

**REDACTED**  
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**003003**

# COURT-MARTIAL RECORD

NAME CRUZ, ARMIN J. SPC

SSN \_\_\_\_\_

ACTIONS CODED:

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VOL II OF II VOL(S)

ARMY 20040973

20040973

VERBATIM<sup>1</sup>  
**RECORD OF TRIAL<sup>2</sup>**  
(and accompanying papers)

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

OF  
(b)(6)2 (DC)-2  
(Social Security Number)

Specialist  
(Rank)

US Army  
(Branch of Service)

Victory Base, Iraq  
(Station or Ship)

BY  
SPECIAL (BCD) COURT-MARTIAL  
CONVENED BY COMMANDING GENERAL  
(Title of Convening Authority)

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

TRIED AT

Baghdad, Iraq  
(Place or Places of Trial)

ON

11 September 2004  
(Date or Dates of Trial)

COMPANION CASES:

[REDACTED]

(b)(6)5, (7)(C)-5

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00300

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

1 MJ: Trial counsel, do you have any objection to the pen and ink  
2 corrections?

3 TC: No, Your Honor.

4 MJ: Defense Exhibit, do you have any objection to Prosecution  
5 Exhibit 2 for identification with the pen and ink corrections?

6 CDC: No, Your Honor.

7 MJ: Prosecution Exhibit 2 for identification is admitted.  
8 Government?

9 TC: The government has nothing further, Your Honor.

10 MJ: Defense, do you have any documentary evidence to present on  
11 sentencing?

12 CDC: Yes, Your Honor, I've previously handed those to the court  
13 reporter.

14 MJ: Defense Exhibit Alpha, Defense Exhibit Bravo and Defense  
15 Exhibit Charlie, any objection to these documents?

16 TC: No, Your Honor.

17 MJ: Before I admit them, I want a chance to review them. Are  
18 the originals in Defense Exhibit Charlie, are these like computer-  
19 generated stuff?

20 CDC: I'm sorry, sir, I'm not sure....

21 MJ: Well, I'm saying, Charlie is the one with the pictures in  
22 it. Are there original photos that the accused would want back----

1 CDC: No, those are photocopies, Your Honor.

2 MJ: These are digital colored copies.

3 CDC: Those can go up with the record.

4 MJ: The court will be in recess while I read the documents.

5 [Court recessed at 1031, 11 September 2004, and reconvened at 1111,

6 11 September 2004.]

7 MJ: Court is called to order. All parties are again present

8 that were present when the court recessed.

9 Trial counsel, there's no objections to Defense Exhibits

10 Alpha through Charlie?

11 TC: No objection, Your Honor.

12 MJ: They are admitted.

13 Defense?

14 CDC: Your Honor, before I forget, I'd like to go ahead and offer

15 Defendant's Exhibit D for identification.

16 MJ: And that's a CD?

17 CDC: Yes, Your Honor.

18 MJ: A DVD?

19 CDC: Yes, Your Honor.

20 MJ: Do you want to play it?

1 CDC: It doesn't have to be right now. I was just going to offer  
2 it and get it into evidence. We can play it right now, if you'd like  
3 to do that.

4 MJ: Let's play it right now.

5 CDC: Okay.

6 TC: Your Honor, just for clarification sake, we're going to  
7 play the video, VCR version of that same information. So I'm not  
8 sure if you want to enter the CD, as well. Again, just to clarify  
9 that.

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

10 MJ: We're using different technology here there, Major [REDACTED]?

11 TC: Yes, sir. There is a DVD and a VCR copy of the same  
12 footage.

13 MJ: And you have VCR capability?

14 TC: Yes, sir, and the VCR is ready to go.

15 MJ: We'll play the VCR. Is it okay if we use the VCR as the  
16 exhibit?

17 CDC: Yes, Your Honor.

18 MJ: Is that in your hand the exact same thing that's on the  
19 VCR?

20 CDC: Yes, Your Honor.

21 MJ: Could you give that to the court reporter for insertion n  
22 the record of trial, and it's easier to make copies off of that than

1 it is off the other one. It's the same. The exhibit itself will be  
2 the videotape.

3 TC: Yes, sir.

4 MJ: Any objection to Defense Exhibit Delta?

5 TC: No, Your Honor.

6 MJ: Defense Exhibit Delta is admitted.

7 TC: Play the video. [Defense Exhibit D was played in open  
8 court. The following is a transcript of the audio.]

9 AUDIO: The Honorable Judge (b)(6)-2, (7)(c)-2 We thank you for the  
10 opportunity to address the court regarding the sentencing of our son,  
11 Specialist Armin John Cruz. We appreciate you taking the time to  
12 hear us. And so out of respect of your time, we are reading a  
13 prepared statement as a way to keep on track. Our purpose is merely  
14 to share with you our full and substantial experience of our son's  
15 character as his parents. Please consider the following about our  
16 son during your deliberations.

17 Armin volunteered to serve his country, postponing his  
18 education to do so. He could have chosen to complete his education  
19 first, joining the Army through ROTC. However, he chose to join as  
20 an enlisted soldier. He is a young man who has put his country's  
21 interests in winning the war on terror before his career and his  
22 interest of completing his bachelor's degree. He has done this for

1 his own deeply personal reasons not complaining or expecting special  
2 treatment for his sacrifices, but also because he's a first  
3 generation American and born and raised in an Army family.

4 Armin has served admirably, earning a Purple Heart and a Bronze  
5 Star. He was wounded in a mortar attack and despite his heroic  
6 efforts, could not save the life of his best friend and mentor in  
7 Iraq. He has never refused a request that entailed putting his own  
8 interests behind those of someone else. On the whole, he has been a  
9 selfless, compassionate, bright, dedicated and loyal team player for  
10 the Army. Please do not lose sight of the unique character of our  
11 son or his service record by lumping him in with other soldiers  
12 accused of wrongdoing. Contrary to some of these other soldiers,  
13 Armin did not enjoy his participation in the incident. Armin has  
14 taken responsibility for his mistakes. He is not passing the buck.  
15 We know that Armin views this as a personal failing and regrets not  
16 having the courage or conviction in the moment he chose to  
17 participate in the abuse of detainees. Even though we know that our  
18 son was suffering from the lingering effects of stress from combat  
19 trauma and enormous pressure from being overworked in his MOS, he  
20 still blames only himself for failing to follow his personal moral  
21 code and Army training. Even though we know that had the proper  
22 support system been made available to our son to help him deal with



1 his traumatic combat experiences, he would not now be in this  
2 position. Our son, nevertheless, takes full and complete  
3 responsibility for his choices without pointing fingers or lamenting  
4 if only....

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

5 Armin's attorney, [REDACTED], has pointed out many  
6 considerations for your deliberation on sentencing. We understand  
7 the Army's reasoning for punishing Armin, but the Army will not  
8 punish Armin more than he is punishing himself. It is our further  
9 wish and prayer that you realize that Armin's choice to participate  
10 in the abuse of detainees does not define his character, but only  
11 contrasts it. He's a good man and a good soldier who was put under  
12 enormous pressure and made a bad decision. But he has learned from  
13 his experience and has vowed to overcome the poisonous effects it has  
14 had on his spirit and he will overcome it.

15 What happened to the detainees at Abu Ghraib is a tragedy,  
16 but we hope you see that to saddle our son with a bad-conduct  
17 discharge for the rest of his life is a further tragedy. Not only do  
18 we know that our son is a good man, but we have heard the remorse in  
19 his voice over our countless conversations with him since this  
20 incident. We respectfully ask that you give due weight to our  
21 observations and we thank you for hearing our plea.

22 MJ: Defense?

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

1 CDC: Yes, Your Honor. We call Sergeant First Class [REDACTED].  
2 Sergeant First Class [REDACTED], U.S. Army, was called as a witness  
3 for the defense, was sworn, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the trial counsel [Major [REDACTED]]:

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

6 Q. If you would, please state your full name.

7 A. [REDACTED]

8 Q. And your unit of assignment?

9 A. HHC, 504th MI Brigade.

10 Questions by the defense [Mr. [REDACTED]]:

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

11 Q. Sergeant [REDACTED] if I ask you any questions you don't know the  
12 answer to, just let me know, or if you don't understand the question,  
13 just let me know and I'll try and rephrase it for you.

14 A. Yes, sir.

15 Q. What's your current unit?

16 A. HHC, 504th MI Brigade.

17 Q. And what's your current duty assignment?

18 A. I'm the [REDACTED]

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

19 Q. What's your MOS?

20 A. I'm a [REDACTED]

21 Q. And how long have you been in the Army?

22 A. 17 1/2 years.

1 Q. Have you ever been deployed before?

2 A. Yes.

3 Q. How many times?

4 A. Six.

5 Q. And did you say whether or not you're active or Reserve?

6 A. I'm active duty.

7 Q. And do you know Specialist Cruz?

8 A. Yes.

9 Q. How did you come to meet him?

10 A. He was transferred to our unit, I think, in April, and

11 that's how I met him.

12 Q. And you've come into contact with him how often since that

13 time?

14 A. Pretty much on a daily basis up until about a month ago, a

15 month and a half when he was transferred to one of the battalions,

16 but I see him now about four or five times a week.

17 Q. How is that possible?

18 A. Well, he was with HHD, he worked in the building that my

19 office is in, and then when he was with the other battalion, he works

20 in a different office, but his duties, his current duties, I see him

21 every day, or I see him four to five times a week.

22 Q. Okay, basically, what are his current duties?

1 A. He's the MWR monitor, and so I see him like in the barracks  
2 or up at MWR all the time.

3 Q. What was your initial impression when you first met him?

4 A. My initial impression was, just a soldier. I didn't really  
5 try to form an opinion.

6 Q. What is your opinion of him now?

7 A. As I got----

8 TC: I'd object. I just want clarification as to what type of  
9 opinion, what----

10 MJ: Mr. [REDACTED] <sup>(b)(6)2, (b)(7)(c)-2</sup> you need to focus the question, please.

11 CDC: I'll narrow it down.

12 Q. Did you have an opportunity to observe his duties?

13 A. Yes.

14 Q. How do you think he performed his duties?

15 A. He did all the tasks that he would give him in an  
16 outstanding fashion. Everything was done on time. He was on time.  
17 He was prompt in all the duties that he accomplished.

18 Q. Did you ever see him take initiative on anything?

19 A. Pretty much everything he did he took some kind of  
20 initiative to either make sure it got done or improve the way,  
21 improve on what we expected. Like we had a lot of--in our building,  
22 there was a lot of maintenance issues, so we would put work orders

1 in, but they were kind of slowly getting done. So, certain tasks, I  
2 personally told him to go and put the work orders in, and all of a  
3 sudden, things started getting done. He built a rapport down there  
4 with people who are responsible for fixing some of the stuff and came  
5 up with all kinds of ideas to get things done within our building.

6 Q. So do you think he made a difference in that regard, as far  
7 as getting things accomplished?

8 A. Yes. On some of the stuff, we had put repeated work orders  
9 in for them, and for some reason, they didn't get done. He started  
10 to get things done.

11 Q. Why did you choose Specialist Cruz to help you with that?

12 A. I think the soldiers we had to choose from that worked in  
13 the MI, I thought he was more responsible.

14 Q. What was his unit's mission? What was Specialist Cruz's  
15 unit's mission at that point?

16 A. Well, HHD was the Headquarters and Headquarters Detachment  
17 for the brigade, so we housed all of the staff and performed all the  
18 staff functions for the brigade.

19 Q. How would you describe his level of dedication to the  
20 mission?

21 A. I thought he was pretty dedicated. He never--he was always  
22 at work on time and he was always, you know, he was upbeat about

1 everything. He never really complained about some of the stuff that  
2 some of the other soldiers were complaining about.

3 Q. How well did he get along with other soldiers?

4 A. He got along pretty well with all the other soldiers. Even  
5 one of the soldiers who, they were in the same rank but she was in  
6 charge of him, she's not the--she's lacking on some of her leadership  
7 skills, he never even argued with her. He would just tell me about  
8 some of the issues they had and I would go fix them, or either the  
9 first sergeant would go fix them.

10 Q. Was he receptive to learning new things? Did you all talk  
11 about those sorts of matters as far as--well, I guess, you've shared  
12 some things with me about, just kind of having an NCO-to-soldier  
13 talk.

14 A. Right, I would talk with him as I started to learn, you  
15 know, more about what was going on. I talked to him about just  
16 keeping his head up, and I talked to him as an NCO, a senior NCO  
17 about, especially because he had been over here so long, about some  
18 of the things that I had went through when I was deployed and I had  
19 to be extended and things like that, but just to keep his head up and  
20 to stay motivated and to just keep doing the right things that he was  
21 doing.

22 Q. And he did that.

1 A. Yes.

2 Q. How does he treat his superiors?

3 A. I think he has an overwhelming respect for his superiors.  
4 I think that, in my opinion, just the time he was in HHD, I think  
5 he's kind of a reflection of his superiors. We've got some pretty  
6 good leaders, the first sergeant and company commander, at the time,  
7 the brigade commander and sergeant major, and then I was there. He  
8 did--he looked for approval from his superiors, and I would give him,  
9 you know, I would tell him, "Hey, you did a good job here." It was  
10 almost like, to me, it was like giving a kid a toy at Christmas. It  
11 just made him feel good knowing that his superiors said, you know,  
12 good things about him.

13 Q. How was his military bearing?

14 A. Outstanding, I mean, he was always at parade rest when he  
15 talked to NCOs. He always addressed people properly. He had pretty  
16 good military bearing.

17 Q. How was his overall attitude?

18 A. I think he has a positive attitude, I mean, you wouldn't  
19 think that he was even going through anything because he was always  
20 positive. He would sit and talk about, not only would we talk about  
21 military things, but sometimes talk about his civilian life and some  
22 of the things he did as far as in civilian life, and how he was

1 looking forward to getting back and doing some of the things with  
2 some of the social organizations that he was with.

3 Q. Have you formed an opinion as to his rehabilitative  
4 potential?

5 A. I don't know if I've formed an opinion, I try not to. I  
6 mean, I'm not sure.

7 Q. Would you be willing to, let me ask this, would you be  
8 willing to serve with him again?

9 A. If I had a choice, I would definitely serve with him. He  
10 would be one of the soldiers that I would definitely choose to work  
11 with me because I think he shows initiative. I think he's  
12 hardworking. I think he works hard for his leadership. I think with  
13 good leadership, he's an outstanding soldier.

14 CDC: No further questions, thank you, Sergeant.

15 MJ: Trial counsel, do you have any questions of Sergeant [REDACTED]

16 TC: No, Your Honor.

(b)(7)(C)-2

17 [The witness was excused and remained in the spectator's gallery.]

18 CDC: Your Honor, we'd like to call Captain [REDACTED]  
19 please.

20 [END OF PAGE.]



1 Captain <sup>(b)(6)2;(7)(C)2</sup> [REDACTED] U.S. Army, was called as a witness for the  
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major <sup>(b)(6)2;(7)(C)-2</sup> [REDACTED]]:

5 Q. State your full name.

6 A. <sup>(b)(6)2;(7)(C)-2</sup> [REDACTED].

7 Q. Your unit of assignment, please.

8 A. <sup>(b)(6)2;(7)(C)-2</sup> [REDACTED], 502d MI

9 Battalion.

10 Questions by the defense <sup>(b)(6)4;(7)(C)-4</sup> [REDACTED]:

11 Q. How long have you been in the Army?

12 A. 14 years.

13 Q. Is that active duty time?

14 A. Yes, that's active duty time.

15 Q. Prior enlistment.

16 A. Prior enlisted.

17 Q. Excuse me, prior enlisted. Have you ever been deployed  
18 before?

19 A. Yes.

20 Q. How many times?

21 A. Three.

22 Q. And do you know Specialist Cruz?

1 A. I do.

2 Q. How do you know him?

3 A. He came to our unit. We hold formation every day at  
4 Headquarters Company. It's at 8:30 in the morning, except for  
5 Mondays, we have formation at 8 o'clock. And every morning, I see my  
6 soldiers every single day, and on one particular day, I noticed that  
7 Specialist Cruz arrived at [REDACTED]  
8 [REDACTED] and he showed up and I spoke to [REDACTED]  
9 [REDACTED] about, you know, who was this soldier? And he briefly  
10 said he'd talk to me offline [REDACTED] which he then went  
11 in to say that he was roughly on holdover. He didn't really know the  
12 full gist of what the holdover was entailing. And at that point, we  
13 found out later that he was going to be assigned to [REDACTED] that he  
14 originally came from the HHD, 504th MI Brigade, and that he was in  
15 part of [REDACTED]

16 Q. What was your initial impression of him?

17 A. It really wasn't any impression. I look at [REDACTED]  
18 equally, and I gave him the courtesy. I went up to him, introduced  
19 myself, asked him if he needed anything, you know, where was he going  
20 to be staying, where was he staying currently at the time. And then  
21 I spoke to [REDACTED] afterwards and said you know, "Let me  
22 know if there's any problems, if he needs anything at all." And at

1 the time, we still didn't know. I personally didn't know anything  
2 about what was going on.

3 Q. What duties did you assign him?

4 A. Initially, my [REDACTED] said that he was going to the  
5 command sergeant major for the 502d MI and they were looking at  
6 putting him in some form of position working with 51 Fox; 51 Fox is  
7 the building where all the soldiers are mainly housed, a three-story  
8 building. And we were trying to create a better quality of life for  
9 the soldiers there at 51 Fox, because when we arrived there in  
10 January, it was pretty much a gutted out building. It was in  
11 shambles, and it needed a lot of attention.

12 Q. Did Specialist Cruz help you in that regard?

13 A. He did. We decided that we were going to go out and  
14 purchase some equipment for the soldiers. Part of it was, in this  
15 technology today, soldiers rely on email. It's a great thing for  
16 soldiers to have. Also, being over here when we first arrived,  
17 phones were a hard thing to come by. There was one little trailer.  
18 They went up and they purchased some satellite technology, dishes and  
19 stuff, and along with my soldiers, the electronic personnel, they put  
20 this whole system together along with my sister battalion personnel,  
21 and they put that MWR together. And it was isolated in this one room  
22 inside 51 Fox, and we primarily did that because we didn't want the

1 soldiers going outside if they didn't have to, everything could just  
2 stay there, the fact of--mortar attacks and stuff that was going on  
3 when we first arrived.

4 Q. Did you have an opportunity to either observe him perform  
5 his duties or to see his work?

6 A. Correct on both. I've seen him work and I've seen what  
7 he's done. When they first started out, they initially had the MWR  
8 in a really small area, and they moved it to another mezzanine on the  
9 second floor to make it much bigger and to give the soldiers more  
10 options. When I say "options," we had at one end the computers and  
11 the phones, and then they took and they put in a bunch of electronic  
12 equipment, amplifiers, speakers and a Proxima so that the soldiers  
13 would be able to watch DVDs or VHS movies, they could put them up on  
14 the wall and they didn't need a screen.

15 Q. How would you describe his execution of those duties?

16 A. No problems whatsoever.

17 Q. Is it more than just no problems, I mean, did he do it  
18 well?

19 A. He did an excellent job. I've never had any single  
20 problems since Specialist Cruz has been in my unit. He knows from  
21 being in [REDACTED], along with any of my NCOs, [REDACTED] is very well

1 disciplined, and he's had no problems whatsoever, you know, came  
2 right into the unit and became one of us.

3 Q. Is he a soldier that just does what he's told to do, or  
4 does he take initiative?

5 A. There are times when he has actually gone above what  
6 [REDACTED] has asked him to do, and he's come back and shown the  
7 [REDACTED] the stuff that he did. Case in point, that the  
8 electronics and the Proximas, he helped out one of my fellow soldiers  
9 that I had working up at MWR, was actually one of my cooks, because  
10 of the fact when we deployed over here, we weren't really sure what  
11 our mission was for our cooks, and we found out there was a lot of  
12 contractual bids with different companies that were running the food  
13 service. So, we put a couple of our cooks into different areas to  
14 help out, to pick up the slack, and one of them was Specialist [REDACTED]  
15 and he worked with Specialist Cruz on a daily basis.

