VERBATIM
RECORD OF TRIAL

(and accompanying papers)

of

LAAK, Walter H.	(b)(6)	LCpl/E-3
(Name: Last, First, Middle Initial)	(Social Security Number)	(Rank)
1stBn, 4thMar, 1stMarDiv	USMC	Camp Pendleton, CA
(Unit/Command Name)	(Branch of Service)	(City or State)

By

SPECIAL **COURT-MARTIAL**

Convened by Commanding Officer
(Title of Convening Authority)

1st Battalion, 4th Marines
1st Marine Division (REIN)
(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, California, on 19 November 2003
(Place or Places of Trial) (Date or Dates of Trial)

APPELLATE RIGHTS STATEMENT

From: Lance Corporal Walter H. Laak USMC
To: The Judge Advocate General of the Navy

Subj: APPELLATE RIGHTS STATEMENT

1. I was convicted and sentenced by a Special court-martial on Wednesday, November 19, 2003, at Camp Pendleton, Ca. Pursuant to Article 70, Uniform Code of Military Justice, and R.C.M. 502(d)(6), R.C.M. 1105, and R.C.M. 1110, M.C.M., 2002 my defense counsel, First Lieutenant Curt J. Dewberry, USMC has advised me of my appellate rights and the review process of the record of my court-martial as follows:

a. The convening authority will take action on the sentence and may, in his discretion, take action on the findings. The action to be taken on the findings and sentencing is within the sole discretion of the convening authority. The determination of the action to take on findings and sentence is a matter of command prerogative. The convening authority is not required to review the case for legal errors or factual sufficiency. In taking action on the sentence, the convening authority may approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority is not empowered to reverse a finding of not guilty; however, the convening authority may change a finding of guilty to a charge or specification to a finding of guilty to a lesser offense included within that charge or specification, may disapprove a finding of guilty and order a rehearing, or may set aside and dismiss any charge or specification. Under no circumstances may the convening authority increase the severity of the sentence as adjudged. I have been advised by my defense counsel that it is counsel's responsibility to represent me during the convening authority's action stage of my court-martial conviction. In this regard, my defense counsel has advised me of my right to request deferment of any sentence to confinement, and of counsel's obligation to advise and assist me in preparing matters for submission to the convening authority for consideration prior to his taking action. I understand that I have ten days after a copy of the authenticated record of trial is served in accordance with R.C.M. 1104(b) or the recommendation of the staff judge advocate or legal officer is served in accordance with R.C.M. 1105(c), whichever is later, to submit matters to the convening authority. The convening authority may, for good cause, extend the ten day period for not more than twenty additional days. It is also understood that the failure to submit matters within the times prescribed waives the right to submit matters. I may also expressly waive, in writing, my rights to submit matters, and such waiver may not be revoked. My defense counsel has also advised me of his responsibility to examine the record of trial and to note any errors and to examine the post-trial recommendation by the staff judge advocate or legal officer for error or omissions, and to reply within ten days from the date of service of the record of trial under R.C.M. 1104(b) or service of the recommendation under R.C.M. 1105(c), whichever is later. The convening authority may, for good cause, extend this time period for up to twenty additional days.

b. If, after action by the convening authority, my sentence includes dismissal or a punitive discharge, as applicable, or confinement at hard labor for one year or more, I understand the record of trial will be forwarded to the Judge Advocate General for referral to the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) in Washington, D.C., for review. I

understand that NMCCA is limited to reviewing the findings and sentence as approved by the convening authority and may not reverse a finding of not guilty, approve findings of guilty previously disapproved, or approve a sentence more severe than that previously approved. In this regard, I understand that no findings of guilty approved on review below may be affirmed by NMCCA unless that court is satisfied that each element of the offense or offenses of which I was convicted is established beyond reasonable doubt by legal and competent evidence of record. I further understand that if NMCCA approves a finding of guilty with regard to one or more offenses, the court is then required to determine the appropriateness of the sentence as approved on review below, and the court may not affirm a sentence as approved on review below unless it finds that the sentence is a legal, adequate, and appropriate punishment in view of all the circumstances.

c. If NMCCA affirms the findings and sentence, in whole or in part, I understand that I have the right to seek further review of my court-martial conviction before the Court of Appeals for the Armed Forces (CAAF). In this regard, I understand that CAAF is composed of five civilian judges and is located in Washington, D.C. Insofar as further review before CAAF is concerned, I understand that, whereas the review process described in the preceding paragraph is automatic, I must request review before CAAF by filing a petition for grant of review within sixty days from the earlier of the date of being notified of the NMCCA decision or the date on which my copy of the NMCCA decision, after having been served on my appellate counsel of record, if any, is deposited in the United States mail for delivery by first-class certified mail to the address I have provided; or, if I fail to provide such an address, to the latest address listed by me in my service record. Furthermore, I understand that a petition for grant of review before CAAF does not have to be granted by that court. I understand that such a petition is granted only on good cause shown and the CAAF determines whether good cause is shown. I understand that if CAAF should grant my petition for review, its review of my case is limited solely to questions of law, and that its review will also be limited to those questions of law for which review was granted. I understand that CAAF generally must accept the facts as found at trial or during the prior review of my case and that it has no power to amend the sentence as affirmed by NMCCA except in very limited circumstances.

d. If CAAF reviews my case, or otherwise grants relief, I understand that I may further petition the U.S. Supreme Court for review of the CAAF decision by writ of certiorari. I understand that the grant or denial of a writ of certiorari is within the sole discretion of the U.S. Supreme Court and that the application for a writ of certiorari must be filed in accordance with, and within the time limits prescribed by, the rules of the U.S. Supreme Court.

e. My defense counsel has further advised me that I may waive the appellate review as just explained to me or I may withdraw the appeal of my case from such review. If I do waive the review or withdraw my appeal, then my case will be reviewed by a judge advocate. This judge advocate review must be in writing and set forth conclusions as to whether: (1) the court has jurisdiction over me and the offense(s); (2) the charge(s) and specification(s) stated an offense; and, (3) the sentence was within the limits prescribed as a matter of law. The judge advocate must also respond in writing to each allegation of error made by me or my defense counsel. If the judge advocate determines that corrective action is required or if the sentence includes dismissal, a punitive discharge, or confinement for more than six months, the record of trial and the judge advocate's review and

recommendation will be sent to the officer exercising special court-martial jurisdiction for action. The officer exercising special court-martial jurisdiction may disapprove or approve the finding(s) or sentence, in whole or in part; may remit, commute, or suspend the sentence, in whole or in part; may order a rehearing on the findings or the sentence, or on both; or may dismiss the charge(s).

f. I further understand that the portion of my sentence providing for a punitive discharge or dismissal may not be ordered executed until the court-martial conviction is final and the sentence, as finally approved, including the punitive discharge or dismissal. A court-martial conviction is final when the review is completed by NMCCA and:

(1) I fail to file a petition for grant of review before CAAF within 60 days after notification, or the date of certified mailing, as appropriate, or the NMCCA decision in my case;

(2) My petition for grant of review is denied or otherwise rejected by CAAF;

(3) My case is not otherwise under review by CAAF; or

(4) Review is completed in accordance with the judgment of CAAF and:

(a) A petition for a writ of certiorari is not filed within the time limits prescribed by the U.S. Supreme Court;

(b) A petition for a writ of certiorari is denied or otherwise rejected by the U.S. Supreme Court; or,

(c) Review is otherwise completed in accordance with the judgment of the U.S. Supreme Court.

Additionally, if I have waived review of my case by NMCCA or withdrawn my appeal from that court, my court-martial conviction is final when review by a judge advocate is completed and action is taken by the officer exercising special court-martial jurisdiction approving the findings and sentence. If my sentence includes a dismissal, approval by the Secretary of the Navy or such Under or Assistant Secretary as is designated is further required. If my sentence, as finally approved, includes a punitive discharge or dismissal, it is understood that I will be discharged or dismissed in accordance with the approved punishment.

2. In view of the foregoing, and should my court-martial be referred to NMCCA under Article 66 or Article 69, Uniform Code of Military Justice, I have been informed that I am entitled to representation before NMCCA, CAAF, and the U.S. Supreme Court by appellate defense counsel who is a lawyer qualified in accordance with Article 27(b), Uniform Code of Military Justice, designated by the Judge Advocate General of the Navy, and provided at no expense to me. Although I am entitled to such representation, I understand that I must request such representation. I also understand that, in addition to or in lieu of my designated appellate defense counsel, I may retain a civilian counsel to represent me before NMCCA, CAAF, and the U.S. Supreme Court, but that the services of a civilian counsel would be at my own expense and at no expense to the Government. Having fully discussed the foregoing with my defense counsel, I do desire to be represented by appellate defense counsel.

3. By my signature below, I hereby request the Judge Advocate General of the Navy to designate an appellate defense counsel to represent me. I understand that I may waive representation by appellate defense counsel, and that I may also waive or withdraw from appellate review. If I desire to exercise any of these rights, I will so indicate by separate correspondence to my appellate defense counsel.

4. In addition to, and separate from, my right to review by NMCCA, I have the right to sentence review by the Naval Clemency and Parole Board (NCPB). The NCPB will accept the findings of my court-martial and will not review my case for legal errors. After reviewing my case, however, the NCPB may grant clemency by reducing a part of my sentence. I understand that I may waive review by the NCPB. The decision whether to waive such review is an important one and I understand that I have the right to consult with counsel before making that decision.

5. For administrative purposes, the following information is provided:

a. Principal defense counsel in this case was:
First Lieutenant Curt J. Dewberry, USMC

b. I understand that in order for my defense counsel or any successor counsel properly to represent me, I must keep counsel informed of my current mailing address. In this regard, I may be contacted at the following address and phone number:

(b)(6)

c. By my signature below, I agree to forward any change of address or phone number to:

Director, Appellate Defense Division (Code 45)
Navy-Marine Corps Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, DC 20374-1111

Walter H. Laak

SPECIAL POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That I, Walter H. Laak, having been convicted by a Special court-martial on Wednesday, November 19, 2003, do hereby make, constitute and appoint my appellate defense counsel of record appointed under the provisions of Article 70, Uniform Code of Military Justice, U.S.C. section 870, and R.C.M. 1202, MCM, 2002, for the defense of my case, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the U.S. Navy-Marine Court of Criminal Appeals (NMCCA) decision in my case and thereby start the running of the 60-day appeal period within which I may petition the U.S. Court of Appeals for the Armed Forces (CAAF) for a grant of review and, in the event any part of my conviction is affirmed by the NMCCA, to execute, file, and prosecute a petition for grant of review in the CAAF under the provision of Article 67, UCMJ, 10 U.S.C. section 867, or when in his judgment he deems further review of my conviction is unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the CAAF. I fully understand my statutory right under Article 67(c), UCMJ, 10 U.S.C. section 867(c), to have actual personal service of the decision of the NMCCA on myself and I hereby voluntarily, knowingly, and consciously waive that right.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power in my of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Wednesday, November 19, 2003.

Walter H. Laak

With the United States Armed Forces at Camp Pendleton, Ca.

I, First Lieutenant Curt J. Dewberry, the undersigned officer, do hereby certify that on this Wednesday, November 19, 2003, before me, personally appeared Walter H. Laak who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the contents thereof, he personally acknowledged to me that he signed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth.

AUTHORIZED TO ACT AS A NOTARY PUBLIC UNDER THE PROVISIONS OF SECTION 936 OF TITLE 10 OF THE UNITED STATES CODE

Curt J. Dewberry
First Lieutenant, USMC

PRIVACY ACT STATEMENT

Authority. This information is requested by authority of 10 U.S.C. section 876a(1982), Executive Order 12473, C.F.R. 201 (1984 Comp)

Principal Purpose(s). This information is used to keep the servicemember informed of the status of his case through appellate review, to ensure that he is fully advised of his appellate rights, and to communicate actions that may be required of the servicemember based upon appellate review.

Routine Uses. The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation in the Federal Register apply.

Mandatory or Voluntary Disclosure and Effect on Individual Not Providing Information. Failure to provide a current address and telephone number may adversely affect the servicemember's ability to properly exercise his rights on appellate review and may adversely affect any benefits or privileges due upon completion of such review. For servicemembers requesting voluntary appellate leave, failure to provide a current address and telephone number may result in denial of that request. For servicemembers ordered to involuntary appellate leave or those already on appellate leave, either voluntarily or involuntarily, failure to provide current information may result in disciplinary action.

Tuesday, November 18, 2003
Walter H. Laak

UNITED STATES MARINE CORPS
Legal Service Support Team D
Legal Services Support Section
1st Force Service Support Group, MARFORPAC
Camp Pendleton, California 92055-5607

1050
LSST-d
19 Nov 2003

From: Lance Corporal Walter H. Laak 447929599, U.S. Marine Corps
To: Commanding General, Marine Corps Base
Via: Commanding Officer, 1stBn, 4thMar, 1stMarDiv

SUBJ: REQUEST FOR VOLUNTARY APPELLATE LEAVE

Ref: (a) MCO P1050.3G, Regulations for Leave, Liberty and Administrative Absence

Encl: (1) Copy of completed discharge physical

1. In accordance with the reference, I request to be placed on voluntary appellate leave.

2. The enclosure is attached as required information.

3. I hereby request that I be granted leave, including excess leave, without pay, pending completion of the review of my court-martial. I understand that:

a. While on such leave, I am subject to the orders of competent military authority;

b. While on such leave, I must keep my commanding officer advised of my correct address;

c. Such leave may be terminated at any time by written notice to me, delivered to the address that I have provided my Commanding Officer. Upon notification of such termination, other than as a result of my executed discharge, I am obligated to expeditiously return to my duty station or such other location as directed by competent authority;

d. I am not entitled to mileage allowance or transportation in kind while on such leave. Accordingly, I must bear my own transportation expenses from my duty station to my leave address and, if my leave is terminated for any reason other than as a result of my executed punitive discharge, I must bear my own transportation expenses to return to my duty station. In either event, I must meet such expense without recourse to the government;

e. Any accrued leave remaining to my credit will be charged to my account. I will receive pay and allowances for such accrued leave, if any, which I utilize. Thereafter, any leave requested hereby which is utilized by me will be excess allowance and during which period all my existing allotments will be stopped in the same manner that such stoppages are made upon discharge;

f. If the punitive discharge is disapproved for any reason, I may be discharged with a discharge under conditions other than honorable or an honorable or general discharge, as appropriate;

g. My leave may be terminated if my punitive discharge is disapproved, or approved but suspended for a probationary period;

h. Solely at the option of the Commanding General, termination of my leave may be effected where the date of my expiration of active duty (EAS) or other obligated active duty has not passed and my punitive discharge is disapproved by the discharge authority. In such an event, I hereby consent to be discharged for the convenience of the government, specific basis under MCO P1900.16C, Marine Corps Separation and Retirement Manual, paragraph 6203(4), is applicable to my case, and cognizant military authority determines this course of action to be more appropriate than terminating my leave status; and

4. My excess leave address and telephone number are as follows:

(b)(6)

Walter H. Laak

Walter H. Laak

R E C O R D O F T R I A L

of

LAAK, Walter H. (b)(6) LCpl/E-3

1stBn, 4thMar, 1stMarDiv USMC Camp Pendleton, CA

By

Special Court-Martial

Convened by Commanding Officer

1st Battalion, 4th Marines
1st Marine Division (REIN)

Tried at

Camp Pendleton, California, on 19 November 2003

INDEX	RECORD
Article 39(a) Sessions:	
On 19 November 2003	1
Introduction of Counsel:	2
Arraignment:	6
Pleas:	7
Findings:	40
Prosecution evidence:	42
Defense evidence:	56
Sentence:	80
Appellate rights advisement:	81

TESTIMONY

EXHIBITS ADMITTED IN EVIDENCE

PROSECUTION EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
1	SRB pages	55	56

COPIES OF RECORD

_____ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

_____ copy (ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial of United States v. _____, delivered to me at _____ this ___ day of _____, _____.

