

**REDACTED
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002553

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NAME AMBUHL, MEGAN M. SPC

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ORIGINAL COPY

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

AMBUHL, Megan M.

(NAME: Last, First Middle Initial)

HHC, 16th MP Bde (ABN)

III Corps

(unit/Command Name)

(Social Security Number)

US Army

(Branch of Service)

Specialist

(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

Victory Base, Iraq/Mannheim

(Place or Places of Trial)

ON

11, 23 and 25 August 2004

(Date or Dates of Trial)

COMPANION CASES:

SGT
SSG
SPC
SPC
SPC
SPC
PFC

[REDACTED]

Transcript R.60 through appellate exhibits

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JUL 25 2004
US ARMY JUDGE

1 MJ: Why would it take 2 weeks to put that person....

2 TC: Sir, out of an abundance of caution, just to make certain
3 that I can get through all the hoops and arrange everything in order.

4 MJ: And [REDACTED] there's a separate issue here.

5 TC: And sir, sorry, one other point. There is, within the
6 theater, there is a trained psychiatrist who has some experience in
7 prisons, has worked in prisons for some time that's actually been----

8 MJ: What's his or her name?

9 TC: I'm sorry, don't know the name, sir. I was just given
10 this----

11 MJ: If I tell you to provide him today, within one week he will
12 be there talking to Specialist Ambuhl and get this thing going?

13 TC: Yes, sir, or the government would concede with the defense
14 request.

15 MJ: Or if I say, "If you don't do it within a week, then you
16 give them Dr. [REDACTED]"

17 TC: Yes, sir. We will have this individual identified. He may
18 be on leave right now, sir.

19 DC: Your Honor, if the court's inclined to rule overall in
20 favor of the defense, I guess that's not good enough for us. Sir,
21 we've gone out and done the legwork, spoken with Dr. [REDACTED]
22 identified him. And not that we've, again, there's an

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1 attorney/client issue there, sir, but we've gone out and done the
2 legwork over 8 weeks ago now. And so, for the government to say,
3 "Well, we'll get to it maybe when this person isn't on the leave and
4 it's convenient with their schedule," assuming, Your Honor, that this
5 person isn't already conflicted in some way by having talked to any
6 number of people involved in this case. I mean, and that's a greater
7 assumption which I'm not sure the government has investigated,
8 whether this person has their own knowledge of the prison.

9 MJ: But you would agree with me, Captain [REDACTED] the state of
10 the law is the defense does not get to pick their experts by name.

11 DC: That's true, Your Honor.

12 MJ: That that's the default.

13 DC: That's true, Your Honor.

14 MJ: Once you've shown necessity.

15 DC: Yes, Your Honor.

16 MJ: But let me, and I don't want to raise a side issue here,
17 because I think it raises practical concerns, is that [REDACTED]
18 [REDACTED] you indicated to me in an 802 that you were PCSing to
19 Virginia?

20 DC: Yes, Your Honor.

21 MJ: And as a matter of fact, you will not be returning to Iraq
22 except periodically to work on this case.

1 DC: That's correct, Your Honor.

2 MJ: Well, practically speaking, since Specialist Ambuhl is
3 going back to back Iraq in approximately a week.

4 DC: Yes, Your Honor.

5 MJ: Well, who's going to be the--because [REDACTED] doesn't
6 live in Iraq, so who is going to--you know, correct me if I'm wrong,
7 but normally, regardless whether it's Dr. [REDACTED] or somebody else, is
8 that if this individual shows up to Iraq and talks to your client,
9 where's her defense counsel?

10 DC: Your Honor, we've discussed this with Specialist Ambuhl and
11 with Dr. [REDACTED]. Our plan at the time, if it's relevant to the court,
12 I guess, Your Honor, is that Dr. [REDACTED] will fly into Kuwait
13 commercial. The TDS office at Camp Doha will make sure that he gets
14 on a flight from a C-130 from Kuwait up to Baghdad where he'll be met
15 by the Legal NCO from the TDS office and Specialist Ambuhl, and she
16 basically will act as his escort and coordinate through the 16th MP
17 Brigade, which is what I would do, to go out to the prison. He will
18 meet with her, utilizing the TDS offices there in Baghdad and then
19 return to the States. Your Honor, I've spoken with him on the phone.
20 I'll continue to do that. As soon as he's approved, we have a CD-ROM
21 of the entire case file to get into the mail to him as soon as he's
22 approved. But it's our position, and we've spoken to him, we don't

1 need to be there. If he's appointed to the defense team, neither Mr.
2 [REDACTED] I actually need to be there to do what's already--we've
3 already toured the prison. We've already talked to Specialist
4 Ambuhl. He can do that without us, Your Honor.

5 MJ: Did you say--maybe I misheard you, that your client is
6 going to be the escort for Dr. [REDACTED] under your theory?

7 DC: Not the escort, Your Honor, but he has access to her there.
8 I mean, they have office space to meet. They have a confidential
9 private area in the TDS office space there. We don't see it as him
10 needing to meet with her for weeks on end, Your Honor.

11 MJ: Major [REDACTED]

12 TC: Just to interject as another option here, because it's
13 relevant to this point. The other option that the government would
14 present is we have a number of forensically trained psychiatrists and
15 psychologists at Walter Reed who have agreed to consult with the
16 accused by VTC, being counseled, could accompany the psychologist at
17 Walter Reed, speak to their client in a confidential manner over VTC.
18 I just present that as an option.

19 MJ: What about sending Specialist Ambuhl to Walter Reed?

20 TC: Sir, that is a possibility, although the current posture is
21 that the accused will remain in theater pending these offenses,
22 absent some order----

1 MJ: But obviously, we're sitting here, there's an exception to
2 that rule.

3 TC: Yes, sir, there are certain exceptions to that rule, they
4 would be limited, and I think this would probably qualify, and we are
5 willing to do that, Your Honor.

6 MJ: Captain [REDACTED], let's revisit the findings portion of the
7 trial.

8 DC: Yes, Your Honor.

9 MJ: I'm looking at your brief and I'm trying to figure out--and
10 it may be just because I'm slow, of how this expertise can be
11 relevant to any findings issue that another trained psychologist
12 slash psychiatrist couldn't also do.

13 DC: Your Honor, I think given the court's continuing dialogue
14 on this issue, certainly a psychologist, any psychologist could
15 probably testify just as easily on that particular issue. For
16 judicial economy, we would ask for Dr. [REDACTED] for sentencing anyway,
17 Your Honor. And so rather than have two experts, if we are
18 entitled----

19 MJ: And I don't want you to just--and Captain [REDACTED], I
20 understand, I mean, feel free to disagree, but I'm just trying to
21 figure out.... On findings, I'm trying to figure out how this guy is

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1 necessary as opposed to any other trained psychiatrist slash
2 psychologist.

3 DC: Your Honor, if Specialist Ambuhl's state of mind becomes an
4 issue with the findings case, Dr. [REDACTED] is in a unique position to
5 have his, basically his experience and background, Your Honor, is
6 what we'd be drawing on as to why it's him. Any other psychologist
7 can just come in and say, "Yeah, I talked to her, and here's what it
8 was." But with somebody who kind of understands the greater picture
9 and the impacts and the effects, they're going to be able to better
10 say, and not that, "Is this normal?" is really an issue for the fact
11 finder, Your Honor, because it's not. But Dr. [REDACTED] experience and
12 education and background are what we're relying on to make him an
13 expert.

14 MJ: I'm not sure you answered my question.

15 DC: I probably didn't, Your Honor.

16 MJ: I'm just saying is, is that on findings, now again, you
17 keep coming back to the way that some of these specifications are
18 charged, because two of them appear to be apparently some type of
19 visual crime, as alleged. By that, I mean, is they're alleging the
20 misconduct as the accused watching others commit misconduct. And
21 again, that's a short version of what they are. But anyway, but

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1 there's mental responsibility and partial mental responsibility on
2 findings.

3 DC: Yes, Your Honor.

4 MJ: And it strikes to the court that any trained psychiatrist
5 can provide that information.

6 DC: Your Honor, the defense is not ready to concede that.

7 MJ: Has there been a mental responsibility board in this case?

8 DC: No, there has not, Your Honor.

9 MJ: So....

10 DC: Your Honor, I guess because I see the mental
11 responsibility--the defense position with the mental responsibility
12 is not--it's the inaction, sir, that's what we want to explain, why
13 there is, and each of them, sir, did participate in a photograph.

14 MJ: That at least implies some acts.

15 DC: Yes, sir, as charged, it does.

16 MJ: The reality may be something different.

17 DC: The reality----

18 MJ: That's factually specific.

19 DC: Yes, Your Honor.

20 MJ: I'm just going by as charged.

21 DC: Yes, sir.

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1 MJ: And similarly, and on the dereliction of duty charge,
2 arguably, it's very broad, but I suspect--well, I don't know, there
3 may or may not be actual acts encompassing that.

4 DC: Well, we received a bill of particulars from the government
5 on that, Your Honor, and I think everything that's alleged in the
6 bill of particulars is not reporting, failure to report, failure to
7 report, and not being the dereliction, as charged.

8 MJ: And is she a military policeman?

9 DC: She is, Your Honor.

10 MJ: But the other two appear to be the inaction.

11 DC: Yes, Your Honor.

12 MJ: And those are offenses.

13 TC: Yes, sir.

14 MJ: Okay, I might add, that's not before me.

15 TC: Yes, sir. It may be before you again.

16 MJ: Well, I've just observed the charges, 93 and a 134 offense.

17 TC: Yes, sir.

18 MJ: Not as a 92 offense.

19 TC: Yes, sir.

20 MJ: And as an aside, in the bill of particulars, for the 92
21 offense, does that include the same thing as in Charges III and IV?

22 TC: I believe so.

1 DC: Yes, it does, Your Honor.

2 TC: But it's not exclusive, but it does include them.

3 MJ: But that issue is not before me at this time, so.... But
4 government, I'm concerned, and both sides, I'm concerned with two
5 practical issues here. One is that if I deny the motion for this
6 particular person and I tell the government to do what you've already
7 promised you're going to do, I have concerns about how expeditious
8 this process has been.

9 TC: Yes, sir, that's a valid concern.

10 MJ: That's my concern to you.

11 TC: Yes, sir.

12 MJ: And for defense, I have real concerns, this is your call,
13 not my call. I have real concerns for this type of--developing this
14 type of testimony with no defense counsel with the accused.

15 DC: I understand, Your Honor.

16 MJ: Now I'm not telling you how to break eggs.

17 DC: I understand, Your Honor.

18 MJ: But I have concerns about practically how you do this
19 without somebody being there.

20 DC: Your Honor, the defense understands the court's concerns
21 and we'll revisit that issue.

22 MJ: Okay.

1 TC: Sir, we can address the court's concern about the pace of
2 the assistance. Again, I think a deadline and then contingent upon
3 the deadline, the appointment of what the defense has asked for would
4 be appropriate, that if we don't provide this expert by X day, then
5 the court would order the appointment of Dr. [REDACTED]

6 MJ: For now, based on the record before me and the evidence
7 presented, is I'm not going to direct that Dr. [REDACTED] become a member
8 of the defense team. But Major [REDACTED] given your generous offer, if
9 by 1 September, identify an individual by name with qualifications,
10 provide that to the defense. And defense, this person will be part
11 of the defense team. And then defense, you decide whether or not
12 this person is acceptable or not. Understand what we're talking
13 about here is what I consider a threshold inquiry. And I'm not
14 excluding Dr. [REDACTED] forever. I'm simply saying based on what's
15 before me now, it appears to be pretty speculative whether he's a
16 necessary witness. And I think quite frankly, there is no showing
17 that he's necessary for any type of merits with what I have before
18 me.

19 Now, if this psychologist or psychologist that the
20 government gives you identifies issues, then obviously, you may need
21 somebody more experienced in a prison environment. And so what I'm

1 saying is, I'm perfectly willing to revisit the situation upon a
2 greater showing of necessity, but I just don't see it at this point.

3 But Major [REDACTED] we're talking about one week from today.

4 TC: Yes, sir.

5 MJ: By name and within, once the defense says, "That's okay,"
6 by one week, that individual, absent extraordinary circumstances,
7 will personally meet with Specialist Ambuhl.

8 TC: Yes, sir.

9 MJ: And if necessary, for Specialist Ambuhl to go to Walter
10 Reed. Is the person out of Walter Reed?

11 TC: Yes, sir.

12 MJ: You can take the mountain to Mohammad, whichever way you
13 want to do it.

14 TC: Yes, sir.

15 MJ: But this, "She has to stay in theater," doesn't cut it.

16 TC: Yes, sir.

17 MJ: And I expect this all to be resolved within 2 weeks, if
18 not, I'm not going to issue a contingent order at this point, but
19 within 2 weeks, if there is any problem, let me know by email and
20 I'll answer you by email of what we'll do, assuming that's acceptable
21 to both sides.

22 TC: Understood, sir.

1 DC: Yes, sir.

2 MJ: So you understand where we're at here, Captain [REDACTED] 2

3 DC: Yes, sir.

4 MJ: For now.

5 DC: Yes, sir.

6 MJ: I'm denying your request for this specific expert because
7 the court finds you've failed to establish sufficient necessity of
8 why this person is required at this point in time, based on the
9 evidence presented to me here. But since the government, since you
10 will have access to a psychiatrist, psychologist....

11 TC: Yes, sir.

12 MJ: If the facts change or the government doesn't get this
13 person within a period of time we talked about, if either of those
14 facts occur, we will revisit this issue. And after this person does
15 his evaluation, if you wish to revisit the issue, I'm certainly
16 willing to reconsider based on the circumstances of the case.

17 Any questions about where we're at with this issue?

18 TC: No, Your Honor.

19 DC: No, Your Honor.

20 MJ: Next motion. I have Appellate Exhibit VI, motion to compel
21 discovery. Government, do you have a written response?

22 ATC: We do not, Your Honor.

1 MJ: Let's review some of the bidding here. We discussed in the
2 802 there appear to be three outstanding investigations, although
3 apparently we have only two now?

4 ATC: That's correct, Your Honor.

5 MJ: And that deals with the [REDACTED] investigation, the
6 [REDACTED] investigation, and what's called the [REDACTED] investigation?

7 ATC: That's correct, Your Honor.

8 MJ: And apparently, the [REDACTED] investigation has been
9 released because it was on TV yesterday.

10 ATC: That is correct, Your Honor.

11 MJ: So you're going to provide a copy of that to the defense.

12 ATC: Yes, Your Honor.

13 MJ: And the [REDACTED] and [REDACTED] investigation?

14 ATC: I do not believe either one of those has been released yet,
15 but they'll be provided due to the court's ruling in their companion
16 cases by no later than 10 September.

17 MJ: And then the last issue, well, not necessarily the last
18 discovery issue, but the other outstanding discovery issue deals with
19 the classified server in the prison is being looked at one page at a
20 time by one CID agent?

21 ATC: That's correct, Your Honor. The government has already
22 made phone calls regarding that situation.

1 MJ: Okay, but when can you get that information?

2 ATC: Based upon the court's ruling in the companion cases....

3 MJ: Not based on what I say, what are the people doing it

4 saying?

5 ATC: Well, I expressed the concerns of the court to people.

6 They did not give me a deadline in return to say, "We'll have it done

7 by X date." I told them what dates the judge said to have it done

8 by.

9 MJ: What did they say, okay, what did they say X date is? Or

10 is that an unknown?

11 ATC: That's an unknown, sir.

12 MJ: They say, "It will be done by X date."

13 ATC: Well, what I was told when I talked to the individuals

14 doing this 10 days ago, is if it's just him doing it, it will be

15 December of this year.

16 MJ: Okay.

17 ATC: If he gets additional people, he believes that can be

18 accomplished in a much quicker time span.

19 MJ: And your follow up calls?

20 ATC: What I did was I told them what the judge had ruled and

21 they said, "All right, we'll get going on it." They didn't say, "All

22 right, that changes the----

1 MJ: Okay, well, the drop dead date on that is 1 December.

2 ATC: Right.

3 MJ: Okay, but understanding that on or about the 21st of
4 October, because we're going to have the next hearing in this case
5 and other cases on or about that time, is I want a status evaluation
6 of this. And I've said this in other cases, but since each case is
7 different, you understand this and make sure they understand this,
8 that if this comes into another, "We'll get to it when we get to it,"
9 then I'm seriously going to consider dismissing this case until the
10 government completes its investigation. Okay?

11 ATC: Yes, Your Honor.

12 MJ: Captain [REDACTED] rather than going through page by page,
13 what don't you have that you think you're entitled to?

14 DC: Your Honor, what is not mentioned in there but was
15 something that I believe the court had mentioned in a companion case
16 was the internal CID investigation of the actions of its own agents
17 with regard to this investigation.

18 MJ: Do you know anything about that, government?

19 ATC: Well, it's not the CID's actions in regards to this
20 investigation, it's alleged abuse by CID agents at Abu Ghraib.

21 MJ: Okay, so this is another variation of the theme, it started
22 with looking at the MPs with General Taguba.

1 ATC: Correct.

2 MJ: And then General Fay starts looking at the MI folks.

3 ATC: That's correct.

4 MJ: And now we've decided to have somebody else look at the CID
5 folks.

6 ATC: There were certain allegations that specific CID agents had
7 done specific acts out there.

8 MJ: Okay, so this is more of a focused criminal investigation.

9 ATC: That's correct, Your Honor.

10 MJ: And when did this investigation start, on or about?

11 ATC: From what we understand, it's been completed. I just do
12 not have a copy. I sent email correspondence to the CID agent to the
13 office that ran the investigation, which is in Tikrit, Iraq. I've
14 not received a response yet from that. I will renew my request
15 through them, but then I will also ask CID higher headquarters to
16 provide a copy.

17 MJ: Captain [REDACTED] I understand that you have to request
18 these things.

19 ATC: Right.

20 MJ: They are to provide that not later than 10 September.

21 ATC: Okay.

1 MJ: And I don't care what form it's in. When you tell me the
2 investigation is complete, because all we're talking about is
3 crossing T's and dotting I's and making things look pretty.

4 ATC: That's correct, Your Honor.

5 MJ: And then vetting it up for--there's no security
6 classification issue, is there?

7 ATC: No, Your Honor, and it's not a question of vetting or not
8 vetting, it's just, I haven't been provided with it.

9 MJ: Okay, 10 September.

10 ATC: Yes, Your Honor.

11 MJ: And when I tell you these dates, Captain [REDACTED] I expect
12 you, if you don't get it, I was about to say "when you don't get it,"
13 but that would be an unfair comment, if you don't get it, I expect
14 you to let me know and we'll go from there.

15 DC: Yes, Your Honor.

16 MJ: What else?

17 DC: Your Honor, specifically, it may assist the court in
18 looking at enclosure number 5 to the defense motion. Your Honor, not
19 only has the defense not received those----

20 MJ: Let me....

21 DC: Yes, Your Honor.

22 MJ: Trial counsel, do you have a copy of this document?

1 ATC: If the enclosure we're talking about is the request for
2 declassification for ICRC.

3 MJ: 26 June 2004.

4 ATC: That's correct, I do have that.

5 MJ: Do you have the documents referenced in here?

6 ATC: We have already provided at least one of these documents.

7 The government's position on these is, the ICRC is a private
8 organization that the defense can go and request these documents from
9 themselves.

10 MJ: Let me ask you this, well, let's go through these one at a
11 time. One alpha would appear to be not an ICRC document. Am I
12 right?

13 ATC: That is correct, Your Honor.

14 MJ: Has that been provided to the defense?

15 ATC: It has not.

16 MJ: And why not? And again, this document talks about
17 declassification. I'm going to ignore that issue temporarily,
18 because that's different than access to documents. Does this
19 document exist?

20 ATC: I'm unaware if it does or not. To be honest, since the
21 accused's case has been following along three other co-accused's
22 cases and it was just arraigned, I have not necessarily worked on the

1 specific discovery request in this particular case. So, I do not
2 know if this particular document exists or not.

3 MJ: Okay, how about one bravo?

4 ATC: I'm not sure if that exists yet, either.

5 MJ: But none of these have been--one Charlie?

6 ATC: I'm not sure if that exists yet or not.

7 MJ: Any of these--none of these look like to me like ICRC
8 documents.

9 ATC: That's correct, those three are not.

10 MJ: So I didn't understand your original comment about ICRC.

11 ATC: I was mistaken. I thought we were talking about--there's
12 also a request out there for the ICRC reports themselves, and that's
13 been given to--you're right, I was mistaken.

14 MJ: And Captain [REDACTED] you seem to know, what's your source
15 of these documents' existence?

16 DC: I believe that the legal clerk or the former legal clerk
17 for the 16th MP Brigade does have copies of them, Your Honor. But
18 because they are classified, they could not be distributed. They
19 just don't have them, Your Honor.

20 MJ: But you have a clearance, right?

21 DC: I do, Your Honor, however, the request for declassification
22 comes into play for two accounts, one, we'd like to utilize those

1 documents with witnesses and in talking to witnesses. We believe
2 that they may provide a basis of knowledge. The second basis, Your
3 Honor, is that because she is pending charges, Specialist Ambuhl, her
4 security clearance has been revoked and she is not able to review any
5 secret documents.

6 MJ: Well, I suspect it's really been suspended.

7 DC: It has been suspended, Your Honor.

8 MJ: But you've had an opportunity to review these documents.

9 DC: I have, Your Honor, briefly, Your Honor. I do have the
10 opportunity to go look at them when the 16th MP Brigade legal office
11 can find them.

12 MJ: So what I'm hearing both sides tell me, at least Captain
13 [REDACTED] knows where these documents are and has looked at them.
14 Captain [REDACTED]----

15 ATC: That's more than what I've done.

16 MJ: But the real issue here is whether they should be
17 declassified. Is there any--does the government have any response to
18 whether they intend to declassify these documents?

19 ATC: We'll put them in for a declassification review, Your
20 Honor. At this point, since I haven't seen them, read them----

1 MJ: But you have to understand, this document is really not a
2 discovery document, is what you're asking for. You're asking for
3 them to be declassified to prepare.

4 ATC: Right, so it's not a discovery issue as much as a
5 declassification issue, yes, sir.

6 MJ: And let me, and I really hate to ask this, is how long does
7 a declassification process take?

8 ATC: Depending on the priority of what's being asked to be
9 declassified, the issue that we have in this case is, a vast majority
10 of documents need to go through a declassification review, beginning
11 with the 6,000 pages of the General Taguba report, followed by
12 various documents that are in our joint intelligence note there at
13 Camp Victory, and to include, obviously, these three memorandums. So
14 what we elevate are, these are priority documents, will determine how
15 soon we can have it turned around. If the defense is saying, "These
16 are three priority documents for us," then we'll put them at the top
17 of the list. Otherwise, they're going to go into the mix of a lot of
18 declassification.

19 DC: Your Honor, they can certainly go into the mix. They're
20 not smoking gun-type documents. However, we would ask the court to
21 note that we did put our request in on the 26th of June.

1 MJ: Now, I understand Captain [REDACTED], you and Major [REDACTED]
2 are juggling all these balls. Captain [REDACTED] is the only one who's
3 asked that these be declassified?

4 ATC: That's correct, Your Honor.

5 MJ: Put it at the top of the list. There's only three
6 documents. It doesn't strike to be--and it would it be fair to say
7 that some of these documents were classified just out of habit, or
8 happened to be put on a classified server and became classified, as
9 opposed to any type of scrutiny?

10 ATC: That's correct. I believe----

11 MJ: These appear to be internal legal memorandums.

12 ATC: Well, what I believe the posture, from what has been
13 explained to me of the U.S. government towards ICRC, because this is
14 a request from ICRC, is they provide confidential reports to the U.S.
15 government and they like to receive that same confidentiality back.
16 So I believe that----

17 MJ: Confidential would be a need to know basis.

18 ATC: Right.

19 MJ: Which doesn't require....

20 ATC: There's a lot of inaccuracies when it comes to the
21 classification process.

22 MJ: Put these at the top and get them to the....

1 ATC: Yes, Your Honor.

2 MJ: But you've had copies--you've had a chance to see them,
3 Captain [REDACTED] so you still can prepare your case. You just
4 wanted to ask other people about them.

5 DC: Yes, Your Honor. Your Honor, this may be a good segue.
6 There are two additional documents that we've asked to be
7 declassified, and those are contained in enclosure 7, Your Honor,
8 which is the 1 July request for evidence from CID, and that would be
9 at item 1a.

10 MJ: Government, what's the position--well, let's break this up.
11 Captain [REDACTED], what do you mean by the four memoranda included in
12 this piece of evidence?

13 DC: Your Honor, I don't believe that the--I didn't want to
14 specify it more because I didn't know how the government is about
15 what's classified and what's not. My understanding is that if I say
16 what they are----

17 MJ: What piece of evidence are you talking about?

18 DC: The item number that's listed there, Your Honor, that's the
19 CID case file evidence.

20 MJ: Okay, I got it. Do we know what we're talking about here?

21 ATC: I personally have not gone back to review that piece of
22 evidence.

1 DC: I can give the court general information, sir.

2 MJ: No, I suspect both sides can figure out what this is.

3 ATC: Right, but as I stand here, the government has no issue in
4 putting it in for declassification.

5 MJ: And this logbook?

6 ATC: Our position on that is, it is available at the BIAP CID
7 office, and they're asking for a copy of it. They can send down
8 their 27 Delta and copy it.

9 MJ: How many pages is this logbook?

10 ATC: It's many, I mean, it's a logbook.

11 MJ: What's a logbook?

12 DC: Your Honor, the logbook is of different movement transfers
13 of prisoners from different parts of Tier 1A and Tier 1B, a logbook
14 of medical treatment that certain prisoners may have received on or
15 about with the dates and the people that treated them. Your Honor,
16 if I can add to that, with regard to most of the rest of that memo,
17 the defense has not received the evidence, and I guess we could deal
18 with the electronic items separately. With regard to the hard copies
19 of documents, as I represented to the government on previous
20 occasions, CID will not allow us to look at these documents without
21 the following conditions: that the evidence custodian be there with
22 the evidence, which is located at one spot in Baghdad; that the

1 actual case agent be there, who is located up at Abu Ghraib. It
2 can't be any agent, it must be the case agent. That the trial
3 counsel or a representative of the government be there; and that
4 Specialist Ambuhl and one of her attorneys be there. So those are
5 their requirements, sir, which is why we've asked, as noted in there
6 for judicial economy, just to give us copies.

7 The other issue, Your Honor, is that Specialist Ambuhl was
8 entitled to go last week. CID would not let her copy anything. So
9 she put aside the items she wanted copied. CID or a government
10 representative copied one set for Specialist Ambuhl and a copy for
11 themselves, Your Honor, and that doesn't give the defense equal
12 access when the government is--and certainly, they have access to
13 those documents, too, but were making an exact copy of what
14 Specialist Ambuhl has copied does not help the defense, Your Honor.
15 At this point, we're asking the court to order that we have this
16 stuff on CD-ROM so we can look at it at our leisure without the
17 watchful eye of the government.

18 ATC: Your Honor, I have no----

19 MJ: Firsthand knowledge of this----

20 ATC: Right, I have no idea.

21 MJ: Let me ask you this. Would it surprise you that CID would
22 act in such a way?

1 ATC: CID is always reluctant with all their pieces of evidence.
2 From what I understand, that their requirements are that a case
3 agent, not necessarily the case agent be there, and the evidence
4 custodian.

5 MJ: But Captain [REDACTED] let's deal in the real world. You
6 say they can just send over one of their legal clerks to do all the
7 copying, and so Specialist [REDACTED] knocks on the CID door, "I'm here
8 from TDS. I want to copy all of these documents. Can you show me
9 where they are, and where's your copy machine?" And they're going to
10 say what? "Sure, come on in."

11 ATC: Well, they'll probably have the evidence custodian there
12 for obvious reasons. I mean, the destruction of evidence,
13 potential...there's a lot of--I mean, it's not an unreasonable
14 request to have your evidence custodian be with someone who's going
15 through the evidence in a case file.

16 MJ: Yeah, but I understand what you're saying, and I'm not
17 saying it isn't unnecessary and unreasonable, but it's kind of like
18 they want it both ways. They want to make it as difficult as
19 possible for somebody else to copy it, but they don't want to copy it
20 themselves.

21 ATC: Yes, Your Honor. I mean, it's not an unsubstantial amount
22 of stuff they're asking for.

1 MJ: Does that mean it's a substantial amount?

2 ATC: Yes, it is.

3 MJ: Okay, what you're saying to me, trial counsel, is that the
4 defense, ignoring the scanning issue temporarily, you're saying
5 there's no problem with copying this stuff, now we're just talking
6 about who's going to turn on the machine and do it.

7 ATC: Right, it's a manpower issue. But at the same time, the
8 government doesn't believe we have to do every little thing for the
9 defense, either.

10 MJ: No, you don't, you don't, but you're going to have to do
11 this.

12 ATC: Whatever the judge wants us to do, that's what we're going
13 to do.

14 MJ: I'm just saying is, I understand there are concerns in--and
15 I'll take judicial notice of personal dealings with CID, but what
16 Captain [REDACTED] represented doesn't strike to me as out of the norm.

17 ATC: That's correct.

18 MJ: And so just tell them to do it.

19 ATC: Okay.

20 MJ: They want to make sure they know exactly everything the
21 defense is getting, then they do it. And if they want to copy each
22 thing the defense individually copies, which causes a little concern,

1 also, then they just copy everything and give a copy to the defense.
2 And once one copy is made, government...how many pages in this
3 logbook?

4 ATC: We're talking several thousand pages of stuff.

5 DC: Sir, the logbooks are only, there's about three--and I
6 don't have a copy of that, I think there's three or four logbooks
7 with may be 30 to 50 pages each in the book.

8 MJ: Okay, based on that representation, you're talking about
9 less than 200 pages.

10 DC: I am, Your Honor.

11 MJ: Well, then what I want you to do is you specify to the
12 government exactly which logbooks you're talking about, because you
13 appear to be talking about two different sets. He's talking about a
14 library, you're talking about a short----

15 DC: Your Honor, I want the ones that are identified in that
16 memo as the item. That's how CID has them marked is by evidence
17 number.

18 ATC: Okay, we'll go by evidence number.

19 MJ: Yeah, okay, well, she's saying it's less than 200 pages.

20 ATC: Okay.

21 MJ: Are these logs classified?

22 ATC: No, Your Honor.

1 MJ: I'm not going to order the government to scan documents.
2 They provide them to you in either a hard copy or other kind of copy.
3 DC: Yes, Your Honor.
4 ATC: I can short circuit the whole discussion about the----
5 MJ: Electronic stuff?
6 ATC: It'll happen, I just...once again.
7 DC: Your Honor, I guess with regard to the electronic items,
8 those are items that we don't even have access to because they're at
9 the USACIL lab. And it may assist both the government and the
10 defense if the court would order a deadline as to when those need to
11 be produced, because USACIL, it's my understanding that they don't
12 prioritize things unless there is a date, Your Honor.
13 MJ: We're talking about items 1 Echo through 1 M.
14 ATC: That's correct, Your Honor.
15 MJ: Is Captain [REDACTED] correct, that these are sitting at
16 USACIL for one of their....
17 ATC: She is correct that they're sitting at USACIL and USACIL
18 usually doesn't act without a court date, yes, Your Honor.
19 MJ: What do they do?
20 ATC: USACIL?
21 MJ: Yeah.
22 ATC: In which department?

1 MJ: Well, I'm just saying, is you apparently sent these things
2 to them to be copied, correct?

3 ATC: No, those were sent to them to go through each one of these
4 things. So they take the thumb drive, they go through each document.
5 They run their computer program that, you know, deleted items, all
6 that.

7 MJ: Okay, let's do the short version, 10 September they are
8 either produced or tell me why they're not doing their job. Is this
9 evidence I suspect that is more government evidence than it is
10 defense evidence?

11 DC: I believe there may be exculpatory evidence on the entire
12 hard drives, Your Honor. What CID did when they first did their
13 analysis----

14 MJ: Which hard drive are we talking about here?

15 DC: We're talking about Corporal [REDACTED] hard drive. We're
16 talking about Sergeant [REDACTED] thumb drive. We're talking about
17 CD-ROMs that were seized from other co-accused. And the CID's case
18 file only includes what CID thought was important, Your Honor, and we
19 think there may be some exculpatory information on those hard drives.

20 MJ: Okay, but it would seem to also put--most of it would
21 appear to be either irrelevant or inculpable or a chunk of it could

1 be--but of course, you don't know because you don't know what's on
2 it.

3 DC: Yes, sir.

4 MJ: Got it. Okay. I mean, if they want to do it--no, we don't
5 need to beat this horse. You understand where we're at, Captain

6 [REDACTED]

7 ATC: I understand, Your Honor.

8 DC: Your Honor, additionally----

9 MJ: Still on that enclosure?

10 DC: No, Your Honor, done with that enclosure. Your Honor,
11 additionally, in a prior hearing for one of the co-accused in this
12 case, the court had addressed the issue of the AARs from CID that
13 will not be released without a court order.

14 MJ: Okay, that's easy. Give them copies of the AARs. CID is
15 to copy them and provide them to the defense.

16 ATC: Yes, Your Honor.

17 MJ: Next?

18 DC: Yes, Your Honor. With regard to enclosure 4, which is a 17
19 June discovery request, it's a very minute subparagraph, Your Honor,
20 so the court doesn't necessarily have to look at the subparagraph,
21 but what it asks for are the government contracts with CACI and Titan
22 and other organizations where civilian contractors did

1 interrogations. Those contracts have not yet been provided, Your
2 Honor.

3 MJ: Trial counsel, what's the government's position on the
4 contracts?

5 ATC: I've already started the process of tracking those down.
6 They're classified contracts, and that's been one of the problems of
7 getting them. I believe that we have them now, and now it's going to
8 be a declassification issue once again. Now obviously, Captain
9 [REDACTED] and Mr. [REDACTED] both have security clearances, so it's a
10 matter of putting it on a CD and passing the information along to
11 the----

12 MJ: Now, it's my understanding is the classified documents in
13 this case are to be maintained in two places, Baghdad and Washington
14 D.C.

15 ATC: That's correct.

16 MJ: At this point, you foresee it to be relatively short in
17 time to provide that, at least in a classified form to the defense.

18 ATC: That's correct, Your Honor. [Pause.] My 27 Delta has
19 informed me that when we went and asked for the contracts, in
20 particular, for the linguists that the defense has requested, instead
21 of having one overarching contract, they have contracts with each of
22 the linguists, so we're talking about hundreds of linguists here. If

1 they can identify exactly who they're asking for, otherwise, we're
2 just going to have a lot of information.

3 MJ: Well, let me back up, because you indicated Titan
4 Corporation, CACI, and SOS are the primary--are we talking about
5 linguists or interrogators?

6 DC: Both, Your Honor, civilians that worked there at the time.
7 My understanding was that the U.S. government had overriding
8 contracts with these corporations that is going to tell them what
9 their expectations are, and that's----

10 MJ: Okay, so we're talking about at this point is the big
11 contracts, and then subcontracted individual linguists, that's a
12 different issue.

13 ATC: Right, correct.

14 DC: Yes, Your Honor.

15 ATC: And as far as linguists or interrogators, CACI provides
16 interrogators. Titan and SOS provide analysts and interpreters.

17 MJ: Then apparently, since I have a motion which I haven't
18 gotten to yet, there must be some type of contract for each of those
19 three entities, since----

20 ATC: That's correct, they are contracted with the United States
21 government.

22 MJ: And those are in U.S. government hands, obviously.

1 ATC: Yes, in Baghdad, yes, sir.

2 MJ: Provide the overall contracts. If you need to explore that
3 further, Captain [REDACTED] separate issue, we'll get there.

4 DC: Your Honor, again, I guess just to put on the record, we
5 would request the same names and general counsel contact information
6 that the government has agreed to provide to the other co-accused in
7 this case. And we certainly would narrow it down at a reasonable
8 basis once we were provided with that information, as well.

9 MJ: Do you have a copy of those third party motions?

10 ATC: I do. [Pause.] My apologies, Your Honor, I don't have the
11 one for CACI with me this morning. I have the protective order for
12 Titan.

13 MJ: I'll just note for the record that Titan Corporation, SOS
14 International Limited and CACI have requested that subpoenas be
15 quashed. You don't have the CACI one?

16 ATC: Not with me, Your Honor. I can provide it to the court
17 later.

18 MJ: We'll add that as Appellate Exhibit IX, the Titan brief as
19 Appellate Exhibit VII, and the SOS brief will be VIII, and we'll add
20 CACI. You've seen these documents, Captain [REDACTED]

21 DC: Yes, Your Honor.

1 ATC: Are you including the Titan brief, suggested protective
2 order?

3 MJ: No, because I'm not going to sign it.

4 And Captain [REDACTED] you're familiar with the court's
5 ruling in the companion cases on this issue?

6 DC: Yes, Your Honor.

7 MJ: Do you have anything to add or request why this issue
8 should be handled any different in this case as it did in the other
9 cases?

10 DC: No, Your Honor.

11 MJ: Government, similar question.

12 ATC: No, Your Honor.

13 MJ: Based on the representations of counsel and the briefs
14 filed by the third parties, the court directs that the government
15 provide names of the personnel involved during the relevant
16 timeframe, which is August through....

17 ATC: August through December.

18 MJ: August through December of employees of these companies
19 that worked at Abu Ghraib.

20 ATC: Yes, Your Honor.

21 MJ: And once you provide the names, the defense is free to make
22 contact with them through the general counsel of the respective

1 companies. And would it be fair to say that the general counsel
2 point of contact would be the person who signed the brief?

3 ATC: That's correct, Your Honor.

4 MJ: And you have copies of all the briefs, right?

5 DC: Yes, Your Honor.

6 MJ: And like I said, we'll add the CACI brief as Appellate
7 Exhibit IX.

8 Any other discovery?

9 DC: Yes, Your Honor. There are--it's the defense's
10 understanding that there were interrogation plans maintained by
11 either MI or MP personnel at Abu. Those interrogation plans
12 basically were a file folder for each detainee that talked about what
13 was required for each detainee regarding sleep management, food
14 management, exercise, those types of things, Your Honor.

15 MJ: Were these kept as separate--where were these kept?

16 DC: They were kept at Abu, Your Honor, and defense has
17 requested production or access to them from the government, and we've
18 not been provided access to them. We've listed in the 17 June
19 discovery request a list of detainees with their detainee number,
20 Your Honor, and we would limit that request to those individuals.

21 ATC: Part of this issue is tied to the CID SIPR net, because
22 that's where this stuff resides.

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1 MJ: It's been reduced to electronic copies, you said?

2 ATC: That's correct.

3 MJ: I think Captain [REDACTED] seems to imply to me that it was a

4 hard copy. Captain [REDACTED] you believe it was a----

5 DC: I believe it was a hard copy, Your Honor, but that may have

6 been on the SIPR net, as well.

7 ATC: I haven't seen any hard copies. I do know it's on the SIPR

8 net.

9 MJ: For all these people? You know what she's talking about?

10 ATC: Yes.

11 MJ: You believe those notes were eventually put in an

12 electronic form and then on the SIPR net?

13 ATC: That's correct.

14 MJ: So when you provide the SIPR net information, it should

15 have all this in it.

16 ATC: And any other interrogation plans that might be hard

17 copies, CID did seize all of the MP files from Abu Ghraib. Now, as

18 accurate as those are and as completed as those are, and those have

19 been at the BIAP CID office. Now some of these have been available

20 to the defense. There is a CD-ROM that's been available both in

21 Baghdad and in Washington D.C. with some of these interrogation plans

22 and reports, and those have been available since the first week of

1 July. And I made that known that I was bringing the classified
2 Taguba report and a CD filled with things that I had received from
3 our intelligence node.

4 MJ: Have you had an opportunity to review all this stuff that
5 he's talking about?

6 DC: I will concur with co-counsel, Your Honor, my
7 understanding----

8 MJ: Well, he's really not your co-counsel.

9 DC: I'm sorry, I meant with Mr. [REDACTED] Your Honor.

10 MJ: Oh, okay.

11 DC: I'll check with Mr. [REDACTED] who's in Washington D.C., but I
12 know that there were hard copies at the prison, because that's the
13 day-to-day files that they used. So an interrogation plan might have
14 come down on the SIPR, someone might have gotten it, but they
15 certainly weren't running to the SIPR to input their information
16 every time a detainee, you know.....

17 MJ: But what Captain [REDACTED] telling me is some of this
18 information is on an electronic format that you have already been
19 provided access to.

20 DC: Yes, sir.

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1 MJ: Some of it is on electronic format that you've not been
2 provided access to that deals with the classified computer issue.
3 Some of it may be in the CID report investigation, which they have.

4 ATC: Right, in the evidence room, boxes of files.

5 DC: Sir, we can reserve this issue, and readdress it with the
6 court later on.

7 MJ: Yes, I mean, really we're getting into so much voluminous
8 material here, Captain [REDACTED], you may have stuff that you don't
9 know you have or at least have access to.

10 DC: Okay, sir.

11 MJ: You understand what she's talking about.

12 ATC: Yes.

13 MJ: If there's a problem where the government says, "It's
14 sitting here," and you go there and you can't find it. I mean,
15 they're not going to have to hand you every individual document.

16 DC: Yes, sir.

17 MJ: And you understand that.

18 DC: Yes, sir, absolutely.

19 MJ: I'm not implying that that's what you're asking for. But
20 if you made efforts to secure or review the documents and you can't
21 find it, then I'm sure the trial counsel will provide ample
22 assistance. And also, I don't expect, and just convey this, is that

1 it was related to earlier about CID's sometimes approach to these
2 things, let's have reasonable rules here. The defense counsel shows
3 up and asks to see something, I don't think it's unreasonable for a
4 case agent to sit there. But if there's all these other rules, the
5 trial counsel being there or anything else, it seems to me to be
6 unnecessary.

7 ATC: I agree, I don't think the trial counsel needs to be there.

8 MJ: Or a particular agent.

9 ATC: That's correct.

10 MJ: And they don't have to drop everything----

11 ATC: As long as the evidence custodian is there.

12 MJ: I understand. And I'm not saying if the defense counsel
13 knocks on the door that the CID drops everything to do what they do,
14 but they make an arrangement or an appointment to go look at
15 evidence, I expect CID to act professionally and cooperate.

16 ATC: Yes, sir.

17 MJ: Not that they haven't, but just not....

18 ATC: Yes, sir.

19 DC: Sir, speaking of evidence that we've tried to get a hold of
20 from CID and that we are seeking government assistance on, this also,
21 I apologize, was referenced in the 1 July memo that we'd gone over
22 earlier in paragraph 2. There seems to be what is a missing hard

1 drive. Now certainly, I understand if the government doesn't have
2 something, they can't give it to us. It's the defense's
3 understanding that the hard drive, the hard drive from the office
4 computer of Captain [REDACTED] who is the 372d MP company
5 commander, he had his hard drive laptop that he used for official
6 business. He and Sergeant Frederick used that laptop computer at
7 Abu. There was testimony under oath from Captain [REDACTED] at an Article
8 32 hearing that CID came, took his hard drive, and never got it back.
9 And off the top of my head I don't know, but I think he did identify
10 an agent by name, Your Honor. I don't want to represent to the court
11 which one it was. But Captain [REDACTED] remembers that a CID agent came
12 and took that hard drive. Well, there's absolutely no record of that
13 seizure or that piece of evidence in CID records.

14 MJ: Did you ask the agent?

15 DC: We did, Your Honor, and they said they----

16 MJ: What's he say?

17 DC: He said he doesn't know what we're talking about. And I
18 guess we're asking the government...maybe an unusual----

19 MJ: I'm not sure where we go here, Captain [REDACTED] because
20 you say Captain [REDACTED] says that, "Agent [REDACTED]-----"

21 DC: X, yes, sir.

22 MJ: -----took my hard drive and left."

1 DC: Yes, sir.

2 MJ: And didn't give him a receipt.

3 DC: No, sir.

4 MJ: And didn't fill out a, to your knowledge, a chain of
5 custody document or anything like that.

6 DC: Correct, sir.

7 MJ: And Agent X says, "I don't know what Captain [REDACTED] is
8 talking about, I have no such thing."

9 DC: Correct, Your Honor.

10 MJ: Okay, and now where do we go next?

11 DC: Your Honor, I guess I don't know, and I'd like the
12 government to make additional inquiries. I am very clearly a defense
13 attorney, Your Honor, and I very often get the reaction of, "I don't
14 know what you're talking about."

15 MJ: Provide the name of the agent to the government.

16 DC: Yes, sir.

17 MJ: And government, check with the agent and see what he says.
18 Also, more than just check with him, it would strike to me in this
19 case is that a lot of computer hard drives have been seized.

20 ATC: That's correct, Your Honor.

21 MJ: And any reason to believe that Captain [REDACTED] is
22 misremembering that they took his hard drive?

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1 ATC: I have not personally looked into this issue, so I have no
2 idea.

3 MJ: Just follow it down and provide an answer back to the
4 defense by a date of September. By 10 September, just let her know
5 where you're at.

6 ATC: Okay.

7 MJ: But Captain [REDACTED] you give them the name.

8 DC: Yes, sir, we'll do that.

9 MJ: And then it seems to me is, I'm not sure we can do much
10 more than that.

11 DC: Yes, Your Honor. Your Honor, the last thing is just that I
12 had filed the discovery request on 17 June. It is rather lengthy. I
13 understand the government's constraints with time. At this point, I
14 would ask that you set a date for the government to respond to that
15 in writing rather than go over every subparagraph and sub-
16 subparagraph. That would probably be the best for judicial economy,
17 sir, since they have not yet responded in writing, and there are a
18 certain number of very detailed requests about Article 15 records,
19 counseling records, offshoot investigations, those kinds of things,
20 Your Honor.

21 ATC: The government realizes the discovery responsibilities
22 under the rules and will respond accordingly, Your Honor.

1 MJ: The simplest way to do this is to provide a paragraph by
2 paragraph response.

3 ATC: Right, and that's our intention to do that.

4 MJ: Already provided, doesn't exist, go look here for it, we'll
5 get it by this date.

6 ATC: Yes, Your Honor.

7 MJ: Provide that response by 10 September.

8 ATC: All right.

9 MJ: Earlier is better than later.

10 DC: May I have one moment, Your Honor?

11 MJ: Sure. Captain [REDACTED] you gave me the Graner copy of
12 the brief.

13 ATC: Oh, did I? I apologize. I'll get the correct copy of the
14 CACI brief, Your Honor.

15 DC: Nothing further from the defense, Your Honor.

16 MJ: Trial counsel, do you have anything further?

17 ATC: No, Your Honor.

18 MJ: As we discussed in the 802, is that I intend to have the
19 next hearing in this case on or about 21 October, 22 October in
20 Baghdad. And as I stated yesterday, is absent a change of venue, all
21 further proceedings in this case will be conducted in Baghdad.

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1 At that time, defense, you indicated at the 802 that you'd
2 be prepared to litigate a command influence motion?

3 DC: Yes, Your Honor, that's correct.

4 MJ: Which would appear to be a significant motion that also
5 could change the entire posture of the case. Also, at that time--any
6 other motions?

7 DC: Your Honor, we intend to file an Article 13 motion to be
8 litigated at that time. And we may also file a motion for
9 unreasonable multiplication of charges, Your Honor.

10 MJ: Okay, your suspense for filing motions is 14 October, and
11 understand, right now, the current schedule for this is the Frederick
12 trial on 20 and 21 October, and the 39(a)s in Graner, Davis and this
13 case, which probably each one will take a whole day subsequent to
14 this. So I'm using on or about dates. But if you need any out of
15 theater witnesses for the motions, that request should be in no later
16 than 1 October. Obviously if something comes up and you need later--
17 but you understand, Captain [REDACTED] the difficulty in getting them
18 here.

19 DC: Yes, Your Honor.

20 MJ: Also, if you don't know where somebody is, assume they're
21 out of theater. So provide your tentative witness list, it's not
22 written in stone, not later than 1 October for the motions so the

1 government has ample time to make sure they're there. If it turns
2 out that somebody falls out, tell them that and just take them off
3 the list.

4 DC: Your Honor, is it sufficient for the court, with regard to
5 that, that the entire motion perhaps not be filed until the 14th, but
6 that we say for the motion, "For Article 13, I need these people?"

7 MJ: Yes, that's fine.

8 DC: Okay.

9 MJ: Now, give the court a synopsis of what these people will
10 say.

11 DC: Yes, sir, absolutely.

12 MJ: And if there's an issue, it's not sufficient enough or
13 whatever it is, government, we can handle that probably by email.
14 But again, we're talking motions here. So, I don't want to say it's
15 a loose standard, but it's not the same standard when it's production
16 for trial. Anything else?

17 TC: No, Your Honor.

18 DC: No, Your Honor.

19 MJ: The court's in recess.

20 [The session recessed at 0926, 25 August 2004.]

21

22

[END OF PAGE.]


AUTHENTICATION OF THE RECORD OF TRIAL

IN THE CASE OF

AMBUHL, MEGAN M., SPECIALIST/E4
HEADQUARTERS AND HEADQUARTERS COMPANY,
16th MILITARY POLICE BRIGADE (AIRBORNE),
III CORPS, VICTORY BASE, IRAQ APO AE 09342

I received the completed record of trial for review and authentication on 16 August 2004.