16 Q. How well does Specialist Cruz get along with other soldiers  
17 in the unit?

18 A. His relationship, what I've seen, what I've observed has  
19 been, there's been no issues at all. He's gotten along with  
20 everybody in the unit. My unit has taken him in. When he first came  
21 to the unit because, again, I look at my unit as every soldier in my

1 [REDACTED] is my family. I'm a little older than most, and I treat it  
2 that way. I treat every one of my soldiers as a part of my family.

3 Q. How does Specialist Cruz treat his superiors?

4 A. With dignity and respect; it's never unwavering. Whenever  
5 I've approached him, he's popped a salute right away. It wasn't  
6 something that was like, you know, very slow motion or anything like  
7 that. It was very popped, "Good morning, sir. Good afternoon, sir."  
8 It was always a greeting, very respectful.

9 Q. Is your experience that other soldiers don't do that?

10 A. I've had soldiers that are, I can't characterize on their  
11 reasoning or why they were doing it, but I mean, I've had soldiers,  
12 they could have had a bad day or whatever and they were, "Hey, sir,  
13 what's going on?" that sort of stuff like that, but he never  
14 exhibited anything like that.

15 Q. So, how would you describe his military bearing overall?

16 A. In the past that he's been under [REDACTED] excellent.

17 Q. His attitude?

18 A. Professional.

19 Q. And have you formed an opinion as to his rehabilitative  
20 potential?

21 A. I think that, in light of what's transpired, I think that  
22 he can be rehabilitated, I do.

1 MJ: That's all you're permitted to say. Go ahead.

2 Q. Would you be willing to serve with him again?

3 TC: Your Honor, we'd object to that question. It's an Ohrt

4 violation.

5 MJ: The objection is sustained.

6 Q. You are the officer who initially [REDACTED] in this

7 case?

8 A. Correct, I am.

9 Q. And you continue to put Specialist Cruz or keep him in

10 the...he's allowed to have his weapon and continued to serve in your

11 unit, sometimes unsupervised?

12 A. That is correct, because I didn't see the need for taking

13 away the part--for self defense measures, and he never exhibited any

14 type of unprofessionalism that would warrant us to take away his

15 weapon.

16 Q. So you would be willing to be in the foxhole with him?

17 TC: Objection, the same....

18 MJ: Sustained.

19 CDC: No further questions, Your Honor.

20 MJ: Trial counsel, any questions?

21 TC: No, Your Honor.

22 [The witness was excused and remained in the spectator's gallery.]

1 A. I do.

2 Q. How do you know him?

3 A. He came to our unit. We hold formation every day at  
4 Headquarters Company. It's at 8:30 in the morning, except for  
5 Mondays, we have formation at 8 o'clock. And every morning, I see my  
6 soldiers every single day, and on one particular day, I noticed that  
7 Specialist Cruz arrived at our formation. And I know every single  
8 one of my soldiers as a commander, and he showed up and I spoke to my  
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13 found out later that he was going to be assigned to our unit, that he  
14 originally came from the HHD, 504th MI Brigade, and that he was in  
15 part of my company, HHS.

16 Q. What was your initial impression of him?

17 A. It really wasn't any impression. I look at all my soldiers  
18 equally, and I gave him the courtesy. I went up to him, introduced  
19 myself, asked him if he needed anything, you know, where was he going  
20 to be staying, where was he staying currently at the time. And then  
21 I spoke to my first sergeant afterwards and said you know, "Let me  
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1 the time, we still didn't know. I personally didn't know anything  
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16 soldiers to have. Also, being over here when we first arrived,  
17 phones were a hard thing to come by. There was one little trailer.  
18 They went up and they purchased some satellite technology, dishes and  
19 stuff, and along with my soldiers, the electronic personnel, they put  
20 this whole system together along with my sister battalion personnel,  
21 and they put that MWR together. And it was isolated in this one room  
22 inside 51 Fox, and we primarily did that because we didn't want the

1 soldiers going outside if they didn't have to, everything could just  
2 stay there, the fact of--mortar attacks and stuff that was going on  
3 when we first arrived.

4 Q. Did you have an opportunity to either observe him perform  
5 his duties or to see his work?

6 A. Correct on both. I've seen him work and I've seen what  
7 he's done. When they first started out, they initially had the MWR  
8 in a really small area, and they moved it to another mezzanine on the  
9 second floor to make it much bigger and to give the soldiers more  
10 options. When I say "options," we had at one end the computers and  
11 the phones, and then they took and they put in a bunch of electronic  
12 equipment, amplifiers, speakers and a Proxima so that the soldiers  
13 would be able to watch DVDs or VHS movies, they could put them up on  
14 the wall and they didn't need a screen.

15 Q. How would you describe his execution of those duties?

16 A. No problems whatsoever.

17 Q. Is it more than just no problems, I mean, did he do it  
18 well?

19 A. He did an excellent job. I've never had any single  
20 problems since Specialist Cruz has been in my unit. He knows from  
21 being in my unit, along with any of my NCOs, my company is very well

1 disciplined, and he's had no problems whatsoever, you know, came  
2 right into the unit and became one of us.

3 Q. Is he a soldier that just does what he's told to do, or  
4 does he take initiative?

5 A. There are times when he has actually gone above what my  
6 first sergeant has asked him to do, and he's come back and shown the  
7 first sergeant the stuff that he did. Case in point, that the  
8 electronics and the Proximas, he helped out one of my fellow soldiers  
9 that I had working up at MWR, was actually one of my cooks, because  
10 of the fact when we deployed over here, we weren't really sure what  
11 our mission was for our cooks, and we found out there was a lot of  
12 contractual bids with different companies that were running the food  
13 service. So, we put a couple of our cooks into different areas to  
14 help out, to pick up the slack, and one of them was Specialist (b)(6)(b)(7)(C) 2  
15 and he worked with Specialist Cruz on a daily basis.

16 Q. How well does Specialist Cruz get along with other soldiers  
17 in the unit?

18 A. His relationship, what I've seen, what I've observed has  
19 been, there's been no issues at all. He's gotten along with  
20 everybody in the unit. My unit has taken him in. When he first came  
21 to the unit because, again, I look at my unit as every soldier in my

1 company is my family. I'm a little older than most, and I treat it  
2 that way. I treat every one of my soldiers as a part of my family.

3 Q. How does Specialist Cruz treat his superiors?

4 A. With dignity and respect; it's never unwavering. Whenever  
5 I've approached him, he's popped a salute right away. It wasn't  
6 something that was like, you know, very slow motion or anything like  
7 that. It was very popped, "Good morning, sir. Good afternoon, sir."  
8 It was always a greeting, very respectful.

9 Q. Is your experience that other soldiers don't do that?

10 A. I've had soldiers that are, I can't characterize on their  
11 reasoning or why they were doing it, but I mean, I've had soldiers,  
12 they could have had a bad day or whatever and they were, "Hey, sir,  
13 what's going on?" that sort of stuff like that, but he never  
14 exhibited anything like that.

15 Q. So, how would you describe his military bearing overall?

16 A. In the past that he's been under my command, excellent.

17 Q. His attitude?

18 A. Professional.

19 Q. And have you formed an opinion as to his rehabilitative  
20 potential?

21 A. I think that, in light of what's transpired, I think that  
22 he can be rehabilitated, I do.

1 MJ: That's all you're permitted to say. Go ahead.

2 Q. Would you be willing to serve with him again?

3 TC: Your Honor, we'd object to that question. It's an Ohrt  
4 violation.

5 MJ: The objection is sustained.

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

6 Q. You are the officer who initially [REDACTED] in this  
7 case?

8 A. Correct, I am.

9 Q. And you continue to put Specialist Cruz or keep him in  
10 the...he's allowed to have his weapon and continued to serve in your  
11 unit, sometimes unsupervised?

12 A. That is correct, because I didn't see the need for taking  
13 away the part--for self defense measures, and he never exhibited any  
14 type of unprofessionalism that would warrant us to take away his  
15 weapon.

16 Q. So you would be willing to be in the foxhole with him?

17 TC: Objection, the same....

18 MJ: Sustained.

19 CDC: No further questions, Your Honor.

20 MJ: Trial counsel, any questions?

21 TC: No, Your Honor.

22 [The witness was excused and remained in the spectator's gallery.]

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

1 CDC: Your Honor, we'd like to call Sergeant First Class [REDACTED]

2 [REDACTED]  
3 Sergeant First Class [REDACTED], U.S. Army, was called as a  
4 witness for the defense, was sworn, and testified as follows:

5 DIRECT EXAMINATION

6 Questions by the trial counsel [Major [REDACTED]]:

7 Q. Please state your full name.

8 A. [REDACTED].

9 Q. Unit of assignment?

10 A. HHS, 502d MI.

11 Questions by the defense [Mr. [REDACTED]]: (b)(6)2, (b)(7)(C) - 2

12 Q. What's your current MOS?

13 A. My current MOS is 33 Whiskey, electronic warfare repair,  
14 sir.

15 Q. How long have you been in the Army?

16 A. I've been in 19 years.

17 Q. And that's active duty time?

18 A. All active duty time.

19 Q. And how many times have you been deployed?

20 A. This is my second deployment.

21 Q. Do you know Specialist Cruz?

22 A. Yes, I do, sir.

1 Q. How do you know him?

2 A. I know Specialist Cruz from when he was assigned to our  
3 unit in June. Right after he got assigned to the unit, I noticed him  
4 out in the formation area, and I asked him who his platoon sergeant  
5 was, and he said he hadn't really been assigned to a platoon at that  
6 time. Based on my first impression of him, I told him, "Hey, I tell  
7 you what, we'll put you in our platoon. I'll assign you a squad  
8 leader who will look out for you, and we'll take care of you."

9 Q. So you've known him since June?

10 A. Roger, sir.

11 Q. Have you had an opportunity to observe his duties?

12 A. He works out--in my platoon, he works for us in the MWR  
13 room, so I observe his duties every day.

14 Q. How would you describe his execution of those duties?

15 A. He's always executed his duties very professionally, always  
16 done them to standard. Usually, he always tries to improve things  
17 rather than just go with what's already happening.

18 Q. How receptive is he to you as far as any suggestions that  
19 you would make to him?

20 A. He's been very receptive. Anything I've ever asked  
21 Specialist Cruz to do, he's been motivated to do, never gave me any  
22 issues, always willing to help out.

1 Q. How well does he get along with the other soldiers in the  
2 unit?

3 A. I think he gets along excellent with the other soldiers.  
4 He's developed a lot of friendships. Once he came into our platoon,  
5 he immediately made himself a part of the platoon by showing he has  
6 teamwork. He was always motivated to help everybody out. He has a  
7 very generous personality, so any time he saw anybody performing any  
8 type of detail, even though he might not have been tasked to be  
9 involved, he'd always jump in to help out and give somebody a helping  
10 hand.

11 Q. You mentioned something, we had talked before and you  
12 mentioned something before about him packing. Can you describe that  
13 for the court, please?

14 A. Sure. Before the appearance in court, we were to inventory  
15 all of Specialist Cruz's gear. This is the second time I've been  
16 involved in a court-martial. The other soldiers, I had to inventory  
17 their gear, once we went into their area, it was usually trashed, the  
18 soldiers were not prepared. Basically, we were boxing up garbage.  
19 They were like, "Oh, I want to keep that, Sergeant." So we'd have to  
20 pack all their junk up, and it would be totally a waste of time.  
21 We'd spend 3 or 4 hours doing it.



1           When we went to do Specialist Cruz's room the other night,  
2 he already had all his gear laid out dress right dress. He had got  
3 down to the detail where he had his underwear, t-shirt and socks  
4 rolled within one bundle so it was just like, it took us about 30  
5 minutes to inventory all his gear.

6           Q.   How does that make you feel as a platoon sergeant?

7           A.   That makes me feel excellent. I didn't give him that  
8 direction. I said, "Hey, we're going to come and inspect at this  
9 time," and I told him what we'd be looking for. And once again, he  
10 excelled above the standard. He took the initiative. He knew what  
11 we'd be looking for. He's been in the military a few years. He just  
12 went way above what I expected.

13          Q.   How would you describe his military bearing?

14          A.   It's been excellent ever since I've known him. Like I  
15 said, the first time I met him, the first thing he did was pop to  
16 parade rest. He addressed me as "Sergeant" every time he talks to  
17 me. His bearing has been better than a lot of soldiers that are on  
18 active duty. I know he's a Reservist. I know the situation he's  
19 been in. He's never shown any disrespect toward anybody.

20          Q.   How has his overall attitude been?

21          A.   Once again, his attitude has been excellent. When I first  
22 met him, I didn't know what the circumstances he was held over for.

1 He just seemed to be held over on some type of admin reason. He was  
2 always cheerful. He always had good things to say about everybody.  
3 If somebody was down, he was always one of the first guys to step in  
4 and try to lighten the mood up and make people feel better. His  
5 attitude toward his duties has been excellent. He's never questioned  
6 anything we've asked him to do. As a matter of fact, his duties in  
7 the MWR room were actually considered kind of an easier job. He's  
8 inside all day. He's got computer access, TV access. But instead of  
9 just riding those duties and just getting over, he comes out and he  
10 volunteers to help us load connexes. He volunteers to be on escort  
11 duty out in the sun all day. Anything we've ever needed, he's always  
12 stepped up.

13 Q. Have you formed an opinion as to his rehabilitative  
14 potential?

15 A. Yes, I have. I know a lot of his future goals are to go  
16 back and get his master's degree and eventually become a teacher.  
17 He's also--he still wants to remain in the military, and I think he'd  
18 still make an excellent soldier. I don't think he's shown anything  
19 other than being an excellent soldier. So I think he is fully  
20 rehabilitatable.

21 CDC: Thank you, sergeant. Nothing further.

22 MJ: Trial counsel, anything?

1 TC: No questions, sir.

2 [The witness was excused and remained in the spectator's gallery.]

3 CDC: Your Honor, we don't have any more live witnesses, just  
4 telephonic.

5 MJ: Are they ready to go?

6 TC: Yes, sir, I believe so.

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

7 **First Sergeant [REDACTED], U.S. Army, was called as a witness for**  
8 **the defense, was sworn, and testified telephonically as follows:**

9 **DIRECT EXAMINATION**

10 **Questions by the trial counsel [Major [REDACTED]]:**

11 Q. First Sergeant, if you'd please state your full name.

12 A. [REDACTED]

13 Q. And your unit of assignment?

14 A. HHSC, 502d MI Battalion.

15 **Questions by the defense [Mr. [REDACTED]]:** *(b)(6)-4, (7)(C) 4*

16 Q. [REDACTED], are you there?

17 A. Yes, sir, I'm here.

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

18 Q. This is [REDACTED], we've spoken before.

19 A. Yes, sir.

20 Q. Now, you're presently in Washington?

21 A. That's correct, I'm in Tacoma.

1 Q. And you're otherwise, when you're present here in Iraq,  
2 you're Specialist Cruz's [REDACTED] (b)(6)-(b)(7)(C)-2

3 A. That is correct.

4 Q. How long have you been in the Army?

5 A. I've been in the Army approximately 18 years.

6 Q. And is that active duty time?

7 A. That is active duty time.

8 Q. How many times have you been deployed?

9 A. I have been deployed for [inaudible].

10 Q. Now, what were Specialist Cruz's duties in your unit?

11 A. [Inaudible]

12 Q. Did you have an opportunity to observe him perform his  
13 duties or to see his work?

14 A. Yes, I did observe him on a regular basis.

15 Q. And what was your observation of his duties?

16 A. [Inaudible] ...I never had to go back and check and see  
17 what he was... [inaudible] ...very responsible, and then any time  
18 [inaudible].

19 Q. Did you ever see him take initiative?

20 A. [Inaudible]

21 Q. How was his attitude?

22 A. I never had problems with his attitude.

1 Q. Did he get along well with other soldiers in the unit?  
2 A. Yes, he always got along well with soldiers in the unit.  
3 Q. Did you feel he was dedicated to the unit's mission?  
4 A. [Inaudible]  
5 Q. If he weren't pending UCMJ action, would you be willing to  
6 assign him to other duties?  
7 TC: Your Honor, object.  
8 MJ: The objection is overruled.  
9 WIT: [Inaudible]  
10 TC: Your Honor, I just want to make sure that the court  
11 reporter can hear the audio.  
12 MJ: [To the reporter] Can you hear it okay?  
13 REPT: [Negative response.]  
14 MJ: Ask him to speak a little louder.  
15 Q. First Sergeant, can you speak a little louder, please?  
16 We're having a little trouble hearing you.  
17 A. Yes, I can.  
18 Q. Thank you. How is Specialist Cruz's military bearing?  
19 A. Each time I spoke with Specialist Cruz, [inaudible].  
20 CDC: [To the reporter] Are you able to hear that now?  
21 REPT: [Negative response.]

1 Q. Has Specialist Cruz been receptive to any suggestions that  
2 you've made to him?

3 A. [Inaudible]

4 Q. Compared to other soldiers that you've seen that have been  
5 facing UCMJ action, how would you compare his attitude to those  
6 soldiers?

7 A. [Inaudible]...Specialist Cruz's attitude has been  
8 excellent. [Inaudible] He's maintained his military bearing and has  
9 worked through all of this.

10 CDC: Thank you, First Sergeant. No further questions.

11 TC: No questions, Your Honor.

12 [The witness was excused and the phone call terminated.]

13 CDC: Your Honor, would there be any objection to offering also  
14 the stipulations of expected testimony just to make sure that....

15 TC: No, Your Honor, not from the government, sir.

16 MJ: No, not at all. Well, you have no objection?

17 TC: Sir, I have no objection.

18 MJ: I have no objection.

19 [END OF PAGE.]

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

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

3 DIRECT EXAMINATION

4 Questions by the trial counsel [Major [REDACTED]]:

5 Q. Please state your full name.

6 A. [Inaudible]

7 Q. Sergeant [REDACTED], we're going to ask you to speak up a  
8 little louder so that the military judge can hear your answers.

9 Could you state your unit of assignment, please?

10 A. [Inaudible.]

11 CDC: Your Honor, may I offer a suggestion? It sounds like he  
12 may be on a cell phone. Is there a land line that we can call him  
13 and ask him that?

14 MJ: Is he on a cell phone?

15 Q. Sergeant [REDACTED] it sounds like you're on a cell phone.  
16 Is that the case?

17 A. Yes.

18 Q. We're going to let you talk to our tech guys, and can you  
19 give us a good land line that we can call you on?

20 A. This is the only...I have.

21 Q. I'm sorry?

22 A. This is...only I have right now.

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1 MJ: I don't think this is going to work, Mr. [REDACTED]. (b)(6)-4/(7)(C)4

2 CDC: I agree.

3 MJ: Do you want to use the stipulation of expected testimony  
4 for this witness?

5 CDC: Yes, Your Honor, if that's okay with Specialist Cruz.

6 MJ: He's just breaking up, or we could wait until he finds a  
7 land line.

8 CDC: I don't think--it's a matter of a phone company coming out  
9 for the land line, unless he went out and drove somewhere.

10 MJ: Why don't you excuse the witness?

11 [The witness was excused and the phone call terminated.]

12 You have one more telephonic?

13 CDC: Yes, sir.

14 MJ: Mr. [REDACTED] (b)(6)4/(7)(C)-4, lead the witness a little bit more and we'll get  
15 shorter and maybe "yes" or "no" answers.