I do / do not have matters to submit pursuant to R.C.M. 1105 and 1106 MCM, 2000.

_____

PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Camp Pendleton, California, at 1151, 19 November 2003, pursuant to the following order:

[END OF PAGE]

UNITED STATES MARINE CORPS
1ST BATTALION, 4TH MARINES
1ST MARINE DIVISION (REIN), FMF
BOX 555432
CAMP PENDLETON, CA 92055-5432

IN REPLY REFER TO:
5813
Legal
CMCO Ser: #1-02
29 Aug 02

SPECIAL COURT-MARTIAL CONVENING ORDER 1-02

Pursuant to authority contained in paragraph 0120b(3), Judge Advocate General of the Navy Instruction 5800.7C, of 3 October 1990, a special court-martial is convened and may proceed at Marine Corps Base, Camp Pendleton California, or at any such authorized place as directed with the following members:

Major M. R. Holahan, U.S. Marine Corps;
Major J. M. K. Casado, U.S. Marine Corps;
Captain (b)(6) U.S. Marine Corps;
First Lieutenant S. Rashid, U.S. Marine Corps; and
First Lieutenant D. G. Ayers, U.S. Marine Corps;

J. L. MAYER
Lieutenant Colonel
United States Marine Corps
Commanding

Certified True Copy
Capt, USMC

MJ: The Court will come to order at Marine Corps Base Camp Pendleton California in the case of *United States versus Lance Corporal Walter H. Laak United States Marine Corps*.

Captain (b)(6)

TC: Good morning, sir.

This Court is convened by the commanding officer 1st Battalion, 4th Marine Regiment by Court-Martial Convening Order 1-02 dated 29 August 2002, copies of which has been furnished to the military judge, defense counsel, accused, and court reporter for insertion in the record of trial. There are no modifications or corrections to the convening order.

The general nature of the charges in this case are as follows: Charge I, violation of the UCMJ Article 92, violation of a lawful order; Charge II, violation of UCMJ Article 93, cruelty and maltreatment; and Charge III, violation of the UCMJ Article 128, assault consummated by a battery.

The charges were preferred by Lance Corporal Thomas, United States Marine Corps, a person subject to the UCMJ, and sworn to before an officer authorized to administer oaths.

The charges have been properly referred to this court-martial for trial by Major D. P. Holahan, United States Marine Corps, the convening authority. He was the commanding officer on the date that these charges were referred.

The charges were served on the accused on 14 November 2003. The three-day statutory waiting period has expired.

The accused and the following persons detailed to this court-martial are present.

Colonel L. Korzan, United States Marine Corps Reserve, as MILITARY JUDGE;
First Lieutenant C. J. Dewberry, United States Marine Corps, as DEFENSE COUNSEL;
Captain J. S. Mills, United States Marine Corps, as TRIAL COUNSEL.

The members are absent.

Sergeant R. Grismore, United States Marine Corps, has been detailed as court reporter for this court-martial and has been previously sworn.

I have been detailed to this court-martial by the Officer-in-Charge of the LSSS Legal Team D. I am qualified, certified, and sworn in accordance with Article 27(b) and 42(a). I have not acted in any disqualifying manner.

MJ: Very well. Thank you, Captain Mills.

Lieutenant Dewberry?

DC: Yes, sir. Good morning, sir.

I have been detailed to this court-martial by the Senior Defense Counsel, Legal Services Support Team D. I am qualified and certified under Article 27(b) and sworn you under Article 42(a). I have not acted in any manner which might tend to disqualify me in this case.

There are no other defense counsel assigned to this case, sir.

MJ: Very well. Thank you.

Lance Corporal Laak, are you the accused in this case?

ACC: Yes, sir.

MJ: Lieutenant Dewberry, is the accused attired in the appropriate uniform with all awards and decorations to which he is entitled?

DC: Yes, sir. Lance Corporal Laak is dressed in his service Charlies. He's wearing the Combat Action Ribbon, Presidential Unit Citation, the Navy Unit Commendation, the National Defense Service Medal, and the Sea Service Deployment Ribbon with a Bronze Star in lieu of Second Award.

MJ: Very well. Thank you. You both may be seated.

The accused and his counsel did as directed.

MJ: Lance Corporal Laak, you may remain seated throughout this discussion unless I direct you to do otherwise.

Lance Corporal Laak, you have the right to be represented in this court-martial by Lieutenant Dewberry, your detailed defense counsel. You also have the right to be represented by military counsel of your own selection provided that the counsel you select is reasonably available. Military defense counsel are provided to you free of charge.

If you're represent by military counsel of your own selection, then Lieutenant Dewberry, your detailed counsel, normally would be excused; however, you could request that he continue to represent you along with the military counsel of your own selection; however his detailing authority would have the sole discretion to either grant or deny that request.

Do you understand that?

ACC: Yes, sir.

MJ: Now, in addition to your military defense counsel, you also have the right to be represented by a civilian counsel at no expense to the United States. Civilian counsel may represent you alone or along with your military defense counsel.

Do you understand your right to civilian counsel?

ACC: Yes, sir.

MJ: Do you have any questions at all about your right to counsel?

ACC: No, sir.

MJ: By whom do you wish to be represented?

ACC: First Lieutenant Dewberry, sir.

MJ: Do you wish to be represented by any other attorney, either military or civilian?

ACC: No, sir.

MJ: I've been detailed to this by court-martial by Colonel Robert Chester, the Circuit Military Judge of the Sierra Judicial Circuit. I am certified and sworn as a military judge in accordance with Articles 26(b) and (c) and 42(a) of the Uniform Code of Military Justice. I will not be a witness for either side in this case. I am not aware of any matters which I believe may be a ground for challenge against me.

However, do counsel for either side wish to voir dire or challenge the military judge?

TC: No, sir.

DC: No, sir.

MJ: Lance Corporal Laak, you have the right to be tried by a court-martial composed of members, including, if you request, at least one-third enlisted persons. If you were found guilty of an offense, the members would also determine a sentence.

Do you understand that?

ACC: Yes, sir.

MJ: You're also advised that you may request to be tried by, the military judge alone. If your request is approved, I, as the military judge, would determine your guilt or innocence, and if I found you guilty of an offense, I would also determine the sentence.

Do you understand that?

ACC: Yes, sir.

MJ: Have you discussed these choices with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you wish to be tried by a court-martial composed of members, a court-martial composed of members with enlisted representation, or by military judge alone?

ACC: Military judge alone, sir.

MJ: I was previously handed a copy of the first portion of your pretrial agreement, and it includes a provision by which you agree to request trial by military judge alone. Notwithstanding that, has anyone forced or threatened you to forego or waive trial by members?

ACC: No, sir.

MJ: Very well. Your request for trial by military judge alone is approved. This court-martial is assembled.

Prior to going on the record this morning, we did have a -- I did have a brief 802 conference in the presence of both counsel and the accused during which we discussed some typographical errors and other administrative changes that needed to be made to the charge sheet. All those changes have been made to the original and the date indicated being today's date.

Do both counsel agree with my summation of our brief 802 conference and do you also agree to the changes made to the charge sheet?

TC: Yes, sir.

DC: Yes, sir.

MJ: Very well. The accused will now be arraigned.

Captain Mills, are there any corrections to the charges and/or specifications?

TC: No, sir.

MJ: Does the defense desire the charges and specifications be read?

DC: No, sir, the defense waives the reading.

MJ: The reading will be omitted.

[END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. RANK/RATE	4. PAY GRADE
Laak, Walter H.	(b)(6)	LCpl	E-3

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
1stBn, 4thMar, 1stMarDiv, CamPen, CA 92055	12 Oct 00	4 years

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$1528.80	None	$1528.80	None	N/A

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 92

SPECIFICATION: In that Lance Corporal Walter H. Laak, U. S. Marine Corps, on active duty, having knowledge of a lawful order issued by ~~Lieutenant Colonel J. T. Mayer,~~ U.S. Marine Corps, not to torture enemy prisoners of war, an order which was his duty to obey, did, on or about 3 June 2003, while deployed in Iraq, wrongfully violate such order by striking enemy prisoners of war with his fists on various parts of their bodies. JTM 03/11/19 (b)(6)

Charge II: VIOLATION OF THE UCMJ, ARTICLE 93

Specification: In that Lance Corporal Walter H. Laak, U. S. Marine Corps, on active duty, did, while deployed in Iraq, on or about 3 June 2003, maltreat enemy prisoners of war, persons subject to his orders, by hitting them with his fists on various parts of their bodies.

Charge III: VIOLATION OF THE UCMJ, ARTICLE 128

Specification: In that Lance Corporal Walter H. Laak, U. S. Marine Corps, on active duty, did, while deployed in Iraq, on or about 3 June 2003, unlawfully strike enemy prisoners of war, by hitting them with his fists on various parts of their bodies.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
(b)(6)	LCpl	SvcCo, HqSvcBn, 1stFSSG

d. SIGNATURE OF ACCUSER	e. DATE
(b)(6)	03/01/4

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 14th day of October, 20 03 and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

(b)(6)

HqSvcBn, 1stFSSG, MarForPac, CamPen, CA
Organization of Officer

Captain, USMCR
Grade and Service

Judge Advocate
Official Capacity to Administer Oaths
(See R.C.M. 307(b)—must be commissioned officer)

(b)(6)

DD FORM 458 S/N 0102-LF-000-4580

ORIGINAL

MJ: Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Lance Corporal Walter H. Laak, United States Marine Corps, I now ask you: How do you plead? But before receiving your pleas, I advise you that any motion to dismiss any charge or to grant any other relief should be made at this time.

Lieutenant Dewberry, does the defense have any motions?

DC: Sir, at this time we'd like to reserve the right to move to have some of the charges merged -- the two charges, Charge I and II -- excuse me -- merged for purposes of sentencing since the allegations all stem from the same activity, the same act, that is alleged in each charge and specification. We'd --

MJ: Are you talking about for findings purposes --

DC: Yes, sir. Once pleas are accepted. For sentencing purpose, sir.

MJ: -- or for sentencing purposes? Okay. I understand your motion and it's probably a pretty good one, so we'll revisit that at some point down the road. I will allow you to raise that motion again should it be necessary later on in this proceeding.

DC: Yes, sir.

MJ: Very well. Is the accused then prepared to plead?

DC: Yes, sir, he is.

To all charges and specifications: Guilty, sir.

MJ: Very well. I understand your pleas. You may be seated.

The accused and his counsel did as directed.

MJ: Lance Corporal Laak, I will only accept your guilty pleas if you understand their meaning and effect. I am now going to discuss your pleas of guilty with you. Do you have a copy of the charge sheet in front of you at this time?

ACC: Yes, sir.

MJ: All right. Keep that handy. If you need to refer to it, please do so. If at any time you need to discuss any matter with your counsel, I will give you the opportunity to do so.

A plea of guilty is the strongest form of proof known to the law. Based on your pleas of guilty alone, without receiving any evidence, this court can find you guilty of the offenses to which you are pleading guilty. Your pleas of guilty will not be accepted unless you understand that by pleading guilty, you admit every element of the offenses to which you are pleading guilty, and you are pleading guilty because you really are guilty. If you do not believe that you are guilty, you should not plead guilty for any reason.

Do you understand that?

ACC: Yes, sir.

MJ: Even if you believe you are guilty, you still have a legal and moral right to enter pleas of not guilty and to require the government to prove its case against you, if it can, by legal and competent evidence beyond a reasonable doubt.

If you were to plead not guilty, then you would be presumed under the law to be innocent and only by introducing evidence and proving your guilt beyond a reasonable doubt could the government overcome this presumption of innocence.

Do you understand this?

ACC: Yes, sir.

MJ: By your pleas of guilty, you waive, or in other words, you give up three very important rights. They are as follows:

First, the right against self-incrimination; that is the right to say nothing at all about these offenses;

Second is the right to a trial of the facts by this court-martial; that is the right to have this court-martial decide whether or not you are guilty based

upon evidence present by the prosecution and, if you chose to do so, by the defense;

Third, the right to confront the witnesses against you and to call witnesses in your own behalf.

Do you understand these three rights?

ACC: Yes, sir.

MJ: If you plead guilty there will not be a trial of any kind as to the offenses to which you are pleading guilty. By pleading guilty, therefore, you give up the three rights that I've just described. Do you understand that?

ACC: Yes, sir.

MJ: Have you discussed this matter with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you agree to give up these three rights with regard to these offenses that you have pleaded guilty and answer my questions about them?

ACC: Yes, sir.

MJ: Lieutenant Dewberry, what advice have you given the accused as to the maximum punishment for the offenses to which he has pled guilty?

DC: Sir, I have advised Lance Corporal Laak that the maximum punishment is confinement for 12 months, forfeiture of two-thirds base pay per month for 12 months, reduction to pay grade E-1, and discharge from the service with a (b)(6)

MJ: Does the government concur?

TC: Yes, sir.

MJ: Lance Corporal Laak, the maximum punishment for the offenses to which you have pleaded guilty is, as just indicated by your counsel, to be confined for 12 months, forfeiture of two-thirds pay per month for 12 months, reduction to E-1, and a (b)(6)

Now, is that your understanding as well?