(ROT pp. 1-13 only)

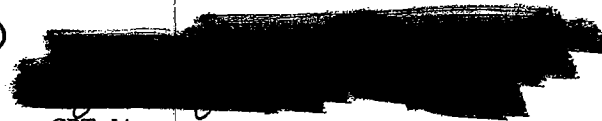

LTC, JA
Military Judge
(Pages 1-13)

DATE: 16 August 2004

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on 15 August 2004 and completed my examination on 15 August 2004.

(ROT pp. 1-13 only)


CPT, JA
Defense Counsel

DATE: _____ 2004

The record of trial was served on defense counsel on _____ 2004. After verifying receipt with defense counsel on _____ 2004 and conferring with the military judge on review by defense counsel on _____ 2004, the record was forwarded for authentication without completion of defense counsel's review.


CPT, JA
Chief, Military Justice

002601

AUTHENTICATION OF RECORD OF TRIAL

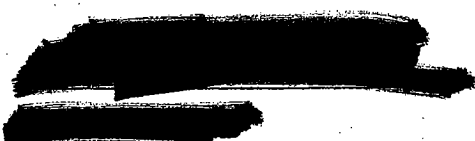
IN THE CASE OF

AMBUHL, Megan M., , Specialist

Headquarters and Headquarters Company, 16th Military Police Brigade (Abn)

III Corps, Victory Base, Iraq, APO AE 09342

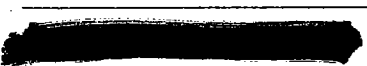
I received the completed record of trial for review and authentication on
15 NOV 20 04.


COL, JA
Military Judge

30 NOV 20 04
79P13-106


ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on
_____ 20 _____.


CPT, JA
Defense Counsel

20 _____

The record of trial was served on defense counsel on _____ 20 _____. After verifying receipt with defense counsel on _____ 20 _____ and conferring with the military judge on review by defense counsel on _____ 20 _____, the record was forwarded for authentication without completion of the defense counsel's review.


CPT, JA
Chief, Military Justice

APPELLATE EXHIBITS

002603

UNITED STATES

v.

Megan M. AMBUHL
SPC, U.S. Army
Headquarters & Headquarters Company
16th Military Police Brigade (Airborne)
III Corps, Victory Base, Iraq
APO AE 09342

MOTION TO DISMISS

22 July 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to move the Court to dismiss the charges and specifications preferred on 13 July 2004 for failure to comply with Rule for Courts-Martial (R.C.M.) 405(a).

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Dismiss be granted and that the Court dismiss with prejudice all charges and specifications that were preferred against SPC Ambuhl on 13 July 2004.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c).

C. FACTS

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts).

On 1 and 3 May 2004, an Investigating Officer (IO) conducted an Article 32 hearing concerning the 20 March 2004 charges and specifications. On 9 May 2004, the IO issued his findings and recommendations. The IO recommended that Charges I and II be referred to a General Court-Martial. The IO further recommended that Charges III and IV, effectively, be dismissed. The IO did not recommend that any additional charges or specifications be preferred against the accused. The government did not request that any uncharged misconduct be investigated.

From 9 May 2004 through 12 July 2004, there was no government activity on SPC Ambuhl's case. On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC

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APPELLATE EXHIBIT I

Recognized R. 16

Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment).

There was no Article 32 hearing to investigate these additional charges and specifications. SPC Ambuhl did not waive her right to an investigation regarding these charges and specifications.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

D. LAW

The defense relies on the following authorities in support of its motion:

Article 32, UCMJ

R.C.M. 405

R.C.M. 905

R.C.M. 906

United States v. Bender, 32 M.J. 1002 (N.M.C.M.R. 1991)

United States v. Miro, 22 M.J. 509 (A.F.C.M.R. 1986)

United States v. Castleman, 11 M.J. 562 (A.F.C.M.R. 1981)

United States v. Louder, 7 M.J. 548 (A.F.C.M.R. 1978)

United States v. Donaldson, 49 C.M.R. 542 (C.M.A. 1975)

United States v. Dozier, 38 C.M.R. 507 (A.B.R. 1967)

United States v. Cunningham, 30 C.M.R. 402 (C.M.A. 1961)

United States v. Mickel, 26 C.M.R. 104 (C.M.A. 1958)

United States v. Nichols, 23 C.M.R. 343 (C.M.A. 1957)

United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956)

United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954)

United States v. Westergren, 14 C.M.R. 560 (A.F.B.R. 1953)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion to Dismiss. The defense requests consideration of the following documents:

- a. Charge Sheet, dated 20 March 2004
- b. Charge Sheet, dated 13 July 2004
- c. Article 32 Report (including DD Form 457, Enclosures #1 - #3, the IO's Memorandum for Record, dated 8 May 2004, and the summarized transcript)

The defense requests government production of the Staff Judge Advocate's Pretrial Advice prepared in accordance with R.C.M. 406 for consideration by the Court.

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The defense requests government production of the following witnesses for this motion:

MG Thomas Metz, Commander, III Corps
CPT [REDACTED] Commander, HHC, 16th MP Brigade

The defense may call SPC Megan M. Ambuhl for the limited purpose of litigating this motion.

F. ARGUMENT

1. Violation of R.C.M. 405

The accused is entitled to a thorough and impartial Article 32 pretrial investigation. It is well established that, “no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation . . . has been made in substantial compliance with [R.C.M. 405].” R.C.M. 405(a). An Article 32 investigation is not a mere formality; rather, it is an integral part of the court-martial proceedings. See United States v. Nichols, 23 C.M.R. 343, 348 (C.M.A. 1957). Further, Article 32 proceedings are quasi-judicial and protect important rights of the accused, including the ability “to gain a soundly conceived recommendation concerning their disposition.” United States v. Cunningham, 30 C.M.R. 402, 404 (C.M.A. 1961).

Under certain circumstances, uncharged misconduct may be investigated at an Article 32 hearing prior to the preferral of additional charges. Article 32(d), UCMJ. However, the subject matter of the uncharged misconduct must specifically be investigated by the IO. Further, Article 32(d) requires that the accused be informed of the nature of each uncharged offense investigated. The proper procedure to follow “when evidence of additional offenses arises during an investigation is to recommend to the appointing authority that additional charges be preferred and referred for investigation while investigation is still in progress.” United States v. Bender, 32 M.J. 1002, 1003 (N.M.C.M.R. 1991) (rejecting the government’s “odd notion” that “additional charges may be preferred at the conclusion of an Article 32 investigation and referred for trial . . . if only there is, in retrospect, sufficient evidence in the report of investigation to warrant them”).

This required step was not done. The IO never informed SPC Ambuhl that he would be investigating any uncharged misconduct or any additional charges. Tellingly, the IO did not recommend any additional charges; rather, he found that the government failed to present sufficient evidence on two of the four charges.

The three additional specifications preferred on 13 July 2004, on their face, appear factually similar to allegations in the original charges preferred on 20 March 2004. Simply because the charges share the same factual predicate, does not relieve the government of its responsibility to insure that the additional specifications are investigated at an Article 32 hearing.

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a. Additional Charge I and its Specification

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge I, in violation of R.C.M. 405(a).¹

At the Article 32 hearing, the IO investigated one specification of maltreatment in violation of Article 93, UCMJ. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

On 13 July 2004, the government preferred the additional charge of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The factual basis for this charge appears to be the same basis as that of original Charge III. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

Well-settled is the legal concept that, “[a] conspiracy to commit an offense is a separate and distinct offense from the offense which is the object of the conspiracy.” Article 81, para. c(8). Both a conspiracy and the underlying object of the conspiracy may be charged. Each is treated as a separate offense and must be charged, tried and punished of its own merits. See id.

In the present case, neither of the elements of the charged conspiracy were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl accountable for this offense and intends to subject her to possible punishment of an additional 12 months of confinement for a charge that never was properly investigated.

¹ Additional Charge I and original Charge III appear to allege the same factual basis. The charges are as follows:

Original Charge III & its Specification, 20 March 2004	Additional Charge I & its Specification, 13 July 2004
CHARGE III: ARTICLE 93, UCMJ In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.	CHARGE I: ARTICLE 81, UCMJ In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003 conspire with Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] and others to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Corporal [REDACTED] did place naked detainees in a human pyramid.

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The defense recognizes that the recommendation of an Article 32 IO is not binding. However, in the present case, the IO's recommendation should be considered when evaluating the basis of this Motion. The IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense." The IO further recommended that the government provide additional evidence as to original Charge III. Despite this recommendation the government used the flawed foundation of Charge III as the basis for Additional Charge I.

b. Additional Charge II, Specification 1

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 1, in violation of R.C.M. 405(a).²

At the Article 32 hearing, the IO investigated one specification of indecent acts with another in violation of Article 134, UCMJ. The elements of this offense are: (1) that the accused committed a certain wrongful act with a certain person; (2) that the act was indecent; and (3) that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. If convicted of a violation of this offense at a general court-martial, SPC Ambuhl faces up to 5 years of confinement.

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual predicate for this charge appears to be the same as that of original Charge IV and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was 'cruel'

² Specification 1 of additional Charge II and original Charge IV appear to allege the same factual basis. The charges are as follows:

Original Charge IV & its Specification, 20 March 2004	Additional Charge II, Specification 1, 13 July 2004
CHARGE IV: ARTICLE 134, UCMJ In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.	CHARGE II: ARTICLE 93, UCMJ SPEC 1: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees being forced to masturbate in front of other detainees and soldiers.

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toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

In the present case, neither of the elements of the newly charged maltreatment were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl subject to an additional 12 months of confinement for a charge that was never investigated.

As highlighted with regard to the first set of charges, the IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense," regarding original Charge IV. The IO further recommended that the government provide additional evidence as to original Charge IV, a charge that shares the same factual basis as Additional Charge II, Specification 1.

c. Additional Charge II, Specification 2

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 2, in violation of R.C.M. 405(a).³

At the Article 32 hearing, the IO investigated one specification of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

³ Specification 2 of additional Charge II and original Charge I appear to allege the same factual basis. The charges are as follows:

Original Charge I & its Specification, 20 March 2004	Additional Charge II, Specification 2, 13 July 2004
CHARGE I: ARTICLE 81, UCMJ In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire with Staff Sergeant [REDACTED] Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Specialist Ambuhl did participate in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck.	CHARGE II: ARTICLE 93, UCMJ SPEC 2: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003, did maltreat several Iraqi detainees, persons subject to her orders, by participating in a photograph with PFC [REDACTED] depicting PFC [REDACTED] holding a naked detainee by a leash wrapped around said detainee's neck and by watching PFC [REDACTED] hold a naked detainee by a leash wrapped around said detainee's neck.

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual basis for this charge appears to be the same basis as that of original Charge I and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

At trial, in order for an accused to be found guilty of a violation of Article 81 the government bears the burden of proof for the conspiracy and that the alleged agreement included every element of the underlying offense. In the present case, the government did not advocate at the time of the Article 32 hearing for an additional charge to encompass the underlying offense of the conspiracy. The IO did not recommend the additional charge of maltreatment, the underlying offense of the conspiracy. SPC Ambuhl is entitled to an Article 32 investigation regarding this additional Article 93 charge. See United States v. Donaldson, 49 C.M.R. 542, 543 (C.M.A. 1975) (finding that an accused is entitled to enforcement of his pretrial rights without regard to whether such enforcement will benefit him at trial); Bender, 32 M.J. at 1003 (prohibiting post-32 addition of charges simply because the government finds sufficient evidence, in hindsight, to warrant the charges).

2. Appropriate Remedy

If an accused is improperly denied a substantial pretrial right, such as a thorough and impartial pretrial investigation, reversal is required, upon timely complaint, regardless of whether accused suffers specific prejudice. See United States v. Miro, 22 M.J. 509, 511 (A.F.C.M.R. 1986); United States v. Castleman, 11 M.J. 562, 566 (A.F.C.M.R. 1981); see also Donaldson, 49 C.M.R. at 543; United States v. Mickel, 26 C.M.R. 104, 107 (C.M.A. 1958) (finding "if an accused is deprived of a substantial pretrial right on timely objection, he is entitled to judicial enforcement of his right, without regard to whether such enforcement will benefit him at the trial").

Among the rights to which an accused is entitled at an Article 32 investigation are the following: the right to cross-examine witnesses, have witnesses produced, have evidence (to include documents) within the control of military authorities produced, and to present anything in defense, extenuation or mitigation. R.C.M. 405(f)(1)-(12). This Court may grant appropriate relief if there is a failure to comply with R.C.M. 405. R.C.M. 906(b)(3).

Failure to comply substantially with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. The discussion to R.C.M. 405(a) provides for further investigation if charges are changed to allege a more serious offense than any of those investigated at the Article 32 hearing. See also United States v. Dozier, 38 C.M.R. 507, 508 (A.B.R. 1967) (providing for a new Article 32 hearing when there has been "a substantial change alleging a different offense" even though there was no additional evidence to be offered"). If convicted at a general court-martial, SPC Ambuhl faces an additional three years of confinement. This increase in the maximum punishment is analogous to the allegation of a more serious offense referenced in the discussion to R.C.M. 405(a). Further investigation is required if there is an essentially different offense.

While both of these legal “gates” are triggered in this case, further investigation is not the appropriate remedy.

The appropriate relief in this case for the government’s violation of R.C.M. 405 is dismissal of the additional charges and specifications. See Donaldson, 49 C.M.R. at 543 (granting discretion to the trial court to set aside findings and dismiss the charges when there was a R.C.M. 405 violation). Failure to provide appropriate relief, while not depriving the court-martial of jurisdiction, may require the reversal of a conviction. See generally United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956); United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954).

In United States v. Louder, the Article 32 IO recommended withdrawal of a certain specification because it charged a violation of a lawful order that was not punitive in nature. 7 M.J. 548, 549 (A.F.C.M.R. 1978). Rather than withdraw the specification, the convening authority amended the specification at referral to allege a violation of an entirely different lawful order. See id. The trial judge failed to grant the accused a new 32 or any alternate appropriate relief. See id. at 550. The appellate court found that the trial judge erred. As a remedy the court set aside the findings of guilt at the trial level and dismissed the amended specification. See id.; see also United States v. Westergren, 14 C.M.R. 560, 577 (A.F.B.R. 1953) (finding that failure to comply substantially with 10 U.S.C. § 832 may be grounds for reversal).

It is the government’s obligation to comply with R.C.M. 405. Any failure to meet this obligation should not prejudice the accused. The Court should not chose as a remedy to reopen the Article 32 hearing since this remedy causes prejudice to SPC Ambuhl. Thus, the only appropriate remedy for the Court is dismissal.

If the Court orders the Article 32 hearing to be reopened, SPC Ambuhl will suffer prejudice. First and foremost is the additional delay that SPC Ambuhl’s case will undergo if there are supplemental Article 32 proceedings. Even with expedient efforts by the government, coordination must be made for civilian defense counsel to attend the proceeding in Iraq. Requests for witness and evidence production must be addressed. Findings and recommendations must be issued and the case must then be forwarded through the chain-of-command for recommendations. This anticipated delay will cause significant prejudice to SPC Ambuhl who has been awaiting disposition of the original charges since 20 March 2004.

There was over two months of inactivity in SPC Ambuhl’s case. See Donaldson, 49 C.M.R. at 543 (the additional charges were preferred two months after the conclusion of the investigation for the original charges). The Article 32 IO issued his findings and recommendations on 9 May 2004. During that two-month period the government easily could have preferred additional charges and even conducted an Article 32 investigation. The choice belonged to the government. The government chose “eleventh hour” preferral of charges, just one week before referral.

The additional charges rely on the same factual predicate as the original charges. As such, the government knew as early as 20 March 2004 that SPC Ambuhl might face additional charges. The government had six weeks between the original preferral and the start of the

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Article 32 hearing in which to prefer additional charges. The government chose not to do so. Further, the government did not advocate the additional preferral of charges at the Article 32 hearing, instead choosing the stated "eleventh hour" preferral of the additional charges.

SPC Ambuhl has been awaiting action on her case since 9 May 2004. To force the soldier to endure additional delay because of the government's error would be an abuse of discretion. Ultimately, the most significant prejudice to SPC Ambuhl is to force her to stand trial for three additional specifications, that carry and an additional 3 years of confinement if she is convicted. Due process requires a remedy that does penalize or prejudice the soldier – the only such remedy is dismissal.

G. CONCLUSION



Dismissal with prejudice of the 13 July 2004 charges and specifications is the only appropriate remedy under the specific circumstances of this case. The defense respectfully requests that this Court grant the defense's Motion to Dismiss.

RESPECTFULLY SUBMITTED:



CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion to Dismiss was served on the government via e-mail to @vcmain.hq.c5.army.mil and @vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 22 July 2004.



CPT, JA
Trial Defense Counsel

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INVESTIGATING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>				
1a. FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED]	b. GRADE O-4	c. ORGANIZATION HHC, 420th Engineer Brigade APO AE 09391	d. DATE OF REPORT 8 May 2004	
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) [REDACTED]	b. TITLE Brigade Commander	c. ORGANIZATION Headquarters, 16th MP Bde (Airborne) APO AE 09342		
3a. NAME OF ACCUSED (Last, First, MI) Ambuhl, Megan M.	b. GRADE E-4	c. SSN [REDACTED]	d. ORGANIZATION HHC, 16th MP Bde (Airborne), Story Base, Iraq, APO AE 09342	e. DATE OF CHARGES 20 March 2004
(Check appropriate answer)				
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) [REDACTED]	b. GRADE O-3	
c. ORGANIZATION (If appropriate) [REDACTED]		c. ORGANIZATION (If appropriate) Trial Defense Counsel, Tikrit Branch Office (FOB Danger) Region IX		
d. ADDRESS (If appropriate) 1101 15th ST, NW, Suite 202 Washington, D.C., 20005		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE [REDACTED]		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES <input type="checkbox"/> NO <input type="checkbox"/>
a. THE CHARGE(S) UNDER INVESTIGATION				<input checked="" type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER				<input checked="" type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				<input checked="" type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION				<input checked="" type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				<input checked="" type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				<input checked="" type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				<input checked="" type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				<input checked="" type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				<input checked="" type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				<input checked="" type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE. (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				<input checked="" type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."				

DD FORM 457, AUG 84

EDITION OF OCT 89 IS OBSOLETE.

USAPPC V1.00

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12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)					
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO	
[REDACTED]	E-5	302nd MI Battalion	X		
[REDACTED]	CW-2	CJIF-7	X		
[REDACTED]	E-9	418th MP Detachment	X		
[REDACTED]	E6	CID, Ft. Jackson, S.C.	X		
Please refer to the attached Enclosure #1 for additional witnesses					
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X		
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.					
DESCRIPTION OF ITEM		LOCATION OF ORIGINAL (If not attached)			
Prosecution Exh 1-Sworn statement of SPC [REDACTED]			X		
Prosecution Exh 2-Sworn statement of SGT [REDACTED]			X		
Prosecution Exh 3-Sworn statement of SPC [REDACTED]			X		
Prosecution Exh 4A thru 4R -20 photos from CID CID			X		
Prosecution Exh 5-Sworn statement of PFC Lyndie England			X		
Please refer to the attached Enclosure #2 for additional Exhibits from the investigation					
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X		
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 209, 216(R).)					X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT. (If Yes, specify in Item 21 below.)			X		
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X		
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X		
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X		
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X		
20. I RECOMMEND:					
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL					
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)					
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)					
Enclosure #1 - Continuation of DD Form 457 Block 12a					
Enclosure #2 - Continuation of DD Form 457 Block 13a					
Enclosure #3 - Defense Counsel's Objections Prior to and During the ART 32 Investigation					
Enclosure #4 - Request for Delay, United States v. SPC Megan M. Ambuhl					
Enclosure #5 - IO Concurrence on Request for Delay, U.S. v. SPC Ambuhl					
Enclosure #6 - Article 32 Request for Witnesses and Production of Evidence - United States v. SPC Megan M. Ambuhl					
Enclosure #7 - Second Request for Delay - United States v. SPC Megan M. Ambuhl					
Enclosure #8 - IO Recommendation on 2nd Defense Request for Delay, United States v. SPC Megan M. Ambuhl					
Enclosure #9 - Approval of 2nd Request for Delay, United States v. SPC Megan M. Ambuhl					
Enclosure #10 - IO Determination on Trial Counsel's response to Defense Request for Witnesses and Production of Evidence					
Enclosure #11 - Appointment as Article 32 Investigating Officer					
Enclosure #12 - Transcript of ART 32 Investigation US v. SPC Ambuhl					
Enclosure #13 - ART 32 Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl					
Block #14 above, Def did not present any grounds to show that the accused was not mentally responsible for the offenses.					
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION		
[REDACTED]		O-4	HHC, 420th Engineer Brigade APO AE 09391		
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE		
[REDACTED]			9 MAY 2004		

USAPPC V1.00

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Enclosure #1 - CONTINUATION OF DD FORM 457, BLOCK 12a

The following witnesses were Available but invoked their rights

1. [REDACTED] O-3 372nd MP CO - invoked at last 32
2. [REDACTED] E-8 372nd MP CO - invoked at last 32
3. [REDACTED] E-7 372nd MP CO - invoked at last 32

The following witnesses were Declared reasonably unavailable

CID Agents:

1. [REDACTED] SA 10th MP BN - Redeployed to the U.S.

Chain of Command:

1. [REDACTED] O-3 372nd MP CO - Redeployed to U.S.

Additional Witnesses -

1. [REDACTED] O-4 320th MP BN - Kuwait
2. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
3. [REDACTED] E-6 - LSA Anaconda -invoked at prior 32
4. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
5. [REDACTED] E-6 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
6. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
7. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
8. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
9. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
10. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
11. [REDACTED] E-6 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.

Military Intelligence Witnesses:

1. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
2. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
3. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
4. [REDACTED] O-6 205th MI BDE - Redeployed to U.S.

Other Witnesses:

1. [REDACTED] O-3 Former Interrogation OIC - Redeployed to U.S.

2. [REDACTED] O-3 205th MI BDE - Redeployed to U.S.
3. [REDACTED] O-3 Ft. Sam Houston - Redeployed to U.S.
4. [REDACTED] O-5 CJTF-7 - cannot locate
5. [REDACTED] O-4 Member of Australian forces - Redeployed to

Co-Accused:

1. England, Lymndie R. E-3 372nd MP CO - Fort Bragg, awaiting court-martial

The following witnesses are co-accused, have invoked their rights and are represented by counsel.

1. [REDACTED] E-5 372nd MP CO
2. [REDACTED] E-6 372nd MP CO
3. [REDACTED] E-4 372nd MP CO
4. [REDACTED] E-4 372nd MP CO
5. [REDACTED] E-4 372nd MP CO

The following witnesses were requested by Defense Counsel and were available, Defense Counsel decided during the Investigation to not call these witnesses and they were therefore deemed reasonably unavailable.

1. [REDACTED] Vigilant A, security detainee
2. [REDACTED] Vigilant A, security detainee
3. [REDACTED] Hard site, 6-B, criminal
4. [REDACTED] Ganci 5, security detainee
5. [REDACTED] Ganci 8, security detainee
6. [REDACTED] Hard site 3-B, criminal
7. [REDACTED] Ganci -I, security detainee
8. [REDACTED] Hard site 4-B, criminal
9. [REDACTED] Unknown, released
10. [REDACTED] Unknown, released
11. [REDACTED] Vigilant C, security detainee
12. [REDACTED] Ganci 5, Unknown
13. [REDACTED] Unknown, released
14. [REDACTED] Ganci 8, security detainee

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Enclosure #2 - CONTINUATION OF DD FORM 457, BLOCK 13a

Prosecution Exhibit #6 - Sworn statement of SPC [REDACTED]
Prosecution Exhibit #7 - CD ROM of pictures and video clips
Prosecution Exhibit #8 - Sworn statement of SPC [REDACTED]
Prosecution Exhibits #9A thru 9O - Sworn statements of Detainees at the Prison
Case File

Defense Exhibit A - ARTICLE 15-6 Investigation of the 800th MP Brigade
Defense Exhibit B - Rebuttal of AR 15-6 for SFC [REDACTED]
Defense Exhibit C - Rebuttal of AR 15-6 for 1SG [REDACTED]
Defense Exhibit D - Rebuttal of AR 15-6 for CPT [REDACTED]
Defense Exhibit E - Sworn statement of [REDACTED]

Enclosure #3 – Defense Counsel's Objections prior to and during the ART 32 Investigation

- The Defense objected to consideration by the IO of the following evidence. These were published in Defense Counsel's memorandum of 10 April, 2004.

1) Various Documents (From Detainee Medical Records, 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

2) Detainee Medical Records (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

3) Hard-cell Medical Log (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

4) Treatment Logs (From B Company, 109th Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

5) Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

6) Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

7) Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some

ENCLOSURE #3

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nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

- DC had the following objections during the investigation.

- 1) Admittance of photos that do not apply specifically to the charges against SPC Ambuhl.
- 2) Consideration of statements from the detainees that have been released.
- 3) Consideration of the CD ROM and specifically those items not relative to the case against SPC Ambuhl.

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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 420th ENGINEER BRIGADE
Victory Base, IRAQ
APO AE 09342



Builders in Battle!

AFRC-CAR-EBA-LG

8 MAY 2004

MEMORANDUM FOR RECORD

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl

1. On 24 March 2004, I was appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the charges noted below against Specialist Megan M. Ambuhl, HHC, 16th MP BDE (ABN), Victory Base, Iraq APO AE 09342. The charges preferred were:
 - a. Charge I: ART 81 Conspiracy
 - b. Charge II: ART 92 Dereliction of Duty
 - c. Charge III: ART 93 Cruelty and Maltreatment
 - d. Charge IV: ART 134 Indecent Acts with Another
2. During the conduct of the investigation, there were two delays granted. Both were attributed to the defense. The first was a 15-day request to allow defense adequate time to prepare for the ART 32 investigation. The second delay was an 11-day request to allow for a civilian defense counsel to travel to Victory Base for the ART 32 investigation and to prepare for the investigation.
3. Upon completion of the investigation and consideration of all evidence presented during the investigation (as noted in block 13a of DD Form 457 and Enclosure #2), I have the following findings regarding the charges against Specialist Megan M. Ambuhl:
 - a. Charge I: Violation of UCMJ, Article 81, Conspiracy
 - i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire and enter into an agreement with SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] and PFC [REDACTED] to commit an offense under UCMJ, Maltreatment of subordinates, and did effect the object of the conspiracy when she participated in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck. (See PE 4A thru 4D, PE 5)
 - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.

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SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States
v. SPC Megan M. Ambuhl

- iii. Strengths-The Trial Counsel presented evidence to show that SPC Ambuhl entered into an agreement with the co-accused to maltreat a detainee and then performed the overt act by proceeding downstairs with the co-accused to pull the detainee from the cell, place a tie down strap around his neck and then participate in a picture with PFC England as she held the leash.
- b. Charge II: Violation of UCMJ, Article 92, Dereliction of Duty
 - i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, who knew of her duties as a Military Police soldier at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do. (See PE 3, PE 4A thru 4D, PE 5)
 - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.
 - iii. Strengths-Trial counsel presented compelling evidence to show that SPC Ambuhl had a duty as an MP and as the NCOIC of 1B to oversee and protect those housed at BCCF. It is reasonable to expect that SPC Ambuhl would have known those duties by virtue of her MOS and of being a U.S. Soldier. Finally, she was willfully derelict in those duties when she did not protect those detainees under her control.
- c. Charge III: Violation of UCMJ, Article 93, Cruelty and Maltreatment
 - i. The Specification: In that SPC Megan Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.
 - ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
 - iii. Weaknesses-There is no contention that element 1 of this charge has been met. I do believe that Trial Counsel failed to present adequate evidence to meet the second element of this charge. SPC Ambuhl was present as the pyramid was built but aside from showing that she was present, Trial Counsel did not present evidence that SPC Ambuhl carried out any act of cruelty or maltreatment other than being present at the building of the pyramid.
- d. Charge IV: Violation of UCMJ, Article 134, Indecent Acts with Another
 - i. The Specification: In that SPC Megan Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, SSG [REDACTED] CPL [REDACTED] SPC [REDACTED] PFC [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located

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AFRC-CAR-EBA-LG

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States
v. SPC Megan M. Ambuhl

in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

- ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
 - iii. Weaknesses-Of the three elements of this charge, I believe that Trial counsel failed to provide adequate evidence to show that elements #1 and #2 were met. SPC Ambuhl was present when the detainees were forced to masturbate but Trial counsel failed to provide evidence that she played any role, other than being present, in the perpetuation of the act itself. I do feel that element #3 was proven adequately as SPC Ambuhl being present was prejudice to good order and discipline and certainly brings discredit upon the armed forces.
4. After review of all evidence presented and completion of the Article 32 Investigation, it is my recommendation that Charges I and II against Specialist Megan Ambuhl be referred to a General Court Martial. I further recommend that Trial Counsel provide additional evidence to show that the elements listed above as not met, were indeed met if they intend to proceed with charges III and IV.
5. POC for this memorandum is MAJ Charles Ransome at [REDACTED]@us.army.mil or by phone at DNVTD/DSN [REDACTED]

[REDACTED]
MAJ, EN
Article 32 Investigating Officer

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Article 32 Transcript

U.S. v Ambuhl

The Article 32 Proceedings were called to order at 1002 hours, 1 May 2004, at Victory Base, Iraq.

PERSONS PRESENT

MAJ [REDACTED], Investigating Officer
CPT [REDACTED], Government Counsel
1LT [REDACTED], Assistant Government Counsel
Mr. [REDACTED], Civilian Defense Counsel
CPT [REDACTED], Military Defense Counsel
SPC Megan M. Ambuhl, Accused
SFC [REDACTED], Recorder

PERSONS ABSENT

None

The Government Counsel stated that sometime today, he would like for all parties to review each packet to ensure all contents were the same.

The Defense Counsel conducted a voire dire of the Investigating Officer, and made no objection to the Investigating Officer being detailed to the hearing.

Government Counsel stated that all parties understand that due to witness location and different ways testimony would be given, the proceedings may not run as normal.

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

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

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence, examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

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The Investigating Officer advised the accused of her right to counsel.

The Accused stated she would be represented by Mr. [REDACTED]

The Investigating Officer instructed Mr. [REDACTED] to fill out items on DD Form 457, Investigating Officer's Report.

The Defense Counsel waived the reading of the charges.

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

The accused stated that she understood her rights.

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

CW2 [REDACTED], IMIR, CJTF-7
SGM [REDACTED], 418th MP Det, (CLD)
CPT [REDACTED], 372d MP CO
1SG [REDACTED], 372d MP CO
SFC [REDACTED], 372d MP CO

Telephonic testimony:

SGT [REDACTED], A CO, 302d MI BN, Germany
SA [REDACTED], CID
PFC [REDACTED], HHC, 16th MP BDE(ABN) (REAR), Fort Bragg, NC

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

Prosecution Exhibit 1: Sworn Statements of SPC [REDACTED]
Prosecution Exhibit 2: Sworn Statements of SGT [REDACTED]
Prosecution Exhibit 3: Sworn Statements of SPC [REDACTED]
Prosecution Exhibit 4A – 4R: 18 photos; with objection; Defense Counsel objected to photos not pertaining to SPC Ambuhl

The Assistant Government Counsel stated that the witnesses from the 372d MP CO, located at LSA Anaconda would probably not be here due to convoy difficulty.

The Government Counsel made an Opening Statement.

The Defense Counsel reserved his Opening Statement.

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SFC [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

CPT [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

1SG [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

SGT [REDACTED] A CO, 302d MI BN, Germany, was called as a witness, sworn, and testified telephonically in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I was deployed to Abu Ghraib Prison Iraq at the end of September 2003 until February 2004; I left when my Battalion redeployed. I was the Systems Administrator and Trojan Spirit Operator for what was called the ICE Intelligence Center for the Interrogators. I was assigned to a MI Bn from Camp Victory, and worked with the interrogators that worked at Abu Ghraib. I worked in the center where the interrogators prepared their reports and collected data and kept information.

The MI personnel had to interact with MPs in order to do their interrogations. The MPs would provide security, or be told by individual interrogators from MI to alter diets or sleep of detainees. The Interrogation teams were usually made up of a civilian interrogator or interpreter. They would give direction to the MPs.

I may know SPC Ambuhl, but I don't recognize the name right now.

I do not know how Tier 1A and 1B is set up. I visited it once, and I was told that the real bad guys were there in individual cells.

I actually sat in on one interrogation with SPC [REDACTED] an interrogator from Victory Base. I was to interrogate a General, and I provided security.

To help with the interrogations, MP guards would play loud music, alter detainees' diets when feeding MRE's and taking out certain items. They would alter detainees' sleep,

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use dogs to intimidate, pour water over them and put them in the back of HMMWVs and drive around.

Physical Training that was authorized would be push-ups, overhead arm clap, instruction like from a Drill Sergeant to a Recruit.

I have not seen photos of abuse at Abu. My Chain of Command has not asked me if I have seen any photos, nor have they told me to delete photos from hard drives. I have only heard of incidents from interrogators.

I heard of the incident involving SPC [REDACTED] I was told that he was too aggressive, and was relieved. I do not know of any UCMJ action. He was placed in a more analytical role at the ICE. SPC [REDACTED] was also relieved because she had a detainee stripped naked and made him walk back to his cell naked in the view of all the other prisoners. This happened in November or December 2003.

My Bde Cdr, moved into the ICE; he was a LTC, and seemed pretty involved with everything that went on until he was replaced by a MAJ [REDACTED]

I would say that MI was in control of prison operations. The OPTEMPO was high. I was the system administrator, and there were many requests for new accounts to be added to the network. More and more personnel and prisoners would arrive.

I would say that there was pressure for the interrogators to produce info from the detainees. It was an overwhelming amount of detainees in the facility. There was no deadline to get detainees out of interrogations.

I recall my statement to CID when I talked of a conversation with SPC [REDACTED] I was sitting at the DFAC and heard him and his peers talking about what the MPs did to the detainees. Things like beating them up and using them as practice dummies and knocking them out.

I had just returned from leave, so this discussion was in December 2003.

Someone from the Nevada National Guard, an older female soldier, told me of some stuff that she saw going on. She documented it, and her chain of command reprimed her because of it. She was afraid of her chain of command. She sent the documentation to her relatives.

I spoke with a SPC [REDACTED] about the MPs using dogs on the detainees. She said how fearful the detainees were of the dogs. She described how a MP pretended to be a dog to scare the detainees. I don't know what happened to SPC [REDACTED] because she witnessed the incident. She is in the same unit as SPC [REDACTED] and SPC [REDACTED]. They are all in a Reserve Unit. She did take pictures of the facilities, but I do not know of her taking pictures of any detainees.

I did not report the abuse that I heard from others. I knew that some of the stuff was authorized, and did not need to be reported.

I talked to one woman about it only being a matter of time before the abuse got out and an investigation initiated. I spoke to at least everyone that I knew about how the place was poorly run. It was very unorganized. The response I got that it was a lot worse under Sadaam. LTC [REDACTED] made that statement after the Red Cross visited the prison and saw the conditions. The Red Cross criticized the food, from what I remember.

I remember soldiers from my BN visiting from Camp Victory being trained on how to interrogate and secure prisoners. They were also trained on how to better use their approaches.

I know that the detainees received blankets and clothing if the interrogators wanted them to have it. SPC [REDACTED] had mentioned to me that they made them wear women's panties, and if they cooperated, some would get an extra blanket.

SPC [REDACTED] was known to bang on the table, yell, scream, and maybe assaulted detainees during interrogations in the booth. This was to not be discussed. It was kept "hush hush" by the individual interrogators.

To my knowledge, the only thing that happened after the incidents was the team getting together to make reports after the interrogation. Nothing was said about not banging on tables. Nothing was put out about not stripping detainees naked after the SPC [REDACTED] incident. She was relieved because she made a detainee walk to his cell naked in front of other detainees.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

I don't know what training was given to the MPs of the 372d MP CO. The only time I saw MPs was while waking through the facility, or at chow.

SPC [REDACTED] also told me of two inmates that supposedly raped a child, and the MPs punished them by making them get into all sorts of sexual positions.

I am vaguely familiar with interrogation techniques. I know the IROE. Putting inmates in sexual positions naked would not be appropriate. I wouldn't do it if someone ordered me to do something like that; not even a CPT.

The different things I was told, I wondered if it was a joke for the guards. I wouldn't be surprised if the freed innocent prisoners retaliated against the prison after being treated this way, by helping to pinpoint locations in the prison for the mortar attacks.

The MPs were directed by the MI personnel to play loud music, vary diets, limit MREs, deprive sleep, and PT exhaustion.

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People got in trouble for being too aggressive. Physical violence would be over the limit of the IROE. It would not be authorized.

I would not hit someone to get them to soften up. Others shouldn't either. That would not be a legal order. Putting a leash around someone's neck, pretending to drag them and taking a picture would not be authorized.

Taking pictures was forbidden. Personnel were placing pictures on the database, and I was told to remove the pictures from the database. These were pictures of soldiers throughout the facility just walking around. It was totally inappropriate to take pictures of detainees. It is inappropriate to take pictures of detainees naked in a pyramid. You would not do this to soften them up. I don't know of anything that would allow MPs to have detainees masturbate to soften up for an interrogation. This would not be allowed. Pictures of this masturbation would be illegal also. Pictures of a detainee with his face next to another detainees genital area masturbating would also be unauthorized. This is not a technique used to soften someone up. I have never heard of any of these techniques used by MI.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])

I didn't report the stuff that I heard, because I thought some of the things I heard was authorized. The dietary and sleep stuff was common knowledge within the ICE. MPs using dogs to scare detainees, I think was approved by our IROE.

Dragging detainees with at leash, making detainees masturbate, and piling them naked in pyramids and taking pictures of it is not authorized.

It was confusing the way the place was run. It was an important mission run by Reservists who did not know what they were doing. They were just on their own. It was a shocking experience.

QUESTIONS BY THE DEFENSE COUNSEL (Mr. [REDACTED])

I don't know if the MI personnel received efficiency reports; I got an NCOER, and I counseled my soldiers. I guess the people above me were counseled on their performance.

The goal of the interrogators was to get information, make diagrams of the info and piece together theories or hypotheses of terrorist events that was going on.

It was important to get the information to prevent terrorist activity, and find perpetrators of terrorist activity.

We would get attacked at the prison. There was pressure to get results by effectively interrogating the prisoners. If there were no results, then the supervisors would be concerned. The goal was to get results.

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General Sanchez opened more facilities, and made things better. The place was getting cleaned up. This was an incentive to get more information from the prisoners.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

Goals would not justify committing a crime; it would be definitely possible for maybe the civilian interrogators to overlook that. They were not under any authority.

General Sanchez never ordered anyone to commit crimes to get information. The Brigade, Battalion, Company, and MI Commanders, never told anyone to commit crimes to get information.

The facility in general, had no real authority base, other than LTC [REDACTED]. There were no clear-cut guidelines.

There is no justification to have detainees masturbate, piled in pyramids naked, or be pulled by leashes. The conditions might lead some people to act inappropriately. The people who act inappropriately should be punished.

I know that there is a separate facility for women and children. There are more than terrorists and security detainees at the prison. Some people were living there. The raids would round up people that were just in the area and probably innocent. If a prisoner was being kept for robbing an Iraqi bank, I wouldn't know about it.

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

The Article 32 proceeding recessed at 1149, 1 May 2004.

The Article 32 proceeding reconvened at 1203, 1 May 2004, with all parties present.

CW2 [REDACTED] IMIR, CJTF-7, was called as a witness, sworn, and testified in substance as follows:

I organize and process reporting by Iraqi information collectors. I am a 351E, Interrogations Technician. Prior to my current job, I was at the JIDC at Abu Ghraib from September 2003 until January 2004. I was reassigned when my unit left. I was asked to stay.

I am familiar with the layout of the prison. The largest camp is Ganci; it holds security detainees primarily, next is Vigilant, it holds detainees of informational interest; and then there is the Hard Site; it holds detainees of MI interest, females and juveniles, problematic detainees from the other camps, like rioters, or crazy detainees.

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Tier 1A and 1B holds persons of MI interest. I do not know anything about what type of training the MP guards would have received at Tier 1A and 1B.

In January 2004, we ceased to bring problematic detainees into the Hard Site, because they created a chaotic environment. The FOB Commander ordered this change. They were troublemakers. I recall one who would rip up his mattress and relieve himself right on the floor of his cell; another would sling their feces at the guards.

I don't know if the MP guards received any special type of training.

I worked in the Operations section of the JIDC. We accounted for the detainees, and answered questions from CJTF-7. We tracked requirements and assessments of the detainees. Leaders would gather the information from the sections, The ICE NCOIC was SFC [REDACTED] and the OIC was CPT [REDACTED]. I don't recall seeing any suspense dates. We were short staffed; we requested for more personnel, and we got more personnel.

I think there was interaction with MPs and MI personnel. SPC [REDACTED] was a liaison, and would attend the FOB BUB daily. The personnel from each section would disseminate the info obtained from the BUB.

I know SPC Ambuhl; she worked in Tier 1, and she is here today. I don't remember when I first met her, but I had a almost daily professional interaction with her. She would provide updates on who was present or not. I don't know how long she worked at the prison. She observed juvenile and female detainees. She had interaction with them; she helped move them from cell to interrogation wing.

I don't know if she received any training on how to interrogating prisoners. We did have a conversation about supplies and Iraqi food for the detainees. We once talked about rewarding detainees that helped clean and do tasks, with cigarettes, because they loved to smoke.

I was the "old Operations expert", everyone would just ask me stuff.

I remember a discussion with her about problem detainees; it was about reducing the environment that caused them to misbehave. Some of the detainees were cooperative and others were not.

There were a few approved interrogation techniques; for example, prod and go down – when you speak down to someone to get them to cooperate.

I do not know of any SPC [REDACTED]. I know SPC [REDACTED] he was an analyst that worked in the ICE shop. I understand that he was removed because of a situation when a detainee was stripped naked.

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SPC [REDACTED] was also involved in this same incident and was moved to my section after she was relieved from her duties. I asked her why she was moved, but I did not ask her what she did. I do not know if SPC [REDACTED] or SPC [REDACTED] received any UCMJ.

We had mandatory IROE training and implemented a mandatory sign out procedure. All MI personnel attended this training.

I heard about a riot at Ganci. I do not know of any punishment after they were moved to the hard site. I hope that they were segregated and silenced.

Embarrassment of the Arab culture would be contrary to producing results, in my opinion. Some of our most effective means to communicate is to just develop a rapport. I do not know if the MPs were trained on the Arab culture.

SPC Ambuhl would help move the prisoners from their cells to the interrogation wing or where we picked them up. The interrogator would ask for the prisoners they needed. SPC Ambuhl would cross-reference and tell which cell the prisoner was in, and she would facilitate the move.

Sleep deprivation would be documented in an interrogation plan. It is a separate book from other files.

I never had any problems with SPC Ambuhl.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT McCabe)

The Hard Site has problematic detainees in 1A and 1B. The rest of the Hard Site houses Iraqi corrections prisoners, such as robbers, and thieves. The CPA is in charge of the rest of the hard site, 2A, 2B, and so on. 1A and 1B contained security detainees for MI, females, and juveniles.

Ganci contained people possibly gathered from raids. There are many camps in Ganci, No one from Ganci has any interrogation value. Someone removed from a riot would not be interrogated. If detainees in Ganci could not be controlled, then they would be moved.

Our priority was to get information to stop the IED attacks, terrorist activity, and crimes against the Coalition.

Every detainee was inprocessed and assessed. After the screening, they were determined to be of value or not value to MI. These reports went to CJTF-7.

I am a trained interrogator. I finished my training in 1990; and I have been an interrogator for 14 years. MPs would do the sleep management plan, it was requested of MI. General Sanchez would have to approve speaking to someone about something that would make them upset. An MP could not just do this on his own.

I am familiar with the Geneva Conventions. We treated them the same as POWs; we treated them with dignity and respect. Anything outside of that required approval.

No MPs attended our training. MPs did not attend our Geneva training. The IROE is classified and located at the JIDC.

The worst criminals were to be treated with dignity and respect.

I never saw SPC Ambuhl treat anyone without dignity and respect. She would help us with the female detainees. She was nice and pleasant. She knew the difference between right and wrong, and what dignity and respect was. I saw her treat people with dignity and respect. I assume she was a guard; she took direction from the Shift NCO, SGT [REDACTED], CPL [REDACTED] or SSG [REDACTED].

There is nothing in the IROE that allows stripping detainees naked. There are times when they are naked for strip-searching. Detainees being piled in a pyramid naked, or being forced to masturbate has no MI or military purpose.

I've seen a handful of photos of the pyramid. That type of interrogation "plan" would not have made it to General Sanchez for approval; it would not have made it past me.

Forcing detainees to masturbate kneeling in front of one another would be outside of the bounds. Placing a leash around a detainee's neck would be out of bounds.

All of these acts would be criminal offenses. If I were ordered to do these acts, I would not carry them out. Embarrassment as a technique would be contradictory to achieving results.

Government Counsel shows the witness Prosecution Exhibit 4A.

This looks like 1A or 1B. I recognize the metal doors. SPC Ambuhl is in this picture. I have seen the other female around, but I do not know her name. I do not recognize the detainee on the "leash". This scene serves no military purpose; it is inappropriate. Interrogators would not tell MPs to do this. I have never seen SPC Ambuhl do anything like this.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ Ransome)

The rest of the Hard Site Tiers housed, as I understood it, Iraqi criminals; some I thought were actually sentenced and serving prison terms.

QUESTIONS BY THE DEFENSE COUNSEL (Mr. Volzer)

A "unclassified" description of the general requirements would be: who's attacking us-, what are some imminent attacks-, where is the WMD-, what do you know about terrorist activity-?

Reports were generated from the information obtained from the detainees interrogated. CJTF-7 developed the reporting requirement.

1 to 2 people would interview or interrogate a detainee, depends on the detainee.

You could not "fear up" or belittle someone without approval. MI would tell the MPs to make the detainees more receptive. It depended on the environment; a detainee may be moved to another area, monitored for interaction, told to keep quiet and not interact with others, with proper documentation, put on dietary management, and possibly be given cigarettes.

These were effective techniques were used by MI and required approval. Removing a blanket or other item required approval.

Saying MI personnel are aggressive is an unfair statement. Some are, and some are not. I am a former grunt. 11B and 11C grunts are aggressive too.

The interrogation techniques used are taught.

MI does not own the detainees. The sleep management procedure was directed by MI to the MPs to supervise and report at the end of the day.

After someone is interrogated, doesn't mean they could leave the prison. There may be more interest in keeping them.

Yelling was not authorized. We had a few that were loud with the detainees.

I saw the special reaction team at the Vigilant camp once. Sometimes handling a situation quietly works better and is more effective. If one technique is working, we continue to scrutinize that technique. Its not one of those "not broke don't fix it" scenarios. We do continue to develop rapport.

There was a sign in sheet in the beginning; it is kept with the NCOIC of each tier. The detainee interrogation plans are classified and kept in the ICE log. Detainee files are secret.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])

To prod and go down is a technique, such as getting a captured officer, making them tired, and calling them a coward.

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You exploit how they were captured and use it to your advantage. An example of fear up would be, "okay, as long as you don't cooperate, you will just stay in here". Approval is need for these two techniques.

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

The Article 32 proceeding recessed at 1315, 1 May 2004.

The Article 32 proceeding reconvened at 1412, 1 May 2004, with all parties present.

SGM [REDACTED] 418th MP Det (CLD), was called as a witness, sworn, and testified in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I first arrived to Iraq 1 February 2004. My mission was to work a BLD/CLD versus a EPW mission. CLD is Camp Liaison Detachment; BLD is Brigade. The 16th MP BDE (ABN) gave us our mission. We replaced the 381st BLD. There were no EPWs, except for a handful at Camp Bucca. We took on the detainee operations role.

The definition of detainee and EPW is in the Geneva Convention, Article 4.

Our mission falls under the 16th MP BDE (ABN). I have not aware of allegations of abuse and mistreatment of detainees. I have heard of the rumors.

I don't know what training was given in the past; I am aware that training is going on now. There are 30 corrections personnel from Fort Knox, Fort Leavenworth here to train soldiers at the prison. There is training on the Arab culture, ROE, and the Geneva Conventions.

I visit the prison often. I am aware of the prison breakdown; 1A and 1B houses MI holds, females and juveniles. Juveniles were moved recently. The Hard Site is fairly secure. Normally, females would be separated. We use the Geneva Convention as a guideline.

Changes are going on in Ganci and Vigilant to make conditions safer for the detainees. The 16th MP BDE (ABN) is refining policies, and SOPs.

I do not know of the officer involvement prior; but COL Quantock frequently visits the prison.

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We have MPs and MI personnel in the inprocessing center at the prison. I do not know of any cross over training. When we made our assessment, we noted that the nutrition and sanitation conditions were not within the Geneva Convention.

I do not know if the Geneva Conventions was followed before the 16th MP BDE (ABN) arrived. It is being followed now. There are weigh ins, and the meals are nutritional.

The Geneva Convention recommends that female detainees be guarded and searched by female MPs.

When a detainee arrives, they are assessed and inprocessed within 72 hours. I do not know of any SOPs being left behind or given to the 372d MP CO.