16 CDC: No problem, Your Honor.

17 Staff Sergeant [REDACTED] (b)(6)2/(7)(C)-2, U.S. Army, was called as a witness  
18 for the defense, was sworn, and testified telephonically:

19 DIRECT EXAMINATION

20 Questions by the trial counsel [Major [REDACTED]]: (b)(6)-2/(7)(C)2

21 Q. State your full name.

22 A. [REDACTED]



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

1 Q. And Sergeant [REDACTED] if you could spell your last name,  
2 please?

3 A. It's spelled [REDACTED]

4 Q. Thank you, and if you would state your unit of assignment.

5 A. It's Delta Company, 321st [inaudible].

6 MJ: Mr. [REDACTED], I recommend you keep the questions short,  
7 because I'm having difficulty hearing this guy.

8 CDC: Yes, Your Honor.

9 Questions by the defense [Mr. [REDACTED]: (b)(6)-4; (7)(C)-4

10 Q. Sergeant [REDACTED], you've known Specialist Cruz since you all  
11 first came in country, or did you all meet in Abu Ghraib?

12 A. He came to Iraq [inaudible].

13 Q. I'm not sure I understood your answer on that. When did  
14 you first meet Specialist Cruz?

15 A. I first met Specialist Cruz in Dallas.

16 Q. Oh, okay, my apologies. So you've known him for how long?

17 A. Oh, let's see, about [inaudible].

18 Q. Now, you all served in Abu Ghraib together, and when you  
19 were at Abu Ghraib, there was a mortar attack?

20 A. Yes, that's correct.

21 Q. And Specialist Cruz was there with you during the attack?

22 A. Yes, he was.

1 Q. And there were several soldiers injured in that attack,  
2 correct?  
3 A. Yeah, a couple dozen injuries [inaudible].  
4 Q. And two soldiers were killed?  
5 A. That's correct.  
6 Q. And one of those soldiers was very close, not only a  
7 section leader, but Specialist Cruz was very close to that soldier?  
8 A. That is correct.  
9 Q. And that was Sergeant [REDACTED] (b)(6)-2;(7)(C)-2  
10 A. Yes.  
11 Q. Now, when the first mortar hit, you all hit the ground?  
12 A. There were three of us, Chief [REDACTED] [inaudible] all in a  
13 tent. (b)(6)-2;(7)(C)-2  
14 CDC: Could you hear that, Your Honor?  
15 TC: Your Honor, I suggest on this witness, I believe he will  
16 have a land line. We could take those 2 minutes and reconnect to a  
17 landline.  
18 MJ: Let Major [REDACTED] (b)(6)2;(7)(C)-2 do this, Mr. [REDACTED] (b)(6)4;(7)(C)-4  
19 TC: Sergeant, this is Major [REDACTED] (b)(6)2;(7)(C)-2 again. Do you have a  
20 landline, don't tell me the number yet, but do you have a land line  
21 that we can call you back on?  
22 WIT: [Inaudible.]

1 TC: I apologize. [To the witness] Thank you, we're having a  
2 little difficulty making out some of your answers just because of the  
3 connection. So, if you could speak as clearly and as loudly as  
4 possible.

5 WIT: Yes, sir.

6 MJ: Repeat the last question, Mr. [REDACTED] (b)(6)-4, (b)(7)(D)-4

7 CDC: Frankly, Your Honor, I don't know where I was.

8 MJ: What happened when the mortar hit?

9 CDC: Thank you, sir.

10 **Questions by the defense [continued]:**

11 Q. Sergeant, when the first mortar hit, you all hit the  
12 ground?

13 A. Yes, sir.

14 Q. And then you all were scrambling to get your gear?

15 A. Yes.

16 Q. When I say "your gear," your body armor and your helmets  
17 were in another tent?

18 A. We were [inaudible].

19 Q. And that night, you all were getting ready to start work  
20 and you were without your gear, and then a second mortar hit by the  
21 time you all started to get up after the first one?

22 A. That's correct.

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all

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

1 Q. Now, before you got up, was Specialist Cruz bringing  
2 another injured soldier back to you?

3 A. Right, he was bringing our teammate at the time, Staff  
4 Sergeant [REDACTED], back into the tent.

5 Q. And Sergeant [REDACTED] had been hit, as well as Specialist Cruz?

6 A. I'm sorry, sir?

7 Q. Sergeant Cruz [sic] was hit, as well as Sergeant [REDACTED]?

8 A. Yes, correct.

9 Q. And then you began treating Sergeant [REDACTED]

10 A. Yes.

11 Q. And Specialist Cruz then said, "I'm going to go back out  
12 there."

13 A. Yes.

14 Q. And when you got done attending to the needs of Sergeant  
15 [REDACTED] you went out there and you saw Specialist Cruz attending to  
16 Sergeant [REDACTED]

17 A. Yes, Specialist Cruz, along with several other individuals,  
18 at that time, I was taking Staff Sergeant [REDACTED] into the building  
19 [inaudible].

20 Q. And you observed Specialist Cruz performing chest  
21 compressions on Sergeant [REDACTED]

*all*  
(b)(6)-2 (X)(C)-2

1           A.    Yes, I did.  When I took Sergeant [REDACTED] over to the medic  
2   [inaudible] and Specialist Cruz along with the medic [inaudible]  
3   vehicle, and I at that time [inaudible] Specialist Cruz and I were  
4   [inaudible] medic, each other as [inaudible], when he could, that he  
5   was being attended to and keeping him conscious, alive.

6           Q.    Could you briefly describe Sergeant [REDACTED] injuries?

7           A.    Yes.  [Inaudible], when the mortar hit.  Much of the damage  
8   that occurred happened to his right side, primarily the upper body.  
9   Also, it had roughly [inaudible] hole in his front [inaudible].

10          Q.    I'm sorry, Sergeant.  He was hit in the head, the neck,  
11   approximately how many times?

12          A.    It shredded his right upper torso, was very [inaudible].

13          Q.    You said his right upper--his lower arm, right arm was  
14   blown off, is that correct, and the remainder was shredded?

15          A.    I believe that is correct.

16          Q.    And you've heard Specialist Cruz saying encouraging things  
17   to Sergeant [REDACTED]

18          A.    Yes, he was very positive.  He was very encouraging.  He  
19   was with [inaudible].

20          Q.    When you're saying it was nonstop, he was telling him,  
21   "You're going to make it.  You can do this.  We're here for you.  
22   Hang in there."

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

1 A. Yes, exactly.

2 Q. And then, you all loaded him up and he was taken away, then  
3 you all continued to tend to the other injured soldiers?

4 A. Yes, correct. What he did was he took off with the vehicle  
5 that Specialist [REDACTED] was in the back of [inaudible] procedures.  
6 He asked to be [inaudible] of that vehicle [inaudible] to the helipad  
7 and continued [inaudible] and the others on the helicopter to be  
8 EVAC'd to Cropper and BIAP and [inaudible].

9 Q. And then after you all attended to the other soldiers, you  
10 went to the hospital or at least at some point learned that he was  
11 dead on arrival at the hospital, and then took another chopper ride  
12 to the morgue facility where he was?

13 A. Correct, sir.

14 Q. And is that something that Specialist Cruz had wanted to  
15 do?

16 A. Yes. Armin wanted very much to see that [REDACTED] had the  
17 best possible care given to him and that [inaudible] the deceased.  
18 He wanted to follow on and make sure he was put to rest properly in  
19 his interim rest place.

20 Q. And was Sergeant [REDACTED] was Specialist Cruz close to  
21 Sergeant [REDACTED]

22 A. Yes, very close.

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

1 Q. I'm sorry?

2 A. Yes, they were.

3 Q. After this, was there a time when Specialist Cruz went to  
4 his chain of command, I say specifically Sergeant First Class  
5 [REDACTED] to ask him for help to deal with his experience after this  
6 mortar attack?

7 A. There was one time, specifically, where Specialist Cruz  
8 [inaudible] Sergeant First Class [REDACTED] and [inaudible] spoken with  
9 everybody who [inaudible] Specialist Cruz [inaudible].

10 Q. Okay, so he did seek help, but it is my understanding that  
11 the combat stress team may have come out, but it was more like they  
12 addressed everyone as a group, whereas Specialist Cruz was seeking  
13 out more individual attention that was never given to him?

14 A. Correct, as I understand it.

15 Q. Well, you went with him, correct, to ask for that help?

16 A. Yes, I'm his--Sergeant [REDACTED] and myself were along with  
17 Specialist Cruz. We were all being mortared. Sergeant [REDACTED] and  
18 his folks [inaudible] so we were [inaudible].

19 Q. Okay, but essentially, to put it in your words, you all  
20 were laughed off.

21 A. Sorry, sir?

1 Q. I don't want to put words in your mouth, but it's my  
2 understanding that your feeling is is that when you all approached  
3 the chain of command, that you were essentially, and when I say chain  
4 of command, Sergeant First Class (b)(6)2, (b)(7)(C)-2 he was the point of contact  
5 for that, and you all were, essentially, laughed off.

6 A. I would say as much, sir. [Inaudible] his response perhaps  
7 was more like, "Oh, what do you want me to do?" [inaudible] help you  
8 or whatever. That was the [inaudible] that was conveyed.

9 Q. Okay, and you all were short of soldiers, at least military  
10 analysts, correct?

11 A. I'm sorry, sir?

12 Q. You were short on military analysts, correct?

13 A. Yes, from what I saw [inaudible] very similar [inaudible]  
14 and as it turns out, the leadership [inaudible] that we did have and  
15 move them to different work schedules [inaudible]. That's how myself  
16 and Sergeant [redacted] and our team [inaudible] I think at least  
17 [inaudible]. (b)(6)2, (b)(7)(C)-2

18 CDC: Okay, thank you, Sergeant. No further questions.

19 TC: Sir, the government has no questions.

20 [The witness was excused and the phone call was terminated.]

21 MJ: I understand, Mr. (b)(6)-4, (b)(7)(C)-4 is you have stipulations of  
22 expected testimony of all three of these witnesses?



1 CDC: Yes, Your Honor, may I approach the court reporter?  
2 MJ: Please.  
3 CDC: And I'd like to go ahead and offer these. I believe  
4 they've been marked.  
5 MJ: Out of an abundance of caution, because on some of the  
6 telephonic testimony, at least as far as the two we took, it would  
7 appear that most of it the court reporter could get. But Mr. [REDACTED] (b)(6)2  
8 would it be fair to say these stipulations of expected testimony, in 7(c)2  
9 particular, Defense Exhibits Echo and Golf, accurately reflect and  
10 actually reiterate what they said over the phone?  
11 CDC: Yes, Your Honor. Your Honor, I'd like to call Specialist--  
12 yes, Your Honor. No further witnesses, Your Honor.  
13 MJ: No, you can call Specialist Cruz. I've just got to go over  
14 something with him.  
15 CDC: Yes, Your Honor.  
16 MJ: I just want to give him a second.  
17 CDC: Yes, Your Honor.  
18 MJ: Do you want a break, Specialist Cruz?  
19 ACC: Yes, Your Honor.  
20 MJ: The court will be in recess.  
21 [Court recessed at 1206 and reconvened at 1219, 11 September 2004.]

1 MJ: Court is called to order. All parties are again present  
2 that were present when the court recessed.

3 Mr. [REDACTED] you wanted just to pick up the stipulation of  
4 expected testimony? *(b)(6)(2,7c)2*

5 CDC: I'm sorry, sir, I'd like to....

6 MJ: You wanted to introduce the stipulation of expected  
7 testimony?

8 CDC: Yes, Your Honor.

9 MJ: And would it be fair to say, in case there is a slight  
10 transcribing problem, that these are accurate, almost substantially  
11 verbatim summaries of what the witnesses actually testified over the  
12 phone?

13 CDC: Yes, sir.

14 MJ: I need to go over these with Specialist Cruz. Specialist  
15 Cruz, did you sign Defense Exhibits Echo, Foxtrot and Golf?

16 ACC: Yes, sir.

17 MJ: Did you read each of these stipulations before you signed  
18 them?

19 ACC: Yes, sir.

20 MJ: Do you agree with the contents of the stipulations?

21 ACC: Yes, sir.

1 MJ: Before signing these stipulations, did your defense counsel  
2 explain the stipulations to you?

3 ACC: Yes, sir.

4 MJ: Do you understand you have the absolute right to refuse to  
5 stipulate to the contents of these documents?

6 ACC: Yes, sir.

7 MJ: You should enter into these stipulations only if you  
8 believe it's in your best interest to do so. Do you understand that?

9 ACC: Yes, sir.

10 MJ: Now, I want to ensure you understand how these stipulations  
11 are to be used. When counsel for both sides and you agree to a  
12 stipulation of expected testimony, you're agreeing that, in Defense  
13 Exhibit Echo, First Sergeant [REDACTED], Defense Exhibit Foxtrot,  
14 Staff Sergeant [REDACTED], and Defense Exhibit Golf, Staff Sergeant  
15 [REDACTED] were present in court and testifying under oath, they would  
16 testify substantially as set forth in these stipulations. These  
17 stipulations do not admit the truth of the person's testimony. The  
18 stipulations can be contradicted, attacked or explained in the same  
19 way as if that person was testifying in person. Do you understand  
20 that?

21 ACC: Yes, sir.

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

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1 MJ: Now knowing what I just told you and what your defense  
2 counsel earlier told you about these stipulations, do you still  
3 desire to enter into the stipulations?

4 ACC: My only question, sir, is for the two that you could  
5 understand, they're the same thing, so....

6 MJ: What it will be, Specialist Cruz, is that I will consider  
7 both the testimony and also the stipulations, and as some of them may  
8 repeat what I heard. In fact, most of it will repeat, I will just  
9 consider them both.

10 ACC: Yes, sir, I understand.

11 MJ: Do you have any objection to me doing that?

12 ACC: No, sir.

13 MJ: Trial counsel, do you concur on the contents of the  
14 stipulations?

15 TC: We do, Your Honor.

16 MJ: Do you have any objection to the stipulations?

17 TC: No, sir.

18 MJ: Defense Exhibits E through G are admitted.

19 Defense?

20 CDC: Yes, Your Honor, we'd like to call Specialist Cruz for an  
21 unsworn statement.

22 MJ: Proceed.

1 [The accused took the stand for an unsworn statement.]

2 **UNSWORN STATEMENT**

3 **Questions by the defense [Mr. ██████]: (S)(b) 4; (7)(C) -4**

4 Q. Specialist Cruz, why did you join the Army?

5 A. Sir, I joined the Army because of some privileges I was  
6 given at an early age. I was able to travel to Guatemala, Central  
7 America and Europe, France and England, Germany, and I noticed that  
8 our country is given a lot of freedoms that we take for granted, and  
9 I felt a really deep need inside myself to serve. That's the biggest  
10 push for it, it was just an inner push. It wasn't for a GI Bill. I  
11 joined when I was a junior in college, sir. It wasn't for money. I  
12 didn't get a bonus or anything. It wasn't for a kicker or anything  
13 like that. I joined because my father served, because my father came  
14 from Cuba. I can't say my forefathers served, but I have a very  
15 patriotic sense inside me, sir, and I felt I should, and that's the  
16 only reason.

17 Q. When did you join?

18 A. I joined the Delayed Entry Program in September of 2000 and  
19 went to basic training in January of '01.

20 Q. And you're in school right now when you're not here?

1           A.    When I'm back home, I would be a senior at UT Dallas  
2   pursuing a double major in history and literature and a minor in  
3   American public education.

4           Q.    What do you do when you're not doing the Reserves or going  
5   to school?

6           A.    Of course, because of the Army and other things, I work out  
7   a lot. I rock climb, I swim. I used to be a lifeguard, I used to  
8   swim. I also have a black belt in Tae Kwon Do; I'm a martial artist,  
9   competed in wrestling and football.

10          Q.    Now, you went to basic at Fort Leonard Wood and then AIT at  
11   Fort Huachuca?

12          A.    Yes, sir.

13          Q.    Then how did you do on your test at AIT?

14          A.    At AIT, all but two tests I maxed out at 100 percent or  
15   better.

16          Q.    Now, how did you come to Iraq? How did that come about?

17          A.    I was on the way to a study group at UT Dallas. My  
18   commander called my cell phone and asked if I wanted to go to war.  
19   He said that he needed to change so many personnel from his unit to a  
20   different unit in New England and asked if I wanted to go, and made  
21   clear that, since I was a graduating senior, he wouldn't make me go.  
22   I went into the study group, told them what the deal was, I said,

1 "Listen guys. I'm sorry, I just literally got a call. I'm going to  
2 accept it." I called my commander and said, "I volunteer." I was  
3 eligible for a deployment at that time, approximately 4 months, and I  
4 told my commander, "I'm not going to miss out on the first fight the  
5 country needs me to be in just because I'm about to graduate. School  
6 will be there when I go home, sir."

7 Q.. Now, you got cross-leveled to another unit, and that was in  
8 March of '03?

9 A. That was in March of '03. It's the 325th MI Battalion.

10 Q.. And then you came in country in April of '03?

11 A. Roger.

12 Q.. What was your unit then at that point?

13 A. It was the 325th MI Battalion underneath the 205th MI  
14 Brigade.

15 Q.. And when you came in country, where was your starting point  
16 and where did you go first after that?

17 A. We started at Camp Virginia, Kuwait. I wasn't there very  
18 long, I believe 2 weeks at the most. And then I volunteered to be on  
19 the advanced party as a 60-gunner. It was just three vehicles from  
20 our battalion tacked on to another unit's advanced party. We trailed  
21 up on them and went straight up to Balad and checked the route. I

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1 wanted to get out there as quick as I can and do my job well, and  
2 volunteered to be a gunner, even though I'm MI.

3 Q. How long was the convoy ride up?

4 A. Three days.

5 Q. And so your first stop was Balad?

6 A. No, we first stopped, I don't remember all the stops. We  
7 stopped in Scania, which is south of here. We stopped somewhere  
8 between Scania and there. It was so long ago, I can't remember the  
9 exact stop, but we drove for about 12 hours the first 2 days and then  
10 about 5 or 6 hours the third day.

11 Q. And your first assignment, I won't say your first  
12 assignment, but your first destination was Balad.

13 A. My first duty position and destination or base was Balad  
14 Air Base.

15 Q. And what did you do there?

16 A. I was just part of an analytical cell. It ended up being  
17 pretty temporary. I was only there for a few weeks until they pushed  
18 me west to Ar Ramadi.

19 Q. And when did you get there?

20 A. Late April, early May, but I'm going to go with late April.

21 Q. And did anything significant happen in May while you were  
22 there?



1       A.    Yes.  It was my first experience with being shot at and  
2  insurgencies and war.  We all slept up on the room in Ramadi, tried  
3  to beat the heat and escape it.  There was one day, I was recovering  
4  from a night duty.  I was sleeping a little bit in the morning, and I  
5  heard a whiz while I was sleeping in my cot up on the roof.  I had no  
6  idea what it was, and I just passed it off and didn't worry about it.  
7  And then I heard another whiz and I looked at another guy that was up  
8  there with me, a fellow soldier, and I said, "Did you hear that?"  
9  And he said, "Yeah, I have no idea what it was, though."  And we both  
10 heard it that time, a snap, a very, very, distinct, and I can't  
11 describe it except for quoting a movie, "Blackhawk Down," a just very  
12 distinct air popping sound.  We both rolled over onto the roof, the  
13 floor, and crawled up against the retaining wall, and we heard a few  
14 more snaps, I believe two, and we were clueless.  We were clueless,  
15 we didn't know what to do.  We started devising a plan to go against  
16 this guy, and it later turned out that he was shooting from right  
17 across the street from where we were in an elevated position.  And  
18 while we were planning out a react to contact plan, to be quite  
19 honest, I'm glad we didn't.  Because in a sniper position, if we  
20 would've popped up, I believe we would have just been picked off.