ACC: Yes, sir.

MJ: Have you had enough time to discuss your case with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you believe that his advice has been in your best interest?

ACC: Yes, sir.

MJ: Are you pleading guilty voluntarily?

ACC: Yes, sir.

MJ: Has anyone forced or threatened you to plead guilty?

ACC: No, sir.

MJ: Now, in a moment you'll be placed under oath and we'll discuss the facts of your case. If what you say is not true, your statements may be used against you in a prosecution for perjury or false statement.

Do you understand that?

ACC: Yes, sir.

MJ: In addition, the government may ask that your statements and answers be used against you during the sentencing portion of your trial.

Do you understand that as well?

ACC: Yes, sir.

MJ: At this time, please stand, turn and face the trial counsel, raise your right hand.

Captain (b)(6) administer the oath.

The accused was duly sworn.

MJ: Is there a stipulation of fact concerning these pleas?

TC: No, sir.

MJ: Lance Corporal Laak, I am now going to explain the elements of the offenses to which you have entered pleas of guilty. By elements, I mean the facts that the government would have to prove beyond a reasonable doubt before you could be found guilty if you had pleaded not guilty. When I state each of these elements, ask yourself if it is true, and whether you want to admit to me that it is true, then be ready to discuss the underlying facts with me.

If you take a look at the charge sheet as amended, all three specifications are alleged to have been committed on or about the same date, that being 3 June 2003. So we'll just go in order.

If you look at the specification under Charge I, this offense alleges a violation of the Uniform Code of Military Justice, Article 92, failure to obey a lawful order.

This offense has the following four elements:

The first element is that a member of the Armed Forces, namely Lieutenant Colonel (b)(6) United States Marine Corps, issued a certain lawful order to not torture enemy prisoners of war;

The second element is that you had knowledge of the order;

The third element is that you had a duty to obey the order; and

The fourth element is that on or about 3 June 2003, while deployed in Iraq, you violated or failed to obey the order by striking enemy prisoners of war with your fists on various parts of their bodies.

Let me give you one brief explanation that pertains to this offense:

An order to be lawful must relate to specific military duty and be one which the member of the Armed Forces is authorized to give.

An order is lawful if it is reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the members of a command and is directly

connected with the maintenance of good order in the services.

Do you understand that explanation?

ACC: Yes, sir.

MJ: Now taken together with that explanation, do the four elements of this offense correctly describe what you did on this occasion?

The accused and his counsel conferred.

ACC: Sir, I walk --

MJ: No. No. I'm just --

The accused and his counsel conferred.

ACC: Yes, sir.

MJ: Okay. We're going to get to a detailed discussion concerning the underlying facts, but at this point what I am going to do is for each of the three offenses, I am going to list the elements for you and give you any pertinent definitions or explanations to flush out the elements, and then when I am done giving you each of the sets of elements, I am just going to ask you to begin with do those elements correctly describe what you did.

ACC: Yes, sir.

MJ: Now with respect to the four elements of the offense of violation of failure to obey a lawful order, along with that explanation that I've given for you, do they correctly describe what you did on this occasion?

ACC: Yes, sir.

MJ: If you look at the specification under Charge II, this offense alleges a violation of the UCMJ, Article 93, maltreatment of subordinates. This offense has the following two elements -- and again, after I give you the elements I'm then going to give you some definitions that apply to those elements.

The first element is that certain unnamed enemy prisoners of war were subject to your orders; and

The second element is that on or about 3 June 2003, while deployed in Iraq, you maltreated the enemy prisoners of war by hitting them with your fist on various parts of their bodies.

Those are the two elements. Here are some definitions.

The phrase "subject to the orders of," includes persons under your direct or immediate command and all persons who, by reason of some duty, are required to obey your lawful orders even if those persons are not in your direct chain of command.

Do you understand that explanation?

ACC: Yes, sir.

MJ: The term maltreated refers to unwarranted, harmful, abusive, rough, or other unjustifiable treatment which, under all of the circumstances, a, results in physical or mental pain or suffering; and, b, is unwarranted, unjustified, and unnecessary for any lawful purpose.

Do you understand that definition of the term maltreated?

ACC: Yes, sir.

MJ: Finally, assault and improper punishment may constitute the offense of maltreatment.

Do you understand that?

ACC: Yes, sir.

MJ: All right. Now, taken together with the definitions and the explanation that I just gave you, do these two elements of this offense correctly describe what you did on this occasion?

ACC: Yes, sir.

MJ: If you look at the specification under Charge III, this alleges a violation of the UCMJ, Article 128, assault consummated by a battery. This offense has the

following three elements:

The first element is that on or about 3 June 2003, while deployed in Iraq, you did bodily harm to certain unnamed enemy prisoners of war;

The second element is that you did so by hitting them with your fists on various part of their bodies; and

The third element is that the bodily harm was done with unlawful force violence.

Those are the three elements of that offense.

Let me give you this additional explanation.

An assault is an attempt or offer with unlawful force or violence to do bodily harm to another. An assault in which bodily harm is inflicted is called a battery.

Do you understand that so far?

ACC: Yes, sir.

MJ: A battery is an unlawful and intentional application of force or violence to another. The act must be done without legal justification or excuse and without the lawful consent of the victim.

Bodily harm means any physical injury to or offensive touching of another person, however slight.

Do you understand all of that explanation?

Yes, sir.

MJ: Now, taken together with those explanations, do the two elements -- I'm sorry -- the three elements of that offense correctly describe what you did on this occasion?

ACC: Yes, sir.

MJ: On 3 June 2003, what unit were you a member of and attached to?

ACC: 1st Battalion, 4th Marines, sir.

MJ: And where was your battalion on that day?

ACC: In Al Hillah, Iraq, sir.

MJ: Do you recall how that is spelled?

SPECTATOR: A-L-H-I-L-L-A-H. I'm sorry.

MJ: We can't have comments from the gallery.

SPECTATOR: I'm sorry, sir.

MJ: I was just going to say, in other cases I have seen that spelled A-L H-I-L-L-A-H. Is that how you spell the city where 1/4 was located?

ACC: Yes, sir.

MJ: Who is Lieutenant Colonel -- or who was Lieutenant Colonel (b)(6) I am not quite sure how it's pronounced. Do now know how it's pronounced?

ACC: Lieutenant Colonel (b)(6) , sir?

MJ: (b)(6) ? Who was Lieutenant Colonel (b)(6) on 3 June 2003?

ACC: Our battalion commander, sir.

MJ: Of 1/4?

ACC: Yes, sir.

MJ: And at some point did Lieutenant Colonel (b)(6) issue you some order pertaining to the treatment of enemy prisoners of war?

ACC: Yes, sir.

MJ: All right. First of all, when did he issue you the order?

ACC: We had classes on ship, sir, about the rules of engagement. We had quite a few of them, sir.

MJ: Well, who gave the classes?

ACC: Or staff NCO's, sir.

MJ: And was this while you were deployed en route to Iraq?

ACC: Yes, sir.

MJ: What time period are we talking about?

ACC: End of January, sir.

MJ: Obviously of '03.

ACC: Yes, sir.

MJ: What did these classes pertain to?

ACC: The rules of engagement, sir.

MJ: Well, it is specifically alleged in the specification under Charge I that you were issued an order not to torture enemy prisoners of war. Can we just kind of hone in on that one and tell me about that order. Who gave it? When? How you received it?

The accused and his counsel conferred.

ACC: The classes that we had, sir, on ship were we weren't supposed to harm any EPW's.

MJ: Let me ask you this: On 3 June 2003, what type of work were you performing that brought you into contact with EPW's?

ACC: I was on EPW watch, sir.

MJ: And what are the duties of a Marine or what were the duties -- what were your duties as a member of the EPW watch on 3 June 2003?

ACC: To watch the EPW's and make sure nothing happens to 'em, sir.

MJ: Well, did you ever receive an order from Lieutenant Colonel (b)(6) about the treatment or maltreatment of enemy prisoners of war?

ACC: Yes, sir.

MJ: When was that?

ACC: I can't remember, sir.

MJ: Well, was it while you were onboard ship or after you were in country?

ACC: In -- I think it was in Kuwait, sir.

MJ: Lieutenant Dewberry, would you like to take five minutes or so to talk with your client? He appears to be perhaps needing some additional time to prepare for a detailed inquiry into this matter. So why don't we take five or ten minutes.

DC: Yes, sir.

MJ: I need him to be a little more specific in terms of, you know, the order, what it pertained to, when he received it from Lieutenant Colonel (b)(6) He seems to be a little bit uncomfortable. Why don't you just take a little bit of time with your client and see if we can't come back and try to facilitate this inquiry.

Court's in recess.

The court-martial recessed at 1214, 19 November 2003.

The court-martial was called to order at 1223, 19 November 2003.

MJ: The Court is called to order. All parties when the Court recessed are once again present.

During the recess we did have a brief 802 conference in the presence of all counsel and the accused, during which we discussed this issue after Lieutenant Dewberry had an opportunity to discuss the matter in turn with his client, and the Court was apprised that the scenario with respect to the specification under Charge I was that the -- essentially, to summarize, the ultimate source of the order was the battalion commander, Lieutenant Colonel (b)(6) but that it was disseminated to the accused directly by his company commander, that being Captain (b)(6) , United States Marine Corps. And the Court was further apprised that counsel and the accused desire to proceed with the providence inquiry with the specification being amended to reflect Captain (b)(6) name as the order issuer as apposed to the battalion commander.

Did that accurately summarize our 802 conference, counsel?

TC: Yes, sir.

DC: Yes, sir.

MJ: And the charge sheet has been amended as I have indicated.

Lance Corporal Laak, have you had an adequate opportunity to discuss this matter and this change with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you agree to the amendment to the specification as I've just summarized?

ACC: Yes, sir.

MJ: Do you understand that that is considered a major amendment to the specification and I will only allow it if you consent to it? Do you understand that?

ACC: Yes, sir.

MJ: Do you consent to this major amendment to the specification under Charge I?

ACC: Yes, sir.

MJ: Lieutenant Dewberry, do you have any objection to that change?

DC: No, sir. No objection.

MJ: Okay. Very well. We'll pick up where we left off then.

Was Captain (b)(6) your company commander?

ACC: Yes, sir.

MJ: And at some point, prior to 3 June 2003, did he issue you some order pertaining to the treatment of enemy prisoners of war?

ACC: Yes, sir.

MJ: And how was that order disseminated to you or how did you receive it?

ACC: In company formation, sir.

MJ: And was Captain (b)(6) physically present and in front of that company formation?

ACC: Yes, sir.

MJ: And what was the order -- well, when was that company formation held, approximately.

ACC: The date, sir?

MJ: Well, yes, if you've -- you may not know the exact date, but can you give me some time frame for that are order.

ACC: February, sir.

MJ: February of 2003?

ACC: Yes, sir.

MJ: Where were you and your unit at the time.

ACC: In Kuwait, sir.

MJ: And what specifically did the order direct you to do or not do?

ACC: Not to hit EPW's, sir.

MJ: Did Captain (b)(6) use the term "torture" at any time during that formation?

ACC: Yes, sir.

MJ: So was the order to not hit or torture enemy prisoners of war?

ACC: Yes, sir.

MJ: Did you understand the order at the time that you received it from Captain (b)(6)

ACC: Yes, sir.

MJ: Did you understand that you would be, at some point after that order was given to you, responsible for the care and treatment of enemy prisoners of war?

ACC: Yes, sir.

MJ: What is your MOS?

ACC: 0311, sir.

MJ: I'm sorry?

ACC: 0311, sir.

MJ: Had you had any -- prior to the order from Captain (b)(6) had you had any other training or briefings concerning the care and treatment of EPW's?

ACC: Yes, sir.

MJ: What were -- well, can you summarize for me the training that you received on those prior occasions?

ACC: We had classes on ship, sir, about rules of engagement.

MJ: Did that also include the care and treatment of enemy prisoner of war?

ACC: Yes, sir.

MJ: And again, on 3 June 2003, you were in Iraq?

ACC: Yes, sir.

MJ: Did you violate or otherwise fail to obey Captain (b)(6) order on that date?

ACC: Yes, sir.

MJ: How did you do so?

ACC: I struck EPW's, sir.

MJ: How did you do that?

ACC: I hit them with my fist in their chest, sir.

MJ: Closed fists?

ACC: Yes, sir.

MJ: How many EPW's are we talking about?

ACC: Three, sir.

MJ: What -- just in a narrative fashion, just tell me what happened. Describe the situation, the --

ACC: I walked into --

MJ: -- physical, you know, description of where you're at and what led you to strike the EPW's in that manner.

ACC: I walked into the EPW site; it was dark and I went to the back and just struck one a couple of times. I went to the next and hit him like two times. The third one just, like, two times and then I just walked back out, sir.

MJ: Were they within a enclosed compound?

ACC: Yes, sir.

MJ: Was it, you know, open-air, a fenced-in area, or was it in a building?

ACC: It was surrounded by walls, sir.

MJ: How many EPW's were in that compound, approximately?

ACC: About 18, sir.

MJ: Eighteen?

Were these EPW's Iraqi soldiers?

ACC: Yes, sir.

MJ: Were they Iraqi soldiers that you had or your unit had captured?

ACC: Yes, sir.

MJ: When, in relation to the striking of them by you, had they been captured?

The accused and his counsel conferred.

ACC: It was a couple of days, sir.

MJ: And again, what prompted you to do that?

ACC: I was just angry at the time, sir, angry and stressed out.

MJ: I mean, had the three EPW's that you struck done anything to you?

ACC: No, sir.

MJ: Were you acting in self-defense.

ACC: No, sir.

MJ: Were you acting in the defense of any other Marine?

ACC: No, sir.

MJ: Were you acting in the self-defense [*sic*] of any other person?

ACC: No, sir.

MJ: With respect to the first EPW that you struck, how many times and on what portion of his body did you strike him?

ACC: His chest and stomach, around that area, sir, about two times.

MJ: Did that EPW attempt to defend himself?

ACC: No, he didn't, sir.

MJ: Was the EPW being physically restrained by handcuffs, rope, wire, any other means?

ACC: Zip ties, sir.

MJ: So the EPW's hands were basically restrained?

ACC: Yes, sir.

MJ: Was that the same situation with respect to the other two EPW's?

ACC: I believe so, sir.

MJ: The same question with respect to the second EPW that you struck, how many times and where?

