senior personnel regarding the creation of a permissive atmosphere in disregard of international conventions, the involvement of the International Red Cross and the pressure to obtain intelligence created by senior officers and officials. She

is a material witness. She will not go to Iraq as a civilian. See e-mail from counsel at Exhibit G. She is now in CONUS.

2. The following individuals, we believe, also fall into this category, but we have been unable to find them without investigatory help or information from the government.

— Maj [REDACTED]
320th MP Bn.

(S)(b)(7)(c) 2
Major [REDACTED] will testify, we believe, as to the identity of the seven detainees who were the subject of humiliation on or about 7 Nov 03.

He will say that they were the ringleaders of a riot that resulted in injury to one American female soldier. He is a material witness. He is in CONUS.

— Cpt [REDACTED] Commander,
72nd MP CO, NUN G, 156

[REDACTED]
These soldiers, we believe, will testify that nudity, female panties on men, handcuffing to cells (sometimes while nude) and requests for sleep deprivation existed prior to the 372nd MP

CO arriving at Abu Ghraib. They are material witnesses. They are in CONUS.

c. Active duty personnel located in CONUS and Germany:

1. Cpt [REDACTED] MI.

(S)(b)-2
Cpt [REDACTED] is the link between MI and the 372nd MP CO.

She will, we believe, testify about posting documents at Abu Ghraib which allowed for conduct by MPs in violation of international conventions. She will also testify as to the permissive atmosphere which existed at Abu Ghraib with regard to the treatment of detainees as well as the interplay between interrogators and MPs. She will also testify as to the stepped up interrogation efforts beginning in September 2003. She is in CONUS, is material and will assert Article 31 rights.

2. CID Agent [REDACTED]

(S)(b)-1
Agent [REDACTED] instructed the Accused to soften up "Gilligan," the detainee on the box with wires, because Gilligan allegedly knew the whereabouts of the bodies of four United States soldiers and who killed them. We have been unable to reach this man, but we expect an Article 31 invocation.

3. Spc [REDACTED], MI

(S)(6)-2
Spc [REDACTED] we believe, will testify that one of the offending pictures was used as a screen saver within MI. This shows both knowledge and condonation. We have been unable to locate her.

4. Sgt [REDACTED] (S)(6)-2
205th MI Brigade.

We believe he is in Germany. Sgt [REDACTED] will reportedly testify that MI had knowledge of the techniques of humiliation and condoned them. We have been unable to reach Sgt [REDACTED] (S)(6)-2

5. LTG Ricardo Sanchez or Col [REDACTED].

These men have yet to be interviewed, but one or the other will testify that they knew from the International Red Cross in the fall and winter of 2003 that activities in violation of international conventions were occurring at Abu Ghraib and command did nothing to stop those activities, thereby condoning them.

6. MG Geoffrey Miller.

This man has not been interviewed but he will testify as to how and why and what stepped up interrogation methods

were authorized and employed during the period Sep through Dec 03.

- d. Active duty personnel located in Iraq. All of these individuals may require testimonial immunity.

1. Cpt [REDACTED]
372nd MP CO.

Cpt [REDACTED] will testify as to the absence of training prior to mobilization and the absence of training prior to and during the Accused's involvement at Abu Ghraib. He will further testify to the Accused's inquiries about proper procedures and rules as well as his own inquiries to MI personnel regarding nudity, hooding and handcuffing to cells.

2. 1SG [REDACTED]

1SG [REDACTED] will testify as to the Accused's weak leadership traits and the aggressive, controlling and dominating personality of Sgt [REDACTED]. He will also testify as to the permissive atmosphere with regard to detainee treatment at tier 1A. He has previously invoked his Article 31 rights.

3. Sgt [REDACTED]

(S)(6) 2 Sgt [REDACTED] will testify as to Sgt Grainer's dominance and the weak leadership of the Accused. He will further testify as to Mr. [REDACTED]'s practice of encouraging MP's soften up of detainees.

Applicable Law

1. Sixth Amendment,
Constitution of the United States.
2. R.C.M. 906(b) (11).
3. U.S. v. Gravitt, 5 C.M.A. 249,
17 C.M.R. 249 (1954).
4. U.S. v. Bennett, 12 M.J.
463 (C.M.A. 1982).
5. U.S. v. Sweeney, 14 C.M.A.
599, 34 C.M.R. 379 (1964).
6. U.S. v. Nivens, 21 C.M.A.
420, 45 C.M.R. 194 (1972).
7. U.S. v. Van Arsdall, 22 C.M.A.
183, 46 C.M.R. (1973).
8. Chenoweth v. Van Arsdall,
22 C.M.A. 183, 46 C.M.R. 183 (1973).
9. U.S. v. Tangpuz, 5 M.J. 426
(C.M.A. 1978).
10. U.S. v. Cary, 1 M.J. 761
(AFCMR 1975).
11. U.S. v. Thornton, 8 C.M.A.
446, 24 C.M.R. 256 (1957).
12. U.S. v. Cox, 23 C.M.R.
535 (A.B.R. 1957).

Argument

This motion facially is a motion for change of location. Buried within it, however, are implications for the public perception of the fundamental fairness of military justice.

In essence the Accused is willing and able to accept responsibility and to spare the government all the burdens associated with a trial on the merits. This provides derivative advantages to the United States in arenas removed from military justice.

The only request the defense is making is to have the sentencing proceeding in a place where the fullest benefit accorded under military law can be achieved. Iraq is not that place.

There is a real danger that a proceeding in Iraq as presently configured will have no civilian witnesses due to safety concerns and the inability to use subpoena power and few military witnesses due to rights invocations. This would be a disastrous result on multiple levels. Such a result can and should be avoided.

There are court imposed incumbencies upon the defense before a motion such as this can be entertained. The defense has discharged those incumbencies. In U.S. v. Carey, 1 M.J. 761 (AFCMR 1975), the Court said that the defense should first submit a change of location request to the convening authority. The defense has done so and was denied. The request is at Exhibit H. The Carey court also said that witnesses should first be contacted so that their status and content of their testimony were known. This, too, has been done to the extent possible.

Accordingly, the Accused's sixth Amendment right to compel witnesses is mature. id. at 766.

R.C.M. 906 (b)(11) is the basis for a change of location motion. It says in part:

"Change of place of trial. The place of trial may be changed when necessary to prevent prejudice to the rights of the accused...."

See also, Analysis of R.C.M. 906 (b)(11) at M.C.M., Appendix A21-54.

Importantly, the constitutional requirement that the trial of a crime occur in the district in which the crime was committed does not apply in the military. Chenoweth v. Van Arsdall, 22 C.M.A. 183, 46 C.M.R. 183 (1973). This motion should not be denied merely because the government represents that the crime was committed in Iraq.

Further, R.C.M. 906 (b)(11) contemplates more than adverse publicity as a basis for granting relief. The Court must consider as well the convenience of the parties and witnesses as well as the inconvenience to the government. U.S. v. Bennett, 12 M.J. 463 (C.M.A. 1982).

Civilian witnesses in CONUS cannot be subpoenaed to testify in a foreign country. U.S. v. Bennett, 12 M.J. 463 (C.M.A. 1982). Nor can the government force the accused to present evidence by way of stipulation or deposition. id. at 466. As noted every civilian who is a contemplated witness for the Defense refuses to go to Iraq. See Declarations at Exhibit A through G and the representation regarding Mr. Stephanowicz, in the "Facts" section.

The Defense has a right to secure the attendance of witnesses. id. at 466. This is, however, not an absolute rule and judicial discretion is available. This Court must

consider the issues involved, the importance of witnesses, whether the proceeding is sentencing or on the merits, whether the testimony is merely cumulative and whether alternatives exist. U.S. v. Sweeney, 14 C.M.A. 599, 34 C.M.R. 379 (1964).

The burden of proof by a preponderance of evidence is upon the defense to show that an alternative location is preferable. U.S. v. Gravitt, 5 C.M.A. 249, 17 C.M.R. 249 (1954).

The essence of the court decisions is that for a change of location to occur unavailable witnesses in the existing location must be essential to the Accused's case. U.S. v. Thornton, 8 C.M.A. 446, 24 C.M.R. 256 (1957); U.S. v. Tangpuz, 5 M.J. 426, 429 (C.M.A. 1978). To be essential the testimony must not be cumulative. U.S. v. Nivens, 21 C.M.A. 420, 45 C.M.R. 194 (1972); U.S. v. Van Arsdall, 22 C.M.A. 183, 46 C.M.R. (1973.)

Of the 24 witnesses named by the defense, 13 are civilians or believed to be civilians at this date:

1. [REDACTED] Ph.D.
 2. [REDACTED]
 3. [REDACTED]
 4. [REDACTED]
 5. [REDACTED]
 6. [REDACTED]
 7. [REDACTED]
 8. [REDACTED]
- (b)(6)-4

9. [REDACTED]
 10. Janis Karpinsky
 11. [REDACTED]
 12. [REDACTED]
 13. [REDACTED]
- (b)(6)-2

Of the remaining ten military witnesses six are not in Iraq. Only four are in Iraq. The military judge is in Germany.

We are left with the Accused, Accused's military defense counsel, prosecutors, four defense witnesses and the prosecution witnesses in Iraq. The government aggravation witnesses are unknown. We will respond in our reply brief to that listing but we doubt they are location dependant.

The defense civilian witnesses are not cumulative. They are essential to understand the Accused, the dynamic that was Tier 1A at Abu Ghraib, what role the interrogators played and how real prisons are run.

Neither depositions nor high tech hook-ups will equal a judge hearing their live testimony.

In fact the sentencing proceeding in this case is far more important than the merits phase. What occurred has never been an issue. Why and how it occurred has always been the issue. The focus, therefore, is rightly upon the sentencing proceeding. It must not be dismissed as an afterthought.

There is no undue burden placed upon the government by changing location.

- The England case, a coconspirator case, is at Fort Bragg, Abu Ghraib cases can be done in CONUS and will be done in CONUS.
- General officer interviews are being conducted in CONUS.
- Virtually all the witnesses are in CONUS.
- Safety and comfort for all participants is greatly enhanced in CONUS. This is a trial, not a test of willingness to enter combat or a willingness to submit to war zone conditions. It is witnesses not warriors that make a fair trial.
- Reluctant civilian witnesses can be subpoenaed in CONUS.

In fact there is no rational basis in law or fact to keep this proceeding in Iraq. There may be political needs, but neither this Court nor the parties should be affected or influenced by these extraneous considerations.

If the Court concludes that additional evidence is required before this motion can be ruled upon, the defense would support that conclusion. We have through no fault of our own been unable to interview identified relevant witnesses because they have not been located by the government and no MP investigator has been named. Trial

preparation due to military counsel's and the Accused's presence in Iraq has been greatly impaired.

Respectfully submitted,

/s/ [REDACTED] (b)(6)-7
Civilian Defense Counsel

/s/ [REDACTED] (b)(6)-2
Cpt, USA
Military Defense Counsel

Certificate of Service

I [REDACTED] (b)(6)-7 hereby certify that a copy of the foregoing motion was sent by e-mail to Maj [REDACTED] Trial Counsel, this ___ day of July 2004.

(b)(6)-2

[REDACTED]
(b)(6)-4

United States

v.

SSG Ivan L. Frederick

)
)
)
)
)

Declaration

(b)(6)-4

I, [REDACTED] P.O. Box 365, Dillwyn, VA 23936, hereby declare:

1. I am the Warden of Buckingham Correctional Center in Virginia.
2. The Accused has worked for me as a prison guard and I am aware of his demeanor with prisoners and his job performance. I further possess expertise in prison management techniques.
3. If subpoenaed to testify by the defense I would testify on behalf of the accused and as an expert in prison management.
4. I will, however, not go to Iraq to do so for reasons of safety.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated: 7/8/04

(b)(6)-4

[REDACTED]

019834

R

United States

v.

SSG Ivan L. Frederick

)
)
) Declaration
)
)

(b)(6) (b)(7)
I, [REDACTED] of 3608 Hadensville-Fife Road, Goochland, VA 23063, hereby
declare:

1. I am a prison guard in the rank of lieutenant at the Buckingham Correctional Center in Virginia.
2. The accused is a co-worker of mine.
3. If subpoenaed to testify by the defense I would testify as to the Accused's treatment of prisoners and his demeanor.
4. I will not go, however, to Iraq to do so for safety reasons.

I declare under the pain and penalty of perjury that the foregoing statement is true
to the best of my knowledge.

Dated: 7/7/04

Signed: 7/7/04

Notary: [REDACTED]

Exp: July 31, 2007

(b)(6) (b)(7)
[REDACTED]
019835
C

United States

v.

SSG Ivan L. Frederick

)
)
)
)
)

Declaration

(b)(6)(4)
I. [REDACTED] P.O. Box 404, Dillwyn, VA 23936, hereby declare:

1. I am the Pastor of the church attended by the Accused in the United States. I know his family quite well.
2. I am willing to testify as to the Accused's character, his devotion to family and his demeanor.
3. I will not go to Iraq to do so out of obvious safety considerations.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated: July 7, 2004

(b)(6)(4)
[REDACTED]

D
019836

United States

v.

SSG Ivan L. Frederick

)
)
)
)
)

Declaration

(b)(6)-4
I, [REDACTED] of HC-02 Box 235, Buckingham, VA 23921 hereby
declare:

1. I am the wife of the accused in the above-styled matter.
2. I desire to testify on behalf of my husband, but will not go to Iraq to do so.

We have two daughters at home and having their mother and father in a war
zone creates far too many safety issues.

I declare under the pain and penalty of perjury that the foregoing statement is true
to the best of my knowledge.

Dated:

July 6, 2004

(b)(6)-4

[REDACTED]

019837

E.

United States

v.

SSG Ivan L. Frederick

)
)
)
)
)

Declaration

(5)(b)(4)
I, [REDACTED] of HC-02 Box 235, Buckingham, VA 23921 hereby declare:

1. I am the elder daughter of the Accused.
2. I will testify as to the Accused's role in my life, his fathering skills and his demeanor.
3. I want very much to testify, but I will not go to Iraq for safety reasons to do so.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated:

July 11, 2004

[REDACTED] (5)(b)(4)

019838

Subj: (no subject)
Date: 6/30/2004 10:38:48 AM Eastern Daylight Time
From: [REDACTED]@mmslaw.com
To: [REDACTED]@aol.com

[REDACTED] (S)(b)-1

Because of safety concerns, BG Karpinski will not voluntarily travel to Iraq in a civilian status. Of course, if ordered and placed on active duty, she would comply with such. On the otherhand, she would consider appearing by VTC, but that may be something that one side, or the other, may object to.

019839

G

Reply to:

[REDACTED]
Weare, NH 03281
800-355-1095
603-529-3455
fax 529-3009

[REDACTED]
Admitted in the
District of Columbia

(5)(6)-7

[REDACTED] & Associates
Attorneys-at-Law

Washington, D.C.
202-857-[REDACTED]
800-355-[REDACTED]
email: [REDACTED]@aol.com

BY ELECTRONIC MAIL:

10 May 04

Memorandum for: LTG Thomas Metz
Commander, III Corps
Camp Victory
Baghdad, Iraq

Subject: Change of Venue
U.S. v. Frederick

1. I represent SSG Ivan Frederick as civilian defense counsel.
2. This is a private communication from me to you through your SJA. There is no dissemination either orally or in writing to any other person or entity. Please acknowledge receiving this.
3. I am asking you point blank to change the venue of this trial to either CONUS or Europe before arraignment. You have the capacity to do this and it is the morally, legally and politically correct course to follow.
4. I do not expect nor want a written response to this request. Action will suffice.
5. This should not be dumped in the lap of a military judge. You should take preemptive action to demonstrate that true transparency exists in this case.
6. Before I articulate the reasons for the unequivocal need for a venue change, may I engage in a brief historical excursus. The My Lai trials were held at the height of the Viet Nam War in 1971. I had the privilege of wearing an Army uniform then and participated in those trials as a judge advocate. The trials were not held in Viet Nam. They were held in CONUS. The principal trials were at Fort Benning and Fort McPherson. There was total access to witnesses in a safe and open environment. These were truly public trials and became one of the noblest moments

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of self examination in the difficult circumstance that was Viet Nam. No one questioned their validity.

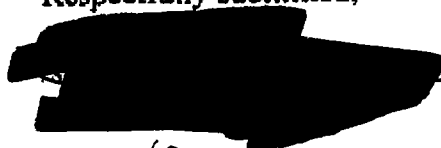
7. Iraq is the wrong place to try these cases for the following reasons:

- a. Safety of civilian witnesses and civilian counsel cannot be assured. We will have multiple civilian expert witnesses as well as civilian witnesses for other purposes. Where will they be housed? How will they be protected? Will they even be willing to come? Announcing that the convention center in the Green Zone will be the site for the trial is like giving targeting coordinates to the enemy. The Green Zone, the site of multiple violent incursions, is no place to have a trial. How am I supposed to concentrate on a defense if I am in continuous fear of bodily harm? I know that Justice Department lawyers in the Green Zone have acquired their own weapons. Do you expect me to do that? Such a trial, given the impact upon Arabs, is a natural target for an act of terrorism in this most unstable environment.
- b. It will be impossible to find a jury pool within Iraq which has not been tainted by the daily denunciation of my client by command at every level. It does not take a lawyer to understand this.
- c. All meaningful witnesses are outside Iraq. That includes virtually all CID agents, the chain of command, MI elements, OGA elements, private contractors, civilian witnesses and government officials. Given the witness locations CONUS is far more appropriate.
- d. The alleged victims, as in My Lai, are not meaningful witnesses. The pictures, as in My Lai, tell what happened. If a victim is necessary, they can easily be transported to CONUS or Europe.
- e. The Military Judge is in Germany. Even he has to come to Iraq.
- f. Communication between myself and military defense counsel and the client is greatly impaired. I cannot phone in. This circumstance is completely unacceptable. Trial preparation is greatly impaired.
- g. There is nothing public about a trial that is steeped in security and surrounded by fear of bodily harm.
- h. The only tie to Iraq at this moment is that it is the situs of the alleged crimes. Since the situs is essentially irrelevant, as it was in My Lai, it does not form a basis for keeping the trial there. If your motivation is

that such a trial in Iraq will serve to appease the Iraqi population, may I say that such a consideration has no place in the justice system.

8. A trial in Iraq under existing circumstances is neither transparent nor public. It is instead a mockery of justice and presents a circumstance in which any defense counsel may rightfully decide not to participate so as to avoid the appearance of complicity.
9. It is with the deepest respect for the position you hold and for the heavy burden you bear, that I ask that you change venue. I believe such a decision will be applauded by the world.

Respectfully submitted,


(5)16-4

Baghdad, Iraq. Subsequent to the referral of charges and his arraignment, the accused has submitted an offer to plead guilty. It is anticipated that the convening authority will take action on this offer to plead this upcoming weekend. However, prior to his presentencing hearing, the accused has elected to file a motion to change the place of his sentencing hearing.

LAW

While Rule for Courts-Martial (R.C.M.) 906(b)(11) provides "the place of trial may be changed when necessary to prevent prejudice to the rights of the accused", the real issue behind the accused's motion is determining the best way to adjudge a "legal, appropriate, and adequate sentence". *United States v. Combs*, 20 M.J. 441, 442 (C.M.A. 1985). In fashioning such a sentence, R.C.M. 1001(e) gives "great latitude" to the court-martial to consider information by means other than live testimony. In fact, R.C.M. 1001(e)(2) places certain limitations on a military judge's discretion when considering whether the production of live witnesses is mandatory during presentencing proceedings. *United States v. Mitchell*, 41 M.J. 512, 514 (A.C.M.R. 1994). In order for a witness to be produced subject to a subpoena or invitational travel orders during sentencing, five criteria must be met: (1) the expected testimony must be necessary for consideration of a matter of substantial significance; (2) the weight or credibility of the testimony is of substantial significance; (3) the other party refuses to enter into a stipulation of fact containing the matters to which the witness is expected to testify (except in an extraordinary case where a stipulation would be insufficient); (4) other forms of evidence (to include oral depositions, written interrogatories, or former testimony) would not be sufficient to meet the needs of the court-martial; and (5) the significance of personal appearance of the witness, when balanced against the practical difficulties of production of the witness, favors production. See R.C.M. 1001(e)(2)(A)-(E); *United States v. McDonald*, 55 M.J. 173, 177 (2001).