21       Q.    So you learned the difference between a whiz and a snap at  
22 that point?

1 A. I learned the difference between a whiz and a snap.

2 Q. The difference....

3 A. The whiz is, as it was explained to me when I was with 3d  
4 Cavalry, is when it's in your general area and it's just going by.  
5 But the snap is when, they said, is breaking the sound barrier near  
6 your ears. So, it's kind of like a mini sonic boom in a bullet, it's  
7 just right next to you. That's how you know you're being engaged,  
8 they say.

9 Q. And then June, was there another incident that you would  
10 like to share with the court?

11 A. In June, I was on a convoy back from BIAP going towards,  
12 back to home in Ar Ramadi. It was the first time I went on a convoy  
13 that I had a bad feeling, and I went on convoys often. I was part of  
14 a team that went out three, four times a week, minimum. And it was  
15 the first time I looked at the 203 gunner, I believe it is, with the  
16 grenades that go under the M-16, and I said, "Hey, man, I don't have  
17 a good feeling about this one. Why don't you pop an HE round in  
18 there, a high explosion." And everyone, you know, was razzing me a  
19 little bit saying, "When was the last time you felt good about a  
20 convoy? The threat is there," etceteras. But I didn't have a good  
21 feeling, and I can't explain why it is. That's the only time I've  
22 been on a convoy when I didn't have a good feeling. And never since

1 has that same feeling come back. Anyway, on the way back, I'm  
2 sitting on the back driver's side near the tailgate of a 5-ton, and I  
3 feel this heat slap on the back of my neck. I mean, the only way I  
4 can describe it is if your hand was really hot and you just hit me  
5 really hard on the back of the neck. I turned. I didn't realize  
6 what it was, and I saw an explosion to the front and left of the  
7 front vehicle. I put two and two together later on and figured out  
8 it was an RPG that flew right by us and exploded just off the road.  
9 I turned, and on a firing position on my knee and was scanning trying  
10 to find the target, and I found him. He was semi-concealed behind a  
11 sand berm, and he fired another RPG. It was a four-vehicle convoy  
12 and it barely missed the trail vehicle. The front vehicle and the  
13 trail vehicle both had a little bit of shrapnel on the doors. I got  
14 my sight picture. I rose my weapon up, and I've gotta tell you, I  
15 had a perfect sight picture. I wasn't hitting anything, and I didn't  
16 know why. So what I did was I dropped my weapon down and found my  
17 line of fire in the sand, and I rose it up until I saw the target  
18 fall down. And then I picked up, I looked around. I knew we were  
19 taking small arms fire, but I didn't know from where. I couldn't  
20 find that target. To this day, I can't tell you where he was. But  
21 in effect, when I hit him and he fell down, he had another RPG tube

1 on his shoulder, and I was able to take him out before he shot it off  
2 at us.

3 And I want to take a quick second, I know it's  
4 understandable and whatnot, talking about the attacks and talking  
5 about my buddy dying is something to this day that was really hard,  
6 and I apologize.

7 Q. At Ramadi, did you all ever encounter any other mortar or  
8 RPG attacks?

9 A. It was often, and at that point, it was the most I've ever  
10 seen. It was every few nights; it wasn't every night. And it was  
11 three or four at a time, rockets, mortars, bombs. We've seen suicide  
12 bombers come up to the gate, and luckily, I was nowhere near the gate  
13 at the time. There's been holes blown in our walls, really big holes  
14 from like 122s. It was intense. We saw a lot of HMMWVs right  
15 outside where our building was just get destroyed. We saw a mortar  
16 land on the building next to us that was housed by MPs. We saw our  
17 water blivits get destroyed and us have to go without water for a  
18 while. It was already rationed, and then it got rationed even more  
19 when water--I don't know what the proper term is, but the plastic  
20 blivit that goes on the back of the truck, that was our water supply  
21 at the time. We didn't have water bottles or anything, and  
22 everything around us was getting blown up.

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1 Q. Specialist Cruz, were you still able to, or at this point,  
2 did you start performing duties under your MOS?

3 A. Close to MOS, it wasn't my MOS. I was assigned to an  
4 operational management team, which is known to--who supported  
5 tactical HUMINT teams. I went out with the teams and worked with the  
6 teams, they were talking to people that wanted to help us, give us  
7 information. The part that was my job was, I was in an analytical  
8 cell, and my duties were to evaluate the threat, do predictive  
9 analysis on the threat, and give that to the teams and the team  
10 chiefs so they can better do their job and find who they need to be  
11 talking to about what subversive groups to save our lives.

12 Q. And after Ramadi, you went to BIAP?

13 A. After Ramadi, and actually, one of the documents there they  
14 got published there when I went to BIAP.

15 Q. And was there an incident there that you want to share with  
16 the court?

17 A. Pardon me?

18 Q. I said incident, was there a time where you assisted with  
19 some other soldiers who had come under attack?

20 A. At Ramadi?

21 Q. At BIAP.

22 A. At BIAP?

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1 Q. Where you radioed.

2 A. There was one incident. I just got to BIAP and I was put  
3 on a nightshift in the analytical cell again supporting the Corps  
4 Interrogation Facility, or the CIF. My duty there was to help  
5 establish and to find intelligence gaps. Whatever the interrogator  
6 needed to know about any given subject, our job as analysts was to  
7 research and find it and then disprove or prove whatever the detainee  
8 or source, depending, was saying. One night on night duty, our job  
9 on nightshift was, in addition to that, check the commander's emails  
10 and make sure nothing is popping up on a SITREP, monitor the radio  
11 and telephone if anything comes through to wake him up. Well, I  
12 heard this call come in on the radio and it was one of our guys in  
13 the headquarters battalion got ambushed. His vehicle got hit by an  
14 IED, and they weren't able to get any help. Either no one could or  
15 no one would--no one could hear what they were saying on the radio.  
16 I got on the radio and I asked who they were. I found out it was our  
17 guys. I called up to HQ up north in Balad, arranged with a CW5 that  
18 was in the office at the time who worked dayshift. He was just  
19 coming in, rescue operations, got the nine-line. I called up and got  
20 helicopter support, air support because they were still taking fire,  
21 and called the HQ to call--because I couldn't do this myself, to get  
22 flatbeds and a ground force out there to secure the perimeter and get

1 the truck that was completely disabled the heck out of there and get  
2 our Jo's away from being fired at. I wasn't there, but you could  
3 hear a lot of things in the background, and it was terrible.

4 Q. After BIAP, you went to Abu Ghraib?

5 A. I went to Abu Ghraib after BIAP.

6 Q. And it was about mid-September?

7 A. Mid-September.

8 Q. And you were in Abu Ghraib from that time to about....

9 A. Mid-January when I went home on leave.

10 Q. You all were under constant mortar attacks?

11 A. For a long time, it was almost every day. You can look  
12 that up in the news or in the reports or anything. It was way more  
13 intense than Ramadi, and I thought that's about as bad as it can get.  
14 It was during combat operations in Ramadi; the war was actually going  
15 on. When I got to Abu Ghraib, I knew that we were getting hit a lot.  
16 I didn't realize how much until I got there. The first day we got  
17 there, I unpacked my stuff. It was like an hour later after I walked  
18 around where my living area is, found out where the showers, if there  
19 was any, and the port-a-johns were. And I noticed a tail fly over  
20 right outside our door, and it was hitting the guard towers and the  
21 MPs were firing back. They fired several RPGs, three or four.  
22 Mortars were going off. I ran and grabbed my crap, my body armor, my

1 helmet and my weapon and I just stood there in case someone told me  
2 what to do. I didn't have a clue. The base was attacked the first  
3 day I got there and then all the time, all the time.

4 Q. Now, testimony has already been presented regarding the one  
5 mortar attack where you were injured. After that mortar attack, did  
6 you do anything to ask for help? <sup>all</sup> (b)(6)2, (b)(7)(C)2

7 A. Sergeant [REDACTED]--I'm sorry, Sergeant [REDACTED] talked about  
8 how Sergeant [REDACTED] death affected him. I went up with Sergeant  
9 [REDACTED] and I asked for help. I asked to speak with a combat stress  
10 team. I asked to speak to a psychologist. I asked to speak to  
11 anyone to tell me that these things I was feeling, these dreams I was  
12 having, even things I was seeing when I was wide awake were normal.  
13 And I said to him, Sergeant [REDACTED] I was like, "I know where I'm  
14 going. This is not a good place. I want to talk to somebody."

15 Q. And did you ever get that help?

16 A. I didn't, and in fact, the first couple times, he just  
17 laughed at me. He said, "What do you need this for? What am I  
18 supposed to do?" He was, at the time, the senior enlisted person at  
19 AG that I could report to, very senior. After a while, I started to  
20 wonder to myself if this was about duty performance and him worrying  
21 about losing someone that can write reports or do work or anything  
22 and I approached him and I said, "Sergeant, if you're worrying about



1 me wanting to leave AG, if you're worried about me, you know, not  
2 working or anything, I'll do this on my down day. If you send me on  
3 a convoy to BIAP, I'll do this on my down day. I don't want to leave  
4 AG, I don't want to stop working. I need to talk to somebody about  
5 what's going on," and I was still shot down.

6 Q. Specialist Cruz, on October 25th, the incident there with  
7 the detainees, the next day, what did you do?

8 A. The next morning after a brief about, as I just said,  
9 numbers of reports and how we're not producing, took a break and I  
10 went straight down to the hard site, found the dayshift NCOIC,  
11 Sergeant ~~XXXXXX~~ (b)(6)(2)(b)(7)(C)-2, and reported what happened the previous day.

12 Q. Now, when did you first learn that you were under  
13 investigation?

14 A. Late January, January 22d, plus or minus.

15 Q. And so that was when you were on R&R?

16 A. I was on leave at home. If I remember right, I left on the  
17 17th and I was called for an investigation a few days later.

18 Q. And that's when you got in contact with me.

19 A. I went and met the investigator, had an interview with him  
20 the first day, expressed my willingness and desire to help with this  
21 investigation, to get it over quickly. We talked for a few hours,  
22 and then I said I wanted to get an attorney and could we continue

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

1 this investigation tomorrow, the rest of it. It was on a weekend, I  
2 think it was a Saturday, the first day, and the second day would be  
3 on a Sunday. I went home. I retained [REDACTED]. I went in the  
4 second day, ensured that the investigator had fax number, telephone  
5 number, email, every contact method possible to get a hold of Mr.  
6 [REDACTED] my email address, my unit information. And then I expressed  
7 again, "I want to be talked to. I want to help you out. The only  
8 thing is I just want a lawyer next to me, but I want to tell you  
9 anything."

10 Q. Now, that was in January, and then you came back to Iraq in  
11 January?

12 A. I think it was late January, it would be 2 weeks, so yeah.

13 Q. And then you gave me your chain of command contact  
14 information.

15 A. I did.

16 Q. Then we contacted your chain of command to let them know  
17 that I represented you in regard to the allegations and that you were  
18 willing to cooperate and to tell us who the trial counsel was on the  
19 case?

20 A. Right.

21 Q. And then changing the units a couple times, and we  
22 continued to make that contact.

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

1           A.    Every time I changed units, I went through the same mission  
2   template. I got the entire chain of command's emails from--if I had  
3   a platoon sergeant like I do this time, first sergeant, commander,  
4   battalion commander, now that I have one, but when I was at HHD, I  
5   didn't have one, just the brigade commander, and brigade sergeant  
6   major. I emailed every single one of them, expressed my willingness  
7   to help in this investigation, expressed my willingness and desire to  
8   make this as quick as possible.

9           Q.    And then early on, we got an email back from Colonel  
10   [REDACTED] the brigade commander as well as the brigade judge advocate  
11   that basically just said, or either didn't respond or they'd just  
12   say, "We'll get back with you."

13          A.    Right, it was Colonel [REDACTED], though, and yeah, the response  
14   was, to use a military term, standby to standby.

15          Q.    And then it wasn't until July 9th that we got an email from  
16   the government stating, asking if you wanted to cooperate.

17          A.    This is correct.

18          Q.    And that's when you were allowed to begin your cooperation.

19          A.    Yes.

20          Q.    Okay. Now, Specialist Cruz, your unit left in March?

21          A.    March 17th.

22          Q.    2004.

1 A. Right.

2 Q. And you've been extended.

(b)(6)2;(7)(C)1-2

3 A. Yes.

4 Q. Moving away from that, can you tell us some people that are  
5 important to you?

6 A. Very clearly, Sergeant [REDACTED] is very close to me. We had a  
7 very traumatic event together. We, on many levels, are almost like  
8 brothers, even though he's old enough to be my father. He's one of  
9 the few people I can talk openly, still emotionally, but openly about  
10 what happened that night. Of course my father, he's like a hero to  
11 me, an extremely intelligent man. He's a West Pointer. I admire  
12 him, my mother and sister. But there's this little boy that I serve  
13 a godfather-type role to. His name is [REDACTED] and I've been with  
14 him since he was approximately just around 2 years until now, he's 5,  
15 turning 6 in January.

(b)(6)-3;(7)(C)-3

16 Q. Specialist Cruz, what are your future goals?

17 A. As soon as I get home, I want to finish that undergrad  
18 degree in history and lit. I want to pursue a minor in education; I  
19 want to teach. I feel I can turn people on to education. I've been  
20 working with kids for community service since I was 11 years old,  
21 1991. I also want to apply to grad school, and there's still two  
22 routes I'm still debating between. One is, honestly, legal, and the

1 other is graduate school and postgraduate and the history, humanities  
2 and education field. I feel that's my calling. I've worked with  
3 kids since I was a kid.

4 Q. Would you like to continue in the Reserves?

5 A. I would very much so. Coming to Iraq, when I came into  
6 Iraq, I was dead set on joining ROTC. And even a long time into the  
7 Iraq conflict, I was dead set on going to ROTC, but while that view  
8 has changed, the view of me being in the Army has not. I think I'd  
9 be better suited as an NCO, as a sergeant. I love being with the  
10 troops. I love motivating them. I love taking care of them. I've  
11 made decisions under really stressful conflicts, on react to contact,  
12 as we say. I think I can really be a good NCO.

13 Q. Is there a statement that you'd like to read to the court?

14 A. There is a statement. The events that occurred are clearly  
15 outlined in detail in the stipulation of fact that I signed, and I  
16 accept full and total responsibility for my actions. As far as my  
17 actions are concerned, the buck will stop here. I clearly recognize  
18 the fact that I was in the wrong and have had since last October to  
19 think about it. I assure you that not one day has gone by that this  
20 tragedy has not haunted me. The statement reads double true since  
21 January until now, as this is the time that I was approached and  
22 asked to make a statement. I have been until a short while ago been

1 in a virtual black hole, not knowing my fate or what would happen,  
2 and all I had were my thoughts and my shame to face. Believe me, in  
3 nearly every conversation to my parents back home this came up. I'm  
4 deeply apologetic for the actions that took place on that night in  
5 the prison. And I assure you, sir, that over 10 months of thinking  
6 about one event creates an unbelievable amount of sorrow, shame and  
7 regret.

8           An immense amount of the guilt I felt within myself derives  
9 from the very reason most of us joined the Army to begin with, and  
10 that is to protect and fight for those who cannot fight for  
11 themselves. Of course, this is not the sole purpose we're here in  
12 Iraq, however, as liberators in Iraq, this is a major goal and  
13 mission for all service members here in Iraq. I clearly had an  
14 opportunity to fight for those who cannot defend themselves and do  
15 not. Rather, I showed a lack of leadership, discipline, respect,  
16 personal courage, integrity and honor, some of the very values our  
17 Army is built upon.

18           I had something everyone dreams of, a chance to make a  
19 difference. I took that chance, however, and failed to make a  
20 positive difference in other human beings' life. Rather, a few  
21 soldiers and I subjected detainees to hardship and humiliation. The  
22 events that transpired on that night in question depicted a person

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

1 that I, myself, are not familiar with, one that, as Specialist [REDACTED]  
2 said in a news article, something close to these lines, "The Cruz I  
3 know is always a calm and reserved Cruz. He never gets mad. The  
4 Cruz I saw that night was a different Cruz." This is true in my  
5 opinion. I was always a calm and reserved person. However that  
6 night, I did not see three detainees. In honesty, I saw three people  
7 who tried to kill me and who killed my section leader and my friend.  
8 The amount of time I spent in the tier, in the hard site that night  
9 was without a doubt, the darkest hour of my life. I turned my back  
10 on my country and my Army and myself. I no longer fought for and  
11 upheld the values that I strived to uphold my entire life. I was a  
12 different person for that time. I assure you I'm not making any  
13 excuses and I have said and continue to say that the events that  
14 transpired held no honor and were clearly wrong.

15 I want to ensure that the intent of my statement is clear.  
16 I accept full and complete responsibility for my actions that night,  
17 which include humiliating detainees by viewing them naked,  
18 handcuffing, throwing a ball in their direction, and watching others  
19 on occasion pour water on them, poke and prod them and subject them  
20 to a great deal of humiliation. I accept full and complete  
21 responsibility for the actions indicated in this stipulation of fact  
22 concerning the night in question. Furthermore, I would like to call

1 upon every noncommissioned officer and commissioned officer alike to  
2 do the same. This clearly imprints a blemish in our clear and  
3 honorable name in the United States Army and every soldier serving  
4 proudly and honorably under Operation Iraqi Freedom. I apologize to  
5 the detainees that felt the wrongdoing and to the soldiers in the  
6 service that have lived the stigma of this wrongdoing.

7 Q. Specialist Cruz, I told you that you would have an  
8 opportunity to write a statement. That was the exact same statement  
9 that you wrote and prepared without any----

10 A. This is it. There's no editing done. I wrote it, sent it,  
11 and this it.

12 CDC: No further questions.

13 MJ: You may return to your seat, Specialist Cruz.

14 CDC: Your Honor, the defense rests.

15 MJ: Government, do you have any rebuttal?

16 TC: No, sir.

17 MJ: Trial counsel, you may argue first on sentencing.

18 TC: Thank you, sir.

19 Sir, on behalf of the Government of the United States, we  
20 respectfully submit three general points for your consideration as  
21 you fashion an appropriate sentence for the accused, Specialist Armin  
22 Cruz.



1           These points are, first, the nature of these offenses.  
2   Second, the logical consequences of this type of misconduct. And  
3   third, the necessity for severe punishment under these circumstances.  
4   The points are submitted in order to assist in fashioning a sentence  
5   based on reason, and not emotion.

6           First, the nature of these offenses. Let's begin with an  
7   examination of the basic facts. We know that the accused was present  
8   at the hard site on the night of 25 October out of curiosity, nothing  
9   more, nothing less. We know that SPC (b)(6)5, (b)(7)(C)5 informed the accused that  
10   the military police had an alleged rapist in the hard site and asked  
11   the accused if he wanted to see how the MP handled the situation. At  
12   that point, the accused made his first decision, to go and see what  
13   was happening in the hard site. He didn't have to go, but he did.

14           And then the accused chose to participate. We know that he  
15   wasn't compelled to participate in any way. As you can see in  
16   paragraph 12 of the stipulation of fact, no one ordered the accused  
17   to participate, neither military nor civilian. And you can see that  
18   there was no information of value to the military intelligence  
19   community to be obtained from these men. What we do know, from the  
20   word and actions of Sergeant (b)(6)5, (b)(7)(C)5 and Corporal [REDACTED] and the  
21   others, that the military police present were enjoying themselves as  
22   evidenced by paragraph 8 of the stipulation. We also know that

(b)(6) 5, (b)(7)(C) 5

1 others, like Specialist [REDACTED] chose not to participate in this  
2 abuse. The accused didn't have to participate, but he did.