ACC: Two times, sir, the same area, chest, stomach area.

MJ: And the third one?

ACC: The same thing, sir.

MJ: Did you inflict pain or bodily harm upon each of the three?

ACC: Yes, sir.

MJ: How did each of the three react or respond to being struck by you?

ACC: They really didn't do anything, sir.

MJ: Did anybody tell you that that was acceptable or permissible behavior?

ACC: One of the guys told me, Stop doing that, sir.

MJ: One of the guards?

ACC: Yes.

MJ: Was that a Marine?

ACC: Yes, sir.

MJ: What rank?

ACC: Lance corporal, sir.

MJ: At what point in this scenario did the guard tell you to stop doing that?

ACC: Just right when I was done, sir.

MJ: Were other Marines in the compound with you at the same time. No, let me finish the question. Were there Marines in the compound with you at the same time doing the same kind of behavior, striking and hitting EPW's?

ACC: No, sir.

MJ: Did you have any authority to do that?

ACC: No, sir.

MJ: Did you believe that you had any authority to do that?

ACC: No, sir.

MJ: Do you have any legal justification or excuse for violating Captain (b)(6) order?

ACC: No, sir.

MJ: Did any other Marine in a position of authority tell you that you did not have a duty to obey that order?

ACC: No, sir.

MJ: Did you, in fact, have a duty to obey that order?

ACC: No, sir.

MJ: I'm sorry?

ACC: No, sir.

MJ: You didn't have a duty to obey Captain (b)(6) order?

ACC: Oh, yes, sir I did.

MJ: Do you believe then that Captain (b)(6) being your company commander, had the authority to issue an order to not torture or strike enemy prisoners of war?

ACC: Yes, sir.

MJ: Do you believe that your conduct in striking enemy prisoners of war while their hands are restrained constitutes torture?

ACC: Yes, sir.

MJ: Do you believe Captain (b)(6) order was lawful?

ACC: Yes, sir.

MJ: Could you have avoided striking these EPW's had you wanted to do so?

ACC: Yes, sir.

MJ: Did anything force or compel you to strike these EPW's in the manner that you described?

ACC: No, sir.

MJ: Could you have complied with Captain (b)(6) order had you wanted to do so?

ACC: Yes, sir.

MJ: Again, did anyone or anything give you the authority to disregard his order?

ACC: No, sir.

MJ: When you violated his order on 3 June 2003 -- well, let me take a step back. Each specification says on or about 3 June 2003, was it, in fact, the 3rd of June 2003?

ACC: Yes, sir.

MJ: When you violated Captain (b)(6) order on that date, was that a freely made decision on your part?

ACC: Yes, sir.

MJ: Were there any exceptions to the order that you felt applied to your situation?

ACC: No, sir.

MJ: Now, one more question with respect to this offense, Lance Corporal Laak. Was there anything at all about the situation that you were in, to include what other Marines might have been doing or not doing, that led you to believe at the time that it was okay or permissible to strike enemy prisoners of war?

ACC: No, sir.

MJ: Do you believe, under the circumstances, your conduct was wrongful?

ACC: Yes, sir.

MJ: Does either counsel desire further inquiry into Charge I?

TC: No, sir.

DC: No, sir.

MJ: If you look at the specification under Charge II, this also alleges that you hit enemy prisoners of war with your fists on various parts of their bodies. Is this any different than the scenario that you just described for me under Charge I?

ACC: The same thing, sir.

MJ: Okay. It is exactly the same incident?

ACC: Yes, sir.

MJ: Same date? Same EPW's?

ACC: Yes, sir.

MJ: You were at the same location?

ACC: Yes, sir.

MJ: The same three enemy prisoners of war?

ACC: Yes, sir.

MJ: Were these enemy prisoners of war somehow subject to your orders?

ACC: Yes, sir.

MJ: How so?

ACC: Because they're our prisoners, sir.

MJ: Well, you told me earlier, quite a while ago, that you were on EPW watch. Correct?

ACC: Yes, sir.

MJ: And explain that to me in a little more detail, what that watch involved and what your responsibilities were.

ACC: To take care of the prisoners and make sure they're not harmed. Make sure we feed them and make sure that nothing happened to them, sir.

MJ: As a member of the EPW watch -- well, let me ask you this: How many members were on EPW watch at this time, the time that this incident occurred?

ACC: There were two, sir.

MJ: You and what was the rank of the other one?

ACC: I wasn't on; I just got off, sir.

MJ: You just got off EPW watch?

ACC: Yes, sir.

MJ: What time did this incident occur? What time of the day?

ACC: This was late at night, sir. I don't remember the exact time, sir.

MJ: What time did you get off EPW watch?

ACC: It was around 19, 2000, sir.

MJ: And how long had you been off watch before you struck the first EPW?

ACC: Thirty minutes, sir.

MJ: While you were on watch, was there one other Marine on watch with you?

ACC: Yes, sir.

MJ: What rank was he or she?

ACC: It was -- I can't remember sir, it always switched out everyday. It was always somebody else, sir.

MJ: I mean, who were typically, as best you can recall -- I mean, what rank Marine was standing this EPW watch, the same watch that you were standing?

ACC: A lance corporal or corporal, sir.

MJ: Okay. So E-3 or E-4. Was there kind of a sergeant of the guard or a staff NCO in charge of the EPW watch?

ACC: Yes, sir.

MJ: And who was that on the 3rd of June just before you got off your watch?

ACC: Sergeant (b)(6) sir.

MJ: Sergeant who?

ACC: (b)(6)

MJ: Do you know how to spell his last name?

ACC: (b)(6)

MJ: (b)(6)

ACC: (b)(6)

MJ: (b)(6)

ACC: Yes, sir.

MJ: Was Sergeant (b)(6) in the compound at the time that you were striking the EPW's?

ACC: Yes, sir.

MJ: Did he see you strike the EPW's?

ACC: He was sleeping, sir. No.

MJ: He was sleeping?

ACC: Yes, sir.

MJ: Was he supposed to be sleeping?

ACC: Yes, sir.

MJ: So he obviously didn't see you engage in your conduct. Correct?

ACC: That's right, sir.

MJ: Had he done or said anything to you prior to this incident that caused you to believe that you wouldn't get in any trouble for physically mistreating EPW's.

ACC: No, he came to my tent, sir, and woke me up and started yelling at me.

MJ: After it happened?

ACC: Yes, sir.

MJ: When he found out?

ACC: Yes, sir.

Then I had to go see my company gunnery sergeant, company XO, sir.

MJ: Okay. Well, I suspect I know the answer to the question I actually asked but let me ask it again. Did Sergeant (b)(6) do or say anything prior to the incident that caused you to believe it would be okay to mistreat EPW's?

ACC: No, sir.

MJ: As a member of the EPW watch do you have the authority to issue orders to enemy prisoners of war?

ACC: Yes, sir.

MJ: Would they then have the corresponding obligation to comply with your orders?

ACC: Yes, sir.

MJ: Now, you indicated to me you had been off watch for a half hour, approximately a half hour, before you struck the first EPW. Were they still, nevertheless, at that time subject to your orders?

ACC: Yes, sir.

MJ: Did you have any other duties during this time period while you were on EPW watch?

ACC: I had an EPW watch, just running for people, doing this and that for people, and just all kinds of sorts of different odd jobs, sir.

MJ: Okay. Prior to 3 June 2003, had you stood EPW watch before?

ACC: Yes, sir.

MJ: How soon prior to that date did you stand that watch?

ACC: How soon?

MJ: I mean, is this something you did everyday? Every other day?

ACC: Every now and then, sir.

MJ: So, like, a watch list would be published and you would be given a shift?

ACC: Yes, sir.

MJ: I mean, if that's not -- I'm, you know, making assumptions. If my assumptions aren't correct, please tell me that that's not how it was, but is that how it was?

ACC: Yes, sir.

MJ: Do you believe that your conduct of hitting those three enemy prisoners of war, again, with your first on various parts of their bodies constituted maltreatment as I defined that term for you?

ACC: Yes, sir.

MJ: Do you recall how I defined that for you? Do you want me to do that again?

ACC: No, sir.

MJ: For example, was it harmful to the EPW's, your conduct?

ACC: Yes, sir.

MJ: Unwarranted?

ACC: Yes, sir.

MJ: Abusive?

ACC: Yes, sir.

MJ: Rough?

ACC: Yes, sir.

MJ: Did you have any justification for treating them in that manner?

ACC: No, sir.

MJ: Maltreatment requires that your conduct result in physical or mental pain or suffering to at least some extent. Do you believe and admit that your conduct meets that definition or met that definition?

ACC: Yes, sir.

MJ: The act of punching somebody in the chest and stomach with a closed fist would you agree would cause some amount of pain?

ACC: Yes, sir.

MJ: The second prong of that definition of maltreatment requires that the conduct, under the circumstances, be unwarranted, unjustified, and unnecessary for any lawful purpose. Do you remember that definition?

ACC: Yes, sir.

MJ: Do you believe that your conduct, again, satisfied that definition?

ACC: Yes, sir.

MJ: Was there any lawful purpose, whatsoever, behind your conduct?

ACC: Excuse me, sir?

MJ: Was there any lawful purpose behind your conduct?

ACC: No, sir.

MJ: Did you feel it was necessary for some proper purpose?

ACC: No, sir.

MJ: And, again, even though you had been off EPW watch for some short period of time, are you satisfied that the enemy prisoners of war were still subject to your

orders?

ACC: Yes, sir.

MJ: Have you ever seen the names of those enemy prisoners of war?

ACC: No, sir.

MJ: They have never been identified to you?

ACC: I heard one of the names before, I just don't remember, sir.

MJ: Okay. Notwithstanding that fact, are you completely satisfied that at the time of these offenses they were, in fact, enemy prisoners of war?

ACC: Yes, sir.

MJ: They had been captured, recently captured Iraqi soldiers?

ACC: Yes, sir.

MJ: Any further inquiry, counsel, with respect to Charge II?

TC: No, sir.

DC: No, sir.

MJ: All right. We probably have already satisfied the elements of Charge III, but let's make sure.

Again, Lance Corporal Laak, the enemy prisoners of war that are alleged in the specification under Charge III, if you take a look at that, are we talking about the same EPW's as we have been talking about so far?

ACC: Yes, sir.

MJ: Is this the same incident that we have been discussing?

ACC: Yes, sir.

MJ: Did you intend to strike each of the EPW's in the manner that you have described?

ACC: Yes, sir.

MJ: Did you do so with unlawful force of violence?

ACC: Yes, sir.

MJ: Had any of the EPW's consented to that physical contact?

ACC: No, sir.

MJ: I defined for you the phrase "bodily harm," to mean any of physical injury to or offensive touching of another person, however slight.

Are you satisfied that your conduct satisfied that definition?

ACC: Yes, sir.

MJ: Did you have any legal justification or excuse for doing so?

ACC: No, sir.

MJ: Any further inquiry into this offense, counsel?

TC: No, sir.

DC: No, sir.

MJ: Lance Corporal Laak, if you will, take a look at each of the specifications. Confirm for me that your rank and name is correctly stated in each specification.

ACC: Yes, sir.

MJ: The personal data at the top of the charge sheet indicates you initially came on active duty in the Marine Corps on 12 October 2000 -- I'm sorry, 2000 -- for a period of four years. Is that correct?

ACC: Yes, sir.

MJ: Have you ever been discharged or released from active duty?

ACC: No, sir.

MJ: Have you remained on continuous active duty from 12 October 2000, to the present date?

ACC: Yes, sir.

MJ: Finally, Lance Corporal Laak, do you believe and admit that taken together, the elements I have listed for you and the matters that we have just discussed correctly describe what you did on each occasion?

ACC: Yes, sir.

MJ: There is a pretrial agreement in this case, correct counsel?

DC: Yes, sir.

MJ: Again, I've already indicated I have received a copy of the first portion of the pretrial agreement. I have reviewed the original which has been marked as Appellate Exhibit I. Do you have a copy of the pretrial agreement at your table, Lieutenant Dewberry?

DC: Yes, sir, we do.

MJ: Lance Corporal Laak, if you will look at the first part of your pretrial agreement, which is the only portion that I have at this time. If you turn to the fourth page, confirm for me that that is your signature at the top of that page.

ACC: Yes, sir.

MJ: Before you signed this document, did you read it carefully and discuss its content with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you believe that you fully understand each and every provision of your pretrial agreement?

ACC: Yes, sir.

MJ: Now, I don't have the sentence limitation portion of the pretrial agreement.

Lieutenant Dewberry, has that been marked as Appellate Exhibit II?

DC: Yes, sir, it has.

MJ: If you can take a look at Appellate Exhibit II, the sentence limitation portion, Lance Corporal Laak, confirm for me that you have signed that document as well.

The accused did as directed.

ACC: Yes, sir.

MJ: Before you signed that document, did you read it carefully and discuss its content with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Now, I don't know and I don't want to know at this time what the sentence limitation portion is that you've agreed to with the convening authority, but if you take a look at Appellate Exhibit II just confirm for me that you understand what the maximum sentence is that the convening authority can approve in this case.

ACC: I understand, sir.

MJ: Now, in a pretrial agreement you agree to enter pleas of guilty to the charges and specifications. In return, the convening authority agrees to approve and order executed no sentence greater than that set forth in Appellate Exhibit II.

Do you understand that?

ACC: Yes, sir.

MJ: If the sentence adjudged by this court-martial is greater than the one provided for in Appellate Exhibit II, then the convening authority would have to reduce the sentence to one no more severe than the one provided for in you agreement. Do you understand that?

ACC: Yes, sir.

MJ: On the other hand, if the sentence adjudge by this court-martial is less than the one provided for in Appellate Exhibit II, the convening authority cannot increase the sentence adjudged. Do you understand that as well?

ACC: Yes, sir.

MJ: Now, normally the sentence limitation portion of a pretrial agreement, Appellate Exhibit II in your case, is broken down into several distinct parts, to provide for provisions pertaining to punitive discharge, confinement, reduction, forfeiture, and possibly other miscellaneous sentencing provisions. Again, without disclosing any of the details of Appellate Exhibit II, is it broken down in that manner?

ACC: Yes, sir.

MJ: Do you understand that administrative processing is separate from this trial and your pretrial agreement?

ACC: Yes, sir.

MJ: Therefore, any agreement you may have with the convening authority pertaining to a punitive discharge would not prevent the service from initiating administrative discharge proceedings against you that could result in an other-than-honorable discharge. Do you understand that?

ACC: Yes, sir.