ARGUMENT

The real substance behind the accused's motion for change of location is witness attendance/production for his presentencing proceeding. While the situation before the Court is not a true issue of witness production since the government is willing to produce any witness who possesses relevant testimony that can assist in fashioning a legal, appropriate,

and adequate sentence for the accused,¹ the balancing test set up by R.C.M. 1001(e)(2) is useful for determining whether the presence of the proffered witnesses is necessary for a fair presentencing hearing. As shown in the following analysis, there is not one potential witness proffered by the accused who is necessary to a fair hearing especially considering that the President has given wide latitude under R.C.M. 1001(e) for this Court to consider alternate forms of evidence in lieu of live testimony during sentencing. Consequently, the accused's change of location motion should be denied.

First, any expected testimony offered by a sentencing witness must be necessary for consideration of a matter of substantial significance to a determination of an appropriate sentence, including evidence necessary to resolve an alleged inaccuracy or dispute as to a material fact. R.C.M. 1001(e)(2)(A) (emphasis added). Of the witnesses listed by the accused in his motion, there are several who do not meet this first requirement since any testimony they would provide is clearly attenuated at best. Specifically, the following witnesses do not have testimony that is necessary for consideration of a matter of substantial significance:

Inmates [REDACTED] k - the accused represents that these witnesses will testify as to the way he treated them while they were prisoners under his charge. However, these witnesses' testimony can hardly be characterized as necessary to a matter of substantial significance. First, the accused has already identified two other witnesses, [REDACTED] and [REDACTED] who are familiar with his previous conduct as a prison guard in Virginia. See *Combs*, 20 M.J. at 442 (factor to be weighed in determining whether personal appearance is required is testimony is cumulative of other evidence). Moreover, any knowledge of the accused's character for rehabilitative potential by these two witnesses is clearly limited since their relationship to the accused is one of guard/prisoner who can hardly speak

¹ The government does object to the production of Doctor [REDACTED] inmate [REDACTED] inmate [REDACTED] Major [REDACTED], Captain [REDACTED], Captain [REDACTED], Special Agent [REDACTED], Specialist [REDACTED], Sergeant [REDACTED], Lieutenant [REDACTED], General Ricardo Sanchez, Colonel [REDACTED], and Major General Geoffrey Miller since their testimony is marginally relevant at best and would not assist the Court in any meaningful way in fashioning an appropriate and adequate sentence for the accused.

to the accused's character, moral fiber, determination of the accused to be rehabilitated, and the nature and severity of the offenses. See R.C.M. 1001(b) (5) (B).

(S)(G)-4
Doctor (Dr.) [REDACTED] - the accused has not demonstrated any direct correlation between Dr. [REDACTED] expertise and the accused's misconduct that would make Dr. [REDACTED] testimony necessary in fashioning an appropriate sentence for this particular accused.

(S)(G)-2
Major (MAJ) [REDACTED] - the accused represents to the Court that this witness will testify as to the identity of the seven detainees who were the victims of the accused's abuse. The identity of these victims is not a matter of substantial significance in the accused's sentencing proceeding. Moreover, the government intends to call at least one of these Iraqi victims in its case in aggravation where defense counsel can question this witness in how he and the other detainees arrived in Tier 1A the night of 7 November.²

(S)(G)-2
Captain (CPT) [REDACTED] - the accused's summary of these two witnesses' expected testimony is entirely speculative. However, if they would testify as represented, calling both witnesses would be cumulative and unnecessary since they would testify to the same information.

(S)(G)-2 (S)(G)-1
CPT [REDACTED] and SA [REDACTED] - while the government does not have any specific information that these two witnesses would invoke their Article 31, UCMJ rights, any invocation would make their personal appearance unnecessary since they would not provide any necessary information that would assist the Court in determining an appropriate sentence for the accused. At this time, the government does not intend to extend either CPT Wood or SA Romero immunity.³

(S)(G)-2
Specialist (SPC) [REDACTED] - assuming that the witness would testify that a certain offensive picture was used as a screen saver within the military

² The government anticipates calling between 1-3 Iraqi nationals who were the victims of the accused's abuse.

³ At this time, the government does not intend to extend immunity to any of the potential witnesses identified by the accused.

intelligence unit stationed at Abu Ghraib, this fact is hardly necessary in determining a matter of substantial significance. Taken at face value, this testimony does not establish whose computer this screen saver was used on, that anyone in the military intelligence chain of command knew of this screen saver, or that the accused knew that it was being used as a screen saver, thus somehow justifying his criminal misconduct.

Sergeant (SGT) [REDACTED] - the accused's representation of this witness' testimony is again speculative at best. However, taken at face value, the accused has already identified [REDACTED] as a member of the intelligence community that can testify as its knowledge of the accused's actions. See *Combs*, 20 M.J. at 442. SGT [REDACTED] testimony would be cumulative and unnecessary. (S)(b)(7)

(S)(b)(7) Lieutenant General (LTG) Sanchez and Colonel (COL) [REDACTED] - the accused's representation of these witnesses' testimony is speculative and would be contrary to statements already made by these two officers. Moreover, any action or inaction taken by either LTG Sanchez or COL [REDACTED] is entirely attenuated to fashioning an appropriate sentence for this particular accused.

Major General (MG) Geoffrey Miller - the accused's representations of this witness' testimony is once again speculative.

Next, in order for a witness to be produced, the weight or credibility of the necessary testimony has to be of substantial significance to the determination of an appropriate sentence. R.C.M. 1001(e)(2)(B). Of the witnesses the accused has identified who can provide necessary evidence on a matter of substantial significance, the credibility of these witnesses is insignificant. The government has no information that would make the credibility of Mr. [REDACTED] (S)(b)(7)

[REDACTED] Mrs. [REDACTED]
[REDACTED] Ms. [REDACTED], Brigadier General (BG) Janis Karpinski, CPT [REDACTED] First Sergeant (1SG) [REDACTED]
[REDACTED] or SGT [REDACTED] a matter of substantial (S)(b)(7)

significance in determining an appropriate sentence for the accused.⁴

The third requirement for mandating witness production is that the other party refuses to enter into a stipulation of fact containing the matters to which the witness is expected to testify, except in an extraordinary case when such a stipulation of fact would be an insufficient substitute for the testimony. R.C.M. 1001(e)(2)(C). The government is willing to enter into a stipulation of fact with the above named witnesses who are unwilling to travel to Iraq.⁵ These alternate means of evidence will allow all relevant information in adequate and legal forms to be presented to the Court to ensure an appropriate decision.

The final requirement in determining whether a witness must be produced is if the significance of the personal appearance of the witness to the determination of an appropriate sentence, when balanced against the practical difficulties of producing the witness, favors production. R.C.M. 1001(e)(2)(E). Some of the factors that a military judge can consider in weighing this balancing test are whether the testimony relates to a disputed matter, whether the government is willing to stipulate to the testimony as fact, whether there is other live testimony available to appellant on the same subject, whether the testimony is cumulative of other evidence, whether there are practical difficulties in producing the witness, whether the credibility of the witness is significant, whether the request is timely, and whether another form of presenting the evidence is available and sufficient. *Combs*, 20 M.J. at 442-443. After the government produces BG Karpinski, CPT [REDACTED] 1SG [REDACTED] and SGT [REDACTED] to testify live at the court-martial, the only witnesses with necessary evidence on a matter with substantial significance who will not be present would be Mr. [REDACTED] Mr. [REDACTED] Pastor Raymond [REDACTED] Mrs. [REDACTED] and Ms. [REDACTED]. However, there are several factors that weigh against making their personal appearance mandatory for a fair proceeding.

⁴ Of these witnesses, the government is willing to produce the following military witnesses on behalf of the accused in Baghdad during the presentencing hearing: BG Karpinski, CPT [REDACTED] 1SG [REDACTED] and SGT [REDACTED]

Furthermore, if the Court deems Dr. [REDACTED] testimony necessary, in recognition of the difference between fact and expert witnesses, the government will request that the convening authority order the deposition of Dr. [REDACTED]

As stated above, the government is willing to enter into stipulations of fact concerning the substance of these witnesses' testimony and their credibility as witnesses is not an issue. Moreover, as demonstrated by the affidavits filed by the accused, there are practical difficulties in producing these witnesses since they refuse to travel to Iraq. While these witnesses will testify as to their opinion on the accused's rehabilitative potential and, absent their personal appearance, there will be no live testimony on this subject, their opinions of the accused's rehabilitative potential is really not a matter of dispute. The government does not dispute that the accused's spouse, daughter, co-workers, and pastor share the opinion that the accused possesses rehabilitative potential. However, the stipulations of fact the government is willing to enter into will be more than a sufficient substitute to present this evidence to the Court. When all of these factors are considered as a whole, it is clear that the personal appearance of these witnesses is not necessary for a fair and just sentencing proceeding.

Finally, throughout his motion, the accused makes consistent mention of the safety situation in Iraq and that the government is seeking to keep the court-martial there for mere political reasons. However, the command has a strong interest in holding a fully public trial in Iraq. Under R.C.M. 806, courts-martial shall be open to the public, to include both members of the military and civilian communities. Iraqi nationals and the Arab community on the whole have a keen interest in how justice will be pursued in the accused's case. An open and public hearing in Iraq will send a strong message that our military justice process is thorough, reliable, and provides justice for those who come into contact with it. Holding this court-martial in Iraq also carries a strong deterrence effect on our soldiers who will have a very proximate example of accounting that must be given for similar misconduct. Lastly, the convening authority will take all necessary steps to ensure the safety of all the participants.

CONCLUSION

In sum, the fact that a number of the accused's desired sentencing witnesses refuse to travel to Iraq should not be an impediment to holding the court-martial in Iraq. The Manual for Courts-Martial allows for a situation such as this to collect all of the relevant and necessary information for the Court to fashion a legal, appropriate, and adequate sentence for the accused. Consequently, the government asks that this Court find that the witnesses listed in footnote 1, supra, are unnecessary for consideration of a matter of substantial significance and, therefore, should not be produced. Secondly, given the government's willingness to enter into stipulations of fact for the other proffered witnesses thus putting any necessary evidence before this Court, the government requests that the accused's motion for change of the location of the trial be denied.

//original signed//
[REDACTED]

CPT, JA
Trial Counsel

(b)(6)-2

Delivered to defense counsel, by email, this 28th day of July 2004.

//original signed//
[REDACTED]

CPT, JA
Trial Counsel

(b)(6)-2
[REDACTED], COL (C5 OSJA)

From: [REDACTED]@vcmain.hq.c5.army.mil
Sent: Thursday, July 29, 2004 8:53 AM
To: [REDACTED]@us.army.mil; [REDACTED]@vcmain.hq.c5.army.mil;
[REDACTED]@hqda.army.mil; [REDACTED]@hq.c5.army.mil
Cc: [REDACTED]@aol.com; [REDACTED]@vcmain.hq.c5.army.mil
Subject: RE: response to motion to change location of trial
(b)(6)-7

Sir:

The Defense feels that the issues have been properly framed, there is no need for oral argument. The Defense is in a posture, however, to answer any question, in writing, which the court may have prior to a decision.

Respectfully submitted,

CPT [REDACTED] (b)(6)-2
Mr. [REDACTED] (b)(6)-7

Defense Counsel

-----Original Message----- (b)(6)-2

From: [REDACTED] COL (C5 OSJA) [mailto:[REDACTED]@us.army.mil]
Sent: Thursday, July 29, 2004 10:31 AM
To: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@hqda.army.mil; [REDACTED]@hq.c5.army.mil; [REDACTED] COL (C5 OSJA)
Cc: [REDACTED]@aol.com; [REDACTED]@vcmain.hq.c5.army.mil
Subject: RE: response to motion to change location of trial
(b)(6)-4

All:

Does either side want a hearing on this motion? If not, I will decide on the submitted briefs, and the defense email response to the gov brief, and inform all parties by email. I'll put the ruling on the record at the next session.

COL [REDACTED] (b)(6)-2

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

From: [REDACTED]@vcmain.hq.c5.army.mil
To: [REDACTED]@hqda.army.mil; [REDACTED]@hq.c5.army.mil; [REDACTED]@us.army.mil
Cc: [REDACTED]@aol.com; [REDACTED]@vcmain.hq.c5.army.mil
Sent: 7/29/2004 8:36 AM
Subject: RE: response to motion to change location of trial

Sir: (b)(6)-4

This is a reply to the government's response to the Accused's motion for a change of location. We very briefly wish to point out the following to the court:

1. The deterrence associated with this guilty plea will be known and felt by all soldiers around the world instantly upon its announcement. This is clearly irrespective of where the hearing might occur.
2. The idea that no live witnesses are required is antithetical to the most rudimentary concepts of justice in any system. Such a position is entirely inconsistent with the government's assertion that it seeks justice in this case or the Court's stated position that this case will be tried like any other court-martial case anywhere else in the world.
3. The Government now suggests further that the due process rights of the Accused should somehow be subordinated to an alleged, but unproven, need to appease the Arab world. In a nation which has elevated individual rights to a level unparalleled in all of

civilization, such an assertion should rightly be summarily rejected as a rationale for holding a trial in Baghdad. The Arab world will know the result the moment it occurs, wherever it occurs.

Respectfully submitted,

CPT [REDACTED] (b)(6)-2
Mr. [REDACTED] (b)(6)-4

Defense Counsel (b)(6)-2

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

From: [REDACTED] CPT USALSA [mailto:[REDACTED]@hqda.army.mil]
Sent: Wednesday, July 28, 2004 4:31 PM
To: [REDACTED]@hq.c5.army.mil'; [REDACTED]@us.army.mil'
Cc: [REDACTED]@aol.com'; [REDACTED]@vomain.hq.c5.army.mil' CPT CJTF7 -Senior Defense Counsel;
Subject: response to motion to change location of trial (b)(6)-4

Sir:

Please find attached the government's response to the motion to change location of trial.

v/r

CPT [REDACTED] (b)(6)-2

Aug-17-04 08:18 AM CONSOLIDATED INFO 000 170 0000 P.01

**In the 5th Judicial Circuit
Unit #29355
APO AE 09014**

United States

v.

SSG Ivan L. Frederick, II

) Motion for
) Reconsideration
) of
) The Court's
) Decision
) Denying Motion
) To Move Trial

I. Request for Relief

The Accused, by counsel, hereby moves this Court under R.C.M. 905(f) to reconsider its decision of 4 August 2004 denying the Accused Motion to Change Location of Sentencing Proceeding. Oral argument is required and is requested by the Accused in Mannheim on or about 23 or 24 August 2004.

II. Facts

The facts as portrayed in the Accused original motion are incorporated by reference herein except that the following exceptions and substitutions are noted based upon the defense's ongoing investigations.

- Cpt [REDACTED] will not assert her Article 31 rights. To the contrary she has been totally forthcoming upon interview by civilian counsel. (5)(b)(2)
- Cpt [REDACTED] 1SG [REDACTED] and Sgt [REDACTED] are no longer in Iraq. They are in CONUS. The government has advised the defense that they will be kept on active duty for these proceedings and, therefore, can be ordered to return to Iraq. The practical effect of return to Iraq upon their willingness to

APPELLATE EXHIBIT XX

Recognized R. 180 019853

cooperate is unknown. It is reasonable to conclude that such an order would not induce pleasure in these witnesses who served on the ground in Iraq for more than a year.

- The government has informed the defense that it will not recall witnesses to active duty for the purpose of recalling such persons to Iraq to testify in a sentencing proceeding.
- The government has informed the defense that it will not agree to testimonial immunity to multiple witnesses who may yet face court-martial charges.
- The Accused, by counsel, has requested that Dr. (S)(b)-4 be appointed as an expert. That request remains outstanding with the convening authority.
- The Accused, by counsel, has requested that LTC (S)(b)-2 be given testimonial immunity in the face of his invocation of Article 31 rights. He is now a named witness with material sentencing evidence. He is in Germany. We have requested testimonial immunity for multiple other individuals within MI and MP. These requests remain outstanding with the convening authority.

III. Applicable Law

The Applicable Law section of the underlying motion is incorporated by reference herein.

IV. Argument

In its opinion this Court has failed to apply case law standards and more importantly has failed to provide reasons for keeping this court-martial in Iraq.

The military justice system is worldwide. That rudimentary statement from the Court, however, ignored the body of case law which has held that the proper location of a trial is fact dependant. If Article 5, UCMJ, were a foreclosing Article, there would be no case law respecting location of trial. Fortunately for the interests of justice there is such case law.

As the defense has pointed out Chenoweth v. Van Arsdall, 22 C.M.A. 183 (1973), held that trial need not occur where the offense was committed.

The Court initially relied upon three factors in denying change of location:

1. "The misconduct occurred in Iraq." This, as Chenoweth provides, is not dispositive.
2. "All of the alleged victims were in Iraq at the time of the alleged misconduct." This is saying nothing more than the misconduct occurred in Iraq. The crimes alleged could not have had absented victims. This element of the opinion has, the defense submits, no probative value.
3. "The current place of trial is Baghdad, Iraq." This is a statement of fact and has nothing whatsoever to do with a change of location. It is, in fact, a non sequitur for purposes of this motion. No case law has said location is proper because that is where the case started.
4. "The Accused intention to plead guilty" invokes R.C.M. 1001(e). The mere fact that the Accused intends to plead guilty does not in and of itself justify a denial of change of location. It does invoke R.C.M. 1001 (e).

In other words the Court has failed to provide one judicially recognized reason as to why remaining in Iraq serves the interests of justice through paragraph c. of its opinion.

Paragraphs d., e. and f. of the opinion address the refusal of civilian witnesses to go to Iraq for the sentencing proceeding. The Court's reasoning is again faulty.

The Court said that violence is a daily event in Baghdad and that fear for one's personal safety is justified. The Court failed to mention that getting to Baghdad is also fraught with peril.

The Court then took judicial notice that civilians are routinely brought into Iraq on U.S. government business. Is the Court suggesting that these civilian witnesses are overreacting? The civilians brought into Baghdad are generally government employees on official business or private businessmen driven by economic gain. It is a contradiction not an analogy to treat these persons as the same or similar to the witnesses whose sole purpose is to contribute to a full and fair hearing.

The Court then said that these individuals were choosing not to attend for purely personal reasons. There is no choice here. Witnesses should not have to be heroes to assist in obtaining justice when with the stroke of a pen they could safely testify in multiple locations. To shift the burden to the witnesses by blaming them for their absence rather than recognizing reality offends justice and is a defacto forcing of the Accused to utilize depositions and stipulations.

Finally the Court was unable to affirmatively recognize that these witnesses concerns for safety were "founded". Instead the Court chose to use the convoluted double negative in

defining concerns for personal safety as "not unfounded". The defense presumes that means their concerns are "founded".

As the Court noted the government is willing to provide alternative means of presenting evidence. Anything that waters down the impact of personal testimony is in the interest of the government. Further, one or two detainee witnesses for the government, if they can be found, can be taken anywhere as they will be in England. The Court notes that it does not have subpoena power over civilians in Iraq. This is a reason to move the trial out of Iraq, not to keep it there. Knowingly rejecting live testimony due to this procedural defect offends justice.