3 Then, we know that over the course of approximately an  
4 hour, the accused and his co-conspirators chose to abuse three men.  
5 The accused chose to yell at these men. The accused chose to force  
6 these men to crawl along the floor, naked, shaking and frightened.  
7 The accused forced these men to crawl, dragging their genitals on the  
8 floor, and as the accused did this, he used his foot to press the men  
9 back down to the cold concrete floor when they rose too high in his  
10 estimation. The accused, this accused sitting here now, chose to  
11 terrify these men, to mock them and degrade them like they were  
12 animals and not fellow human beings. The accused chose to add his  
13 efforts and his ideas as to how to abuse these men to the choices and  
14 the actions of those around him in an effort to do what? To magnify  
15 the terror and the humiliation of these men. And when he noticed  
16 that one of the men was bleeding, what did he do? Despite knowing  
17 that the conduct was wrong, he chose to continue. And when he saw  
18 another soldier, SPC [REDACTED], (b)(6) 5, (b)(7)(C) 5 throw a football at the bound, exposed,  
19 and completely vulnerable fellow human beings on the floor before  
20 him, what did he do? He chose to throw the football as well. He  
21 chose to handcuff these men together, pressing them together in such  
22 a way as to mimic sexual relations. And when the men naturally,

1 reasonably tried to create space between themselves and the naked  
2 body of the man now bound to him, the accused chose to press them  
3 back together, again using his feet. With contempt and with disdain,  
4 the accused chose to do all of this. He did not have to, but he did.  
5 He chose, he decided, he made the conscious effort to  
6 continue in this abuse along with all of his reveling co-  
7 conspirators. And now, Your Honor, the accused is responsible, not  
8 only for his own acts, but the acts of all of these men and women who  
9 chose to torment rather than to safeguard, to demean rather than to  
10 protect. And while his motivations may have been different than were  
11 Sergeant <sup>(b)(6), (b)(7)(C)</sup> [REDACTED] or Corporal [REDACTED] men who clearly took great  
12 enjoyment out of the misery of the three detainees lying helpless and  
13 hopeless on the hard concrete floor, the accused assisted these  
14 military police, joined them in their ultimate purpose and in their  
15 terrible work. And now he is responsible for all of their actions,  
16 and they of his, all because of his choice.

17 Your Honor, please let me make one final point with regard  
18 to the nature of these offenses. The government has consciously  
19 chosen not to call the men abused by the accused as witnesses, and I  
20 have consciously chosen not to use their names here out of respect  
21 for their privacy. In a way, however, the identity of these men is  
22 really independent of the misconduct. It doesn't matter that the

1 charges of rape against these men were later unfounded as evidenced  
2 by paragraph 13 of the stipulation of fact. They were men, they were  
3 in our custody. And a very basic tenet of our way of life, and by  
4 that I mean the American way of life is this: that all men, be they  
5 enemy or friend, criminal or saint, and regardless of the color of  
6 their skin, their beliefs, or their national identity are absolutely  
7 entitled to dignity and respect, all men. The accused chose to  
8 disregard this tenant, to take by force and savagery the personal  
9 pride and sense of self-worth that we all hold dear, the spark of  
10 dignity and self respect that makes us who we are. And that is the  
11 fundamental nature of these offenses and the first point we would ask  
12 you to consider.

13           Next, Your Honor, I would ask you to consider the  
14 consequences of this misconduct. And these are the logical and  
15 probable consequences of the type of misconduct at issue here, which  
16 is the abuse of individuals in military custody.

17           In paragraph 25, the stipulation of fact reveals that the  
18 misconduct of the accused became known to many in the United States  
19 and the world. The first consequence, a consequence captured in that  
20 paragraph, is that the accused's misconduct contributed to tarnishing  
21 the reputation and image of the United States Armed Forces and the

1 United States in the eyes of many Americans as well as the  
2 individuals throughout the world.

3 That reputation and image will of course survive, but we  
4 must not forget that it was bought with a price, a heavy price. And  
5 we cannot get around the fact that the accused's conduct, despite his  
6 otherwise good acts at other times and his evident remorse now,  
7 worked to lessen that reputation, again a reputation paid for by the  
8 hard work, sacrifice, the obedience, and even blood of many of our  
9 brothers and sisters in arms.

10 But this consequence is not the only consequence that must  
11 be considered. We now know that many in the world are aware of these  
12 photos. The fact that the men abused are civilian detainees and not  
13 Prisoner's of War is essentially irrelevant, what is seen is men  
14 being held in custody by U.S. Army personnel. That is what the world  
15 sees. And so what may be some logical consequences of such behavior?  
16 There are three closely related but distinct consequences we would  
17 ask you to consider.

18 First, how might the enemy use an act like this to his  
19 advantage? Here we have a number of men, a number of soldiers,  
20 rather, acting in concert to humiliate and abuse Muslim men. The  
21 reasons for doing so are completely irrelevant to the individual who  
22 sees these photographs. Might existing enemies use such conduct as a

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1 moral rallying point? Might not these photos cause others who might  
2 not otherwise be enemies of our nation to think differently about us  
3 as a people? Might not these actions on the part of the accused  
4 foster further distrust and sow even greater hate? How do we now  
5 convince others that we are a nation of laws, a nation of equality, a  
6 nation of honor and decency? The photographs you have, Your Honor,  
7 speak much louder and much more forcibly than our words. That is a  
8 consequence of the accused's acts.

9           Second, but a related consequence is this, how might this  
10 behavior influence enemies in the future to treat our service members  
11 when they are captive? This conflict in Iraq will not be the last  
12 for the nation's military. There will be future fights in other far  
13 away places and American soldiers, sailors, Marines, and Airmen will  
14 find themselves in captivity. Will the treatment inflicted on these  
15 men at Abu Ghraib come back to influence their captor's actions?  
16 There is simply no way to know for sure, but this is certainly a  
17 possible consequence of the accused's actions.

18           Third, the U.S. military is a fighting force unparalleled  
19 in the world. Ideally, this knowledge would cause an enemy to  
20 surrender to our forces whenever he finds himself arrayed against us.  
21 Will an enemy be as likely to surrender if he believes that he will  
22 be humiliated in this manner? No doubt some might prefer death over

1 such treatment and in fighting to prevent this might cause greater  
2 harm to himself and, more importantly, our forces than would  
3 otherwise be necessary. To put it bluntly, will he fight more  
4 fiercely and be more likely to wound or kill our soldiers because he  
5 fears not so much death as degradation? This, too, is a consequence,  
6 a consequence of the actions of the accused.

7           The fact that the accused may not have considered these  
8 consequences does not make the consequences any less severe, or the  
9 accused any less responsible. He must now pay for his crimes. This  
10 brings us to our final point, that under these circumstances,  
11 significant punishment is necessary.

12           For the sake of reasoning out this together, let us assume  
13 that the accused is the type of man that the testimony and evidence  
14 presented to you today suggests, that he has promise and potential.  
15 If so, let's hope together that he can learn from this experience and  
16 recover from the just and appropriate punishment, which you will  
17 shortly administer. But consider this, sir, that the accused had  
18 every benefit, apparently loving parents, supportive teachers and  
19 leaders, a good education, a distinct knowledge of the difference  
20 between right and wrong, and as his father said, his personal moral  
21 code, as well as the aid of all our core Army values, all the tools  
22 necessary to do the right thing that night, to make different

1 choices. But he did not, and now he must be held accountable. He  
2 must be held accountable because this is the essence of military  
3 discipline, that the needs of the Army supersede the wants and  
4 desires of the individual. That men, even men under stress, don't  
5 conduct themselves according to their own passing, personal desires,  
6 but rather that these men follow the lawful orders, laws, and  
7 regulations meant to govern the warriors of our nation. This is the  
8 essence and spirit of our force, and this is the very thing the  
9 accused violated.

10 And so, this is exactly why, in this situation, this good  
11 order and discipline where punishment is most necessary, and  
12 punishment most needed to restore that good order and discipline.  
13 This conduct cannot, must not be tolerated. It must be dealt with in  
14 such a way that other soldiers under other circumstances both  
15 difficult and stressful, and sir, there will be other soldiers under  
16 circumstances even more difficult and more stressful than those found  
17 here, that those soldiers understand clearly that following their own  
18 predilections, their own sense of justice, is inconsistent with who  
19 we are as an Army and will result in swift and certain punishment.  
20 There is a very fine, but distinct and important line between an Army  
21 in the service of the nation and a mob of armed individuals each  
22 seeking their own interests. We must hold, at all costs, to the



1 right side of that line. Thus under these circumstances, significant  
2 punishment is required, necessary, and just.

3 Sir, the government has presented to you three broad points  
4 for use in your deliberations. First, the deliberate and harmful  
5 conduct at issue, conduct that deliberate as it was debasing, conduct  
6 in concert with others in an attempt to dehumanize three fellow human  
7 beings. Second, we ask you to consider the probable consequences of  
8 this behavior, how this type of misconduct, abuse of individuals  
9 within our custody, might have long term and grave consequences.

10 Finally, we presented the need for punishment under these  
11 circumstances to maintain the essence of what and who we are, a  
12 disciplined, highly trained and deadly force exercised only by and  
13 for the will of the nation, and not a mob of individuals each seeking  
14 their own sense of personal justice or interests. We simply cannot  
15 allow any slide toward anarchy within our own ranks. This must be  
16 stopped, coolly, logically, dispassionately but severely stopped. It  
17 is reason, not emotion, that must guide justice now. Sir, for all of  
18 the aforementioned reasons stated above and for those otherwise  
19 evident to the court, the government requests that you now punish the  
20 accused with a bad conduct-discharge, reduction to E1, and  
21 confinement as you deem appropriate.

22 MJ: Defense?

1 CDC: Thank you, Your Honor, may it please the court, counsel.  
2 Your Honor, the story of Specialist Cruz is that of an American Hero,  
3 not a superhuman hero like we see in comic books, but a hero that is  
4 human, one who demonstrates heroic acts of bravery and sacrifice, as  
5 well as the capacity to make a mistake.

6 The story of Specialist Cruz began when he became the first  
7 generation American born into his family, not just any family, but  
8 that of a military family. And, not just as the son of a soldier,  
9 but that of a West Point graduate. The bar was set, and the bar was  
10 set high. How would he measure up to it?

11 As soon as he was old enough, Specialist Cruz chose  
12 activities in life which enabled him to help others. From the  
13 evidence we've submitted, you've read that while in high school he  
14 received life saving training from the Red Cross which he's used to  
15 become a lifeguard. On more than one occasion, he came to the aid of  
16 swimmers in distress and brought them to shore. He also joined the  
17 JROTC program rising to the rank of First Lieutenant and serving as a  
18 platoon leader.

19 After high school, his dedication to helping others  
20 continued. He majors in history and literature with a minor in  
21 American public education so that he can become a certified teacher.  
22 He completed his Associate's Degree cum laude. When not in school,

1 he is involved in after school programs for elementary school  
2 children.

3 While in college, he decided that he had more time and more  
4 to give, so he became a citizen soldier and joined the Reserves. He  
5 took time away from his studies and went to basic & AIT, earning top  
6 marks at AIT.

7 While in his senior year in college, the Army came to him  
8 and asked him if he'd be willing to serve in Iraq. Since Specialist  
9 Cruz was in his senior year, his unit wasn't going to require that he  
10 be activated. But, being the person that he is, Specialist Cruz  
11 volunteered and disenrolled from the classes he'd already begun.

12 Once he became activated, he was cross-leveled and he  
13 arrived in Iraq in 2003, April. For his exemplary service to his  
14 country from that date to November of 2003, his command nominated him  
15 and he has been awarded the Bronze Star, or he's been flagged and he  
16 would receive it if he weren't flagged. But not just for his actions  
17 on one day, but for 8 eight months. Specialist Cruz's command  
18 recognized that he was giving it his all day in and day out. This  
19 was an impact award, not just an end of tour award. His unit  
20 wouldn't leave for another 5 months. And this is all while he's 23  
21 years old and a specialist.

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

1           In September of '03, he was assigned to Abu Ghraib. On the  
2 night of the 20th, he and his teammates were preparing for  
3 interrogations when a mortar struck near their tent. Everyone hit  
4 the ground and several soldiers were injured, two fatally. And  
5 before Sergeant [REDACTED] could get up to go get his gear and the second  
6 mortar hit, Specialist Cruz was already bringing back another  
7 soldier, Sergeant [REDACTED] who'd been hit in the neck. He brought him  
8 back to Sergeant [REDACTED] and he told Sergeant [REDACTED], "I'm going back  
9 out." He goes back out and he starts attending to Sergeant [REDACTED]  
10 [REDACTED], someone who's very close to him. Sergeant [REDACTED]  
11 body, as you've read in the stipulations of expected testimony,  
12 Sergeant [REDACTED] body was ravaged, was missing an arm, you could  
13 barely tell who it was. Specialist Cruz began chest compressions and  
14 started encouraging his friend, his falling comrade, telling him to,  
15 "Hang in there. You can do this. You're going to make it. We're  
16 here for you." They then loaded up Sergeant [REDACTED] onto the EVAC  
17 chopper and began attending others. And once they were done doing  
18 that, they went back and went to the hospital, learned that Sergeant  
19 [REDACTED] had died, and they wanted to go say goodbye to him. And  
20 that's how much that soldier, that comrade, meant to Specialist Cruz.  
21 And they went all the way back to the morgue facility by taking  
22 chopper ride.

1           This experience of being wounded in combat and losing a  
2 friend that you personally attended is too much for anyone, much less  
3 a 23-year old. It didn't take Specialist Cruz long to realize that  
4 the stress of this experience was getting the best of him and testing  
5 his limits to cope. He needed help. The Army recognizes this  
6 onerous impact that such an experience can have on young soldiers and  
7 that's why they developed combat stress teams. Specialist Cruz went  
8 to his chain of command for help, but none was made available to him.

9           Specialist Cruz did the best that he could to deal with the  
10 nightmares and all the questions that he had, but didn't seem to have  
11 any answers. To make matters worse, as Lieutenant General Jones  
12 found in the excerpts that we've provided to you, while this was  
13 going on also at Abu Ghraib, he found out "the difficult  
14 circumstances for soldiers, including a poor quality of life and the  
15 constant threat of death or serious injury, contributed to soldiers'  
16 frustrations and increased their levels of stress."

17           In addition, General Fay reported that Lieutenant General  
18 Sanchez confirmed that there was a great pressure placed upon the  
19 intelligence system to produce actionable intelligence. General Fay  
20 also found that "Leaders failed to take steps to effectively manage  
21 pressure placed upon personnel." Specialist Cruz was laboring under  
22 this occupational pressure as he struggled with his personal demons.

all  
(b)(6)-2, (b)(7)(C)-2 except as noted

1 General Fay also commented in his report that when he  
2 interviewed Colonel [REDACTED], Lieutenant Colonel [REDACTED] 7 months after  
3 the attack, that Lieutenant Colonel [REDACTED] became very emotional and  
4 said that he still thinks about the attacks daily about the suffering  
5 that Sergeant [REDACTED] received right before he died. General Fay  
6 found that there was a general feeling by both MI and MP personnel at  
7 Abu Ghraib that it was a forgotten outpost receiving little support  
8 from the Army. The frequency of these attacks and the perceived lack  
9 of aggressive action to prevent them were contributing factors to the  
10 overall poor morale that existed Abu Ghraib."

11 Regarding the incident, this is one night, a month  
12 Specialist Cruz was sitting in his cot, minding his own business,  
13 when Specialist [REDACTED] (b)(6), (b)(7)(C) came and approached him and told him about the  
14 three detainees that supposedly raped a boy and what the MPs were  
15 doing with them. He went there out of curiosity. He wasn't on duty,  
16 and he walked to the hard site and his life then forever changed.

17 To be sure, Specialist Cruz takes responsibility for his  
18 actions and is remorseful, but let's recognize the limited nature of  
19 his involvement, at least compared to the other soldiers who were  
20 there--to the other soldiers that were there. This wasn't something  
21 that he initiated. He was in his cot. Someone came and got him.  
22 The abuse had started before he got there and it continued after he

(b)(5)(1C)-5

1 left. This wasn't his idea, as the stipulation of fact says, this  
2 wasn't orchestrated by him. There was also an E6 present, Sergeant  
3 [REDACTED] another Sergeant [REDACTED] who was present. He didn't  
4 enjoy his actions. He was coming from a different place. He wasn't  
5 laughing. He wasn't posing for pictures. And even in the two  
6 pictures that you see, or at least the one picture that you see that  
7 he's in, he's standing back away from the other people. He was told  
8 the detainees raped a boy, and then he always questioned the degree  
9 of the group's actions. He told an MP that a detainee was bleeding  
10 around the wrist and then the next day he reported it.

11 So, on this night, we learn that our hero is human. He's  
12 fallible. Our 23-year old hero can succumb to peer pressure. At  
13 times while he participated, he was active. At other times, he tried  
14 to summon the strength to stop himself and the others. Even with his  
15 personal problems and the poor morale at Abu Ghraib, he was  
16 conflicted about what the MPs were doing that night.

17 Now, this moment did not define Specialist Cruz's  
18 character, Your Honor, but represented a departure from it. His  
19 actions over his entire life before and after this incident define  
20 his character as exemplary and one of the highest moral order. To be  
21 fair, if we want you to consider all the good choices he's made, you  
22 have to consider this choice as well, but I ask that you consider his

1 level of his involvement and the context in which it occurred. We  
2 know he doesn't have a pattern of mistakes. To the contrary, he has  
3 a pattern of making all the right choices, but he did not. So why  
4 didn't he?

5           Was he able to get something off his chest that night?  
6 Maybe. Did he realize that after making that choice it was not a  
7 healthy way to deal with his emotions from the attack? Most  
8 definitely. His actions since that night prove that he realized he  
9 was not comporting himself to the highest standards of his Army  
10 training and personal morals. But, what would have happened if  
11 someone from the combat stress team would have been made available to  
12 him? Would Specialist Cruz be here before you today?

13           We don't know. But what we do know today is that  
14 Specialist Cruz asked for help, and he should have received it. Not  
15 all soldiers are going to react well under combat stress. Sometimes  
16 good soldiers make mistakes under stress because they forget their  
17 training or are just unable to act on it. The Army, again,  
18 appreciates this fact by having combat stress teams. The combat  
19 stress team isn't there for the bad soldiers who are under stress.  
20 The combat stress team is there for the good soldiers who need help  
21 and can be helped so that they can return to their mission to which  
22 the Army assigned them. Maybe the combat stress team was too busy



1 helping other soldiers. Maybe they were understaffed. It doesn't  
2 matter. That's not Specialist Cruz's responsibility.

3 We know that Specialist Cruz is a good soldier. We know  
4 that he has a pattern of rising to the occasion under stress. Why  
5 did he give in to the peer pressure on the night in question? I  
6 submit to Your Honor, it's because the emotional pain he was feeling,  
7 the guilt, the anger, and the stress was accumulating, extraordinary,  
8 and completely predictable and normal.

9 We know that Specialist Cruz has a strong character because  
10 he rebounded from that night on his own. He knew it was a mistake,  
11 learned from it, and he's moved forward, fantastically. He didn't  
12 learn he was under investigation until 3 months later.

13 As I've stated, not all soldiers are going to react well or  
14 according to their training under stress, and their reaction is going  
15 to depend on what their experience has been up to that point. As the  
16 government pointed out, Specialist [REDACTED] didn't actively participate  
17 that night. He deserves credit for that. But, while Specialist Cruz  
18 was physically in the same position as Specialist Cruz--while  
19 Specialist [REDACTED] was physically in the same position as Specialist  
20 Cruz that night, he was not the same emotionally. He did not have  
21 the same experiences as Specialist Cruz up to this point of the war.