MJ: There are a couple of automatic provisions that I want to make sure you understand how they work, automatic reduction and automatic forfeiture.

Article 58a of the Uniform Code of Military Justice and Section 152 of the JAG Manual provide that any approved court-martial sentence of an enlisted person in a pay grade above E-1 that includes either a punitive discharge or confinement in excess of 90 days or 3 months automatically reduces that individual to the lowest enlisted pay grade, E-1, by operation of law. This would apply unless your pretrial agreement provides differently or the convening authority otherwise acts to disapprove or suspend operation of those articles. Do you understand that?

ACC: Yes, sir.

MJ: Similarly, and again, your counsel may have gone over all of this with you, but Article 58b of the UCMJ provides that any approved court-martial sentence that includes either a punitive discharge and confinement or confinement for more than six months results in the

forfeiture of two-thirds of all pay due during the period of confinement; however, the convening authority could waive those forfeitures for a period of up to six months as an aspect of your pretrial agreement, or otherwise, in which case the pay would be given to a dependant. Do you understand that as well?

ACC: Yes, sir.

MJ: You may request to withdraw your pleas of guilty at any time before sentence is announced. If you have a good reason for the request, I will allow you to do so. Do you understand that?

ACC: Yes, sir.

MJ: If any plea of guilty is changed to not guilty, either because you desire it or because I direct it, then the convening authority could withdraw from the agreement. Do you understand that?

ACC: Yes, sir.

MJ: Finally, if the pretrial agreement becomes null and void for any reason, that means of no effect, then your offer to plead guilty and enter into this agreement cannot be used against you in any way. Do you understand that as well?

ACC: Yes, sir.

MJ: If you take a look at Appellate Exhibit I, I just want to go through this in a little more detail to see if there's anything else that we need to discuss.

Paragraph 2 states that you are satisfied with Lieutenant Dewberry as your defense counsel. Is that correct?

ACC: Yes, sir.

MJ: We've covered everything else on the first page. If you turn to the second page.

We've covered Paragraphs 8 and 9. You've pled consistent with Paragraph 10. We've covered Paragraph 11. I will summarize Paragraphs 12 and 13 for you.

First of all, Paragraph 13a says that if you violate any provision of the agreement or commit any misconduct before the date of trial, the convening authority could withdraw from the agreement. Since we are here talking about the agreement, Captain (b)(6) I assume Paragraph 13a no longer applies. Is that correct?

TC: Yes, sir.

MJ: All right. Very well.

Paragraph 13b, however, may have some potential application and what it says, essentially, is that should you commit any misconduct or otherwise violate any provision of your pretrial agreement at any time between today's date and the completion of you sentence, to include any suspension periods, then the convening authority could take action after following certain procedural steps that could cause you to lose the benefit of your pretrial agreement. Do you understand that?

ACC: Yes, sir.

MJ: Do you also understand that for the purpose of that paragraph and for the agreement as a whole, any -- misconduct is defined as any act or omission that you might commit in violation of the UCMJ? Do you understand that as well?

ACC: Yes, sir.

MJ: Paragraph 14 indicates that this agreement constitutes all of the conditions and understandings of both the government and you regarding your pleas and the sentence limitations in this case. Is that correct?

ACC: Yes, sir.

MJ: Do you have any other understandings or agreements with the convening authority or the government other than what is set forth in your pretrial agreement?

ACC: No, sir.

MJ: Do both counsel agree with that statement?

TC: Yes, sir.

DC: Yes, sir.

MJ: And Captain [redacted](b)(6) is that your signature on Page 4 for the convening authority?

TC: Yes, sir.

MJ: And obviously, you had his authority and the convening authority agrees to be bound by the pretrial agreement?

TC: Yes, sir.

MJ: Very well.

Do both counsel agree with my interpretation of the pretrial agreement?

TC: Yes, sir.

DC: Yes, sir.

MJ: Lance Corporal Laak, do you have any questions at all about any of the provisions of your pretrial agreement?

ACC: No, sir.

MJ: Are you entering into this agreement voluntarily?

ACC: Yes, sir.

MJ: Has anyone tried to force or threaten you to enter into this agreement?

ACC: No, sir.

MJ: Have you fully discussed this agreement with Lieutenant Dewberry and are you satisfied that his advice has been in your best interest?

ACC: Yes, sir.

MJ: Do you have any questions about your pleas of guilty, your pretrial agreement, or anything else that we have discussed?

ACC: No, sir.

MJ: At this point I find the pretrial agreement to be in accord with appellate case law, not contrary to public policy or my own notions of fairness, and the agreement is accepted.

Once more, Lance Corporal Laak, do you have any questions about the meaning and effect of your pleas of guilty?

ACC: No, sir.

MJ: Do you still wish to plead guilty?

ACC: Yes, sir.

MJ: I find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by this court-martial, and to confront the witnesses against you. I further find that your pleas are made voluntarily and with a factual basis; and they are accepted.

Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Lance Corporal Walter H. Laak, United States Marine Corps, it's my duty as military judge to inform you that in accordance with your pleas, this court-martial finds you:

Of all three charges and the specifications thereunder: Guilty.

You may be seated.

The accused and his counsel did as directed.

MJ: Captain (b)(6) are there any corrections or additions to the personal data?

TC: No, sir. We do request that the matters addressed in providency be considered for purposes of sentencing.

MJ: Very well. Any objection, Lieutenant Dewberry?

DC: No, sir, just again, reserving the objection made earlier when we were entering pleas.

MJ: With respect to multiplicity for sentencing purposes?

DC: Yes, sir.

MJ: Very well. There has been no pretrial restraint of the accused. Is that correct, Lieutenant Dewberry?

DC: That's correct, sir.

MJ: Very well. The Court will note the personal data on the charge sheet as well as the matters addressed during the providence inquiry.

Lance Corporal Laak, at this point in the trial you have the right to present matters in extenuation and mitigation; that is, matters about the offenses or yourself that you want me to consider in determining an appropriate sentence.

Included in your right to present such matters are the rights you have to testify under oath, to make an unsworn statement, and to remain silent. If you testify under oath you may be cross-examined by the trial counsel and questioned by me. If you make an unsworn statement, you may not be cross-examined by trial counsel or questioned by me; however, the government would have the right to rebut any statement of fact contained in your unsworn statement. You may make an unsworn statement orally or in writing, personally or through your counsel, or you may use any combination of those methods. Finally, should you exercise your right to remain silent, that cannot and will not be held against you in any way.

Do you understand your rights?

ACC: Yes, sir.

MJ: Captain (b)(6) , does the government have any sentencing evidence?

TC: Yes, sir. I request a five-minute recess.

MJ: Court's in recess.

The court-martial recessed at 1306, 19 November 2003.

The court-martial was called to order at 1315, 19 November 2003.

MJ: The Court will come to order. All parties present prior to the recess are again present.

Captain (b)(6)

TC: Thank you, sir.

Sir, the government calls Lance Corporal (b)(6)

MJ: Proceed.

Lance Corporal (b)(6) U.S. Marine Corps, was called as a witness by the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Lance Corporal (b)(6) please state your name, rank, and unit and spell your last name.

A. Yes, sir. My name is Lance Corporal (b)(6) I am with 1st Battalion, 4th Marines.

MJ: We need a first name too, Lance Corporal (b)(6)

WIT: Yes, sir. (b)(6)

Q. Lance Corporal (b)(6) how long have you been in the Marine Corps?

A. About two years and two months, sir.

Q. With whom have you been attached for those two years?

A. This is my first fleet unit, sir.

Q. Is that 1/4?

A. Yes, sir.

Q. You've been with them for the last two years?

A. Well, aside from school and training, sir.

MJ: Time out a second. So how long have you been with 1/4?

WIT: 1/4, about a year and a month, sir, something close to

that, sir.

Q. Lance Corporal [redacted] what are you duties with 1/4?
A. I am a communications technician, Comm Platoon.

Q. What does that mean?
A. That means if a radio breaks in our battalion, I have to basically fix it, sir.

Q. Were you in Iraq during June of 2003?
A. Yes, sir, I was.

Q. Why were you there?
A. In support of Operation Iraqi Freedom, sir.

Q. How long had you been there at that point, in June?
A. In country we'd been about four months running on four months, something like that, sir.

Q. Do you know Lance Corporal Laak.?
A. Yes, I do, sir.

Q. How do you know him?
A. He's in my battalion, sir. I just -- random meetings.

Q. What kind of daily interaction would you have with him?
A. I didn't really have much interaction with him, sir, it was just more -- it was more along the lines of just random meet -- after work or something like that, sir.

Q. Lance Corporal (b)(6) I am going to direct your attention to June 2 2003. Do you recall that date? Actually, I meant to say 3 June 2003. Do you recall that date?
A. I am not sure exactly what you mean, sir.

Q. Let me ask you this: I am going to direct your attention to an incident taking place involving both Lance Corporal Laak and EPW's, enemy prisoners of war. Do you recall that incident?
Q. Yes, sir.

Q. Did that take place sometime on or about 3 June 2003?
A. Yes, sir, that sounds right.

Q. Where were you when that -- where were you at that time period that we're talking about?
A. I was on EPW watch, sir. I was standing there from -- I

believe it was 2 to 6 watch, something close to that, sir.

Q. What does that mean, two to six watch?
A. 02 in the morning do 06 in the morning, sir.

Q. Was it dark outside?
A. It was pretty dark, sir. In fact, actually, yes, sir, it was very dark because it was -- just when I came on it was about 2 in the morning, sir.

Q. What does that mean to be on EPW watch?
A. It means that I am supposed to guard the EPW's, keep them from escaping, keep anything from happening to them, basically take care of them while they -- before they're either sentenced as criminals of war or until they're released, because we just basically hold them -- held them there to make sure that they weren't criminals and that --

Q. Okay. How many Marines are on duty as EPW watch at a time?
A. There's two junior Marines, sir, and then there was a sergeant of the guard.

Q. So three total Marines?
A. Yes, sir.

Q. Was that the case on this night?
A. Yes, sir.

Q. How many EPW's were there?
A. I would say in the vicinity of 25, 26, sir.

Q. Now what kind of an arrangement are we talking about? Where are all of these EPW's spending their time?
A. We were in -- we had taken over a pistol factory, sir, and we were -- we kept the EPW's in the pistol range. Basically just a big sandlot with walls, I would say about 10 feet high, sir. Then in the rear part was -- we had a cammie net set up to provide shade for the EPW's during the day.

Q. What are the walls made out of?
A. Concrete, sort of a -- like a stucco sort of, sir.

Q. And how big would you say this walled-in area is?
A. I'm kind of bad with distances, sir, but I would say --

Q. Relative to this courtroom, can you --
A. It was longer this way, sir, but it was about half as wide as this court room, sir.

Q. The witness has -- when the witness says longer this way, he's pointing toward the door leading into the courtroom which I would estimate to be approximately 40 feet. He's saying that is longer than that. And then width wise, he says half the width of this court room which would probably be about 20 feet -- 15 to 20 feet?

MJ: And how much longer?

WIT: About another half a length, sir.

MJ: So about 60 by 20?

WIT: That could probably be right, sir.

MJ: Any objection to that summary of his description?

DC: No, sir.

MJ: Proceed.

Q. All right. Lance Corporal (b)(6) just so I've got this right, we've got 10-foot walls and approximately 60-foot by 20-foot area?
A. Yes, sir.

Q. And the deck is -- what covers the deck?
A. Sand, sir.

Q. Is there anything -- you said there were 20 to 25 EPW's in this area?
A. Something like that yes, sir.

Q. Is there anything dividing the EPW's up?
A. Yes, sir, we had rolls of concertina wire set up in certain areas where we had to keep some of the EPW's farther away from the rest of the EPW's because they had not been interrogated and -- I don't know all of the reasons, sir, but my assumption would be to keep them -- definitely make sure to keep them from talking to each other, to try to get a story.

Q. So is each EPW in his own little spot?

A. Negative, sir.

Q. So there's one group in one spot and another group in another spot?
A. Yes, sir.

Q. And that is divided by concertina wire?
A. Yes, sir.

Q. Were the EPW's restrained in any way?
A. Yes, sir, they had flex cuffs on.

Q. What are flex cuffs?
A. The zip ties, basically, around the wrists, sir, and they were also blindfolded.

Q. What were the -- when you say blindfolded --
A. It was just cloth -- strips of cloth, sir.

Q. Were their feet bound in any way?
A. Some of them -- some of them had -- had flex cuffs also on their ankles but not all of them all the time, sir.

Q. And in which case then some of them had their feet and wrists bound?
Q. Yes, sir.

Q. And others only had their wrists bound?
A. Yes, sir.

Q. Did all of them have their wrists bound?
A. Yes, sir.

Q. When their wrists were bound, were they bound in front or behind their backs?
A. If I remember correctly, most all of them were in the front, sir, like if they would mess with their blindfold or anything like, sometimes we would tie the wrists behind their backs, sir.

Q. All right. Now how were these EPW's spending their night? What were they doing?
A. They just slept, sir.

Q. Were they just kind of laying on the sand?
A. Just laying on the sand, sir.

Q. All of them?

A. All of them, sir.

Q. Did you see Lance Corporal Laak enter this facility at any point?
A. Yes, sir. He entered shortly after I got on watch about 15, 20 minute after I got on watch that night, sir.

Q. And about what time would that make it do you think?
A. I would guess 2:15 or so, sir.

Q. Okay. How did you realize he had come into the facility?
A. I just -- when I first saw him he had taken off his blouse and sat it down somewhere and he was walking towards the EPW's and PFC (b)(6) kind of sort of asked him, Hey -- he said, Hey, what are you doing?

Q. All right. My first question is: Who is PFC (b)(6)
A. PFC (b)(6) was the other Marine who was on watch with me that night, sir.

Q. Okay. One of the three Marines we had talked about?
A. Yes, sir.

MJ: Can you spell his last name?

WIT: (b)(6) sir.

MJ: Thank you.

WIT: Yes, sir.

Q. Did he say something to Lance Corporal Laak?
A. Yes, sir.

Q. What did he say?

DC: Objection, sir, calls for hearsay. PFC (b)(6) is not here to testify as to what he said.

MJ: Any response?

TC: It's effect on listener, sir, it's not hearsay. We're not using it for the truth of the matter asserted.

MJ: What's the relevance of this witness's reaction to what the PFC told him?

TC: We're not concerned about this witness' reaction, sir, we are just -- it would build or explain the circumstances for Lance Corporal Laak walking in when there are two sentinels or guards talking to him and him going through despite that.