We at the BLD look at the prison from a Geneva Convention standpoint. We ensure that prisoners are treated properly, and that environmental conditions are correct.

The 372d MP CO was previously at Mosul. I am not aware of anyone else performing the prison mission before them.

We brought our regulations and documentation with us. I have walked throughout the compound and had casual conversations with the soldiers. We have a big switch of OIF1 and OIF 2 personnel.

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

The Article 32 proceeding recessed at 1435, 1 May 2004.

The Article 32 proceeding reconvened at 1459, 1 May 2004, with all parties present.

SA [REDACTED] U. S. Army CID, Fort Jackson, SC, was called as a witness, sworn, and testified telephonically in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I first became involved in the detainee abuse case when we received a anonymous letter and cd-rom containing pictures. In the preliminary stage of the investigation, I was the case manager. I left in February 2004. Our CID detachment was located at Abu Ghraib; we were three agents conducting interviews of prisoners. We also had three translators.

In order to find out who the detainees were that were abuse, we obtained logs of the prisoners that were in the isolation wing at the time of 7 November and a couple of other days.

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Initially, the person who came forward with the letter and cd-rom provided the names of the main persons involved. This was SPC [REDACTED]; he went through the pictures with us and identified the military personnel involved. He identified the majority of the personnel, and knew who they were. Others, he did not know. We interviewed every single MI and military personnel that worked in the prison; we sent numerous requests for assistance to other CID offices worldwide to interview all other persons that were ever at the prison and identified in the photographs. I have no idea of any UCMJ action. The case is still open. I interviewed several hundred people, but I cannot remember a SPC [REDACTED].

I believe SPC [REDACTED] came forward because he knew this stuff was wrong, and that CPL [REDACTED] would go back to work in the isolation wing and continue the abuse. He wanted the abuse to stop. He received the pictures approximately one week before he came forward. He was weighing his conscience, and decided to do the right thing.

I think several people suspected abuse but did not report it. I don't know the status of any UCMJ against anyone. CID does not recommend what action be taken against subjects of our investigations. We just gather facts; the chain of command decides what to do. We briefed the Company and Battalion commanders about our progress during the investigation.

I remember my interview with SGT [REDACTED] he was interviewed twice. He lied in his first statement, and told the truth in his second statement; admitting to stepping, stomping, and jumping on the detainees.

After talking with the detainees and personnel, the names of the main perpetrators of the abuse were CPL [REDACTED], SSG [REDACTED], and SGT [REDACTED]. The ones taking pictures were SPC Ambuhl, PFC [REDACTED] and another I cannot recall. These names are based on the interviews, and who was there.

I recall the detainees mentioning SPC Ambuhl; they would refer to her as Miss [REDACTED]. I can't recall if she helped a detainee by giving him an inhaler.

When I interviewed a detainee, I explained why I was there, and just gave them a pen and a sworn statement form in Arabic or English; and they would write what they knew about the incidents. Their statements were later translated. If something wasn't clear, we had follow up questions. If they did not know someone's name, they were told to just describe that person using as much detail as possible.

I remember SGT [REDACTED] but not his statement. I remember SSG [REDACTED] once being a suspect; I thought he observed the abuse; he was later cleared of any wrongdoing. This was all based on our interviews of the personnel that were there.

SFC [REDACTED] as I remember was not involved. It became apparent through the course of the investigation, that the nightshift-- SPC Ambuhl, CPL [REDACTED], SSG [REDACTED], PFC [REDACTED]

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██████████, and on occasion SPC ██████████, would do these acts after SFC ██████████ had left; and after the chain of command had changed shifts and gone home. It became clear to me that they knew that SFC ██████████ would not tolerate these acts. There was one incident when SFC ██████████ was on the upper tier and saw an incident and ordered them to stop immediately; I believe he observed SGT ██████████ stepping on a detainee. They were shocked at how angry he was when he told them to stop. I don't believe that SFC ██████████ reported that incident.

I have no recollection of SGT ██████████ again, I spoke with several hundred personnel.

SPC ██████████ was identified as one of the people in the photos, but I don't recall his statement. He never came forward to report any misconduct to the CID office. SPC ██████████ and SPC ██████████ were MI soldiers identified in one of the photographs.

I am not sure of any UCMJ action pending on anyone; I left Iraq in February 2004, and until very recently, I did not know of anyone pending any UCMJ action. I turned the investigation over to SA ██████████. I don't know if he did any follow up interviews. We gave the 15-6 Investigation Staff a copy of our case file; we also provided the photos and statements we gathered.

I do not recall a SGT ██████████ again, I spoke with hundreds of personnel. Our main purpose was to identify the personnel in the photos; we also wanted to find out if MI told the MPs to do these acts. If so, we wanted to know who told them; that's why we interviewed everyone. No one said do this to that person, or anything specific. Our second purpose was to have the most thorough investigation that we could. We wanted to talk with each and every person mentioned in the interviews.

Most of the interrogators did not wear nametags. You knew who they were, if you knew them. We would figure out who was working, and interview all the handlers, interrogators, and guards.

I do not recall if there are any civilians involved in the investigation; several people were interviewed.

I remember ██████████. We listed someone as a subject if there was reasonable belief that they committed a crime. The investigative file is a working document, and the status of personnel involved may change. Like when SSG ██████████ was listed as a subject, and later taken off of the status report.

There are numerous things involved when determining if someone is derelict in their duty; if they inform their chain of command, then they are not derelict in my mind, and the way the UCMJ puts it, as I know.

No one reported any abuse up until January 15, 2004, to CID; however, there was one individual who reported the abuse to his chain of command—his NCOIC.

The NCOIC then went to SSG [REDACTED] to report the abuse; and because SSG [REDACTED] was the perpetrator in this incident, it did not go anywhere. The individual that reported it did the right thing.

Had SPC Ambuhl reported the abuse to SFC [REDACTED] she would not be a subject of the investigation. It would be different if she had reported it to SSG [REDACTED]; I am not a lawyer. This was an ongoing incident. The NCOIC that reported the incident to SSG [REDACTED] I believe, did not report it to anyone else. When he reported to SSG [REDACTED], he did not know that SSG [REDACTED] was the perpetrator.

I do not recall interviewing SPC [REDACTED] or SPC [REDACTED]. The investigation is still open, and pending a few requests for assistance. You can add and remove subjects as credible information becomes known.

I worked at Abu from October 2003 to February 2004; I would visit the Hard Site at least once or twice a week. We would interview suspects of crimes against U.S. Forces, or individuals who knew of deaths of U.S. Forces. On occasion, I visited with CPT [REDACTED] in tier 1a and 1B. I had no involvement with the Red Cross.

I heard of a deceased individual that was being stored at the facility, but I don't know the specifics. Our focus was Iraqis committing crimes against U.S. soldiers.

Based on our proximity and the amount of time, the 12th CID came over to help with the investigation. There were a lot of people to be interviewed. They were initially investigating hostile fire incidents. It was a higher priority to work the logistics of this case.

I had no interaction with SPC Ambuhl; I would see her when I went to the Hard Site. I did not see her commit any abuse. I only went there during the day in the morning; the alleged abuse happened in the evening or nighttime.

I never saw the detainees do any PT. I believe a SPC [REDACTED] or someone else hung a detainee in handcuffs for over six hours. I don't recall SPC Ambuhl letting the detainee down.

I don't recall if I interviewed PFC [REDACTED]. I read every document when I was there, but I cannot remember any statements that she made. I do not remember if she changed her stories; she may have. There were a lot of people and documents in this case.

We do criminal record checks on our subjects. I believe PFC [REDACTED] received an Article 15 for a improper relationship with CPL [REDACTED]. I believe CPL [REDACTED] was admonished, and they were told to stay away from each other. I don't remember if CPL [REDACTED] was recommended to take anger management by his commander.

When I interviewed the detainees, I did not provide any names. I would not ask, for instance, "Did CPL [REDACTED] hit you?"—I would simply ask "Were you in the isolation

wing-- and what happened when you were there?" We wanted a clear and unbiased environment.

I don't know if they wore their BDU Tops while in the isolation wing. I don't know if they were told to not use their first names; or to even use fake names. The MI personnel I interviewed never told me they told the MPs what to do to the prisoners.

In some of the incidents, some of the detainees being abused were not actively scheduled for interrogation. They were rioters. This appeared to me as just retaliation against the rioters. The riots were in separate camps.

We interviewed all of the MI personnel. No one admitted to telling the MPs to soften up any detainees; if they had, they would have been violating the UCMJ and the Geneva Convention. No one ever admitted to "good job, keep doing what you are doing".

MI had their very specific interrogation plan. It detailed things they could and could not do. No one I interviewed said they were abused during an interrogation. I am not aware of any MI investigation.

There was absolutely no evidence that the MI or MP chain of command authorized any of this kind of maltreatment. These individuals were acting on their own. The photos I saw, and the totality of our interviews, show that certain individuals were just having fun at the expense of the prisoners. Taking pictures of sexual positions, the assaults, and things along that nature were done simply because they could. It all happened after hours. The fear instilled in the prisoners after these incidents may have been a benefit, but I don't know for sure. These individuals wanted to do this for fun.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

Benefiting the interrogators did not come out in our investigation. The abused individuals were not going to be interrogated. The rioters would have been in another camp if they had military intelligence value. It is clear to me that the abuse was retaliation after the riot.

I know I am here today to help clarify the allegations against SPC Ambuhl. My investigation determined that she was present and took pictures. She is in the pictures with PFC [REDACTED] holding a leash around a detainee's neck. She is described as being present by some of the detainees during the abuse.

I do not recall her present at the riot incident. Our investigation did not determine her committing any abuse; nor did it determine that she stopped the abuse or reported the abuse.

I don't remember a statement from [REDACTED] If he described a tall white female with green eyes named [REDACTED] he would be talking about SPC Ambuhl. I did not give the detainees any names.

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I told them to use the names if they knew them, and to describe what happened. [REDACTED] would also be SPC Ambuhl. In the Arab dialect, they have a hard time pronouncing [REDACTED] and end up saying [REDACTED]

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

There was an amnesty period during the course of our investigation, ordered by the FOB Commander. We did not collect any of this evidence; none of it pertained to our investigation. We reviewed cds and media as requested by the chain of command. The commander had access to the amnesty boxes; it entirely a command function. The commander would have kept all the other contraband. We returned the stuff we reviewed to the chain of command to be destroyed.

The detainee statements were translated. [REDACTED] stated that all the guards were good except for SSG [REDACTED], CPL [REDACTED] and SGT [REDACTED], as I specifically recall. He also said that despite all the abuse, he realized that the majority of U.S. soldiers did not abuse detainees. He only pointed out SGT [REDACTED] and CPL [REDACTED] abusing him.

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

The Article 32 proceeding recessed at 1608, 1 May 2004.

The Article 32 proceeding reconvened at 1617, 1 May 2004, with all parties present.

PFC [REDACTED], HHC 16th MP BDE (ABN) (REAR), Fort Bragg, NC, SC, was called as a witness, sworn, and testified telephonically in substance as follows:

The witness was read her Article 31 rights; she acknowledged and understood them, and stated that she would participate in the proceedings without a lawyer. Upon discussion wit all parties present, the Defense Team decided that they did not wish to question PFC England.

The Article 32 proceeding recessed at 1640, 1 May 2004.

The Article 32 proceeding reconvened at 1643, 1 May 2004, with all parties present.

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

**Prosecution Exhibit 5: Sworn Statements of PFC [REDACTED]
Prosecution Exhibit 6: Sworn Statement of SPC [REDACTED]**

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The Article 32 proceeding recessed at 1643, 1 May 2004.

The Article 32 proceeding reconvened at 0713, 3 May 2004, with all parties present except for the Assistant Government Counsel.

The Government Counsel asked that the members of the 372d MP CO be declared unavailable since they could not make their convoy to Victory Base.

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

Prosecution Exhibit 7: CD Rom containing photos and video clips; with objection; the Defense objects to photos that do not pertain to SPC Ambuhl's charges.

Prosecution Exhibit 8: Sworn Statement of SPC [REDACTED]

Prosecution Exhibit 9A – 9O(oscar): Sworn Statement of detainees; with objection; the Defense objects to the statements of detainees that have been released.

THE GOVERNMENT RESTS

The following exhibits were presented by the Defense Counsel and admitted into evidence as follows:

Defense Exhibit A: 15-6 Investigation of 800th MP Bde

Defense Exhibit B: Rebuttal to 15-6, by SFC [REDACTED]

Defense Exhibit C: Rebuttal to 15-6 by 1SG [REDACTED]

Defense Exhibit D: Rebuttal to 15-6 by CPT [REDACTED]

Defense Exhibit E: Sworn Statement of CPT [REDACTED]

THE DEFENSE RESTS

The Government Counsel made a closing statement.

The Defense Counsel made a closing statement.

The Article 32 proceeding adjourned at 0814, 3 May 2004.

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UNITED STATES

v.

AMBUHL, Megan M.
SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

GOVERNMENT'S RESPONSE
TO DEFENSE MOTION TO
DISMISS

21 AUGUST 2004

RELIEF SOUGHT

The accused requests that this Court dismiss Additional Charge I and its specification and Additional Charge II and its specifications for alleged failure of compliance with Rule for Courts-Martial (R.C.M.) 405(a). The government objects to the accused's motion and maintains that the accused was afforded a thorough and impartial investigation that fairly embraced the two additional charges. Consequently, the government requests that this Court deny the accused's motion to dismiss the additional charges.

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 enlisted soldier, was the noncommissioned officer in charge (NCOIC) of Tier 1B at the Baghdad Central Correctional Facility (BCCF), Abu Ghraib, Iraq during the latter part of 2003. The accused, along with a number of other co-accused, allegedly maltreated and assaulted foreign national detainees while acting as prison guards at the BCCF. 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.

Captain (CPT) [REDACTED] preferred charges of conspiracy to maltreat subordinates, dereliction of duty, maltreatment of subordinates, and indecent acts against the accused on 20 March 2004. On 24 March 2004, the Special Court-

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APPELLATE EXHIBIT II

Recognized R. 16

Martial Convening Authority, Colonel (COL) [REDACTED] appointed Major (MAJ) [REDACTED] as the Article 32 investigating officer.

The Article 32 investigation was held on 1 May 2004 and re-opened on 3 May. MAJ [REDACTED] heard testimony from four witnesses and admitted nine government exhibits and five defense exhibits (See Summarized Transcript, attachment, Defense Motion). Of those exhibits, government exhibit #4 contained 18 photos (A-R), government exhibit #7 (a copy of the CD-ROM SPC Darby turned over to CID that contained numerous photos and video clips), exhibit #9 contained sixteen translated, sworn statements from the abused Iraqi detainees, and defense exhibit A was the lengthy Army Regulation (AR) 15-6 report prepared by Major General (MG) Antonio Taguba.

Subsequent to the Article 32 investigation, CPT [REDACTED] preferred two additional charges. The first additional charge was conspiracy to maltreat subordinates on 8 November 2003. This charge is connected to conduct that the accused was previously charged with in the first set of charges (See Charge Sheet, Charge III, specification 1, dated 20 March 2004). The second additional charge carried two specifications for maltreatment of subordinates on 23 October 2003 and 8 November 2003. Both of these specifications involve misconduct associated with the charges found on the original charge sheet (See Charge Sheet, Charge I and its specification and Charge III, specification 2, dated 20 March 2004).

LAW

Under Article 32, Uniform Code of Military Justice (UCMJ) and R.C.M. 405, no charge or specification can be referred to a general court-martial until all the matters set forth in those charges and specifications have 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. When reviewing an alleged error in an Article 32 investigation, substantial compliance is the appropriate legal standard. R.C.M. 405(a).

ARGUMENT

The accused complains that the additional charges were not subject investigation under Article 32, UCMJ. While it is true that the Article 32 investigation was not re-opened to specifically look at these additional charges, the subject matter of these offenses is the exact same as what was previously impartially investigated by MAJ [REDACTED]. The additional charges

are integrally connected to the original charges and are substantially similar to the charges and specifications MAJ [REDACTED] investigated on 1 and 3 May 2003. Consequently, R.C.M. 405 has been substantially complied with in the accused's case.

Stepping out of order and addressing the last of the additional charges first, additional Charge II, specification 2 is a violation of Article 93, UCMJ, maltreatment of subordinates. This charge is a clear outgrowth of Charge I and its specification, conspiracy to maltreat subordinates, on the original Charge Sheet. The Article 32 officer was presented with pictures showing the accused standing mere feet away as her co-conspirator, Private First Class (PFC) [REDACTED] holds a naked detainee with a leash wrapped around the detainee's neck. See Attachment 1, Article 32 - Exhibit 4A. In addition, MAJ [REDACTED] was also presented the sworn statement of PFC [REDACTED] acknowledging the accused's complicity that night. See Attachment 2, Article 32 - Exhibit 5.

It is well settled law that a co-conspirator is also legally liable for the substantive offense that is the object of the conspiracy. Furthermore, as the accused admits in her motion, in order for the government to be successful in proving the conspiracy charge both at trial and during the Article 32 investigation, all of the elements of underlying offense of maltreatment of subordinates must be proved. Additional Charge II, specification 2 merely adds this underlying offense to the listed charges against the accused. Since the accused was present at the Article 32 investigation, knew of the conspiracy charge and the underlying misconduct that was the object of the conspiracy, was afforded the right to representation and cross-examination, and did present evidence concerning this misconduct, R.C.M. 405 and Article 32, UCMJ has been substantially complied with in relation to this charge. R.C.M. 405(a).

The other two additional charges stem from the same night of abuse, 8 November 2003, that is the subject matter of Charge III and Charge IV on the original Charge Sheet.¹ During the Article 32 investigation, MAJ [REDACTED] received into evidence numerous photographs documenting the subject matter of additional Charge I and additional Charge II, specification 1 as well as the sworn statements of several co-accused that detailed the events of that night to include those of SPC [REDACTED] Sergeant (SGT) [REDACTED]

¹ While it is true that MAJ [REDACTED] stated that he did not believe there were reasonable grounds to believe that the accused committed these offenses, the convening authority was appraised of this recommendation prior to referral of both the original and additional charges. See Attachment 3, Pretrial Advice, dated 21 July 2004. The convening authority disagreed with MAJ [REDACTED] recommendation and, within his due discretion, decided to refer these charges to general court-martial.

██████, SPC ██████████ and PFC ██████████ See Attachment 4-9, Article 32 - Exhibits 4J-0. It can hardly be said that the series of abuses that occurred the night of November 8 were not thoroughly investigated by MAJ ██████████. Moreover, like additional Charge II, specification 2, these additional charges have a clear relation to the original charges.

Additional Charge I and its specification is a conspiracy charge directly related to Charge III in that Charge III is the underlying offense of newly preferred conspiracy charge. Throughout the Article 32 investigation, it was clear that a number of soldiers acted in concert to maltreat and abuse soldiers on the night of 8 November. *Additional Charge II, specification 1 deals with the same sexual in nature misconduct as Charge IV, the forced masturbation of the detainees in her care. This is not a case where the misconduct was not investigated or the accused was not on notice of the conduct being investigated.

The amount of evidence that MAJ ██████████ reviewed, to include the large number of photographs, statements of co-accused, and the lengthy AR 15-6 investigation completed by MG Antonio Taguba, and the detail of his report clearly shows the absolute thoroughness of his investigation. The Article 32 investigation took in so much evidence that the government could determine no discernable benefit to re-opening the investigation for the additional charges that were fairly raised by the evidence adduced and which dealt with the same matter that had been investigated. This point is underlined by the inability of the accused to identify any witness or evidence that she would present in a re-opened Article 32 investigation.

The accused's inability to identify any benefit that she might receive from a re-opened Article 32 investigation forces her to take the untenable position that the only appropriate remedy is dismissal of the additional charges. However, if this Court should determine that the government erred in not re-opening the Article 32 investigation prior to referring these additional charges, the proper remedy would be to order the re-opening of the Article 32 investigation for a number of reasons. First, all of the cases that the accused cited in support of the proposition that dismissal is the only fitting remedy are cases that deal with remedying a defect to a pretrial right *after* trial on the merits. The accused's case is in a different trial posture altogether. A trial date has to be set. Discovery for the accused's case has been voluminous and is still underway. Evidence and investigations that the accused has specifically

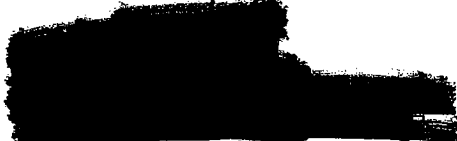
requested is still being compiled and have yet to be released.² Even if this discovery is finalized and released in short order, a trial date for the accused is still at least two months away. This realistic assessment of the accused's case shows that there is ample time to re-open the Article 32 investigation and not unduly the accused's trial in the least.

The accused goes on to allege that "there was over two months of inactivity" in her case. Defense Motion at 8. However, this allegation belies reality. The actions of the accused and her co-accused have been the subject of numerous and wide-ranging investigations to include the AR 15-6 investigation conducted by MG Taguba, an AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones, and the extensive investigation being conducted the Criminal Investigation Division. As the Court and all of the participants in this case are well aware, these investigations, with the exception MG Taguba's investigation, have been active and have taken longer than originally expected to complete. Of particular interest to both the government and the accused, the AR 15-6 investigation being conducted by MG Fay and LTG Jones studying the role that military intelligence played in the abuses at the BCCF originally had a suspense date of 1 June that has been extended on a number of occasions so as to continue to interview relevant witnesses. It was only after the deadline for that investigation was extended yet again was the decision made to recommend and prefer the additional charges at issue.

² While trial counsel has yet to see the investigation, it has been reported that the AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones into the role that military intelligence played in the abuses will consist of over 8,000 pages of witness statements and supporting documents.

CONCLUSION

In sum, the accused received a thorough investigation into the charges that have been brought against him. Therefore, the defense's motion to dismiss should be denied.


CPT, JA
Trial Counsel

Delivered to defense counsel, by email, this 22nd day of August 2004.


CPT, JA
Trial Counsel

002647

**OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837**

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAS [HAVE] BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION 6 and 7(C):

Photographic Exhibit

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UNITED STATES

v.

Megan M. AMBUHL

SPC, U.S. Army

Headquarters & Headquarters Company

16th Military Police Brigade (Airborne)

III Corps, Victory Base, Iraq

APO AE 09342

MOTION FOR EXPERT ASSISTANCE

16 August 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to request that Dr. [REDACTED] a psychologist, be appointed to the defense team, pursuant to Rule for Courts-Martial [R.C.M.] 703(d).

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion for Expert Assistance be granted and that Dr. [REDACTED] appointed to the defense team as an expert consultant with the expectation that Dr. [REDACTED] will also become an expert witness for the defense at trial. In lieu of Dr. [REDACTED] the defense will accept a comparable substitute expert witness, if once can be identified by the government. The defense further requests that Dr. [REDACTED] be designated as a member of the defense team under U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987), Military Rule of Evidence [M.R.E.] 502(a), and Article 46, UCMJ.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c). The current legal standard for employment of a defense expert is a convincing showing of a compelling need. See U.S. v. Cameron, 21 M.J. 59 (C.M.A. 1985).

C. FACTS

SPC Megan M. Ambuhl entered the U.S. Army Reserves in early 2002. SPC Ambuhl never served on active duty prior to this initial enlistment. In October 2002, SPC Ambuhl was notified that she would be activated in support of Operation Iraqi Freedom. As a civilian, SPC Ambuhl worked as a technician in a medical laboratory. She had no law enforcement training or experience prior to her joining the military as a Military Police Officer. As an MP, SPC Ambuhl was trained to conduct combat support operations, not relocation and interment operations. During her time in the military, she has never received any training on how to conduct detainee operations or how to work in a prison.

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APPELLATE EXHIBIT IV

Recognized R. 40

In October 2003, while deployed to Iraq, SPC Ambuhl and members of her unit were relocated from Hillah, to Abu Ghraib Prison or Baghdad Central Correctional Facility (BCCF). SPC Ambuhl was assigned to work at Tier 1B of the maximum security section of the prison. The command gave SPC Ambuhl this assignment because they needed a female soldier to work on the wing to assist with the female detainees housed on Tier 1B. SPC Ambuhl worked at BCCF until January 2004.

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts). All of these offenses are alleged to have occurred at BCCF during the time of SPC Ambuhl's assignment to the prison.

On 6 July 2004, the defense submitted a Request for Expert Assistance, regarding Dr. [REDACTED] to MG Thomas Metz, Commander, III Corps. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein.

On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment). These additional charges are alleged to have occurred at BCCF while SPC Ambuhl worked on Tier 1B.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

On 14 August 2004, MG Metz denied the defense's 6 July 2004 Request for Expert Assistance. However, MG Metz indicated that the government would detail a military expert of suitable training, education, and experience to assist the defense.

On 16 August 2004, the government notified the defense of MG Metz's decision. The defense immediately requested that the government identify who they deemed as a suitable alternative prior to 23 August 2004.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. U.C.M.J. Article 46
- b. R.C.M. 703(d)

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- c. M.R.E. 502
- d. Ake v. Oklahoma, 470 U.S. 68 (1985)
- e. United States v. Ford, 51 M.J. 445 (C.A.A.F. 1999)
- f. United States v. Gonzalez, 39 M.J. 459 (C.M.A. 1994)
- g. United States v. Burnette, 29 M.J. 473 (C.M.A. 1990)
- h. United States v. Toledo, 25 M.J. 270 (C.M.A. 1987)
- i. United States v. Garries, 22 M.J. 288 (C.M.A. 1986)
- j. United States v. Cameron, 21 M.J. 59 (C.M.A. 1985)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion for Expert Assistance. The defense requests consideration of the following documents:

- a. Memorandum through SJA, III Corps, for CG, III Corps, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 6 July 2004
- b. Curriculum Vitae of [REDACTED] Ph.D.
- c. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]
- d. Memorandum for Defense Counsel for SPC Ambuhl, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 14 August 2004

The defense may call SPC Megan Ambuhl to testify for the limited purpose of litigating this motion.

F. ARGUMENT

A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (C.M.A.), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her "[m]eaningful access to justice." Ake, 470 U.S. at 77.

Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate "a proper showing of necessity." U.S. v. Burnette, 29 M.J. 473, 475 (C.M.A. 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (C.M.A.), cert. denied, 513 U.S. 965 (1994); see also U.S. v. Ford, 51 M.J. 445, 455 (C.A.A.F. 1999).

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1. Why is expert assistance needed?

Expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all of the charges, with specific reference to SPC Ambuhl's complacency or inability to act. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person's behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

Granting expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report, conducted by MG Taguba, is a "Psychological Assessment" conducted by COL [REDACTED] USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

Dr. [REDACTED] should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. [REDACTED]. Dr. [REDACTED] holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. [REDACTED] has provided evaluations of prison conditions and their psychological effects.

2. What would the expert assistance accomplish for SPC Ambuhl?

For SPC Ambuhl's case, Dr. [REDACTED] would provide invaluable insight and expert assistance. Dr. [REDACTED] will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. [REDACTED] will visit Abu Ghraib for a first-hand evaluation of the facility. He will review training documents and evaluate the training given to soldiers prior to their work at the prison. He will review the standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. [REDACTED] can also assist the

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defense in developing evidence in extenuation or mitigation, in effect, "why good people do bad things."

3. *Why is the defense team unable to gather and present the evidence that the expert assistant would be able to develop?*

Finally, the defense is unable, on its own, to gather and present the evidence that the Dr. [REDACTED] would be able to develop. Neither counsel maintains any type of degree or background in psychology. Neither counsel has researched the psychological or social impacts of prisons on the corrections guards that work there. Dr. [REDACTED] over-30-years of experience can not be replicated even with the most diligent of efforts by counsel. Further, Dr. [REDACTED] is anticipated to testify at SPC Ambuhl's court-martial, a task clearly beyond the ethical boundaries permitted by any defense bar.

If this motion is granted, the defense further requests that Dr. [REDACTED] be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests that Dr. [REDACTED] assist in the investigation of the case, and, if requested, be present with SPC Ambuhl at trial as a member of the defense team. It is also requested that confidentiality extend to all research assistants that may assist Dr. [REDACTED] in his work with the defense.

For his assistance, Dr. Haney charges \$175 per hour. He anticipates spending between 100 and 200 hours in preparation of SPC Ambuhl's defense. Once Dr. [REDACTED] is appointed to the defense team and is able to speak with SPC Ambuhl and to begin to review discovery documents, he can provide a more accurate cost/time estimate. Once Dr. [REDACTED] is appointed, funding will be required so that Dr. [REDACTED] can travel to Iraq to consult with SPC Ambuhl and to visit the Abu Ghraib prison. Dr. [REDACTED] intent is to visit Iraq in early September 2004 to minimize disruption to his academic duties at UCSC caused by approximately 10-days of travel to Iraq.

G. CONCLUSION

The defense requests that the government appoint Dr. [REDACTED] as an expert assistant on the defense team with confidentiality. Additionally, the defense requests that the court's order includes a determination that the government fund the travel of Dr. [REDACTED] to the crime scene at Abu Ghraib Prison, Iraq. This travel will be necessary for Dr. [REDACTED] to properly analyze all of the physical, social, and psychological factors that may have contributed to SPC Ambuhl's action or inaction in the charged offenses.

RESPECTFULLY SUBMITTED:

[REDACTED]
CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion for Expert Assistance was served on the government via e-mail to [REDACTED]@vcmain.hq.c5.army.mil and [REDACTED]@vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 16 August 2004.

[REDACTED]
CPT, JA
Trial Defense Counsel

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DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

6 July 2004

MEMORANDUM THRU Staff Judge Advocate, III Corps, Victory Base, APO AE 09342-1400

FOR Commanding General, III Corps, Victory Base, APO AE 09342-1400

SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl

1. The defense requests that the government appoint Dr. [REDACTED] as a confidential expert consultant to the defense team to provide advice on the psychological and sociological impact of working in a prison, areas of expertise that fall outside the experience of defense counsel.

2. A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (CMA), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her "[m]eaningful access to justice." Ake, 470 U.S. at 77.

3. Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate "a proper showing of necessity." U.S. v. Burnette, 29 M.J. 473, 475 (CMA 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (CMA), cert. denied, 513 U.S. 965 (1994).

a. First, expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all four charges, with specific reference to SPC Ambuhl's complacency or inability to act. Dr. [REDACTED] a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person's behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological

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forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

b. Second, for the accused, Dr. ██████ would provide invaluable insight and expert assistance. Dr. ██████ will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. ██████ will visit Abu Ghraib for a first-hand evaluation of the facility. He will review documents about the training that personnel were provided before beginning work at the prison and standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. ██████ can also assist the defense in developing evidence in extenuation or mitigation, in effect, why good people do bad things.

c. Finally, the defense is unable, on its own, to gather and present the evidence that the Dr. ██████ would be able to develop. Neither counsel maintains any type of degree or background in psychology. Neither counsel has researched the psychological or social impacts of prisons on the corrections guards that work there. Dr. ██████ over-30-years of experience can not be replicated even with the most diligent of efforts by counsel. Further, Dr. ██████ is anticipated to testify at SPC Ambuhl's court-martial, a task clearly beyond the ethical boundaries permitted by any defense bar.

4. Authorizing expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report is a "Psychological Assessment" conducted by COL ██████ USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

5. Dr. ██████ should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. ██████. Dr. ██████ holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. ██████ has provided evaluations of prison conditions and their psychological effects.

6. If this request is granted, the defense further requests that Dr. ██████ be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests that Dr. ██████ assist in the investigation of the case, and, if requested, be present with SPC Ambuhl at trial as a

member of the defense team. It is also requested that confidentiality extend to all research assistants that may assist Dr. [REDACTED] in his work with the defense.

7. For his assistance, Dr. [REDACTED] charges \$175 per hour. He anticipates spending between 100 and 200 hours in preparation of SPC Ambuhl's defense. Once Dr. [REDACTED] is appointed to the defense team and is able to speak with SPC Ambuhl and to begin to review discovery documents, he can provide a more accurate cost/time estimate.

8. Once Dr. [REDACTED] is appointed, funding will be required so that Dr. [REDACTED] can travel to Iraq to consult with SPC Ambuhl and to visit the Abu Ghraib prison. Please inform us of your decision as quickly as possible so there will be no undue delays in this case. Dr. [REDACTED] intent is to visit Iraq in late August or early September 2004 to minimize disruption to his academic duties at UCSC caused by approximately 10-days of travel to Iraq.

9. Thank you for your prompt consideration of this request. If I may be of further assistance in this matter, please contact me via unsecured email at [REDACTED]@us.army.mil or by phone at DNVT: 553-[REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel

Encls

1. Curriculum Vitae of [REDACTED] Ph.D.
2. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]

CURRICULUM VITAE

[REDACTED]
Professor of Psychology
Department of Psychology
University of California, Santa Cruz 95064

home address: [REDACTED]
Santa Cruz, California 95062
phone: [REDACTED]
fax: [REDACTED]
email: [REDACTED]
birthdate: 3/8/47
citizenship: U.S.A.
spouse: Aida Hurtado

PREVIOUS EMPLOYMENT

1985-	University of California, Santa Cruz, Professor of Psychology
1981-85	University of California, Santa Cruz, Associate Professor of Psychology
1978-81	University of California, Santa Cruz, Assistant Professor of Psychology
1977-78	University of California, Santa Cruz, Lecturer in Psychology
1976-77	Stanford University, Acting Assistant Professor of Psychology

EDUCATION

1978	Stanford Law School, J.D.
1978	Stanford University, Ph.D.
1971	Stanford University, M.A.
1969	University of Pennsylvania, B.A.

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HONORS AWARDS GRANTS

- 2004 National Science Foundation Grant to Study Capital Jury Decisionmaking
- 2002 Santa Cruz Alumni Association Distinguished Teaching Award,
University
of California, Santa Cruz.
- United States Department of Health & Human Services/Urban Institute,
"Effects of Incarceration on Children, Families, and Low-Income
Communities" Project.
- American Association for the Advancement of Science/American
Academy of Forensic Science Project: "Scientific Evidence Summit"
Planning Committee.
- Teacher of the Year (UC Santa Cruz Re-Entry Students' Award).
- 2000 White House Forum on the Uses of Science and Technology to Improve
Crime and Prison Policy.
- Excellence in Teaching Award (Academic Senate Committee on
Teaching).
- Joint American Association for the Advancement of Science-American
Bar Association Science and Technology Section National Conference
of Lawyers and Scientists.
- 1999 American Psychology-Law Society Presidential Initiative
Invitee ("Reviewing the Discipline: A Bridge to the Future")
- National Science Foundation Grant to Study Capital Jury Decisionmaking
(renewal and extension).
- 1997 National Science Foundation Grant to Study Capital Jury Decisionmaking.
- 1996 Teacher of the Year (UC Santa Cruz Re-Entry Students' Award).
- 1995 Gordon Allport Intergroup Relations Prize (Honorable Mention)
- Excellence in Teaching Convocation, Social Sciences Division
- 1994 Outstanding Contributions to Preservation of Constitutional Rights,
California Attorneys for Criminal Justice.

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- 1992 Psychology Undergraduate Student Association Teaching Award
- SR 43 Grant for Policy-Oriented Research With Linguistically Diverse Minorities
- 1991 Alumni Association Teaching Award ("Favorite Professor")
- 1990 Prison Law Office Award for Contributions to Prison Litigation
- 1989 UC Mexus Award for Comparative Research on Mexican Prisons
- 1976 Hilmer Oehlmann Jr. Award for Excellence in Legal Writing at Stanford Law School
- 1975-76 Law and Psychology Fellow, Stanford Law School
- 1974-76 Russell Sage Foundation Residency in Law and Social Science
- 1974 Gordon Allport Intergroup Relations Prize, Honorable Mention
- 1969-71 University Fellow, Stanford University
- 1969-74 Society of Sigma Xi
- 1969 B.A. Degree Magna cum laude with Honors in Psychology
- Phi Beta Kappa
- 1967-1969 University Scholar, University of Pennsylvania

UNIVERSITY SERVICE AND ADMINISTRATION

- 1998-2002 Chair, Department of Psychology
- 1994-1998 Chair, Department of Sociology
- 1992-1995 Chair, Legal Studies Program
- 1995 (Fall) Committee on Academic Personnel
- 1995-1996 University Committee on Academic Personnel (UCAP)
- 1990-1992 Committee on Academic Personnel

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1991-1992 Chair, Social Science Division Academic Personnel Committee

1984-1986 Chair, Committee on Privilege and Tenure

WRITINGS AND OTHER CREATIVE ACTIVITIES IN PROGRESS

Books Limits to Prison Pain: Using Psychology to Improve Prison Policy,
American Psychological Association, forthcoming, circa 2005.

Articles

"Indifferent as They Stand Unsworn?: Pretrial Publicity, Fairness, and the
Capital Jury," (with [REDACTED]), in preparation.

"Death Penalty Attitudes, Selective Memory, and Instructional
Incomprehension in Capital Jury Decisionmaking," (with [REDACTED]),
in preparation.

"Race and Capital Sentencing: Another Look at Discriminatory Death
Sentences," (with [REDACTED]), in preparation.

PUBLISHED WRITINGS AND CREATIVE ACTIVITIES

Monographs and Technical Reports

1989 Employment Testing and Employment Discrimination (with [REDACTED]).
Technical Report for the National Commission on Testing and Public
Policy. New York: Ford Foundation.

Articles in Professional Journals and Book Chapters

2004 "Special Issue on the Death Penalty in the United States" (co-edited with
[REDACTED]), for Psychology, Public Policy, and Law, in press.

- "Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation, and the Empathic Divide," DePaul Law Review, 53, 1557-1590.
- 2003 "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," Crime & Delinquency (special issue on mental health and the criminal justice system), 49, 124-156.
- "The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment," in [REDACTED] (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press.
- "Comments on 'Dying Twice': Death Row Confinement in the Age of the Supermax," Capital University Law Review, in press.
- 2002 "Making Law Modern: Toward a Contextual Model of Justice," Psychology, Public Policy, and Law, 7, 3-63.
- "Psychological Jurisprudence: Taking Psychology and Law into the Twenty-First Century," (with [REDACTED]), in [REDACTED] (Ed.), Taking Psychology and Law into the Twenty-First Century (pp. 35-59). New York: Kluwer Academic/Plenum Publishing.
- "Science, Law, and Psychological Injury: The Daubert Standards and Beyond," (with [REDACTED]), in [REDACTED], The Handbook of Psychological Injury (pp. 184-201). Chicago, IL: American Bar Association. [CD-ROM format]
- 2001 "Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times" (with [REDACTED]). In [REDACTED] (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association.
- "Afterword," in J. Evans (Ed.), Undoing Time (pp. 245-256). Boston, MA: Northeastern University Press.
- 2000 "Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty" (with [REDACTED]), Law and Human Behavior, 24, 337-358.

"Cycles of Pain: Risk Factors in the Lives of Incarcerated Women and Their Children," (with [REDACTED]), Prison Journal, 80, 3-23.

1999 "Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences ('The SPE and the Analysis of Institutions')," In [REDACTED] (Ed.), Obedience to Authority: Current Perspectives on the Milgram Paradigm (pp. 221-237). Hillsdale, NJ: Erlbaum.

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1998 "The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment," (with [REDACTED]), American Psychologist, 53, 709-727. [Reprinted in special issue of Norwegian journal as: USAs fengselspolitikk i fortid og fremtid, Vardoger, 25, 171-183 (2000); in [REDACTED] (Ed.), Debating Points: Crime and Punishment. Englewood Cliffs, NJ: Prentice-Hall, in press; and in Annual Editions: Criminal Justice. Guilford, CT: Dushkin/McGraw-Hill, in press; [REDACTED] (Ed.), The American Prison System (pp. 17-43) (Reference Shelf Series). New York: [REDACTED] (2001).]

"Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency," Hastings Women's Law Journal, 9, 27-78.

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1997 "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," (with [REDACTED]), New York University Review of Law and Social Change, 23, 477-570.

"Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law," Psychology, Public Policy, and Law, 3, 499-588.

"Commonsense Justice and the Death Penalty: Problematizing the 'Will of the People,'" Psychology, Public Policy, and Law, 3, 303-337.

"Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death," Stanford Law Review, 49, 1447-1486.

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"Mitigation and the Study of Lives: The Roots of Violent Criminality and the Nature of Capital Justice." In [REDACTED], America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction. Durham, NC: Carolina Academic Press, 343-377.

"Clarifying Life and Death Matters: An Analysis of Instructional Comprehension and Penalty Phase Arguments" (with [REDACTED]), Law and Human Behavior, 21, 575-595.

"Psychological Secrecy and the Death Penalty: Observations on 'the Mere Extinguishment of Life,'" Studies in Law, Politics, and Society, 16, 3-69.

1995 "The Social Context of Capital Murder: Social Histories and the Logic of Capital Mitigation," Santa Clara Law Review, 35, 547-609.

"Taking Capital Jurors Seriously," Indiana Law Journal, 70, 1223-1232.

"Death Penalty Opinion: Myth and Misconception," California Criminal Defense Practice Reporter, 1995(1), 1-7.

1994 "The Jurisprudence of Race and Meritocracy: Standardized Testing and 'Race-Neutral' Racism in the Workplace," (with [REDACTED]), Law and Human Behavior, 18, 223-248.

"Comprehending Life and Death Matters: A Preliminary Study of California's Capital Penalty Instructions" (with [REDACTED]), Law and Human Behavior, 18, 411-434.

"Felony Voir Dire: An Exploratory Study of Its Content and Effect," (with [REDACTED]), Law and Human Behavior, 18, 487-506.

"Broken Promise: The Supreme Court's Response to Social Science Research on Capital Punishment" (with [REDACTED]), Journal of Social Issues (special issue on the death penalty in the United States), 50, 75-101.

"Deciding to Take a Life: Capital Juries, Sentencing Instructions, and the Jurisprudence of Death" (with [REDACTED]), Journal of Social Issues (special issue on the death penalty in the United States), 50, 149-176. [Reprinted in [REDACTED] (Ed.), Capital Punishment. New York: Garland Publishing (1995).]

"Modern' Death Qualification: New Data on Its Biasing Effects," (with [REDACTED]), Law and Human Behavior, 18, 619-633.

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- "Processing the Mad, Badly," Contemporary Psychology, 39, 898-899.
- "Language is Power," Contemporary Psychology, 39, 1039-1040.
- 1993 "Infamous Punishment: The Psychological Effects of Isolation," National Prison Project Journal, 8, 3-21. [Reprinted in [REDACTED] Eds.), Correctional Contexts: Contemporary and Classical Readings (pp. 428-437). Los Angeles: Roxbury Publishing (1997); [REDACTED] (Eds.), Correctional Perspectives: Views from Academics, Practitioners, and Prisoners (pp. 161-170). Los Angeles: Roxbury Publishing (2001).]
- "Psychology and Legal Change: The Impact of a Decade," Law and Human Behavior, 17, 371-398.
- 1992 "Death Penalty Attitudes: The Beliefs of Death-Qualified Californians," (with [REDACTED]). Forum, 19, 43-47.
- "The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies." (with [REDACTED]). Special issue on Discrimination and the Law. Behavioral Science and Law, 10, 179-195.
- 1991 "The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process," Law and Human Behavior, 15, 183-204.
- 1988 "In Defense of the Jury," Contemporary Psychology, 33, 653-655.
- 1986 "Civil Rights and Institutional Law: The Role of Social Psychology in Judicial Implementation," (with [REDACTED]), Journal of Community Psychology, 14, 267-277.
- 1984 "Editor's Introduction. Special Issue on Death Qualification," Law and Human Behavior, 8, 1-6.
- "On the Selection of Capital Juries: The Biasing Effects of Death Qualification," Law and Human Behavior, 8, 121-132.
- "Examining Death Qualification: Further Analysis of the Process Effect," Law and Human Behavior, 8, 133-151.

"Evolving Standards and the Capital Jury," Law and Human Behavior, 8, 153-158.

"Postscript," Law and Human Behavior, 8, 159.

"Social Factfinding and Legal Decisions: Judicial Reform and the Use of Social Science." In [REDACTED] (Eds.), Perspectives in Psychology and Law. New York: John Wiley, pp. 43-54.

1983 "The Future of Crime and Personality Research: A Social Psychologist's View," in [REDACTED] (Eds.), Personality Theory, Moral Development, and Criminal Behavioral Behavior. Lexington, Mass.: Lexington Books, pp. 471-473.

"The Good, the Bad, and the Lawful: An Essay on Psychological Injustice," in [REDACTED] (Eds.), Personality Theory, Moral Development, and Criminal Behavior. Lexington, Mass.: Lexington Books, pp. 107-117.

"Ordering the Courtroom, Psychologically," Jurimetrics, 23, 321-324.

1982 "Psychological Theory and Criminal Justice Policy: Law and Psychology in the Formative Era," Law and Human Behavior, 6, 191-235. [Reprinted in [REDACTED] (Eds.), Law and American History: Cases and Materials. Minneapolis, MN: West Publishing, 1989.]

"Data and Decisions: Social Science and Judicial Reform," in [REDACTED] (Ed.), The Analysis of Judicial Reform. Lexington, Mass.: D.C. Heath, pp. 43-59.

"Employment Tests and Employment Discrimination: A Dissenting Psychological Opinion," Industrial Relations Law Journal, 5, pp. 1-86.

"To Polygraph or Not: The Effects of Preemployment Polygraphing on Work-Related Attitudes," (with [REDACTED]), Polygraph, 11, 185-199.

1981 "Death Qualification as a Biasing Legal Process," The Death Penalty Reporter, 1 (10), pp. 1-5. [Reprinted in Augustus: A Journal of Progressive Human Sciences, 9(3), 9-13 (1986).]

1980 "Juries and the Death Penalty: Readdressing the Witherspoon Question," Crime and Delinquency, October, pp. 512-527.

"Psychology and Legal Change: On the Limits of a Factual Jurisprudence," Law and Human Behavior, 6, 191-235. [Reprinted in [REDACTED] (Ed.), Social Research and the Judicial Process. New York: Russell Sage, 1983.]

"The Creation of Legal Dependency: Law School in a Nutshell" (with [REDACTED], in [REDACTED] (Ed.), The People's Law Review. Reading, Mass.: Addison-Wesley, pp. 36-41.

"Television Criminology: Network Illusions of Criminal Justice Realities" (with [REDACTED]), in [REDACTED] (Ed.), Readings on the Social Animal. San Francisco, [REDACTED], pp. 125-136.

1979 "A Psychologist Looks at the Criminal Justice System," in [REDACTED] (Ed.), Challenges and Alternatives to the Criminal Justice System. Ann Arbor: Monograph Press, pp. 77-85.

"Social Psychology and the Criminal Law," in [REDACTED] (Ed.), Social Psychology and Modern Life. New York: Random House, pp. 671-711.

"Bargain Justice in an Unjust World: Good Deals in the Criminal Courts" (with [REDACTED]), Law and Society Review, 13, pp. 633-650. [Reprinted in [REDACTED] (Eds.), Criminal Law and Its Processes. Boston: Little, Brown, 1983.]

1977 "Prison Behavior" (with [REDACTED]), in B. Wolman (Ed.), The Encyclopedia of Neurology, Psychiatry, Psychoanalysis, and Psychology, Vol. IX, pp. 70-74.

"The Socialization into Criminality: On Becoming a Prisoner and a Guard" (with [REDACTED], in [REDACTED] (Eds.), Law, Justice, and the Individual in Society: Psychological and Legal Issues (pp. 198-223). New York: [REDACTED]

1976 "The Play's the Thing: Methodological Notes on Social Simulations," in P. Golden (Ed.), The Research Experience, pp. 177-190. Itasca, IL: Peacock.

1975 "The Blackboard Penitentiary: It's Tough to Tell a High School from a Prison" (with [REDACTED]). Psychology Today, 26ff.

"Implementing Research Results in Criminal Justice Settings,"
Proceedings, Third Annual Conference on Corrections in the U.S.
Military, Center for Advanced Study in the Behavioral Sciences, June 6-7.

"The Psychology of Imprisonment: Privation, Power, and Pathology"
(with [REDACTED]), in D. Rosenhan and P. London
(Eds.), Theory and Research in Abnormal Psychology. New York: Holt
Rinehart, and Winston. [Reprinted in: [REDACTED] (Ed.), Doing Unto
Others: Joining, Molding, Conforming, Helping, Loving. Englewood
Cliffs: Prentice-Hall, 1974. [REDACTED]
(Eds.) Contemporary Issues in Social Psychology. Third Edition.
Monterey: [REDACTED], 1977. Calhoun, James Readings, Cases, and
Study Guide for Psychology of Adjustment and Human Relationships.
New York: Random House, 1978.]

1973

"Social Roles, Role-Playing, and Education" (with [REDACTED]), The
Behavioral and Social Science Teacher, Fall, 1(1), pp. 24-45. [Reprinted
in: [REDACTED] (Eds.) Psychology For Our Times.
Glenview, Ill.: [REDACTED] 1977. [REDACTED] (Eds.)
Current Perspectives in Social Psychology. Third Edition. New York:
Oxford University Press, 1978.]