What is most concerning about the Court's decision is the statement that, "The defense has made no showing that any preferred witness is essential to presentation of the Accused case."

Perhaps the defense has not adequately described its case, although we offered to provide additional evidence if asked to do so by the Court.

The sentencing portion of a trial is not an appendix. It is an essential ingredient of justice that the sentence adjudged reflect the totality of the circumstances which gave rise to the crime and to the personal circumstances of the Accused.

The sentencing portion must not be treated lightly. Because there is no formula or guideline for a sentence, the military judge must be possessed of all nuances and facts which result in a fair sentence, stripped of political considerations or bias.

(b)(6)-2

Captain [REDACTED] co-counsel here, has advised civilian counsel that in Iraq there is seldom live civilian testimony in a sentencing proceeding. This appears to be commonplace or policy, but it offends justice. Because it is seldom done, does not make it right.

Perhaps an explanation from the government as to why this is done would be helpful. It cannot be the exigencies of war with Iraq, for we are not at war with Iraq. It cannot be the exigencies of being an occupying force, for since 28 Jun 04 we have not been an occupying force. In fact, it is unclear what status we hold in Iraq which would justify a blanket denial of live witnesses in a sentencing proceeding. Surely concern for the safety of witnesses is an essential ingredient of this pervasive misapplication of justice in cases where essential extraterritorial witnesses do not provide live testimony.

No judge, military or otherwise, has the right or should have the right to believe that he or she is possessed of such sagacity or empathy that the human factor in the testimony of sentencing witnesses can be ignored. Further, no judge, military or otherwise, should willingly deny himself or herself the opportunity to question sentencing witnesses directly.

It is difficult to understand how this Court in applying R.C.M. 1001(e) could say, "The defense has made no showing that any proffered witness is essential to presentation of the Accused case."

The Court has provided no reasoned substantiation of this sweeping comment which seemingly serves to dismiss out of hand the importance of sentencing witnesses. We ask this Court:

1. Is it not essential to understand on a first hand and direct basis the existing violations of law and regulation that the Accused came upon when he was first

assigned to Abu Ghraib or the strains under which the undermanned and untrained 320th MP BN to include the Accused endured the chaos of Abu Ghraib to include substandard food, intolerable hours, overcrowded prison conditions and endless attack by RPG and mortar fire? BG Karpinsky, Major [REDACTED] Cpt [REDACTED] and Sg [REDACTED] tell you in person if you will allow them to, but not in Iraq. (S)(b)-2

2. Is it not essential to know the psychology of prison abuse as it relates to the intolerable conditions at Abu Ghraib and the Accused? Do you not wish to know the impact of nonreporting of abuse, of the tolerance for palpable violations of law and regulation and the acceptance of abusive conduct by most at Abu Ghraib, be they MI, MP, civilian contractor or OGA? We are giving you the world's foremost authority. He is 71 years old. He will not go to Iraq and therefore, you will never question him. Think what you could learn to render a fair result from such discourse. Yet you eschew it as not essential.
3. Is it not essential to know, contrary to the protestations of those acting out of self interest that the Accused is not a rogue soldier? Rather, the truth is that he was a good soldier, a good husband and father, a good prison guard and a good man until the chaos of Abu Ghraib corrupted him. Do you believe that you can gain that flavor from a stipulation or a video tape? We think not. Mrs. [REDACTED] (S)(b)-4 the warden of his civilian prison, his pastor, his stepdaughter, his coworker and, yes, even prisoners who he has overseen at the prison in Virginia where he works will tell you.

- 2-9)(9)
4. Is it not essential to know that MI approved violations of law and regulation to include ghost detainees, nudity, handcuffing nude detainees to cells and the use of dogs, or that OGA killed a man in Tier 1A and tried to cover it up? These transgressions were known to the Accused. Cpt [REDACTED] tell you as will Maj [REDACTED] Cpt [REDACTED] and 1SG [REDACTED]. So will most assuredly, LTC [REDACTED] he is granted immunity. How can these people not be essential to your full understanding of this case in extenuation and mitigation?
 5. Is it not essential to know that MI knew of abuse and participated in it with the full knowledge of the MPs to include the Accused lending the imprimatur of legitimacy to violation of law and regulation? SPCs [REDACTED] Cruz and Krol will tell you. Such graphic testimony cannot come from a deposition or stipulation.
 6. Is it not essential to know that the Accused was encouraged to harshly treat the detainees? Mr. [REDACTED] (S)(a)-4 is an essential witness who will never testify in Iraq as he is a civilian contractor and not subject to subpoena power.
 7. Is it not essential for you to know how a normal prison is run against the horror and chaos that was Abu Ghraib? The warden of Buckingham Correctional Institution is prepared to tell you, but all questions you might have will go unanswered if he is not before you.

What strikes the defense about the Court's decision is the absence of reasons. This decision is a series of unsupported conclusions which provide no insight into the Court's thinking. At the very least the Court has an obligation to provide a rationale for its decision for appellate purposes

The Court did not even touch upon alternate sites. This Court sits regularly in Kuwait, a safe location a couple of hundred miles from Baghdad. We believe the Court has an obligation to tell the defense why Kuwait or Germany is not acceptable since both locations are within this Court's purview. We note that this Court kept all the Abu Ghraib cases within its chambers even though other judges function within the Court's judicial circuit. This should increase, not decrease, your ability to be flexible as to location given this Court's total control over all these complex cases.

The unvarnished reality is there is no good reason to hold this proceeding in Iraq other than the Army wants it there for political purposes. The government has essentially admitted that fact by telling the Court that it should be in Iraq to satisfy Iraqi and Arab interests.

This Court can not subscribe to that approach nor can this Court create transparently artificial reasons for keeping these proceedings in Iraq. This case will come and this case will go. Military justice will endure. The question is in what state of grace will it endure?

Respectfully submitted,

Dated: 14 August 2004

/s/ [REDACTED] (b)(6)-4
Civilian Defense Counsel

/s/ [REDACTED] (b)(6)-2
Cpt [REDACTED]
Military Defense Counsel

(S)(b)(7) CERTIFICATE OF SERVICE

I, [REDACTED] civilian defense counsel in the above-styled matter hereby
certify that the foregoing motion was served upon the government by e-mail to
Major [REDACTED] and the military judge on 14 August 2004.

(S)(b)(7)-2

/s/

[REDACTED]
(S)(b)(7)-7

019862

United States

v.

Staff Sergeant Ivan L. Frederick

)
)
) Motion to
) Change Location
) of
) Sentencing Proceeding
)

I. Request for Relief

The Accused, by counsel, hereby moves this Court to change the location of sentencing proceedings in the above styled matter to CONUS or such other place which will meet the ends of justice and provide fairness and the appearance of fairness in the sentencing proceeding.

II. Facts

1. The Accused has voluntarily entered into a pretrial agreement which provides for a guilty plea to certain charged and specified matters.
2. The pretrial agreement is silent on the question of location of the proceedings, alternative methodologies for the appearance of witnesses and testimonial immunity for proposed witnesses.
3. The Accused intends to call the following classes of witnesses:
 - a. Civilians.
 - a. Lay
 - b. Expert
 - c. Government contractor

019863

- b. Former military personnel not on active duty.
 - c. Active duty personnel located in CONUS and Germany.
 - d. Active duty personnel located in Iraq.
4. For reasons of safety, none of the civilian personnel all of whom are material will agree to appear in Iraq.
5. One material former military member not now on active duty will not appear voluntarily in Iraq. Others similarly situated but not yet contacted may fall into that category.
6. Multiple active duty personnel are asserting Article 31 or Fifth Amendment rights. Many of the contemplated military witnesses are in CONUS.
7. The Accused has yet to receive full discovery; has yet to have named an agreed upon MP investigator; and has not been informed of the whereabouts of certain material military witnesses. A companion motion to compel is being filed.
8. The Accused's contemplated witness list to date includes:
 - a. Civilians
 1. [REDACTED] Ph.D.,
Stanford University.
(b)(6)-(b)(7)
Dr. [REDACTED] will testify as an expert on the social psychology of situational forces and group dynamics associated with prisoner abuse. He is a material witness and will provide the Court with invaluable information regarding the implications of lax rules, absence of

leadership, tacit condonation and encouragement in a prison setting relative to prisoner abuse. He will not go to Iraq. See Declaration at Exhibit A.

- (b)(6)-(9)
2. [REDACTED]
Warden, Buckingham Correctional Center
- Warden [REDACTED] will testify as an expert on proper prison management techniques to include guard – prisoner interaction. He will also testify as to the Accused's job performance with prisoners while serving as a prison guard at the Buckingham institution. He is a material witness who will give the Court knowledge as to how a proper prison is managed. He will not go to Iraq. See Declaration at Exhibit B.

3. [REDACTED]
Prison Guard Lieutenant, Buckingham Correctional Center.
- Mr. [REDACTED] a co-worker of the Accused. He will testify as to the Accused's treatment of prisoners at the Buckingham institution, his job performance and demeanor as well as his character for peacefulness. He is a material witness. He will not go to Iraq. See Declaration at Exhibit C.

4. [REDACTED]
CACI contractor.

Mr. [REDACTED] was a CACI employee who served as a contract interrogator. He instructed the Accused and gave the Accused encouragement with respect to the Accused "softening up" detainees. He is a material witness as he provides an understanding of the permissive atmosphere which existed at Abu Ghraib and why the Accused would believe that such an atmosphere was condoned and encouraged. His civilian attorney has advised the defense orally that Mr. [REDACTED] will not voluntarily appear in Iraq.

5. Pastor [REDACTED]
Pastor to the Accused and his family.

Pastor [REDACTED] will testify as to the Accused's character, his devotion to family and his demeanor. He is a material witness giving the Court an understanding of the whole man. He will not go to Iraq. See Declaration at Exhibit D.

6. [REDACTED]
Wife of the Accused.

Ms. [REDACTED] will testify as to the Accused's character, his devotion to family and his treatment of others. She is a material witness. She will not go to Iraq. See Declaration at Exhibit E.

(b)(6)-c
7. [REDACTED]
Step-daughter of the Accused.

Ms [REDACTED] teenager, will testify as to the role her step-father has played and is playing in her life. She is a material witness. She will not go to Iraq. See Declaration at Exhibit F.

8. Inmate [REDACTED] and Inmate [REDACTED]
Buckingham Correctional Center.

These men are prisoners at Buckingham Correctional Center. They will testify as to the manner in which the Accused treated them and other prisoners. They are material witnesses. They cannot go to Iraq.

b. Former military personnel not on active duty:

1. BG Janis Karpinsky,
Commander, 800th MP Brigade.

BG Karpinsky will testify as to her knowledge of command changes which took the Accused out from her control, the involvement of military intelligence at Abu Ghraib, the knowledge of senior personnel regarding the creation of a permissive atmosphere in disregard of international conventions, the involvement of the International Red Cross and the pressure to obtain intelligence created by senior officers and officials. She

is a material witness. She will not go to Iraq as a civilian. See e-mail from counsel at Exhibit G. She is now in CONUS.

2. The following individuals, we believe, also fall into this category, but we have been unable to find them without investigatory help or information from the government.

— Maj [REDACTED]
320th MP Bn.

Major [REDACTED] will testify, we believe, as to the identity of the seven detainees who were the subject of humiliation on or about 7 Nov 03.

He will say that they were the ringleaders of a riot that resulted in injury to one American female soldier. He is a material witness. He is in CONUS.

— Cpt [REDACTED] Commander,
72nd MP CO, NUN G, 156

[REDACTED]

These soldiers, we believe, will testify that nudity, female panties on men, handcuffing to cells (sometimes while nude) and requests for sleep deprivation existed prior to the 372nd MP

CO arriving at Abu Ghraib. They are material witnesses. They are in CONUS.

c. Active duty personnel located in CONUS and Germany:

1. Cpt [REDACTED] MI.

(b)(6)-2
Cp [REDACTED] is the link between MI and the 372nd MP CO.

She will, we believe, testify about posting documents at Abu Ghraib which allowed for conduct by MPs in violation of international conventions. She will also testify as to the permissive atmosphere which existed at Abu Ghraib with regard to the treatment of detainees as well as the interplay between interrogators and MPs. She will also testify as to the stepped up interrogation efforts beginning in September 2003. She is in CONUS, is material and will assert Article 31 rights.

2. CID Agent [REDACTED] (b)(6)-1

Agent Romero instructed the Accused to soften up

[REDACTED] the detainee on the box with wires, because

(b)(6)-4
[REDACTED] allegedly knew the whereabouts of the bodies of

four United States soldiers and who killed them. We have been unable to reach this man, but we expect an Article 31 invocation.

3. Spc [REDACTED] MI

(S)(b)-2
Spc [REDACTED] we believe, will testify that one of the
offending pictures was used as a screen saver within MI.
This shows both knowledge and condonation. We have
been unable to locate her.

4. Sgt [REDACTED]
205th MI Brigade.

(S)(b)-2
We believe he is in Germany. Sg [REDACTED] will
reportedly testify that MI had knowledge of the techniques
of humiliation and condoned them. We have been unable
to reach Sgt [REDACTED]

5. LTG Ricardo Sanchez or Col [REDACTED]

(S)(b)-2
These men have yet to be interviewed, but one or the other
will testify that they knew from the International Red
Cross in the fall and winter of 2003 that activities in
violation of international conventions were occurring at
Abu Ghraib and command did nothing to stop those
activities, thereby condoning them.

6. MG Geoffrey Miller.

This man has not been interviewed but he will testify as to
how and why and what stepped up interrogation methods

were authorized and employed during the period Sep
through Dec'03.

d. Active duty personnel located in Iraq. All of these individuals
may require testimonial immunity.

1. Cpt [REDACTED]
372nd MP CO (b)(6)-2

Cpt [REDACTED] will testify as to the absence of training prior to
mobilization and the absence of training prior to and
during the Accused's involvement at Abu Ghraib. He will
further testify to the Accused's inquiries about proper
procedures and rules as well as his own inquiries to MI
personnel regarding nudity, hooding and handcuffing to
cells.

2. 1SG [REDACTED]
(b)(6)-2

1SG [REDACTED] will testify as to the Accused's weak
leadership traits and the aggressive, controlling and
dominating personality of Sgt Grainer. He will also testify
as to the permissive atmosphere with regard to detainee
treatment at tier 1A. He has previously invoked his Article
31 rights.

3. Sgt [REDACTED]

(b)(6)-2
Sgt [REDACTED] will testify as to Sgt Grainer's dominance and
the weak leadership of the Accused. He will further testify
as to Mr. [REDACTED] practice of encouraging MP's
(b)(6)-7
soften up of detainees.

Applicable Law

1. Sixth Amendment,
Constitution of the United States.
2. R.C.M. 906(b) (11).
3. U.S. v. Gravitt, 5 C.M.A. 249,
17 C.M.R. 249 (1954).
4. U.S. v. Bennett, 12 M.J.
463 (C.M.A. 1982).
5. U.S. v. Sweeney, 14 C.M.A.
599, 34 C.M.R. 379 (1964).
6. U.S. v. Nivens, 21 C.M.A.
420, 45 C.M.R. 194 (1972).
7. U.S. v. Van Arsdall, 22 C.M.A.
183, 46 C.M.R. (1973).
8. Chenoweth v. Van Arsdall,
22 C.M.A. 183, 46 C.M.R. 183 (1973).
9. U.S. v. Tangpuz, 5 M.J. 426
(C.M.A. 1978).
10. U.S. v. Cary, 1 M.J. 761
(AFCMR 1975).
11. U.S. v. Thornton, 8 C.M.A.
446, 24 C.M.R. 256 (1957).
12. U.S. v. Cox, 23 C.M.R.
535 (A.B.R. 1957).

Argument

This motion facially is a motion for change of location. Buried within it, however, are implications for the public perception of the fundamental fairness of military justice.

In essence the Accused is willing and able to accept responsibility and to spare the government all the burdens associated with a trial on the merits. This provides derivative advantages to the United States in arenas removed from military justice.

The only request the defense is making is to have the sentencing proceeding in a place where the fullest benefit accorded under military law can be achieved. Iraq is not that place.

There is a real danger that a proceeding in Iraq as presently configured will have no civilian witnesses due to safety concerns and the inability to use subpoena power and few military witnesses due to rights invocations. This would be a disastrous result on multiple levels. Such a result can and should be avoided.

There are court imposed incumbencies upon the defense before a motion such as this can be entertained. The defense has discharged those incumbencies. In U.S. v. Carey, 1 M.J. 761 (AFCMR 1975), the Court said that the defense should first submit a change of location request to the convening authority. The defense has done so and was denied. The request is at Exhibit H. The Carey court also said that witnesses should first be contacted so that their status and content of their testimony were known. This, too, has been done to the extent possible.

Accordingly, the Accused's sixth Amendment right to compel witnesses is mature. id. at 766.

R.C.M. 906 (b)(11) is the basis for a change of location motion. It says in part:

"Change of place of trial. The place of trial may be changed when necessary to prevent prejudice to the rights of the accused...."

See also, Analysis of R.C.M. 906 (b)(11) at M.C.M., Appendix A21-54.

Importantly, the constitutional requirement that the trial of a crime occur in the district in which the crime was committed does not apply in the military. Chenoweth v. Van Arsdall, 22 C.M.A. 183, 46 C.M.R. 183 (1973). This motion should not be denied merely because the government represents that the crime was committed in Iraq.

Further, R.C.M. 906 (b)(11) contemplates more than adverse publicity as a basis for granting relief. The Court must consider as well the convenience of the parties and witnesses as well as the inconvenience to the government. U.S. v. Bennett, 12 M.J. 463 (C.M.A. 1982).

Civilian witnesses in CONUS cannot be subpoenaed to testify in a foreign country. U.S. v. Bennett, 12 M.J. 463 (C.M.A. 1982). Nor can the government force the accused to present evidence by way of stipulation or deposition. id. at 466. As noted every civilian who is a contemplated witness for the Defense refuses to go to Iraq. See Declarations at Exhibit A through G and the representation regarding Mr. [REDACTED] in the "Facts" section. (S)(G)-4

The Defense has a right to secure the attendance of witnesses. id. at 466. This is, however, not an absolute rule and judicial discretion is available. This Court must

consider the issues involved, the importance of witnesses, whether the proceeding is sentencing or on the merits, whether the testimony is merely cumulative and whether alternatives exist. U.S. v. Sweeney, 14 C.M.A. 599, 34 C.M.R. 379 (1964).

The burden of proof by a preponderance of evidence is upon the defense to show that an alternative location is preferable. U.S. v. Gravitt, 5 C.M.A. 249, 17 C.M.R. 249 (1954).

The essence of the court decisions is that for a change of location to occur unavailable witnesses in the existing location must be essential to the Accused's case. U.S. v. Thornton, 8 C.M.A. 446, 24 C.M.R. 256 (1957); U.S. v. Tangpuz, 5 M.J. 426, 429 (C.M.A. 1978). To be essential the testimony must not be cumulative. U.S. v. Nivens, 21 C.M.A. 420, 45 C.M.R. 194 (1972); U.S. v. Van Arsdall, 22 C.M.A. 183, 46 C.M.R. (1973.)

Of the 24 witnesses named by the defense, 13 are civilians or believed to be civilians at this date:

1. [REDACTED] Ph.D.
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]

(b)(6)-4

9. [REDACTED] (b)(6)-4

10. Janis Karpinsky

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

(b)(6)-2

Of the remaining ten military witnesses six are not in Iraq. Only four are in Iraq. The military judge is in Germany.

We are left with the Accused, Accused's military defense counsel, prosecutors, four defense witnesses and the prosecution witnesses in Iraq. The government aggravation witnesses are unknown. We will respond in our reply brief to that listing but we doubt they are location dependant.