MJ: I am going to sustain the objection. You can't answer the last question he asked.

WIT: Good to go, sir.

Q. Did -- okay. So Lance Corporal Laak came in and what did he do at that point?
A. He started walking towards the back, sir, and then we heard him -- well, we heard a striking noise and when we got up to look at it we saw him hitting the EPW's, sir.

Q. How was he hitting the EPW's?
A. He was -- in regards to what, sir?

Q. Well, what was he hitting them with?
A. Just his fist, sir.

Q. A closed fist?
A. Yes, sir.

Q. And where was he hitting the EPW?
Q. On the torso, sir.

Q. On the front of the torso?
A. Yes, sir.

Q. What was -- was the EPW -- where was he?
A. He was in the farthest back from the door. There's only one door that led into the holding area, sir, and it was the farthest back that you can get from the door, sir.

Q. Was he sitting down?
A. The EPW, sir?

Q. Yes.
A. He was laying down, sir.

Q. Laying down?
A. Yes, sir. I believe he was sleeping at the time, sir.

Q. How did the EPW react to this?
A. He -- well, obviously, he tried to cover himself, sir.

Q. Was that difficult with his wrists bound?
A. Yes -- well, I'm assuming so, sir. I wouldn't really know.

Q. Okay what happened at this point?
A. PFC (b)(6) and myself were trying to tell Laak to get out of there before anything happened because we didn't want any trouble and he --

Q. So what did you say?
A. We said, You need to leave. You need to get out of here. Stop doing that and get out of here.

Q. How did he respond?
A. If I recall correctly, he said, These mother fuckers are making us stay here till September, sir.

Q. Did he stop hitting the EPW's at that point, after you told him to stop?
A. He stopped hitting the EPW's, sir, except for when he was walking past, walking towards the door, he kicked another one, sir, and when he went to get his blouse again, he was going to kick another person laying on the ground but it wasn't an EPW, sir, it was Sergeant (b)(6) who was --

Q. Did he kick Sergeant (b)(6)
A. No, sir, we -- he stopped before then, sir.

Q. So before Sergeant (b)(6) , did he kick an EPW on his way out?
A. Yes, sir.

Q. How did -- where did he kick that EPW?
A. I believe it was in the side, sir. I am not directly sure because I kind of missed that one, sir. It was more attendant on getting him out of there.

Q. Did -- were you able to get him out of there?
A. Yes, sir. Well he left, sir.

Q. What did you do after that, once he left?
A. We woke up Sergeant (b)(6) sir, because he was the sergeant of the guard that night. We woke him up and told him what happened and Sergeant (b)(6) told us to write down our statements on a piece of paper and I am not exactly clear on what happened after that. I think there was -- they went and searched for Lance Corporal

Laak, and then talked to some -- probably the company first sergeant.

Q. All right. While Lance Corporal Laak was in there, did he ever explain to you why he wanted to hit the EPW's or offer any reason?
A. Like I said, sir, he, you know, he was upset about having to stay. We had just gotten word that day that we were probably going to get extended out there, sir, and so I'm assuming it was probably just anger.

Q. Did he mention anything about stress?
A. Yes, sir. He said -- he said, Now this is the way to relieve stress or something like that. This is the way I take care of stress.

Q. Did you take that to mean by hitting EPW's?
A. Yes, sir, because he said it while he was -- while he was striking the EPW's.

TC: Thank you. That's all I have at this time.

MJ: Cross-examination?

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. Lance Corporal (b)(6) you said that the holding facility was approximately 60 feet long. Is that correct?
A. Something like that, sir.

Q. Okay. And you and the PFC were you-all standing by the door, the entrance to the holding facility?
A. Yes, sir.

Q. You told Captain (b)(6) that Lance Corporal Laak walked to the back, the farthest back EPW and actually struck him. Correct?
A. Yes, sir.

Q. Now it was 0215 at this time. Is that right?
A. About that time, sir.

Q. You said it was really dark. Correct?
A. It was really dark and there was a cammie net in the way too, sir.

Q. Okay. So how -- I mean, I'm trying to get a little picture. How did you see from 60 feet away in the dark exactly what was going on?
A. Yes, sir. At first, we didn't see what was going on. We heard what was going on. We heard the striking. It was kind of hard to miss that, sir.

Q. But you didn't see the -- where the EPW was or how he was standing in relation or anything like that?
A. Well, the EPW was wearing kind of a whitish gown, sort of what they wear out there, sir. So he kind of stood out. His silhouette kind of stood out in the dark part, because we still had moonlight and stars. We could see a little bit, sir.

Q. Okay. So you could see a little bit?
A. We could see a little bit, but at first we didn't see him striking the EPW until we walked back there, sir.

Q. Now, did you say anything to him as he was walking in? I mean, were you, like, Hey. Stop. You can't come in? Or did he just say, I've got to take care of something? How did he walk in?
A. He just sort of walked in very quietly, unannounced and he just walked to the back.

Q. Now you said -- you said -- just one second --
A. Yes, sir.

Q. You said that after he struck these EPW's he left. You contacted the sergeant. Right?
A. Yes, sir.

Q. Now is he sleeping nearby?
A. Yes, he was sleeping on the ground. The door would be off to the left where the guards sat. It was on a little -- it was like a chest, sir, like a -- I don't know how to describe it exactly. It was just kind of a chest that we sat on and then we'd walk around and we'd sit on again. While he was sleeping off to the right where there was no EPW's, sir.

Q. Okay. Now, if you remember, what was exactly -- or approximately the time that it took for you to hear what you thought was him striking EPW's to the time that he actually left the facility and you woke up the sergeant. Was this one minute? Two minutes? Thirty seconds?

A. I'm not really sure, sir. I would -- two minutes maybe sir. I can't be sure because at the time it happened, it was just a real big shock.

Q. So why didn't you -- I mean, if this is going on for two minutes, first of all, why didn't you do anything to -- go ahead.

A. It wasn't that we didn't try to stop him, sir, it was just that at first it was kind of -- it was a really big shock like I said, sir. We had -- we kind of -- you know, we just woke up, sir, a little groggy and we weren't exactly sure on how to act at first and so then we jumped up after we realized, Oh, you know, he shouldn't be doing this. We said, Hey, you need to get out of here right now.

Q. And that's when --

A. So it probably wasn't even two minutes now that I think about it, sir.

Q. Now, you said you could hear the sounds of what you thought was him striking the EPW from 60 feet away. Correct?

Q. Yes, sir.

Q. How loud was this? You said you could hear it, was it --

A. It was pretty loud, sir.

Q. So even with, like, the outside noises -- I'm assuming there wasn't a roof -- you could sill make out the sounds of this?

A. Yes, sir. There wasn't really a lot of noises. There's not --

Q. So this was the only distinct sound that was out there. Right?

A. Yes, sir.

Q. And the entire time this was going Sergeant (b)(6) was asleep right next to you?

A. Yes, sir.

Q. And this never woke him up?
A. He's a heavy sleeper. He told us that too, sir.

Q. And again, just so I'm clear, your perspective, visually anyway, of what was going on was from this 60 feet away through the cargo net or the cammie net, is that what you said it was?
A. Yes, sir. The cammie net wasn't in the way of the direct sight, it was just overhead.

Q. Was it casting any moon shadows in kind of a weird way through cammie net?
A. Not really, sir, the moon was kind of -- I can't really recall, sir. I wouldn't --

DC: Okay. I have nothing further, sir.

MJ: Any redirect?

TC: No, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Did I understand you to say, Lance Corporal (b)(6) that both you and the other EPW watch were also sleeping at the time?
A. Negative, sir. We were not sleeping.

Q. I thought you said we woke up a little groggy.
A. No, we had just got on watch about that time, sir, about the time the incident happened, so we were still -- I don't know, we were a little tired and still kind of -- not waking up but waking up, sir.

Q. So you weren't sleeping on watch?
A. No, sir.

Q. But Sergeant [redacted] was asleep?
A. Yes, sir. He always caught a little sleep. He was the only sergeant. He told us, you know, Wake us up if anything happens, sir.

Q. Was that SOP for the sergeant to go to sleep?
A. Yes, sir. He was the only sergeant of the guard.

Q. Who was over him with respect to the care and treatment of EPW's, if anybody?
A. Probably the company first sergeant, sir. I am not really sure about how that worked, sir.

Q. As far as you knew just being there on the ground it was two E-3, E-4 on watch and then the sergeant who didn't necessarily have to stay awake?
A. Yes, sir.

Q. How did -- well, let me ask you this: Did Lance Corporal Laak stand EPW watch, to your knowledge?
A. To my knowledge, yes, sir.

Q. How did he get access into this compound?
A. The compound is pretty well open, sir. We didn't have any locks or anything like that which is why we had the guards staying in there with the EPW's, sir. It was just a door you could walk in, sir.

Q. Once you got inside the compound was there concertina wire between the entrance and the EPW's?
A. Yes, sir. There's there was a couple of stands of concertina wire, sir. I don't know exactly how to describe it.

Q. How does the -- or how did Lance Corporal Laak get access to the EPW's?
A. Because sometimes, sir, we left a little gateway open, sir, so like when we walked up and down or when we escorted the EPW's to make headcalls, sir, we'd -- it would just be easier, but we changed that because that -- we realized that was bad practice, sir.

Q. Changed it after this incident?
A. Actually, yes, it was a little bit after this, but it wasn't because of this incident, sir.

Q. After the incident was that front -- was the entrance into the compound still pretty much accessible to anybody?
A. Well, we didn't really have locks to lock the doors with, sir. Most of the locks had been broken, the hatches, so -- I don't know. Or maybe they just didn't feel there was a need for locks, sir. I don't know, sir.

Q. How many EPW's did you actually see Lance Corporal Laak strike with his fists?

A. I didn't really get a count, sir.

Q. Well, you described the one that was on the ground trying to cover himself, and you talked about seeing Lance Corporal Laak kick one on the way out.

A. Yes, sir.

Q. Sitting here today, do you recall seeing him strike another EPW or any other EPW's?

A. Not -- not many, sir. I can recall maybe two or three, sir.

MJ: Any questions from counsel in light of mine?

TC: No, sir.

DC: No, sir.

MJ: Okay. Very well. Lance Corporal (b)(6) you're done testifying. You may step down and resume your normal duties. Thanks for coming in today.

WIT: Yes, sir.

The witness withdrew from the courtroom.

MJ: Does the government have any additional evidence?

TC: Yes, sir. May I approach?

MJ: Yes, you may.

TC: The government offers Prosecution Exhibit 1 marked for identification and ask that the words for identification be deleted.

MJ: Any objection?

DC: Just a moment, sir.

The accused and his counsel conferred.

DC: Sir, the (b)(6) that's in there, the (b)(6) is older than two years. Service regulations dictates that it's not admissible in a sentencing proceeding.

MJ: Any response, Captain (b)(6)

TC: Yes, sir. The (b)(6) date is actually December 7th of 2001, which is not two years old. It would be about a year and 11 months old, sir.

DC: Sir, that's the date of the entry into the UPB, but if you look at the bottom, it states that these punishments were awarded at company (b)(6) dated or 011107. His (b)(6) actually took place November 7th, however due to the administrative nature of the Marine Corps, it takes a while for these things to reach the UPB.

MJ: Does that change your response, Captain Mills?

TC: Well, sir, I still believe that when we're talking about the last two years that this falls, I suppose at worst for the defense counsel, right on the -- or at best right on the two-year mark there, and it's an administrative entry, but that's when the (b)(6) becomes official and that's what we should go by administratively, sir.

MJ: I'll sustain the objection. So the (b)(6) entry on the Page 12 I am not considering that. Any other objections, Lieutenant Dewberry?

DC: No, sir.

MJ: Very well. Except as noted, Prosecution Exhibit 1 for identification is admitted into evidence. The words for identification are deleted.

Any additional government evidence on sentencing?

TC: No, sir.

MJ: Lieutenant Dewberry, does the defense have any evidence to present on sentencing?

DC: Yes, sir.

I would like to call Captain (b)(6) please, sir.

MJ: Proceed.

Captain (b)(6), U.S. Marine Corps, was called as a witness by the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. (b)(6) please state your name, rank, and unit and spell your last name.
A. My name is Captain (b)(6) and I am with 1st Battalion, 4th Marines.

MJ: Proceed, counsel.

DC: Yes, sir.

Questions by the defense:

Q. Captain (b)(6) what was your billet with 1/4 back in January of 2003?
A. Commanding Officer, Headquarters and Service Company.

Q. Okay. And was Lance Corporal Laak a member of your company at the time?
A. He was.

Q. Now, did 1/4 deploy in support of Operation Iraqi Freedom?
A. We did.

Q. What time was that you-all deployed, sir.
A. 17 January.

Q. Did you go straight to Iraq or where did you go first?
A. Negative, we deployed by ship on the U.S.S. BOXER and several other ships on an ARG. We arrived in Kuwait On 24 February and we stayed at LSA-1 outside of Kuwait City for roughly about a month before crossing the LD and going into Iraq.

Q. Now, do you recall -- you said you were there for about a month from 24 February to --
A. -- 19 March is when we moved to disbursal area and crossed the LD I believe on the 20th or 21st.

Q. And how exactly -- when you say cross the LD, what was your movement? Were you-all foot mobile? Did you guys mount up on trucks?

A. We were a mechanized battalion and then with our truck assets, we brought our vehicle assets along with us and then we had 7-tons that had been shipped over, but primarily we were a mechanized AMTRAK battalion.

Q. Were you guys on the go all the time, sir, or did you-all hold up at the end of the day? Dig in? How did that work out for you-all?

A. Once we moved -- it was a little slow in the beginning. We crossed the LD and moved up outside to the town of An Nasiriyah, and then once we hit An Nasiriyah, it was pretty much on the go from there, I mean, I think they titled the book 21 Days to Baghdad, so it was pretty solid moving. We did a lot of day movement, mostly dug in at night. There were some night movements, but it was I'd say 21 fairly arduous days.

Q. So you weren't, you know, towing behind chow services or nice cozy tents where everybody could hold up?

A. Negative. Negative. It was, I mean, you stop -- when you stop for the night or stop for the day or whatever, you dug a hole for the artillery threat and, I mean, we were taking fire pretty much from Nasiriyah from on all of the way until -- well, all of the way until we left and went back down to Kuwait. I mean, obviously it ebbed and flowed, but in the initial parts of the war we were taking fire daily.