"The Mind is a Formidable Jailer: A Pirandellian Prison" (with [REDACTED]
[REDACTED], The New York Times Magazine, April
8, Section 6, 38-60. [Reprinted in [REDACTED] (Ed.), Psychology Is Social:
Readings and Conversations in Social Psychology. Glenview, Ill.: Scott,
Foresman, 1982.]

"Interpersonal Dynamics in a Simulated Prison" (with [REDACTED]
[REDACTED], International Journal of Criminology and Penology, 1, pp. 69-
97. [Reprinted in : [REDACTED] (Eds.)
Examining Deviance Experimentally. New York: Alfred Publishing, 1975;
[REDACTED] (Ed.) The Research Experience. Itasca, Ill.: Peacock, 1976;
[REDACTED] (Ed.) The Sociology of Corrections. New York: [REDACTED]
1977; A kiserleti tarsadalom-lelektan foarma. Budapest, Hungary:
[REDACTED] 1977; [REDACTED] Justice
and Corrections. New York: John Wiley, 1978; Research Methods in
Education and Social Sciences. The Open University, 1979; [REDACTED]
(Ed.), Modern Sociology. British Columbia: Open Learning Institute,
1980; [REDACTED] (Ed.) Prison Guard/ Correctional Officer: The Use
and Abuse of Human Resources of Prison. Toronto: Butterworth's 1981;
[REDACTED] (Eds.), Social Science in Law:
Cases, Materials, and Problems. Foundation Press, 1985: [REDACTED]
(Ed.), The Context of Human Behavior. Jagiellonian University Press,
2001; [REDACTED] (Ed.), Mapping the Social Landscape: Readings in
Sociology. St. Enumclaw, WA: Mayfield Publishing, 2001.]

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"A Study of Prisoners and Guards" (with [REDACTED]
Naval Research Reviews, 1-17. [Reprinted in [REDACTED] (Ed.) Readings
About the Social Animal. San Francisco: [REDACTED], 1980; [REDACTED]
(Ed.) Key Studies in Psychology. Third Edition. London: Hodder &
Stoughton, 1999; [REDACTED] (Ed.), Basic Themes in Law and
Jurisprudence. Anderson Publishing, 2000.]

MEMBERSHIP/ACTIVITIES IN PROFESSIONAL ASSOCIATIONS

American Psychological Association

American Psychology and Law Society

Law and Society Association

National Council on Crime and Delinquency

INVITED ADDRESSES AND PAPERS PRESENTED AT PROFESSIONAL ACADEMIC MEETINGS AND RELATED SETTINGS (SELECTED)

- 2003 "Crossing the Empathic Divide: Race Factors in Death Penalty
Decisionmaking," DePaul Law School Symposium on Race and the Death
Penalty in the United States, Chicago, October.
- "Supermax Prisons and the Prison Reform Paradigm," PACE Law School
Conference on Prison Reform Revisited: The Unfinished Agenda, New
York, October.
- "Mental Health Issues in Supermax Confinement," European Psychology
and Law Conference, University of Edinburgh, Scotland, July.
- "Roundtable on Capital Punishment in the United States: The Key
Psychological Issues," European Psychology and Law Conference,
University of Edinburgh, Scotland, July.
- "Psychology and Legal Change: Taking Stock," European Psychology and
Law Conference, University of Edinburgh, Scotland, July.

"Economic Justice and Criminal Justice: Social Welfare and Social Control," Society for the Study of Social Issues Conference, January.

"Race, Gender, and Class Issues in the Criminal Justice System," Center for Justice, Tolerance & Community and Barrios Unidos Conference, March.

2002 "The Psychological Effects of Imprisonment: Prisonization and Beyond." Joint Urban Institute and United States Department of Health and Human Services Conference on "From Prison to Home." Washington, DC, January.

"On the Nature of Mitigation: Current Research on Capital Jury Decisionmaking." American Psychology and Law Society, Mid-Winter Meetings, Austin, Texas, March.

"Prison Conditions and Death Row Confinement." New York Bar Association, New York City, June.

2001 "Supermax and Solitary Confinement: The State of the Research and the State of the Prisons." Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

"Mental Health in Supermax: On Psychological Distress and Institutional Care." Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

"On the Nature of Mitigation: Research Results and Trial Process and Outcomes." Boalt Hall School of Law, University of California, Berkeley, August.

"Toward an Integrated Theory of Mitigation." American Psychological Association Annual Convention, San Francisco, CA, August.

Discussant: "Constructing Class Identities—The Impact of Educational Experiences." American Psychological Association Annual Convention, San Francisco, CA, August.

"The Rise of Carceral Consciousness." American Psychological Association Annual Convention, San Francisco, CA, August.

- 2000 "On the Nature of Mitigation: Countering Generic Myths in Death Penalty Decisionmaking," City University of New York Second International Advances in Qualitative Psychology Conference, March.
- "Why Has U.S. Prison Policy Gone From Bad to Worse? Insights From the Stanford Prison Study and Beyond," Claremont Conference on Women, Prisons, and Criminal Injustice, March.
- "The Use of Social Histories in Capital Litigation," Yale Law School, April.
- "Debunking Myths About Capital Violence," Georgetown Law School, April.
- "Research on Capital Jury Decisionmaking: New Data on Juror Comprehension and the Nature of Mitigation," Society for Study of Social Issues Convention, Minneapolis, June.
- "Crime and Punishment: Where Do We Go From Here?" Division 41 Invited Symposium, "Beyond the Boundaries: Where Should Psychology and Law Be Taking Us?" American Psychological Association Annual Convention, Washington, DC, August.
- 1998 "Psychology and the State of U.S. Prisons at the Millennium," American Psychological Association Annual Convention, Boston, MA, August.
- "Spreading Prison Pain: On the Worldwide Movement Towards Incarcerative Social Control," Joint American Psychology-Law Society/ European Association of Psychology and Law Conference, Dublin, Ireland, July.
- 1998 "Prison Conditions and Prisoner Mental Health," Beyond the Prison Industrial Complex Conference, University of California, Berkeley, September.
- "The State of US Prisons: A Conversation," International Congress of Applied Psychology, San Francisco, CA, August.
- "Deathwork: Capital Punishment as a Social Psychological System," Invited SPPSI Address, American Psychological Association Annual Convention, San Francisco, CA, August.
- "The Use and Misuse of Psychology in Justice Studies: Psychology and Legal Change: What Happened to Justice?," (panelist), American

Psychological Association Annual Convention, San Francisco, CA,
August.

"Twenty Five Years of American Corrections: Past and Future," American
Psychology and Law Society, Redondo Beach, CA, March.

1997 "Deconstructing the Death Penalty," School of Justice Studies, Arizona
State University, Tempe, AZ, October.

"Mitigation and the Study of Lives," Invited Address to Division 41
(Psychology and Law), American Psychological Association Annual
Convention, Chicago, August.

1996 "The Stanford Prison Experiment and 25 Years of American Prison
Policy," American Psychological Association Annual Convention,
Toronto, August.

1995 "Looking Closely at the Death Penalty: Public Stereotypes and Capital
Punishment," Invited Address, Arizona State University College of Public
Programs series on Free Speech, Affirmative Action and Multiculturalism,
Tempe, AZ, April.

"Race and the Flaws of the Meritocratic Vision," Invited Address, Arizona
State University College of Public Programs series on Free Speech,
Affirmative Action and Multiculturalism, Tempe, AZ, April.

"Taking Capital Jurors Seriously," Invited Address, National Conference
on Juries and the Death Penalty, Indiana Law School, Bloomington,
February.

1994 "Mitigation and the Social Genetics of Violence: Childhood Treatment
and Adult Criminality," Invited Address, Conference on the Capital
Punishment, Santa Clara Law School, October, Santa Clara.

1992 "Social Science and the Death Penalty," Chair and Discussant, American
Psychological Association Annual Convention, San Francisco, CA,
August.

1991 "Capital Jury Decisionmaking," Invited panelist, American Psychological
Association Annual Convention, Atlanta, GA, August.

- 1990 "Racial Discrimination in Death Penalty Cases," Invited presentation, NAACP Legal Defense Fund Conference on Capital Litigation, August, Airlie, VA.
- 1989 "Psychology and Legal Change: The Impact of a Decade," Invited Address to Division 41 (Psychology and Law), American Psychological Association Annual Convention, New Orleans, LA., August.
- "Judicial Remedies to Pretrial Prejudice," Law & Society Association Annual Meeting, Madison, WI, June.
- "The Social Psychology of Police Interrogation Techniques" (with R. Liebowitz), Law & Society Association Annual Meeting, Madison, WI, June.
- 1987 "The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process," APA Annual Convention, New York, N.Y. August.
- "The Nature and Function of Prison in the United States and Mexico: A Preliminary Comparison," InterAmerican Congress of Psychology, Havana, Cuba, July.
- 1986 Chair, Division 41 Invited Address and "Commentary on the Execution Ritual," APA Annual Convention, Washington, D.C., August.
- "Capital Punishment," Invited Address, National Association of Criminal Defense Lawyers Annual Convention, Monterey, CA, August.
- 1985 "The Role of Law in Graduate Social Science Programs" and "Current Directions in Death Qualification Research," American Society of Criminology, San Diego, CA, November.
- "The State of the Prisons: What's Happened to 'Justice' in the '70s and '80s?" Invited Address to Division 41 (Psychology and Law); APA Annual Convention, Los Angeles, CA, August.
- 1983 "The Role of Social Science in Death Penalty Litigation." Invited Address in National College of Criminal Defense Death Penalty Conference, Indianapolis, IN, September.

- 1982 "Psychology in the Court: Social Science Data and Legal Decision-Making." Invited Plenary Address, International Conference on Psychology and Law, University College, Swansea, Wales, July.

- 1982 "Paradigms in Conflict: Contrasting Methods and Styles of Psychology and Law." Invited Address, Social Science Research Council, Conference on Psychology and Law, Wolfson College, Oxford University, March.

- 1982 "Law and Psychology: Conflicts in Professional Roles." Invited paper, Western Psychological Association Annual Meeting, April.

- 1980 "Using Psychology in Test Case Litigation," panelist, American Psychological Association Annual Convention, Montreal, Canada, September.

- 1980 "On the Selection of Capital Juries: The Biasing Effects of Death Qualification." Paper presented at the Interdisciplinary Conference on Capital Punishment. Georgia State University, Atlanta, GA, April.

- 1980 "Diminished Capacity and Imprisonment: The Legal and Psychological Issues," Proceedings of the American Trial Lawyers Association, Mid-Winter Meeting, January.

- 1975 "Social Change and the Ideology of Individualism in Psychology and Law." Paper presented at the Western Psychological Association Annual Meeting, April.

SERVICE TO STAFF OR EDITORIAL BOARDS OF
FOUNDATIONS, SCHOLARLY JOURNALS OR PRESSES

- 2000-present Reviewer, Society for the Study of Social Issues Grants-in-Aid Program.

- 2000-present Editorial Board Member, ASAP (on-line journal of the Society for the Study of Social Issues)

1997-present Editorial Board Member, Psychology, Public Policy, and Law

1991 Editorial Consultant, Brooks/Cole Publishing

1989 Editorial Consultant, Journal of Personality and Social Psychology

1988- Editorial Consultant, American Psychologist

1985 Editorial Consultant, American Bar Foundation Research Journal

1985-present Law and Human Behavior, Editorial Board Member

1985 Editorial Consultant, Columbia University Press

1985 Editorial Consultant, Law and Social Inquiry

1980-present Reviewer, National Science Foundation

1997 Reviewer, National Institutes of Mental Health

1980-present Editorial Consultant, Law and Society Review

1979-1985 Editorial Consultant, Law and Human Behavior

1997-present Editorial Consultant, Legal and Criminological Psychology

1993-1997 Psychology, Public Policy, and Law, Editorial Consultant

GOVERNMENTAL, LEGAL AND CRIMINAL JUSTICE CONSULTING

Training Consultant, Palo Alto Police Department, 1973-1974.

Evaluation Consultant, San Mateo County Sheriff's Department, 1974.

Design and Training Consultant to Napa County Board of Supervisors, County Sheriff's Department (county jail), 1974.

Training Consultation, California Department of Corrections, 1974.

Consultant to California Legislature Select Committee in Criminal Justice, 1974, 1980-1981 (effects of prison conditions, evaluation of proposed prison legislation).

Reviewer, National Science Foundation (Law and Social Science, Research Applied to National Needs Programs), 1978-present.

Consultant, Santa Clara County Board of Supervisors, 1980 (effects of jail overcrowding, evaluation of county criminal justice policy).

Consultant to Packard Foundation, 1981 (evaluation of inmate counseling and guard training programs at San Quentin and Soledad prisons).

Member, San Francisco Foundation Criminal Justice Task Force, 1980-1982 (corrections expert).

Consultant to NAACP Legal Defense Fund, 1982- present (expert witness, case evaluation, attorney training).

Faculty, National Judicial College, 1980-1983.

Consultant to Public Advocates, Inc., 1983-1986 (public interest litigation).

Consultant to California Child, Youth, Family Coalition, 1981-82 (evaluation of proposed juvenile justice legislation).

Consultant to California Senate Office of Research, 1982 (evaluation of causes and consequences of overcrowding in California Youth Authority facilities).

Consultant, New Mexico State Public Defender, 1980-1983 (investigation of causes of February, 1980 prison riot).

Consultant, California State Supreme Court, 1983 (evaluation of county jail conditions).

Member, California State Bar Committee on Standards in Prisons and Jails, 1983.

Consultant, California Legislature Joint Committee on Prison Construction and Operations, 1985.

Consultant, United States Bureau of Prisons and United States Department of the Interior (Prison History, Conditions of Confinement Exhibition, Alcatraz Island), 1989-1991.

Consultant to United States Department of Justice, 1980-1990 (evaluation of institutional conditions).

Consultant to California Judicial Council (judicial training programs), 2000.

Consultant to American Bar Association/American Association for Advancement of Science Task Force of Forensic Standards for Scientific Evidence, 2000.

Member, Joint Legislative/California Department of Corrections Task Force on Violence, 2001.

Consultant, United States Department of Health & Human Services/Urban Institute, "Effects of Incarceration on Children, Families, and Low-Income Communities" Project.

PRISON AND JAIL CONDITIONS

EVALUATIONS AND LITIGATION

Hoptowit v. Ray [United States District Court, Eastern District of Washington, 1980; 682 F.2d 1237 (9th Cir. 1982)]. Evaluation of psychological effects of conditions of confinement at Washington State Penitentiary at Walla Walla for United States Department of Justice.

Wilson v. Brown (Marin County Superior Court; September, 1982, Justice Burke). Evaluation of effects of overcrowding on San Quentin mainline inmates.

Thompson v. Enomoto (United States District Court, Northern District of California, Judge Stanley Weigel, 1982 and continuing). Evaluation of conditions of confinement on Condemned Row, San Quentin Prison.

Toussaint v. McCarthy [United States District Court, Northern District of California, Judge Stanley Weigel, 553 F. Supp. 1365 (1983); 722 F. 2d 1490 (9th Cir. 1984) 711 F. Supp. 536 (1989)]. Evaluation of psychological effects of conditions of confinement in lockup units at DVI, Folsom, San Quentin, and Soledad.

In re Priest (Proceeding by special appointment of the California Supreme Court, Judge Spurgeon Avakian, 1983). Evaluation of conditions of confinement in Lake County Jail.

Ruiz v. Estelle [United States District Court, Southern District of Texas, Judge William Justice, 503 F. Supp. 1265 (1980)]. Evaluation of effects of overcrowding in the Texas prison system, 1983-1985.

Atascadero State Hospital (Civil Rights of Institutionalized Persons Act of 1980 action). Evaluation of conditions of confinement and nature of patient care at ASH for United States Department of Justice, 1983-1984.

In re Rock (Monterey County Superior Court 1984). Appointed to evaluate conditions of confinement in Soledad State Prison in Soledad, California.

In re Mackey (Sacramento County Superior Court, 1985). Appointed to evaluate conditions of confinement at Folsom State Prison mainline housing units.

Bruscino v. Carlson (United States District Court, Southern District of Illinois 1984 1985). Evaluation of conditions of confinement at the United States Penitentiary at Marion, Illinois [654 F. Supp. 609 (1987); 854 F.2d 162 (7th Cir. 1988)].

Dohner v. McCarthy [United States District Court, Central District of California, 1984-1985; 636 F. Supp. 408 (1985)]. Evaluation of conditions of confinement at California Men's Colony, San Luis Obispo.

Invited Testimony before Joint Legislative Committee on Prison Construction and Operations hearings on the causes and consequences of violence at Folsom Prison, June, 1985.

Duran v. Anaya (United States District Court, 1987-1988). Evaluation of conditions of confinement in the Penitentiary of New Mexico, Santa Fe, New Mexico [Duran v. Anaya, No. 77-721 (D. N.M. July 17, 1980); Duran v. King, No. 77-721 (D. N.M. March 15, 1984)].

Gates v. Deukmejian (United States District Court, Eastern District of California, 1989). Evaluation of conditions of confinement at California Medical Facility, Vacaville, California.

Kozeak v. McCarthy (San Bernardino Superior Court, 1990). Evaluation of conditions of confinement at California Institution for Women, Frontera, California.

Coleman v. Gomez (United States District Court, Eastern District of California, 1992-3; Magistrate Moulds, Chief Judge Lawrence Karlton, 912 F. Supp. 1282 (1995)). Evaluation of study of quality of mental health care in California prison system, special mental health needs at Pelican Bay State Prison.

Madrid v. Gomez (United States District Court, Northern District of California, 1993, District Judge Thelton Henderson, 889 F. Supp. 1146 (N.D. Cal. 1995). Evaluation of conditions of confinement and psychological consequences of isolation in Security Housing Unit at Pelican Bay State Prison, Crescent City, California.

Clark v. Wilson, (United States District Court, Northern District of California, 1998, District Judge Fern Smith, No. C-96-1486 FMS), evaluation of screening procedures to identify and treatment of developmentally disabled prisoners in California Department of Corrections.

Ruiz v. Johnson [United States District Court, Southern District of Texas, District Judge William Wayne Justice, 37 F. Supp. 2d 855 (SD Texas 1999)]. Evaluation of

current conditions of confinement, especially in security housing or “high security” units.

Osterback v. Moore (United States District Court, Southern District of Florida (97-2806-CIV-MORENO) (2001) [see, Osterback v. Moore, 531 U.S. 1172 (2001)]. Evaluation of Close Management Units and Conditions in the Florida Department of Corrections.

Valdivia v. Davis (United States District Court, Eastern District of California, 2002). Evaluation of due process protections afforded mentally ill and developmentally disabled parolees in parole revocation process.

Ayers v. Perry (United States District Court, New Mexico, 2003). Evaluation of conditions of confinement and mental health services in New Mexico Department of Corrections “special controls facilities.”

Interpersonal Dynamics in Simulated Prison

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*These should
not be redacted*

Interpersonal dynamics in a prison environment were studied experimentally by designing a functional simulation of a prison in which subjects role-played prisoners and guards for an extended period of time. To assess the power of the social forces on the emergent behaviour in this situation, alternative explanations in terms of pre-existing dispositions were eliminated through subject selection. A homogeneous, "normal" sample was chosen after extensive interviewing and diagnostic testing of a large group of volunteer male college students. Half of the subjects were randomly assigned to role-play prison guards for eight hours each day, while the others role-played prisoners incarcerated for nearly one full week. Neither group received any specific training in these roles.

Continuous, direct observation of behavioural interactions was supplemented by video-taped recording, questionnaires, self-report scales and interviews. All these data sources converge on the conclusion that this simulated prison developed into a psychologically compelling prison environment. As such, it elicited unexpectedly intense, realistic and often pathological reactions from many of the participants. The prisoners experienced a loss of personal identity and the arbitrary control of their behaviour which resulted in a syndrome of passivity, dependency, depression and helplessness. In contrast, the guards (with rare exceptions) experienced a marked gain in social power, status and group identification which made role-playing rewarding.

The most dramatic of the coping behaviour utilised by half of the prisoners in adapting to this stressful situation was the development of acute emotional disturbance—severe enough to warrant their early release. At least a third of the guards were judged to have become far more aggressive and dehumanising toward the prisoners than would ordinarily be predicted in a simulation study. Only a very few of the observed reactions to this experience of imprisonment could be attributed to personality trait differences which existed before the subjects began to play their assigned roles.

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Introduction

After he had spent four years in a Siberian prison the great Russian novelist Dostoevsky commented, surprisingly, that his time in prison had created in him a deep optimism about the ultimate future of mankind because, as he put it, if man could survive the horrors of prison life he must surely be a "creature who could withstand anything". The cruel irony which Dostoevsky overlooked is that the reality of prison bears witness not only to the resilience and adaptiveness of the men who tolerate life within its walls, but as well to the "ingenuity" and tenacity of those who devised and still maintain our correctional and reformatory systems.

Nevertheless, in the century which has passed since Dostoevsky's imprisonment, little has changed to render the main thrust of his statement less relevant. Although we have passed through periods of enlightened humanitarian reform, in which physical conditions within prisons have improved somewhat and the rhetoric of rehabilitation has replaced the language of punitive incarceration, the social institution of prison has continued to fail. On purely pragmatic grounds, there is substantial evidence that prisons in fact neither "rehabilitate" nor act as a deterrent to future crime—in America, recidivism rates upwards of 75% speak quite decisively to these criteria. And, to perpetuate what is additionally an economic failure, American taxpayers alone must provide an expenditure for "corrections" of 1.5 billion dollars annually. On humanitarian grounds as well, prisons have failed: our mass media are increasingly filled with accounts of atrocities committed daily, man against man, in reaction to the penal system or in the name of it. The experience of prison undeniably creates, almost to the point of cliché, an intense hatred and disrespect in most inmates for the authority and the established order of society into which they will eventually return. And the toll which it takes on the deterioration of human spirit for those who must administer it, as well as for those upon whom it is inflicted, is incalculable.

Attempts to provide an explanation of the deplorable condition of our penal system and its dehumanising effects upon prisoners and guards, often focus upon what might be called the *dispositional hypothesis*. While this explanation is rarely expressed explicitly, it is central to a prevalent non-conscious ideology: that the state of the social institution of prison is due to the "nature" of the people who administer it, or the "nature" of the people who populate it, or both. That is, a major contributing cause to despicable conditions, violence, brutality, dehumanisation and degradation existing within any prison can be traced to some innate or acquired characteristic of the correctional and inmate population. Thus on the one hand, there is the contention that violence and brutality exist within prison because guards are sadistic, uneducated, and insensitive people. It is the "guard mentality", a unique syndrome of negative traits which they bring into the situation, that engenders the inhumane treatment of prisoners. Or, from other quarters comes the argument that violence and brutality in prison are the logical and predictable result of the

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involuntary confinement of a collective of individuals whose life histories are, by definition, characterised by disregard for law, order and social convention and a concurrent propensity for impulsiveness and aggression. Logically, it follows that these individuals, having proved themselves incapable of functioning satisfactorily within the "normal" structure of society, cannot do so either inside the structure provided by prisons. To control such men as these, the argument continues, whose basic orientation to any conflict situation is to react with physical power or deception, force must be met with force, and a certain number of violent encounters must be expected and tolerated by the public.

The dispositional hypothesis has been embraced by the proponents of the prison *status quo* (blaming conditions on the evil in the prisoners), as well as by its critics (attributing the evil to guards and staff with their evil motives and deficient personality structures). The appealing simplicity of this proposition localises the source of prison riots, recidivism and corruption in these "bad seeds" and not in the conditions of the "prison soil". Such an analysis directs attention away from the complex matrix of social, economic and political forces which combine to make prisons what they are—and which would require complex, expensive, revolutionary solutions to bring about any meaningful change. Instead, rioting prisoners are identified, punished, transferred to maximum security institutions or shot, outside agitators sought and corrupt officials suspended—while the system itself goes on essentially unchanged, its basic structure unexamined and unchallenged.

However, a critical evaluation of the dispositional hypothesis cannot be made directly through observation in existing prison settings, since such naturalistic observation necessarily confounds the acute effects of the environment with the chronic characteristics of the inmate and guard populations. To separate the effects of the prison environment *per se* from those attributable to *à priori* dispositions of its inhabitants requires a research strategy in which a "new" prison is constructed, comparable in its fundamental social-psychological milieu to existing prison systems, but entirely populated by individuals who are undifferentiated in all essential dimensions from the rest of society.

Such was the approach taken in the present empirical study, namely, to create a prison-like situation in which the guards and inmates were initially comparable and characterised as being "normal-average", and then to observe the patterns of behaviour which resulted, as well as the cognitive, emotional and attitudinal reactions which emerged. Thus, we began our experiment with a sample of individuals who did not deviate from the normal range of the general population on a variety of dimensions we were able to measure. Half were randomly assigned to the role of "prisoner", the others to that of "guard", neither group having any history of crime, emotional disability, physical handicap nor even intellectual or social disadvantage.

The environment created was that of a "mock" prison which physically constrained the prisoners in barred cells and psychologically conveyed the sense of imprisonment to all participants. Our intention was not to create a *literal*

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simulation of an American prison, but rather a functional representation of one. For ethical, moral and pragmatic reasons we could not detain our subjects for extended or indefinite periods of time, we could not exercise the threat and promise of severe physical punishment, we could not allow homosexual or racist practices to flourish, nor could we duplicate certain other specific aspects of prison life. Nevertheless, we believed that we could create a situation with sufficient mundane realism to allow the role-playing participants to go beyond the superficial demands of their assignment into the deep structure of the characters they represented. To do so, we established functional equivalents for the activities and experiences of actual prison life which were expected to produce qualitatively similar psychological reactions in our subjects—feelings of power and powerlessness, of control and oppression, of satisfaction and frustration, of arbitrary rule and resistance to authority, of status and anonymity, of machismo and emasculation. In the conventional terminology of experimental social psychology, we first identified a number of relevant conceptual variables through analysis of existing prison situations, then designed a setting in which these variables were made operational. No specific hypotheses were advanced other than the general one that assignment to the treatment of “guard” or “prisoner” would result in significantly different reactions on behavioural measures of interaction, emotional measures of mood state and pathology, attitudes toward self, as well as other indices of coping and adaptation to this novel situation. What follows is the mechanics of how we created and peopled our prison, what we observed, what our subjects reported, and finally, what we can conclude about the nature of the prison environment and the experience of imprisonment which can account for the failure of our prisons.

Method

Overview

The effects of playing the role of “guard” or “prisoner” were studied in the context of an experimental simulation of a prison environment. The research design was a relatively simple one, involving as it did only a single treatment variable, the random assignment to either a “guard” or “prisoner” condition. These roles were enacted over an extended period of time (nearly one week) within an environment which was physically constructed to resemble a prison. Central to the methodology of creating and maintaining a psychological state of imprisonment was the functional simulation of significant properties of “real prison life” (established through information from former inmates, correctional personnel and texts).

The “guards” were free with certain limits to implement the procedures of induction into the prison setting and maintenance of custodial retention of the “prisoners”. These inmates, having voluntarily submitted to the conditions of this total institution in which they now lived, coped in various ways with its

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stresses and its challenges. The behaviour of both groups of subjects was observed, recorded and analysed. The dependent measures were of two general types: transactions between and within each group of subjects, recorded on video and audio tape as well as directly observed; individual reactions on questionnaires, mood inventories, personality tests, daily guard shift reports, and post experimental interviews.

Subjects

The 21 subjects who participated in the experiment were selected from an initial pool of 75 respondents, who answered a newspaper advertisement asking for male volunteers to participate in a psychological study of "prison life" in return for payment of \$15 per day. Those who responded to the notice completed an extensive questionnaire concerning their family background, physical and mental health history, prior experience and attitudinal propensities with respect to sources of psychopathology (including their involvement in crime). Each respondent who completed the background questionnaire was interviewed by one of two experimenters. Finally, the 24 subjects who were judged to be most stable (physically and mentally), most mature, and least involved in anti-social behaviour were selected to participate in the study. On a random basis, half of the subjects were assigned the role of "guard", half to the role of "prisoner".

The subjects were normal, healthy males attending colleges throughout the United States who were in the Stanford area during the summer. They were largely of middle class socio-economic status, Caucasians (with the exception of one Oriental subject). Initially they were strangers to each other, a selection precaution taken to avoid the disruption of any pre-existing friendship patterns and to mitigate against any transfer into the experimental situation of previously established relationships or patterns of behaviour.

This final sample of subjects was administered a battery of psychological tests on the day prior to the start of the simulation, but to avoid any selective bias on the part of the experimenter-observers, scores were not tabulated until the study was completed.

Two subjects who were assigned to be a "stand-by" in case an additional "prisoner" was needed were not called, and one subject assigned to be a "stand-by" guard decided against participating just before the simulation phase began—thus, our data analysis is based upon ten prisoners and eleven guards in our experimental conditions.

Procedure

Physical aspects of the prison

The prison was built in a 35-ft section of a basement corridor in the psychology building at Stanford University. It was partitioned by two fabricated walls, one of which was fitted with the only entrance door to the cell block, the other

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contained a small observation screen. Three small cells (6 x 9 ft) were made from converted laboratory rooms by replacing the usual doors with steel barred, black painted ones, and removing all furniture.

A cot (with mattress, sheet and pillow) for each prisoner was the only furniture in the cells. A small closet across from the cells served as a solitary confinement facility; its dimensions were extremely small (2 x 2 x 7 ft) and it was unlit.

In addition, several rooms in an adjacent wing of the building were used as guards' quarters (to change in and out of uniform or for rest and relaxation), a bedroom for the "warden" and "superintendent", and an interview-testing room. Behind the observation screen at one end of the "yard" was video recording equipment and sufficient space for several observers.

Operational details

The "prisoner" subjects remained in the mock-prison 24 hours per day for the duration of the study. Three were arbitrarily assigned to each of the three cells; the others were on stand-by call at their homes. The "guard" subjects worked on three-man, eight-hour shifts; remaining in the prison environment only during their work shift, going about their usual lives at other times.

Role instruction

All subjects had been told that they would be assigned either the guard or the prisoner role on a completely random basis and all had voluntarily agreed to play either role for \$15.00 per day for up to two weeks. They signed a contract guaranteeing a minimally adequate diet, clothing, housing and medical care as well as the financial remuneration in return for their stated "intention" of serving in the assigned role for the duration of the study.

It was made explicit in the contract that those assigned to be prisoners should expect to be under surveillance (have little or no privacy) and to have some of their basic civil rights suspended during their imprisonment, excluding physical abuse. They were given no other information about what to expect nor instructions about behaviour appropriate for a prisoner role. Those actually assigned to this treatment were informed by phone to be available at their place of residence on a given Sunday when we would start the experiment.

The subjects assigned to be guards attended an orientation meeting on the day prior to the induction of the prisoners. At this time they were introduced to the principal investigators, the "Superintendent" of the prison (P.G.Z.) and an undergraduate research assistant who assumed the administrative role of "Warden". They were told that we wanted to try to simulate a prison environment within the limits imposed by pragmatic and ethical considerations. Their assigned task was to "maintain the reasonable degree of order within the prison necessary for its effective functioning", although the specifics of how this

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duty might be implemented were not explicitly detailed. They were made aware of the fact that while many of the contingencies with which they might be confronted were essentially unpredictable (e.g. prisoner escape attempts), part of their task was to be prepared for such eventualities and to be able to deal appropriately with the variety of situations that might arise. The "Warden" instructed the guards in the administrative details, including: the work-shifts, the mandatory daily completion of shift reports concerning the activity of guards and prisoners, the completion of "critical incident" reports which detailed unusual occurrences and the administration of meals, work and recreation programmes for the prisoners. In order to begin to involve these subjects in their roles even before the first prisoner was incarcerated, the guards assisted in the final phases of completing the prison complex—putting the cots in the cells, signs on the walls, setting up the guards' quarters, moving furniture, water coolers, refrigerators, etc.

The guards generally believed that we were primarily interested in studying the behaviour of the prisoners. Of course, we were equally interested in the effect which enacting the role of guard in this environment would have on their behaviour and subjective states.

To optimise the extent to which their behaviour would reflect their genuine reactions to the experimental prison situation and not simply their ability to follow instructions, they were intentionally given only minimal guidelines for what it meant to be a guard. An explicit and categorical prohibition against the use of physical punishment or physical aggression was, however, emphasised by the experimenters. Thus, with this single notable exception, their roles were relatively unstructured initially, requiring each "guard" to carry out activities necessary for interacting with a group of "prisoners" as well as with other "guards" and the "correctional staff".

Uniform

In order to promote feelings of anonymity in the subjects each group was issued identical uniforms. For the guards, the uniform consisted of: plain khaki shirts and trousers, a whistle, a police night stick (wooden batons) and reflecting sunglasses which made eye contact impossible. The prisoners' uniform consisted of loosely fitting muslin smocks with an identification number on front and back. No underclothes were worn beneath these "dresses". A chain and lock were placed around one ankle. On their feet they wore rubber sandals and their hair was covered with a nylon stocking made into a cap. Each prisoner was also issued a toothbrush, soap, soapdish, towel and bed linen. No personal belongings were allowed in the cells.

The outfitting of both prisoners and guards in this manner served to enhance group identity and reduce individual uniqueness within the two groups. The khaki uniforms were intended to convey a military attitude, while the whistle and night-stick were carried as symbols of control and power. The prisoners'

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uniforms were designed not only to deindividuate the prisoners but to be humiliating and serve as symbols of their dependence and subservience. The ankle chain was a constant reminder (even during their sleep when it hit the other ankle) of the oppressiveness of the environment. The stocking cap removed any distinctiveness associated with hair length, colour or style (as does shaving of heads in some "real" prisons and the military). The ill-fitting uniforms made the prisoners feel awkward in their movements; since these dresses were worn without undergarments, the uniforms forced them to assume unfamiliar postures, more like those of a woman than a man—another part of the emasculating process of becoming a prisoner.

Induction procedure

With the cooperation of Palo Alto City Police Department all of the subjects assigned to the prisoner treatment were unexpectedly "arrested" at their residences. A police officer charged them with suspicion of burglary or armed robbery, advised them of their legal rights, handcuffed them, thoroughly searched them (often as curious neighbours looked on) and carried them off to the police station in the rear of the police car. At the station they went through the standard routines of being fingerprinted, having an identification file prepared and then being placed in a detention cell. Each prisoner was blindfolded and subsequently driven by one of the experimenters and a subject-guard to our mock prison. Throughout the entire arrest procedure, the police officers involved maintained a formal, serious attitude, avoiding answering any questions of clarification as to the relation of this "arrest" to the mock prison study.

Upon arrival at our experimental prison, each prisoner was stripped, sprayed with a delousing preparation (a deodorant spray) and made to stand alone naked for a while in the cell yard. After being given the uniform described previously and having an I.D. picture taken ("mug shot"), the prisoner was put in his cell and ordered to remain silent.

Administrative routine

When all the cells were occupied, the warden greeted the prisoners and read them the rules of the institution (developed by the guards and the warden). They were to be memorised and to be followed. Prisoners were to be referred to only by the number on their uniforms, also in an effort to depersonalise them.

The prisoners were to be served three bland meals per day, were allowed three supervised toilet visits, and given two hours daily for the privilege of reading or letterwriting. Work assignments were issued for which the prisoners were to receive an hourly wage to constitute their \$15 daily payment. Two visiting periods per week were scheduled, as were movie rights and exercise periods. Three times a day all prisoners were lined up for a "count" (one on each guard

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work-shift). The initial purpose of the "count" was to ascertain that all prisoners were present, and to test them on their knowledge of the rules and their I.D. numbers. The first perfunctory counts lasted only about 10 minutes, but on each successive day (or night) they were spontaneously increased in duration until some lasted several hours. Many of the pre-established features of administrative routine were modified or abandoned by the guards, and some were forgotten by the staff over the course of the study.

Data collection (dependent measures)

The exploratory nature of this investigation and the absence of specific hypotheses led us to adopt the strategy of surveying as many as possible behavioural and psychological manifestations of the prison experience on the guards and the prisoners. In fact, one major methodological problem in a study of this kind is defining the limits of the "data", since relevant data emerged from virtually every interaction between any of the participants, as well as from subjective and behavioural reactions of individual prisoners, guards, the warden, superintendent, research assistants and visitors to the prison. It will also be clear when the results are presented that causal direction cannot always be established in the patterns of interaction where any given behaviour might be the consequence of a current or prior instigation by another subject and, in turn, might serve as impetus for eliciting reactions from others.

Data collection was organised around the following sources:

(1) *Videotaping.* About 12 hours of recordings were made of daily, regularly occurring events, such as the counts and meals, as well as unusual interactions, such as a prisoner rebellion, visits from a priest, a lawyer and parents, Parole Board meetings and others. Concealed video equipment recorded these events through a screen in the partition at one end of the cell-block yard or in a conference room (for parole meetings).

(2) *Audio recording.* Over 30 hours of recordings were made of verbal interactions between guards and prisoners on the prison yard. Concealed microphones picked up all conversation taking place in the yard as well as some within the cells. Other concealed recordings were made in the testing-interview room on selected occasions—interactions between the warden, superintendent and the prisoners' Grievance Committee, parents, other visitors and prisoners released early. In addition, each subject was interviewed by one of the experimenters (or by other research associates) during the study, and most just prior to its termination.

(3) *Rating scales.* Mood adjective checklists and sociometric measures were administered on several occasions to assess emotional changes in affective state and interpersonal dynamics among the guard and prisoner groups.

(4) *Individual difference scales.* One day prior to the start of the simulation all subjects completed a series of paper and pencil personality tests. These tests

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were selected to provide dispositional indicators of interpersonal behaviour styles—the *F* scale of Authoritarian Personality [1], and the Machiavellianism Scale [2]—as well as areas of possible personality pathology through the newly developed Comrey Personality Scale [3]. The subscales of this latter test consist of:

- (a) trustworthiness
- (b) orderliness
- (c) conformity
- (d) activity
- (e) stability
- (f) extroversion
- (g) masculinity
- (h) empathy

(5) *Personal observations.* The guards made daily reports of their observations after each shift, the experimenters kept informal diaries and all subjects completed post-experimental questionnaires of their reactions to the experience about a month after the study was over.

Data analyses presented problems of several kinds. First, some of the data was subject to possible errors due to selective sampling. The video and audio recordings tended to be focussed upon the more interesting, dramatic events which occurred. Over time, the experimenters became more personally involved in the transaction and were not as distant and objective as they should have been. Second, there are not complete data on all subjects for each measure because of prisoners being released at different times and because of unexpected disruptions, conflicts and administrative problems. Finally, we have a relatively small sample on which to make cross-tabulations by possible independent and individual difference variables.

However, despite these shortcomings some of the overall effects in the data are powerful enough to reveal clear, reliable results. Also some of the more subtle analyses were able to yield statistically significant results even with the small sample size. Most crucial for the conclusions generated by this exploratory study is the consistency in the pattern of relationships which emerge across a wide range of measuring instruments and different observers. Special analyses were required only of the video and audio material, the other data sources were analysed following established scoring procedures.

Video analysis

There were 25 relatively discrete incidents identifiable on the tapes of prisoner-guard interactions. Each incident or scene was scored for the presence of nine behavioural (and verbal) categories. Two judges who had not been involved with the simulation study scored these tapes. These categories were defined as follows:

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Question. All questions asked, requests for information or assistance (excluding rhetorical questions).

Command. An order to commence or abstain from a specific behaviour, directed either to individuals or groups. Also generalised orders, e.g. "Settle down".

Information. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Individuating reference. Positive: use of a person's real name, nickname or allusion to special positive physical characteristics. Negative: use of prison number, title, generalised "you" or reference to derogatory characteristic.

Threat. Verbal statement of contingent negative consequences of a wide variety, e.g. no meal, long count, pushups, lock-up in hole, no visitors, etc.

Deprecation insult. Use of obscenity, slander, malicious statement directed toward individual or group, e.g. "You lead a life of mendacity" or "You guys are really stupid."

Resistance. Any physical resistance, usually prisoners to guards, such as holding on to beds, blocking doors, shoving guard or prisoner, taking off stocking caps, refusing to carry out orders.

Help. Person physically assisting another (i.e. excludes verbal statements of support), e.g. guard helping another to open door, prisoner helping another prisoner in cleanup duties.

Use of instruments. Use of any physical instrument to either intimidate, threaten, or achieve specific end, e.g. fire extinguisher, batons, whistles.

Audio analysis

For purposes of classifying the verbal behaviour recorded from interviews with guards and prisoners, eleven categories were devised. Each statement made by the interviewee was assigned to the appropriate category by judges. At the end of this process for any given interview analysis, a list had been compiled of the nature and frequencies of the interviewee's discourse. The eleven categories for assignment of verbal expressions were:

Questions. All questions asked, requests for information or assistance (excluding rhetorical questions).

Informative statements. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Demands. Declarative statements of need or imperative requests.

Requests. Deferential statements for material or personal consideration.

Commands. Orders to commence or abstain from a specific behaviour, directed either to individuals or groups.

Outlook, positive/negative. Expressions of expectancies for future experiences or future events; either negative or positive in tone, e.g. "I don't think I can make it" v. "I believe I will feel better."

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Criticism. Expressions of critical evaluation concerning other subjects, the experimenters or the experiment itself.

Statements of identifying reference, deindividuating/individuating. Statements wherein a subject makes some reference to another subject specifically by allusion to given name or distinctive characteristics (individuating reference), or by allusion to non-specific identity or institutional number (deindividuating reference).

Desire to continue. Any expression of a subject's wish to continue or to curtail participation in the experiment.

Self-evaluation, positive/negative. Statements of self-esteem or self-degradation, e.g. "I feel pretty good about the way I've adjusted" v. "I hate myself for being so oppressive."

Action intentions, positive/negative including "Intent to aggress". Statements concerning interviewees' intentions to do something in the future, either of a positive, constructive nature or a negative, destructive nature, e.g. "I'm not going to be so mean from now on" v. "I'll break the door down."

Results

Overview

Although it is difficult to anticipate exactly what the influence of incarceration will be upon the individuals who are subjected to it and those charged with its maintenance (especially in a simulated reproduction), the results of the present experiment support many commonly held conceptions of prison life and validate anecdotal evidence supplied by articulate ex-convicts. The environment of arbitrary custody had great impact upon the affective states of both guards and prisoners as well as upon the interpersonal processes taking place between and within those role-groups.

In general, guards and prisoners showed a marked tendency toward increased negativity of affect and their overall outlook became increasingly negative. As the experiment progressed, prisoners expressed intentions to do harm to others more frequently. For both prisoners and guards, self-evaluations were more deprecating as the experience of the prison environment became internalised.

Overt behaviour was generally consistent with the subjective self-reports and affective expressions of the subjects. Despite the fact that guards and prisoners were essentially free to engage in any form of interaction (positive or negative, supportive or affrontive, etc.), the characteristic nature of their encounters tended to be negative, hostile, affrontive and dehumanising. Prisoners immediately adopted a generally passive response mode while guards assumed a very active initiating role in all interactions. Throughout the experiment, commands were the most frequent form of verbal behaviour and, generally, verbal exchanges were strikingly impersonal, with few references to individual identity. Although it was clear to all subjects that the experimenters would not

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permit physical violence to take place, varieties of less direct aggressive behaviour were observed frequently (especially on the part of guards). In lieu of physical violence, verbal affronts were used as one of the most frequent forms of interpersonal contact between guards and prisoners.

The most dramatic evidence of the impact of this situation upon the participants was seen in the gross reactions of five prisoners who had to be released because of extreme emotional depression, crying, rage and acute anxiety. The pattern of symptoms was quite similar in four of the subjects and began as early as the second day of imprisonment. The fifth subject was released after being treated for a psychosomatic rash which covered portions of his body. Of the remaining prisoners, only two said they were not willing to forfeit the money they had earned in return for being "paroled". When the experiment was terminated prematurely after only six days, all the remaining prisoners were delighted by their unexpected good fortune. In contrast, most of the guards seemed to be distressed by the decision to stop the experiment and it appeared to us that had become sufficiently involved in their roles so that they now enjoyed the extreme control and power which they exercised and were reluctant to give it up. One guard did report being personally upset at the suffering of the prisoners and claimed to have considered asking to change his role to become one of them—but never did so. None of the guards ever failed to come to work on time for their shift, and indeed, on several occasions guards remained on duty voluntarily and uncomplainingly for extra hours—without additional pay.

The extremely pathological reactions which emerged in both groups of subjects testify to the power of the social forces operating, but still there were individual differences seen in styles of coping with this novel experience and in degrees of successful adaptation to it. Half the prisoners did endure the oppressive atmosphere, and not all the guards resorted to hostility. Some guards were tough but fair ("played by the rules"), some went far beyond their roles to engage in creative cruelty and harassment, while a few were passive and rarely instigated any coercive control over the prisoners.

These differential reactions to the experience of imprisonment were not suggested by or predictable from the self-report measures of personality and attitude or the interviews taken before the experiment began. The standardised tests employed indicated that a perfectly normal emotionally stable sample of subjects had been selected. In those few instances where differential test scores do discriminate between subjects, there is an opportunity to, partially at least, discern some of the personality variables which may be critical in the adaptation to and tolerance of prison confinement.

Initial personality and attitude measures

Overall, it is apparent that initial personality-attitude dispositions account for an extremely small part of the variation in reactions to this mock prison experience. However, in a few select instances, such dispositions do seem to be correlated with the prisoners' ability to adjust to the experimental prison environment.

Comrey scale

The Comrey Personality Inventory [3] was the primary personality scale administered to both guards and prisoners. The mean scores for prisoners and guards on the eight sub-scales of the test are shown in Table 1. No differences between prisoner and guard mean scores on any scale even approach statistical significance. Furthermore, in no case does any group mean fall outside of the 40 to 60 centile range of the normative male population reported by Comrey.

Table 1. Mean scores for prisoners and guards on eight Comrey subscales

Scale	Prisoners	Guards
Trustworthiness—high score indicates belief in the basic honesty and good intentions of others	$\bar{X} = 92.56$	$\bar{X} = 89.64$
Orderliness—extent to which person is meticulous and concerned with neatness and orderliness	$\bar{X} = 75.67$	$\bar{X} = 73.82$
Conformity—indicates belief in law enforcement, acceptance of society as it is, resentment of nonconformity in others	$\bar{X} = 65.67$	$\bar{X} = 63.18$
Activity—liking for physical activity, hard work, and exercise	$\bar{X} = 89.78$	$\bar{X} = 91.73$
Stability—high score indicates calm, optimistic, stable, confident individual	$\bar{X} = 98.33$	$\bar{X} = 101.45$
Extroversion—suggests outgoing, easy to meet person	$\bar{X} = 83.22$	$\bar{X} = 81.91$
Masculinity—"people who are not bothered by crawling creatures, the sight of blood, vulgarity, who do not cry easily and are not interested in love stories"	$\bar{X} = 88.44$	$\bar{X} = 87.00$
Empathy—high score indicates individuals who are sympathetic, helpful, generous and interested in devoting their lives to the service of others	$\bar{X} = 91.78$	$\bar{X} = 95.36$

Table 2. Mean scores for "Remaining" v. "Early released" prisoners on Comrey subscales

Scale	Remaining prisoners	Early released prisoners	Mean difference
Trustworthiness	93.4	90.8	+2.6
Orderliness	76.6	78.0	-1.4
Conformity	67.2	59.4	+7.8
Activity	91.4	86.8	+4.6
Stability	99.2	99.6	-0.4
Extroversion	98.4	76.2	+22.2
Masculinity	91.6	86.0	+5.6
Empathy	103.8	85.6	+17.2

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Table 2 shows the mean scores on the Comrey sub-scales for prisoners who remained compared with prisoners who were released early due to severe emotional reactions to the environment. Although none of the comparisons achieved statistical significance, three seemed at least suggestive as possible discriminators of those who were able to tolerate this type of confinement and those who were not. Compared with those who had to be released, prisoners who remained in prison until the termination of the study: scored higher on conformity ("acceptance of society as it is"), showed substantially higher average scores on Comrey's measure of extroversion and also scored higher on a scale of empathy (helpfulness, sympathy and generosity).

F-Scale

The *F*-scale is designed to measure rigid adherence to conventional values and a submissive, uncritical attitude towards authority. There was no difference between the mean score for prisoners (4.78) and the mean score for guards (4.36) on this scale.

Again, comparing those prisoners who remained with those who were released early, we notice an interesting trend. This intra-group comparison shows remaining prisoners scoring more than twice as high on conventionality and authoritarianism ($\bar{X} = 7.78$) than those prisoners released early ($\bar{X} = 3.20$). While the difference between these means fails to reach acceptable levels of significance, it is striking to note that a rank-ordering of prisoners on the *F*-scale correlates highly with the duration of their stay in the experiment ($r_s = 0.898$, $P < 0.005$). To the extent that a prisoner was high in rigidity, in adherence to conventional values, and in the acceptance of authority, he was likely to remain longer and adjust more effectively to this authoritarian prison environment.

Machiavellianism

There were no significant mean differences found between guards ($\bar{X} = 7.73$) and prisoners ($\bar{X} = 8.77$) on this measure of effective interpersonal manipulation. In addition, the Mach Scale was of no help in predicting the likelihood that a prisoner would tolerate the prison situation and remain in the study until its termination.