The defense civilian witnesses are not cumulative. They are essential to understand the Accused, the dynamic that was Tier 1A at Abu Ghraib, what role the interrogators played and how real prisons are run.

Neither depositions nor high tech hook-ups will equal a judge hearing their live testimony.

In fact the sentencing proceeding in this case is far more important than the merits phase. What occurred has never been an issue. Why and how it occurred has always been the issue. The focus, therefore, is rightly upon the sentencing proceeding. It must not be dismissed as an afterthought.

There is no undue burden placed upon the government by changing location.

- The England case, a coconspirator case, is at Fort Bragg, Abu Ghraib cases can be done in CONUS and will be done in CONUS.
- General officer interviews are being conducted in CONUS.
- Virtually all the witnesses are in CONUS.
- Safety and comfort for all participants is greatly enhanced in CONUS. This is a trial, not a test of willingness to enter combat or a willingness to submit to war zone conditions. It is witnesses not warriors that make a fair trial.
- Reluctant civilian witnesses can be subpoenaed in CONUS.

In fact there is no rational basis in law or fact to keep this proceeding in Iraq. There may be political needs, but neither this Court nor the parties should be affected or influenced by these extraneous considerations.

If the Court concludes that additional evidence is required before this motion can be ruled upon, the defense would support that conclusion. We have through no fault of our own been unable to interview identified relevant witnesses because they have not been located by the government and no MP investigator has been named. Trial

preparation due to military counsel's and the Accused's presence in Iraq has been greatly impaired.

Respectfully submitted,

(S)(b)(4)

[REDACTED]
Civilian Defense Counsel

(S)(b)(2)

/s/ [REDACTED]
Cpt, USA
Military Defense Counsel

Certificate of Service

(S)(b)(4)

I [REDACTED] hereby certify that a copy of the foregoing motion was sent by e-mail to Maj [REDACTED] Trial Counsel, this __ day of July 2004.

(S)(b)(2)

[REDACTED]

United States

v.

SSG Ivan L. Frederick

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Declaration

(b)(6)-4
I, [REDACTED] Ph.D., hereby declare:

1. I am a member of the faculty of Stanford University in the Department of Psychology.
2. I am considered an expert on the social psychology of situational forces and group dynamics associated with prisoner abuse.
3. I am prepared to testify as an expert for the defense in the above styled matter, but I will not travel to Iraq to so testify due to safety considerations.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

July 5, 2004
Dated:

(b)(6)-4
[REDACTED]
[REDACTED] Ph.D.

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United States

v.

SSG Ivan L. Frederick

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Declaration

(S)(b)(4)
I [REDACTED] Dillwyn, VA 23936, hereby declare:

1. I am the Warden of Buckingham Correctional Center in Virginia.
2. The Accused has worked for me as a prison guard and I am aware of his demeanor with prisoners and his job performance. I further possess expertise in prison management techniques.
3. If subpoenaed to testify by the defense I would testify on behalf of the accused and as an expert in prison management.
4. I will, however, not go to Iraq to do so for reasons of safety.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated:

7/8/04

(S)(b)(4)

[REDACTED]

019881
B

United States

v.

SSG Ivan L. Frederick

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Declaration

(5)16-7
I, [REDACTED], Goochland, VA 23063, hereby
declare:

1. I am a prison guard in the rank of lieutenant at the Buckingham Correctional Center in Virginia.
2. The accused is a co-worker of mine.
3. If subpoenaed to testify by the defense I would testify as to the Accused's treatment of prisoners and his demeanor.
4. I will not go, however, to Iraq to do so for safety reasons.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated: 7/7/04

Signed: 7/7/04

Notary: [REDACTED]

Exp: July 31, 2007

(5)16-7

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United States

v.

SSG Ivan L. Frederick

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Declaration

(b)(6)-4
I, [REDACTED] llwyn, VA 23936, hereby declare:

1. I am the Pastor of the church attended by the Accused in the United States. I know his family quite well.
2. I am willing to testify as to the Accused's character, his devotion to family and his demeanor.
3. I will not go to Iraq to do so out of obvious safety considerations.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated: July 7, 2004

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[REDACTED]

D

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United States

v.

SSG Ivan L. Frederick

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Declaration

(b)(6)-4

I, [REDACTED] Buckingham, VA 23921 hereby

declare:

1. I am the wife of the accused in the above-styled matter.
2. I desire to testify on behalf of my husband, but will not go to Iraq to do so.

We have two daughters at home and having their mother and father in a war zone creates far too many safety issues.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated:

July 6, 2004

[REDACTED]

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United States

v.

SSG Ivan L. Frederick

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Declaration

(b)(6)-4
I [REDACTED] Buckingham, VA 23921 hereby declare:

1. I am the elder daughter of the Accused.
2. I will testify as to the Accused's role in my life, his fathering skills and his demeanor.
3. I want very much to testify, but I will not go to Iraq for safety reasons to do so.

I declare under the pain and penalty of perjury that the foregoing statement is true to the best of my knowledge.

Dated:

July 11, 2004

[REDACTED]

(b)(6)-4

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F

Subj: (no subject)
Date: 6/30/2004 10:38:48 AM Eastern Daylight Time
From: [REDACTED]@mmslaw.com
To: [REDACTED]@aol.com

(b)(6)-9

Because of safety concerns, BG Karpinski will not voluntarily travel to Iraq in a civilian status. Of course, if ordered and placed on active duty, she would comply with such. On the otherhand, she would consider appearing by VTC, but that may be something that one side, or the other, may object to.

Sunday, July 04, 2004 America Online: Grmyers44

G

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Reply to:

[REDACTED]
Weare, NH 03281
800-355-1095
603-529-3455
fax 529-3009

[REDACTED]
Admitted in the
District of Columbia

(b)(6)-4

[REDACTED] & Associates
Attorneys-at-Law

Washington, D.C.
202-857-[REDACTED]
800-355-[REDACTED]
email [REDACTED]@aol.com

BY ELECTRONIC MAIL:

10 May 04

Memorandum for: LTG Thomas Metz
Commander, III Corps
Camp Victory
Baghdad, Iraq

Subject: Change of Venue
U.S. v. Frederick

1. I represent SSG Ivan Frederick as civilian defense counsel.
2. This is a private communication from me to you through your SJA. There is no dissemination either orally or in writing to any other person or entity. Please acknowledge receiving this.
3. I am asking you point blank to change the venue of this trial to either CONUS or Europe before arraignment. You have the capacity to do this and it is the morally, legally and politically correct course to follow.
4. I do not expect nor want a written response to this request. Action will suffice.
5. This should not be dumped in the lap of a military judge. You should take preemptive action to demonstrate that true transparency exists in this case.
6. Before I articulate the reasons for the unequivocal need for a venue change, may I engage in a brief historical excursus. The My Lai trials were held at the height of the Viet Nam War in 1971. I had the privilege of wearing an Army uniform then and participated in those trials as a judge advocate. The trials were not held in Viet Nam. They were held in CONUS. The principal trials were at Fort Benning and Fort McPherson. There was total access to witnesses in a safe and open environment. These were truly public trials and became one of the noblest moments

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of self examination in the difficult circumstance that was Viet Nam. No one questioned their validity.

7. Iraq is the wrong place to try these cases for the following reasons:
 - a. Safety of civilian witnesses and civilian counsel cannot be assured. We will have multiple civilian expert witnesses as well as civilian witnesses for other purposes. Where will they be housed? How will they be protected? Will they even be willing to come? Announcing that the convention center in the Green Zone will be the site for the trial is like giving targeting coordinates to the enemy. The Green Zone, the site of multiple violent incursions, is no place to have a trial. How am I supposed to concentrate on a defense if I am in continuous fear of bodily harm? I know that Justice Department lawyers in the Green Zone have acquired their own weapons. Do you expect me to do that? Such a trial, given the impact upon Arabs, is a natural target for an act of terrorism in this most unstable environment.
 - b. It will be impossible to find a jury pool within Iraq which has not been tainted by the daily denunciation of my client by command at every level. It does not take a lawyer to understand this.
 - c. All meaningful witnesses are outside Iraq. That includes virtually all CID agents, the chain of command, MI elements, OGA elements, private contractors, civilian witnesses and government officials. Given the witness locations CONUS is far more appropriate.
 - d. The alleged victims, as in My Lai, are not meaningful witnesses. The pictures, as in My Lai, tell what happened. If a victim is necessary, they can easily be transported to CONUS or Europe.
 - e. The Military Judge is in Germany. Even he has to come to Iraq.
 - f. Communication between myself and military defense counsel and the client is greatly impaired. I cannot phone in. This circumstance is completely unacceptable. Trial preparation is greatly impaired.
 - g. There is nothing public about a trial that is steeped in security and surrounded by fear of bodily harm.
 - h. The only tie to Iraq at this moment is that it is the situs of the alleged crimes. Since the situs is essentially irrelevant, as it was in My Lai, it does not form a basis for keeping the trial there. If your motivation is

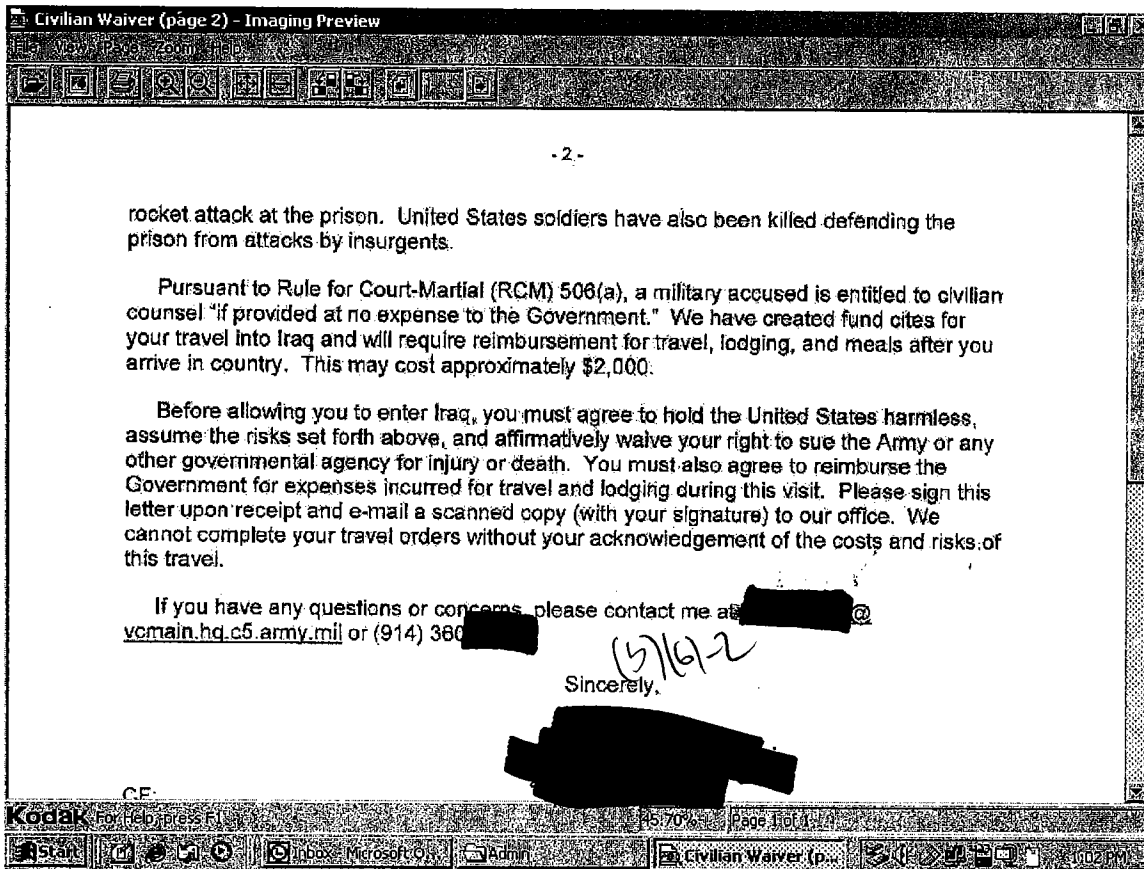
that such a trial in Iraq will serve to appease the Iraqi population, may I say that such a consideration has no place in the justice system.

8. A trial in Iraq under existing circumstances is neither transparent nor public. It is instead a mockery of justice and presents a circumstance in which any defense counsel may rightfully decide not to participate so as to avoid the appearance of complicity.
9. It is with the deepest respect for the position you hold and for the heavy burden you bear, that I ask that you change venue. I believe such a decision will be applauded by the world.

Respectfully submitted,

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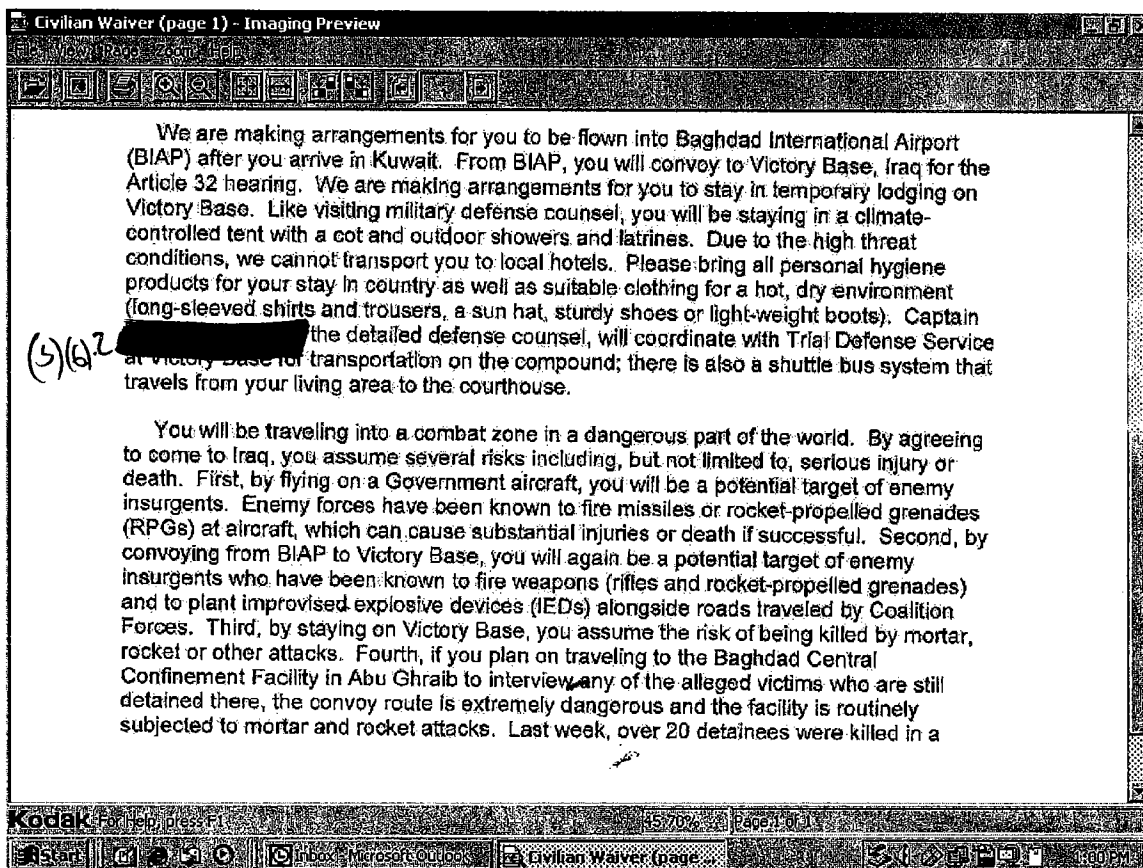
(S)(6)-4



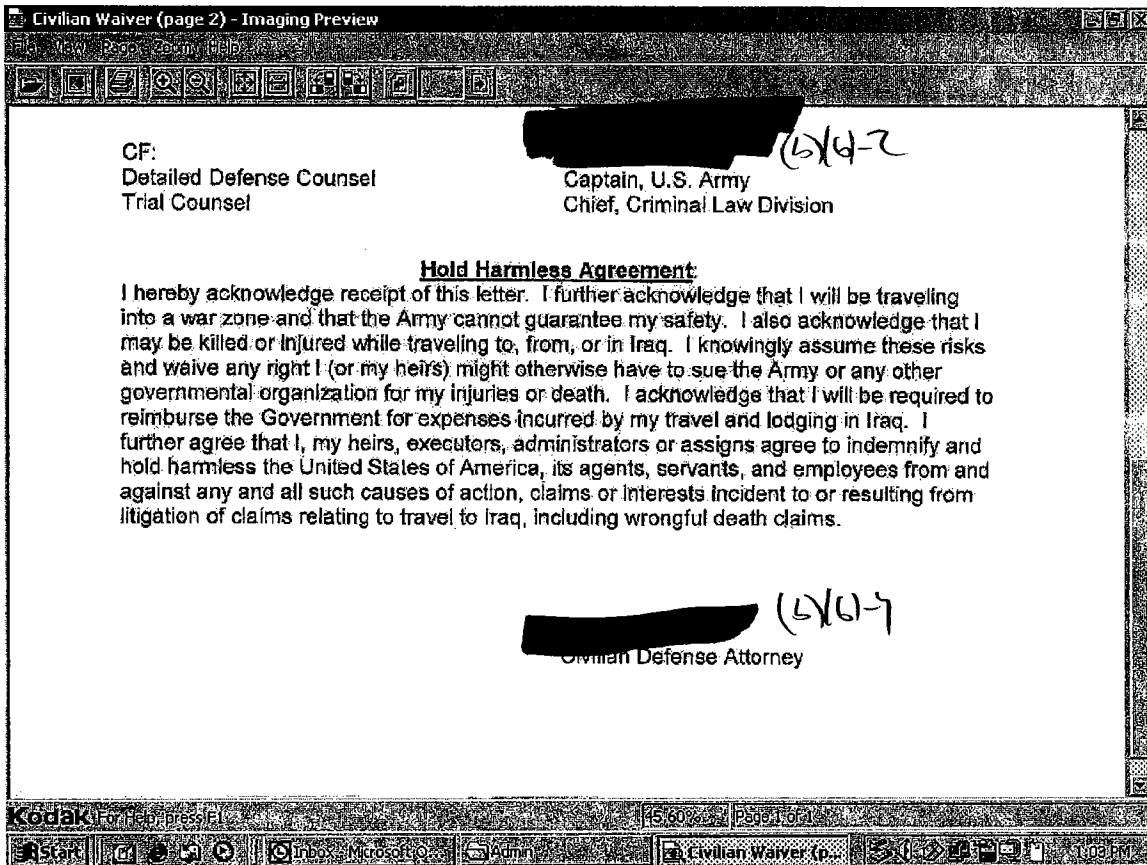
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APPELLATE EXHIBIT XXI

Recognized R. 187



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019892

In the 5th Judicial Circuit
Unit #29355
APO AE 09014

United States)	Motion
)	for
v.)	Appropriate Relief
)	
SSG Ivan L. Frederick, II)	
)	
)	

I. Request for Relief

The Accused, by counsel, hereby moves this Court to direct an appropriate convening authority to grant testimonial immunity to the following witnesses that the Defense intends to call in its case in extenuation and mitigation: LTC [REDACTED] AJ [REDACTED] SPC Cruz, SPC Krol, CPT [REDACTED] SPC [REDACTED] and [REDACTED]

II. Facts

1. The Defense is pleading guilty to certain charges and specifications pursuant to a plea agreement with the government. The charges and specifications revolve around specific acts of detainee abuse at Abu Ghraib prison in Iraq during Operation Iraqi Freedom.
2. The plea agreement is silent on the issue of witnesses for the defense in extenuation and mitigation.
3. The Defense submitted a request to the Convening Authority pursuant to RCM 704 to grant testimonial immunity for the following named individuals as they have indicated that they will or have invoked their right to remain silent under Art. 31, UCMJ:

a. LTC [REDACTED]
(S)(b)-2

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APPELLATE EXHIBIT XXII

Recognized R. 215

b. MAJ [REDACTED]

c. SPC Armin Cruz

d. SPC Roman Krol

e. CPT [REDACTED] (b)(6)-2

f. SPC [REDACTED]

g. [REDACTED] (b)(6)-4

4. Each of the above individuals can provide material testimony which will serve to demonstrate the pervasive and systematic violation of regulations and law regarding detainee treatment during the applicable time period at Abu Gharib prison.