Q. You said you started moving rapidly after An Nasiriyah. Is that correct, sir?

A. From Nasiriyah we went up to Route 7 to Qal' at Saqr. We fought basically through Qal' at Saqr to Ash Shatrah then up to Al Hayy into Al Kut. That was Route 7 all of the way up. And then we back tracked and went over on Route 17 and then took Route 1 up into Baghdad and spent roughly -- we got to Baghdad on 9 April and we stayed from 9 April to 21 April in Saddam City in Baghdad.

Q. So when you hit each of these cities were -- was there sporadic gunfire or was it sustained at any point?

A. From -- from -- we hit Nasiriyah on 24 March. From 24 March all of the way up till 20 April in Baghdad it was daily, sustained fire, fire fights, and even when we -- even when we had taken Baghdad there was still considerable amounts of rifle fire into the compound at night.

Q. Did 1/4 sustain any casualties --
A. We did.

Q. -- as you moved up Route 7?
A. We did. We had 1 KIA and 4 WIA.

Q. Now, you say eventually after you moved up through Route 7 through this sustained gunfire you ended up at Saddam City?
A. We did.

Q. And how long were you at Saddam City, sir?
A. Eleven days.

Q. And during this time were there still -- was there incoming fire?
A. Most definitely.

Q. And when you say you were at Saddam City for 11 days, at this point had the facilities gotten any better or was it still pretty Spartan?
A. Negative. We didn't -- things didn't start getting better until we got to Al Hillah which is where we ended up staying for the remainder -- the remaining four months up till the last of our battalion got in on 24 September but we were in Al Hillah for Phase 4B operations for over four months -- actually, closer to five months.

Q. So how -- you left Saddam City, did you-all travel directly to Al Hillah?
A. Directly to Al Hillah, and we were supposed to stay there to do the phase 4B operations, which we were told would be about June, and then for obvious reasons we were extended and we ended up staying in Al Hillah all of the way until the middle of September.

Q. Do you recall approximately what day you-all arrived at Al Hillah?
A. I know exactly. We left the Monday after Easter Sunday so that would have been 21 April that we -- it was only a 60-mile movement. Hillah was only 60 miles away from Baghdad so we made the movement at night -- actually, Easter Sunday night we moved down there and got there I believe Monday, 21 April, if memory serves me correctly.

Q. And at Al Hillah were you-all -- was this a pretty secure area? I mean, did everybody kind of just relax at this point, or was there still --

A. Negative, nobody ever let their hair down over there. I mean, it was secure in the sense that we were inside a walled compound and that the nature of Al Hillah was a little bit more permissive but there was still gunfire nightly, we still ran what we considered to be combat patrols. There was still -- there were fire fights. Our Marines were in fire fights literally up until the last week that we were there. So there's nothing that I would say permissive in Iraq at this point. All you have to do is watch the news and you'll see that.

Q. Yes, sir.

Now, you said that you entered Phase 4 -- what you thought was going to be Phase 4, but for some reason it didn't work out and you-all stayed until 24 September. Is that correct?

A. We did.

Q. When did 1/4 find out that they were not going to be coming home?

A. The night of 3 June -- or the day of 3 June I should say.

Q. How did the members of that unit find out?

A. It was passed initially by the battalion commander, and then the battalion commander to the company commanders, down to the first sergeants. Standard formations, Hey, we're not -- we had originally been given a timeframe that we were going to be home, between the 14th and 18th of June. That was our known flight window. It had been printed in the Virginia Times Dispatch by our embedded reporter who had gone back home, and passed to the KVN's that you can expect your Marines home between 14 and 18 June.

Q. Now, as you moved throughout all these cities and finally arrived in Al Hillah, how much interaction did you have with Lance Corporal Laak? Did you know who he was?

A. Oh, very well, because I'm the H&S Company Commander, but Lance Corporal Laak was a part of Headquarters Platoon which I oversaw personally.

As an 0311 in H&S he was one of my machine gunners and one of my main security personnel, so pretty much daily interaction.

Q. Yes, sir. How would you describe his conduct through these combat operations through each individual city?
A. He was a solid performer.

Q. Now, the night of June 3rd, when were you notified of a potential incident dealing with an EPW?
A. The first thing in the morning on the following day.

Q. And had you been bringing these EPW's along with you through each phase or --
A. Negative. We took EPW's in all phases of the war, but at this particular this time, we had been -- at that point, we had been in Al Hillah for six weeks, and our facility was basically kind of a half-way point. If anybody in 4th LAR, 1/4, anybody in our region took an EPW they knew that they could take it to the 1/4 compound in Al Hillah and we would have a HET team [*sic*] there on site that could interrogate them.

We tried to get them -- the EPW's out in a space of a week or so and bring them down to a major holding facility further down south, but -- so they were there to basically get interrogated. It was -- I believe it was eluded to earlier by Lance Corporal (b)(6) sometimes they were criminals. We'd put them back out into the Iraqi court system, but if we felt they were a threat to Coalition Forces, then they'd move south to a more formal holding facility. Ours was pretty much just a half-way point.

Q. Yes, sir.

What did you do when you learned of this incident? Did you investigate it?
A. I did. I'm sorry.

Q. Go ahead, sir.
A. I notified my battalion commander of what happened and began working -- figuring out what he wanted, his commander's intent, on how to handle the situation.

Q. Did you, at any point, go down and actually put your feet on the ground and see if anybody was actually -- had been injured in this incident?

A. I did.

Q. Did you take any medical personnel with you?
A. I did.

Q. Who did you take, sir?
A. I took the senior enlisted Corpsman with me.

Q. What did you guys find when you interview these EPW's?
A. We first did a full of inspection of everybody who had claimed to have been hit by Lance Corporal Laak. There were no marks, no bruises. If -- my word to the Corpsman and what we both agreed on was superficial at best. We could find no visible evidence that they were -- that they were assaulted.

Q. Did you-all have -- you said you interviewed them and communicated with them. How exactly did that come about, sir?
A. We had several interpreters. We had Marines who were fluent in Arabic as well as locals who we had hired as translators.

Q. And were these translators -- did they ever, you know, was there conversations between you, the translator, and these EPW's?
A. There was.

Q. Did you learn anything through these conversations? Did anybody say, Yes, it happened; No, it didn't happen?

TC: Objection; hearsay.

MJ: Response?

DC: Sir, I'd ask that the rules be relaxed a little bit here since these EPW's are actually probably still in Iraq and are unable to testify here today.

MJ: Any response, Captain (b)(6)

TC: Sir, I am not going to argue against the Court relaxing the rules of evidence if that's the Court's ruling, but my objection to the hearsay stands.

MJ: Well, let me take a few minute off the record. We'll go in a recess because I want to look at this issue in a little more detail. The Court's in recess

The court-martial recessed at 1351, 19 November 2003.

The court-martial was called to order at 1357, 19 November 2003.

MJ: The Court will come to order. All parties present when the Court recessed are once again present.

During the recess I did review Rule for Court-Martial 1001(c)(3) and even though the rule is normally cited in the request for a relaxation made in the context or writings, the rule is clearly not limited to that. So I will allow the rules of evidence to be relaxed for the purpose of the testimony that is being elicited at this point; however, the rules will remain relaxed for the government rebuttal, if any. And also during the recess I did review the admissible portion of Prosecution Exhibit I.

You may proceed.

DC: Yes, sir.

Questions by the defense:

Q. Captain (b)(6) you had -- you and the interpreter were speaking with the EPW's to try to figure out what exactly had occurred. Is that correct?

A. I had already -- I had already had knowledge of what had happened because Lance Corporal -- I had spoken with Lance Corporal Laak and he admitted that he had assaulted some of them. So I was speaking to the EPW's and let them know that they had not deserved to be treated in that manner and that Lance Corporal Laak was going to be punished for it and that I guaranteed that their safety -- that they would be safe while they were in our care, was basically what I was trying to get across to all of them, and apologized on behalf of the Marines and the United States.

Q. Did anybody ever mention that they had been harmed in any way?

A. No.

Q. Did anybody say, Yes, he came in and hit us all? Anything like that, sir?

A. No, they didn't -- or, excuse me. They acknowledged that the incident happened, but no one ever -- not in so many words. No one ever came -- no one ever pointed at

him and said, He hit me. He hit me. They all just pretty much nodded their head accepting the apology.

Q. When you say the apology, was this coming from yourself, sir?

A. It came from Lance Corporal Laak. First I had him -- he was in there with me. I had him come in and apologize to everybody for his unprofessional behavior and then I apologized and basically gave them -- guaranteed their safety and that he would be punished for what he did.

Q. Did anybody respond to the fact that he was potentially going to be punished for this incident?

A. Yes, the oldest -- the oldest victim, if you want to say that, the oldest one that he had assaulted, he said that he had made -- Lance Corporal Laak, by apologizing, had made his peace with him and the others and that when -- I had already stated that Lance Corporal Laak was going to be punished, he asked that he not be punished for what he did because he had made his peace.

Q. Now, sir, understanding, you know, your interactions with Lance Corporal Laak throughout combat operations and even State-side prior to your departure and once you've returned, taking that into account with the fact that this incident has occurred, do you have any opinion as to his rehabilitative potential?

A. I think Lance Corporal Laak has utility in the Marine Corps. I think he can be -- we need -- I mean, we need every Marine we can right now. I think he could go out and do a good job. I think he's learning a lesson here right not today.

Q. Why do you think it's important that we have Marines like him right now? What do you mean by that, sir?

A. Well, Lance Corporal Laak, even though this was a pretty reprehensible incident, for the most part, I mean, he did what we told him to do during combat operations and did his job well. I mean, I put him on a gun, have him stand security. I mean, other than -- in the time he's been under my command, which has been 18 months now, he's been -- I haven't had to discipline him and he's been a good kid. He does what he's told to do. I can count on him for that.

Q. If you had to go into combat again, sir, would you want Lance Corporal Laak to be a member of your company?

A. I would.

DC: I have nothing further, sir.

MJ: Cross-examination?

TC: Thank you, sir.

CROSS-EXAMINATION

Questions by the prosecution:

Q. Captain (b)(6) are there plans for 1/4 to deploy again?
A. It is.

Q. When do you think that is going to happen?
A. Probably four months from now.

Q. Do you believe that 1/4 again will be in a position of maintaining EPW's?
A. Almost certainly.

Q. You mentioned that the Iraqi EPW's seemed accepting of the apology that Lance Corporal Laak offered them.
Q. They seemed to.

Q. These EPW's that we're talking about, they had bound wrists?
A. They did.

Q. Some of them had bound feet?
A. Very -- only the most hostile had bound feet. For the most part they just were blindfolded and bound wrists.

Q. So blindfolded and bound wrists. Right?
A. Yes.

Q. And they were all under 1/4's authority. Right?
A. They were.

Q. And they weren't really going anywhere. Correct?
A. No.

Q.. And they were pretty much completely and totally subject to the power of the Marine Corps at that point.
A. They were.

Q. So they didn't have a lot of choice other than pretty much acknowledging and nodding their heads when it came to offering apologies?
A. I would say so, yes. Some were more vocal than others.

Q. Okay. Captain (b)(6) do you agree that our care for the EPW's is important?
A. Oh, yes.

Q. Would you agree that it is important under the law of war?
A. Most definitely.

Q. Probably the rules of engagement and all of that stuff. Right?
A. Certainly.

Q. Would you agree that the way we treat our EPW's sends a message to other nations as to how they should treat their EPW's?
A. Most definitely.

Q. Do you think that Iraq possibly could be aware of the way we were treating their EPW's in a time of war? Do you agree with that?
A. Yes, I do.

Q. Do you think that it could affect the way then that they treat our EPW's if it got back to them that we were mistreating their EPW's?
A. Yes.

Q. Do you agree that that's a danger to our Marines?
A. Yes.

Q. Possibly 1/4 Marines. Right?
A. Yes.

Q. Do you think that letting off some steam is a good reason for assaulting EPW's?
A. No.

Q. Do you think there's any kind of justifiable reason for just walking in and hitting EPW's in the torso?
A. No.

Q. How about blindfolded EPW's?
A. No.

Q. How about EPW's just laying in the sand on the ground?
A. He had no excuse.

Q. No justification?
A. No justification. No excuse.

Q. I don't think Lieutenant Dewberry asked you this, but I am going to give you an opportunity to say it. Was morale kind of low at this point?
A. In the cellar.

Q. Why was it?
A. We had -- I mean, it had been announced in the Virginia Times Dispatch, through the KVN e-mails, that we were going to be home sometime between 14 and 18 June. I mean, it was literally the 11th hour. You've got to remember, it's about a ten-day turnaround period down in Kuwait, so on 3 June, we were looking at breaking down the camp at around 5 June. So probably within 48 hours -- 48 hours of knowing you're going to Kuwait and doing that final out-processing and going home, the word came down that we were going to get extended.

Q. All right. And did that appear to really effect all of the Marines who thought they were going home?
A. Pretty much everybody was upset.

Q. Lance Corporal Laak was one of those Marine?
A. I would say Lance Corporal Laak was definitely one of those Marines.

Q. Did any other Marines in the battalion start roughing up EPW's?
A. No, Lance Corporal Laak was the only one.

Q. You said that the oldest -- I'm sorry. The oldest EPW mentioned he had accepted Lance Corporal Laak's apology?
A. He did.

Q. How old was he?
A. He was old. I can't gauge it exactly, but I would say in his 60's.

Q. And why do you say that?
A. Grey hair, grey beard. He just looked like an old man.

Q. So Lance Corporal Laak went into an EPW camp and assaulted a blindfolded, 60-year-old man?

A. Yes.

TC: That's all I've got. Thanks a lot.

MJ: Any redirect?

DC: Just a few, sir.

REDIRECT EXAMINATION

Questions by the defense:

Q. Captain (b)(6) you just told Captain (b)(6) that there's a concern with the way we treat EPW's because it could be translated onto the way that say the Iraqis would have treated our EPW's. Is that correct?

A. Yes.

Q. Now, do you think that the incident on June 3rd translated in any way on how EPW's or potential EPW's that the Iraqis may have captured --

TC: Objection; speculation.

DC: Sir, asking for the captain's opinion --

MJ: Well, before you say anything, finish the question and start back at the beginning.

DC: Do you think that the actions or activities that took place on 3 June 2003, with Lance Corporal Laak translated into any type of heightened abuse or punishment that would have been inflicted on American POW's?

MJ: Is he aware of any incident of that happening?

DC: I am asking if he thinks it could have happened. Captain (b)(6) asked does he think it is important for Americans to --

MJ: I remember what he asked and what the answer was.

Do you have an objection to that question?