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

1           This reminds me of the movie Saving Private Ryan, Your  
2 Honor. In one scene of the movie, Captain Miller and his squad come  
3 across a German machine gun nest. CPT Miller gives the order to take  
4 the nest. In the fight, one American soldier dies, and one German  
5 soldier surrenders. The most junior soldiers who've lost their  
6 comrade want to kill the German soldier, except for one, and that's  
7 the translator, Opam. Opam intervenes on behalf of the German  
8 soldier, arguing that it would be a crime to kill the German. To the  
9 other soldier's dismay, CPT Miller reaches the dispassionate  
10 conclusion that killing the German soldier does not comport to their  
11 mission and orders him to be released. Later in the movie, Captain  
12 Miller and his squad once again encounter the German soldier in a  
13 fire fight and Captain Miller dies at the hands of this German  
14 soldier. Then, Opam catches that German soldier and some of his  
15 comrades off guard. Opam tells the German soldiers to drop their  
16 weapons. They do and now they're EPWs. Opam, filled with anger,  
17 guilt, and rage kills the one German that killed Captain Miller.

18           Now, Opam's role in these two scenes is there to challenge  
19 our moral decision making or how we would respond in the same  
20 situation. Unless we actually are Opam, including all of his life  
21 ~~experiences and find ourselves in the exact same situation, we'll~~  
22 never know if we would act in the same way. But, what's most

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

1 important, is that we can all identify with Opam's struggle because  
2 of the context in which it occurs. His actions were legally wrong,  
3 killing the German soldier was murder, but no one looked at Opam as a  
4 cold-blooded murderer. The German soldier had the opportunity to  
5 kill Captain Miller largely because of Opam's earlier argument that  
6 killing him as an EPW was wrong. Indirectly, Opam may have had a  
7 hand in creating the situation in which CPT Miller was killed.  
8 Judging Opam's actions in this context is difficult. So when we  
9 examine Specialist Cruz's actions, we can't forget the context.

10 And although in that situation, the situation after  
11 attacking the German machine gun nest and then...well, what I wanted  
12 to distinguish, Your Honor, is the fact that even though this  
13 incident in October happened one month after, for Specialist Cruz,  
14 like it was for Colonel [REDACTED] it might as well had been yesterday  
15 that it happened, especially when you don't get treatment. And  
16 granted, the scenes from the movie depict a morally complex situation  
17 that most of us will never face. But in real life, soldiers must  
18 make hard decisions under stress. Like I said, we know that Colonel  
19 [REDACTED] cried 7 months after the attack. He was reliving the attack  
20 every day. And in fact, Specialist Cruz was only 23 years old one  
21 month out from the attack when the incident occurred. When he walked  
22 into the hard site that night and saw the adrenaline of the other

1 soldiers going, the mortar attack might as well have just happened,  
2 and it didn't matter that those three Iraqis weren't the exact ones  
3 who did the mortar attack, and Specialist Cruz was honest, the lines  
4 were blurred.

5 Also regarding the context, Your Honor, I'd like for you to  
6 consider in the Fay report in one of the excerpts that I've provided,  
7 I'd like for you to consider all the excerpts for the purposes of  
8 this argument. There is an expert that says using nudity as an  
9 interrogation technique had already been started before Abu Ghraib.  
10 And that, in the last line there it says, "The use of clothing is an  
11 incentive or nudity is significant in that it likely contributed to  
12 an escalating dehumanization of the detainees and set the stage for  
13 additional and more severe abuses to occur."

14 MJ: Of course, Mr. (b)(6)(b)(7)(D)4 the context though, is the use of  
15 nudity as an interrogation technique.

16 CDC: Well, Yes, Your Honor.

17 MJ: And there's no issue in this case that these prisoners,  
18 these detainees were being interrogated, correct?

19 CDC: Correct, Your Honor.

20 MJ: Okay, just make sure there's no confusion of those two  
21 cases.

1 CDC: Oh, absolutely, Your Honor, but I still, overall, I believe  
2 that even though just taking clothes off in general when other  
3 leadership, when the leadership wasn't around, I think overall it  
4 does affect the context of it. There's no excuses, but once you  
5 start taking clothes off, I believe that that's what the report is  
6 stating, that you're going to have to have even tighter, greater  
7 supervision, and that wasn't there.

8 But you're right, Your Honor, regardless, Specialist Cruz  
9 made his mistake, learned from it, and moved on, fantastically, and  
10 even while working in different MOS's. Remember, this is a soldier  
11 who is facing court-martial and has the potential to poison morale by  
12 besmirching the Army if he chose to. But not Specialist Cruz, in his  
13 heart of hearts, he's a soldier and a true believer. And even after  
14 his clearance was pulled and he had to work in the likes of the  
15 Internet café, he soldiers on, continuing to support the mission with  
16 the best attitude and a superior dedication even to include coming up  
17 with new ideas for the command.

18 He has continued to be there for others, as well, even  
19 after this incident. For example, as in the evidence that we've  
20 provided to you in the soldier packet, he came up for R&R leave  
21 before another soldier, a soldier who was married and had kids. He  
22 gave up his spot to that soldier so he could be with his family on

1 Christmas. He also became a battle buddy for a soldier in despair, a  
2 soldier that now credits him with saving his life.

3 In addition, Specialist Cruz did not get to go home, Your  
4 Honor, until January of 2004, and that's when CID approached him. He  
5 came to me, and together we went down to CID. We told the agent that  
6 he was willing to cooperate. From that point, we just wanted to talk  
7 to someone who had some negotiating authority. Over the next 6 months  
8 from January, we were proactive and in constant communication with  
9 his command. It wasn't until over 6 months later that the government  
10 contacted us, and that was in July of 2004. And within 2 months of  
11 that contact with the government, then we're here today. I just  
12 point that out to Your Honor to simply state that his unit left in  
13 March, and he's been here since that time, and we'd just ask that you  
14 consider that, as well as initiative and willingness to work with the  
15 government back in January.

16 While we've stipulated that his actions may have tarnished  
17 the Army's image, I think if you consider the total soldier, the  
18 context of his actions, and the level of his involvement, the Army  
19 has still gotten a great return on its investment in Specialist Cruz.  
20 He hasn't been in the press pointing the finger at the Army and  
21 blaming others. He's accepted responsibility. And, his plea has  
22 saved the government a vast amount of resources. He's agreed to

1 cooperate with the government. He's waived his Article 32 rights and  
2 hasn't fought the government tooth and nail at Article 32s etceteras  
3 and asking for hundreds of witnesses.

4 No doubt, Specialist Cruz's actions affected the three  
5 detainees, and he accepts responsibility for that. But he's also  
6 helped the government mission of helping millions of Iraqis over the  
7 past 16 months. And again, Your Honor, to be fair, if the government  
8 is going to--it is fair if the government says that he has affected  
9 these three Iraqis and he's accepted responsibility for that. But  
10 the government is also taking credit for the liberation of Iraq and  
11 liberating Iraqis, and that was a mission, that taking credit for  
12 that, and Specialist Cruz also deserves that credit because he's been  
13 part of that mission, and so he's also helped the Iraqis that the  
14 government has said that they've helped. And he's done it at such a  
15 level that he's earned the Bronze Star. So I only think that it's  
16 fair that we include everyone.

17 In spite of all this, he's continued to help with the  
18 mission. He isn't just punching the clock since this has come down.  
19 For the past 8 months, knowing he was under investigation, he could  
20 have easily thought that the Army was just going to kick him out  
21 anyway and put him in jail. Like I said, his unit left in March, and  
22 he's still soldiering on. The Army is still getting added value from

1 Specialist Cruz. He's not on the sidelines. He hasn't alienated  
2 himself from the Army. That's because he's a genuine hero who  
3 recognizes that he deserves punishment, but who loves the Army and  
4 believe in its mission, and wants to continue to soldier on. Not  
5 only does his soldering show that he still trusts the Army, it shows  
6 that the Army can still trust him.

7           As quoted from US v Wheeler, Your Honor, "A punitive  
8 discharge so characterizes an individual that his whole future is  
9 utterly destroyed. He is marked far beyond the civilian felon,  
10 hampered as he may be by the sneering term 'ex-con.' For,  
11 justifiably or not, the punitive discharge so dishonors and disgraces  
12 an accused that he finds employment virtually impossible; is  
13 subjected to many legal deprivations; and is regarded with horror by  
14 his fellow citizens. Truly, it has come to be the modern equivalent  
15 of the ancient practice of branding felons, and the strain it leaves  
16 is as ineradicable."

17           All in all, I believe that Specialist Cruz has cleared that  
18 high bar that was set for him. He's done it by leaps and bounds. I  
19 don't believe there are parents out there who wouldn't be proud to  
20 call him son, a sibling proud to call him a brother, a soldier to  
21 call him a comrade, and a commander who wouldn't earnestly seek him  
22 out.



1 Specialist Cruz leaves it all on the battlefield. He leans  
2 forward in the foxhole. And when your back is against the wall,  
3 Specialist Cruz has got your backside. He is a man of honor and a  
4 soldier of uncommon mettle.

5 SPC Cruz's story will never end, but his life will. And, I  
6 believe I can safely say that when it does, Your Honor, he will be  
7 there helping others.

8 Your Honor, all in all, as far as a recommendation on  
9 sentence, I think that Specialist Cruz does not deserve a bad-conduct  
10 discharge. His rehabilitative potential, his command, you've heard  
11 the witnesses say that he has soldiered on and continued to  
12 contribute to the Army. He's done that. He's proven that. It's not  
13 just after the charges came down. He was that way beforehand. This  
14 is a one-time incident. It doesn't warrant a discharge, and I  
15 believe that if you believe that confinement is warranted, that it be  
16 minimal confinement. Thank you, Your Honor.

17 MJ: Court is closed.

18 [Court closed at 1320, 11 September 2004, and reopened at 1352,  
19 September 2004.]

20 MJ: Court is called to order. All parties are again present  
21 that were present when the court closed.

1 Defense counsel, have you advised the accused orally and in  
2 writing of his post-trial and appellate rights?

3 CDC: Yes, Your Honor.

4 MJ: That's reduced to Appellate Exhibit IV.

5 Specialist Cruz, I have before me what's marked Appellate  
6 Exhibit IV, your post-trial and appellate rights form. Is that your  
7 signature on this form?

8 ACC: Yes, sir.

9 MJ: And Mr. (b)(6)-4 (b)(7)(C)-4 that's your signature below his?

10 CDC: Yes, Your Honor.

11 MJ: Specialist Cruz, did your defense counsel explain these  
12 post-trial and appellate rights to you?

13 ACC: He did, sir.

14 MJ: Do you have any questions about your post-trial and  
15 appellate rights?

16 ACC: No, I don't, sir.

17 MJ: Which counsel will be responsible for the post-trial  
18 actions in this case and upon whom is the Staff Judge Advocate's  
19 post-trial recommendation to be served?

20 CDC: That would be me, sir.

21 MJ: Mr. (b)(6)-4 (b)(7)(C)-4 they have your civilian address?

22 CDC: Yes, Your Honor.

1 MJ: And that's your understanding, also, Specialist Cruz?

2 ACC: It is.

3 MJ: Accused and counsel, please rise. [The accused and his  
4 counsel stood.]

5 Specialist Armin J. Cruz, this court sentences you:

6 **To be reduced to the grade of Private E1;**

7 **To be confined for 8 months; and**

8 **To be discharged with a bad-conduct discharge.**

9 Please be seated. [The accused and his counsel resumed  
10 their seats.]

11 May I see Appellate Exhibit III, please? [Court reporter  
12 hands document to MJ.]

13 The way I read the quantum portion of the Appellate Exhibit  
14 III is the convening authority is free to approve the adjudged  
15 sentence. Is that the understanding of both parties?

16 TC: Yes, sir.

17 CDC: Yes, Your Honor.

18 MJ: And Specialist Cruz, is that your understanding, also?

19 ACC: It is, sir.

20 MJ: Any other matters to take up before this court adjourns?

21 TC: No, Your Honor.

22 CDC: No, Your Honor.

1 MJ: This court is adjourned.

2 [The court-martial adjourned at 1354, 11 September 2004.]

3 [END OF PAGE.]

**AUTHENTICATION OF RECORD OF TRIAL**

**IN THE CASE OF** (b)(6)-2-7(c)-2

CRUZ, Armin J., [REDACTED] Specialist

Headquarters and Headquarters Services Company, 502d MI Battalion  
504th Military Intelligence Brigade, APO AE 09342

I received the completed record of trial for review and authentication on  
10/15 2004.

[REDACTED] (b)(6)-2, (b)(6)-2  
[REDACTED]  
COL, JA  
Military Judge

15 Oct 2004

**ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION**

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

\_\_\_\_\_  
[REDACTED] (b)(6)-4; (b)(6)-4  
Civilian Defense Counsel

\_\_\_\_\_  
20\_\_\_\_\_

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

\_\_\_\_\_  
CPT, JA  
Chief, Military Justice

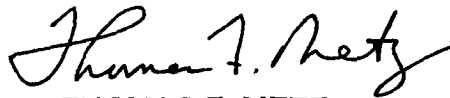
(b)(6)-2; (b)(6)-2

003097

ACTION

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

(b)(6) (7)(C) - 2  
In the case of Specialist Armin J. Cruz, Headquarters and Headquarters  
Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence  
Brigade, III Corps, Victory Base, Iraq, the sentence is approved and, except for the part  
of the sentence extending to bad-conduct discharge, will be executed.



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

JAN 18 2005

003098

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

003099

UNITED STATES

v.

Cruz, Armin J. (5)(b)-21(7)(C)-2  
SPC, U.S. Army, !  
Headquarters and Headquarters  
Service Company,  
502<sup>nd</sup> Military Intelligence Battalion,  
504<sup>th</sup> Military Intelligence Brigade,  
III Corps,  
Victory Base, Iraq, APO AE 09342

STIPULATION OF FACT

4 September 2004

**I. NATURE AND USES OF THE STIPULATION:**

1. It is agreed between Specialist Armin J. Cruz ("the accused"), the Civilian Defense Counsel and Trial Counsel, that the following facts are true, susceptible to proof, and admissible in evidence. These facts may be considered by the military judge in determining the providence of the accused's plea of guilty; to establish the elements of all charges and specifications; and they may be considered by the sentencing authority in determining an appropriate sentence. For these purposes, the accused expressly waives any objection that he may have to the admission of these facts, and any referenced attachments, into evidence at trial under any evidentiary rule, applicable case law, or Rule for Courts-Martial that might otherwise make them inadmissible.

**II. THE ACCUSED:**

2. The accused is 24 years old and was 23 years old on the date of the charged offenses. The accused is a high school graduate and is in his 4<sup>th</sup> year of college. The accused has a GT score of 116. He entered military service on 28 September 2000, attended basic training at Fort Leonard Wood, Missouri, and completed basic training in April 2001. He entered active duty in May 2002 to complete his MOS training and was released from active duty on 31 October 2002. The accused was activated for his current period of service in support of Operation Iraqi Freedom on 17 March 2003. The accused has a total of approximately 3 years and 11 months of service in the United States Army Reserve. As a civilian, the accused attends the University of Texas at Dallas where he has a double major in History and Literature and a minor in education. The accused received Geneva Convention and UCMJ training during basic training.

3. At the time of the charged offenses, the accused was on active duty in the United States Army. He was originally assigned to 325<sup>th</sup> Military Intelligence Battalion and arrived in Iraq on 1 April 2003. The accused is now assigned to Headquarters and Headquarters Service Company, 502<sup>nd</sup> Military Intelligence Battalion. At all times relevant to the charged offenses, the accused was on active duty. This court has proper jurisdiction over the accused and the charged offenses.

003100

PROSECUTION EXHIBIT 1 ~~END~~

OFFERED R. 13 ADMITTED R. 16



### III. THE MISCONDUCT

4. The Baghdad Central Confinement Facility (BCCF) is located in Abu Ghraib, a city located approximately 12 miles west of Baghdad, Iraq. Within the BCCF there are several compounds used to hold a large number of detainees. One of the compounds is actually a series of buildings built to contain individual cells. This compound is known as the "hard site" and consists of a number of halls, or tiers. Detainees in tier 1 were divided into two sub-tiers, tier 1A and tier 1B. During the relevant time, tier 1A was used for MI holds, those individuals who were believed to possess information of tactical, strategic, or operational value. Tier 1B was used to house certain sub-categories of civilian detainees including women and juveniles. Tier 1B also housed detainees who had caused disciplinary problems.

5. On the night of 25 October 2003, the accused was awakened by SPC [REDACTED] an MI soldier known to the accused and assigned to the accused's unit. SPC [REDACTED] told the accused that the MP had some suspected rapists in the hard site and asked the accused if he wanted to see how the MP dealt with the alleged rapists. The accused agreed to accompany SPC [REDACTED] to the hard site. The accused, SPC [REDACTED], and SPC [REDACTED] all of the 325<sup>th</sup> Military Intelligence Battalion arrived at the hard site and walked to tier 1B. At tier 1B, the accused found a number of MP personnel present including SSG [REDACTED] the night shift NCOIC of the hard site, CPL [REDACTED] the night shift NCOIC of tier 1A, SPC [REDACTED] the NCOIC of tier 1B, and SPC [REDACTED] a soldier assigned to work in the hard site on the night shift. Also present were Mr. [REDACTED] an employee of the Titan Corporation, Baghdad International Airport (BIAP), Baghdad, Iraq as well as various Iraqi Corrections Officers and other members of the 372d MP Company. These other members of the 372d MP Company, SPC [REDACTED] and the Iraqi Corrections Officers did not participate in the abuse of detainees that was to follow.

all  
(b)(6)5, (7)(C)5  
or up to  
noted

6. Upon arrival, the accused was notified by SPC [REDACTED] that the MP were "taking a break." It appeared to the accused as if the MP had previously been conducting some sort of activity with three detainees. The detainees were in a cell together, and all three were naked. The detainees appeared to be afraid and deeply distressed. The three detainees in the cell and that were later abused were [REDACTED]

[REDACTED] ISN [REDACTED] Mr. [REDACTED] ISN [REDACTED] and Mr. [REDACTED] ISN [REDACTED]

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

7. SPC [REDACTED] then opened the cell and pulled the detainees into the hallway. SSG [REDACTED] and CPL [REDACTED] were initially standing by and observing. SPC [REDACTED] was present and was holding a camera. SPC [REDACTED] was also present. SSG [REDACTED], and SPC [REDACTED], began yelling at the detainees and forcing them to lay on the floor. SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED] then began to force the detainees to crawl along the floor dragging their genitals on the floor itself. The accused joined in this effort, yelling at the detainees and using his foot to keep the detainees from rising too high off the floor. The detainees, principally at

CPL [REDACTED] instruction, were also forced to roll on the ground and perform a variety of physical exercises while they were naked.

8. At some point prior to this activity, the accused was told that the detainees had allegedly raped a 15-year-old boy, also detained in the facility. Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] had denied doing so, confessed to the act, recanted, then apparently "confessed" again. At some point, the accused asked SSG [REDACTED] if the abusive behavior the detainees were being subjected to was permissible. SSG [REDACTED] told the accused something to the effect of "what you don't understand is that we don't get the chance to do this stuff in the civilian world." CPL [REDACTED] then added that he "loved this shit." When pressed, both SSG [REDACTED] and CPL [REDACTED] stated that they were "within their rights" to abuse detainees. The accused observed that one of the detainees was bleeding from his wrist were he was still handcuffed or possibly the knee. The accused commented on this bleeding to the MP and asked if the abuse should stop. CPL [REDACTED] urged the accused and others to continue with the abuse, and the accused and other individuals participating in fact did continue. (b)(6)-4; (7)(C)4

9. Notwithstanding SSG [REDACTED] and CPL [REDACTED] assertions that the abusive behavior was "within their rights," the accused knew based on his training, experience, and education that such behavior was illegal, immoral, and without legal justification or excuse. Nevertheless, the accused assisted the MP in abusing the detainees.

10. SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], SPC [REDACTED] and the accused continued to abuse the detainees. The accused was present for one hour, but did not participate in the abuse of the detainees for the full hour. SPC [REDACTED] stood by encouraging the other MP and holding a camera although the accused is not certain that pictures were taken with the camera. [REDACTED] translated for the MP and assisted in yelling at the detainees. SPC [REDACTED] did not take part in the abuse. During this period of abuse, the group of MP (SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]), SPC [REDACTED], and [REDACTED] entered into a silent agreement to abuse the detainees. Ultimately the detainees were handcuffed with their naked bodies pressed tightly together in such a fashion as to suggest that the men were sodomizing one another. While in this position, both CPL [REDACTED] and the accused used their feet to press the detainees closer together. At no time during the abuse did the detainees resist in any way or appear to be a threat. To the contrary, the detainees were in a state of terror, pain, and hopelessness throughout the abuse. (b)(6)4; (7)(C)4

11. Prior to handcuffing the detainees together, the accused, along with SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED], yelled loudly at the detainees and with their voices and with various hand signals, compelled the detainees to crawl along the floor and perform various exercises. The accused did this himself and also in conjunction with the other individuals. Additionally, SPC [REDACTED] poured cold water on the naked detainees anytime the detainees would try to close their eyes. Because it was November and night, the cold water greatly chilled the detainees. SPC [REDACTED] also threw a nerf football at the detainees, striking them while they were handcuffed on the floor. The accused threw the same ball as well at the detainees, but did not actually contact any of the detainees with the ball. At one point SPC [REDACTED] grabbed one detainee by the throat and slapped

the detainee several times while asking the detainee "why he raped that kid." SPC [REDACTED] also screamed and laughed at the detainees pointing out that the detainees had "small dicks" and that she was not sexually interested in "anything these guys had." This abuse was carried out in the open in tier 1B. In addition to the MI and MP soldiers present, Iraqi Corrections Officers and other detainees witnessed the humiliation of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

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

12. During the abuse of the detainees, CPL [REDACTED] and SPC [REDACTED] laughed at various times and seemed to be enjoying themselves throughout the abuse. From the actions, words, and demeanor of the individuals involved in the abuse, it was clear that the primary purpose of the abuse was simply to provide entertainment for those conducting the abuse, at least with regard to SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPO [REDACTED]. The accused, however, showed no signs of personal enjoyment while conducting the abuse but remained very serious during the incident. There was no indication whatsoever that the detainees were to be questioned for intelligence value or that the abuse had been directed by any military or civilian personnel other than SSG [REDACTED], CPL [REDACTED], SPO [REDACTED], and SPC [REDACTED]. There were no civilian contract employees or other civilian government employees present encouraging or directing this conduct, nor was there any officers or NCOs senior to SSG [REDACTED]. After the abuse ended, Iraqi Corrections Officers returned the detainees' clothes.

13. Of the three detainees involved, two were alleged to have raped another detainee, a boy aged 15. The boy was examined soon after the alleged rape and although showed signs of nervousness and fear, did not have any physical trauma that would normally be associated with multiple, forcible, anal sodomy. Further investigation revealed that the allegations of rape were unfounded. At the time of the abuse by the accused and his co-conspirators, the men were being detained for crimes against fellow Iraqis.

14. During the time period of the abuse on 25 October 2003, the accused did not know whether or not the detainees had in fact raped anyone. Prior to the end of the abuse on or about 25 October, SPC [REDACTED] a friend of the accused, left the scene of abuse. SPC [REDACTED] did not participate in the abuse. SPC [REDACTED] later testified during the Article 32 hearing of SPC [REDACTED] that the accused made the statement to him to the effect of "[REDACTED] you're not going to tell anyone are you?" SPC [REDACTED] testified during the hearing that this statement was made as SPC [REDACTED] prepared to leave tier 1B the night of the abuse. SPC [REDACTED] left the hard site on the night of 25 October 2003 prior to the end of the abuse and before the accused left the hard site.

#### IV. PROTECTIONS OF CIVILIAN DETAINEES

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

15. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], while not enemy prisoners of war, were civilian internees entitled to the protections of Geneva Convention Relative to the Protection of Civilians in Time of War (GC IV). GC IV, Article 5 requires that

Stipulation of Fact – United States v. Cruz

civilian internees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] be treated with humanity. GC IV, Article 100, requires that the disciplinary regime in places of interment shall be consistent with humanitarian principles and that under no circumstances should a disciplinary regime include regulation imposing on internees any physical exertion involving physical or moral victimization. Further, Article 100 prohibits punishment drills.

16. Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and other Detainees also proscribes treatment for detainees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. Paragraph 1-5(b) prohibits inhuman treatment including corporal punishment and all cruel and degrading treatment. Paragraph 1-5(c) prohibits all acts of violence to include reprisals and those acts subjecting detainees to public curiosity. (b)(6)4; (7)(c)-4

17. Army Regulation 34-52, Intel Interrogation, states that the Geneva Conventions and U.S. policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation. This prohibition applies to all detainees and included, on 25 October 2003, Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

**V. CHARGE 1, THE SPECIFICATION – CONSPIRACY TO MALTREATMENT**  
**(In Violation of Article 81, UCMJ).**

18. On or about 25 October 2003, at the BCCF, the accused entered into an unspoken agreement with CPL [REDACTED], SSG [REDACTED], SPC [REDACTED], SPC [REDACTED], Mr. [REDACTED] and others to maltreat subordinate, an offense under the Uniform Code of Military Justice. While this agreement continued to exist and while the accused remained party to the agreement, CPL [REDACTED] performed one of the overt acts alleged, that is, CPL [REDACTED] forced three detainees to conduct various physical exercises while the detainees were naked. The overt acts included forcing the detainees to roll on the floor while naked. While the agreement continued to exist and while the accused remained party to the agreement, SPC [REDACTED] also performed overt acts by throwing a nerf football and pouring water on the detainees during the time of the abuse. all (b)(6)5; (7)(c)5 except as noted (b)(6)4; (7)(c)4

19. The detainees who were abused by the accused and his co-conspirators were subject to the orders of CPL [REDACTED], SPC [REDACTED], SSG [REDACTED], SPC [REDACTED], and the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

20. On or about 25 October 2003, at the BCCF, the accused maltreated these individuals by forcing the detainees to conduct various physical exercises while the detainees were naked and by handcuffing the detainees together on the floor while the detainees were naked. Forcing the detainees to perform these exercises and handcuffing the detainees together on the floor was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain

and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

21. During the night of 25 October in which the detainees were abused in tier 1B, the accused never withdrew from the conspiracy. Specifically, the accused did not take an affirmative act wholly inconsistent with his adherence to the unlawful agreement that would show that he had severed all connection with the conspiracy.

**VI. CHARGE II, THE SPECIFICATION – MALTREATMENT OF A DETAINEE**  
**(In violation of Article 93, UCMJ)**

22. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], as detainees of the BCCF were subject to the orders of the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

23. On or about 25 October 2003, at the BCCF, Abu Ghraib, Iraq the accused maltreated three detainees, [REDACTED] and [REDACTED] by forcing these men, while the men were naked, to crawl on the floor in such a manner as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another. Forcing the detainees to crawl in this manner and handcuffing the detainees to each other was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

**VII. ADDITIONAL INFORMATION IN AGGRAVATION:**

24. The accused has since learned that the humiliating and sadistic acts of maltreatment and dehumanization described herein are unacceptable in any culture, but especially so in the Arab world. Homosexual acts are against Islamic law and Arab men consider it humiliating to be naked in front of others. Placing the detainees together in a manner to simulate acts of homosexuality seriously violated the tenets of Islamic law and degraded the detainees.

25. Over the past few months, both Middle Eastern and Western media outlets have broadcast some of the attached photographs. The accused's and his co-conspirators' acts on the night of 25 October, as reflected in these photographs, contributed to tarnishing the reputation and image of the United States Armed Forces and the United States in the eyes of many Americans as well as many individuals throughout the world.

**VIII. EXTENUATION AND MITIGATION:**


26. On the evening of 20 September 2003, at approximately 2145 hours, Abu Ghraib was the target of a mortar attack. As the accused and his fellow soldiers prepared to begin interrogations that evening, a mortar impacted in very near proximity to the

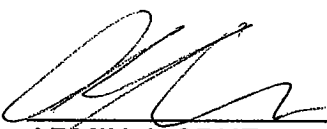
Interrogation Control Element tent where the accused was located. After initially seeking cover on the floor of the tent the accused and his fellow soldiers scrambled to acquire their personal protective equipment from their indoor sleeping area. The soldiers had been told that a "Risk Assessment" had been completed and that it was safe to work outside. The accused and SSG [REDACTED] were out the door of the tent approximately 5-10 yards. SSG [REDACTED] entered the tent's doorway when suddenly a second mortar hit within 5-10 yards of SSG [REDACTED] SSG [REDACTED] and the accused. Everyone hit the ground. SSG [REDACTED] yelled, "I'm hit, I'm hit". The accused almost immediately returned to SSG [REDACTED]'s side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which SSG [REDACTED] began to triage immediately. The accused turned to go back to the impact site to continue to assist the wounded. The accused worked on a fellow analyst by the name of SGT [REDACTED] for a long time attempting to provide aid. SGT [REDACTED] was one of two soldiers who was in the immediate impact zone of the second mortar. As SSG [REDACTED] handed SSG [REDACTED] off to the medics on the scene he came upon the accused still in attendance of SGT [REDACTED]. SSG [REDACTED] began to assist the accused and the medics in revival and stabilization efforts of SGT [REDACTED]. The accused performed chest compressions on SGT [REDACTED] and verbally comforted and encouraged him unfalteringly saying "you are going to make it, you can do this, and we are here for you". The accused and SSG [REDACTED] personally loaded SGT [REDACTED]'s ravaged body into the medical evacuation chopper and spent the next several hours performing evacuation operations of the other dead and wounded. The accused insisted that SSG [REDACTED] and he follow SGT [REDACTED] to the hospital to continue to see that SGT [REDACTED]'s medical needs were being met. The accused and SSG [REDACTED] did check on SGT [REDACTED] condition after first ensuring that other soldiers had been attended to. The accused learned from the hospital staff that SGT [REDACTED] was pronounced DOA. The accused and SSG [REDACTED] determined where he had been taken and secured another chopper ride to the morgue facility where they viewed SGT [REDACTED] in his interim resting place. The accused and SSG [REDACTED] said good-bye to their fallen comrade and together began their grieving process with a hand on SGT [REDACTED]'s body bag as they said goodbye to him. The accused was wounded during this mortar attack and was subsequently awarded the Purple Heart. The accused, based on this incident as well his overall duty performance was recommended for the Bronze Star award for meritorious service. That award was approved but because the soldier was flagged pending his investigation, the award was withheld from presentation.


27. The accused has agreed to cooperate with the government in the investigation of misconduct within the BCCF. Additionally, the accused has cooperated with the government by waiving his Article 32 hearing, entering an Offer to Plead Guilty, and agreeing to a trial date convenient to the government. This cooperation has saved the government considerable time, expense, and effort in resolving the accused's case.

**IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE**

28. The government and the defense agree that this stipulation of fact plus attached enclosures are admissible at trial and may be considered by the military judge in determining the providence of the accused's pleas and in determining an appropriate sentence. The attached enclosures include five photographs labeled 004, 005, 006, 007, and 008. The accused appears in photographs 004 and 005 as the only soldier in black PT shorts.

 (b)(6) 4, 7(c) 4  
\_\_\_\_\_  
Civilian Defense Counsel

  
\_\_\_\_\_  
ARMIN J. CRUZ  
SPC, USA  
Accused

(b)(6)-2, 7(c)-2  
  
\_\_\_\_\_  
MAJ, JA  
Trial Counsel

237

**ENLISTED RECORD BRIEF**

[illegible]

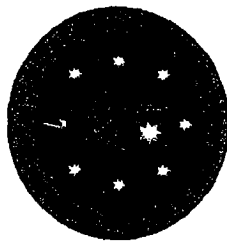
PROSECUTION EXHIBIT 2 ~~FID~~

OFFERED R. 62 ADMITTED R. 63



DEFENSE EXHIBITS ADMITTED INTO EVIDENCE

003109



Combined Joint Task Force 7  
Joint Interrogation and Debriefing Center  
*Abu Ghurayb*  
*Baghdad, IRAQ*



# Certificate of Appreciation

is presented to:

SPC Armin Cruz

October 2003 – February 2004

Your support of the Joint Interrogation and Debriefing Center in Baghdad, Iraq. You made an immediate impact on operations by providing actionable analytical support during interrogations of several top Iraqi prisoners. Your dedication to duty reflects great credit upon yourself, your unit, and the United States Army.

SGT, USA

Fusion Analysis Cell NCOIC

CW2, MI

Fusion Analysis Cell SA

CPT, MI

Fusion Analysis Cell OIC

003110

DEFENSE EXHIBIT A FID

**Excerpts from the AR 15-6 Investigation of the**  
**Abu Ghraib Prison and 205<sup>th</sup> Military Intelligence Brigade**  
**By LTG Anthony R. Jones and MG George R. Fay**

From the AR 15-6 Investigation of LTG Jones, 7. a. (3) at Page 12:

- “At Abu Ghraib, the lack of an MI commander and chain of command precluded the coordination needed for effective operations. At the same time, LTC [REDACTED] failed to execute his responsibilities as Chief, JIDC.”

From the AR 15-6 Investigation of LTG Jones, 8. a. at Page 15: (b)(6) - 2, (7)(C) - 2

- “This report, so far, has discussed the OPLAN background, operational environment, and policy, doctrine and structural decisions that created conditions which allowed abuses at Abu Ghraib to occur.”

From the AR 15-6 Investigation of LTG Jones, 8. e. (2) at Page 16:

- “CJTF-7 leaders and staff actions, however, contributed indirectly to the questionable activities regarding alleged detainee abuse at Abu Ghraib.”

From the AR 15-6 Investigation of LTG Jones, 8. f. (1) at Page 17:

- “The leaders from the 205<sup>th</sup> MI and 800<sup>th</sup> MP Brigades located at Abu Ghraib or with supervision over Abu Ghraib, failed to supervise subordinates or provide direct oversight of this important mission. The lack of command presence, particularly at night, was clear.”

From the AR 15-6 Investigation of MG Fay, at Page 17:

- “In the critical early stages of the JDIC, as it was being formed, Abu Ghraib needed a LTC to take total control. The need was for a leader to get the JIDC organized, to set standards, enforce discipline, create checks and balances, establish quality controls, communicate a zero tolerance for abuse of detainees, and enforce that policy by quickly and efficiently punishing offenders so that the rest of the organization clearly understood the message. Well-disciplined units that have active, involved leaders both at the NCO and Officer level are less likely to commit abuses or other such infractions. If such instances do occur, they are seldom repeated because those leaders act aggressively to deal with the violators and reemphasize the standards.”

From the AR 15-6 Investigation of LTG Jones, 8. g. at Page 18:

- “Other Contributing Factors. No single, or simple, cause explains why some of the Abu Ghraib abuses happened. In addition to the leadership failings discussed above, other contributing factors include: (1) Safety and security conditions at Abu Ghraib. Resources that might otherwise have been put towards detention operations instead had to be dedicated to force protection. In addition, the difficult circumstances for Soldiers, including a poor quality of life and the constant threat of death or serious injury, contributed to Soldiers’ frustrations and increased their levels of stress. Facilities at Abu Ghraib were poor. Working and living conditions created a poor climate to conduct interrogation and detention operations to standard.”

From the AR 15-6 Investigation of MG Fay, paragraph (4) at Page 8:

- “Looking beyond personal responsibility, leader responsibility and command responsibility, systemic problems and issues also contributed to the volatile environment in which the abuse occurred. These systemic problems included: inadequate interrogation doctrine and training, an acute shortage of MP and MI Soldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq

003111 DEFENSE EXHIBIT B FID

Campaign, and intense pressure felt by the personnel on the ground to produce actionable intelligence from detainees.”

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Page 42:

- “LTG Sanchez did not believe significant pressure was coming from outside of CJTF-7, but does confirm that there was great pressure placed upon the intelligence system to produce actionable intelligence (Reference Annex B, Appendix 1, SANCHEZ).”

From the AR 15-6 Investigation of MG Fay, paragraph (5) at Page 111:

- “Finding: Leaders failed to take steps to effectively manage pressure placed upon JIDC personnel.”

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Pages 10 and 88:

- “The use of nudity as an interrogation technique or incentive to maintain the cooperation of detainees was not a technique developed at Abu Ghraib, but rather a technique which was imported and can be traced through Afghanistan and GTMO. As interrogation operations in Iraq began to take form, it was often the same personnel who had operated and deployed in other theaters and in support of GWOT, who were called upon to establish and conduct interrogation operations in Abu Ghraib. The lines of authority and the prior legal opinions blurred. They simply carried forward the use of nudity into the Iraqi theater of operations. The use of clothing as an incentive (nudity) is significant in that it likely contributed to an escalating ‘de-humanization’ of the detainees and set the stage for additional and more severe abuses to occur.”

From the AR 15-6 Investigation of MG Fay, paragraph (11) at Page 45:

- “LTC [REDACTED] and ten other soldiers were wounded in the mortar attack that occurred on 20 September 2003. Two soldiers died in that attack. LTC [REDACTED] was extremely traumatized by that attack, especially by the two deaths and the agony suffered by one of those soldiers before his death. He was still very emotional about that attack when interviewed for this investigation on 27 May 2004. He said he thinks about the attack and the deaths daily. That attack also had an impact on a number of other Soldiers at Abu Ghraib as did the very frequent mortar attacks that occurred at Abu Ghraib during this entire period. The Soldiers’ and civilians’ morale at Abu Ghraib suffered as the attacks continued. Additionally, there was a general feeling by both MI and MP personnel that Abu Ghraib was the forgotten outpost receiving little support from the Army. (Reference Annex F, Appendix 3, Mortar Attacks). The frequency of these attacks and the perceived lack of aggressive action to prevent them were contributing factors to the overall poor morale that existed at Abu Ghraib.”

003112

REMOVED BATES PAGES 3113 - 3179  
(RECORD OF TRIAL – SPC ARMIN J. CRUZ)

(67 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE  
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF  
OF SPC CRUZ AND OTHER RECORDS CONTAINING PRIVATE  
INFORMATION, WHICH WERE DETERMINED TO BE  
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST AND  
DUPLICATES OF NONRESPONSIVE DOCUMENTS FOUND AT  
BATES 2819 - 2893

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED  
TESTIMONY

1SG [REDACTED]

11 September 2004

all

(b)(6)-(7)-

(7)(c)-2

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if 1SG [REDACTED] were present and testifying under oath, he would testify as follows:


1. I am SPC Cruz [REDACTED] I have known and worked with SPC Cruz for over 3 months on a daily basis. As his first sergeant, I assign duties and details to him and monitor his well-being and appointments.
2. I have observed SPC Cruz' duty performance, and he has never failed to show for duty on time, and has always been at the right place and time for all training and details. He has worked hard for me and performed up to all of my expectations as a soldier and has never performed poorly.
3. SPC Cruz' attitude has been good. Although he is understandably very concerned about his case, and has a reason to lose focus on his job, he has kept his focus, has not adopted a poor attitude, and has shown no signs of "copping an attitude" or unwillingness to work.
4. SPC Cruz interacts with the other soldiers from the company very well. I made it a point to integrate him into the company and welcome him. He has not had any altercations or problems with anyone in the company or battalion.
5. I have not had to perform or recommend any corrective training for SPC Cruz. He has not failed to attend mandatory training, show up for work, or perform details during his assignment to my company. I have not had to recommend anything in regards to work for SPC Cruz. He has been assigned a job to run the MWR area in our barracks and he has taken the initiative to set standards and ensure they are adhered to.
6. Considering SPC Cruz' performance since being assigned to my company, I believe SPC Cruz has been humbled by the allegations and has already learned what is right and what is wrong. I believe that he can be rehabilitated. Furthermore, I believe that he was impressionable and overwhelmed by the circumstances surrounding the prison and made a mistake in judgment by participating in detainee maltreatment. I do not condone what has happened at the prison, however, I realize how powerful peer pressure can be and someone as young and inexperienced as SPC Cruz can easily make a mistake in judgment. To be involved in armed combat, see what happens to soldiers when wounded or injured is a very emotional experience and can overwhelm most people. We as soldiers need to set emotions aside, do what is right, maintain the discipline that we have been taught and conduct ourselves professionally. SPC Cruz made errors in judgment and his actions are not to be dismissed lightly. Having said that, based on my interactions with SPC Cruz, I still believe that he can be rehabilitated.