This latter finding, the lack of any mean differences between prisoners who remained *v.* those who were released from the study, is somewhat surprising since one might expect the Hi Mach's skill at manipulating social interaction and mediating favourable outcomes for himself might be acutely relevant to the simulated prison environment. Indeed, the two prisoners who scored highest on the Machiavellianism scale were also among those adjudged by the experimenters to have made unusually effective adaptations to their confinement. Yet, paradoxically (and this may give the reader some feeling for the anomalies we encountered in attempting to predict in-prison behaviour from personality

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measures), the other two prisoners whom we categorised as having effectively adjusted to confinement actually obtained the lowest Mach scores of any prisoners.

Video recordings

An analysis of the video recordings indicates a preponderance of genuinely negative interactions, i.e. physical aggression, threats, deprecations, etc. It is also clear that any assertive activity was largely the prerogative of the guards, while prisoners generally assumed a relatively passive demeanour. Guards more often aggressed, more often insulted, more often threatened. Prisoners, when they reacted at all, engaged primarily in resistance to these guard behaviours.

For guards, the most frequent verbal behaviour was the giving of commands and their most frequent form of physical behaviour was aggression. The most frequent form of prisoners' verbal behaviour was question-asking, their most frequent form of physical behaviour was resistance. On the other hand, the most infrequent behaviour engaged in overall throughout the experiment was "helping"—only one such incident was noted from all the video recording collected. That solitary sign of human concern for a fellow occurred between two prisoners.

Although question-asking was the most frequent form of verbal behaviour for the prisoners, guards actually asked questions more frequently overall than did prisoners (but not significantly so). This is reflective of the fact that the overall level of behaviour emitted was much higher for the guards than for the prisoners. All of those verbal acts categorised as commands were engaged in by guards. Obviously, prisoners had no opportunity to give commands at all, that behaviour becoming the exclusive "right" of guards.

Of a total 61 incidents of direct interpersonal reference observed (incidents in which one subject spoke directly to another with the use of some identifying reference, i.e. "Hey, Peter"; "you there", etc.), 58 involved the use of some deindividuating rather than some individuating form of reference. (Recall that we characterised this distinction as follows: an individuating reference involved the use of a person's actual name, nickname or allusion to special physical characteristics, whereas a deindividuating reference involved the use of a prison number, or a generalised "you"—thus being a very depersonalising form of reference.) Since all subjects were at liberty to refer to one another in either mode, it is significant that such a large proportion of the references noted involved were in the deindividuating mode ($Z = 6.9$, $P < 0.01$). Deindividuating references were made more often by guards in speaking to prisoners than the reverse ($Z = 3.67$, $P < 0.01$). (This finding, as all prisoner-guard comparisons for specific categories, may be somewhat confounded by the fact that guards apparently enjoyed a greater freedom to initiate verbal as well as other forms of behaviour. Note, however, that the existence of this greater "freedom" on the part of the guards is itself an empirical finding since it was not prescribed

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à priori.) It is of additional interest to point out that in the only three cases in which verbal exchange involved some individuating reference, it was prisoners who personalised guards.

A total of 32 incidents were observed which involved a verbal threat spoken by one subject to another. Of these, 27 such incidents involved a guard threatening a prisoner. Again, the indulgence of guards in this form of behaviour was significantly greater than the indulgence of prisoners, the observed frequencies deviating significantly from an equal distribution of threats across both groups ($Z = 3.88, P < 0.01$).

Guards more often deprecated and insulted prisoners than prisoners did of guards. Of a total of 67 observed incidents, the deprecation-insult was expressed disproportionately by guards to prisoners 61 times; ($Z = 6.72, P < 0.01$).

Physical resistance was observed 34 different times. Of these, 32 incidents involved resistance by a prisoner. Thus, as we might expect, at least in this reactive behaviour domain, prisoner responses far exceeded those of the guards ($Z = 5.14, P < 0.01$).

The use of some object or instrument in the achievement of an intended purpose or in some interpersonal interaction was observed 29 times. Twenty-three such incidents involved the use of an instrument by a guard rather than a prisoner. This disproportionate frequency is significantly variant from an equal random use by both prisoners and guards ($Z = 3.16, P < 0.01$).

Over time, from day to day, guards were observed to generally escalate their harassment of the prisoners. In particular, a comparison of two of the first prisoner-guard interactions (during the counts) with two of the last counts in the experiment yielded significant differences in: the use of deindividuating references per unit time ($\bar{X}_{t_1} = 0.0$ and $\bar{X}_{t_2} = 5.40$, respectively; $t = 3.65, P < 0.10$); the incidence of deprecation-insult per unit time ($\bar{X}_{t_1} = 0.3$ and $\bar{X}_{t_2} = 5.70$, respectively; $t = 3.16, P < 0.10$). On the other hand, a temporal analysis of the prisoner video data indicated a general decrease across all categories over time: prisoners came to initiate acts far less frequently and responded (if at all) more passively to the acts of others—they simply *behaved less*.

Although the harassment by the guards escalated overall as the experiment wore on, there was some variation in the extent to which the three different guard shifts contributed to the harassment in general. With the exception of the 2.30 a.m. count, prisoners enjoyed some respite during the late night guard shift (10.00 p.m. to 6.00 a.m.). But they really were "under the gun" during the evening shift. This was obvious in our observations and in subsequent interviews with the prisoners and was also confirmed in analysis of the video taped interactions. Comparing the three different guard shifts, the evening shift was significantly different from the other two in resorting to commands; the means being 9.30 and 4.04, respectively, for standardised units of time ($t = 2.50, P < 0.05$). In addition, the guards on this "tough and cruel" shift showed more than twice as many deprecation-insults toward the prisoners (means of 5.17 and

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2.29, respectively, $P < 0.20$). They also tended to use instruments more often than other shifts to keep the prisoners in line.

Audio recordings

The audio recordings made throughout the prison simulation afforded one opportunity to systematically collect self-report data from prisoners and guards regarding (among other things) their emotional reactions, their outlook, and their interpersonal evaluations and activities within the experimental setting. Recorded interviews with both prisoners and guards offered evidence that: guards tended to express nearly as much negative outlook and negative self-regard as most prisoners (one concerned guard, in fact, expressed more negative self-regard than any prisoner and more general negative affect than all but one of the prisoners); prisoner interviews were marked by negativity in expressions of affect, self-regard and action intentions (including intent to aggress and negative outlook).

Analysis of the prisoner interviews also gave *post hoc* support to our informal impressions and subjective decisions concerning the differential emotional effects of the experiment upon those prisoners who remained and those who were released early from the study. A comparison of the mean number of expressions of negative outlook, negative affect, negative self-regard and intentions to aggress made by remaining *v.* released prisoners (per interview) yielded the following results: prisoners released early expressed more negative expectations during interviews than those who remained ($t = 2.32$, $P < 0.10$) and also more negative affect ($t = 2.17$, $P < 0.10$); prisoners released early expressed more negative self-regard, and four times as many "intentions to aggress" as prisoners who remained (although those comparisons fail to reach an acceptable level of significance).

Since we could video-record only public interactions on the "yard", it was of special interest to discover what was occurring among prisoners in private. What were they talking about in the cells—their college life, their vocation, girl friends, what they would do for the remainder of the summer once the experiment was over. We were surprised to discover that fully 90% of all conversations among prisoners were related to prison topics, while only 10% to non-prison topics such as the above. They were most concerned about food, guard harassment, setting up a grievance committee, escape plans, visitors, reactions of prisoners in the other cells and in solitary. Thus, in their private conversations when they might escape the roles they were playing in public, they did not. There was no discontinuity between their presentation of self when under surveillance and when alone.

Even more remarkable was the discovery that the prisoners had begun to adopt and accept the guards' negative attitude toward them. Half of all reported private interactions between prisoners could be classified as non-supportive and non-cooperative. Moreover, when prisoners made evaluative statements of or

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expressed regard for, their fellow prisoners, 85% of the time they were uncomplimentary and deprecating. This set of observed frequencies departs significantly from chance expectations based on a conservative binominal probability frequency ($P < 0.01$ for prison v. non-prison topics; $P < 0.05$ for negative v. positive or neutral regard).

Mood adjective self-reports

Twice during the progress of the experiment each subject was asked to complete a mood adjective checklist and indicate his current affective state. The data gleaned from these self-reports did not lend themselves readily to statistical analysis. However, the trends suggested by simple enumeration are important enough to be included without reference to statistical significance. In these written self-reports, prisoners expressed nearly three times as much negative as positive affect. Prisoners roughly expressed three times as much negative affect as guards. Guards expressed slightly more negative than positive affect. While prisoners expressed about twice as much emotionality as did guards, a comparison of mood self-reports over time reveals that the prisoners showed two to three times as much mood fluctuation as did the relatively stable guards. On the dimension of activity-passivity, prisoners tended to score twice as high, indicating twice as much internal "agitation" as guards (although, as stated above, prisoners were seen to be markedly less active than guards in terms of overt behaviour).

It would seem from these results that while the experience had a categorically negative emotional impact upon both guards and prisoners, the effects upon prisoners were more profound and unstable.

When the mood scales were administered for a third time, just after the subjects were told the study had been terminated (and the early released subjects returned for the debriefing encounter session), marked changes in mood were evident. All of the now "ex-convicts" selected self-descriptive adjectives which characterised their mood as less negative and much more positive. In addition, they now felt less passive than before. There were no longer any differences on the sub-scales of this test between prisoners released early and those who remained throughout. Both groups of subjects had returned to their pre-experimental baselines of emotional responding. This seems to reflect the situational specificity of the depression and stress reactions experienced while in the role of prisoner.

Representative personal statements

Much of the flavour and impact of this prison experience is unavoidably lost in the relatively formal, objective analyses outlined in this paper. The following quotations taken from interviews, conversations and questionnaires provide a more personal view of what it was like to be a prisoner or guard in the "Stanford County Prison" experiment.

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Guards

"They [the prisoners] seemed to lose touch with the reality of the experiment—they took me so seriously."

"... I didn't interfere with any of the guards' actions. Usually if what they were doing bothered me, I would walk out and take another duty."

"... looking back, I am impressed by how little I felt for them ..."

"... They [the prisoners] didn't see it as an experiment. It was real and they were fighting to keep their identity. But we were always there to show them just who was boss."

"... I was tired of seeing the prisoners in their rags and smelling the strong odours of their bodies that filled the cells. I watched them tear at each other, on orders given by us."

"... Acting authoritatively can be fun. Power can be a great pleasure."

"... During the inspection, I went to cell 2 to mess up a bed which the prisoner had made and he grabbed me, screaming that he had just made it, and he wasn't going to let me mess it up. He grabbed my throat, and although he was laughing I was pretty scared. I lashed out with my stick and hit him in the chin (although not very hard) and when I freed myself I became angry."

Prisoners

"... The way we were made to degrade ourselves really brought us down and that's why we all sat docile towards the end of the experiment."

"... I realise now (after it's over) that no matter how together I thought I was inside my head, my prison behaviour was often less under my control than I realised. No matter how open, friendly and helpful I was with other prisoners I was still operating as an isolated, self-centred person, being rational rather than compassionate."

"... I began to feel I was losing my identity, that the person I call _____, the person who volunteered to get me into this prison (because it was a prison to me, it *still* is a prison to me, I don't regard it as an experiment or a simulation ...) was distant from me, was remote until finally I wasn't *that* person, I was 416. I was really my number and 416 was really going to have to decide what to do."

"I learned that people can easily forget that others are human."

Debriefing encounter sessions

Because of the unexpectedly intense reactions (such as the above) generated by this mock-prison experience, we decided to terminate the study at the end of six days rather than continue for the second week. Three separate encounter sessions were held, first, for the prisoners, then for the guards and finally for all participants together. Subjects and staff openly discussed their reactions and strong feelings were expressed and shared. We analysed the moral conflicts posed by this experience and used the debriefing sessions to make explicit alternative courses of action that would lead to more moral behaviour in future comparable situations.

Follow-ups on each subject over the year following termination of the study revealed the negative effects of participation had been temporary, while the personal gain to the subjects endured.

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Conclusions and Discussion

It should be apparent that the elaborate procedures (and staging) employed by the experimenters to insure a high degree of mundane realism in this mock prison contributed to its effective functional simulation of the psychological dynamics operating in "real" prisons. We observed empirical relationships in the simulated prison environment which were strikingly isomorphic to the internal relations of real prisons, corroborating many of the documented reports of what occurs behind prison walls.

The conferring of differential power on the status of "guard" and "prisoner" constituted, in effect, the institutional validation of those roles. But further, many of the subjects ceased distinguishing between prison role and their prior self-identities. When this occurred, within what was a surprisingly short period of time, we witnessed a sample of normal, healthy American college students fractionate into a group of prison guards who seemed to derive pleasure from insulting, threatening, humiliating and dehumanising their peers—those who by chance selection had been assigned to the "prisoner" role. The typical prisoner syndrome was one of passivity, dependency, depression, helplessness and self-deprecation. Prisoner participation in the social reality which the guards had structured for them lent increasing validity to it and, as the prisoners became resigned to their treatment over time, many acted in ways to justify their fate at the hands of the guards, adopting attitudes and behaviour which helped to sanction their victimisation. Most dramatic and distressing to us was the observation of the ease with which sadistic behaviour could be elicited in individuals who were not "sadistic types" and the frequency with which acute emotional breakdowns could occur in men selected precisely for their emotional stability.

Situational v. dispositional attribution

To what can we attribute these deviant behaviour patterns? If these reactions had been observed within the confines of an existing penal institution, it is probable that a dispositional hypothesis would be invoked as an explanation. Some cruel guards might be singled out as sadistic or passive-aggressive personality types who chose to work in a correctional institution because of the outlets provided for sanctioned aggression. Aberrant reactions on the part of the inmate population would likewise be viewed as an extrapolation from the prior social histories of these men as violent, anti-social, psychopathic, unstable character types.

Existing penal institutions may be viewed as *natural experiments* in social control in which any attempts at providing a causal attribution for observed behaviour hopelessly confound dispositional and situational causes. In contrast, the design of our study minimised the utility of trait or prior social history explanations by means of judicious subject selection and random assignment to roles. Considerable effort and care went into determining the composition of the

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final subject population from which our guards and prisoners were drawn. Through case histories, personal interviews and a battery of personality tests, the subjects chosen to participate manifested no apparent abnormalities, anti-social tendencies or social backgrounds which were other than exemplary. On every one of the scores of the diagnostic tests each subject scored within the normal-average range. Our subjects then, were highly representative of middle-class, Caucasian American society (17 to 30 years in age), although above average in both intelligence and emotional stability.

Nevertheless, in less than one week their *behaviour* in this simulated prison could be characterised as pathological and anti-social. The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather, the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it. Thus, we offer another instance in support of Mischel's [4] social-learning analysis of the power of situational variables to shape complex social behaviour. Our results are also congruent with those of Milgram [5] who most convincingly demonstrated the proposition that evil acts are not necessarily the deeds of evil men, but may be attributable to the operation of powerful social forces. Our findings go one step further, however, in removing the immediate presence of the dominant experimenter-authority figure, giving the subjects-as-guards a freer range of behavioural alternatives, and involving the participants for a much more extended period of time.

Despite the evidence favouring a situational causal analysis in this experiment, it should be clear that the research design actually *minimised* the effects of individual differences by use of a homogenous middle-range subject population. It did not allow the strongest possible test of the relative utility of the two types of explanation. We cannot say that personality differences do not have an important effect on behaviour in situations such as the one reported here. Rather, we may assert that the variance in behaviour observed could be reliably attributed to variations in situational rather than personality variables. The inherently pathological characteristics of the prison situation itself, at least as functionally simulated in our study, were a *sufficient* condition to produce aberrant, anti-social behaviour. (An alternative design which would maximise the potential operation of personality or dispositional variables would assign subjects who were extreme on pre-selected personality dimensions to each of the two experimental treatments. Such a design would, however, require a larger subject population and more resources than we had available.)

The failure of personality assessment variables to reliably discriminate the various patterns of prison behaviour, guard reactions as well as prisoner coping styles is reminiscent of the inability of personality tests to contribute to an understanding of the psychological differences between American P.O.W.s in Korea who succumbed to alleged Chinese Communist brain-washing by

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"collaborating with the enemy" and those who resisted [6]. It seems to us that there is little reason to expect paper-and-pencil behavioural reactions on personality tests taken under "normal" conditions to generalise into coping behaviours under novel, stressful or abnormal environmental conditions. It may be that the best predictor of behaviour in situations of stress and power, as occurs in prisons, is overt behaviour in functionally comparable simulated environments.

In the situation of imprisonment faced by our subjects, despite the potent situational control, individual differences were nevertheless manifested both in coping styles among the prisoners and in the extent and type of aggression and exercise of power among the guards. Personality variables, conceived as learned behaviour styles can act as moderator variables in allaying or intensifying the impact of social situational variables. Their predictive utility depends upon acknowledging the inter-active relationship of such learned dispositional tendencies with the eliciting force of the situational variables.

Reality of the simulation

At this point it seems necessary to confront the critical question of "reality" in the simulated prison environment: were the behaviours observed more than the mere acting out assigned roles convincingly? To be sure, ethical, legal and practical considerations set limits upon the degree to which this situation could approach the conditions existing in actual prisons and penitentiaries. Necessarily absent were some of the most salient aspects of prison life reported by criminologists and documented in the writing of prisoners [7, 8]. There was no involuntary homosexuality, no racism, no physical beatings, no threat to life by prisoners against each other or the guards. Moreover, the maximum anticipated "sentence" was only two weeks and, unlike some prison systems, could not be extended indefinitely for infractions of the internal operating rules of the prison.

In one sense, the profound psychological effects we observed under the relatively minimal prison-like conditions which existed in our mock prison make the results even more significant and force us to wonder about the devastating impact of chronic incarceration in real prisons. Nevertheless, we must contend with the criticism that the conditions which prevailed in the mock prison were too minimal to provide a meaningful analogue to existing prisons. It is necessary to demonstrate that the participants in this experiment transcended the conscious limits of their preconceived stereotyped roles and their awareness of the artificiality and limited duration of imprisonment. We feel there is abundant evidence that virtually all of the subjects at one time or another experienced reactions which went well beyond the surface demands of role-playing and penetrated the deep structure of the psychology of imprisonment.

Although instructions about how to behave in the roles of guard or prisoner were not explicitly defined, demand characteristics in the experiment obviously exerted some directing influence. Therefore, it is enlightening to look to

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circumstances where role demands were minimal, where the subjects believed they were not being observed, or where they should not have been behaving under the constraints imposed by their roles (as in "private" situations), in order to assess whether the role behaviours reflected anything more than public conformity or good acting.

When the private conversations of the prisoners were monitored, we learned that almost all (a full 90%) of what they talked about was directly related to immediate prison conditions, that is, food, privileges, punishment, guard harassment, etc. Only one-tenth of the time did their conversations deal with their life outside the prison. Consequently, although they had lived together under such intense conditions, the prisoners knew surprisingly little about each other's past history or future plans. This excessive concentration on the vicissitudes of their current situation helped to make the prison experience more oppressive for the prisoners because, instead of escaping from it when they had a chance to do so in the privacy of their cells, the prisoners continued to allow it to dominate their thoughts and social relations. The guards too, rarely exchanged personal information during their relaxation breaks. They either talked about "problem prisoners", or other prison topics, or did not talk at all. There were few instances of any personal communication across the two role groups. Moreover, when prisoners referred to other prisoners during interviews, they typically deprecated each other, seemingly adopting the guards' negative attitude.

From post-experimental data, we discovered that when individual guards were alone with solitary prisoners and out of range of any recording equipment, as on the way to or in the toilet, harassment often was greater than it was on the "Yard". Similarly, video-taped analyses of total guard aggression showed a daily escalation even after most prisoners had ceased resisting and prisoner deterioration had become visibly obvious to them. Thus guard aggression was no longer elicited as it was initially in response to perceived threats, but was emitted simply as a "natural" consequence of being in the uniform of a "guard" and asserting the power inherent in that role. In specific instances we noted cases of a guard (who did not know he was being observed) in the early morning hours pacing the "Yard" as the prisoners slept—vigorously pounding his night stick into his hand while he "kept watch" over his captives. Or another guard who detained an "incurable" prisoner in solitary confinement beyond the duration set by the guards' own rules and then he conspired to keep him in the hole all night while attempting to conceal this information from the experimenters who were thought to be too soft on the prisoners.

In passing, we may note an additional point about the nature of role-playing and the extent to which actual behaviour is "explained away" by reference to it. It will be recalled that many guards continued to intensify their harassment and aggressive behaviour even after the second day of the study, when prisoner deterioration became marked and visible and emotional breakdowns began to occur (in the presence of the guards). When questioned after the study about their persistent affrontive and harassing behaviour in the face of prisoner

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emotional trauma, most guards replied that they were "just playing the role" of a tough guard, although none ever doubted the magnitude or validity of the prisoners' emotional response. The reader may wish to consider to what extremes an individual may go, how great must be the consequences of his behaviour for others, before he can no longer rightfully attribute his actions to "playing a role" and thereby abdicate responsibility.

When introduced to a Catholic priest, many of the role-playing prisoners referred to themselves by their prison number rather than their Christian names. Some even asked him to get a lawyer to help them get out. When a public defender was summoned to interview those prisoners who had not yet been released, almost all of them strenuously demanded that he "bail" them out immediately.

One of the most remarkable incidents of the study occurred during a parole board hearing when each of five prisoners eligible for parole was asked by the senior author whether he would be willing to forfeit all the money earned as a prisoner if he were to be paroled (released from the study). Three of the five prisoners said, "yes", they would be willing to do this. Notice that the original incentive for participating in the study had been the promise of money, and they were, after only four days, prepared to give this up completely. And, more suprisingly, when told that this possibility would have to be discussed with the members of the staff before a decision could be made, each prisoner got up quietly and was escorted by a guard back to his cell. If they regarded themselves simply as "subjects" participating in an experiment for money, there was no longer any incentive to remain in the study and they could have easily escaped this situation which had so clearly become aversive for them by quitting. Yet, so powerful was the control which the situation had come to have over them, so much a reality had this simulated environment become, that they were unable to see that their original and singular motive for remaining no longer obtained, and they returned to their cells to await a "parole" decision by their captors.

The reality of the prison was also attested to by our prison consultant who had spent over 16 years in prison, as well as the priest who had been a prison chaplain and the public defender who were all brought into direct contact with out simulated prison environment. Further, the depressed affect of the prisoners, the guards' willingness to work overtime for no additional pay, the spontaneous use of prison titles and I.D. numbers in non role-related situations all point to a level of reality as real as any other in the lives of all those who shared this experience.

To understand how an illusion of imprisonment could have become so real, we need now to consider the uses of power by the guards as well as the effects of such power in shaping the prisoner mentality.

Pathology of power

Being a guard carried with it social status within the prison, a group identity (when wearing the uniform), and above all, the freedom to exercise an unprecedented degree of control over the lives of other human beings. This

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control was invariably expressed in terms of sanctions, punishment, demands and with the threat of manifest physical power. There was no need for the guards to rationally justify a request as they do in their ordinary life and merely to make a demand was sufficient to have it carried out. Many of the guards showed in their behaviour and revealed in post-experimental statements that this sense of power was exhilarating.

The use of power was self-aggrandising and self-perpetuating. The guard power, derived initially from an arbitrary label, was intensified whenever there was any perceived threat by the prisoners and this new level subsequently became the baseline from which further hostility and harassment would begin. The most hostile guards on each shift moved spontaneously into the leadership roles of giving orders and deciding on punishments. They became role models whose behaviour was emulated by other members of the shift. Despite minimal contact between the three separate guard shifts and nearly 16 hours a day spent away from the prison, the absolute level of aggression as well as more subtle and "creative" forms of aggression manifested, increased in a spiralling function. Not to be tough and arrogant was to be seen as a sign of weakness by the guards and even those "good" guards who did not get as drawn into the power syndrome as the others respected the implicit norm of *never* contradicting or even interfering with an action of a more hostile guard on their shift.

After the first day of the study, practically all prisoner's rights (even such things as the time and conditions of sleeping and eating) came to be redefined by the guards as "privileges" which were to be earned for obedient behaviour. Constructive activities such as watching movies or reading (previously planned and suggested by the experimenters) were arbitrarily cancelled until further notice by the guards—and were subsequently never allowed. "Reward", then became granting approval for prisoners to eat, sleep, go to the toilet, talk, smoke a cigarette, wear glasses or the temporary diminution of harassment. One wonders about the conceptual nature of "positive" reinforcement when subjects are in such conditions of deprivation, and the extent to which even minimally acceptable conditions become rewarding when experienced in the context of such an impoverished environment.

We might also question whether there are meaningful non-violent alternatives as models for behaviour modification in real prisons. In a world where men are either powerful or powerless, everyone learns to despise the lack of power in others and in oneself. It seems to us, that prisoners learn to admire power for its own sake—power becoming the ultimate reward. Real prisoners soon learn the means to gain power whether through ingratiation, informing, sexual control of other prisoners or development of powerful cliques. When they are released from prison, it is unlikely they will ever want to feel so powerless again and will take action to establish and assert a sense of power.

The pathological prisoner syndrome

Various coping strategies were employed by our prisoners as they began to react to their perceived loss of personal identity and the arbitrary control of their

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lives. At first they exhibited disbelief at the total invasion of their privacy, constant surveillance and atmosphere of oppression in which they were living. Their next response was rebellion, first by the use of direct force, and later with subtle divisive tactics designed to foster distrust among the prisoners. They then tried to work within the system by setting up an elected grievance committee. When that collective action failed to produce meaningful changes in their existence, individual self-interests emerged. The breakdown in prisoner cohesion was the start of social disintegration which gave rise not only to feelings of isolation but deprecation of other prisoners as well. As noted before, half the prisoners coped with the prison situation by becoming extremely disturbed emotionally—as a passive way of demanding attention and help. Others became excessively obedient in trying to be “good” prisoners. They sided with the guards against a solitary fellow prisoner who coped with his situation by refusing to eat. Instead of supporting this final and major act of rebellion, the prisoners treated him as a trouble-maker who deserved to be punished for his disobedience. It is likely that the negative self-regard among the prisoners noted by the end of the study was the product of their coming to believe that the continued hostility toward all of them was justified because they “deserved it” [9]. As the days wore on, the model prisoner reaction was one of passivity, dependence and flattened affect.

Let us briefly consider some of the relevant processes involved in bringing about these reactions.

Loss of personal identity. Identity is, for most people, conferred by social recognition of one's uniqueness, and established through one's name, dress, appearance, behaviour style and history. Living among strangers who do not know your name or history (who refer to you only by number), dressed in a uniform exactly like all other prisoners, not wanting to call attention to one's self because of the unpredictable consequences it might provoke—all led to a weakening of self identity among the prisoners. As they began to lose initiative and emotional responsivity, while acting ever more compliantly, indeed, the prisoners became deindividuated not only to the guards and the observers, but also to themselves.

Arbitrary control. On post-experimental questionnaires, the most frequently mentioned aversive aspect of the prison experience was that of being subjugated to the apparently arbitrary, capricious decisions and rules of the guards. A question by a prisoner as often elicited derogation and aggression as it did a rational answer. Smiling at a joke could be punished in the same way that failing to smile might be. An individual acting in defiance of the rules could bring punishment to innocent cell partners (who became, in effect, “mutually yoked controls”), to himself, or to all.

As the environment became more unpredictable, and previously learned assumptions about a just and orderly world were no longer functional, prisoners ceased to initiate any action. They moved about on orders and when in their cells rarely engaged in any purposeful activity. Their zombie-like reaction was the functional equivalent of the learned helplessness phenomenon reported by

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Seligman and Groves [10]. Since their behaviour did not seem to have any contingent relationship to environmental consequences, the prisoners essentially gave up and stopped behaving. Thus the subjective magnitude of aversiveness was manipulated by the guards not in terms of physical punishment but rather by controlling the psychological dimension of environmental predictability [11].

Dependency and emasculation. The network of dependency relations established by the guards not only promoted helplessness in the prisoners but served to emasculate them as well. The arbitrary control by the guards put the prisoners at their mercy for even the daily, commonplace functions like going to the toilet. To do so, required publicly obtained permission (not always granted) and then a personal escort to the toilet while blindfolded and handcuffed. The same was true for many other activities ordinarily practised spontaneously without thought, such as lighting up a cigarette, reading a novel, writing a letter, drinking a glass of water or brushing one's teeth. These were all privileged activities requiring permission and necessitating a prior show of good behaviour. These low level dependencies engendered a regressive orientation in the prisoners. Their dependency was defined in terms of the extent of the domain of control over all aspects of their lives which they allowed other individuals (the guards and prison staff) to exercise.

As in real prisons, the assertive, independent, aggressive nature of male prisoners posed a threat which was overcome by a variety of tactics. The prisoner uniforms resembled smocks or dresses, which made them look silly and enabled the guards to refer to them as "sissies" or "girls". Wearing these uniforms without any underclothes forced the prisoners to move and sit in unfamiliar, feminine postures. Any sign of individual rebellion was labelled as indicative of "incurability" and resulted in loss of privileges, solitary confinement, humiliation or punishment of cell mates. Physically smaller guards were able to induce stronger prisoners to act foolishly and obediently. Prisoners were encouraged to belittle each other publicly during the counts. These and other tactics all served to engender in the prisoners a lessened sense of their masculinity (as defined by their external culture). It follows then, that although the prisoners usually outnumbered the guards during line-ups and counts (nine v. three) there never was an attempt to directly overpower them. (Interestingly, after the study was terminated, the prisoners expressed the belief that the basis for assignment to guard and prisoner groups was physical size. They perceived the guards were "bigger", when, in fact, there was no difference in average height or weight between these randomly determined groups.)

In conclusion, we believe this demonstration reveals new dimensions in the social psychology of imprisonment worth pursuing in future research. In addition, this research provides a paradigm and information base for studying alternatives to existing guard training, as well as for questioning the basic operating principles on which penal institutions rest. If our mock prison could generate the extent of pathology it did in such a short time, then the punishment of being imprisoned in a real prison does not "fit the crime" for

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most prisoners—indeed, it far exceeds it! Moreover, since prisoners and guards are locked into a dynamic, symbiotic relationship which is destructive to their human nature, guards are also society's prisoners.

Shortly after our study was terminated, the indiscriminate killings at San Quentin and Attica occurred, emphasising the urgency for prison reforms that recognise the dignity and humanity of both prisoners and guards who are constantly forced into one of the most intimate and potentially deadly encounters known to man.

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Interpersonal Dynamics in a Simulated Prison

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Interpersonal dynamics in a prison environment was simulated by designing a functional simulation of a prison in which prisoners and guards for an extended period of time experienced the social forces on the emergent behaviour in explanations in terms of pre-existing dispositions and subject selection. A homogeneous, "normal" sample of college students. A homogeneous, "normal" sample of college students. Half of the subjects were random assignment to the role of prison guards for eight hours each day, while the other half played prisoners incarcerated for nearly one full week. Neither group received any specific training in these roles.

Continuous, direct observation of behavioural interactions was supplemented by video-taped recording, questionnaires, self-report scales and interviews. All these data sources converge on the conclusion that this simulated prison developed into a psychologically compelling prison environment. As such, it elicited unexpectedly intense, realistic and often pathological reactions from many of the participants. The prisoners experienced a loss of personal identity and the arbitrary control of their behaviour which resulted in a syndrome of passivity, dependency, depression and helplessness. In contrast, the guards (with rare exceptions) experienced a marked gain in social power, status and group identification which made role-playing rewarding.

The most dramatic of the coping behaviour utilised by half of the prisoners in adapting to this stressful situation was the development of acute emotional disturbance—severe enough to warrant their early release. At least a third of the guards were judged to have become far more aggressive and dehumanising toward the prisoners than would ordinarily be predicted in a simulation study. Only a very few of the observed reactions to this experience of imprisonment could be attributed to personality trait differences which existed before the subjects began to play their assigned roles.

Introduction

After he had spent four years in a Siberian prison the great Russian novelist Dostoevsky commented, surprisingly, that his time in prison had created in him a deep optimism about the ultimate future of mankind because, as he put it, if man could survive the horrors of prison life he must surely be a "creature who could withstand anything". The cruel irony which Dostoevsky overlooked is that the reality of prison bears witness not only to the resilience and adaptiveness of the men who tolerate life within its walls, but as well to the "ingenuity" and tenacity of those who devised and still maintain our correctional and reformatory systems.

Nevertheless, in the century which has passed since Dostoevsky's imprisonment, little has changed to render the main thrust of his statement less relevant. Although we have passed through periods of enlightened humanitarian reform, in which physical conditions within prisons have improved somewhat and the rhetoric of rehabilitation has replaced the language of punitive incarceration, the social institution of prison has continued to fail. On purely pragmatic grounds, there is substantial evidence that prisons in fact neither "rehabilitate" nor act as a deterrent to future crime—in America, recidivism rates upwards of 75% speak quite decisively to these criteria. And, to perpetuate what is additionally an economic failure, American taxpayers alone must provide an expenditure for "corrections" of 1.5 billion dollars annually. On humanitarian grounds as well, prisons have failed: our mass media are increasingly filled with accounts of atrocities committed daily, man against man, in reaction to the penal system or in the name of it. The experience of prison undeniably creates, almost to the point of cliché, an intense hatred and disrespect in most inmates for the authority and the established order of society into which they will eventually return. And the toll which it takes on the deterioration of human spirit for those who must administer it, as well as for those upon whom it is inflicted, is incalculable.

Attempts to provide an explanation of the deplorable condition of our penal system and its dehumanising effects upon prisoners and guards, often focus upon what might be called the *dispositional hypothesis*. While this explanation is rarely expressed explicitly, it is central to a prevalent non-conscious ideology: that the state of the social institution of prison is due to the "nature" of the people who administer it, or the "nature" of the people who populate it, or both. That is, a major contributing cause to despicable conditions, violence, brutality, dehumanisation and degradation existing within any prison can be traced to some innate or acquired characteristic of the correctional and inmate population. Thus on the one hand, there is the contention that violence and brutality exist within prison because guards are sadistic, uneducated, and insensitive people. It is the "guard mentality", a unique syndrome of negative traits which they bring into the situation, that engenders the inhumane treatment of prisoners. Or, from other quarters comes the argument that violence and brutality in prison are the logical and predictable result of the

involuntary confinement of a collective of individuals whose life histories are, by definition, characterised by disregard for law, order and social convention and a concurrent propensity for impulsiveness and aggression. Logically, it follows that these individuals, having proved themselves incapable of functioning satisfactorily within the "normal" structure of society, cannot do so either inside the structure provided by prisons. To control such men as these, the argument continues, whose basic orientation to any conflict situation is to react with physical power or deception, force must be met with force, and a certain number of violent encounters must be expected and tolerated by the public.

The dispositional hypothesis has been embraced by the proponents of the prison *status quo* (blaming conditions on the evil in the prisoners), as well as by its critics (attributing the evil to guards and staff with their evil motives and deficient personality structures). The appealing simplicity of this proposition localises the source of prison riots, recidivism and corruption in these "bad seeds" and not in the conditions of the "prison soil". Such an analysis directs attention away from the complex matrix of social, economic and political forces which combine to make prisons what they are—and which would require complex, expensive, revolutionary solutions to bring about any meaningful change. Instead, rioting prisoners are identified, punished, transferred to maximum security institutions or shot, outside agitators sought and corrupt officials suspended—while the system itself goes on essentially unchanged, its basic structure unexamined and unchallenged.

However, a critical evaluation of the dispositional hypothesis cannot be made directly through observation in existing prison settings, since such naturalistic observation necessarily confounds the acute effects of the environment with the chronic characteristics of the inmate and guard populations. To separate the effects of the prison environment *per se* from those attributable to *a priori* dispositions of its inhabitants requires a research strategy in which a "new" prison is constructed, comparable in its fundamental social-psychological milieu to existing prison systems, but entirely populated by individuals who are undifferentiated in all essential dimensions from the rest of society.

Such was the approach taken in the present empirical study, namely, to create a prison-like situation in which the guards and inmates were initially comparable and characterised as being "normal-average", and then to observe the patterns of behaviour which resulted, as well as the cognitive, emotional and attitudinal reactions which emerged. Thus, we began our experiment with a sample of individuals who did not deviate from the normal range of the general population on a variety of dimensions we were able to measure. Half were randomly assigned to the role of "prisoner", the others to that of "guard", neither group having any history of crime, emotional disability, physical handicap nor even intellectual or social disadvantage.

The environment created was that of a "mock" prison which physically constrained the prisoners in barred cells and psychologically conveyed the sense of imprisonment to all participants. Our intention was not to create a *literal*

simulation of an American prison, but rather a functional representation of one. For ethical, moral and pragmatic reasons we could not detain our subjects for extended or indefinite periods of time, we could not exercise the threat and promise of severe physical punishment, we could not allow homosexual or racist practices to flourish, nor could we duplicate certain other specific aspects of prison life. Nevertheless, we believed that we could create a situation with sufficient mundane realism to allow the role-playing participants to go beyond the superficial demands of their assignment into the deep structure of the characters they represented. To do so, we established functional equivalents for the activities and experiences of actual prison life which were expected to produce qualitatively similar psychological reactions in our subjects—feelings of power and powerlessness, of control and oppression, of satisfaction and frustration, of arbitrary rule and resistance to authority, of status and anonymity, of machismo and emasculation. In the conventional terminology of experimental social psychology, we first identified a number of relevant conceptual variables through analysis of existing prison situations, then designed a setting in which these variables were made operational. No specific hypotheses were advanced other than the general one that assignment to the treatment of “guard” or “prisoner” would result in significantly different reactions on behavioural measures of interaction, emotional measures of mood state and pathology, attitudes toward self, as well as other indices of coping and adaptation to this novel situation. What follows is the mechanics of how we created and peopled our prison, what we observed, what our subjects reported, and finally, what we can conclude about the nature of the prison environment and the experience of imprisonment which can account for the failure of our prisons.

Method

Overview

The effects of playing the role of “guard” or “prisoner” were studied in the context of an experimental simulation of a prison environment. The research design was a relatively simple one, involving as it did only a single treatment variable, the random assignment to either a “guard” or “prisoner” condition. These roles were enacted over an extended period of time (nearly one week) within an environment which was physically constructed to resemble a prison. Central to the methodology of creating and maintaining a psychological state of imprisonment was the functional simulation of significant properties of “real prison life” (established through information from former inmates, correctional personnel and texts).

The “guards” were free with certain limits to implement the procedures of induction into the prison setting and maintenance of custodial retention of the “prisoners”. These inmates, having voluntarily submitted to the conditions of this total institution in which they now lived, coped in various ways with its

stresses and its challenges. The behaviour of both groups of subjects was observed, recorded and analysed. The dependent measures were of two general types: transactions between and within each group of subjects, recorded on video and audio tape as well as directly observed; individual reactions on questionnaires, mood inventories, personality tests, daily guard shift reports, and post experimental interviews.

Subjects

The 21 subjects who participated in the experiment were selected from an initial pool of 75 respondents, who answered a newspaper advertisement asking for male volunteers to participate in a psychological study of "prison life" in return for payment of \$15 per day. Those who responded to the notice completed an extensive questionnaire concerning their family background, physical and mental health history, prior experience and attitudinal propensities with respect to sources of psychopathology (including their involvement in crime). Each respondent who completed the background questionnaire was interviewed by one of two experimenters. Finally, the 24 subjects who were judged to be most stable (physically and mentally), most mature, and least involved in anti-social behaviour were selected to participate in the study. On a random basis, half of the subjects were assigned the role of "guard", half to the role of "prisoner".

The subjects were normal, healthy males attending colleges throughout the United States who were in the Stanford area during the summer. They were largely of middle class socio-economic status, Caucasians (with the exception of one Oriental subject). Initially they were strangers to each other, a selection precaution taken to avoid the disruption of any pre-existing friendship patterns and to mitigate against any transfer into the experimental situation of previously established relationships or patterns of behaviour.

This final sample of subjects was administered a battery of psychological tests on the day prior to the start of the simulation, but to avoid any selective bias on the part of the experimenter-observers, scores were not tabulated until the study was completed.

Two subjects who were assigned to be a "stand-by" in case an additional "prisoner" was needed were not called, and one subject assigned to be a "stand-by" guard decided against participating just before the simulation phase began—thus, our data analysis is based upon ten prisoners and eleven guards in our experimental conditions.

Procedure

Physical aspects of the prison

The prison was built in a 35-ft section of a basement corridor in the psychology building at Stanford University. It was partitioned by two fabricated walls, one of which was fitted with the only entrance door to the cell block, the other

duty might be implemented were not explicitly detailed. They were made aware of the fact that while many of the contingencies with which they might be confronted were essentially unpredictable (e.g. prisoner escape attempts), part of their task was to be prepared for such eventualities and to be able to deal appropriately with the variety of situations that might arise. The "Warden" instructed the guards in the administrative details, including: the work-shifts, the mandatory daily completion of shift reports concerning the activity of guards and prisoners, the completion of "critical incident" reports which detailed unusual occurrences and the administration of meals, work and recreation programmes for the prisoners. In order to begin to involve these subjects in their roles even before the first prisoner was incarcerated, the guards assisted in the final phases of completing the prison complex—putting the cots in the cells, signs on the walls, setting up the guards' quarters, moving furniture, water coolers, refrigerators, etc.

The guards generally believed that we were primarily interested in studying the behaviour of the prisoners. Of course, we were equally interested in the effect which enacting the role of guard in this environment would have on their behaviour and subjective states.

To optimise the extent to which their behaviour would reflect their genuine reactions to the experimental prison situation and not simply their ability to follow instructions, they were intentionally given only minimal guidelines for what it meant to be a guard. An explicit and categorical prohibition against the use of physical punishment or physical aggression was, however, emphasised by the experimenters. Thus, with this single notable exception, their roles were relatively unstructured initially, requiring each "guard" to carry out activities necessary for interacting with a group of "prisoners" as well as with other "guards" and the "correctional staff".

Uniform

In order to promote feelings of anonymity in the subjects each group was issued identical uniforms. For the guards, the uniform consisted of: plain khaki shirts and trousers, a whistle, a police night stick (wooden batons) and reflecting sunglasses which made eye contact impossible. The prisoners' uniform consisted of loosely fitting muslin smocks with an identification number on front and back. No underclothes were worn beneath these "dresses". A chain and lock were placed around one ankle. On their feet they wore rubber sandals and their hair was covered with a nylon stocking made into a cap. Each prisoner was also issued a toothbrush, soap, soapdish, towel and bed linen. No personal belongings were allowed in the cells.

The outfitting of both prisoners and guards in this manner served to enhance group identity and reduce individual uniqueness within the two groups. The khaki uniforms were intended to convey a military attitude, while the whistle and night-stick were carried as symbols of control and power. The prisoners'

uniforms were designed not only to deindividuate the prisoners but to be humiliating and serve as symbols of their dependence and subservience. The ankle chain was a constant reminder (even during their sleep when it hit the other ankle) of the oppressiveness of the environment. The stocking cap removed any distinctiveness associated with hair length, colour or style (as does shaving of heads in some "real" prisons and the military). The ill-fitting uniforms made the prisoners feel awkward in their movements; since these dresses were worn without undergarments, the uniforms forced them to assume unfamiliar postures, more like those of a woman than a man—another part of the emasculating process of becoming a prisoner.

Induction procedure

With the cooperation of Palo Alto City Police Department all of the subjects assigned to the prisoner treatment were unexpectedly "arrested" at their residences. A police officer charged them with suspicion of burglary or armed robbery, advised them of their legal rights, handcuffed them, thoroughly searched them (often as curious neighbours looked on) and carried them off to the police station in the rear of the police car. At the station they went through the standard routines of being fingerprinted, having an identification file prepared and then being placed in a detention cell. Each prisoner was blindfolded and subsequently driven by one of the experimenters and a subject-guard to our mock prison. Throughout the entire arrest procedure, the police officers involved maintained a formal, serious attitude, avoiding answering any questions of clarification as to the relation of this "arrest" to the mock prison study.

Upon arrival at our experimental prison, each prisoner was stripped, sprayed with a delousing preparation (a deodorant spray) and made to stand alone naked for a while in the cell yard. After being given the uniform described previously and having an I.D. picture taken ("mug shot"), the prisoner was put in his cell and ordered to remain silent.

Administrative routine

When all the cells were occupied, the warden greeted the prisoners and read them the rules of the institution (developed by the guards and the warden). They were to be memorised and to be followed. Prisoners were to be referred to only by the number on their uniforms, also in an effort to depersonalise them.

The prisoners were to be served three bland meals per day, were allowed three supervised toilet visits, and given two hours daily for the privilege of reading or letterwriting. Work assignments were issued for which the prisoners were to receive an hourly wage to constitute their \$15 daily payment. Two visiting periods per week were scheduled, as were movie rights and exercise periods. Three times a day all prisoners were lined up for a "count" (one on each guard

work-shift). The initial purpose of the "count" was to ascertain that all prisoners were present, and to test them on their knowledge of the rules and their I.D. numbers. The first perfunctory counts lasted only about 10 minutes, but on each successive day (or night) they were spontaneously increased in duration until some lasted several hours. Many of the pre-established features of administrative routine were modified or abandoned by the guards, and some were forgotten by the staff over the course of the study.

Data collection (dependent measures)

The exploratory nature of this investigation and the absence of specific hypotheses led us to adopt the strategy of surveying as many as possible behavioural and psychological manifestations of the prison experience on the guards and the prisoners. In fact, one major methodological problem in a study of this kind is defining the limits of the "data", since relevant data emerged from virtually every interaction between any of the participants, as well as from subjective and behavioural reactions of individual prisoners, guards, the warden, superintendent, research assistants and visitors to the prison. It will also be clear when the results are presented that causal direction cannot always be established in the patterns of interaction where any given behaviour might be the consequence of a current or prior instigation by another subject and, in turn, might serve as impetus for eliciting reactions from others.

Data collection was organised around the following sources:

(1) *Videotaping.* About 12 hours of recordings were made of daily, regularly occurring events, such as the counts and meals, as well as unusual interactions, such as a prisoner rebellion, visits from a priest, a lawyer and parents, Parole Board meetings and others. Concealed video equipment recorded these events through a screen in the partition at one end of the cell-block yard or in a conference room (for parole meetings).

(2) *Audio recording.* Over 30 hours of recordings were made of verbal interactions between guards and prisoners on the prison yard. Concealed microphones picked up all conversation taking place in the yard as well as some within the cells. Other concealed recordings were made in the testing-interview room on selected occasions—interactions between the warden, superintendent and the prisoners' Grievance Committee, parents, other visitors and prisoners released early. In addition, each subject was interviewed by one of the experimenters (or by other research associates) during the study, and most just prior to its termination.

(3) *Rating scales.* Mood adjective checklists and sociometric measures were administered on several occasions to assess emotional changes in affective state and interpersonal dynamics among the guard and prisoner groups.

(4) *Individual difference scales.* One day prior to the start of the simulation all subjects completed a series of paper and pencil personality tests. These tests

were selected to provide dispositional indicators of interpersonal behaviour styles—the *F* scale of Authoritarian Personality [1], and the Machiavellianism Scale [2]—as well as areas of possible personality pathology through the newly developed Comrey Personality Scale [3]. The subscales of this latter test consist of:

- (a) trustworthiness
- (b) orderliness
- (c) conformity
- (d) activity
- (e) stability
- (f) extroversion
- (g) masculinity
- (h) empathy

(5) *Personal observations.* The guards made daily reports of their observations after each shift, the experimenters kept informal diaries and all subjects completed post-experimental questionnaires of their reactions to the experience about a month after the study was over.

Data analyses presented problems of several kinds. First, some of the data was subject to possible errors due to selective sampling. The video and audio recordings tended to be focussed upon the more interesting, dramatic events which occurred. Over time, the experimenters became more personally involved in the transaction and were not as distant and objective as they should have been. Second, there are not complete data on all subjects for each measure because of prisoners being released at different times and because of unexpected disruptions, conflicts and administrative problems. Finally, we have a relatively small sample on which to make cross-tabulations by possible independent and individual difference variables.

However, despite these shortcomings some of the overall effects in the data are powerful enough to reveal clear, reliable results. Also some of the more subtle analyses were able to yield statistically significant results even with the small sample size. Most crucial for the conclusions generated by this exploratory study is the consistency in the pattern of relationships which emerge across a wide range of measuring instruments and different observers. Special analyses were required only of the video and audio material, the other data sources were analysed following established scoring procedures.

Video analysis

There were 25 relatively discrete incidents identifiable on the tapes of prisoner-guard interactions. Each incident or scene was scored for the presence of nine behavioural (and verbal) categories. Two judges who had not been involved with the simulation study scored these tapes. These categories were defined as follows:

Question. All questions asked, requests for information or assistance (excluding rhetorical questions).

Command. An order to commence or abstain from a specific behaviour, directed either to individuals or groups. Also generalised orders, e.g. "Settle down".

Information. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Individuating reference. Positive: use of a person's real name, nickname or allusion to special positive physical characteristics. Negative: use of prison number, title, generalised "you" or reference to derogatory characteristic.

Threat. Verbal statement of contingent negative consequences of a wide variety, e.g. no meal, long count, pushups, lock-up in hole, no visitors, etc.

Deprecation insult. Use of obscenity, slander, malicious statement directed toward individual or group, e.g. "You lead a life of mendacity" or "You guys are really stupid."