5. The Convening Authority rejected all the Defense requests.

6. There are numerous government-sponsored investigations regarding this case and the facts surrounding this case.

III. Applicable Law

1. In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses. 6th Amendment, U.S. Constitution

2. Defense counsel shall have equal opportunity to obtain witnesses and evidence in accordance with such regulations as the President may prescribe. Art. 46, UCMJ

3. The Defense shall have equal opportunity to obtain witnesses and evidence. R.C.M. 703(a).

4. The defense may present matters in extenuation and mitigation. R.C.M. 1001(c).

5. The military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority grant testimonial immunity to a defense

witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

- (a) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and
- (b) The government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and,
- (c) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.



IV. Argument

Attached is the Defense's request to the Convening Authority for a grant of testimonial immunity for multiple persons—each has indicated either individually or through counsel their intention to invoke their rights against self-incrimination. Each of these individuals can provide material testimony that will serve to demonstrate the pervasive and systematic violation of regulations and law regarding detainee treatment during the relevant time period at Abu Gharib Prison. All of these individuals contributed to the prevailing sense that there were no rules, that nothing had to be reported, and that violation of regulation and law was acceptable.

There are numerous investigations, involving a number of different agencies, regarding detainee abuse in Iraq and especially at Abu Gharib prison during the applicable time frame of this case. The Government, pursuant to an offer to plead guilty for another

co-accused, has granted immunity to PVT Jeremy Sivits so that he is free to testify against the Accused. The Government has refused to grant like immunity to ANY defense witness. The Government, through its own overreaching, has caused numerous individuals to invoke their rights for fear of implicating themselves from the multitude of investigations in this case. The Government has effectively denied the Defense the ability to present a case in extenuation and mitigation.

Respectfully submitted,


(b)(6)-2


CPT, JA
Trial Defense Counsel

11 Aug 04

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

SUBJECT: Request for Testimonial
Immunity ICO of
U.S. v. SSG Frederick

1. The defense in the above styled action requests the grant of testimonial immunity for the following named individuals as they have indicated that they will or have invoked their right to remain silent under Article 31, UCMJ.

- a. LTC [REDACTED] MI
- b. Maj [REDACTED] MP
- c. SPC Armin Cruz, MI
- d. SPC Roman Krol, MI
- e. Cpt [REDACTED] MP
- f. SPC [REDACTED] MI
- g. [REDACTED] Civilian

(S)(6)-2

(S)(6)-4

2. Each of these individuals can provide material testimony which will serve to demonstrate the pervasive and systematic violation of regulations and law regarding detainee treatment during the relevant time period at Abu Ghraib Prison. The

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absence of their testimony will eviscerate the defense's extenuation and mitigation evidence.

3. The individuals named are material witnesses:

- (S)(6)-2
- a. LTC [REDACTED] was aware of and responsible for creating an environment at Abu Ghraib which was violative of law and regulation and which allowed no one to know the actual rules of engagement.
 - b. Maj [REDACTED] was aware of violations of regulation and law from the outset of the 320 MP BN assuming responsibility at Abu Ghraib and was aware of ongoing violations of law and regulation. He knows the circumstances of the seven detainees placed in a pyramid which brought them to Tier 1A.
 - c. SPCs Cruz, [REDACTED] and Krol – participated in abuse of detainees and were aware of ongoing violations of regulation and law.
 - d. Cpt [REDACTED] was aware of ongoing violations of regulation and law and knew that MI was a willing participant in such violations.
 - e. Mr. [REDACTED] encouraged the accused to engage in violation of law and regulation with respect to detainee treatment.
- (S)(6)-4

4. All of these individuals contributed to the prevailing sense that there were no rules, that nothing had to be reported and that violation of regulation and law was acceptable.

5. The defense may request additional parties for testimonial immunity as our investigation continues.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the person submitting the document.

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


AUG 17 2004

AFZF-CG

MEMORANDUM FOR Defense Counsel for Staff Sergeant Ivan Frederick, II,
Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III
Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Request for Testimonial Immunity for Sentencing Witnesses in United
States v. Staff Sergeant Ivan Frederick, II

(S)(b)-2
Your request for testimonial immunity for Lieutenant Colonel [REDACTED], Major
[REDACTED] Captain [REDACTED], Specialist Armin Cruz, Specialist Roman
Krol, Specialist [REDACTED] and Mr. [REDACTED] is denied.

(S)(b)-4

THOMAS F. METZ
Lieutenant General, USA
Commanding

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

AUG 17 2004

AFZF-JA

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

SUBJECT: Request for Testimonial Immunity for Witnesses in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

1. Purpose. To obtain your decision on a Defense request for immunity of certain witnesses for sentencing in the case of United States v. Staff Sergeant Ivan L. Frederick, II, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq.

2. Background. On 20 March 2004, charges were preferred against Staff Sergeant Frederick for abuse, maltreatment, and conspiracy to maltreat detainees at the Baghdad Central Confinement Facility near Abu Ghraib, Iraq. On 5 May 2004, the case was referred to trial. (See, Enclosure 1). Staff Sergeant Frederick, through counsel, has filed a request for testimonial immunity for certain witnesses. (See, Enclosure 2). The request is for the following witnesses:

a. *Lieutenant Colonel [REDACTED]* Defense asserts that this witness "was aware of and responsible for creating an environment at Abu Ghraib which was violative of law and regulation and which allowed no one to know the actual rules of engagement."

b. *Major [REDACTED]* Defense asserts that this witness "was aware of violations of regulation and law from the outset of the 320 MP BN assuming responsibility at Abu Ghraib and was aware of ongoing violations of law and regulation. He knows the circumstances of the seven detainees placed in a pyramid which brought them to Tier 1A."

c. *Specialist Armin Cruz, Specialist Roman Krol, and Specialist [REDACTED]* Defense asserts that these witnesses "participated in abuse of detainees and were aware of ongoing violations of regulation and law."

d. *Captain [REDACTED]* Defense asserts that this witness "was aware of ongoing violations of regulation and law and knew that MI was a willing participant in such violations."

e. *Mr. [REDACTED]* Defense asserts that this employee of Consolidated Analysis Centers, Inc. "encouraged the accused to engage in violation of law and regulation with respect to detainee treatment."

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AFZF-JA

SUBJECT: Request for Testimonial Immunity for Witnesses in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

f. The defense also asserts that these witnesses "can provide material testimony which will serve to demonstrate the pervasive and systematic violation of regulations and law regarding detainee treatment during the relevant time period at Abu Ghraib Prison. The absence of their testimony will eviscerate the defense's extenuation and mitigation evidence."

g. You previously provided a grant of testimonial immunity to Specialist Jeremy Sivits following his guilty plea at a Special Court-Martial Empowered to Adjudge a Bad Conduct Discharge.

3. Applicable Law. Rules for Courts-Martial 704(e) states that the general court-martial convening authority, absent some limitation by a superior authority, has sole discretion with regard to granting immunity to prospective witnesses. The military judge, upon denial of a defense request for immunity of witnesses, may grant appropriate relief based upon a finding of the following:

a. The witness intends to invoke the right against self-incrimination;

b. The Government has engaged in discriminatory use of immunity to obtain a tactical advantage or has, through its own overreaching, forced the witness to invoke the privilege against self-incrimination; and

c. The witnesses' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.

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Additionally, with respect to civilian witnesses like Mr. [REDACTED] the convening authority is required to forward the request for immunity to the United States Attorney General, but only if the convening authority intends to grant such a request. United States v. Ivey, 55 M.J. 251 (C.A.A.F. 2001).

4. Discussion. Applying the factors above, the Defense has not shown that the Convening Authority must immunize any of the identified witnesses.

a. With regard to LTC [REDACTED] the Defense request fails for two reasons. First, the Government has not engaged in discriminatory use of immunity to obtain a tactical advantage. The Government is investigating LTC [REDACTED] who may be culpable for creating an environment conducive to abuse. Because LTC [REDACTED] may be prosecuted, the Government is not indiscriminately withholding immunity to gain a tactical advantage. Second, LTC [REDACTED] does not offer evidence that cannot be obtained from a number of other sources. Major General Taguba's report on the conditions at the prison includes evidence and the names of witnesses who can assert the same facts sought from LTC [REDACTED]

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AFZF-JA

SUBJECT: Request for Testimonial Immunity for Witnesses in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

b. With regard to Major [REDACTED] the Defense request also fails for two reasons. First, the Government does not concede that Major [REDACTED] will invoke his privilege against self-incrimination when questioned. Second, even if Major [REDACTED] does elect to invoke his privilege against self-incrimination, the information that Major [REDACTED] allegedly possesses can be obtained from several other witnesses.

c. With regard to Specialist Cruz and Specialist Krol, both soldiers are subjects of Major General Fay's investigation and are targeted for prosecution.

d. With regard to Specialist [REDACTED] this witness has not indicated that he will invoke and has already testified at a number of hearings. In the event that Specialist [REDACTED] elects to invoke his privilege against self-incrimination, several other witnesses can testify about the alleged abuse in which Specialist Cruz and Specialist Krol were participants.

e. With regard to Captain [REDACTED] the Defense request fails for the same reason as the request regarding Lieutenant Colonel [REDACTED] specifically, Captain [REDACTED] is under investigation and may be prosecuted. Further, the information the Defense intends to solicit from Captain [REDACTED] can be obtained from a variety of other sources.

f. With regard to Mr. [REDACTED] the Defense makes an assertion based on conjecture that Mr. [REDACTED] encouraged the accused to abuse detainees. The Government is investigating this allegation and, if substantiated, will likely forward this case to the Department of Justice for prosecution. Accordingly, if the Defense proffer is accurate, Mr. [REDACTED] will be prosecuted and any grant of immunity would hinder his prosecution.

5. Recommendation. Because the Defense has failed to show that all three prongs of RCM 704 have been met for any witness, I recommend that you disapprove the Defense request to immunize the above-named witnesses.

6. POC is Major [REDACTED] at DSN 318-822 [REDACTED]

(S)(b)(2)
[REDACTED]
COL, JA
Staff Judge Advocate

commit specific acts of maltreatment and then to record his maltreatment as sort of a war trophy. Dr. (S)(b)(4) conducted a famous psychological experiment in 1971 and can testify to fundamental social psychological processes at work in the prison he designed for experimentation and the prison at Abu Gharib. He can testify that when ordinary people, like SSG Frederick, are placed in a novel, evil place, such as most prison environments, Situations Win, People Lose. He can testify that scenario is true for the vast majority of people in all the relevant social psychological research done over the past forty years.

4. The Convening Authority rejected the Defense request for employment of Dr. (S)(b)(4) and, instead, offered the services of an unnamed Government psychologist.

III. Applicable Law

1. In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses. 6th Amendment, U.S. Constitution
2. Defense counsel shall have equal opportunity to obtain witnesses and evidence in accordance with such regulations as the President may prescribe. Art. 46, UCMJ
3. The Defense shall have equal opportunity to obtain witnesses and evidence. R.C.M. 703(a).
4. The defense may present matters in extenuation and mitigation. R.C.M. 1001(c).
5. When employment of an expert is considered necessary by a party, the party shall, in advance of employment of the expert, and with notice to the opposing party, submit a request to the convening authority to authorize the employment and fix compensation of the expert. The request shall include a complete statement of the reasons why employment of the expert is necessary and the estimated cost of employment. R.C.M. 703 (d).

6. A request (for appointment of an expert) denied by the convening authority may be renewed before the military judge who shall determine whether the testimony of the expert is relevant and necessary and, if so, whether the Government has provided or will provide an adequate substitute. R.C.M. 703(d).
7. The defense may not select the expert of its choice and bind the government to pay for her. U.S. v. Hagen, 25 MJ 78 (CMA 1987), cert. Denied, 108 S. Ct. 1015 (1988).
8. The government bears the burden of demonstrating that it can provide an adequate substitute. RCM 703(d)
9. To qualify as an "adequate substitute," the person must be one with similar professional qualifications and who can testify to the same conclusions and opinions as the defense requested expert. U.S. v. Guitard, 28 MJ 952, 955 (NMCMR 1989).

IV. Argument

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Dr. [REDACTED] expert testimony will greatly assist the sentencing authority in this particular case by explaining, in great deal, his vast psychological background and knowledge of prisons and prisoner abuse with direct application to the social psychological dynamics present at the Abu Gharib prison. A truly unique insight into the role of both the Accused, the victims, and the Abu Gharib prison environment.

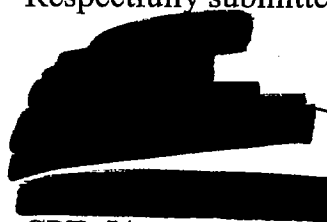
The Defense made a request to the convening authority to employ Dr. Zimbardo as an expert witness in this case for the defense's case in extenuation and mitigation. The convening authority denied the Defense request and offered an unnamed government employee substitute. This substitute has unknown qualifications and it is not known whether he or she will be able to testify substantially similar to Dr. [REDACTED]—the world's

(b)(6)-4

foremost expert in this particular area of psychology. Attached is a synopsis of his expertise as it is applied to the specific facts of this case.

The Accused faces a possible multi-year sentence for the charges and specifications to which he has agreed to plead guilty. The court is entitled to hear particularized evidence on the circumstances surrounding the Accused and Abu Gharib prison environment in order for it to determine an appropriate sentence—one that is truly informed and considers both the aggravation, but also the extenuating circumstances surrounding the offenses.

Respectfully submitted,

 (b)(6) (b)(7)(C)

CPT, JA
Trial Defense Counsel

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

AUG 17 2004

AFZF-JA

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

SUBJECT: Request for Employment of Expert Witness in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

1. Purpose. To obtain your decision on a request for employment of Dr. [REDACTED] (S)(6)-4 as an expert witness on behalf of the Defense team in the case of United States v. Staff Sergeant Ivan Frederick, II, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq.

2. Background. On 20 March 2004, charges were preferred against Staff Sergeant Ivan Frederick for abuse, dereliction, maltreatment, and conspiracy to maltreat detainees at the Baghdad Central Confinement Facility near Abu Ghraib, Iraq. These charges were referred on 5 May 2004. (See Enclosure 1). Staff Sergeant Frederick, through counsel, has filed a request for employment of Dr. [REDACTED] as an expert witness. (See Enclosure 2).

a. Dr. [REDACTED] curriculum vitae has not been provided by the Defense, however, Dr. [REDACTED] is a faculty member of Stanford University's Department of Psychology. The Defense contends that Dr. [REDACTED] is a recognized expert "on the social psychology of situational forces and group dynamics associated with prisoner abuse." The Defense further contends that Dr. [REDACTED] is the foremost authority in the country on prison abuse and its causes. (S)(6)-4

b. The Defense contends that the failure to employ Dr. [REDACTED] would effectively deprive SSG Frederick of his ability to present a meaningful case in extenuation and mitigation pursuant to RCM 1001(c)."

c. Dr. [REDACTED] charges \$5,000 a day and anticipates taking 5 days to prepare and testify on behalf of Staff Sergeant Frederick. The Defense asserts that Dr. [REDACTED] may be deposed at a location convenient to the government.

3. Applicable Law. Article 46 of the Manual for Courts-Martial (MCM) provides that the trial counsel and defense counsel shall have equal opportunity to obtain witnesses and other evidence. As a matter of due process, servicemembers are entitled to investigative or other expert assistance at Government expense when necessary for an adequate defense. See United States v. Garries, 22 M.J. 288, 290 (1986). The

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AFZF-JA

SUBJECT: Request for Employment of Expert Witness in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

necessity requirement exists because, unlike the civilian defendant, the military accused has the resources of the Government at his or her disposal. Id. Defense counsel must present more than an inkling that expert assistance is required. See United States v. Tornowski, 29 M.J. 578, 580 (1989). Further, in demonstrating necessity, the accused must demonstrate more than just the possibility of assistance from a requested expert, but instead must show that there exists a reasonable probability that an expert would be of assistance to the defense and that the denial of expert assistance would result in a fundamentally unfair trial. United States v. Gunkle, 55 M.J. 26, 31-32 (C.A.A.F. 2001). The highest military court has articulated three criteria for showing necessity:

First, why the expert assistance is needed. Second, what the expert assistance [would] accomplish for the accused. Third, why the defense counsel [is] unable to gather and present the evidence that the expert assistant would be able to develop.

United States v. Ndanyi, 45 M.J. 315, 319 (C.A.A.F. 1996) (emphasis supplied). In the instant case, the Defense has not shown the necessity of the requested appointment of this expert consultant.

4. Discussion. Applying the factors above, the Defense has not shown that the requested investigative assistance is necessary for the following reasons:

a. First, the Defense has failed to show why Dr. [REDACTED] testimony is actually needed. The Defense has provided no information as to why this testimony would be required by the trier of fact to determine an appropriate sentence. The accused has the ability to present evidence in mitigation and extenuation through a wide variety of techniques (e.g., letters, affidavits, video, witnesses). The Defense has not shown why these techniques to present extenuation and mitigation are not sufficient to provide the appropriate extenuation and mitigation case.

(b)(6)-4
b. Second, the Defense has failed to show what Dr. [REDACTED] testimony is intended to accomplish. The Defense has identified that this case involves prison abuse and has identified that Dr. [REDACTED] has expertise regarding prison abuse. The Defense has not given a proffer of testimony or any other explanation of the purpose Dr. [REDACTED] testimony will serve.

c. Third, the Defense has not shown why they are unable to gather and present evidence that the expert assistant would be able to develop. The two defense counsel representing the accused, although not trained as psychologists, have a duty to competently represent the accused and understand the operative facts. In this case, two attorneys (one military and one civilian) represent the accused. Additionally, you have previously detailed a trained military police investigator to assist with other aspects of case preparation. The Defense team has the resources to adequately research the

AFZF-JA

SUBJECT: Request for Employment of Expert Witness in United States v. Staff Sergeant Ivan Frederick, II – ACTION MEMORANDUM

pertinent issues given the wide variety of trained psychologists within the Department of Defense made available to all parties in this case.

5. Recommendation. The Defense has not met their burden of demonstrating that the employment of this specific expert is necessary. I therefore recommend you disapprove the Defense request. To ensure a fair trial, however, I recommend you offer to the Defense the appointment of a military expert to assist the Defense in the preparation of this case.

6. POC is Major [REDACTED] at DSN 318-822-2541.

(S)(b)-2

[REDACTED]

Encls

- | | |
|--|----------------------|
| 1. Charge sheet | COL, JA |
| 2. Defense request for expert assistance | Staff Judge Advocate |
| 3. Curriculum vitae | |

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


AUG 17 2004

AFZF-CG

MEMORANDUM FOR Defense Counsel for Staff Sergeant Ivan Frederick, II,
Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III
Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Request for Expert Assistance in United States v. Staff Sergeant Ivan
Frederick

(S)(b)(7)
Your request for appointment of Dr. [REDACTED] as a confidential expert consultant is
denied. You have not demonstrated that the appointment of Dr. [REDACTED] necessary
pursuant to RCM 703(d). I am prepared, however, to detail a military expert of suitable
training, education, and experience to assist you if you so desire.