DEFENSE EXHIBIT 2 003180

OFFERED R. 103 ADMITTED R. 105

7. SPC Cruz has done every duty as required, never been in trouble and always kept the NCO support channel informed on his schedule so we could assist him. I can attest that SPC Cruz has fulfilled all duties assigned to him and has not one time performed his duties poorly. Despite everything going on, he has continued to soldier on and I respect that a lot.

(b)(6)2;  
(7)(C)2  
[REDACTED]  
MAJ, JA  
Trial Counsel

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

[REDACTED]  
Defense Counsel

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

003181

all (b)(6)2; (b)(7)C12

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED  
TESTIMONY

SSG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. SPC Armin Cruz was assigned to my section in the Joint Interrogation and Debriefing Center, Fusion Analysis Cell, in November 2003, and did an outstanding job throughout the period of his service with me. When initially assigned to me, he was placed in the Former Regime Elements Cell. A few weeks later, seeing his work ethic, dedication, and attention to detail, I reassigned him as my FRE NCOIC in charge of two other junior enlisted soldiers. Once he was transferred into my section, I had daily contact with him until his departure from the JIDC around Feb-Mar 2004. In addition, we have kept in touch via email since going our separate ways.

2. As the FRE NCOIC, SPC Cruz was responsible for the integration of newly assigned personnel into the FRE teams. He ensured the proficiency and accountability of intelligence collection efforts by intelligence analysts assigned to the FRE Tiger Team. SPC Cruz was also accountable for the timely dissemination of team products to the necessary parties as well as the day-to-day management of the FRE team.

3. Additionally, SPC Cruz was also responsible for all-source analysis and the integration of intelligence products in support of the ICE Tiger Teams and Fusion cell. He was tasked to identify intelligence gaps and provide input to direct collection efforts. SPC Cruz also provided assessments and recommended courses of action, participated to the greatest extent possible to ensure accurate analytical exchanges, and was also responsible for relaying all new information obtained to team members.

4. SPC Cruz maintained knowledge of assigned cases and prioritized detainees based on intelligence value. He also coordinated with the Senior Analyst for the creation of products to assist the team's interrogation efforts. SPC Cruz additionally provided all final intelligence available in order to assist the team assessment and DAB memorandums to support Transfer and Release nominee profiles.

5. While working in the Fusion Analysis Cell, SPC Cruz personally wrote 10 Analytical Assessments, which should normally be executed by senior, Corp or Division level, Analysts. His analytical assessments included, but were not limited to the following areas-- General Security Organization, Special Security Organization, Iraqi Intelligence Service, with special emphasis on the Ghafiqi Project, Mohammeds Army and the Former Regime Elements remnants within Iraq. These analytical assessments were distributed around Iraq, some of which went as high as the Secretary of Defense.

DEFENSE EXHIBIT

003182

OFFERED R. 103 ADMITTED R. 105



6. SPC Cruz' work ethic, motivation, dedication and attention to detail initially impressed me, and have continued to do so. From what I have observed, as his supervisor, I feel he is more than capable and competent. He has continuously created a much happier environment, greatly assisting everyone with those long days spent within the office. He has made a significant impact within the organization.

7. As his supervisor, between November 2003 and March 2004, I had opportunities every day to observe his duty performance. SPC Cruz was basically my right hand man. He served as not only the NCOIC of one of my teams, but pretty much as my second in charge, when I was out performing other duties. He never refused to pull extra duty whenever I needed someone to help. SPC Cruz was and is an outstanding analyst and soldier. He was one of my best soldiers, with his outstanding work ethic, attention to detail, and humorous ways he had about him. Overall, I couldn't have asked for a better troop.


8. SPC Cruz' attitude and work ethic were amazing. Although I had set hours for him to work, SPC Cruz often times came in early and stayed much later than his duty hours, to assist his teammates, and ensure everything was going as planned. Although morale was often times low in Iraq, SPC Cruz always tried to keep a positive attitude on life, and passed those vibes off to the rest of the office. It allowed for a more relaxed environment and assisted with the section's productivity.


9. SPC Cruz worked extremely well with other soldiers. As one of my section leaders, SPC Cruz did not rule with an iron fist. He listened to everyone's opinions on the situation, and then acted from there. He never left anyone out, and always made sure his entire section was involved in any decisions that were being made. He worked well with my other section leaders, and also assisted them with their duties, when assistance was necessary.


10. Although we became very good friends, SPC Cruz also recognized that I was his supervisor, and that he had to listen to what I had to say. As such, he didn't gripe or complain, or even ask why, he just sucked it up, and moved on. His level of professionalism while in the combat zone was uncanny. Never did he talk down to anyone offering him suggestions. To the contrary, he would take in those opinions, with that of the others in the section, and mold them into his final piece.

11. I strongly believe SPC Cruz is capable of rehabilitation. Under the conditions, and based on everything that he experienced, I strongly feel he will have no problems with his rehabilitation. SPC Cruz is an outstanding soldier and wonderful friend, and anyone who was close to him will tell you the same.

12. SPC Cruz is a soldier who has definitely separated himself from the rest. SPC Cruz was by far one of the best soldiers with whom I have ever had the privilege of working.

(b)(6)2; (b)(7)(C)-2  
  
MAJ, JA  
Trial Counsel

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

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

003183

UNITED STATES OF AMERICA

v.

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

STIPULATION OF EXPECTED  
TESTIMONY

SSG [REDACTED]

11 September 2004

all

(b)(6)-2

(b)(7)(C)-2

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. Armin Cruz and I are members of the 321st MI Battalion based in Austin, Texas. I first met SPC Cruz during his initial visits to the unit after enlisting in the Army Reserves.
2. Right from the start SPC Cruz struck me as an educated, articulate young man. Over a drill or two I learned that he worked in a junior managerial position within the national private day-care industry. As a father who'd entrusted his child to the same organization, I gained even more respect for SPC Cruz. Parenting, just as surrogate parenting, is a task which requires discipline, compassion, and the ability to reason and be highly organized, structured and consistent in all aspects of the job. I too work in an industry where the male is only recently making inroads. I am a rehabilitative massage therapist. As an anthropologist by degree, I have studied human nature and found my way naturally to all that I've done in my career which involves people. We are both Red Cross certified Professional Rescuers as well. Specialist Armin Cruz is one of these special people.
3. SPC Cruz was my Analyst when we were first sent to Abu Ghraib. I am proud to have him as a friend, a "brother" and a team member. As an analyst he excels in his work. He constantly provided good data and enthusiastically immersed himself in the job, always making an extra effort. On one occasion he constructed a spread sheet specific to our teams' data making it easier to analyze as well as to report. As friends and team members we lived and worked together during our stay at Abu, even after our managerial staff began juggling team members from one Tiger Team to the next. Much to our dismay SSG Day and I lost SPC Cruz to another team and were unable to reacquire him in spite of our protestations that our team integrity had been compromised.
4. Analysts were in shorter order at Abu and were being heavily multi-tasked. A huge influx of civilian contractors ensued. The analysts endured a great burden at Abu, being shuttled from team to team, being required to hot swap shifts at the whim of the managers of the Interrogation Control Element. When the work day was done, as well as when it began, we would end or begin our day as "brothers" and hooch mates over a pot or two Starbucks coffee. It was something we shared with the entire unit as well as passers-by. This time always included marking down our calendar. "Another day behind us in this hell hole, another day closer to going home" was the oft unspoken mantra. We always shared all that our friends and family sent us. SPC Cruz is very generous and selfless person, never placing his needs before the needs of others.

003184

DEFENSE EXHIBIT G FID


OFFERED R. 103 ADMITTED R. 105

5. On the evening of 20 September 2003 at approximately 2145 hours our facility was once again the target of a mortar attack. We feared this moment because of the fact that we were cleared, as a result of an allegedly conducted Risk Assessment, to work outside at night in tents within the confines of the High Value yard at Abu Ghraib. The prison at that time had nearly unlimited indoor work space available in the form of empty cells and halls. Just prior to our arrival at Abu a mortar attack had killed on the order of 20 prisoners and injured many more. The proximity of our tents to the "cage" and the previous impact site struck fear in our minds. As we prepared to begin interrogations that evening, suddenly a mortar impacted in very near proximity to our Interrogation Control Element tent. After initially seeking cover on the floor of the tent we scrambled to acquire our personal protective equipment from our indoor sleeping area. I left the tent immediately behind my teammates Specialist Armin Cruz and Staff Sergeant [REDACTED]. Cruz and [REDACTED] were out the door of the tent approximately 5-10 yards as I breached the tent's doorway when suddenly a second mortar hit within 5-10 yards of them. As I hit the ground I heard SSG [REDACTED] yell, "I'm hit, I'm hit". Specialist Cruz almost immediately returned to my side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which I began to triage immediately. Specialist Cruz turned to go back to the impact site to continue to assist the wounded. He worked on a fellow analyst by the name of Sergeant [REDACTED] for a long time who was one of two soldiers who were in the immediate impact zone of this second mortar. As I handed SSG [REDACTED] off to the medics on the scene I came upon Specialist Cruz still in attendance of our fallen comrade. I began to assist Cruz and the medics in revival and stabilization efforts of our fallen comrade. Specialist Cruz performed chest compressions on our friend and verbally comforted and encouraged Sergeant [REDACTED] unfalteringly to hang in there, "you are going to make it, you can do this, and we are here for you". Our Red Cross training and military Combat Lifesaver training was being fully utilized. We personally loaded Sgt [REDACTED] ravaged body into the evac chopper and spent the next several hours performing evac operations of the other dead and wounded. Specialist Cruz insisted that we follow Sgt [REDACTED] to the hospital to continue to see that he was being cared for. We were able to do this once all of the casualties were transported to medical facilities and were being attended to. Sadly, we learned from the hospital staff that Sgt [REDACTED] was pronounced DOA. We determined where he had been taken and secured another chopper ride to the morgue facility where we viewed Sgt [REDACTED] in his interim resting place. We sadly said goodbye to our fallen comrade and together began our grieving process with a hand on [REDACTED] body bag as we said goodbye to him. Thereafter we were picked up by our rear element and interviewed regarding the occurrence.

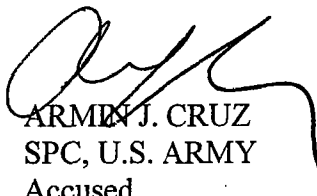
6. SPC Cruz, our teammate and I went to SFC [REDACTED] who was our detachment's NCOIC, and collectively asked for help in the form of counseling and were essentially laughed off. I personally pursued speaking with the Chaplain for the 205th MI Brigade whom I know well and was referred to the Chaplain in charge at Abu, who gave me very little of her time and no help to speak of. Access to Combat Stress assistance was provided one time very shortly after the mortar attack in a group session and to my knowledge, leadership made no concerted effort to determine whether individuals or the group needed any further help. We all dealt with the event and the situation in different ways, but SPC Cruz and I discussed issues regularly among ourselves, even after SPC Cruz was assigned to different teams and work schedules.


7. Specialist Cruz has always demonstrated all of the qualities which I referred to throughout the foregoing character reference. He is a brave, selfless human being whom I shall forever hold in the highest regard. He is my brother and has my unwavering support and respect. We have survived having unthinkingly been thrust into harms way by a commander who has hopefully learned a lesson, unfortunately at the ultimate cost, and are better men for it.

003185

  
MAJ, JA  
Trial Counsel

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

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

  
Defense Counsel

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

003186

APPELLATE EXHIBITS

003187

# Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States  
v.  
SPC Armin Cruz

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

## 1. ACCUSED

I have been informed that COL [REDACTED] is the military judge detailed to the court-martial to which the charges and specifications pending against me have been referred for trial. After consulting with my defense counsel, I hereby request that the court be composed of the military judge alone. I make this request with full knowledge of my right to be tried by a court-martial composed of (commissioned)<sup>1</sup> officers (and, if I so request, enlisted personnel).<sup>2</sup>

CRUZ, ARMIN

SPC

x [Signature]

10 September 2004

## 2. DEFENSE COUNSEL

Prior to the signing of the foregoing request, I fully advised the above accused of his/her right to trial before a court-martial composed of (commissioned)<sup>1</sup> officers (and of his/her right to have such court consist of at least one-third enlisted members not of his/her unit, upon his/her request).<sup>2</sup>

MAJ<sup>SK</sup>  
Civilian

[REDACTED]

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

10 September 2004

## 3. TRIAL COUNSEL

Argument is (not) requested.

MAJ

[REDACTED]

10 September 2004

## 4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (x one) ☒ approved ☐ disapproved<sup>3</sup>

COL

[REDACTED]

11 Sep 04

1. Delete when accused is a warrant officer or enlisted member.

2. Delete when accused is a commissioned officer or warrant officer.

3. When request is disapproved, the basis for the denial must be put on the record. (See MCM, 1984, RCM 903(c))

003188

APPELLATE EXHIBIT I

RECOGNIZED R. 8

UNITED STATES )

v. )

Offer to Plead Guilty )

Cruz, Armin J. )  
SPC, U.S. Army, )  
Headquarters and Headquarters )  
Service Company, )  
502nd Military Intelligence Battalion, )  
504<sup>th</sup> Military Intelligence Brigade, )  
III Corps, )  
Victory Base, Iraq, APO AE 09342 )

4 September 2004

\*\*\*\*\*

1. I, SPC Armin J. Cruz, the Accused, have examined the Charges preferred against me and all statements and documents attached thereto. After consulting with my trial defense counsel and being fully advised that I have a legal and moral right to plead not guilty to the Charges and Specifications under which I may be tried, I offer to plead guilty as follows:

To all Specifications and Charges: Guilty

2. I offer to plead to the Charges as stated above, provided that the Convening Authority will take the action set forth in Appendix I. There are no other promises, conditions, or understandings regarding my proposed pleas of guilty that are not contained in this offer and the quantum at Appendix I.

3. As part of this offer, I also agree to the following:

a. I agree to enter into a written stipulation of fact correctly describing those offenses to which I am offering to plead guilty. I further agree that the Military Judge may use this stipulation during the guilty plea inquiry and in adjudging an appropriate sentence.

b. Upon receipt of a grant of testimonial immunity from the Convening Authority, I agree to cooperate fully with the Trial Counsel in the investigations and prosecutions of Specialist [REDACTED] Sergeant [REDACTED]; Staff Sergeant [REDACTED], II, Corporal [REDACTED] Jr.; Specialist [REDACTED]; Specialist [REDACTED], Private First Class [REDACTED] and any other soldier or civilian charged based on misconduct at the Baghdad Central Confinement Facility at Abu Ghraib. Specifically, the term "cooperate fully" as used herein shall mean: (a) the full disclosure to the Trial Counsel of all information known by me and relating to the treatment, maltreatment or alleged abuse of detainees at Baghdad Central Correctional Facility, Abu Ghraib, Iraq; (b) the identification of individuals in digital photographs on compact disc titled "CPU Exam" in the "Abu" Criminal Investigation Division file; (c) personally testifying at all such Article 32 investigations, courts-martial and evidentiary hearings relative to the investigation and prosecution of Sergeant [REDACTED] Corporal [REDACTED]

all 6/6/5;  
(7XC)-5

(b)(6)-5;  
(7)(C)5 { [REDACTED]; Specialis [REDACTED]; Specialis [REDACTED] and Private  
First Clas [REDACTED] any other soldier or civilian charged based on misconduct at the  
Baghdad Central Confinement Facility at Abu Ghraib.

c. I understand that I have a right to be tried by a court consisting of at least three officer members, or by a court consisting of at least one-third enlisted members. None of the members would come from my company. I further understand that I have a right to request trial by military judge alone, and if approved, there would be no court members and the judge alone would decide whether I am guilty or not guilty. I request trial by judge alone.

c. I agree that the Government will not be required to physically produce any witnesses from the United States to testify on my behalf pursuant to R.C.M. 1001(e). I understand that this does not constitute a waiver of my right to offer into evidence other forms of evidence under R.C.M. 1001(c), including, but not limited to, telephonic testimony, Stipulations of Expected Testimony, letters, photographs, awards and certificates.

(b)(6)-4 (7)(C)-4  
4. I am satisfied with the advice of Mr. [REDACTED]. He has advised me of the meaning and effect of my guilty plea, and I understand the meaning and effect thereof.

5. The government initiated the negotiations for this offer to plead guilty, however I have made the decision to plead guilty freely, voluntarily, and with the advice of counsel. No person has attempted to force or coerce me into making this offer to plead guilty.

6. If, before or during trial, any specification is amended, consolidated or dismissed with my consent for multiplicity or other reason, this agreement will remain in effect.


7. I understand that I may request to withdraw the plea of guilty at any time before my plea is accepted and that if I do so, this agreement is canceled. This agreement will also be canceled if:

a. I fail to plead guilty as agreed above;

b. The Stipulation of Fact is modified at any time without the consent of either myself or the Trial Counsel; or

c. The Military Judge either refuses to accept my plea of guilty or changes my plea of guilty during the trial.

8. This writing, including Appendix I (Quantum), includes all terms and conditions of this Offer to Plead Guilty and contains all promises made to me or by me concerning my plea of guilty. There are no other terms or conditions that are not contained in this writing.

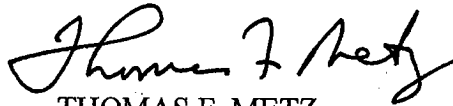
  
ARMIN J. CRUZ  
SPC, USA  
Accused

  
Civilian Defense Counsel



The offer to plead guilty dated 4 September 2004 is:

(accepted) ~~(not accepted)~~



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

003191

UNITED STATES

v.

Cruz, Armin J.  
SPC, U.S. Army,  
Headquarters and Headquarters  
Service Company,  
502<sup>nd</sup> Military Intelligence Battalion,  
504<sup>th</sup> Military Intelligence Brigade,  
III Corps,  
Victory Base, Iraq, APO AE 09342


APPENDIX I (QUANTUM)

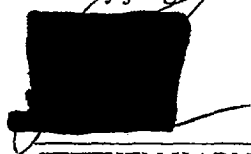
4 September 2004

\*\*\*\*\*

1. I, SPC Armin J. Cruz, offer to plead guilty to the Charges and Specifications, as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority agrees to refer my case to a special court-martial empowered to adjudge a bad conduct discharge.

2. Except as limited above, any other lawful punishments can be approved. The Convening Authority will apply any credit given by the military judge to the approved sentence.


  
ARMIN J. CRUZ  
SPC, USA  
Accused

  
Civilian Defense Counsel

(b)(6)4, (b)(6)-4

The offer to plead guilty dated 4 September 2004 and Appendix I (Quantum) is:

(accepted) ~~(not accepted)~~

  
THOMAS F. METZ  
Lieutenant General, USA  
Commanding

003192

UNITED STATES OF AMERICA

v.

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

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

11 September 2004

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

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

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

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

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

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

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

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

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

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

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


AC b. I would like a copy of the record of trial served on Stephen P. Karns.

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

(B6)-4; (7)(C)-4

C03194

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

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

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

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

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

NAME: Armin J. Cruz


STREET: \_\_\_\_\_

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

CITY/ STATE / ZIP CODE: \_\_\_\_\_


AREA CODE/ TELEPHONE NUMBER \_\_\_\_\_

DATED: 11 Sep 04

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

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

DATED: 11 Sep 04

 (b)(6)-4, (7)(C)-4  
\_\_\_\_\_  
Defense Counsel

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