Resistance. Any physical resistance, usually prisoners to guards, such as holding on to beds, blocking doors, shoving guard or prisoner, taking off stocking caps, refusing to carry out orders.

Help. Person physically assisting another (i.e. excludes verbal statements of support), e.g. guard helping another to open door, prisoner helping another prisoner in cleanup duties.

Use of instruments. Use of any physical instrument to either intimidate, threaten, or achieve specific end, e.g. fire extinguisher, batons, whistles.

Audio analysis

For purposes of classifying the verbal behaviour recorded from interviews with guards and prisoners, eleven categories were devised. Each statement made by the interviewee was assigned to the appropriate category by judges. At the end of this process for any given interview analysis, a list had been compiled of the nature and frequencies of the interviewee's discourse. The eleven categories for assignment of verbal expressions were:

Questions. All questions asked, requests for information or assistance (excluding rhetorical questions).

Informative statements. A specific piece of information proffered by anyone whether requested or not, dealing with any contingency of the simulation.

Demands. Declarative statements of need or imperative requests.

Requests. Deferential statements for material or personal consideration.

Commands. Orders to commence or abstain from a specific behaviour, directed either to individuals or groups.

Outlook, positive/negative. Expressions of expectancies for future experiences or future events; either negative or positive in tone, e.g. "I don't think I can make it" v. "I believe I will feel better."

Criticism. Expressions of critical evaluation concerning other subjects, the experimenters or the experiment itself.

Statements of identifying reference, deindividuating/individuating. Statements wherein a subject makes some reference to another subject specifically by allusion to given name or distinctive characteristics (individuating reference), or by allusion to non-specific identity or institutional number (deindividuating reference).

Desire to continue. Any expression of a subject's wish to continue or to curtail participation in the experiment.

Self-evaluation, positive/negative. Statements of self-esteem or self-degradation, e.g. "I feel pretty good about the way I've adjusted" v. "I hate myself for being so oppressive."

Action intentions, positive/negative including "Intent to aggress". Statements concerning interviewees' intentions to do something in the future, either of a positive, constructive nature or a negative, destructive nature, e.g. "I'm not going to be so mean from now on" v. "I'll break the door down."

Results

Overview

Although it is difficult to anticipate exactly what the influence of incarceration will be upon the individuals who are subjected to it and those charged with its maintenance (especially in a simulated reproduction), the results of the present experiment support many commonly held conceptions of prison life and validate anecdotal evidence supplied by articulate ex-convicts. The environment of arbitrary custody had great impact upon the affective states of both guards and prisoners as well as upon the interpersonal processes taking place between and within those role-groups.

In general, guards and prisoners showed a marked tendency toward increased negativity of affect and their overall outlook became increasingly negative. As the experiment progressed, prisoners expressed intentions to do harm to others more frequently. For both prisoners and guards, self-evaluations were more deprecating as the experience of the prison environment became internalised.

Overt behaviour was generally consistent with the subjective self-reports and affective expressions of the subjects. Despite the fact that guards and prisoners were essentially free to engage in any form of interaction (positive or negative, supportive or affrontive, etc.), the characteristic nature of their encounters tended to be negative, hostile, affrontive and dehumanising. Prisoners immediately adopted a generally passive response mode while guards assumed a very active initiating role in all interactions. Throughout the experiment, commands were the most frequent form of verbal behaviour and, generally, verbal exchanges were strikingly impersonal, with few references to individual identity. Although it was clear to all subjects that the experimenters would not

permit physical violence to take place, varieties of less direct aggressive behaviour were observed frequently (especially on the part of guards). In lieu of physical violence, verbal affronts were used as one of the most frequent forms of interpersonal contact between guards and prisoners.

The most dramatic evidence of the impact of this situation upon the participants was seen in the gross reactions of five prisoners who had to be released because of extreme emotional depression, crying, rage and acute anxiety. The pattern of symptoms was quite similar in four of the subjects and began as early as the second day of imprisonment. The fifth subject was released after being treated for a psychosomatic rash which covered portions of his body. Of the remaining prisoners, only two said they were not willing to forfeit the money they had earned in return for being "paroled". When the experiment was terminated prematurely after only six days, all the remaining prisoners were delighted by their unexpected good fortune. In contrast, most of the guards seemed to be distressed by the decision to stop the experiment and it appeared to us that had become sufficiently involved in their roles so that they now enjoyed the extreme control and power which they exercised and were reluctant to give it up. One guard did report being personally upset at the suffering of the prisoners and claimed to have considered asking to change his role to become one of them—but never did so. None of the guards ever failed to come to work on time for their shift, and indeed, on several occasions guards remained on duty voluntarily and uncomplaining for extra hours—without additional pay.

The extremely pathological reactions which emerged in both groups of subjects testify to the power of the social forces operating, but still there were individual differences seen in styles of coping with this novel experience and in degrees of successful adaptation to it. Half the prisoners did endure the oppressive atmosphere, and not all the guards resorted to hostility. Some guards were tough but fair ("played by the rules"), some went far beyond their roles to engage in creative cruelty and harassment, while a few were passive and rarely instigated any coercive control over the prisoners.

These differential reactions to the experience of imprisonment were not suggested by or predictable from the self-report measures of personality and attitude or the interviews taken before the experiment began. The standardised tests employed indicated that a perfectly normal emotionally stable sample of subjects had been selected. In those few instances where differential test scores do discriminate between subjects, there is an opportunity to, partially at least, discern some of the personality variables which may be critical in the adaptation to and tolerance of prison confinement.

Initial personality and attitude measures

Overall, it is apparent that initial personality-attitude dispositions account for an extremely small part of the variation in reactions to this mock prison experience. However, in a few select instances, such dispositions do seem to be correlated with the prisoners' ability to adjust to the experimental prison environment.

Comrey scale

The Comrey Personality Inventory [3] was the primary personality scale administered to both guards and prisoners. The mean scores for prisoners and guards on the eight sub-scales of the test are shown in Table 1. No differences between prisoner and guard mean scores on any scale even approach statistical significance. Furthermore, in no case does any group mean fall outside of the 40 to 60 centile range of the normative male population reported by Comrey.

Table 1. Mean scores for prisoners and guards on eight Comrey subscales

Scale	Prisoners	Guards
Trustworthiness—high score indicates belief in the basic honesty and good intentions of others	$\bar{X} = 92.56$	$\bar{X} = 89.64$
Orderliness—extent to which person is meticulous and concerned with neatness and orderliness	$\bar{X} = 75.67$	$\bar{X} = 73.82$
Conformity—indicates belief in law enforcement, acceptance of society as it is, resentment of nonconformity in others	$\bar{X} = 65.67$	$\bar{X} = 63.18$
Activity—liking for physical activity, hard work, and exercise	$\bar{X} = 89.78$	$\bar{X} = 91.73$
Stability—high score indicates calm, optimistic, stable, confident individual	$\bar{X} = 98.33$	$\bar{X} = 101.45$
Extroversion—suggests outgoing, easy to meet person	$\bar{X} = 83.22$	$\bar{X} = 81.91$
Masculinity—"people who are not bothered by crawling creatures, the sight of blood, vulgarity, who do not cry easily and are not interested in love stories"	$\bar{X} = 88.44$	$\bar{X} = 87.00$
Empathy—high score indicates individuals who are sympathetic, helpful, generous and interested in devoting their lives to the service of others	$\bar{X} = 91.78$	$\bar{X} = 95.36$

Table 2. Mean scores for "Remaining" v. "Early released" prisoners on Comrey subscales

Scale	Remaining prisoners	Early released prisoners	Mean difference
Trustworthiness	93.4	90.8	+2.6
Orderliness	76.6	78.0	-1.4
Conformity	67.2	59.4	+7.8
Activity	91.4	86.8	+4.6
Stability	99.2	99.6	-0.4
Extroversion	98.4	76.2	+22.2
Masculinity	91.6	86.0	+5.6
Empathy	103.8	85.6	+17.2

Table 2 shows the mean scores on the Comrey sub-scales for prisoners who remained compared with prisoners who were released early due to severe emotional reactions to the environment. Although none of the comparisons achieved statistical significance, three seemed at least suggestive as possible discriminators of those who were able to tolerate this type of confinement and those who were not. Compared with those who had to be released, prisoners who remained in prison until the termination of the study: scored higher on conformity ("acceptance of society as it is"), showed substantially higher average scores on Comrey's measure of extroversion and also scored higher on a scale of empathy (helpfulness, sympathy and generosity).

F-Scale

The *F*-scale is designed to measure rigid adherence to conventional values and a submissive, uncritical attitude towards authority. There was no difference between the mean score for prisoners (4.78) and the mean score for guards (4.36) on this scale.

Again, comparing those prisoners who remained with those who were released early, we notice an interesting trend. This intra-group comparison shows remaining prisoners scoring more than twice as high on conventionality and authoritarianism ($\bar{X} = 7.78$) than those prisoners released early ($\bar{X} = 3.20$). While the difference between these means fails to reach acceptable levels of significance, it is striking to note that a rank-ordering of prisoners on the *F*-scale correlates highly with the duration of their stay in the experiment ($r_s = 0.898$, $P < 0.005$). To the extent that a prisoner was high in rigidity, in adherence to conventional values, and in the acceptance of authority, he was likely to remain longer and adjust more effectively to this authoritarian prison environment.

Machiavellianism

There were no significant mean differences found between guards ($\bar{X} = 7.73$) and prisoners ($\bar{X} = 8.77$) on this measure of effective interpersonal manipulation. In addition, the Mach Scale was of no help in predicting the likelihood that a prisoner would tolerate the prison situation and remain in the study until its termination.

This latter finding, the lack of any mean differences between prisoners who remained *v.* those who were released from the study, is somewhat surprising since one might expect the Hi Mach's skill at manipulating social interaction and mediating favourable outcomes for himself might be acutely relevant to the simulated prison environment. Indeed, the two prisoners who scored highest on the Machiavellianism scale were also among those adjudged by the experimenters to have made unusually effective adaptations to their confinement. Yet, paradoxically (and this may give the reader some feeling for the anomalies we encountered in attempting to predict in-prison behaviour from personality

measures), the other two prisoners whom we categorised as having effectively adjusted to confinement actually obtained the lowest Mach scores of any prisoners.

Video recordings

An analysis of the video recordings indicates a preponderance of genuinely negative interactions, i.e. physical aggression, threats, deprecations, etc. It is also clear that any assertive activity was largely the prerogative of the guards, while prisoners generally assumed a relatively passive demeanour. Guards more often aggressed, more often insulted, more often threatened. Prisoners, when they reacted at all, engaged primarily in resistance to these guard behaviours.

For guards, the most frequent verbal behaviour was the giving of commands and their most frequent form of physical behaviour was aggression. The most frequent form of prisoners' verbal behaviour was question-asking, their most frequent form of physical behaviour was resistance. On the other hand, the most infrequent behaviour engaged in overall throughout the experiment was "helping"—only one such incident was noted from all the video recording collected. That solitary sign of human concern for a fellow occurred between two prisoners.

Although question-asking was the most frequent form of verbal behaviour for the prisoners, guards actually asked questions more frequently overall than did prisoners (but not significantly so). This is reflective of the fact that the overall level of behaviour emitted was much higher for the guards than for the prisoners. All of those verbal acts categorised as commands were engaged in by guards. Obviously, prisoners had no opportunity to give commands at all, that behaviour becoming the exclusive "right" of guards.

Of a total 61 incidents of direct interpersonal reference observed (incidents in which one subject spoke directly to another with the use of some identifying reference, i.e. "Hey, Peter"; "you there", etc.), 58 involved the use of some deindividuating rather than some individuating form of reference. (Recall that we characterised this distinction as follows: an individuating reference involved the use of a person's actual name, nickname or allusion to special physical characteristics, whereas a deindividuating reference involved the use of a prison number, or a generalised "you"—thus being a very depersonalising form of reference.) Since all subjects were at liberty to refer to one another in either mode, it is significant that such a large proportion of the references noted involved were in the deindividuating mode ($Z = 6.9$, $P < 0.01$). Deindividuating references were made more often by guards in speaking to prisoners than the reverse ($Z = 3.67$, $P < 0.01$). (This finding, as all prisoner-guard comparisons for specific categories, may be somewhat confounded by the fact that guards apparently enjoyed a greater freedom to initiate verbal as well as other forms of behaviour. Note, however, that the existence of this greater "freedom" on the part of the guards is itself an empirical finding since it was not prescribed

à priori.) It is of additional interest to point out that in the only three cases in which verbal exchange involved some individuating reference, it was prisoners who personalised guards.

A total of 32 incidents were observed which involved a verbal threat spoken by one subject to another. Of these, 27 such incidents involved a guard threatening a prisoner. Again, the indulgence of guards in this form of behaviour was significantly greater than the indulgence of prisoners, the observed frequencies deviating significantly from an equal distribution of threats across both groups ($Z = 3.88, P < 0.01$).

Guards more often deprecated and insulted prisoners than prisoners did of guards. Of a total of 67 observed incidents, the deprecation-insult was expressed disproportionately by guards to prisoners 61 times; ($Z = 6.72, P < 0.01$).

Physical resistance was observed 34 different times. Of these, 32 incidents involved resistance by a prisoner. Thus, as we might expect, at least in this reactive behaviour domain, prisoner responses far exceeded those of the guards ($Z = 5.14, P < 0.01$).

The use of some object or instrument in the achievement of an intended purpose or in some interpersonal interaction was observed 29 times. Twenty-three such incidents involved the use of an instrument by a guard rather than a prisoner. This disproportionate frequency is significantly variant from an equal random use by both prisoners and guards ($Z = 3.16, P < 0.01$).

Over time, from day to day, guards were observed to generally escalate their harassment of the prisoners. In particular, a comparison of two of the first prisoner-guard interactions (during the counts) with two of the last counts in the experiment yielded significant differences in: the use of deindividuating references per unit time ($\bar{X}_{t_1} = 0.0$ and $\bar{X}_{t_2} = 5.40$, respectively; $t = 3.65, P < 0.10$); the incidence of deprecation-insult per unit time ($\bar{X}_{t_1} = 0.3$ and $\bar{X}_{t_2} = 5.70$, respectively; $t = 3.16, P < 0.10$). On the other hand, a temporal analysis of the prisoner video data indicated a general decrease across all categories over time: prisoners came to initiate acts far less frequently and responded (if at all) more passively to the acts of others—they simply *behaved less*.

Although the harassment by the guards escalated overall as the experiment wore on, there was some variation in the extent to which the three different guard shifts contributed to the harassment in general. With the exception of the 2.30 a.m. count, prisoners enjoyed some respite during the late night guard shift (10.00 p.m. to 6.00 a.m.). But they really were "under the gun" during the evening shift. This was obvious in our observations and in subsequent interviews with the prisoners and was also confirmed in analysis of the video taped interactions. Comparing the three different guard shifts, the evening shift was significantly different from the other two in resorting to commands; the means being 9.30 and 4.04, respectively, for standardised units of time ($t = 2.50, P < 0.05$). In addition, the guards on this "tough and cruel" shift showed more than twice as many deprecation-insults toward the prisoners (means of 5.17 and

2.29, respectively, $P < 0.20$). They also tended to use instruments more often than other shifts to keep the prisoners in line.

Audio recordings

The audio recordings made throughout the prison simulation afforded one opportunity to systematically collect self-report data from prisoners and guards regarding (among other things) their emotional reactions, their outlook, and their interpersonal evaluations and activities within the experimental setting. Recorded interviews with both prisoners and guards offered evidence that: guards tended to express nearly as much negative outlook and negative self-regard as most prisoners (one concerned guard, in fact, expressed more negative self-regard than any prisoner and more general negative affect than all but one of the prisoners); prisoner interviews were marked by negativity in expressions of affect, self-regard and action intentions (including intent to aggress and negative outlook).

Analysis of the prisoner interviews also gave *post hoc* support to our informal impressions and subjective decisions concerning the differential emotional effects of the experiment upon those prisoners who remained and those who were released early from the study. A comparison of the mean number of expressions of negative outlook, negative affect, negative self-regard and intentions to aggress made by remaining v. released prisoners (per interview) yielded the following results: prisoners released early expressed more negative expectations during interviews than those who remained ($t = 2.32$, $P < 0.10$) and also more negative affect ($t = 2.17$, $P < 0.10$); prisoners released early expressed more negative self-regard, and four times as many "intentions to aggress" as prisoners who remained (although those comparisons fail to reach an acceptable level of significance).

Since we could video-record only public interactions on the "yard", it was of special interest to discover what was occurring among prisoners in private. What were they talking about in the cells—their college life, their vocation, girl friends, what they would do for the remainder of the summer once the experiment was over. We were surprised to discover that fully 90% of all conversations among prisoners were related to prison topics, while only 10% to non-prison topics such as the above. They were most concerned about food, guard harassment, setting up a grievance committee, escape plans, visitors, reactions of prisoners in the other cells and in solitary. Thus, in their private conversations when they might escape the roles they were playing in public, they did not. There was no discontinuity between their presentation of self when under surveillance and when alone.

Even more remarkable was the discovery that the prisoners had begun to adopt and accept the guards' negative attitude toward them. Half of all reported private interactions between prisoners could be classified as non-supportive and non-cooperative. Moreover, when prisoners made evaluative statements of or

expressed regard for, their fellow prisoners, 85% of the time they were uncomplimentary and deprecating. This set of observed frequencies departs significantly from chance expectations based on a conservative binominal probability frequency ($P < 0.01$ for prison v. non-prison topics; $P < 0.05$ for negative v. positive or neutral regard).

Mood adjective self-reports

Twice during the progress of the experiment each subject was asked to complete a mood adjective checklist and indicate his current affective state. The data gleaned from these self-reports did not lend themselves readily to statistical analysis. However, the trends suggested by simple enumeration are important enough to be included without reference to statistical significance. In these written self-reports, prisoners expressed nearly three times as much negative as positive affect. Prisoners roughly expressed three times as much negative affect as guards. Guards expressed slightly more negative than positive affect. While prisoners expressed about twice as much emotionality as did guards, a comparison of mood self-reports over time reveals that the prisoners showed two to three times as much mood fluctuation as did the relatively stable guards. On the dimension of activity-passivity, prisoners tended to score twice as high, indicating twice as much internal "agitation" as guards (although, as stated above, prisoners were seen to be markedly less active than guards in terms of overt behaviour).

It would seem from these results that while the experience had a categorically negative emotional impact upon both guards and prisoners, the effects upon prisoners were more profound and unstable.

When the mood scales were administered for a third time, just after the subjects were told the study had been terminated (and the early released subjects returned for the debriefing encounter session), marked changes in mood were evident. All of the now "ex-convicts" selected self-descriptive adjectives which characterised their mood as less negative and much more positive. In addition, they now felt less passive than before. There were no longer any differences on the sub-scales of this test between prisoners released early and those who remained throughout. Both groups of subjects had returned to their pre-experimental baselines of emotional responding. This seems to reflect the situational specificity of the depression and stress reactions experienced while in the role of prisoner.

Representative personal statements

Much of the flavour and impact of this prison experience is unavoidably lost in the relatively formal, objective analyses outlined in this paper. The following quotations taken from interviews, conversations and questionnaires provide a more personal view of what it was like to be a prisoner or guard in the "Stanford County Prison" experiment.

Guards

"They [the prisoners] seemed to lose touch with the reality of the experiment—they took me so seriously."

"... I didn't interfere with any of the guards' actions. Usually if what they were doing bothered me, I would walk out and take another duty."

"... looking back, I am impressed by how little I felt for them ..."

"... They [the prisoners] didn't see it as an experiment. It was real and they were fighting to keep their identity. But we were always there to show them just who was boss."

"... I was tired of seeing the prisoners in their rags and smelling the strong odours of their bodies that filled the cells. I watched them tear at each other, on orders given by us."

"... Acting authoritatively can be fun. Power can be a great pleasure."

"... During the inspection, I went to cell 2 to mess up a bed which the prisoner had made and he grabbed me, screaming that he had just made it, and he wasn't going to let me mess it up. He grabbed my throat, and although he was laughing I was pretty scared. I lashed out with my stick and hit him in the chin (although not very hard) and when I freed myself I became angry."

Prisoners

"... The way we were made to degrade ourselves really brought us down and that's why we all sat docile towards the end of the experiment."

"... I realise now (after it's over) that no matter how together I thought I was inside my head, my prison behaviour was often less under my control than I realised. No matter how open, friendly and helpful I was with other prisoners I was still operating as an isolated, self-centred person, being rational rather than compassionate."

"... I began to feel I was losing my identity, that the person I call _____, the person who volunteered to get me into this prison (because it was a prison to me, it *still* is a prison to me, I don't regard it as an experiment or a simulation ...) was distant from me, was remote until finally I wasn't *that* person, I was 416. I was really my number and 416 was really going to have to decide what to do."

"I learned that people can easily forget that others are human."

Debriefing encounter sessions

Because of the unexpectedly intense reactions (such as the above) generated by this mock-prison experience, we decided to terminate the study at the end of six days rather than continue for the second week. Three separate encounter sessions were held, first, for the prisoners, then for the guards and finally for all participants together. Subjects and staff openly discussed their reactions and strong feelings were expressed and shared. We analysed the moral conflicts posed by this experience and used the debriefing sessions to make explicit alternative courses of action that would lead to more moral behaviour in future comparable situations.

Follow-ups on each subject over the year following termination of the study revealed the negative effects of participation had been temporary, while the personal gain to the subjects endured.

Conclusions and Discussion

It should be apparent that the elaborate procedures (and staging) employed by the experimenters to insure a high degree of mundane realism in this mock prison contributed to its effective functional simulation of the psychological dynamics operating in "real" prisons. We observed empirical relationships in the simulated prison environment which were strikingly isomorphic to the internal relations of real prisons, corroborating many of the documented reports of what occurs behind prison walls.

The conferring of differential power on the status of "guard" and "prisoner" constituted, in effect, the institutional validation of those roles. But further, many of the subjects ceased distinguishing between prison role and their prior self-identities. When this occurred, within what was a surprisingly short period of time, we witnessed a sample of normal, healthy American college students fractionate into a group of prison guards who seemed to derive pleasure from insulting, threatening, humiliating and dehumanising their peers—those who by chance selection had been assigned to the "prisoner" role. The typical prisoner syndrome was one of passivity, dependency, depression, helplessness and self-deprecation. Prisoner participation in the social reality which the guards had structured for them lent increasing validity to it and, as the prisoners became resigned to their treatment over time, many acted in ways to justify their fate at the hands of the guards, adopting attitudes and behaviour which helped to sanction their victimisation. Most dramatic and distressing to us was the observation of the ease with which sadistic behaviour could be elicited in individuals who were not "sadistic types" and the frequency with which acute emotional breakdowns could occur in men selected precisely for their emotional stability.

Situational v. dispositional attribution

To what can we attribute these deviant behaviour patterns? If these reactions had been observed within the confines of an existing penal institution, it is probable that a dispositional hypothesis would be invoked as an explanation. Some cruel guards might be singled out as sadistic or passive-aggressive personality types who chose to work in a correctional institution because of the outlets provided for sanctioned aggression. Aberrant reactions on the part of the inmate population would likewise be viewed as an extrapolation from the prior social histories of these men as violent, anti-social, psychopathic, unstable character types.

Existing penal institutions may be viewed as *natural experiments* in social control in which any attempts at providing a causal attribution for observed behaviour hopelessly confound dispositional and situational causes. In contrast, the design of our study minimised the utility of trait or prior social history explanations by means of judicious subject selection and random assignment to roles. Considerable effort and care went into determining the composition of the

final subject population from which our guards and prisoners were drawn. Through case histories, personal interviews and a battery of personality tests, the subjects chosen to participate manifested no apparent abnormalities, anti-social tendencies or social backgrounds which were other than exemplary. On every one of the scores of the diagnostic tests each subject scored within the normal-average range. Our subjects then, were highly representative of middle-class, Caucasian American society (17 to 30 years in age), although above average in both intelligence and emotional stability.

Nevertheless, in less than one week their *behaviour* in this simulated prison could be characterised as pathological and anti-social. The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather, the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it. Thus, we offer another instance in support of Mischel's [4] social-learning analysis of the power of situational variables to shape complex social behaviour. Our results are also congruent with those of Milgram [5] who most convincingly demonstrated the proposition that evil acts are not necessarily the deeds of evil men, but may be attributable to the operation of powerful social forces. Our findings go one step further, however, in removing the immediate presence of the dominant experimenter-authority figure, giving the subjects-as-guards a freer range of behavioural alternatives, and involving the participants for a much more extended period of time.

Despite the evidence favouring a situational causal analysis in this experiment, it should be clear that the research design actually *minimised* the effects of individual differences by use of a homogenous middle-range subject population. It did not allow the strongest possible test of the relative utility of the two types of explanation. We cannot say that personality differences do not have an important effect on behaviour in situations such as the one reported here. Rather, we may assert that the variance in behaviour observed could be reliably attributed to variations in situational rather than personality variables. The inherently pathological characteristics of the prison situation itself, at least as functionally simulated in our study, were a *sufficient* condition to produce aberrant, anti-social behaviour. (An alternative design which would maximise the potential operation of personality or dispositional variables would assign subjects who were extreme on pre-selected personality dimensions to each of the two experimental treatments. Such a design would, however, require a larger subject population and more resources than we had available.)

The failure of personality assessment variables to reliably discriminate the various patterns of prison behaviour, guard reactions as well as prisoner coping styles is reminiscent of the inability of personality tests to contribute to an understanding of the psychological differences between American P.O.W.s in Korea who succumbed to alleged Chinese Communist brain-washing by

"collaborating with the enemy" and those who resisted [6]. It seems to us that there is little reason to expect paper-and-pencil behavioural reactions on personality tests taken under "normal" conditions to generalise into coping behaviours under novel, stressful or abnormal environmental conditions. It may be that the best predictor of behaviour in situations of stress and power, as occurs in prisons, is overt behaviour in functionally comparable simulated environments.

In the situation of imprisonment faced by our subjects, despite the potent situational control, individual differences were nevertheless manifested both in coping styles among the prisoners and in the extent and type of aggression and exercise of power among the guards. Personality variables, conceived as learned behaviour styles can act as moderator variables in allaying or intensifying the impact of social situational variables. Their predictive utility depends upon acknowledging the inter-active relationship of such learned dispositional tendencies with the eliciting force of the situational variables.

Reality of the simulation

At this point it seems necessary to confront the critical question of "reality" in the simulated prison environment: were the behaviours observed more than the mere acting out assigned roles convincingly? To be sure, ethical, legal and practical considerations set limits upon the degree to which this situation could approach the conditions existing in actual prisons and penitentiaries. Necessarily absent were some of the most salient aspects of prison life reported by criminologists and documented in the writing of prisoners [7, 8]. There was no involuntary homosexuality, no racism, no physical beatings, no threat to life by prisoners against each other or the guards. Moreover, the maximum anticipated "sentence" was only two weeks and, unlike some prison systems, could not be extended indefinitely for infractions of the internal operating rules of the prison.

In one sense, the profound psychological effects we observed under the relatively minimal prison-like conditions which existed in our mock prison make the results even more significant and force us to wonder about the devastating impact of chronic incarceration in real prisons. Nevertheless, we must contend with the criticism that the conditions which prevailed in the mock prison were too minimal to provide a meaningful analogue to existing prisons. It is necessary to demonstrate that the participants in this experiment transcended the conscious limits of their preconceived stereotyped roles and their awareness of the artificiality and limited duration of imprisonment. We feel there is abundant evidence that virtually all of the subjects at one time or another experienced reactions which went well beyond the surface demands of role-playing and penetrated the deep structure of the psychology of imprisonment.

Although instructions about how to behave in the roles of guard or prisoner were not explicitly defined, demand characteristics in the experiment obviously exerted some directing influence. Therefore, it is enlightening to look to

circumstances where role demands were minimal, where the subjects believed they were not being observed, or where they should not have been behaving under the constraints imposed by their roles (as in "private" situations), in order to assess whether the role behaviours reflected anything more than public conformity or good acting.

When the private conversations of the prisoners were monitored, we learned that almost all (a full 90%) of what they talked about was directly related to immediate prison conditions, that is, food, privileges, punishment, guard harassment, etc. Only one-tenth of the time did their conversations deal with their life outside the prison. Consequently, although they had lived together under such intense conditions, the prisoners knew surprisingly little about each other's past history or future plans. This excessive concentration on the vicissitudes of their current situation helped to make the prison experience more oppressive for the prisoners because, instead of escaping from it when they had a chance to do so in the privacy of their cells, the prisoners continued to allow it to dominate their thoughts and social relations. The guards too, rarely exchanged personal information during their relaxation breaks. They either talked about "problem prisoners", or other prison topics, or did not talk at all. There were few instances of any personal communication across the two role groups. Moreover, when prisoners referred to other prisoners during interviews, they typically deprecated each other, seemingly adopting the guards' negative attitude.

From post-experimental data, we discovered that when individual guards were alone with solitary prisoners and out of range of any recording equipment, as on the way to or in the toilet, harassment often was greater than it was on the "Yard". Similarly, video-taped analyses of total guard aggression showed a daily escalation even after most prisoners had ceased resisting and prisoner deterioration had become visibly obvious to them. Thus guard aggression was no longer elicited as it was initially in response to perceived threats, but was emitted simply as a "natural" consequence of being in the uniform of a "guard" and asserting the power inherent in that role. In specific instances we noted cases of a guard (who did not know he was being observed) in the early morning hours pacing the "Yard" as the prisoners slept—vigorously pounding his night stick into his hand while he "kept watch" over his captives. Or another guard who detained an "incurable" prisoner in solitary confinement beyond the duration set by the guards' own rules and then he conspired to keep him in the hole all night while attempting to conceal this information from the experimenters who were thought to be too soft on the prisoners.

In passing, we may note an additional point about the nature of role-playing and the extent to which actual behaviour is "explained away" by reference to it. It will be recalled that many guards continued to intensify their harassment and aggressive behaviour even after the second day of the study, when prisoner deterioration became marked and visible and emotional breakdowns began to occur (in the presence of the guards). When questioned after the study about their persistent affrontive and harassing behaviour in the face of prisoner

emotional trauma, most guards replied that they were "just playing the role" of a tough guard, although none ever doubted the magnitude or validity of the prisoners' emotional response. The reader may wish to consider to what extremes an individual may go, how great must be the consequences of his behaviour for others, before he can no longer rightfully attribute his actions to "playing a role" and thereby abdicate responsibility.

When introduced to a Catholic priest, many of the role-playing prisoners referred to themselves by their prison number rather than their Christian names. Some even asked him to get a lawyer to help them get out. When a public defender was summoned to interview those prisoners who had not yet been released, almost all of them strenuously demanded that he "bail" them out immediately.

One of the most remarkable incidents of the study occurred during a parole board hearing when each of five prisoners eligible for parole was asked by the senior author whether he would be willing to forfeit all the money earned as a prisoner if he were to be paroled (released from the study). Three of the five prisoners said, "yes", they would be willing to do this. Notice that the original incentive for participating in the study had been the promise of money, and they were, after only four days, prepared to give this up completely. And, more surprisingly, when told that this possibility would have to be discussed with the members of the staff before a decision could be made, each prisoner got up quietly and was escorted by a guard back to his cell. If they regarded themselves simply as "subjects" participating in an experiment for money, there was no longer any incentive to remain in the study and they could have easily escaped this situation which had so clearly become aversive for them by quitting. Yet, so powerful was the control which the situation had come to have over them, so much a reality had this simulated environment become, that they were unable to see that their original and singular motive for remaining no longer obtained, and they returned to their cells to await a "parole" decision by their captors.

The reality of the prison was also attested to by our prison consultant who had spent over 16 years in prison, as well as the priest who had been a prison chaplain and the public defender who were all brought into direct contact with our simulated prison environment. Further, the depressed affect of the prisoners, the guards' willingness to work overtime for no additional pay, the spontaneous use of prison titles and I.D. numbers in non role-related situations all point to a level of reality as real as any other in the lives of all those who shared this experience.

To understand how an illusion of imprisonment could have become so real, we need now to consider the uses of power by the guards as well as the effects of such power in shaping the prisoner mentality.

Pathology of power

Being a guard carried with it social status within the prison, a group identity (when wearing the uniform), and above all, the freedom to exercise an unprecedented degree of control over the lives of other human beings. This

control was invariably expressed in terms of sanctions, punishment, demands and with the threat of manifest physical power. There was no need for the guards to rationally justify a request as they do in their ordinary life and merely to make a demand was sufficient to have it carried out. Many of the guards showed in their behaviour and revealed in post-experimental statements that this sense of power was exhilarating.

The use of power was self-aggrandising and self-perpetuating. The guard power, derived initially from an arbitrary label, was intensified whenever there was any perceived threat by the prisoners and this new level subsequently became the baseline from which further hostility and harassment would begin. The most hostile guards on each shift moved spontaneously into the leadership roles of giving orders and deciding on punishments. They became role models whose behaviour was emulated by other members of the shift. Despite minimal contact between the three separate guard shifts and nearly 16 hours a day spent away from the prison, the absolute level of aggression as well as more subtle and "creative" forms of aggression manifested, increased in a spiralling function. Not to be tough and arrogant was to be seen as a sign of weakness by the guards and even those "good" guards who did not get as drawn into the power syndrome as the others respected the implicit norm of *never* contradicting or even interfering with an action of a more hostile guard on their shift.

After the first day of the study, practically all prisoner's rights (even such things as the time and conditions of sleeping and eating) came to be redefined by the guards as "privileges" which were to be earned for obedient behaviour. Constructive activities such as watching movies or reading (previously planned and suggested by the experimenters) were arbitrarily cancelled until further notice by the guards—and were subsequently never allowed. "Reward", then became granting approval for prisoners to eat, sleep, go to the toilet, talk, smoke a cigarette, wear glasses or the temporary diminution of harassment. One wonders about the conceptual nature of "positive" reinforcement when subjects are in such conditions of deprivation, and the extent to which even minimally acceptable conditions become rewarding when experienced in the context of such an impoverished environment.

We might also question whether there are meaningful non-violent alternatives as models for behaviour modification in real prisons. In a world where men are either powerful or powerless, everyone learns to despise the lack of power in others and in oneself. It seems to us, that prisoners learn to admire power for its own sake—power becoming the ultimate reward. Real prisoners soon learn the means to gain power whether through ingratiation, informing, sexual control of other prisoners or development of powerful cliques. When they are released from prison, it is unlikely they will ever want to feel so powerless again and will take action to establish and assert a sense of power.

The pathological prisoner syndrome

Various coping strategies were employed by our prisoners as they began to react to their perceived loss of personal identity and the arbitrary control of their

lives. At first they exhibited disbelief at the total invasion of their privacy, constant surveillance and atmosphere of oppression in which they were living. Their next response was rebellion, first by the use of direct force, and later with subtle divisive tactics designed to foster distrust among the prisoners. They then tried to work within the system by setting up an elected grievance committee. When that collective action failed to produce meaningful changes in their existence, individual self-interests emerged. The breakdown in prisoner cohesion was the start of social disintegration which gave rise not only to feelings of isolation but deprecation of other prisoners as well. As noted before, half the prisoners coped with the prison situation by becoming extremely disturbed emotionally—as a passive way of demanding attention and help. Others became excessively obedient in trying to be “good” prisoners. They sided with the guards against a solitary fellow prisoner who coped with his situation by refusing to eat. Instead of supporting this final and major act of rebellion, the prisoners treated him as a trouble-maker who deserved to be punished for his disobedience. It is likely that the negative self-regard among the prisoners noted by the end of the study was the product of their coming to believe that the continued hostility toward all of them was justified because they “deserved it” [9]. As the days wore on, the model prisoner reaction was one of passivity, dependence and flattened affect.

Let us briefly consider some of the relevant processes involved in bringing about these reactions.

Loss of personal identity. Identity is, for most people, conferred by social recognition of one's uniqueness, and established through one's name, dress, appearance, behaviour style and history. Living among strangers who do not know your name or history (who refer to you only by number), dressed in a uniform exactly like all other prisoners, not wanting to call attention to one's self because of the unpredictable consequences it might provoke—all led to a weakening of self identity among the prisoners. As they began to lose initiative and emotional responsivity, while acting ever more compliantly, indeed, the prisoners became deindividuated not only to the guards and the observers, but also to themselves.

Arbitrary control. On post-experimental questionnaires, the most frequently mentioned aversive aspect of the prison experience was that of being subjugated to the apparently arbitrary, capricious decisions and rules of the guards. A question by a prisoner as often elicited derogation and aggression as it did a rational answer. Smiling at a joke could be punished in the same way that failing to smile might be. An individual acting in defiance of the rules could bring punishment to innocent cell partners (who became, in effect, “mutually yoked controls”), to himself, or to all.

As the environment became more unpredictable, and previously learned assumptions about a just and orderly world were no longer functional, prisoners ceased to initiate any action. They moved about on orders and when in their cells rarely engaged in any purposeful activity. Their zombie-like reaction was the functional equivalent of the learned helplessness phenomenon reported by

Seligman and Groves [10]. Since their behaviour did not seem to have any contingent relationship to environmental consequences, the prisoners essentially gave up and stopped behaving. Thus the subjective magnitude of aversiveness was manipulated by the guards not in terms of physical punishment but rather by controlling the psychological dimension of environmental predictability [11].

Dependency and emasculation. The network of dependency relations established by the guards not only promoted helplessness in the prisoners but served to emasculate them as well. The arbitrary control by the guards put the prisoners at their mercy for even the daily, commonplace functions like going to the toilet. To do so, required publicly obtained permission (not always granted) and then a personal escort to the toilet while blindfolded and handcuffed. The same was true for many other activities ordinarily practised spontaneously without thought, such as lighting up a cigarette, reading a novel, writing a letter, drinking a glass of water or brushing one's teeth. These were all privileged activities requiring permission and necessitating a prior show of good behaviour. These low level dependencies engendered a regressive orientation in the prisoners. Their dependency was defined in terms of the extent of the domain of control over all aspects of their lives which they allowed other individuals (the guards and prison staff) to exercise.

As in real prisons, the assertive, independent, aggressive nature of male prisoners posed a threat which was overcome by a variety of tactics. The prisoner uniforms resembled smocks or dresses, which made them look silly and enabled the guards to refer to them as "sissies" or "girls". Wearing these uniforms without any underclothes forced the prisoners to move and sit in unfamiliar, feminine postures. Any sign of individual rebellion was labelled as indicative of "incurability" and resulted in loss of privileges, solitary confinement, humiliation or punishment of cell mates. Physically smaller guards were able to induce stronger prisoners to act foolishly and obediently. Prisoners were encouraged to belittle each other publicly during the counts. These and other tactics all served to engender in the prisoners a lessened sense of their masculinity (as defined by their external culture). It follows then, that although the prisoners usually outnumbered the guards during line-ups and counts (nine v. three) there never was an attempt to directly overpower them. (Interestingly, after the study was terminated, the prisoners expressed the belief that the basis for assignment to guard and prisoner groups was physical size. They perceived the guards were "bigger", when, in fact, there was no difference in average height or weight between these randomly determined groups.)

In conclusion, we believe this demonstration reveals new dimensions in the social psychology of imprisonment worth pursuing in future research. In addition, this research provides a paradigm and information base for studying alternatives to existing guard training, as well as for questioning the basic operating principles on which penal institutions rest. If our mock prison could generate the extent of pathology it did in such a short time, then the punishment of being imprisoned in a real prison does not "fit the crime" for

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

AFZF-CG

AUG 14 2004

MEMORANDUM FOR Defense Counsel for Specialist Megan Ambuhl, 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. SPC Megan M. Ambuhl

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

Your request for Appointment of [REDACTED] as a confidential expert consultant is denied. You have not demonstrated that the appointment of [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

002709

UNITED STATES)

v.)

AMBUHL, MEGAN M.)

SPC, U.S. Army)

Headquarters & Headquarters Company)

16th Military Police Brigade (Airborne))

III Corps, Victory Base, Iraq)

APO AE 09342)

RESPONSE TO DEFENSE MOTION
FOR EXPERT ASSISTANCE

17 August 2004

RELIEF SOUGHT

The Government moves the Court deny the Defense Motion for Expert Assistance.

BURDEN OF PROOF & STANDARD OF PROOF

The Defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c). The current legal standard for employment of a defense expert is discussed below.

FACTS

The accused, along with a number of other co-accused, allegedly maltreated and assaulted foreign national detainees while acting as a prison guard at the Baghdad Central Correctional Facility, Abu Ghraib, Iraq. (b)(6)2 (b)(7)(C)2

On 20 March 2004, CPT [REDACTED] preferred charges against the accused for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts). All of these offenses are alleged to have occurred at BCCF during the time of the accused's assignment to the facility. (b)(6)4 (b)(7)(C)4

On 6 July 2004, the Defense submitted a Request for Expert Assistance, regarding Dr. [REDACTED] to the Convening Authority. The Defense asserts the following: Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz; Dr. [REDACTED] is one of the original researchers in the "Stanford Prison Experiment"; Dr. [REDACTED] has dedicated over 30 years of research to the subject-area of prison psychology; Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein.

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APPELLATE EXHIBIT V

Recognized R. 40

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

On 13 July 2004, CPT [REDACTED] preferred additional charges against the accused. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment). These additional charges are alleged to have occurred at BCCF while SPC Ambuhl worked on Tier 1B.

On 21 July 2004, the Convening Authority, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

On 14 August 2004, the Convening Authority denied the Defense's 6 July 2004 Request for Expert Assistance. However, the Convening Authority indicated that the Government would detail a military expert of suitable training, education, and experience to assist the Defense.

On 16 August 2004, the Government notified the Defense of the Convening Authority's decision. The Defense immediately requested that the Government identify who they deemed as a suitable alternative prior to 23 August 2004.

On 17 August the Government notified the Defense that efforts were underway to identify suitable individuals to be detailed to the Defense.

LAW

A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (C.M.A.), cert. denied, 479 U.S. 985 (1986). 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 (C.M.A. 1986). The necessity requirement exists because, unlike the civilian defendant, the military accused has the resources of the Government at his or her disposal. Id. There are 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). Finally, 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).

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ARGUMENT

Applying the factors above, the Defense has not shown that the requested investigative assistance is necessary.

(b)(6)-4 (b)(7)(C)-4
First, the Defense has failed to show why the expert assistance is needed. The Defense asserts that [REDACTED] can provide insight into how the prison environment "may help to account for a person's behavior or inaction." The Defense further asserts that this expert is necessary to explore the defenses to all charges, specifically with reference to the accused's complacency or inability to act. The expert will also be apparently utilized to demonstrate the "elaborate" training requirements necessary to handle the unique pressures of the prison environment.

With respect to the accused's complacency or inability to act, the Defense's ultimate contention appears to be that this expert is able to answer the imponderable question of "why good people do bad things." This contention is simply speculative at best and falls short of the reasonable probability of assistance specified in United States v. Gunkle. This is particularly true given the inordinate reliance upon the "Stanford Prison Experiment," an experiment with a questionable foundation. See Alan Zarembo, *A Theater of Inquiry and Evil*, L.A. TIMES at 1, July 15, 2004 (attached). If the Defense's assertion were given credence then any offense within any prison involving a person's "action or inaction" would be entitled to expert assistance, a result that is both impractical and nonsensical.

Second, the Defense has failed to show why they are unable to present the evidence that the expert assistant would be able to develop. The Defense has the ability to consult with a wide variety of experts, including Colonel [REDACTED]. As an annex to MG Taguba's investigation, COL [REDACTED] initial report addresses many of the same issues the Defense now seeks to present. COL [REDACTED] report highlights the unique pressures, lack of training, and other situation specific stressors that the Defense seeks to highlight. The Defense has access to Colonel [REDACTED] as well as a wide variety of military and civilian psychologist, and psychiatrist, all of whom may be called to testify on behalf of the Defense upon a proper showing of relevancy. all (b)(6)-2;
(b)(7)(C)-2

Additionally, the two defense counsel representing the accused, though not trained as psychologists, have an identified duty to do the hard work necessary to understand the operative facts of their case. In this case, two attorneys (one military and one civilian) represent the accused. Additionally, the Convening Authority previously detailed a trained military police investigator to assist with other aspects of case preparation. The Defense team is also aided by the work of other investigators including MG Taguba's report, a Department of Army Inspector General's report (specifically identifying training issues within a military context), as well as a number of other investigations. Together with these reports, the Defense team has the means to adequately research the pertinent issues particularly given the wide variety of trained psychologists within the Department of Defense made available to the all parties to this case.

Finally, although not conceding that the Defense has met their requisite showing for necessity, the Convening Authority, at his discretion, is prepared to appoint a specific psychologist or psychiatrist of appropriately comparable training, education and experience.

CONCLUSION

While the appointment of Dr. [REDACTED] may very well be helpful to the Defense, the standard for appointment of an expert to the Defense team is not whether the assistance is helpful, but rather expert's assistance is necessary. Because the Defense has failed to demonstrate either need or inability to gather and present the requisite evidence and thus failed to establish necessity, the Government requests that the Defense motion for appointment of Dr. [REDACTED] as an expert assistant on the Defense team be denied.

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

RESPECTFULLY SUBMITTED:

[REDACTED]
MAJ, JA
Trial Counsel

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

CERTIFICATE OF SERVICE

I certify that this Government Response to Motion for Expert Assistance was served on the Defense via e-mail to CPT [REDACTED] at [REDACTED]@us.army.mil and to Mr. [REDACTED] at [REDACTED]@svg-law.com and to the military judge via e-mail on 17 August 2004.

[REDACTED]
MAJ, JA
Trial Counsel

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

002713

UNITED STATES

v.

Megan M. AMBUHL
SPC, U.S. Army
Headquarters & Headquarters Company
16th Military Police Brigade (Airborne)
III Corps, Victory Base, Iraq
APO AE 09342

MOTION TO COMPEL
DISCOVERY

14 August 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to move the Court to compel the government to release certain discovery that is relevant and necessary to the preparation of the defense's case.

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Compel Discovery be granted and that the government be ordered to produce discovery expeditiously in this case.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. Rule for Courts-Martial (R.C.M.) 905(c).

C. FACTS

On 20 March 2004, the government preferred charges against SPC Megan M. Ambuhl for four alleged violations of the Uniform Code of Military Justice (UCMJ). (See Charge Sheet)

On 10 April 2004, the defense requested production of certain relevant and necessary evidence. The government only partially complied with this request prior to the Article 32(b) hearing in the above-captioned case.

On 7 May 2004, the defense requested copies of the Article 32 hearing reports for the following co-accused: SGT [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]. The government complied with this request. *all* (b)(6)-5, (b)(7)(C)-5

On 11 May 2004, the defense requested copies of all of the individual rebuttals to MG Taguba's 15-6 investigation. The defense has not yet received all of the rebuttal documents.

On 20 May 2004, the defense requested audio recordings of the Article 32 hearings for the following co-accused: SGT [REDACTED], SPC [REDACTED], and SSG [REDACTED]. The government complied with this request.

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APPELLATE EXHIBIT VI

Recognized R. 71

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

On 22 May 2004, the defense requested copies of certain case documents from the companion case of *United States v. SPC* [REDACTED]. The government complied with this request.

On 24 May 2004, the defense requested production and declassification of MG Taguba's AR 15-6 Investigation and Annexes. To date, the government has failed to comply with this request. (On 1 July 2004, the government formally requested declassification of these documents by submitting a memorandum to the Commanding General, Coalition Forces Land Component Command.)

On 17 June 2004, the defense submitted a formal request for discovery. The government has not responded and has failed to produce a significant portion of this request.

On 26 June 2004, the defense requested a copy of the audio recording of the Article 32 hearing for the following co-accused: SPC [REDACTED]. The government has failed to comply with this request.

On 26 June 2004, the defense requested production and declassification of several memoranda issued by the Combined Joint Task Force Seven (CJTF-7) relating to International Committee for the Red Cross (ICRC) visits to the Baghdad Central Detention Facility and Special Detentions Facility in October 2003. The government has not responded to or complied with this request.

On 28 June 2004, the defense requested the preservation of certain tangible evidence maintained by the government's Criminal Investigative Command (CID) pertaining to case number 0003-04-CID149. The government has not responded to this request.

On 1 July 2004, the defense requested production of copies of certain tangible CID evidence. The government has not responded to or complied with this request.

On 13 July 2004, the government preferred additional charges against SPC Megan M. Ambuhl for three alleged violations of the UCMJ.

On 22 July 2004, the General Court-Martial Convening Authority referred all charges and specifications to a general court-martial.