THOMAS F. METZ
Lieutenant General, USA
Commanding

019911



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE, REGION IX
BAGHDAD, IRAQ FIELD OFFICE
VICTORY BASE, IRAQ
APO AE 09342-1400

REPLY TO
ATTENTION OF:

FICI-JA-TBO

10 AUG 2004

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

SUBJECT: Request for Expert Witness—U.S. v. SSG Frederick

1. The defense in the above pending court-martial requests, pursuant to Rule for Court-Martial (RCM) 703(d), the employment of Dr. [REDACTED] as a defense expert witness for sentencing.
2. Employing this expert witness is necessary for the following reasons:
 - a. This case involves maltreatment of Iraqi detainees in a prison environment.
 - b. Dr. [REDACTED] faculty member of the Stanford University Department of Psychology.
 - c. Dr. [REDACTED] an expert on the social psychology of situational forces and group dynamics associated with prisoner abuse.
 - d. Dr. [REDACTED] the foremost authority in the country on prison abuse and its causes.
3. Failure to employ this expert witness would effectively deprive SSG Frederick of his ability to present a meaningful case in extenuation and mitigation pursuant to RCM 1001(c).
4. The Defense has spoken with Dr. [REDACTED] and discussed fees with him. Dr. [REDACTED] charges \$5000 per day and the defense anticipates 5 days for this witness. This witness will testify via deposition at a place convenient for the government.

Enclosure
as

[REDACTED] (S) 6-7
CPT, JA
Defense Counsel

019912

VITA

Office:
Department of Psychology

Stanford University
Stanford, CA 94305-2130
Telephone: (650) 723-
Fax: (650) 725-

Admin. Associate

Home:

San Francisco, CA 94109
Telephone (415) 776-
Fax: (415) 673-

Email: @stanford.edu

PERSONAL INFORMATION

Born: New York City, NY

Married: Ph.D., Psychologist, U. C. Berkeley

Children:

Licensed: Psychologist, State of California PL 4306 (since 1975)

EDUCATION AND HONORARY DEGREES

Brooklyn College, A.B. (Summa) Honors in Psychology, Sociology/Anthropology, 1954,
Phi Beta Kappa, 1953.

Yale University, M.S. 1955; Ph.D., 1959

Honorary Degree, Doctor of Humane Letters in Clinical Psychology, Pacific Graduate
School of Psychology, 1996

Honorary Degree, Doctor Honoris Causa, National University of San Martin, Peru, 1996

Honorary Degree, Doctor Honoris Causa, Aristotle University, Thessalonika, Greece, 1998

PROFESSIONAL EXPERIENCE

Post Doctoral Trainee - West Haven Veteran's Hospital, Clinical Psychology Dept., 1959-1960

Co-Director (with Dr. S. Sarason), Children's Test Anxiety Research Project, Yale University,
1959-1962

Created, Directed The Harlem Summer Program, "A Head Start-Black Pride" Daily Program
Staffed by NYU and CCNY Students in Harlem (1965)

Training and research consultant in hypnosis, Morton Prince Clinic, New York, 1963-1967

Co-Director (with Dr. E. Hilgard), Stanford Hypnosis Research Lab, 1969-1980

Director, Stanford University Social Psychology Graduate Research Training Program

Founder, Co-Director (with Dr. L. Henderson), Shyness Clinic/ Shyness Institute, 1975-present

Senior Scientific Advisor, writer, narrator, *Discovering Psychology*, PBS-TV/ Annenberg Corp
Video series (1989, updated 2001)

TEACHING

Instructor/Assistant Professor, Yale University, 1957-1960

Assistant Professor, New York University, 1960-1967

Professor, Stanford University, 1968 to present

Visiting Professor: Yale (1962), Stanford (Summer 1963), Barnard College (1966), University of
Louvain (Belgium) Part-time (Summer 1966), University of Texas (1967), Columbia University
(1967-68; Klingenstein Professor of Race Relations), University of Hawaii (Summer 1973),
International Graduate School of Behavioral Sciences, Florida Institute of Technology at Lugano,
Switzerland (Summer, 1978), University of Warsaw (Summer 2000)

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HONORS

TEACHING

- *Distinguished Teaching Award, New York University, 1965
- *Distinguished Teaching Award for Outstanding Contributions to Education in Psychology, American Psychological Foundation, 1975
- *Phoenix Award for Outstanding Teaching, Stanford Psychology Department Faculty, 1984
- **California Magazine*, Best Psychology Teacher in California, 1986
- *The Walter Gores Distinguished Teaching Award, Senior Faculty, Stanford University, 1990
- *Bing Fellow Outstanding Senior Faculty Teaching Award, Stanford University, 1994-1997
- *WPA Recipient of the annual Outstanding Teaching Award, 1995
- *Distinguished Teaching Award, Phi Beta Kappa (Northern California Chapter), 1998
- *Robert S. Daniel Teaching Excellence Award, APA Division 2, Society for the Teaching of Psychology, 1999
- *Dean's Award for Distinguished Teaching, Stanford University 1999-2000

RESEARCH

- *Peace Medal from Tokyo Police Dept., 1972 (special recognition of a foreign national whose research and ideas significantly contributed to improving criminal justice administration)
- *Fellow, Center for the Advanced Study in the Behavioral Sciences, 1972
- *Gordon Allport Intergroup Relations Prize (honorable mention), 1974, Society for Psychological Study of Social Issues (for the Stanford Prison Experiment)
- *Distinguished Research Contributor Award, California State Psychological Association, 1977
- *Psi Chi Award for contributions to the Science of Psychology, 1986
- *Guze Award (Society for Clinical & Experimental Hypnosis), Best Research in Hypnosis, 1989
- *Selected as one of ten major contributors to *Social Psychology*, Yosemite Conference on 100 Years of Experimental Social Psychology, 1997
- *Ernest R. and Josephine R. Hilgard Award for the Best Theoretical hypnosis paper for Society for Clinical and Experimental Hypnosis, published 1999
- *Distinguished Lifetime Contributions to General Psychology (APA, Division 2, 2000)
- *Distinguished Contributions to Scientific Hypnosis (APA, Division 30, 2001)
- **Psychology Today Magazine*, Mental Health Award for Research and Treatment of Shyness, 2001
- *Distinguished Lifetime Contributions to Psychology, California Psychology Association, 2003

WRITING

- *National Media Award (honorable mention), American Psychological Foundation, 1973 (for popular writing on vandalism)
- *William Holmes McGuffey Award for *Psychology and Life*, for Excellence and Longevity, (Textbook Authors Association) 1995

GENERAL

- *President, Western Psychological Association, 1983, again in 2001
- *Who's Who in America, 1982 to present
- *Ugliest Man on Campus (Most Popular Stanford Faculty/ Administrator), Alpha Phi Omega, 1983
- *Chosen by Editors of *The Sciences* to represent psychology in its 35th year celebration reflecting on the contributions in each field of science, November, 1996
- *Phi Beta Kappa, Distinguished Visiting Lecturer, 1989-1990
- *Distinguished Contribution to Psychology as a Profession, California Psychological Association, 1998
- *APA Division 1 award, Ernest Hilgard Award for Lifetime Contributions to General Psychology, 2000
- *Los Angeles County Psychological Association: Psyche Award for lifetime contributions to Psychology as a science and art (2000)
- *Fulbright Scholar at U. Rome (2001)
- President of the American Psychological Association, 2002

MEDIA

- *Selected to be Senior Academic Advisor, Host, Writer and Narrator of *Discovering Psychology*, (A 26-part PBS TV series on psychology, Annenberg/CPB project, 1986-1989)

(S)10-4
*London Weekend Television (Granada Media), "Human Zoo" Three Programs, Chief Scientific Advisor and On-Screen Expert

- *STC (Society for Technical Communication) International Audiovisual Competition Award of Excellence for "The Power of the Situation" (*Discovering Psychology* video series), 1991
- *Columbus International Film & Video Festival Bronze Plaque Award for "The Developing Child" (*Discovering Psychology* video series), 1992
- *International Film & TV Festival of New York Finalist Certificate for "Past, Present and Promise" (*Discovering Psychology* video series), 1992
- *WPA Film Festival Award of Excellence for "The Responsive Brain" and "Social Psychology" (*Discovering Psychology* video series), 1992
- *WPA Spring Festival first place award for *Quiet Rage: The Stanford Prison Study* video, 1993
- *WPA Spring Festival first place award for *Candid Camera Classics in Social Psychology* Video, 1993
- *APA Presidential Citation for outstanding contributions to psychology for the *Discovering Psychology* video series, 1994
- *Psychological Consultant, New Programming for NBC TV, 2002.
- *Emmy Award, New England Instructional Television, Host, Cognitive-Neuroscience (*Discovering Psychology* Video Series), 2002
- *WPA Spring Festival, First Place Award for Cultural Psychology (*Discovering Psychology* Video Series), 2002
- *Sagan Award for Promoting Public Understanding of Science, Awarded by Council of Scientific Society Presidents, 2002.

PROFESSIONAL MEMBERSHIPS

American Psychological Association (APA), Fellow; Div. 1(F), 2(F), 3(F), 8(F), 9(F), 13(LM), 15(F), 26(LM), 35, 45, 46(LM), 48(F), 52(F)
Association for Advancement of Psychology (AAP)
American Psychological Society (APS), Fellow
Charter Fellow Canadian Psychological Association (CPA)
Western Psychological Association (WPA), Fellow
Eastern Psychological Association (EPA), Fellow
California State Psychological Association (CSPA)
International Association of Applied Psychology (IAAP)
International Congress of Psychology (ICP)
Society for Inter-American Psychology
Society for Psychological Study of Social Issues (SPSSI)
American Association for Advancement of Science (AAAS), Fellow
Society for Experimental Social Psychology (SESP)
Society for Advancement of Social Psychology (SASP)
Society for Personality and Social Psychology (SPSP)
Phi Beta Kappa, Sigma Xi, Psi Chi
American Association of University Professors (AAUP)
Psychologists for Social Responsibility

CONSULTATIONS AND BOARDS

Research Consultant, Morton Prince Clinic for Hypnotherapy (New York City)
Asthma Research Unit, Cornell Medical School (New York City)
Tokyo Police Department
Wake Up! Louisiana (New Orleans Citizens' Group)
Public Advocates Law Offices (San Francisco)
Charles Garry Law Offices—expert witness, prison litigation, Senate subcommittee on prisons and juvenile delinquency
Japanese internment reparations hearings (San Francisco)
San Francisco Newspaper Agency (Senior Project Research Consultant)

(S) 4-7

Cristaldi Films, Rome, Italy (Consultant on "Control" film)
SRI International Consultant to PSI Phenomena Project (Oversight Committee)
San Francisco Exploratorium, Consultant to APA Traveling Museum Exhibit, and Memory Project
Executive Board for the Holocaust Study Center, Sonoma State University
Advisory Panel for the Center on Postsecondary Learning, Teaching and Assessment
Board of Advisors, *Psychology Today* Magazine
Consulting Editor, McGraw Hill Publishers, Social Psychology Series
Historian, Western Psychological Association (1984-2000)
Editorial Board, *Journal of Social Behavior and Personality*
Editorial Board, *Journal of Social Issues*
Institute for Research on Social Problems
Contributing Editor, *Healthline*
Advisory Board, The Foundation for Grand parenting
Advisory Board, End Violence Against the Next Generation (California)
Advisory Board, North American Journal of Psychology
Honorary Member, Italian Inter-university Center for the Study and Research on the Origins and Development of Prosocial and Antisocial Motivations
Consultant, Live Entertainment, Hollywood, "Stanford Prison Experiment" film
Advisory Council, Resources for Independent Thinking
Advisor, London Weekend Television, "Human Zoo" 3 programs on group behavior Discovery Channel
Advisor, BBC, Human Rights, Human Wrongs Program: "Five Steps to Tyranny,"
Founder, Scientific Advisor, RealPsychology.com
Consultant, NBC TV
Consultant, Maverick Films, Hollywood, "Stanford Prison Experiment" film
Board of Directors, Council of Scientific Society Presidents

INTERNATIONAL INVITED ADDRESSES, WORKSHOPS, PRESENTATIONS

Conventions and Associations

International Congress of Psychology (in Bonn, London, Tokyo, Mexico City, Brussels, Stockholm); International Congress of Applied Psychology, International Social Psychology Conference (in Majorca, Spain, and Budapest); Canadian Psychological Association, Japanese Psychological Association, Japanese Social Psychological Association, German Psychological Society, Greek Psychological Association, Spanish Social Psychological Association, European Association of Experimental Social Psychology, European Association of Personality Psychology, World Congress on Eclectic Hypnotherapy in Psychology (Ixtapa), International Conference on Time (San Marino, Italy); International Convention on Shyness and Self Consciousness (Cardiff, Wales), Mexican Psychological Society

Universities

University of Salamanca, University of Barcelona; The Sorbonne; University of Paris (Ecole des Hautes Etudes), University of Rome, University of Bologna, Catholic University of Milan, University of Naples, University of Parma; Oxford University, East London University, Central London University, University of Cardiff, Open University-Birmingham, England; University of Thessalonika, University of Athens; University of Louvain; Hamburg University; Tokyo University, Kyoto University, Okinawa University, Osaka University; University of Sao Paulo, University of Rio de Janeiro; Guanajuato University; University of British Columbia, Calgary University, University of Alberta, Toronto University, McGill University, University of New Foundland; Chinese University of Hong Kong, Deree College, (Athens).

DOMESTIC LECTURES, WORKSHOPS, PRESENTATIONS

Conventions and Associations

American Psychological Association, American Psychological Society, Eastern Psychological Association, Western Psychological Association, Midwestern Psychological Association, South Eastern Psychological Association, Rocky Mountain Psychological Association, New England Psychological Association, American Psychiatric Association, American Ortho-psychiatric Association, American Association for the Advancement of Science, New York Academy of Sciences, Society for

(6)(b)-4
Experimental Social Psychology, Federation of Behavioral, Cognitive and Social Sciences, Nebraska Symposium on Motivation, Society for Clinical and Experimental Hypnosis, National Conference on Law Enforcement, Smithsonian Institute, Annenberg Foundation, American Association of Behavior Therapy, Anxiety Disorders Association of America, California School of Professional Psychology (Fresno and Berkeley), Pacific Graduate School of Psychology, Eriksonian Conference on New Developments in Therapy, National Conference on Teaching, Texas Junior College Convention, Veteran's Administration Hospital Psychology Programs in Palo Alto, Menlo Park, CA., Bronx, NY, Society for Research in Child Development, California Psychological Association, Midwest Institute for Teachers of Psychology.

Colleges, High Schools

University of Virginia Visiting Scholar (lectured at VMI, Virginia Tech, George Mason, William & Mary Colleges); University of California: at Berkeley, Davis, La Jolla, Los Angeles, Riverside, Santa Barbara, Santa Cruz, San Francisco (Extension Program), San Francisco (Langley Porter Institute); California State University: at Fresno, Long Beach, San Diego, San Marino, Sonoma; Claremont-McKenna College, Claremont College, Cal Tech, University of Southern California, San Francisco State University, College of San Mateo, Foothill College, D'Anza College, NYU, Columbia University, Yeshiva University, New School for Social Research, Queens College, Hunter College, Brooklyn College, Lehman College, City University of New York, Einstein Medical School, West Point Military Academy, University of Vermont, Dartmouth College, Cornell University, Harvard University, Boston University, Wesleyan University, Yale University, Brandies University, MIT, Pennsylvania University, Temple University, St. Joseph's University, Princeton University, Rutgers University, Montclair State College, University of Delaware, Emory University, Pittsburgh University, University of Cincinnati, Duke University, North Carolina University, University of Florida, Broward Community College, Baton Rouge College, LSU, University of Texas (Austin), Sam Houston Community College, University of Houston, Texas Tech University (Lubbock), McNeese State College, Arkansas University, University of Northern Arizona, Arizona State University, Arizona University, Michigan University, Northwestern University, University of Chicago, University of Illinois- Chicago, St. Louis University, Oregon University, Washington University, University of Central Washington, University of Eastern Washington, Chemmetkita College (Washington), University of Hawaii (Manoa Campus), Central Oklahoma University, University of Puget Sound, Reed College, University of South Carolina, Claremont Graduate School, California State University, Long Beach, Ohio State University, Devry University, College of DuPage, Holy Names College, Baldwin Wallace (Harrington Distinguished Lecturer), Temple University (Uriel Foa Distinguished Lecturer), Tufts University, Prince Georges CC.

Jordan Junior High School (Palo Alto), Crittenden Middle School (Mountain View), Lick-Wilmerding High School (S.F.), Lincoln High School (S.F.), Gunn High School (Palo Alto), Loudin County High School (Virginia), Walt Whitman High School, (Bethesda, Maryland)

Non-Academic Lectures, Presentations

Commonwealth Club (San Francisco), Comstock Club (Sacramento), IBM, Maritz Corporation, Xerox Corporation, New Orleans Chamber of Congress, Harper Collins Publisher, Scott, Foresman Publisher, National College Textbook Publishers Conference, Lucas Arts (Industrial Light and Magic Company), George Lucas Workshop on Creativity, Local PTA Groups, Prison Reform Groups, Peace Group Associations (New York and California).

MEDIA PRESENTATIONS (TV AND RADIO)

"Discovering Psychology" Series, 26 episodes shown nationally on PBS and Internationally in 10 Countries (from 1989 to Present), The Today Show, Good Morning America, 20/20, Night Line, and The Phil Donahue Show (each several times), That's Incredible, Not For Women Only, To Tell The Truth, Tom Snyder Show, Charlie Rose Show, NBC Chronolog, People Are Talking, AM and Late Night TV Shows in NYC, LA, Chicago, Seattle, Washington, DC, Atlanta, Detroit, Philadelphia, Pittsburgh, Boston, Vancouver; Canadian Broadcasting Company, BBC, CNN, National Public Radio, KGO Radio, Live 105 San Francisco Radio, Milt Rosenberg Radio Interview Program (Chicago), Italian TV-RAI (Shyness Program on Quark), Stanford Television Network, The Discovery Channel Program on Torture. 60 Minutes, and, London Weekend TV/ Discovery Channel

[REDACTED]
program on the "Human Zoo." Only Human", NBC/Discovery Channel.

INTERVIEWER/ ON STAGE CONVERSATION SERIES

(S) (b) (4)
Public interviews/conversations for California Academy of Sciences and S. F. City Arts & Lecture Series) with [REDACTED]
[REDACTED]
[REDACTED]

CAREER GOALS

The joys of psychology have come from blending teaching, research, and applications of psychological knowledge as basic career goals. I love to teach and have done it extensively and intensively for nearly 50 years, trying to communicate what we know and how we know it to the next generation of citizens and psychologists. But my training as a research psychologist has prepared me to take much delight in contributing to the basic knowledge about how the mind and behavior works. Publishing that information is not only essential to career advancement, but to sharing with colleagues and the public these new ideas. Finally, it has always been a central goal for me academically and personally to "give psychology away" to the public, to the media, and to those who could use it in ways that enhance the human condition. I like to think of myself as a social change agent—able to use my experience, training, and insights as a psychologist to make a difference in the lives of many people.

TEACHING CAREER

The year 2003 marks my 46th year as an educator, the sixth decade of continually teaching Introductory Psychology.

I began teaching in 1957 as a part-time instructor at Yale, in charge of a class of 25 freshmen in Introductory Psychology, and continued this wonderful experience for several more years until my first full-time appointment as assistant professor at New York University, Heights Campus in the Bronx. That was teaching in the raw: 12 semester courses a year, including summer school, all lecture courses, including 3 large Introductory Psychology courses per year. Living in New York on semi-starvation wages forced me to add a 13th course for several years, moonlighting up at Yale, teaching the Psychology of Learning to master's level students in the Education School, and another year teaching Social Psychology at Barnard College. Some years I taught summer school at Stanford, in Louvain, Belgium, and Lugano, Switzerland.