On 11 August 2004, the court arraigned SPC Ambuhl on the charges and specifications and the additional charges and specifications.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. Article 46, UCMJ
- b. R.C.M. 701
- c. R.C.M. 703
- d. R.C.M. 905
- e. Brady v. Maryland, 373 U.S. 83 (1963)
- f. United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002)
- g. United States v. Mosley, 42 M.J. 300 (C.A.A.F. 1995)

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- h. United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986)

E. EVIDENCE

The defense requests consideration of the following documents to establish a factual timeline of events in this case and to memorialize the exact content of each defense request:

- a. Memorandum, dated 10 April 2004, SUBJECT: Article 32 Request for Witnesses and Production of Evidence – United States v. SPC Megan M. Ambuhl
- b. Memorandum, dated 11 May 2004, SUBJECT: Request for Copies of 15-6 Rebuttals
- c. Memorandum, dated 24 May 2004, SUBJECT: Request for Production and Declassification of MG Taguba's AR 15-6 Investigation and Annexes – U.S. v. SPC Megan M. Ambuhl
- d. Request for Discovery, dated 17 June 2004
- e. Memorandum, dated 26 June 2004, SUBJECT: Request for Declassification of Memoranda Reviewing ICRC Detention Facility Visits – U.S. v. SPC Megan M. Ambuhl
- f. Memorandum, dated 28 June 2004, SUBJECT: Request for Preservation of Evidence – U.S. v. SPC Megan M. Ambuhl
- g. Memorandum, dated 1 July 2004, SUBJECT: Request for Production of CID Evidence – U.S. v. SPC Megan M. Ambuhl
- h. Memorandum, dated 1 July 2004, SUBJECT: Declassification of witness statements in AR 15-6 Investigation – 800th Military Police Brigade

F. ARGUMENT

An accused has a right as a matter of due process to favorable evidence. The United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 87 (1963).

The military provides even more generous provisions for discovery in trials by Courts-Martial. In military trials, the defense “shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.” Article 46, UCMJ. Moreover, R.C.M. 703(f)(1) provides: “Each party is entitled to the production of evidence which is both relevant and necessary.” The Discussion to this rule explains that, “[r]elevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue.” Upon defense request, the government shall permit the defense to inspect tangible objects that are material to the preparation of the defense. R.C.M. 701(a)(2).

In United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986), the Court of Military Appeals held that Congress and the President enacted higher standards for discovery in trials by Courts-Martial. The Court noted that Article 46, UCMJ, provides for “equal opportunity” to obtain

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witnesses and evidence. See id. at 24. The Court, although not directly addressing the issue, noted that Article 46, UCMJ, may impose a heavier burden on the government to sustain a conviction than is constitutionally required when defense requested discovery is withheld. See id.

In United States v. Mosley, 42 M.J. 300 (1995), the Court of Appeals for the Armed Forces dealt with the issue of defense access to evidence. In that case, the accused was charged with wrongful use of cocaine. The defense made a request to the convening authority for retesting of the urine sample, which was denied. The defense then asked that the Court order the retesting. See id. at 301. Despite the Military Judge's order to retest the sample based upon R.C.M. 703(f)(1), the convening authority refused to comply. The Military Judge subsequently abated the proceedings. The Air Force Court of Criminal Appeals reversed the order of the Military Judge, holding that he abused his discretion. The Court of Appeals for the Armed Forces reversed and ordered a new trial, holding that the Military Judge relied upon the proper standard and did not abuse his discretion. See id. at 303.

There is no requirement in military practice that the evidence be exculpatory in nature in order to be discoverable. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002) (finding that neither the phrase "material to the preparation of the defense" in R.C.M. 701 nor Article 46, UCMJ, limits disclosure to exculpatory matters).

1. The Defense has a Right to Equal Access to Evidence in this Case

The defense first requested discovery on 10 April 2004. To date the government has failed to provide a significant amount of discovery and documents. The requested materials should be provided in an expeditious manner to enable SPC Ambuhl's civilian and military counsel to have equal access. Government representatives control the release of discovery in this case and despite continued defense requests, submitted in a timely manner, the government continues to fail to comply with these requests. Civilian and military counsel must be granted equal access.

Additionally, the defense has requested the declassification of a significant number of documents in this case. The government only made the classified documents available to the civilian defense counsel in July 2004 and has not yet provided redacted or declassified copies. The government has suspended SPC Ambuhl's security clearance pending the outcome of the pending charges. The government is also prohibiting SPC Ambuhl from viewing classified documents because of this now-suspended security clearance. Even with these government mandated decisions, the government still refuses to provide declassified or redacted documents for SPC Ambuhl's review. The government is effectively prohibiting SPC Ambuhl from fully participating in her own defense. Despite receiving a defense request for declassification of MG Taguba's 15-6 Investigation on 24 May 2004, the government did not act on that request until 1 July 2004. This failure to produce denies the defense equal access to evidence in this case.

2. The Requested Evidence is Relevant and Necessary to the Defense

The inspection of the requested evidence by the defense team is both relevant and necessary. SPC Ambuhl is charged with dereliction of duty. At issue in this case will be the exact extent of SPC Ambuhl's duties and whether or not her alleged dereliction was actually sanctioned by those in her chain-of-command. Many of the requested documents are relevant and necessary to explore this possible defense. These documents may further assist the defense in presenting extenuation or mitigation if SPC Ambuhl is convicted.

Further, SPC Ambuhl is charged with two specifications of conspiracy, three specifications of maltreatment and one specification of indecent acts. The defense has requested copies of the hard drives of various laptop computers seized by the government. These hard drives contain dozens, if not hundreds, of additional photographs that the Criminal Investigative Division deemed not relevant to its investigation. These photographs, specifically the dates and times these digital photos were taken, are relevant and necessary to SPC Ambuhl's defense.

If deemed necessary by the court, the defense requests argument as to the relevance and necessity of each requested piece of evidence prior to the court's determination to compel production. At a minimum, the defense requests written government responses to each of the defense requests submitted to date.

3. The Requested Evidence is Material to the Preparation of the Defense

R.C.M. 701(a)(2) provides that upon defense request, the government shall permit the defense to inspect tangible objects that are material to the preparation of the defense. The defense team is unable to prepare adequately for trial without being able to examine certain documents and tangible evidence in this case. The defense has a good faith basis as to the materiality of each requested piece of evidence. Certain tangible evidence may prove exculpatory to SPC Ambuhl and is certainly material to preparation of her defense.

G. CONCLUSION

The defense respectfully request that this Court grant the defense's Motion to Compel Discovery and order expeditious production of the requested discovery in this case.

RESPECTFULLY SUBMITTED:

 (b)(6), (b)(7)(C)-2
CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

(b)(6)-4, (b)(7)(C)-4
I certify that this defense Motion to Compel Discovery was served on the government via e-mail to [REDACTED]@vcmain.hq.c5.army.mil and [REDACTED]@vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 14 August 2004.

[REDACTED] (b)(6)2; (b)(7)(C)-2
CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

10 April 2004

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

MEMORANDUM FOR MAJ [REDACTED] Article 32 Investigating Officer, Headquarters,
420th Engineer Brigade, Victory Base, Iraq, APO AE 09342

SUBJECT: Article 32 Request for Witnesses and Production of Evidence – *United States v. SPC Megan M. Ambuhl*

1. The Defense requests that the following witnesses be produced at the Article 32 investigative hearing scheduled for 20 April 2004, IAW with Rules for Courts-Martial (R.C.M.) 405(f)(9) and 405(g):

a. CID Agents

(b)(6) 1; (b)(7)(C) 1

i. Special Agent [REDACTED] 10th MP BN, Baghdad, Iraq, APO AE 09335.

Agent [REDACTED] testimony is relevant because he interviewed numerous alleged victims and made several visits to the Abu Ghraib prison facility during the period of the alleged offenses. Agent Pieron also interviewed several alleged co-conspirators.

(b)(6) 1; (b)(7)(C) 1

ii. Special Agent [REDACTED] 10th MP BN, Baghdad, Iraq, APO AE 09335.

Agent [REDACTED] testimony is relevant because she interviewed several of the alleged victims and actively investigated the allegations in this case.

b. Iraqi Detainees

The Defense requests a certified interpreter to translate the testimony of the Iraqi detainee witnesses. The testimony of these witnesses is extremely relevant. These individuals may have potentially exculpatory information. The Defense has limited if any access to them based on their current status. For that reason, the Defense requests that the government produce the listed detainees to testify at the Article 32(b) Investigation. IAW R.C.M. 405(g)(4)(A) the Defense objects to consideration of the Sworn Statements of the listed alleged victims and Iraqi detainees. Such statements may not be considered by the IO over the objection of the Defense. All alleged victims and detainees reside at Abu Ghraib Prison in Abu Ghraib, Iraq. They are as follows:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]
- vi. [REDACTED]

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

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Enclosure 1

vii.
viii.
ix.
x.
xi.
xii.
xiii.
xiv.

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

c. Chain of Command – 372nd MP Company

i. CPT [REDACTED] former Company Commander

([REDACTED]@us.army.mil) CPT [REDACTED] can testify as to the training provided to his unit, specifically any training regarding detention facilities. CPT [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

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

ii. CPT [REDACTED] former Platoon Leader

([REDACTED]@us.army.mil) CPT [REDACTED] can testify as to the training given to reserve MPs, specifically the training regarding detention facilities and control of detainees. CPT [REDACTED] can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iii. MSG [REDACTED] former Company 1SG

([REDACTED]@us.army.mil) As the senior enlisted member of the 372nd MP Company, 1SG Lipinski can testify as to the training given to his MPs. He can testify as to his knowledge of the alleged abuses that occurred at Abu Ghraib. If necessary, the defense requests immunity for this witness to testify.

iv. SFC [REDACTED] former Platoon Sergeant

([REDACTED]@us.army.mil) SFC [REDACTED] supervised many of the co-accused at Abu Ghraib. He conducted spot-checks of the facility, specifically cell blocks 1a and 1b. SFC [REDACTED] witnessed at least one of the charges to which SPC Ambuhl is facing court-martial. He can provide exculpatory testimony for SPC Ambuhl. His testimony is highly relevant and critical to this case. If necessary, the defense requests immunity for this witness to testify.

d. Co-Accused – 372nd MP Company

i. SGT [REDACTED]
ii. PFC [REDACTED]
iii. SSG [REDACTED]
iv. CPL [REDACTED]
v. SPC [REDACTED]
vi. SPC [REDACTED]

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

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

e. Additional Witnesses – 372nd MP Company

i. MAJ [REDACTED] former S-3 for the 320th MP Battalion [REDACTED]@us.army.mil) As the S-3 MAJ [REDACTED] was responsible for drafting and disseminating ROE guidance. The ROE and any training received by the 372nd MPs are extremely relevant to Charge II.

ii. SPC [REDACTED] [REDACTED]@us.army.mil) SPC [REDACTED] first reported the alleged offenses to CID. His credibility and motivation are highly relevant. Further, SPC [REDACTED] may provided exculpatory testimony regarding SPC Ambuhl.

iii. SSG [REDACTED] [REDACTED]@us.army.mil)

iv. SGT [REDACTED] [REDACTED]@us.army.mil) SGT [REDACTED] was the operations NCOIC of Abu Ghraib during the time frame of the charged offenses. He will testify that he never witnessed any abuse taking place at the prison.

v. SSG [REDACTED] [REDACTED]@us.army.mil) SSG [REDACTED] was the Force Protection NCO of Abu Ghraib during the time frame of the charged offenses. He can testify as to the day-to-day operations of Abu Ghraib and what procedures were in place on cell blocks 1b for interacting with detainees.

vi. SGT [REDACTED] [REDACTED]@us.army.mil) SGT [REDACTED] spent time at blocks 1a and 1b during October, November, and December 2003. SGT [REDACTED] worked at 1a on evenings when CPL [REDACTED] was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received.

vii. SPC [REDACTED] [REDACTED]@us.army.mil) SPC [REDACTED] worked on the same block as SPC Ambuhl. She can testify as to the nature of detainees that were held on 1b and as to the types of training received by her reserved unit. She can testify as to the interaction between the MI representatives and the MP guards.

viii. SGT [REDACTED] [REDACTED]@us.army.mil) SGT [REDACTED] worked at block 1a during October, November, and December 2003. He worked at 1a on evenings when CPL [REDACTED] was not working. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

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

ix. SGT [REDACTED]

[REDACTED]@us.army.mil) SGT [REDACTED] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

x. SPC [REDACTED]

[REDACTED]@us.army.mil) SPC [REDACTED] worked at block 1a during October, November, and December 2003. He can provided testimony as to the procedures used on the cell blocks and to training that he and his unit received. He can testify as to the general nature of detainees that were held on block 1a and the procedures that MI used for interrogation.

xi. SSG [REDACTED]

[REDACTED]@us.army.mil) SSG [REDACTED] can testify as to the procedures used on the cell blocks and to training that he and his unit received. He will also testify to the lack of any standard procedure or accountability at Abu Ghraib.

f. Military Intelligence Witnessesi. SPC [REDACTED] 325th MI Battalionii. SPC [REDACTED] 325th MI Battalioniii. SPC [REDACTED] 325th MI Battalioniv. SGT [REDACTED] 302nd MI Battalion

[REDACTED]@us.army.mil) SGT [REDACTED] will testify that members of his chain of command told him to delete Abu Ghraib photos off of his computer hard drive prior to the CID investigation.

v. CW2 [REDACTED] formerly assigned to 325th MI Battalion

[REDACTED]@us.army.mil) CW2 [REDACTED] was an MI Interrogator that worked daily at Abu Ghraib at blocks 1a and 1b. CW2 [REDACTED] will testify about authorized MI interrogation techniques. CW2 [REDACTED] can testify as to the interaction and coordination between the MI interrogators and the MP guards. CW2 [REDACTED] has been transferred to the CPA in Baghdad.

vi. COL [REDACTED] 205th MI Brigade

[REDACTED]@us.army.mil) COL [REDACTED] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03. In command during the time of the alleged offenses, COL [REDACTED] knowledge of misconduct at Abu Ghraib and the chain-of-commands response to such allegations is highly relevant.

001616-2, (7)(C)-2

g. Other Witnesses

i. CPT [REDACTED] former Interrogation OIC, DNV: [REDACTED] ([REDACTED]@us.army.mil) CPT [REDACTED] a Military Intelligence officer, is familiar with the Camp Vigilant SOP and can testify as to CJTF-7 policies regarding Interrogation Rules of Engagement for detainees at Abu Ghraib.

ii. CPT [REDACTED] 205th MI Brigade Operational Law, DNV: [REDACTED] ([REDACTED]@us.army.mil) CPT [REDACTED] was the legal advisor for the MI Group who ran Abu Ghraib prison. CPT [REDACTED] can testify to the procedures put into place for dealing with detainees and the training that was taught to the members of the 372nd MP Company for their work at the facility. CPT [REDACTED] visited Abu Ghraib during the relevant time period and can testify to the conditions at the facility.

iii. CPT [REDACTED] Ft. Sam Houston ([REDACTED]@us.army.mil) CPT [REDACTED] was one of several attorneys who provided advice on detainee operations and ROE at Abu Ghraib.

iv. SGM [REDACTED] 418th MP Detachment ([REDACTED]@us.army.mil)

iii. LTC [REDACTED] CJTF-7, BIAP, Baghdad, Iraq ([REDACTED]@us.army.mil) LTC [REDACTED] will testify as to his knowledge of allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03.

iv. MAJ [REDACTED] CJTF-7 LTC [REDACTED] tasked MAJ [REDACTED] to respond to inquiries by the ICRC during the fall of 2003. When called to testify he can explain the ICRC inquiries and testify as to his response on behalf of CJTF-7.

2. If the Government contends that any Defense requested witness is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). Your determination should be made after the Government explains *on the record* the specific efforts made to locate and contact the witnesses and after consultation with your legal advisor as to whether or not the witness is reasonably available. If deemed reasonably unavailable, the Defense requests that a specific factual reason be stated on the record.

3. The Defense requests that the following documents and evidence be produced to the Defense at the Article 32 hearing, IAW with R.C.M. 405(f)(10) and 405(g)(1)(B):

a. All copies of CID reports (including 28s), military police reports, or any other reports made by a law enforcement agency relevant to this investigation to include the Agent Activity Reports and the Agent Activity Summaries compiled by the following investigators:

i. SA [REDACTED]
 ii. SA [REDACTED]
 iii. SA [REDACTED]
 iv. SA [REDACTED]
 v. SA [REDACTED]
 vi. SA [REDACTED]
 vii. SA [REDACTED]
 viii. SA [REDACTED]
 ix. SA [REDACTED]
 x. SA [REDACTED]

xi. SA [REDACTED]
 xii. SA [REDACTED]
 xiii. SA [REDACTED]
 xiv. SA [REDACTED]
 xv. SA [REDACTED]
 xvi. SA [REDACTED]
 xvii. SA [REDACTED]
 xviii. SA [REDACTED]
 xix. SA [REDACTED]
 xx. SA [REDACTED]

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

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b. All evidence seized from the crime scene or any related evidence be present or made available for inspection by the Defense and the Investigating Officer including but not limited to any evidence seized as a result of the CID searches conducted throughout this investigation;

c. Any and all ROE/RUF guidance established by 372nd MP Company from October 2003 to the present;

d. Any and all OPORDs that pertain to the Abu Ghraib mission to include the ROE/RUF card then in effect;

e. Training records for SPC Megan Ambul and the co-accused;

f. Complete medical records for the Iraqi detainees listed in paragraph 1b of this Memorandum;

g. Any and all unit level and/or IG complaints regarding the treatment of Abu Ghraib detainees lodged against any soldier assigned to the 372nd MP Company, the 800th MP Brigade, the 205th MI Company, the 325th MI Battalion, or the 20th MI Brigade;

h. A complete copy of the unit counseling files to include any records of nonjudicial punishment or administrative action for the following soldiers:

Megan M Ambuhl
 i. SPC [REDACTED]
 ii. SGT [REDACTED]
 iii. SPC [REDACTED]
 iv. SPC [REDACTED]
 v. SGT [REDACTED]
 vi. SSG [REDACTED]
 vii. PFC [REDACTED]

viii. SSG [REDACTED]
 ix. CPT [REDACTED]
 x. SPC [REDACTED]
 xi. SPC [REDACTED]
 xii. SGT [REDACTED]
 xiii. SPC [REDACTED]
 xiv. SPC [REDACTED] (b)(6)-5; (b)(7)(C)-5

i. Copies of any relief-in-place (RIP) schedules or training schedules between the 72nd MP Company (Las Vegas, Nevada) and the 372nd MP Company, to include any OPORDs;

j. A copy of the final CID case file with exhibits, of case number 0005-04-CID149, as referenced in the AIR of SA [REDACTED] dated 22 Jan 04, regarding a K-9 incident at Abu Ghraib;

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

k. Copies of the two Working Papers referenced by BG Karpinski in her 24th Dec 03 letter to Ms. [REDACTED] ICRC Protection Coordinator; (b)(6)-4, (b)(7)(C)-4

l. Copies of the ICRC reports dated Oct 03 and Dec 03 obtained by CID from CW4 [REDACTED] (b)(6)-1; (b)(7)(C)-1 as referenced in SA [REDACTED] AIR, dated 5 Feb 04;

m. Copies of the official detainee file (as referenced in para. 3-4 of the Camp Vigilant Operations Procedures SOP (draft)) of the detainees listed in para. 1b of this Memorandum. At a minimum, the defense requests the name, detainee sequence number, capture number, capture date and crime charged with or suspected of for the detainees listed in para. 1b of this Memorandum;

n. A copy of the "Behavior Modification Plan" as referenced in para. 3-12 of the SOP;

o. A copy of the draft of Chapter 4 as referenced on pages 9-10 of the SOP;

p. A copy of the parallel AR 15-6 Investigation concerning the charged offenses and the actions and conduct of the leadership of the 372nd MP Company and the 800th MP Brigade (to include, any documents maintained by the AR 15-6 Officer to include his or her appointment memorandum);

q. Copies of any Press Releases or PAO information disseminated by the command regarding the charges faced by SPC Ambuhl and her co-accused, to include documents drafted by the Office of the Staff Judge Advocate for release;

r. Copies of any administrative action, relief-for-cause documents, letters of reprimand, and OERs/NCOERs for the members of the commands of 372nd MP Company and 800th MP Battalion who were in command from October 2003 through March 2004;

s. Copies of any SIGACTS, FRAGOs, OPORDERS, or other similar documents related to the ICRC visits to Abu Ghraib from October to December 2003;

t. Copies of any documents obtained or produced by MAJ [REDACTED] (b)(6)-2; (b)(7)(C)-2 as a result of his response by CJTF-7 to allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03;

u. Copies of all documents, including documents of UCMJ or administrative action, regarding 3 soldiers from the 519th who ordered a female detainee to strip as referenced by CPT [REDACTED] in the preferral packet;

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

v. Copies of all documents, including documents of UCMJ or administrative action, regarding the 'Spence Incident,' as referenced by CW2 [REDACTED] in the preferral packet;

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

w. Copies of all documents, including documents of UCMJ or administrative action, from the August 2003 incident where 2 or 3 soldiers were disciplined by LTC [REDACTED] after a CID investigation into abuse, as referenced by MAJ [REDACTED], JIDC, MI, Operations Officer, as referenced in the preferral packet;

x. Copies of all negative counselings, UCMJ records, and records of administrative action regarding the following soldiers from 4th Platoon, 372nd MP Company: SPC [REDACTED] SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED] and SSG [REDACTED];

y. Copies of all work schedules maintained by the 372nd MP Company or higher headquarters showing which soldiers were scheduled to work which shifts at cell blocks 1a and 1b during October, November and December 2003;

z. The Defense reserves the right to ask for additional evidence, as it becomes known during the Article 32 investigation.

4. If the Government contends that any Defense requested evidence relevant to this case is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). This determination should be made after the Government counsel explains on the record the specific efforts made to locate and produce the evidence and consultation with your legal advisor as to whether the evidence is reasonably available.

5. The Defense objects to consideration by the IO of the following evidence:

a. Various Documents (From Detainee Medical Records, 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

b. Detainee Medical Records (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

c. Hard-cell Medical Log (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

d. Treatment Logs (From B Company, 109th Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

e. Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

f. Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

g. Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

6. The Defense expresses the following additional concerns regarding the Article 32 pretrial investigation in this case:

a. Receipt of Legal Advice. The defense specifically requests that the IO make all determinations on questions of law after referring to R.C.M. 405, DA Pam 27-17, and based on advice from your legal advisor. As per DA Pam 27-17, para.1-2e, SPC Ambuhl and defense counsel are entitled to be informed of any legal advice received by the IO and the opportunity to reply to that legal advice. The Defense proposes that both parties be present during receipt of legal advice, that you restate the legal advice on the record, and that both parties be given the opportunity to respond to that advice before you make a determination on a question of law.

b. Marking Evidence. For record purposes, the Defense requests that you have the reporter mark each piece of evidence received and catalog the evidence. Please do not admit the "packet" as part of the record. This will prevent the parties and you from determining which evidence has been objected to and ruled upon.

c. Delivery of Report to Defense Counsel. The Defense requests that the convening authority direct delivery of your report to the Defense Counsel instead of SPC Ambuhl. See, R.C.M. 405(j)(3). To effect this delivery, I ask that you state my request in your report, and request that

the report be delivered with a personal certification and date annotation so that the Defense may comment on the report within five (5) days allocated UP R.C.M. 405 (j)(4). Defense counsel and SPC Ambuhl are located in different physical jurisdictions and service upon SPC Ambuhl can not be considered the same as service on Defense Counsel.

d. Verbatim Testimony. The Defense requests a verbatim transcript of the testimony presented during the Article 32 hearing. Alternatively, and IAW R.C.M. 405(h) and its applicable discussion, the Defense requests that each witness swear to the truth of his or her testimony, after it is reduced to writing.

7. If I may be of further assistance in this matter, please contact me via email at [REDACTED]@us.army.mil or by DNVF phone at: [REDACTED] or [REDACTED]

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

[REDACTED]
CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

11 May 2004

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

MEMORANDUM FOR CPT [REDACTED], Trial Counsel, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Copies of 15-6 Rebuttals

1. The defense requests copies of the rebuttals to the AR 15-6 Investigation completed by MG Taguba. As the 15-6 Investigation does not identify by name specific respondents, the defense requests copies of all rebuttals. The request *excludes* the rebuttals by the following individuals which previously were served on the defense:

- a. SFC [REDACTED] (b)(6)2; (7)(C)2
- b. 1SG [REDACTED]
- c. CPT [REDACTED]
- d. LTC [REDACTED]

2. This request specifically includes, but is not limited to, copies of the following:

- a. Notification of right to submit rebuttal matters
- b. Rebuttal Memoranda
- c. Exhibits or attachments to the rebuttal memoranda

3. Additionally, the defense requests copies of any and all actions, to include Letters of Reprimand and Relief for Cause OERs and NCOERs, that were issued as a result of the findings of MG Taguba's 15-6 Investigation or as a result of the investigation into misconduct at Abu Ghraib.

4. If possible, the defense requests that these documents be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNV: [REDACTED] (b)(6)2; (b)(7)(C)2

[REDACTED]
CPT, JA
Trial Defense Counsel

002730

Enclosure 2



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

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

24 May 2004

MEMORANDUM FOR CPT [REDACTED], Trial Counsel, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), Victory Base, Iraq, APO AE 09342

SUBJECT: Request for Production and Declassification of MG Taguba's AR 15-6 Investigation and Annexes – U.S. v. SPC Megan M. Ambuhl

1. The defense requests government production of the entire AR 15-6 Investigation and Annexes completed by MG Taguba regarding allegations of abuse at Abu Ghraib prison.
2. The 15-6 annexes are maintained together on a classified CD Rom. After having completed a preliminary review of the annexes, the defense now requests that the government conduct a document-by-document review to determine the proper classification for each annex. Many documents, to include relevant sworn statements, appear to be unclassified; however, by maintaining them with classified documents on a CD Rom, the government has deemed them "secret." The government is reminded that Executive Order Number 12958 prohibits the classification of documents solely to "conceal violations of law." Government documents should be classified only if revealing their contents would harm national security. A cursory review of the annexes reveals that national security would not be jeopardized by the release and/or declassification of the majority of the 15-6 annexes.
3. Prior to any disposition of the charges against the above-referenced accused, the defense requires production of *all* the 15-6 annexes and an unredacted copy of the 15-6 Report. However, to facilitate and expedite the process, the defense requests immediate production of the annexes listed at the enclosure to this memorandum.
4. The defense requests that these documents be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNV: 553-[REDACTED]

Encl

[REDACTED]
CPT, JA
Trial Defense Counsel

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Enclosure 3

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**MG Taguba's 15-6 Investigation
Annexes**

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

<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
1	Psychological Assessment	Overview of life at Abu Ghraib and its effects on MP guards conducted by COL Henry Nelson, USAF Psychiatrist	
8	15-6 Investigation, 24 Nov 03	Contains 2 documents: (1) Memo from COL [REDACTED], dated 14 Feb 04, regarding corrective action from 24 Nov 03 incident; and (2) 25-page 15-6 Investigation about the riot and shootings from 24 Nov 03 – includes observations of conditions at hard site and Camp Ganci	
19	MG Ryder's Report, 6 Nov 03		
20	MG Miller's Report, 9 Sep 03		
27	800 th MP Brigade Roster, 29 Jan 04	Contains 2 documents: (1) a 39-page unit roster; (2) another unit roster of 2-pages	
28	205 th MI Brigade IROE, undated	Contains 4 documents: (1) 205 th photos of IROE; (2) 3-page IROE and DROE; (3) LTC [REDACTED] plan (same as corrective plan in Annex #8); (4) unsigned request from COL [REDACTED] to CJTF-7 to use "fear-up harsh and isolation approaches," dated 30 Nov 03	
30	Investigation Team's Witness List	List of interviewee names, dated interviewed, type of transcript (verbatim or summarized); 2-page document	
37	Excerpts from log books, 320 th MP Bn	11-pages of the Camp Ganci Log Book	
38	310 th MP Bn's Inprocessing SOP	Al Hillah SOP by the 310 th MP Bn; 36-page SOP	
40	Joint Interrogation and Debriefing Center (JIDC) Slides, undated	Contains 3 sets of JIDC slides – 49 page slide show	
43	General Officer Memoranda of Reprimand (GOMORs)	On 10 Nov 03, BG Karpinski reprimands LTC [REDACTED] for 8 Nov 03 escape at Abu Ghraib.	
45	BG Janis Karpinski, Commander, 800 th MP BDE	Contains 2 documents: (1) Memo dated 17 Jan 04, issued by BG Karpinski regarding Fraternization and Memo dated 19 Jan 04, issued by BG Karpinski, regarding treatment of detainees; (2) BG Karpinski's 157 page verbatim deposition.	

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Annex No.	Annex Title	Summary	
46	COL [REDACTED] Commander, 205 th MI BDE	Contains 4 statements from COL [REDACTED] including a verbatim transcript of his 15-6 interview	
47	COL [REDACTED] CFLCC Judge Advocate, CPA Ministry of Justice	Verbatim deposition, dated 10 Feb 04, 41- pages. Questioned by COL [REDACTED] [REDACTED] CFLCC-SJA.	
48	LTC [REDACTED] S-5 and XO, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
49	LTC [REDACTED] Command Judge Advocate, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
50	LTC [REDACTED] Commander, 165 th MI Battalion (Tactical Exploitation)	Summary of Interview by MG Taguba's Investigative Team	
51	LTC [REDACTED] 202 nd MI Battalion	Summary of Interview by MG Taguba's Investigative Team	
52	LTC [REDACTED] CDR, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
53	LTC [REDACTED] former Director, JIDC	Summary of Interview by MG Taguba's Investigative Team	
54	LTC [REDACTED] CDR, 724 th MP Bn and OIC Acifjan Detachment, 800 th MP BDE	Summary of Interview by MG Taguba's Investigative Team	
55	LTC [REDACTED] CDR, 744 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
56	MAJ [REDACTED] S-1, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
57	MAJ [REDACTED] Deputy CJA, 800 th MP BDE	Summary of Interview by MG Taguba's Investigative Team	
58	MAJ [REDACTED] S-1 (forward), 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
59	MAJ [REDACTED] S-3, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
60	MAJ [REDACTED] XO, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
61	MAJ [REDACTED] S-3, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
62	CPT [REDACTED] CDR, 670 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
63	CPT [REDACTED] CDR, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
64	CPT [REDACTED] Assistant S-3, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
65	CPT [REDACTED] S-3, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	

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<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
66	CPT [REDACTED] S-2, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
67	LTC [REDACTED] CDR, 320 th MP Bn.	Summary of Interview by MG Taguba's Investigative Team	
68	CPT [REDACTED] CDR, 299 th MP Co.	Summary of Interview by MG Taguba's Investigative Team	
69	CPT [REDACTED] Jr., CDR, 310 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
70	CPT [REDACTED] IG, 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
71	1LT [REDACTED] Platoon Leader, 372 nd MP Co	Summary of Interview by MG Taguba's Investigative Team	
72	1LT [REDACTED] Aide-de-Camp to BG Karpinski	Summary of Interview by MG Taguba's Investigative Team	
73	1LT [REDACTED] CDR, HHC 320 th MP Bn.	Summary of Interview by MG Taguba's Investigative Team	
74	2LT [REDACTED] Platoon Leader, 229 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
75	CW2 [REDACTED] 205 th MI Brigade	Summary of Interview by MG Taguba's Investigative Team	
76	CSM [REDACTED] 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
77	SGM [REDACTED] 800 th MP Brigade	Summary of Interview by MG Taguba's Investigative Team	
78	CSM [REDACTED] 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
79	1SG [REDACTED] 977 th MP Co	Summary of Interview by MG Taguba's Investigative Team	
80	SGM [REDACTED] Ops SGM, 320 th MP Battalion	Summary of Interview by MG Taguba's Investigative Team	
81	MSG [REDACTED] 1SG, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
82	MSG [REDACTED] Operations Sergeant, 310 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
83	SFC [REDACTED] Platoon Sergeant, 299 th MP Company	Summary of Interview by MG Taguba's Investigative Team	
84	SFC [REDACTED] Platoon Sergeant, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
85	SFC [REDACTED] 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
86	SSG [REDACTED] Squad Leader, 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
87	SSG [REDACTED] Army Dog Handler	Summary of Interview by MG Taguba's Investigative Team	

<u>Annex No.</u>	<u>Annex Title</u>	<u>Summary</u>	
88	SGT [REDACTED] Army Dog Handler	Summary of Interview by MG Taguba's Investigative Team	
89	MA1 [REDACTED] USN Dog Handler	Summary of Interview by MG Taguba's Investigative Team	
90	Mr. [REDACTED] Civ. Interrogator w/CACI, 205 th MI Brigade	Verbatim transcript of interview conducted by MG Taguba's Investigative Team	
91	Mr. [REDACTED] Civ. Interpreter w/Titan Corp., 205 th MI Brigade	Verbatim transcript of interview conducted by MG Taguba's Investigative Team	
94	CJTF-7 Interrogation and Counter Resistance Policy, 12 Oct 03	Describes "fear-up" and "pride and ego down"	
101	2LT [REDACTED] S-2, 320 th MP Bn	Summary of Interview by MG Taguba's Investigative Team	
102	Mem of Admonishment from LTG Sanchez to BG Karpinski, 17 Jan 04		
104	205 th MI Brigade SITREP to MG Miller, 12 Dec 03	Annex contains 5 documents, to include secret briefings.	
105	SGT [REDACTED] 372 nd MP Company	Summary of Interview by MG Taguba's Investigative Team	
106	1LT [REDACTED] Cdr, 870 th MP Company	Summary of Interview by MG Taguba's Investigative Team	

UNITED STATES

v.

Megan M. AMBUHL

SPC, U.S. Army

Headquarters & Headquarters Company

16th Military Police Brigade (Airborne)

III Corps, Victory Base, Iraq

APO AE 09342

REQUEST FOR DISCOVERY

17 June 2004

1. In accordance with the Rules for Courts-Martial (R.C.M.) and the Military Rules of Evidence (M.R.E.), Manual for Courts-Martial, United States, 2002 edition, the defense requests that the government produce and permit the defense to inspect, copy, or photograph each of the following items which are known, or should through the exercise of due diligence be known, to the United States or its agents. The defense requests the government to notify the defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery.

a. R.C.M. 701(a)(1)(A). All papers which accompanied the charges when they were referred to court-martial, including, but not limited to, the charge sheet, transmittals of charges from the commanders, law enforcement reports, laboratory reports, statements by the accused and witnesses, and the Staff Judge Advocate's pre-trial advice.

b. R.C.M. 701(a)(1)(B). The convening order and all amending orders.

c. R.C.M. 701(a)(1)(C). All statements about the charged offenses which are in the possession of the government. The term "statements" includes statements of any person, not just the accused and potential government witnesses, taken by or given to any person or agency, to include all Reports of Investigation under Article 32(b), UCMJ, civilian or military law enforcement agencies, Inspector General investigations, all AR 15-6 investigations, all commander's inquiries or investigations, Central Intelligence Agency investigations, congressional investigations, Department of Justice Investigations, internal CJTF-7 Memoranda and investigations, and any press releases or documents produced or maintained by the III Corps or CJTF-7 Public Affairs Offices and any such documents produced, maintained or disseminated by the press or public affairs offices of the White House, the Office of the President of the United States, the Pentagon, the Department of Defense, the Department of the Army, the Office of the Vice President of the United States, the Office of the Chairman of the Joint Chiefs of Staff, the Office of the Secretary of Defense, the Office of the Secretary of the Army, the Central Intelligence Agency, the Department of Justice, the Office of the Attorney General, and the offices of the members of the Senate Armed Services Committee.

d. R.C.M. 701(a)(2)(A). Any books, papers, documents, photographs, tangible objects, or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which were obtained from or belong to the accused or co-accused or are intended for use by trial counsel as evidence in the government's case-in-chief or are material to the

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Enclosure 4

preparation of the defense. Request permission to inspect all buildings or places at which the alleged offenses occurred and any such place within government control that may be material to the preparation of the defense.

e. R.C.M. 701(a)(2)(B). Any results or reports of physical or mental examinations, to include those of government witnesses and the alleged victims of the charged offenses, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of military authorities, the existence of which is known to the trial counsel or should be known by the exercise of due diligence, and which are intended for use by the trial counsel as evidence in the government's case-in-chief or which are material to the preparation of the defense.

f. R.C.M. 701(a)(3)(A). The names, addresses, home telephone numbers, work telephone numbers, mobile phone numbers, and e-mail addresses of all witnesses the government intends to call in its case-in-chief.

g. R.C.M. 701(a)(4). Notice and copies of the records of prior civilian or military convictions of the accused which may be offered by the government during trial on the merits, impeachment, or presentencing proceedings.

h. R.C.M. 701(a)(5)(A). Copies of all written material to be presented by the government at the presentencing proceedings, to include the accused's personnel records.

i. R.C.M. 701(a)(5)(B). The names, addresses, home telephone numbers, work telephone numbers, mobile phone numbers, and e-mail addresses of all witnesses the government intends to call at the presentencing proceedings.

j. R.C.M. 701(a)(6). All evidence which may negate the guilt of the accused, reduce the degree of guilt of the accused, or reduce the punishment. See Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agars, 427 U.S. 97 (1976). This request includes the disclosure of any and all evidence affecting the credibility of government witnesses, alleged co-conspirators and alleged victims of the charged offenses, pursuant to United States v. Webster, 1 M.J. 216 (C.M.A. 1975). This request encompasses such documents that may negate the guilt of the accused as maintained by the organizations, offices, agencies, departments and entities listed in paragraph 1c of this Request for Discovery. This request seeks the listed evidence for the following individuals: (b)(6) SSG [REDACTED], Jr., SGT [REDACTED], CPL [REDACTED], SPC [REDACTED] (b)(6) SPC [REDACTED] and PFC [REDACTED]. The list of individuals is non-exclusive. (b)(6) The following provides a non-exclusive list of matters subject to this request:

(1) Prior civilian or court-martial convictions or arrests of all government witnesses; request a check with the National Crime Information Center (NCIC), Criminal Records Center (CRC), and all local military criminal investigatory organizations; see United States v. Jenkins, 18 M.J. 583 (A.C.M.R. 1984).

(2) Records of pending and/or completed nonjudicial punishment; adverse administrative actions, including but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters of reprimand, and letters of admonition; and all

documents or counseling statements which refer to or relate to any adverse or disciplinary actions against government witnesses, to include but not limited to, the counseling packets and 201 files of SSG [REDACTED], SGT [REDACTED] CPL [REDACTED], SPC J. [REDACTED] (b)(6)5; SPC [REDACTED] and PFC [REDACTED], see United States v. Green, 37 M.J. 88 (7)(C) 5 (C.M.A. 1993). This request also encompasses the counseling records, OERs, letters of reprimand and letters of admonition for the following individuals:

- i. BG Janis Karpinski
- ii. COL [REDACTED]
- iii. LTC [REDACTED]
- iv. LTC [REDACTED]
- v. LTC [REDACTED]
- vi. LTG [REDACTED]
- vii. LTG [REDACTED]
- viii. LTC [REDACTED]
- ix. LTC [REDACTED]
- x. MAJ [REDACTED]
- xi. MAJ [REDACTED]
- xii. MAJ [REDACTED]
- xiii. MAJ [REDACTED]
- xiv. MAJ [REDACTED]
- xv. CPT [REDACTED]
- xvi. CPT [REDACTED]
- xvii. CPT [REDACTED]
- xviii. LTC [REDACTED]
- xix. 1LT [REDACTED]
- xx. 2LT [REDACTED]
- xxi. CW2 [REDACTED]
- xxii. CSM [REDACTED]
- xxiii. SGM [REDACTED]
- xxiv. MSG [REDACTED]
- xxv. SFC [REDACTED]
- xxvi. SFC [REDACTED]
- xxvii. SSG [REDACTED]
- xxviii. SGT [REDACTED]

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

(3) Any evidence, including medical records, of psychiatric treatment, mental disease or defect, combat stress treatment, head injury, alcoholism, or drug addiction of the accused, government witnesses, and co-accused; see United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983); United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R. 1971).

(4) Evidence of character, conduct, or bias bearing on the credibility of government witnesses; see Giglio v. United States, 405 U.S. 150 (1972); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983). This request includes, but is not limited to, information relating to any and all consideration or promises of consideration given to or made on

behalf of government witnesses. By consideration, the defense refers to anything of value and use, including but not limited to, plea agreements, immunity grants, witness fees, special witness fees, transportation assistance to members of a witness' family or associates, and any civil or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and that witness, and anything else 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 or to color or shape testimony.

(5) The questions, answers, and results of any polygraph examination of the accused and government witnesses, including the Polygraph Examination Report (DA Form 2802-E) and related polygraph records, the Polygraph Examination Authorization, and the Polygraph Examination Quality Control Review; see United States v. Mougenel, 6 M.J. 589 (A.F.C.M.R. 1978); United States v. Simmons, 38 M.J. 376 (C.M.A. 1993). This request includes those records maintained at the U.S. Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, Virginia, 22060-5585.

(6) 201 files, unit files, and Military Personnel Records Jacket (MPRJ) of all government witnesses; request a hard copy of the Official Military Personnel File (OMPF) for each government witness; copies of the DA Form 2A, 2-1, and Enlisted Record Brief (ERB) for all enlisted government witnesses and ORBs for all officer government witnesses. Request copies of the counseling packets, DA Form 2A, 2-1 and ERBs for the following:

i. SPC Megan M. Ambuhl

ii. SGT [REDACTED]

iii. SPC [REDACTED]

iv. SPC [REDACTED]

v. SGT [REDACTED]

vi. SSC [REDACTED]

vii. PFC [REDACTED]

viii. SSG [REDACTED]

ix. CPL [REDACTED]

x. SPC [REDACTED]

xi. SPC [REDACTED]

xii. SGT [REDACTED]

xiii. SPC [REDACTED]

xiv. SPC [REDACTED]

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

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

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

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

(7) Counseling/performance files of the investigators who have or are presently participating in the investigation of the allegations contained in the charges and specifications preferred against the accused, to include but not limited to the following:

i. SA [REDACTED]

ii. SA [REDACTED]

iii. SA [REDACTED]

iv. SA [REDACTED]

v. SA [REDACTED]

vi. SA [REDACTED]

vii. SA [REDACTED]

viii. SA [REDACTED]

ix. SA [REDACTED]

x. SA [REDACTED]

xi. SA [REDACTED]

xii. SA [REDACTED]

xiii. SA [REDACTED]

xiv. SA [REDACTED]

xv. SA [REDACTED]

xvi. SA [REDACTED]

xvii. SA [REDACTED]

xviii. SA [REDACTED]

xix. SA [REDACTED]

xx. SA [REDACTED]

all (b)(6)1;
(7)(C)-1

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(8) Contracts between the Department of Defense or any subsidiary or sub-entity and Titan and/or CACI Corporations concerning the employment of contractors at Abu Ghraib or Baghdad Central Correctional Facility (BCCF) between August 2003 and March 2004. Request copies of the employee files of all civilian contractors, to include anyone involved in interrogation or intelligence gathering during the referenced time period. Specifically, the defense requests copies of any and all performance evaluations and/or adverse actions and/or counselings or ratings of Mr. [REDACTED] of CACI Corporation and Mr. [REDACTED] of Titan Corporation. (b)(6)4; (7)(C)-4

k. R.C.M. 912(a)(1). The defense requests that the government submit to each panel member the written questions listed at R.C.M. 912 (a)(1) and provide copies of the signed responses of each member to the defense; request copies of the ORBs of officer panel members and DA Form 2A, 2-1, and ERB of enlisted panel members.

l. R.C.M. 912(a)(2). All written matters provided to the convening authority concerning the selection of members detailed to this court-martial or more broadly, selection of the members stated in the applicable Court-Martial Convening Order.

m. R.C.M. 914 (a)(2), 18 U.S.C. Section 3500, et. seq. The defense intends to move at trial for the production by the government of all statements by government witnesses which relate to the subject matter of their testimony, to include statements made by the co-accused; the government is requested to voluntarily disclose all such statements before trial.

n. M.R.E. 201. Any matters the prosecution seeks to have judicially noticed.

o. M.R.E. 301(c)(2). Any immunity or leniency granted or promised to any government witness in exchange for testimony.

p. M.R.E. 304(d)(1). 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 the control of the armed forces, regardless of whether the government intends to use the statements at trial. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

q. M.R.E. 304(d)(2)(B). Notice of government intent to offer against the accused a statement, oral or written, made by the accused that was not disclosed prior to arraignment.

r. M.R.E. 311(d)(1). 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.

s. M.R.E. 311(d)(2)(B). Notice of government intent to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment.

t. M.R.E. 321(c)(1). All evidence of the identification of the accused at a line-up, photo line-up, show-up, voice identification, or other identification process which the government intends to offer at trial; request disclosure of any unsuccessful efforts at identification by any witness.

u. M.R.E. 321(c)(2)(B). Notice of government intent to offer identification evidence that was not disclosed prior to arraignment.

v. M.R.E. 404(b). Notice of whether the government intends to offer other crimes, wrongs, or acts of the accused; the defense requests copies of investigations, witness statements, and names and phone numbers of witnesses pertaining to such alleged crimes, wrongs, or acts.

w. M.R.E. 507. Disclosure of the identity, including name, address, and phone number, of all informants and notice of any government exercise of privilege.

x. M.R.E. 609(b). Notice of whether the government intends to impeach a witness with a conviction older than ten years.

y. M.R.E. 612. All writings or documents used by a witness to prepare for trial; the defense intends to move at trial for the production of any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or before testifying.

z. M.R.E. 807. Notice of any hearsay statements, oral or written, intended to be offered at trial under M.R.E. 807, the particulars of the statements, and the names, addresses, and the phone numbers of the declarants.

aa. Notification of testing upon any evidence which may consume the only available samples of the evidence and an opportunity to be present at such testing; an opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of any government agency or agents. See United States v. Garries, 22 M.J. 288 (C.M.A. 1986), cert. denied, 479 U.S. 985 (1986); United States v. Mobley, 31 M.J. 273 (C.M.A. 1990).

bb. All evidence in rebuttal which is exculpatory in nature or material to punishment. See United States v. Trimmer, 26 M.J. 534 (A.F.C.M.R. 1988), aff'd, 28 M.J. 460 (C.M.A.), cert. denied, 493 U.S. 965 (1989). The government is reminded that trial by "ambush" is improper. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

cc. All chain of custody documents generated by any law enforcement or military agency in conjunction with the taking of evidence during the investigation of the alleged offense.

dd. All case notes of the agents involved in this case, investigation report entries, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, or any other similar documentation made by such law enforcement personnel pertaining to this case.

ee. A list of, and the opportunity to view prior to trial, all physical, demonstrative, or other evidence and proposed exhibits the government intends to introduce at trial. Please list the location of such evidence and a contact phone number to arrange for inspection of such evidence.

ff. Names, addresses, and telephone numbers of any expert witnesses whom the government intends to call at trial; copies of all reports and statements of expert witnesses who

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spoke with witnesses or otherwise participated in the investigation of this case, regardless of whether such reports or statements are included in any formal report.

gg. Any statements, oral or written, made by the summary, special, or general court-martial convening authorities in this case or by any officer superior to the general courts-martial convening authority, or acting for the command, whether oral or written, which:

(1) in any manner, withholds 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.

(2) provides guidance to any subordinate commander concerning the appropriate level of disposition of the charged offenses and/or punishment for the charged offenses, either made before or after the offenses at issue in this case.

hh. United States v. Nix, 40 M.J. 6 (C.M.A. 1994). Disclosure of any information known to government agents which in any manner indicates that a person who forwarded the charges with recommendations displayed bias or prejudice or had an other-than-official interest in the case.

ii. Notice to the defense of the nature of any past or present relationships, associations, or ties between any potential member of the court-martial panel and the trial counsel, assistant trial counsel, chief of military justice, or the Staff Judge Advocate; this request specifically includes, but is not limited to, any religious, social, business, professional, or recreational associations.