I love to teach large lecture classes where I am on the "performing center," doing demonstrations, class experiments, and integrating novel AV materials, but it is more challenging to be intimately connected to students in seminars where I learn from our interaction. In addition to this in-class teaching, I have always mentored students in individual study, undergraduate honors research, and thesis research of masters and doctoral students.

Another dimension of teaching for me has been to develop teaching materials, and course supplements that make teaching both more effective and easier. To this end, I have not only written many basic texts and primers in Introductory and Social Psychology, but pioneered the new breed of Instructor's Manual that helps teachers with every aspect of course preparation and curriculum design. I have also developed Student Guides and Workbooks, and a variety of demonstrations and AV resources for teachers. Among the later are: the "Discovering Psychology" PBS - video series of 26 programs covering all of general psychology, "Candid Camera Classics," one for Introductory and another for Social Psychology courses (with teacher's manuals for each), "Quiet Rage," the video documentary of the Stanford Prison Experiment, and a public web site slide show of my experiment (www.prisonexp.org).

In the past decade, about 70,000 students in Tele-Courses have received full credit for Introductory Psychology by passing a standard test based on the "Discovering Psychology: video series and a basic textbook. For me, that represents an ideal in "outreach teaching."

(S)G-4

Another dimension of teaching in my career has been training teachers also to discover the joys of teaching by helping them to do their job really well. I regularly give workshops on teaching throughout the country, at professional meetings (APA, APS, WPA, National Conference on Teaching, and others); in many universities and colleges; organize my own workshops at Stanford (for local area teachers at all levels of psychology education), and have given many teaching workshops internationally as well. I also contribute to teaching by training my own teaching associates to become experts through working closely with them in an intensive Practicum in Teaching course, that I innovated in 1960 at NYU, and have developed over the years into a training program that includes undergraduate TAs as well as graduate students. Many of these students have gone on to become distinguished, prize-winning teachers in colleges across the country and in national competitions.

STANFORD TEACHING: I believe that I have taught more students, for more credits, in a greater variety of courses, than any other Full Professor in the history of Stanford University. Since 1968, I have regularly taught large lectures in **Introductory Psychology**, one of the most popular courses in the University, typically to about 325 students, but have taught this course to as many as 1000 students, and as few as 10 students in a special seminar format with computerized daily interaction on written assignments, in addition to lectures.

Unit Mastery Instruction: For several years, I taught about 600 students in a Unit Mastery System with Personalized Instruction that included taking individual testing on each of 18 chapters of the text, and oral exams on an additional reading. Proctors, 200 of them, administered all testing in their dorms separately to each of their 3 students, and met weekly with me to discuss issues relevant to this form of teaching. About 50 other undergraduate teaching assistants worked in pairs to lead their weekly discussion section component of the course.

Practicum in Teaching is a seminar I designed to train graduate and undergraduate teaching assistants to become effective teachers, first by helping them to develop engaging weekly sections that are coordinated with my lecture course, **Introductory Psychology**, based on original experiments, demonstrations and exercises that I designed and are available in my Instructor's Manual for this course. In addition, this course is designed to teach students to value the honor of being able to teach and guide them toward successful careers in teaching.

Lecture Courses:

Introductory Psychology
The Psychology of Mind Control
Social Psychology (taught solo and also as a co-teacher)
Social Psychology In Action
Social Alienation
The Nature of Madness
The Psychology of Hypnosis
Sex Roles in the U.S. and Italy (During Florence teaching term)
Cross-Cultural Psychology (During Florence teaching term)
Psychology and Drama (Co-taught with Patricia Ryan, Drama Department)

Seminar Courses:

The Psychology of Imprisonment (Co-taught with Carlo Prescott, former inmate)
The Dynamics of Shyness (general students and Freshman, Co-taught with Lynne Henderson)
The Psychology of Time Perspective (Sophomore Seminars)
On Becoming a Professional Psychologist (for advanced graduate students)
Effective Teaching (Co-taught with David Rosenhan)
Research Methods in Social Psychology (Graduate Course)
Research Issues in Social-Cognitive Pathology (Graduate Course)
Graduate Pro-seminar in Social Psychology (Weekly Area Meetings, Faculty & Graduate Students)
Practicum in Teaching for Graduate and Undergraduate Teaching Associates

Individual Study, Reading and Laboratory Projects:

I usually have several undergraduate Honors students working under my direction each year, and also supervise 5 to 20 undergraduates and graduate students doing individual study with me, either in special laboratory projects or independent reading.

[REDACTED] (S)6-4

RESEARCH INTERESTS

My research has always focused on trying to understand basic psychological phenomena, from early research on exploratory and sexual behavior (in rats) to test anxiety (in school children), prejudice, affiliation, dissonance, persuasion, motivation, deindividuation, aggression, memory, shyness, pro-social and anti-social behavior, time perspective, madness and more.

The research issues in which I am currently interested center on several fundamental human concerns: time, madness, shyness, and evil.

TIME PERSPECTIVE

The psychological study of temporal perspective investigates the ways in which our learned sense of partitioning experience into the three frames of past, present and future exerts profound influences upon how we think, feel and act. Because of learned biases in over emphasizing one of these three temporal modes, or de-emphasizing one or more or the other time zones, we may distort reality, reduce our personal effectiveness or happiness, create problems in our social relationships, and lead others to misattribute our performance to ability or motivational factors rather than to the subtle, pervasive, and non-obvious operation of our temporal perspective. This issue is studied with a multi-method approach that includes a new assessment instrument (Zimbardo Time Perspective Inventory), large-scale surveys, field studies, interviews, and laboratory experiments. The emerging results have important implications for educational practice, family dynamics, group conflict, creativity, and social problems such as addiction and unwanted teenage pregnancies. Both a sociological and economic level of social class level of analysis supplements the psychological level of analysis of individual behavior. This area of research (begun in 1971 with an original experiment that manipulated time perspectives by transforming future-oriented students into present-oriented hedonists using hypnotic manipulations) advances Time Perspective as a "foundational" process in psychology. My theorizing (elaborated in a Dec., 1999 *JPSP* article) proposes that Time Perspective exerts profound influences across a wide range of human experiences and actions, yet is unrecognized in its power. I argue that TP is the foundation upon which many psychological and social constructs are erected, such as achievement motivation, commitment, responsibility, guilt, goal seeking, planning, and many more. Going beyond experimental and correlational research, I (with John Boyd) have developed a new reliable, valid index of time perspective profiles that give promise of organizing much of the research in this area, while stimulating new research on risk taking, health decisions, and addictive behavior.

THE DISCONTINUITY THEORY OF THE ORIGINS OF MADNESS

A similar concern for integrating individual psychology with social analysis is seen in my long-term interest in discovering the process by which "ordinary, normal" people are "recruited into madness." The conceptual model here seeks to clarify our understanding of the first stages in the process of "going mad," that is, of beginning to think, feel, or act in ways that the person (as actor) or observers judge to be pathological. This research utilizes a social-cognitive approach to understanding how a person's attempt to explain a perceived significant discontinuity initiates a search process, which if misdirected because of the operation of specific cognitive biases, can result in "symptomatic" explanations. These attributions are diagnostic of non-rational thinking.

This work, though conducted over the past 25 years, has been published only recently (in *Science*, *JAP*) and featured in an invited chapter for the 1999 (Vol. 31) issue of *Advances in Experimental Social Psychology*. The research first began by clarifying Schachter's findings on unexplained arousal, then went on to explore the dynamics of emotional arousal without awareness of its source or origins (using hypnosis to induce the physiological arousal and source amnesia). Now its scope is broadened with a new theory about the perception of a significant personal discontinuity in one's functioning that triggers either a cognitive search for causal meaning (seeking rationality) or a social search (seeking normality). The research offers a new paradigm for studying the origins of psychopathological symptoms and makes provocative and proven predictions about how individual explanatory biases in utilizing certain search frames for meaning of the discontinuity can lead to specific forms of pathology, such as environmental search frames leading to phobias, while people-based search frames are more likely to result in paranoid thinking, and body-related search frames to

hypochrodiasis. This research is a creative synthesis of many lines of thinking, combines cognitive, social, personality and clinical psychology in novel ways, and integrates aspects of them into a new integrated whole that promises to stimulate a renewal of research in experimental psychopathology. It also draws parallels between processes that contribute to individual psychopathology and social forms of pathology in ways never articulated previously

THE ROLE OF TECHNOLOGY IN CREATING A SHYNESS EPIDEMIC

My early research on the dynamics of shyness in adults, adolescents, and children opened this area of research to many new investigators in social and personality psychology, as well as in clinical psychology. My current interest now is in the psychological processes that sustain and exacerbate shyness in clinical populations that we treat in our Shyness Clinic.

But my most recent revival of interest in shyness comes from new data that the prevalence of reported shyness is steadily increasing over the past decade to reach epidemic proportions of 50% or more. One hypotheses being explored is that technology is creating an A-Social environment for heavy users of electronic technology, a self-imposed social isolation that contributes to social awkwardness in "face situations," thus promoting avoidance, and thereby feelings of shyness.

POWER OF THE SITUATION AND THE PSYCHOLOGY OF EVIL

The research demonstration of the power of social situations over individual dispositions is highlighted in the now classic Stanford Prison Experiment, along with Milgram's Obedience research (see www.prisonexp.org). This research advances a conceptual view of how ordinary citizens can be transformed into aggressors, into people who act in evil ways. By focusing on social situational variables the can influence or seduce good people to do evil deeds, we move the analysis away from traditional dispositional trait approaches to studying evil. The underlying conception of the transformation of human nature by social forces has led me to new investigations of the nature of the training of young men to become torturers for the State in Brazil, during the reign of the military junta (see Violence Workers, U.C. Berkeley Press, 2002, with co-investigators, Martha Huggins and Mika Haritos-Fatouros). In addition, this analysis has been used to understand how German men, ordinary men, could be made into perpetrators of evil for the Nazi state and help to create the ultimate evil of the holocaust. I also maintain an on-going interest in cults and mind control, under this general rubric of the psychology of evil.

APPLICATIONS OF PSYCHOLOGY

My attempts to enhance the human condition by "giving psychology away to the public" have taken many forms over the years, a few examples of which give a flavor of the old and the new instances. I organized "The Harlem Summer Project" in 1965 that provided "Head Start" type educational opportunities for pre-school and elementary school children in New York's Harlem area, along with an introduction to college life for high school students from this area, and a Black Pride program for all 100 children in our center. My work on police interrogation tactics, vandalism, and prisons led to changes in public and government policy. Consulting with a community organization in New Orleans led to many neighborhood programs to reduce crime and vandalism and increase jobs for qualified black citizens. **The Shyness Clinic** and **The Shyness Institute** (with Dr. Lynne Henderson) has directly applied our research findings and theories on shyness to help treat shy clients, and to train therapists to work with shy clients, as well as to disseminate information and research on shyness to the general public (via our web site, www.shyness.com). The Internet now provides the ideal way to give psychology away to millions of people for free, so my colleagues, Lee Ross and Sabrina Lin, and I have developed a content-intensive web site that provides in depth information from experts about a range of psychological topics related to improving one's self in personal, social and career domains

February 03

STANFORD UNIVERSITY EXTRAMURAL LECTURES, PRESENTATIONS

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Alumni Club Invited Lecturer: New York, Los Angeles, Hawaii, Denver, Washington, Portland, Napa, San Francisco, Cincinnati, Chicago, Rome

Stanford Community Lecture Series

Journalist Interview re: Abu Ghraib Prison Abuses

Eleven answers to eleven questions

Completed May 25, 2004

(b)(6) (b)(7)
[REDACTED], Ph.D.

Professor Emeritus
Psychology Department
Stanford University

QUESTION 1. First, your feeling about and interpretation of the photographs of Iraqi prisoner abuse and degradation? Are they worse than we've seen on the part of Americans in the past? If not, when was it worse? [I can't help but to think of the famous revolver fired to the head photo from Vietnam, though that was taken by a news photographer rather than the abusers themselves as these photos apparently were, and I believe it was a South Vietnamese ally doing the killing, not us. Does any of that make a difference in responsibility? In perception by public?]

ANSWER 1. I was horrified by the graphic images of the descent into Hell by American soldiers and their captives, but I must say I was not surprised by any of them. In fact, I fully anticipate, almost am ready to predict, that the next ones that are released will be much worse, as that process of degradation continued, the soldiers would have become bored with the old stuff and needed to invent new "fun and games" using the Iraqi prisoners as their playthings. From simulated to actual sodomy is my prediction, either forcing the inmates to do it to each other, or worse, American soldiers literally screwing their captives. If so, then the entire lid will be blown off that prison and the rest of America's illegal detainee centers, and the world will insist they all be released or have them fully opened to external inspection.

The images are worse than anything we have seen before by their vividness, by the variety of poses, by the intimate involvement of women soldiers, by the sexual nature, by the homophobic nature -- by US doing such horrible things to THEM. In Cambodia and Vietnam, we saw soldiers carrying decapitated heads, prisoners shot in the head point blank, and the horrors of napalm bombing with that little girl with her clothes burned off screaming.

But we did not have images of the My Lai Massacre, of our good boys murdering civilians, burning them to death, raping them, and then scalping them, those horrific deeds were not captured as "trophy photos," because it happened too fast, and was so unexpected, and they did not have the advantage of inexpensive digital cameras at their ready disposal.

As a postscript, we do have photos of good Americans of an earlier generation posing for postcard photos of black men being lynched or burned alive, interesting parallels of

trophy photographs, and a reminder to those who insist on the special goodness of Americans -- as a group or category. Americans are just as capable of evil deeds as are people from any nationality.

PPS: when I said a process was going on, I meant that we will see that there was a gradual transformation of these good, ordinary men and women into "brute beasts," not instantly like Dr. Jekyll into the Mr. Hyde monster with the magic elixir, but a day by day acclimation to the new role, to expanding the boundaries of possibilities, to perversions of human creativity designing ever new tortures and humiliations. The first steps are gradual, like Stanley Milgram's blind obedience studies, with its first little shock of only 15 volts, the "teacher" stepping up the punishment by only 30 volts with each successive error by the learner. Step by step, good experimental subjects faced the option of perhaps killing or rendering their student-victim unconscious. None would have done it had Milgram started at 200 volts or higher and the "learner" started screaming from the start. Evil begins with baby steps and then escalates into giant ones that demean, degrade and destroy people.

QUESTION 2. How does your 1971 prison study apply to what occurred in Iraq? When you put good people in an evil place, does humanity win or evil? And psychologically speaking, why?

ANSWER 2: There are so many eerily parallels, it is uncanny. Let me outline some of them:

- a. Most of the M.P. reservists had no experience for their job and no training, ditto SPE
- b. There was gradual, daily escalation of degradation ceremonies in SPE, and I bet in Abu Ghraib, here after as, A.G.
- c. Most of the time in SPE guards and prisoners interacted without apparent supervision by prison staff, we watched unseen, in A.G., Brigadier General, Prison Superintendent, Janis Karpinsky was never present nor was there evidence of any command structure at work.
- d. Boredom of our guards was a motivating force to engage prisoners when it was not necessary, like waking them up repeated during the night for "counts" and to play games with them, ditto I am sure in A.G.
- e. Guards were young, ours 18-23, ditto most in A.G.
- f. Prisoners were young men in pre-trial detention -- in both
- g. Guards making prisoners experience sleep deprivation, stripping them naked often, putting bags over their heads, chaining them, putting them in dark solitary confinements, humiliating them in many ways, having them engage in homophobic acts -- in both, etc.
- h. Similar fundamental social psychological processes were at work in our prison and I assume in A.G. such as:
 - * a novel setting for which there are no standard habitual ways of responding;
 - * emergent norms about what is becoming appropriate, acceptable in this new setting;
 - * diffusion of responsibility, no personal accountability, personal anonymity, or known as
 - * "deindividuation" a loss of personal identity in a given place of the guards;

- *dehumanization of the prisons, as "animals" of scum, (made easier in A.G. because of foreign language, customs, different appearance, "they all look the same", and likely their filth and smell from not bathing (our guards said they began to hate the prisoners because they were so foul-- after preventing them from washing);
- *peer modeling -- individual soldiers take the lead in breaking the rules, setting new rules and standards and others follow;
- *group camaraderie, macho culture -- that the female soldiers fell into in order to be accepted;
- *"Us against Them" attitudes;
- *group conformity pressures once some buddies stepped over the line between good and evil to join the group;
- *the mechanisms of "moral disengagement" were operating (See research by Albert Bandura, my colleague in the Psych dept, who developed this notion) who says that usually moral people temporarily detach the morality, put it in neutral, by means of reframing their behavior, generating palliative justifications, altering semantics of the act to sanitize it, and making the victims non comparable to them, and
- * also, the presence of unresponsive bystanders who saw and did not openly dissent or challenge their peers provided tacit approval of the immoral behavior going on in that prison.

When ordinary people are put in a novel, evil place, such as most prisons, Situations Win, People Lose. That is true for the majority of people in all the relevant social psychological research done over the past 40 years. My point has been a simple sermon, preached loudly but too often to deaf audiences. Our individualistically oriented culture explains behavior by focusing excessively on attributes within people -- genes, dispositions, traits, pathologies for the bad and the virtues for the good. However, under many circumstances human behavior is under the control of situational forces, things outside of people that are not typically inside their heads and guts. This is so because we all make what is known as the "fundamental attribution error" when we try to understand the causes of any behavior by simultaneously overestimating dispositional contributions and underestimating the situational -- because of our cultural training in person-centered attributions. They are the coin of the realm in medicine, religion, psychiatry, law and other institutions, as well as character analysis in literature. The alternative is really the public health model that identifies vectors of disease in epidemics and individuals as being carriers but not the source of the pathology. See William Golding's "Lord of the Flies" for a fictional depiction of the power of induced anonymity on the behavior of good little choirboys. Changing their external appearance was sufficient to turn good boys into killers.

Who is to blame for these horrific abuses, one wonders?

Applied to A.G., the M.P. reservists were infected by the disease of war, they were guilty of being carriers, transmitters of pathology, but should not be blamed as the source of the epidemic. For that, the finger of blame goes to the top, not to the bottom, to President Bush for his recklessly impulsive rush to pre emptive war, to Rumsfeld, to Wolfowitz, and to some of the generals for their exclusive focus on the destructively obscene "shock and awe" war campaign while giving little attention or resources to adequate planning of

the post war reconstruction. That task should have been turned over to the UN and our State Dept. because the military knows how to destroy, but knows little about how to create, how to establish "best practices" for prisons in post-Saddam Iraq, for protecting valuable cultural resources, like the national history museum, etcetera.

The military superiors must share the blame with their bosses -- from Bush to Cheney, to Rumsfeld, on down the chain of command --for allowing these torture-interrogation centers to be operated by the CIA and outsourcing the interrogation to private contractor-civilians, perhaps foreigners not accountable to either prison officials, or the military. They gave orders to these army reservists to help "break the will, bend the resistance of the inmates" so that they might confess and give information about terrorism and insurgency in Iraq. I am sure that they also encouraged the MPs to stage the initial photos of abuse so that they could use them in their interrogations as part of the "good cop, bad cop" gambit, by showing them to prisoners and saying the same would happen to them if he turns those violent guards loose on them, which confession would prevent. Once so encouraged, once the threshold for takings such obscene photos was lowered, then in the next phase, the MPs. escalated the sadistic abuses and their documentation for their own perverted pleasure. It appears that General Sanchez not only was aware of these abuses, he was present at some interrogations, as was [REDACTED] who was in charge of the interrogation unit in Cell Block 1A. So they are as responsible as any soldier and should face similar public trial as the soldiers are now doing. And finally, the whole military leadership is responsible for putting Gen Karpinsky in charge of this large prison -- aware of its symbolic value as Saddam's torture center-- with no prior experience in corrections, nor in running such a large prison complex. I believe they purposely chose her because they could then tell her not to oversee the sensitive cell areas where [REDACTED] and the CIA were in charge, and she would have neither the prior experience nor the seasoned confidence to challenge such an order. Any wise prison superintendent knows she or he must have oversight of every domain under their command. So with no top-down supervision of the MPs, and no adequate training for doing their tough job, the army reservists ran amok, just as did the fictional characters in "Lord of the Flies." Who should be held accountable for their misdeeds? Shall we only blame the bad apples or throw in the bad barrel makers for good measure?