2. The defense renews its request of 10 April 2004 for production of the following documents and evidence:

a. All copies of CID reports (including 28s), military police reports, or any other reports made by a law enforcement agency relevant to this investigation to include the Agent Activity Reports and the Agent Activity Summaries compiled by the following investigators:

i. SA [REDACTED]
ii. SA [REDACTED]
iii. SA [REDACTED]
iv. SA [REDACTED]
v. SA [REDACTED]
vi. SA [REDACTED]
vii. SA [REDACTED]
viii. SA [REDACTED]
ix. SA [REDACTED]
x. SA [REDACTED]

xi. SA [REDACTED]
xii. SA [REDACTED]
xiii. SA [REDACTED]
xiv. SA [REDACTED]
xv. SA [REDACTED]
xvi. SA [REDACTED]
xvii. SA [REDACTED]
xviii. SA [REDACTED]
xix. SA [REDACTED]
xx. SA [REDACTED]

all

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

b. All evidence seized from the crime scene or any related evidence be present or made available for inspection by the Defense and the Investigating Officer including but not limited to any evidence seized as a result of the CID searches conducted throughout this investigation;

- c. Any and all ROE/RUF guidance established by 372nd MP Company from October 2003 to the present;
- d. Any and all OPORDs that pertain to the Abu Ghraib mission to include the ROE/RUF card then in effect;
- e. Training records for SPC Megan Ambuhl and all of the co-accused;
- f. Complete medical records for the Iraqi detainees listed in paragraph 1b of this Memorandum;
- g. Any and all unit level and/or IG complaints regarding the treatment of Abu Ghraib detainees lodged against any soldier assigned to the 372nd MP Company, the 800th MP Brigade, the 205th MI Company, the 325th MI Battalion, or the 20th MI Brigade;
- h. A complete copy of the unit counseling files to include any records of nonjudicial punishment or administrative action for the following soldiers:
- i. SPC Megan M. Ambuhl
 - ii. SGT [REDACTED]
 - iii. SPC [REDACTED]
 - iv. SPC [REDACTED]
 - v. SGT [REDACTED]
 - vi. SSG [REDACTED]
 - vii. PFC [REDACTED] (b)(6)5, (7)(C)-5
 - viii. SSG [REDACTED]
 - ix. CPT [REDACTED] (b)(6)5, (7)(C)-5
 - x. SPC [REDACTED]
 - xi. SPC [REDACTED]
 - xii. SGT [REDACTED] (b)(6)-2, (7)(C)2
 - xiii. SP [REDACTED]
 - xiv. SPC [REDACTED] (b)(6)5 (7)(C)5
- i. Copies of any relief-in-place (RIP) schedules or training schedules between the 72nd MP Company (Las Vegas, Nevada) and the 372nd MP Company, to include any OPORDERS;
- j. A copy of the final CID case file with exhibits, of case number 0005-04-CID149, as referenced in the AIR of SA [REDACTED], dated 22 Jan 04, regarding a K-9 incident at Abu Ghraib; (b)(6)1, (7)(C)1
- (b)(6)2, (7)(C)-2 k. Copies of the two Working Papers referenced by BG Karpinski in her 24th Dec 03 letter to Ms. [REDACTED] ICRC Protection Coordinator;
- (b)(6)1, (7)(C)1 l. Copies of the ICRC reports dated Oct 03 and Dec 03 obtained by CID from CW [REDACTED] referenced in SA [REDACTED] AIR, dated 5 Feb 04;
- m. Copies of the official detainee file (as referenced in para. 3-4 of the Camp Vigilant Operations Procedures SOP (draft)) of the detainees listed in para. 1b of this Memorandum. At a minimum, the defense requests the name, detainee sequence number, capture number, capture date and crime charged with or suspected of for the detainees listed in para. 1b of this Memorandum;
- n. A copy of the "Behavior Modification Plan" as referenced in para. 3-12 of the SOP;

- o. A copy of the draft of Chapter 4 as referenced on pages 9-10 of the SOP;
 - p. A copy of the parallel AR 15-6 Investigation concerning the charged offenses and the actions and conduct of the leadership of the 372nd MP Company and the 800th MP Brigade (to include, any documents maintained by the AR 15-6 Officer to include his or her appointment memorandum);
 - q. Copies of any Press Releases or PAO information disseminated by the command regarding the charges faced by SPC Ambuhl and her co-accused, to include documents drafted by the Office of the Staff Judge Advocate for release;
 - r. Copies of any administrative action, relief-for-cause documents, letters of reprimand, and OERs/NCOERs for the members of the commands of 372nd MP Company and 800th MP Battalion who were in command from October 2003 through March 2004;
 - s. Copies of any SIGACTS, FRAGOs, OPORDERS, or other similar documents related to the ICRC visits to Abu Ghraib from October to December 2003;
 - t. Copies of any documents obtained or produced by MAJ [REDACTED] as a result of his response by CJTF-7 to allegations of abuse and/or mistreatment of detainees between 16 Sep 03 and 22 Dec 03;
 - u. Copies of all documents, including documents of UCMJ or administrative action, regarding 3 soldiers from the 519th who ordered a female detainee to strip as referenced by CPT [REDACTED] in the preferral packet;
 - v. Copies of all documents, including documents of UCMJ or administrative action, regarding the 'Spence Incident,' as referenced by CW2 [REDACTED] in the preferral packet;
 - w. Copies of all documents, including documents of UCMJ or administrative action, from the August 2003 incident where 2 or 3 soldiers were disciplined by LTC [REDACTED] after a CID investigation into abuse, as referenced by MAJ [REDACTED], JIDC, MI, Operations Officer, as referenced in the preferral packet;
 - x. Copies of all negative counselings, UCMJ records, and records of administrative action regarding the following soldiers from 4th Platoon, 372nd MP Company: SPC [REDACTED] PC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED] and SSG [REDACTED];
 - y. Copies of all work schedules maintained by the 372nd MP Company or higher headquarters showing which soldiers were scheduled to work which shifts at cell blocks 1a and 1b during October, November and December 2003;
3. For any documents that fall within this discovery request, the defense requests that the government begin to declassify such documents so they may be offered at trial by the defense. Alternatively, the defense requests that redacted copies of such documents be provided until such

time as the documents can be unclassified. Providing redacted copies as early as possible will enable the civilian defense counsel to begin to identify specific documents that require further review by the military defense counsel, who possesses adequate clearance. Further, such identification may narrow the scope of those documents that the defense requests be unclassified.

4. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the government. Immediate notification of new evidence and/or material is requested. A negative response is requested on all items the government is unwilling or unable to produce. The government is reminded of its obligation to provide full discovery in a timely manner. Gamesmanship and trial by ambush are not appropriate. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002).

[REDACTED]
CPT, JA
Trial Defense Counsel

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(b)(6) 2 (7)(C)-2
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CERTIFICATE OF SERVICE

(b)(6) 4 (7)(C)-4 I certify that on 17 June 2004 this defense Request for Discovery was served on the government via e-mail to [REDACTED]@vcmain.hq.c5.army.mil and [REDACTED]@vcmain.hq.c5.army.mil.

[REDACTED]
CPT, JA
Trial Defense Counsel



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DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

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

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

26 June 2004

MEMORANDUM FOR MAJ [REDACTED] Lead Trial Counsel, Headquarters and
Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Declassification of Memoranda Reviewing ICRC Detention Facility
Visits – U.S. v. SPC Megan M. Ambuhl

1. The defense requests declassification of the following Headquarters, Combined Joint Task Force Seven (CJTF-7) memoranda relating to International Committee for the Red Cross (ICRC) visits to the Baghdad Central Detention Facility and Special Detentions Facility in October 2003:

a. Memorandum for Commander, 800th MP Brigade from LTC [REDACTED] CJTF-7 DSJA, dated 27 November 2003

b. Memorandum titled "Review of ICRC Detention Visits – Oct 03," from MAJ [REDACTED], SJA Ops Law, dated 25 Nov 03

c. Memorandum titled "Review of ICRC Detention Visits – 18-24 Oct 03, Baghdad HVD Detention Facility," MAJ [REDACTED], SJA Ops Law, dated 25 Nov 03

2. These CJTF-7 SJA reviews of the ICRC working papers indicate that the protections afforded to certain persons under the Geneva Conventions did not apply to security detainees housed at Abu Ghraib detention facility. At a minimum, these documents indicate a level of knowledge of alleged abuses at Abu Ghraib by the Commander, 800th MP Brigade.

3. The defense requests that redacted copies of these documents be served immediately on the defense electronically at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a hard copy of the requested documents or a CD Rom of the requested documents may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. The defense requests that an unredacted copy of these documents be made available to counsel in Washington, D.C. Point of contact for this request is the undersigned at DNV: 553-9 [REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel

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Enclosure 5



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

28 June 2004

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

MEMORANDUM FOR MAJ [REDACTED], Lead Trial Counsel, Headquarters and
Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Preservation of Evidence - U.S. v. SPC Megan M. Ambuhl

1. The defense requests that the government preserve all tangible evidence maintained by the government or its agents relating to CID Case Number 0003-04-CID149 and/or all investigations concerning allegations of MP misconduct or detainee abuse at Abu Ghraib prison.
2. The defense requests preservation of this evidence until such time as there is final action on appeal, if any, in United States v. SPC Megan M. Ambuhl.
3. POC for this request is the undersigned at [REDACTED]@us.army.mil or civilian defense counsel, Mr. [REDACTED], at [REDACTED]@svg-law.com.

[REDACTED]
CPT, JA
Trial Defense Counsel

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Enclosure 6



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

1 July 2004

(b)(2), (b)(7)(C)-Z
MEMORANDUM FOR MA [REDACTED], Lead Trial Counsel, Headquarters and
Headquarters Company, III Corps, Victory Base, APO AE 09342

SUBJECT: Request for Production of CID Evidence – U.S. v. SPC Megan M. Ambuhl

1. The defense requests production of the following listed items of tangible evidence maintained by the U.S. Army Criminal Investigative Division, BIAP field office, as part of case number 003-04-CID149:

- a. Document No. 405-04: Request declassification and production of the 4 memoranda included in this piece of evidence.
- b. Document No. 035-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- c. Document No. 036-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- d. Document No. 037-04: Request a copy of each page of the log book, excluding the blank unused pages at the back of the log book. Request that each page be scanned and provided to the defense on CD Rom. Only portions of this log book were provided to the defense in the preferral packet; the defense requests production of a copy of the entire book.
- e. Item No. 029-04: Request an exact mirrored-copy of the hard drive of this laptop computer.
- f. Item No. 031-04: Request an exact mirrored-copy of the contents of this USB thumb drive.
- g. Item No. 032-04: Request an exact mirrored-copy of the hard drive of this laptop computer.

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Enclosure 7

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

except as noted

h. Item No. 033-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.

i. Item No. 034-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.

j. Item No. 330-04: Request an exact mirrored-copy of the compact disc identified in this piece of evidence.

k. Item No. 301-04: Request an exact mirrored-copy of the hard drive of this laptop computer.

l. Item No. 162-04: Request an exact mirrored-copy of the compact disc identified in this piece of evidence.

m. Item No. 073-04: Request exact mirrored-copies of the two compact discs composing this piece of evidence.

2. On 22 June 2004, the 16th MP Brigade Trial Counsel seized two boxes of relevant documents, memoranda, schedules, log sheets and log books from the Commander, 301st MP Company at Abu Ghraib prison. The defense requests immediate production of copies of each document seized from the 301st MP Company.

3. At the Article 32 Hearing in U.S. v. SPC (b)(6)5 (7)(C)-5, held on 24 June 2004, CPT [REDACTED] Commander, 372nd MP Company, testified under oath that representatives from CID confiscated the hard drive of the government-issued laptop belonging to the 372nd MP Company. The computer shell was returned to CP [REDACTED] at the hard drive remained missing and presumably, in the custody of CID. The defense requests permission to inspect the original hard drive and production of a mirror-image copy of the contents of that hard drive.

4. This request for production of evidence is made in the interests of judicial economy and efficiency. Providing copies of the requested evidence ensures accessibility to civilian defense counsel located in Washington, D.C. and military defense counsel located in Tikrit.

5. If possible, the defense requests that the requested materials be served electronically on the defense at [REDACTED]@svg-law.com and [REDACTED]@us.army.mil. Alternatively, a CD Rom of the requested evidence may be served on the defense at the Camp Victory Trial Defense Service Office, Baghdad. Point of contact for this request is the undersigned at DNVT [REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel

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DEPARTMENT OF THE ARMY
HEADQUARTERS, III CORPS
VICTORY BASE, IRAQ
APO AE 09342-1400

REPLY TO
ATTENTION OF

AFZF-JA-MJ

1 July 2004

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

THRU LTC [REDACTED] Deputy Staff Judge Advocate, Coalition Forces Land Component
Command, Camp Doha, Kuwait, APO AE 09304

MEMORANDUM FOR LTG David McKiernan, Commanding General, Coalition Forces Land
Component Command, Camp Doha, Kuwait, APO AE 09304

SUBJECT: Declassification of witness statements in AR 15-6 Investigation - 800th Military
Police Brigade

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

1. I am the trial counsel currently prosecuting Staff Sergeant (SSG) [REDACTED] Sergeant
(SGT) [REDACTED] is, Specialist (SPC) [REDACTED], Specialist Meghan Ambuhl, and Specialist
[REDACTED] in connection with detainee abuse at the Baghdad Central Confinement Facility,
Abu Ghraib, Iraq. In a pretrial Article 39(a), Uniform Code of Military Justice (UCMJ) session
held on 21 June 2004, defense counsel for SSG [REDACTED] SGT [REDACTED] and SPC [REDACTED] requested
that witness statements found in the annexes of the Army Regulation (AR) 15-6 report of
investigation (ROI) Major General (MG) Taguba conducted be declassified from secret/secret-
noform to unclassified. The defense counsel stated that declassification would allow for easier
access to these statements and facilitate their ability to photocopy and use these statements in
questioning witnesses. The military judge withheld ruling pending your response to this request.

2. Based upon the defense counsel's request and the need to allow for easier access to these
witness statement and other documents collected by MG Taguba, the Government requests that
you immediately declassify the annexes of the AR 15-6 ROI, that can be declassified without
compromising vital national interests. In order to facilitate this process, the Government has
reviewed the annexes and has identified specific annexes that contain documents marked as
SECRET (11, 12, 13, 20, 28, 40, 41, 93, 94, 95, 97, 99, 100, 103, and 105). In addition to these
annexes that contain secret documents, the Government has identified two other annexes that
may contain other sensitive material (44 and 104). At a minimum, the Government requests that
the annexes containing witness statements be declassified and marked as "For Official Use
Only".

3. The government believes that the declassification of the annexes to the AR 15-6 report,
specifically those that contain witness statements, will assist in the expeditious resolution of
these cases. Thank you for your consideration in this matter.

[REDACTED]
CPT, JA
Trial Counsel

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

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Enclosure 8

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

UNITED STATES)

v.)

[REDACTED])
SSG, U.S. Army)

HHC, 16th MP BDE (ABN),)

III Corps)

Victory Base, Iraq,)

APO AE 09342)

28 JULY 2004

UNITED STATES)

v.)

[REDACTED])
SPC, U.S. Army)

HHC, 16th MP BDE (ABN),)

III Corps)

APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

[REDACTED])
SGT, U.S. Army)

HHC, 16th MP BDE (ABN),)

III Corps)

Victory Base, Iraq,)

APO AE 09342)

18 JUNE 2004

UNITED STATES)

v.)

AMBUHL, Megan)

SPC, U.S. Army)

HHC, 16th MP BDE (ABN),)

III Corps)

Victory Base, Iraq,)

APO AE 09342)

18 JUNE 2004

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APPELLATE EXHIBIT VII

Recognized R. 93

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion and proposed Order were emailed, as instructed by Government Counsel, this 9th day of August 2004, to the Military Judge, Government Counsel, Defense Counsel, and Counsel for CACI at the following email addresses:

• Military Judge: [REDACTED]

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

• Defense Counsel: [REDACTED]

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

• Government Counsel: [REDACTED]

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

• Counsel for CACI:

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

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

Williams & Connolly, LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Voice: 202-434-[REDACTED]
Fax: 202-434-5029

August 9, 2004



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



ADMINISTRATION &
MANAGEMENT

November 9, 2001

Ref: 01-CORR-101

MEMORANDUM FOR DOD FOIA OFFICES

SUBJECT: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)

The President has declared a national emergency by reason of the terrorist attacks on the United States. In the attached memorandum, the Deputy Secretary of Defense emphasizes the responsibilities all DoD personnel have towards operations security and the increased risks to US military and civilian personnel, DoD operational capabilities, facilities and resources. All Department of Defense personnel should have a heightened security awareness concerning their day-to-day duties and recognition that the increased security posture will remain a fact of life for an indefinite period of time.

This change in our security posture has implications for the Defense Department's policies implementing the Freedom of Information Act (FOIA). Presently all DoD components withhold, under 5 USC § 552(b)(3), the personally identifying information (name, rank, duty address, official title, and information regarding the person's pay) of military and civilian personnel who are assigned overseas, on board ship, or to sensitive or routinely deployable units. Names and other information regarding DoD personnel who did not meet these criteria have been routinely released when requested under the FOIA. Now, since DoD personnel are at increased risk regardless of their duties or assignment to such a unit, release of names and other personal information must be more carefully scrutinized and limited.

I have therefore determined this policy requires revision. Effective immediately, personally identifying information (to include lists of e-mail addresses) in the categories listed below must be carefully considered and the interests supporting withholding of the information given more serious weight in the analysis. This information may be found to be exempt under 5 USC § 552(b)(6) because of the heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.

- Lists of personally identifying information of DoD personnel: All DoD components shall ordinarily withhold lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the Department of Defense in response to requests under the FOIA. This is to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. If a particular request does not raise

EXHIBIT

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security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Particular care shall be taken prior to any decision to release a list of names in any electronic format.

- Verification of status of named individuals: DoD components may determine that release of personal identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.
- Names in documents that don't fall into any of the preceding categories: Ordinarily names of DoD personnel, other than lists of names, mentioned in documents that are releasable under the FOIA should not be withheld, but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

When processing a FOIA request, a DoD component may determine that exemption (b)(6) does not fully protect the component's or an individual's interests. In this case, please contact Mr. [REDACTED] Directorate of Freedom of Information and Security Review, at (703) (b)(6) 4; [REDACTED], or DSN [REDACTED] (7XC)-4

This policy does not preclude a DoD component's discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons.

[REDACTED]
[REDACTED]
Director

Attachment:
As stated

002754



COMMAND, CONTROL,
COMMUNICATIONS, AND
INTELLIGENCE

ASSISTANT SECRETARY OF DEFENSE

6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000

December 28, 2001



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Removal of Personally Identifying Information of DoD Personnel from
Unclassified Web Sites

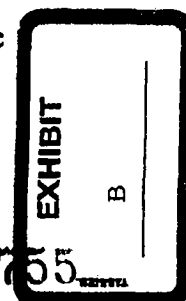
In accordance with DoD 5400.7-R, "DoD Freedom of Information Act Program," unclassified information which may be withheld from the public by one or more Freedom of Information Act (FOIA) exemptions is considered For Official Use Only (FOUO). DoD Web Site Administration policy (www.defenselink.mil/webmasters), issued by Deputy Secretary of Defense memorandum, December 7, 1998, prohibits posting FOUO information to publicly accessible web sites and requires access and transmission controls on sites that do post FOUO materials (see Part V, Table 1).

The attached November 9, 2001, memorandum from the Director, Administration and Management (DA&M), citing increased risks to DoD personnel, states that personally identifying information regarding all DoD personnel may be withheld by the Components under exemption (b)(6) of the FOIA, 5-USC §552. This action makes the information which may be withheld FOUO and inappropriate for posting to most unclassified DoD web sites.

Thus, all personally identifying information regarding DoD personnel now eligible to be withheld under the FOIA must be removed from publicly accessible web pages and web pages with access restricted only by domain or IP address (i.e., .mil restricted). This applies to unclassified DoD web sites regardless of domain (e.g., .com, .edu, .org, .mil, .gov) or sponsoring organization (e.g., Non-Appropriated Fund/Morale, Welfare and



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Recreations sites; DoD educational institutions). The information to be removed includes name, rank, e-mail address, and other identifying information regarding DoD personnel, including civilians, active duty military, military family members, contractors, members of the National Guard and Reserves, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy.

Rosters, directories (including telephone directories) and detailed organizational charts showing personnel are considered lists of personally identifying information. Multiple names of individuals from different organizations/locations listed on the same document or web page constitutes a list. Aggregation of names across pages must specifically be considered. In particular, the fact that data can be compiled easily using simple web searches means caution must be applied to decisions to post individual names. If aggregation of lists of names is possible across a single organization's web site/pages, that list should be evaluated on its merits and the individual aggregated elements treated accordingly.

Individual names contained in documents posted on web sites may be removed or left at the discretion of the Component, in accordance with the DA&M guidance. This direction does not preclude the discretionary posting of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons. Posting such information should be coordinated with the cognizant Component FOIA or Public Affairs office.

In keeping with the concerns stated in the referenced memorandum and in the October 18, 2001, DepSecDef memorandum, "Operations Security Throughout the Department of Defense," the posting of biographies and photographs of DoD personnel identified on public and .mil restricted web sites should also be more carefully scrutinized and limited.

Sites needing to post contact information for the public are encouraged to use organizational designation/title and organizational/generic position e-mail addresses (e.g., office@organization.mil; helpdesk@organization.mil; commander@base.mil).

Questions regarding Web Site Administration policy may be directed to Ms. [REDACTED]. She can be reached at (703) [REDACTED] and e-mail [REDACTED]@osd.mil. Questions regarding Component-specific implementation of the DA&M memorandum should be directed to the Component FOIA office. (b)(6)4, (b)(7)(C)4

[REDACTED]

Attachment
As stated

002756

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

UNITED STATES

v.

[REDACTED]
SSG, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

28 JULY 2004

UNITED STATES

v.

[REDACTED]
SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

18 JUNE 2004

UNITED STATES

v.

[REDACTED]
SGT, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

18 JUNE 2004

UNITED STATES

v.

AMBUHL, Megan
SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

18 JUNE 2004

002757

APPELLATE EXHIBIT VIII

Recognized R. 93

MOTION OF NONPARTY SOS INTERNATIONAL LTD
FOR A PROTECTIVE ORDER

COMES NOW nonparty SOS International Ltd ("SOSi" formerly named SOS Interpreting Ltd.), by and through undersigned counsel, and respectfully moves the Court for entry of a Protective Order pursuant to Rule for Court-Martial ("R.C.M.") 701(g) to prevent the public dissemination of names and other personally identifying information of SOSi's employees produced and/or used during the course of the above-captioned court-martial. For the reasons set forth below, a Protective Order is necessary to safeguard any employment records or other personally identifying information of SOSi employees supporting the U.S. military efforts in Iraq that may be produced by the Government or through subpoena to SOSi.

BACKGROUND

SOSi, through its counsel, has been informed (by counsel for Titan Corporation, its prime contractor for the work reflected in the documents at issue) that the Government intends to disclose, on or about August 13, 2004, approximately 26 pages containing sensitive "personally identifying" information concerning Titan and SOSi employees to defense counsel in this court-martial. Titan—as part of its ongoing efforts to fully cooperate with Government investigations—had earlier provided the Army Criminal Investigative Command access to these 26 pages of detailed confidential information concerning Titan and SOSi personnel with the belief it would be held as such. The 26 pages that the Government intends to disclose contain the following information about Titan and SOSi employees who are presently or were previously assigned to support the U.S. military in Iraq: name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history,

employee number. These documents also identify names of close family members of the employees. In addition, Government Counsel has issued a subpoena seeking production of employment records of a particular SOSi employee that contains additional confidential personal information about the employee.

ARGUMENT

The legal framework for analyzing the need for protective orders in a situation such as this is fully set forth in the Motion of nonparty CACI International, Inc. ("CACI") for Appropriate Relief in the Form of a Protective Order which is pending in the captioned matters. Rather than burden the Court with a repetition of that framework and its applicability to SOSi's situation, SOSi joins and adopts the arguments and authorities contained in CACI's motion and relies on them in support of this motion.

Turning to the particular situation of SOSi, there can be no question that the disclosure of the above-described sensitive information would constitute a severe and unwarranted intrusion upon the privacy interests of SOSi's employees and that SOSi has standing to move for such protection. Cf. United States v. RMI Co., 599 F.2d 1183, 1186 (3d Cir. 1979)("[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders, and if protection is denied, seek immediate appellate review."). Moreover, in addition to the privacy concerns, given the role of SOSi's employees in supporting the military's efforts in quelling the insurgency in Iraq, disclosure could unnecessarily endanger SOSi's employees and their families.

The information at issue clearly warrants protection under R.C.M. 701(g).

The Department of Defense has a long-standing policy of protecting from public disclosure "personally identifying" information of military and civilian personnel, including

contractors, who are assigned overseas, on board ship, or to sensitive or routinely deployable units. See Exhibit A, Office of Secretary of Defense Memorandum for DOD FOIA Offices (Nov. 9, 2001). Personally identifying information protected under this policy includes name, rank, email address, along with rosters, directories (including telephone directories) and detailed organizational charts – in short, precisely the type of information that the Government intends to disclose in this case. See Exhibit B, Assistant Secretary of Defense Memorandum, Removal of Personally Identifying Information from Unclassified Websites (Dec. 28, 2001). Such information is properly treated as “For Official Use Only” and protected from public disclosure. See id.; 32 C.F.R. § 505.4 (d)(3)(“Ordinarily, personal information must be afforded at least the protection required for information designated ‘For Official Use Only’ (see Chapter IV, AR 340–17).”).

Since the President’s declaration of a national emergency by reason of the terrorist attacks on the United States, DOD personnel, including DOD contractors, are considered at “increased risk” and “release of names and other personal information must be more carefully scrutinized and limited.” See Exhibit A. Accordingly, DOD policy is now to give more serious weight to the “heightened interest in the personal privacy of DOD personnel that is concurrent with the increased security awareness demanded in times of national emergency.” Id.

The U.S. military’s policy of protecting from disclosure the personally identifying information and unit affiliation of its Service members, civilian employees, and contractors should be fully respected in this proceeding. Accordingly, all information relating to the identity of SOSi employees and their families should remain protected and not subject to public disclosure during the course of these court-martial proceedings, except to the extent deemed necessary and appropriate by the military judge after permitting SOSi to respond, and only after

considering all less intrusive means of proceeding.

Such relief is necessary and appropriate in order to protect the compelling security and privacy interests of SOSi's employees and their families.

CONCLUSION

Accordingly, for the reasons set forth above and in CACI's motion, SOSi respectfully requests this Court GRANT its Motion for Protective Order and issue the attached proposed Protective Order.

Given the emergency nature of the motion, SOSi requests telephonic argument on its Motion.

Respectfully submitted,

[REDACTED]

By: [REDACTED]

[REDACTED]

Washington, DC 20006
(202) 496-[REDACTED]

Counsel for SOS International Ltd.

Dated: August 11, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion and proposed Order were emailed, as instructed by Government Counsel, this 11th day of August 2004, to the Military Judge, Government Counsel, Defense Counsel, and Counsel for CACI and Counsel for Titan at the following email addresses:

- Military Judge [REDACTED]@us.army.mil
- Defense Counsel [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@usa.net; (b)(6) 4 (7)(C) 4
(b)(6) 4 (7)(C) 4 (b)(6) 2 (7)(C) 2
[REDACTED]@pope-firm.com; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil; (b)(6) 2 (7)(C) 2
(b)(6) 4 (7)(C) 4 (b)(6) 2 (7)(C) 2
[REDACTED]@aol.com; [REDACTED]@us.army.mil; [REDACTED]@svg-law.com (b)(6) 2 (7)(C) 2
- Government Counsel [REDACTED]@us.army.mil; (b)(6) 2 (7)(C) 2
[REDACTED]@hqda.army.mil
- Counsel for CACI [REDACTED]@steptoe.com 7 (b)(6) 4 (7)(C) 4
- Counsel for Titan: [REDACTED]@wc.com

August 11, 2004

MOTION OF NONPARTY TITAN CORPORATION FOR A PROTECTIVE ORDER

COMES NOW nonparty Titan Corporation ("Titan"), by and through undersigned counsel, and respectfully moves the Court for entry of a Protective Order pursuant to Rule for Court-Martial ("R.C.M.") 701(g) to prevent the public dissemination of names and other personally identifying information of Titan's employees produced and/or used during the course of the above-captioned court-martial. For the reasons set forth below, a Protective Order is necessary to safeguard any employment records or other personally identifying information of Titan employees supporting the U.S. military efforts in Iraq that may be produced by the Government or through subpoena to Titan.

BACKGROUND

On August 3, 2004, Titan, through its counsel, was informed that the Government intends to disclose, on or about August 13, 2004, approximately 26 pages containing sensitive "personally identifying" information concerning Titan's employees to defense counsel in this court-martial. Titan—as part of its ongoing efforts to fully cooperate with Government investigations—had earlier provided the Army Criminal Investigative Command access to these 26 pages of detailed confidential information concerning its personnel with the belief it would be held as such. The 26 pages that the Government intends to disclose contain the following information about Titan employees who are presently or were previously assigned to support the U.S. military in Iraq:

name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history, employee number. These documents also identify names of close family members of the employees. In addition, Government Counsel has issued a subpoena seeking production of employment records of a particular Titan employee that contains additional confidential personal information about the employee.

ARGUMENT

The legal framework for analyzing the need for protective orders in a situation such as this is fully set forth in the Motion of nonparty CACI International, Inc. ("CACI") for Appropriate Relief in the Form of a Protective Order with regard to its information. Rather than burden the Court with a repetition of that framework and its applicability to Titan's situation, Titan joins and adopts the arguments and authorities contained in CACI's motion.

Turning to the particular situation of Titan, there can be no question that the disclosure of the above-described sensitive information would constitute a severe and unwarranted intrusion upon the privacy interests of Titan's employees and that Titan has standing to move for such protection. Cf. United States v.

RMI Co., 599 F.2d 1183, 1186 (3d Cir. 1979) ("[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders, and if protection is denied, seek immediate appellate review."). Moreover, in addition to the privacy concerns, given the role of Titan's employees in supporting the military's efforts in quelling the insurgency in Iraq, disclosure could unnecessarily endanger Titan's employees and their families.

The information at issue clearly warrants protection under R.C.M. 701(g).

The Department of Defense has a long-standing policy of protecting from public disclosure "personally identifying" information of military and civilian personnel, including contractors, who are assigned overseas, on board ship, or to sensitive or routinely deployable units. See Exhibit A, Office of Secretary of Defense Memorandum for DOD FOIA Offices (Nov. 9, 2001). Personally identifying information protected under this policy includes name, rank, email address, along with rosters, directories (including telephone directories) and detailed organizational charts - in short, precisely the type of information that the Government intends to disclose in this case. See Exhibit B, Assistant Secretary of Defense Memorandum, Removal of Personally Identifying Information from Unclassified Websites (Dec. 28, 2001). Such information is properly treated as "For

Official Use Only" and protected from public disclosure. See id.; 32 C.F.R. § 505.4 (d)(3) ("Ordinarily, personal information must be afforded at least the protection required for information designated 'For Official Use Only' (see Chapter IV, AR 340-17).").

Since the President's declaration of a national emergency by reason of the terrorist attacks on the United States, DOD personnel, including DOD contractors, are considered at "increased risk" and "release of names and other personal information must be more carefully scrutinized and limited." See Exhibit A. Accordingly, DOD policy is now to give more serious weight to the "heightened interest in the personal privacy of DOD personnel that is concurrent with the increased security awareness demanded in times of national emergency." Id.

The U.S. military's policy of protecting from disclosure the personally identifying information and unit affiliation of its Service members, civilian employees, and contractors should be fully respected in this proceeding. Accordingly, all information relating to the identity of Titan employees and their families should remain protected and not subject to public disclosure during the course of these court-martial proceedings, except to the extent deemed necessary and appropriate by the military judge after permitting Titan to respond, and only after considering all less intrusive means of proceeding.

Such relief is necessary and appropriate in order to protect

the compelling security and privacy interests of Titan's employees and their families.

CONCLUSION

Accordingly, for the reasons set forth above and in CACI's motion, Titan respectfully requests this Court GRANT its Motion for Protective Order and issue the attached proposed Protective Order.

Given the emergency nature of the motion, Titan requests telephonic argument on its Motion.

Respectfully submitted,

By: [REDACTED]

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

Counsel for Titan Corporation

Dated: August 7, 2004



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



ADMINISTRATION &
MANAGEMENT

November 9, 2001

Ref: 01-CORR-101

MEMORANDUM FOR DOD FOIA OFFICES

SUBJECT: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)

The President has declared a national emergency by reason of the terrorist attacks on the United States. In the attached memorandum, the Deputy Secretary of Defense emphasizes the responsibilities all DoD personnel have towards operations security and the increased risks to US military and civilian personnel, DoD operational capabilities, facilities and resources. All Department of Defense personnel should have a heightened security awareness concerning their day-to-day duties and recognition that the increased security posture will remain a fact of life for an indefinite period of time.

This change in our security posture has implications for the Defense Department's policies implementing the Freedom of Information Act (FOIA). Presently all DoD components withhold, under 5 USC § 552(b)(3), the personally identifying information (name, rank, duty address, official title, and information regarding the person's pay) of military and civilian personnel who are assigned overseas, on board ship, or to sensitive or routinely deployable units. Names and other information regarding DoD personnel who did not meet these criteria have been routinely released when requested under the FOIA. Now, since DoD personnel are at increased risk regardless of their duties or assignment to such a unit, release of names and other personal information must be more carefully scrutinized and limited.

I have therefore determined this policy requires revision. Effective immediately, personally identifying information (to include lists of e-mail addresses) in the categories listed below must be carefully considered and the interests supporting withholding of the information given more serious weight in the analysis. This information may be found to be exempt under 5 USC § 552(b)(6) because of the heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.

- Lists of personally identifying information of DoD personnel: All DoD components shall ordinarily withhold lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the Department of Defense in response to requests under the FOIA. This is to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. If a particular request does not raise

EXHIBIT

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security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Particular care shall be taken prior to any decision to release a list of names in any electronic format.

- Verification of status of named individuals: DoD components may determine that release of personal identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.
- Names in documents that don't fall into any of the preceding categories: Ordinarily names of DoD personnel, other than lists of names, mentioned in documents that are releasable under the FOIA should not be withheld, but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

When processing a FOIA request, a DoD component may determine that exemption (b)(6) does not fully protect the component's or an individual's interests. In this case, please contact Mr. Jim Hogan, Directorate of Freedom of Information and Security Review, at (703) 697-4026, or DSN 227-4026.

This policy does not preclude a DoD component's discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons.



D. O. Cooke
Director

Attachment:
As stated

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COMMAND, CONTROL,
COMMUNICATIONS, AND
INTELLIGENCE

ASSISTANT SECRETARY OF DEFENSE

6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000

December 28, 2001



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Removal of Personally Identifying Information of DoD Personnel from
Unclassified Web Sites

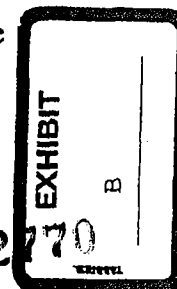
In accordance with DoD 5400.7-R, "DoD Freedom of Information Act Program," unclassified information which may be withheld from the public by one or more Freedom of Information Act (FOIA) exemptions is considered For Official Use Only (FOUO). DoD Web Site Administration policy (www.defenselink.mil/webmasters), issued by Deputy Secretary of Defense memorandum, December 7, 1998, prohibits posting FOUO information to publicly accessible web sites and requires access and transmission controls on sites that do post FOUO materials (see Part V, Table 1).

The attached November 9, 2001, memorandum from the Director, Administration and Management (DA&M), citing increased risks to DoD personnel, states that personally identifying information regarding all DoD personnel may be withheld by the Components under exemption (b)(6) of the FOIA, 5 USC §552. This action makes the information which may be withheld FOUO and inappropriate for posting to most unclassified DoD web sites.

Thus, all personally identifying information regarding DoD personnel now eligible to be withheld under the FOIA must be removed from publicly accessible web pages and web pages with access restricted only by domain or IP address (i.e., .mil restricted). This applies to unclassified DoD web sites regardless of domain (e.g., .com, .edu, .org, .mil, .gov) or sponsoring organization (e.g., Non-Appropriated Fund/Morale, Welfare and



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Recreations sites; DoD educational institutions). The information to be removed includes name, rank, e-mail address, and other identifying information regarding DoD personnel, including civilians, active duty military, military family members, contractors, members of the National Guard and Reserves, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy.

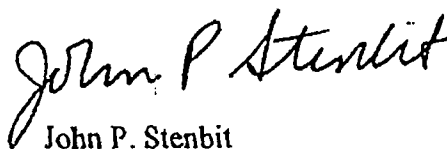
Rosters, directories (including telephone directories) and detailed organizational charts showing personnel are considered lists of personally identifying information. Multiple names of individuals from different organizations/locations listed on the same document or web page constitutes a list. Aggregation of names across pages must specifically be considered. In particular, the fact that data can be compiled easily using simple web searches means caution must be applied to decisions to post individual names. If aggregation of lists of names is possible across a single organization's web site/pages, that list should be evaluated on its merits and the individual aggregated elements treated accordingly.

Individual names contained in documents posted on web sites may be removed or left at the discretion of the Component, in accordance with the DA&M guidance. This direction does not preclude the discretionary posting of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons. Posting such information should be coordinated with the cognizant Component FOIA or Public Affairs office.

In keeping with the concerns stated in the referenced memorandum and in the October 18, 2001, DepSecDef memorandum, "Operations Security Throughout the Department of Defense," the posting of biographies and photographs of DoD personnel identified on public and .mil restricted web sites should also be more carefully scrutinized and limited.

Sites needing to post contact information for the public are encouraged to use organizational designation/title and organizational/generic position e-mail addresses (e.g., office@organization.mil; helpdesk@organization.mil; commander@base.mil).

Questions regarding Web Site Administration policy may be directed to Ms. Linda Brown. She can be reached at (703) 695-2289 and e-mail Linda.Brown@osd.mil. Questions regarding Component-specific implementation of the DA&M memorandum should be directed to the Component FOIA office.


John P. Stenbit

Attachment
As stated

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UNITED STATES

Y.

SSG, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

28 JULY 2004

UNITED STATES

V.

SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

18 JUNE 2004

UNITED STATES

V.

**SGT, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342**

18 JUNE 2004

002772

FINALLY, IT IS ORDERED that nothing in this Order shall preclude entry of a further protective order as to particular items of discovery material.

Dated: August __, 2004

Military Judge

Copy to:
Civilian Defense Counsel
Military Defense Counsel
Trial Counsel
Counsel for Titan
Counsel for CACI
Counsel for SOSi

UNITED STATES

v.

AMBUHL, Megan
SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

18 JUNE 2004

ORDER

In consideration of the Motions for Protective Order filed by SOS International Ltd., Titan Corporation and CACI, the supporting briefs of and the arguments of counsel,

IT IS HEREBY ORDERED pursuant to R.C.M. 701(g) that the Government and Defense shall identify and mark as "particularly sensitive material" all employment records of contractors supporting the U.S. military's mission in Iraq and any documents that contain "personally identifying information" of such contractors;

IT IS FURTHER ORDERED that such particularly sensitive discovery materials shall not be further disseminated by the defendant or his counsel to any individuals, organizations or other entities, other than: (i) members of the defense team (co-counsel, paralegals, investigators, translators and secretarial staff) who have received clearance from the Government, which shall not unreasonably be withheld; and (ii) experts retained to assist in the preparation of the defense, who have been cleared to receive the materials. Each of the individuals to whom disclosure is

made pursuant to the above provision shall be provided a copy of this protective order and will be advised that he or she shall not further disseminate the materials except by the express direction of counsel of record. They shall be further advised that by reviewing the particularly sensitive discovery materials, the individuals consent to the jurisdiction of this Court over them for the purposes of enforcing this order. It is expressly ordered that the attorneys of record for the defendant may not show any of such particularly sensitive discovery materials to witnesses or potential witnesses. The defendant may seek relief from these provisions as to a particular item of discovery by making a motion for such relief to the Court upon notice to the Government, the employee whose records are at issue and his employer. The notice shall identify the particular item(s) at issue. The motion shall be made under seal.

IT IS FURTHER ORDERED that, for the purposes of this order, "personally identifying information" includes, but is not limited to the following information: name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history, travel history, history of residences, employee number, and names and addresses of family members.

IT IS FURTHER ORDERED that any papers to be served upon the Court by either party which include or refer to the contents of particularly sensitive materials shall be filed under seal;

IT IS FURTHER ORDERED that any papers to be served upon the Court in response to papers served in conformity with the preceding paragraph also be filed under seal;

FINALLY, IT IS ORDERED that nothing in this Order shall preclude entry of a further protective order as to particular items of discovery material.

Dated: August __, 2004

Military Judge

Copy to:
Civilian Defense Counsel
Military Defense Counsel
Trial Counsel
Counsel for Titan
Counsel for CACI
Counsel for SOSi

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COMMAND, CONTROL,
COMMUNICATIONS, AND
INTELLIGENCE

ASSISTANT SECRETARY OF DEFENSE
6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000
December 28, 2001



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Removal of Personally Identifying Information of DoD Personnel from
Unclassified Web Sites

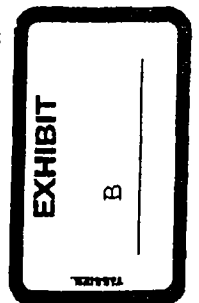
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The attached November 9, 2001, memorandum from the Director, Administration and Management (DA&M), citing increased risks to DoD personnel, states that personally identifying information regarding all DoD personnel may be withheld by the Components under exemption (b)(6) of the FOIA, 5 USC §552. This action makes the information which may be withheld FOUO and inappropriate for posting to most unclassified DoD web sites.

Thus, all personally identifying information regarding DoD personnel now eligible to be withheld under the FOIA must be removed from publicly accessible web pages and web pages with access restricted only by domain or IP address (i.e., .mil restricted). This applies to unclassified DoD web sites regardless of domain (e.g., .com, .edu, .org, .mil, .gov) or sponsoring organization (e.g., Non-Appropriated Fund/Morale, Welfare and



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Recreations sites; DoD educational institutions). The information to be removed includes name, rank, e-mail address, and other identifying information regarding DoD personnel, including civilians, active duty military, military family members, contractors, members of the National Guard and Reserves, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy.

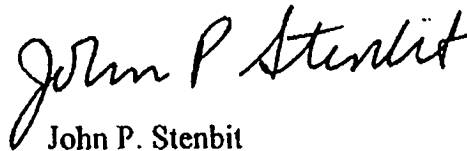
Rosters, directories (including telephone directories) and detailed organizational charts showing personnel are considered lists of personally identifying information. Multiple names of individuals from different organizations/locations listed on the same document or web page constitutes a list. Aggregation of names across pages must specifically be considered. In particular, the fact that data can be compiled easily using simple web searches means caution must be applied to decisions to post individual names. If aggregation of lists of names is possible across a single organization's web site/pages, that list should be evaluated on its merits and the individual aggregated elements treated accordingly.

Individual names contained in documents posted on web sites may be removed or left at the discretion of the Component, in accordance with the DA&M guidance. This direction does not preclude the discretionary posting of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons. Posting such information should be coordinated with the cognizant Component FOIA or Public Affairs office.

In keeping with the concerns stated in the referenced memorandum and in the October 18, 2001, DepSecDef memorandum, "Operations Security Throughout the Department of Defense," the posting of biographies and photographs of DoD personnel identified on public and .mil restricted web sites should also be more carefully scrutinized and limited.

Sites needing to post contact information for the public are encouraged to use organizational designation/title and organizational/generic position e-mail addresses (e.g., office@organization.mil; helpdesk@organization.mil; commander@base.mil).

Questions regarding Web Site Administration policy may be directed to Ms. Linda Brown. She can be reached at (703) 695-2289 and e-mail Linda.Brown@osd.mil. Questions regarding Component-specific implementation of the DA&M memorandum should be directed to the Component FOIA office.



John P. Stenbit

Attachment
As stated

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UNITED STATES


v.


SSG, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

28 JULY 2004

UNITED STATES


v.


SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
APO AE 09342

18 JUNE 2004

UNITED STATES

v.


SGT, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

18 JUNE 2004

UNITED STATES

v.

AMBUHL, Megan
SPC, U.S. Army
HHC, 16th MP BDE (ABN),
III Corps
Victory Base, Iraq,
APO AE 09342

18 JUNE 2004

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APPELLATE EXHIBIT VIII

Recognized R. 93

MOTION OF NONPARTY SOS INTERNATIONAL LTD
FOR A PROTECTIVE ORDER

COMES NOW nonparty SOS International Ltd ("SOSi" formerly named SOS Interpreting Ltd.), by and through undersigned counsel, and respectfully moves the Court for entry of a Protective Order pursuant to Rule for Court-Martial ("R.C.M.") 701(g) to prevent the public dissemination of names and other personally identifying information of SOSi's employees produced and/or used during the course of the above-captioned court-martial. For the reasons set forth below, a Protective Order is necessary to safeguard any employment records or other personally identifying information of SOSi employees supporting the U.S. military efforts in Iraq that may be produced by the Government or through subpoena to SOSi.

BACKGROUND

SOSi, through its counsel, has been informed (by counsel for Titan Corporation, its prime contractor for the work reflected in the documents at issue) that the Government intends to disclose, on or about August 13, 2004, approximately 26 pages containing sensitive "personally identifying" information concerning Titan and SOSi employees to defense counsel in this court-martial. Titan—as part of its ongoing efforts to fully cooperate with Government investigations—had earlier provided the Army Criminal Investigative Command access to these 26 pages of detailed confidential information concerning Titan and SOSi personnel with the belief it would be held as such. The 26 pages that the Government intends to disclose contain the following information about Titan and SOSi employees who are presently or were previously assigned to support the U.S. military in Iraq: name, social security number, home address, date of birth, citizenship, telephone number, email address, security clearance (including level and date of clearance), hire date, arrival date, employment category, language proficiency, unit assignment, identity of site manager, employment status, sex, vocational and educational history,

employee number. These documents also identify names of close family members of the employees. In addition, Government Counsel has issued a subpoena seeking production of employment records of a particular SOSi employee that contains additional confidential personal information about the employee.

ARGUMENT

The legal framework for analyzing the need for protective orders in a situation such as this is fully set forth in the Motion of nonparty CACI International, Inc. ("CACI") for Appropriate Relief in the Form of a Protective Order which is pending in the captioned matters. Rather than burden the Court with a repetition of that framework and its applicability to SOSi's situation, SOSi joins and adopts the arguments and authorities contained in CACI's motion and relies on them in support of this motion.

Turning to the particular situation of SOSi, there can be no question that the disclosure of the above-described sensitive information would constitute a severe and unwarranted intrusion upon the privacy interests of SOSi's employees and that SOSi has standing to move for such protection. Cf. United States v. RMI Co., 599 F.2d 1183, 1186 (3d Cir. 1979) ("[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders, and if protection is denied, seek immediate appellate review."). Moreover, in addition to the privacy concerns, given the role of SOSi's employees in supporting the military's efforts in quelling the insurgency in Iraq, disclosure could unnecessarily endanger SOSi's employees and their families.

The information at issue clearly warrants protection under R.C.M. 701(g).

The Department of Defense has a long-standing policy of protecting from public disclosure "personally identifying" information of military and civilian personnel, including

contractors, who are assigned overseas, on board ship, or to sensitive or routinely deployable units. See Exhibit A, Office of Secretary of Defense Memorandum for DOD FOIA Offices (Nov. 9, 2001). Personally identifying information protected under this policy includes name, rank, email address, along with rosters, directories (including telephone directories) and detailed organizational charts – in short, precisely the type of information that the Government intends to disclose in this case. See Exhibit B, Assistant Secretary of Defense Memorandum, Removal of Personally Identifying Information from Unclassified Websites (Dec. 28, 2001). Such information is properly treated as “For Official Use Only” and protected from public disclosure. See id.; 32 C.F.R. § 505.4 (d)(3)(“Ordinarily, personal information must be afforded at least the protection required for information designated ‘For Official Use Only’ (see Chapter IV, AR 340–17).”).

Since the President’s declaration of a national emergency by reason of the terrorist attacks on the United States, DOD personnel, including DOD contractors, are considered at “increased risk” and “release of names and other personal information must be more carefully scrutinized and limited.” See Exhibit A. Accordingly, DOD policy is now to give more serious weight to the “heightened interest in the personal privacy of DOD personnel that is concurrent with the increased security awareness demanded in times of national emergency.” Id.

The U.S. military’s policy of protecting from disclosure the personally identifying information and unit affiliation of its Service members, civilian employees, and contractors should be fully respected in this proceeding. Accordingly, all information relating to the identity of SOSi employees and their families should remain protected and not subject to public disclosure during the course of these court-martial proceedings, except to the extent deemed necessary and appropriate by the military judge after permitting SOSi to respond, and only after

considering all less intrusive means of proceeding.

Such relief is necessary and appropriate in order to protect the compelling security and privacy interests of SOSi's employees and their families.

CONCLUSION

Accordingly, for the reasons set forth above and in CACI's motion, SOSi respectfully requests this Court GRANT its Motion for Protective Order and issue the attached proposed Protective Order.

Given the emergency nature of the motion, SOSi requests telephonic argument on its Motion.

Respectfully submitted,

[REDACTED]

By: [REDACTED]

[REDACTED]

[REDACTED]

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

1900 K St., N.W.
Washington, DC 20006
(202) [REDACTED]

Counsel for SOS International Ltd.

Dated: August 11, 2004

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion and proposed Order were emailed, as instructed by Government Counsel, this 11th day of August 2004, to the Military Judge, Government Counsel, Defense Counsel, and Counsel for CACI and Counsel for Titan at the following email addresses:

- Military Judge: [REDACTED]@us.army.mil (b)(6)2;(7)(C)-2
- Defense Counsel: [REDACTED]@vcmain.hq.c5.army.mil; [REDACTED]@usa.net;
(b)(6)4;(7)(C)-4
[REDACTED]@pope-firm.com; [REDACTED]@us.army.mil; [REDACTED]@us.army.mil; (b)(6)2;(7)(C)-2
(b)(6)4;(7)(C)-4 [REDACTED]@aol.com; [REDACTED]@us.army.mil; [REDACTED]@svg-law.com
(b)(6)2;(7)(C)-2
(b)(6)2;(7)(C)-2
- Government Counsel: [REDACTED]@us.army.mil; (b)(6)2;(7)(C)-2
(b)(6)2;(7)(C)-2
[REDACTED]@hqda.army.mil
- Counsel for CACI: [REDACTED]@steptoe.com (b)(6)4;(7)(C)-4
- Counsel for Titan: [REDACTED]@wc.com

[REDACTED] (b)(6)-4;(7)(C)-4
[REDACTED]
[REDACTED]
1900 K St., NW
Washington, D.C. 20006
Voice: 202-[REDACTED]
Fax: 202-496-7756

August 11, 2004