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QUESTION 3. In Iraq, a few weeks ago there were some photos of soldiers whose dead bodies were stripped, spat upon, defiled and dragged through the streets of Fallujah and before that in Mosel. There were those unforgettable photographs from Somalia when the bodies of several soldiers were burned and mutilated by a frenzied crowd of insurgents. Do these kinds of events lend to altering the perspective of American soldiers toward their Iraqi captives?

ANSWER 3. The human mind is a learning machine, constantly expanding its perceptual and cognitive universe by everything it learns and experiences, so it quickly adapts to the images of the horrors of war, of terrorism, through psychic numbing that lowers the threshold for imaging doing the same to them. This question also gets at the mental state of the army reservist MPs, who surely bore feelings of revenge for all the terrible things

they had seen Arabs or foreigners do to Americans, from Somalia to the World Trade Center destruction, to the on-going maiming and deaths of their comrades in Iraq. In addition, stress played a role since these young men and women were forced to work 12-hour shifts, which is an enormous load to bear for any job, but amplified greatly by working under sub optimal conditions in that prison. Boredom also is a contributing mental state to the abuses, where as in the Stanford Prison, guards deal with their boredom by using the prisoners as play things for amusement and diversion. One of the MPs reported we were just having fun, we didn't think it was wrong.

QUESTION 4. Not to excuse these ugly and inhumane acts, but doesn't this kind of abuse of captives occur in every war and by both sides?

ANSWER 4. Yes, war is hell, prisons are hell, and war-prisons are especially vulnerable to all that is worse in human nature. War means that supposedly wise old men in power could not negotiate differences and have to use force to get their way, so force, power, domination are the way of the world of the military and who is there to erect barriers to its limits? What is important for me to note is that in the run-up to the war in Iraq, the television media turned it into an exciting, glorious video game, with retired military officers, analysts, and politicians all coming aboard to report on how our technology, military strength, and good old Yankee know-how would win over this little part of the axis of evil.

The majority of Americans took their bait and enthusiastically endorsed all-out war; the first fully initiated aggressive war in American history. But war is never glorious because soldiers are put in harm's way and die or are severely wounded, come home without limbs, or with haunting traumas that will disturb them forever -- and they are the victors. But war puts men, and now women, in an alien place in a time out of time, where their usual identity is suspended, where their uniforms confer anonymity, and the situation either gives permission to, or does not sanction a range of behaviors that are ordinarily taboo, like rape and torture and more.

QUESTION 5. Why is it that when it's Americans inhumanely victimized, the world denounces it and then ignores it--as if anyone bothered to call for justice and punishment against those villagers in Fallujah or Somali. But when Americans act like Natural Born Killers Oliver-Stone-style like this, the world wails at the inhumanity and the talk is that it'll take a generation in the Middle East to get over it? [Does that sound a bit xenophobic? Perhaps, but isn't there some truth to it?] Because the U.S. prides itself in taking the moral high road, when it detours like this do we pay a higher price?

ANSWER 5. Yes indeed, Americans are often seen as taking the high moral ground, as being god-fearing, as generous, kind, open hearted. We have defined our place in the universe as the carriers of democracy, the champions of freedom, the global police force against tyranny, tyrants and evil people. We have come to occupy a unique social-moral-political position in the world. Because of our technological advantages and high standard of living, and having become the only super power left (until China replaces us in the next decade), our leaders dictate terms the rest of the world must follow. So most

of the world does not expect Americans to behave like beasts, and when there are such extreme violations of expectations as in these Iraqi prisoner abuses, they call instant attention to something is unraveled in the American fabric. Of course, those who have closely studied American political history know of the dark underside of the belly of America, in our support of fascist dictatorships around the world as long as they promised to be anti-Communist, of our earlier support of Saddam Hussein when our enemy was Iran, of support for the Afghan war lords when the Soviet Union was our enemy, and so forth.

QUESTION 6. What is the psychology of war take on all of this? Is it that war dehumanizes the enemy, probably out of necessity, and so when face to face with enemy captives, treating them more like animals than humans isn't such a leap of consciousness or morality?

ANSWER 6. Please read Sam Keen's "Faces of the Enemy," for the most succinct answer to such a question. He informs us that a soldier's most powerful weapon is not his gun, but the psychological construction of THE ENEMY. Keen documents how every country creates propaganda that demonizes a given enemy so that the populace will hate that enemy and endorse going to war, and their children-soldiers will want to kill that enemy to protect their homeland-- before even going to battle. Dehumanization is almost a psychological precondition for war, or else soldiers could not kill other young men and women. They must be seen as totally non-comparable, ideally as sub-human, as loathed animals. Once such a mental state is achieved then it is possible for anyone to do anything imaginable to that stigmatized other. In Rwanda, the Hutus leaders told their people that their life long neighbors, the Tutsis, were the "enemy of the state" and must be destroyed. They distributed machetes to the men and clubs to the women who used them to kill nearly a million of their newly designated enemies in three months time-- in up close and personal massacres.

QUESTION 7. What in the world do you think the American soldiers in these photographs were thinking when they were being photographed? Did they have a clue that if the pictures went public there would be shock, torment and outrage over their actions?

ANSWER 7. The simple answer is that they weren't thinking; they were acting without any thought of consequences. It is one thing to engage in such abusive behavior, but quite another thing to document such wrong doing for posterity and prominently feature criminals with their crimes against humanity. The nature of these "trophy photos" is surely amazing in so far as anyone would ever pose for them and would not be aware that they were documentary evidence of their culpability. My research on the psychology of time perspective, how behavior is guided by reference to the past, the present or the future, offers one possible explanation.

As these MPs gradually moved deeper in their new roles and their abuses became common place, merely another part of the daily job description, an emergent norm

developed, a new standard of acceptable behavior developed, that it was all just "fun and games," that they were being reinforced for doing a good job breaking the will of these "animals," as they were told to do in that prison. The usual constraints on personally engaging in taboo behavior come from stopping acting on impulse and thinking about one's past and future. The past contains our obligations, morality, guilt, and religious upbringing, sense of identity over time, commitments to family, friends and higher powers. The future is our repository of consequences, of liabilities, or cost-analyses for current actions, anxiety, ethical concerns, and superego-conscience. But when we are in a highly emotional state, one of intense physical involvement, where other people are similarly energized, and the situation is novel or alien to our habitual behavioral contexts, then something remarkable happens. Our time frame drastically shrinks; past and future become distant and insignificant. We enter into an expanded present-oriented, hedonistic time zone. In that place and in that frame, usual cognitive controls over our behavior are temporarily suspended, so gone are concerns for personal and social accountability, planning, reasoning, causality, responsibility, culpability and morality. We are trapped in the "Mardi Gras Moment." We live fully and exuberantly at the total mercy of powerful situational forces around us, what others are doing, the potency of the stimulus, our emotions unrestrained by reason, and our biological urges. It is like being addicted to drugs, or drunk, at a mob scene, or out of control soccer-football fan riot, or in a rock and roll mosh pit, or some might say, having great sex. One's behavior is totally under the control of momentary situational and social forces and is buffered from your personality, personal history, or anything external to that time and place

(S)G-7 [This is new based on much research and theory I have developed about time perspective, reported in part in an article, written with John Boyd, the reference for which is: ██████████ G., & Boyd, J. N. (1999). Putting time in perspective: A valid, reliable individual-differences metric. *Journal of Personality and Social Psychology*, 77, 1271-1288.

I fully expect that if the Bush Administration gives into public and media pressure to release the next thousand photos and videos, they will represent the fullest depth of degradation that civilized people can reach. It is also likely that this Dionysian revelry will include sexuality among the guards themselves as they embrace lust and document it in pornographic videos for the entire world to see. Indeed, what were they thinking?

QUESTION 8. Obviously there is a level of oppression required to control and interrogate enemy captives that is considered acceptable by international and humane standards. But when does that behavior cross the line and become indecent and immoral, such as in these photos--and why does it cross that line? How far can oppression and interrogation of captives go specifically before it turns that corner into darkness?

ANSWER 8. I studied torturers and death squad executioners, in personal interviews in Brazil and in Greece, through documentary sources and personal experiences of my colleague there. Civil or military policemen were given the job by their fascist military state leaders to get confessions or admissions from the 'enemies of National Security' (the ubiquitous, all-purpose ideological call to arms), or to kill the enemy.

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Departmental Service

Director of Summer School Program (1984-2001)
Founder, Co-Advisor to Stanford Undergraduate Psychology Association (SUPA)
Reactivated, Advisor to Psychology Honor Society (PSI CHI)
Head, Social Psychology Graduate Training Program
Director, Committee Member, Undergraduate Education Committee
Chair, Colloquium Committee
Chair, Member, Various Faculty Search Committees
Major Area Advisor to about 20 students annually
Sophomore Mentor to 12 students

University Service

Faculty Dormitory Resident and Fellow, Cedro Dormitory
Organized, Directed about 2000 students engaged in constructive anti-war activities as part of our
Political Action Coordinating Committee centered in the Psychology Dept., spring 1969
Member, Faculty Senate Steering Committee
Residential Education Guest Presenter, frequently
Human Subjects Research Committee Member
Dean Thomas' Committee on Improving Undergraduate Education
Member, Committee on University and Departmental Honors (subcommittee on Academic Appraisal
and Achievement)
Co-Directed Summer Teaching Program to Improve Quality of High School Psychology
Teaching held at Stanford University (Funded by National Science Foundation)
Organized Several Teaching Workshops in Psychology for California teachers at 4-year colleges,
Community Colleges, Junior Colleges and High Schools, held at Stanford University.
Presenter to Prospective Donors to Stanford University
Faculty Representative to Committee to Renovate Audio-Visual Facilities in Lecture Halls
Professor, Residential Supervisor, Stanford-in-Florence Program, 1983
Liaison, Scholar Exchange and Research Program between University of Rome and Stanford
University

almost always systematic corruption that could have been prevented by oversight, and overhaul of the system. In this case, the military has immediately used the MPs as the scapegoats for their dereliction of duty, for their lack of leadership, for their failure to provide oversight and for their endorsement of a torture-interrogation center in that prison, as well as for their failure to adequately train these youngsters for an incredibly difficult job. Furthermore, as the Bush administration vows to "get to the bottom of this" mess by insisting that we throw these soldiers to the dogs, to deflect the heat that should be searing the administration from top down. I believe the American people need to get to THE TOP OF THIS HORROR and fix blame on the prime barrel maker, George W. Bush, and those in his war cabinet and Pentagon who dumped vinegar into that prison barrel for our good young men and women to sour in and be dumped out as bad apples a few months later.

I hope that Middle America which has so enthusiastically endorsed this war, begins to realize that all war is hell and no war should be entered without the fullest realization of its enormous costs in terms of many lives destroyed, reputations ruined, material sacrifices entailed, and in this case, the world's good will toward America perhaps tarnished for ever.

Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States
v.
SSG Ivan L. Frederick II

1. ACCUSED

I have been informed that COL [REDACTED] is the military judge detailed to the court-martial to which the charges and specifications pending against me have been referred for trial. After consulting with my defense counsel, I hereby request that the court be composed of the military judge alone. This request is contingent on the convening authority accepting my offer to plead guilty. I make this request with full knowledge of my right to be tried by a court-martial composed of officers and, if I so request, enlisted personnel.

a. Typed Name (Last, First, Middle initial)	b. Rank	c. Signature	d. Date Signed
Frederick, Ivan L., II	SSG	[REDACTED]	17 OCT 2004

2. DEFENSE COUNSEL

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

a. Typed Name (Last, First, Middle initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	CPT	[REDACTED]	17 OCT 2004

3. TRIAL COUNSEL

Argument is not requested.

a. Typed Name (Last, First, Middle initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	MAJ	[REDACTED]	20 OCT 2004

4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (x one) ☒ approved ☐ disapproved³

a. Typed Name (Last, First, Middle initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	COL	[REDACTED]	10/20/04

3. When request is disapproved, the basis for the denial must be put on the record. (See MCM, 1984, RCM 903(c))

DD Form 1722, OCT 84

Replaces Edition of 1 Oct 69 which may be used until supply is exhausted

APPELLATE EXHIBIT XXIV

Recognized R. 249 019932

UNITED STATES

v.

IVAN L. FREDERICK II

SSG, U.S. Army

215-56-8739

HHC, 16th Military Police Brigade (Airborne)

III Corps, Victory Base, Iraq

APO AE 09342

OFFER TO PLEAD GUILTY

12 July 2004

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

To Specification 1 of Charge I: Not Guilty

To Specification 2 of Charge I: Guilty, excepting the words, "did place naked detainees in a human pyramid and".

To the excepted words: Not Guilty

To Charge I: Guilty

To the Specification of Charge II and Charge II: Guilty

To Specification 1 of Charge III: Guilty, excepting the words, "be told" and substituting the word "believe".

To the excepted words: Not Guilty

To Specification 2 of Charge III: Guilty, excepting the words, "placing naked detainees in a human pyramid and".

To the excepted words: Not Guilty

To Specification 3 of Charge III: Guilty, excepting the words, "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."

To the excepted words: Not Guilty

To Specification 4 of Charge III: Guilty

To Specification 5 of Charge III: Not Guilty

To Charge III: Guilty

To Specification 1 of Charge IV: Not Guilty

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To Specification 2 of Charge IV: Not Guilty

To Specification 3 of Charge IV: Not Guilty, but Guilty of the lesser included offense of assault consummated by a battery, excepting the words, "striking him with a means or force likely to produce death or grievous bodily harm, to wit: by punching" and "with enough force to cause the detainee to have difficulty breathing and require medical attention", and substituting therefore the words, "unlawfully striking a detainee in the chest with a closed fist."

To the excepted words: Not Guilty

To the substituted words: Guilty

To Charge IV: Guilty

To the Specification of Charge V and Charge V: Guilty

2. I offer to plead to the Charges as stated above, provided that the Convening Authority will take the action set forth in Appendix A and agrees to direct the Trial Counsel to offer no additional evidence on the specifications and charges to which I am pleading not guilty and to not offer additional evidence on the portions of the specifications to which I have excepted language as part of my plea. There are no other promises, conditions, or understandings regarding my proposed pleas of guilty that are not contained in this offer and the quantum at Appendix A.

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

a. I agree to enter into a written stipulation of fact correctly describing those offenses to which I am offering to plead guilty. I further agree that the Military Judge may use this stipulation during the guilty plea inquiry and in adjudging an appropriate sentence. If my plea is not accepted, this offer to stipulate is null and void.

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

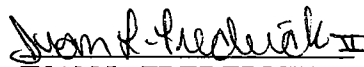
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4. If, before or during trial, any specification is amended, consolidated or dismissed with my consent and the mutual consent of the trial counsel, this agreement will remain in effect.

5. I understand that this agreement will be automatically canceled upon the happening of any of the following events:

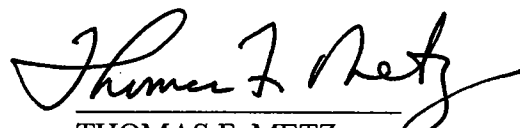
- a. I fail to enter into and sign a stipulation of fact or the stipulation of fact is modified at any time without the consent of both the trial counsel and myself;
- b. The withdrawal by either party, for any reason whatsoever, from this agreement prior to the acceptance of my plea of guilty by the military judge;
- c. My failure to plead guilty;
- d. The refusal of the military judge to accept my plea of guilty or the changing of my guilty plea by the judge during the trial.

 (b)(6)
CPT, JA
Trial Defense Counsel


IVAN L. FREDERICK II
SSG, USA
Accused

The foregoing is (accepted) (~~not accepted~~)

22 AUG 84
DATE


THOMAS F. METZ
LTG, USA
Commanding

UNITED STATES

v.

IVAN L. FREDERICK II
SSG, U.S. Army
215-56-8739
HHC, 16th Military Police Brigade(Airborne))
III Corps, Victory Base, Iraq
APO AE 09342

APPENDIX A (Quantum)

12 July 2004

1. I, SSG IVAN L. FREDERICK II, offer to plead guilty to the Charges and Specifications as stated in my Offer to Plead Guilty provided that:

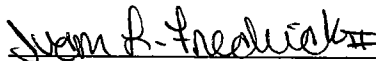
- a. The convening authority agrees to disapprove confinement in excess of eight (8) years.
- b. Subject only to the conditions set out above, any other lawfully adjudged punishment may be approved.

2. The Offer to Plead Guilty, together with this Appendix constitutes the entire agreement between the Accused and the Convening Authority.



CPT, JA
Trial Defense Counsel

(S)(b)-2

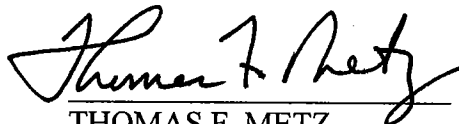

IVAN L. FREDERICK II
SSG, USA
Accused

The offer to plead guilty dated 12 July 2004 and Appendix A (Quantum) is

(accepted) (~~not accepted~~).

22 Aug 04

DATE



THOMAS F. METZ
LTG, USA
Commanding

019936

UNITED STATES

v.

FREDERICK, Ivan L., II
SSG, U.S. Army, 215-56-8739,
HHC,
16th MP BDE, III Corps
Victory Base, Iraq APO AE 09342

)
)
) POST TRIAL AND APPELLATE
) RIGHTS
)
)
)
)
)
)

17 OCT 2004

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

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

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APPELLATE EXHIBIT XXV II

Recognized R. 608

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

6. If neither a punitive discharge nor confinement for a year or more are adjudged or approved, my case will be examined by the Office of the Judge Advocate General for any legal errors and to determine if the sentence is appropriate. The Judge Advocate General (TJAG) may take corrective action as appropriate. This mandatory review under Article 69(a), UCMJ, will constitute the final review of my case unless TJAG directs review by the Army Court of Criminal Appeals.

7. I may waive or withdraw review by the appellate courts (subparagraph 4-5, above) or the Office of The Judge Advocate General (subparagraph 6, above) at any time before such review is completed. I understand that if I waive or withdraw review:

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

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

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

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

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

ULF b. I would like a copy of the record of trial served on: my Defense Counsel, Mr. Gary Myers and myself.

(S)(G-4)

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

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

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11F e. I have been informed that I have the right to retain civilian counsel at my expense. My civilian counsel's name, address, and telephone are as follows:

[REDACTED] & Associates

Weare, NH 03281

(603) 529-[REDACTED]

Fax (603) 529-[REDACTED]

Email: [REDACTED]@aol.com

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Should I later retain different civilian counsel, I will furnish the above information to: Clerk of Court, U.S. Army Judiciary (JALS-CC), 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203-1837.

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

Name: [REDACTED]

Street: [REDACTED]

City, State, Zip: Buckingham, VA 23921

Area Code & Telephone: (434) 969-[REDACTED]

E-MAIL: [REDACTED]@hotmail.com

17 OCT 2004

(Date)

Ivan L. Frederick II
IVAN L. FREDERICK II
SSG, USA
Accused

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

17 Oct 2004

(Date)

(b)(6)-2
[REDACTED]
CPT, JA
Defense Counsel