TC: Yes, sir, I object as to speculation. That is completely out of his first-hand knowledge.

MJ: I am going to sustain that objection. You are free to try to rephrase that.

Questions by the defense:

Q. Captain (b)(6) you told Captain (b)(6) that you had -- you believed that the POW that Lance Corporal Laak was -- or apologized to Lance Corporal Laak [*sic*] was around (b)(7)(c)

A. Somewhere in a neighborhood.

Q. So he was just an older gentlemen, you can't be exactly sure.

A. Correct.

Q. Now taken into account that, you know, he walked in and hit this older gentlemen, does this change your idea at all onto the rehabilitative potential that we talked about earlier that Lance Corporal Laak possesses?

A. This was an -- this is the only -- in the 18 months that I've had Laak, this is only time I've ever had any problem with it. The act, I have to agree with the prosecutor, is pretty despicable, but I also understand his frustration. I think he can still be rehabilitated.

DC: Thank you, sir. Nothing further.

MJ: Any recross?

TC: No, sir.

MJ: All right. You're done. You may step down. I just want to give you one piece of advice for possible future reference. When we're in garrison, when a witness comes to testify in court, the uniform is the summer service Charlie uniform.

WIT: Yes, sir.

MJ: So with that light admonition, you may step down and resume your normal duties. Thanks for coming in today.

WIT: Yes, sir.

MJ: Does the defense have any additional evidence?

DC: Yes, sir, at this time Lance Corporal Laak would like to make an unsworn statement to the Court.

MJ: Proceed, please.

UNSWORN STATEMENT

ACC: I was born in (b)(6) and moved to the United States when I was (b)(6) ears old. First, I lived in (b)(6) and where I lived most of my life. I joined the military because it was a tradition in my family. My grandfather was in the Army and served in World War II; my father served 20 years in the Air Force; and my sister is commissioned in the Army in Germany. I chose the Marines because they are the best and I wanted to be one of the best.

I want to stay in and go on the next deployment with 1st Battalion, 4th Marines.

My plans in the future are to be a reserve --

MJ: Lance Corporal Laak, can you just slow down a little bit.

ACC: Yes, sir.

MJ: Thank you.

ACC: My plans in the future are to be in the reserves and be a firefighter.

I know what I did was wrong and I didn't know what was going through my head at the time. There were a lot of stressful things going on out there. I know I am guilty for what I have done and I am ready to accept the consequences so justice can be served.

Questions by the defense:

Q. Lance Corporal Laak, you heard Captain (b)(6) talk about how 1/4 was moving up Route 7 through Iraq.

A. Yes, sir.

Q. What were the type of conditions that you, as an 0311, were basically forced to live in as you were traveling up Route 7?

A. We slept for like two or three hours as day, sir. At one point in time we were given one MRE a day, sir.

Q. Now, Captain (b)(6) said that 1/4 actually encountered into -- or had actually engaged in some combat on its way up Route 7. Did you yourself or the vehicle that you were in ever engage your weapon onto an enemy or were you ever actually taking incoming fire?
A. Yes, sir.

Q. About how many times would you say?
A. Throughout the whole war, sir?

A. Yes, as you moved up Route 7.
A. About five times, sir.

Q. Five times.

Now, you transitioned from Saddam City to Al Hillah. Is that correct?
A. Yes, sir.

Q. When you guys got to Al Hillah, did Captain (b)(6) cut you-all loose and say, Hey, you've got a week of R&R?
A. No, sir.

Q. Did you ever have a day off between the time you left Saddam City to the time the incident occurred?
A. Never, sir.

Q. What were you doing for the three weeks that you were in Al Hillah until the incident took place?
A. We did security patrols, security runs, EPW watch, and just working parties, sir.

Q. Okay. On the day of June 3rd, or actually June 2nd, did 1/4 find out that they were actually going to be staying in Iraq longer than what had been previously told?
A. Yes, sir.

Q. How long were you-all told you were going to be there for?
A. For about three months, sir, three months longer.

Q. Did this have an effect on you?
A. Yes, sir.

Q. Why don't you tell the judge what kind of effect it had on you.
A. I was mad, sir, because everybody at my home knew I was coming home. I told them I was going to come home on

this date, but that never happened, sir, and I was upset.

Q. Were you tired at all?
A. Everyday, sir.

Q. Were you hungry?
A. Yes, sir.

Q. The 3rd of June -- you told the military judge earlier during providence that you went in and you hit a couple of the Iraqi EPW's. Is that correct?
A. Yes, sir.

Q. You still want to be in the Marine Corps, don't you?
A. Yes, sir.

Q. Why don't you tell the military judge why something like this would never happen again.
A. Because I understand now that it is a serious thing, sir, and I want to stay in the military. I want to go on another deployment, sir, I love being a Marine.

DC: Nothing further, sir.

MJ: Thank you.

Captain Mills, any evidence in rebuttal?

TC: No, sir.

MJ: The Court's prepared to -- well, let's take up the issue of multiplicity for sentencing. None of the offenses are multiplicious for findings purposes. They are not facially duplicative. No offense is a lesser-included offense of the another, but we do have an issue that has been raised by the defense with respect to multiplicity for sentencing or otherwise known as unreasonable multiplication of charges perhaps.

Captain Mills, what are your thoughts on the defense's motion to treat Charge I as multiplicious with Charge II for sentencing purposes?

TC: Sir, I understand the concept of unreasonable multiplication of charges. I will say this regarding Charge I and Charge II, Charge I is a violation of an order which, though he violated the order by assaulting

the EPW's, or maltreating the EPW's, violation of an order is a completely different offense. Everybody is not under an order not to assault other people.

In this case, Lance Corporal Laak was under a specific order not to mistreat these EPW's, which he did. Just in doing that, regardless of how he mistreated them, he was violating that order which makes it a separate offense for both the findings and for sentencing.

With regard to cruelty and maltreatment versus assault, those at least rely on the same conduct, but again, one is charging Lance Corporal Laak taking advantage of his position of authority over these EPW's, that's where the cruelty and maltreatment comes, again, somebody subject to his orders. So that is focussing on a very different element than the assault which, again, could happen to anybody.

MJ: Well there's no issue with respect to Charge II and Charge III. I suspect that issue hasn't been raised because the very fact that you just pointed out that it is a separate offense to commit assault and battery, and then when you do that upon people who are subject to your orders. I buy that and that issue hasn't been raised. But what is your response, Lieutenant Dewberry, to government's argument with respect to the first two charges?

DC: Well, sir, discussion in R.C.M. 307(c)(4) states that what is substantially one transaction should not be the basis for an unreasonable multiplication of charges. Here, the only way that these EPW's were under his care was due to the fact that they were ordered to take these prisoners captive and hold them and safeguard them. The same order that was given by Captain (b)(6) So the orders are interrelated to the fact that they were actually under his command. You can't dissect the two and punish him for what was essentially one transaction based on the two charges since the two charges, while not strictly related based on the elements listed in the MCM, without this order, would not be related at all, sir.

MJ: That's not the argument I thought you were going to make.

Captain (b)(6) points out that -- what I thought him heard him say -- was that even without the order, the accused would have a duty not to commit the maltreatment. Is that correct?

TC: Yes, sir.

MJ: Now, does that not get us into what we would otherwise know to be, well, at least what I still call, the underlying offense doctrine although it may not technically apply because the discussion of that doctrine under Article 92 presupposes that the underlying offense that the accused committed, and also in violation of the order, has a lower maximum punishment, but it's analytically the same situation where the accused is being ordered not to commit an offense and then he commits the offense thereby by violating the order. But it just happens to turn out in this case that the offense that he committed in violation of the order has a greater maximum punishment than the violation of the order itself.

DC: Yes, sir.

MJ: Are you tracking me on that?

DC: Yes, sir.

MJ: So the government's argument, I think to at least some extent, makes the case for multiplicity for sentencing.

I'm going to grant the motion and treat Charge I and its specification as multiplicious with Charge II and its specification for sentencing purposes only.

I continue to find that they are all separate offenses for findings purposes. There is no multiplicity for findings, but I will, again, treat the Article 92 offense as multiplicious with the Article 93 offense.

That having been said, Captain (b)(6) argument on sentencing?

TC: Thank you, sir.

MJ: You may, I suppose, still give me the argument you were prepared to make even if it addresses the Article 92 offense.

TC: Yes, sir.

Sir, this case, though the charge sheet may indicate otherwise, is not about Iraqi POW's or EPW's, it's not what it's about. We're not going to come in here and say we all feel really sorry for Iraqi POW's because we just don't want to hurt EPW's. I suppose in a very global sense that's great and in a humanitarian we care about everybody's sense that it's nice and it is generous. That's not what it is about. It is about two things, it is about: One, being a professional Marine. A professionally trained Marine who executes his duties despite his low morale, despite the heat, despite his lack of sleep, and despite his frustration.

Two, it has to do with American EPW's. The only reason we treat Iraqi EPW's well is not because we like them, we treat them well because when the Iraqis have our Marines; our 1/4 Marines over there, we want them to treat our Marines well. What is that Marine thinking, and thank God it doesn't seem to have happened in this case, but what's that Marine thinking when he's got his wrists bound or his feet bound and a blindfold on and the next thing he knows is word just got out that we, the Marine Corps, the United States Marine Corps, is mistreating its EPW's from the United States, America, the trendsetters, the people who tell the rest of the world how to treat their prisoners? What is that United States Marine EPW thinking when these Iraqis come into the little building that he's in, while he's bound, and start talking about the way we treated their Iraqi EPW's? What's going to happen to him? Is he going to be tortured or maltreated? Are they going to take it steps further than just walking up and beating on old men? Are they going to kill him? Who knows? And we shouldn't have to know because we should be able to trust our professionally trained Marine Corps, Marines, to follow orders, to treat EPW's with respect, not because they like them, but because they're Marines and that's what Marines do and because that is what they are told to do.

It is a tragic mistake to do that and then come in here and say, I feel really bad about it. I was angry because I wanted to go home and my family missed me. Everybodys families missed everybody. It was miserable for everybody, the entire Marine Corps out there, because it was hot, and they were getting shot at all of the time and some people were dying. They were dealing with Iraqi POW's. That's not an excuse. That is not even close to an excuse. What Lance Corporal Laak did is far, far bigger than cruelty and maltreatment, violating a lawful order, or assault. It's global. Because what we do to our EPW's effects what other nations do to their EPW's.

Nobody here is going to get overly worked up about Iraqis when they continue to be our enemy, but we are going to get worked up about United States Marines. We're going to get worked up about the proper treatment of EPW's when it can effect us.

Lance Corporal Laak made a mistake. He may have done it in a huff and he may have done it to let off steam. That, by no stretch of the imagination, forgives or justifies his conduct or makes the punishment that he needs to receive any less harsh.

I'll ask, sir, that when you consider an appropriate punishment in this case, you look to the theme of general deterrents. It's a proper reason for sentencing a Marine.

You heard from Captain (b)(6) 1/4 is going back to the desert. They're going back to Iraq and they're probably going to be back there taking care of EPW's once again. All those Marines, Marines who are here today, are going to be there, possibly taking care of EPW's. Those Marines need to understand that they have to treat those EPW's fairly and correctly because that's what Marines do. By giving the appropriate punishment in this court-martial, that will send the message and they'll understand.

An appropriate punishment, sir, begins with a (b)(6) because there's no other way to define Lance Corporal Laak's conduct. Not when it transcends so much more than just assault or cruelty and maltreatment. It's the only way to define and the only way to characterize his service because of that action.

In addition, confinement is necessary, because Lance Corporal Laak needs some time to realize that letting off steam and missing his family doesn't justify what he did. It needs to send the message to the other Marines how seriously the Marine Corps takes this kind of misconduct. We would offer ten months, sir, ten months' confinement as an appropriate amount of confinement to teach Lance Corporal Laak the lesson he needs and to show those other Marines what they need to know when we go back out there and put Marines lives on the line once again and risk their EPW status.

It is not about Iraqi EPW's, sir, it's about Americans, and that is important. The punishment should reflect that appropriately.

Thank you, sir.

MJ: Lieutenant (b)(6)

DC: Yes, sir.

Sir, if you strip away all of the political stigma that is attached to mishandling of EPW's, what you'll come to find is that all we have here is a case of Lance Corporal Laak, a combat veteran, who traveled up Route 7 with 1/4, and for two months, was under the constant strain and stress of battle.

Captain (b)(6) talked about the fact that they would move forward and they would stop and dig in. They would move forward, stop, and dig in. The entire time they were under sporadic gunfire. Each time they hit a city -- we heard Lance Corporal Laak talk about An Nasiriyah, how there were sustained firefights through An Nasiriyah. For two months these Marines had traveled through the desert without proper food and shelter. They were tired. They were dirty. They were hot. Just like Captain (b)(6) said. This isn't an excuse for what Lance Corporal Laak did, and he's not making an excuse. He came here today, he said he was sorry, he's pled guilty to the charges, accepting responsibility for his actions, sir. He's not saying, Oh, it was the heat that did it; it's not my fault. You heard him tell you, I accept responsibility for my actions. Justice needs to be served.

What is justice in this case, Your Honor? It is not a (b)(6) and ten months in the brig. How can we possibly think that Lance Corporal Laak's behavior as a Marine as whole, not an unknown time in Al Hillah in a tiny room which nobody can really identify what exactly happened anyway. His conduct needs to be taken as a whole, from his performance in garrison prior to deployment, to his deployment -- to his deployment as they marched up Route 7, when Captain (b)(6) said he was a good Marine. I could always count on him with a gun. I want him to go to combat with me again if I have to go. You heard him say that. Is that the type of Marine that we want to get out of the Marine Corps with a (b)(6) I think with the upcoming deployment, 1/4 needs Marines like him on the gun.

The assault that took place in Al Hillah is a disgrace. Lance Corporal Laak has told you it was a disgrace. Captain (b)(6) admitted that it was wrong, but he also said it was the only thing in the 18 months of his close supervision that he had done wrong.

Now, we might think that assaulting this EPW is going to lead to an assault American EPW's, but we don't have any evidence of that. There's nothing to suggest that this striking of an EPW led to maltreatment of American POW's. Your heard testimony from Captain (b)(6) who said, I took a Corpsman down there. We did an investigation. The EPW's, none of them showed any physical signs of abuse. None of them had any marks or bruises. One of them said, I'm not hurt. I know what he did in the heat of battle. He apologized; it's done. Now does this sound like the type of person that's going to go back to his Iraqi brethren and say, Hey, the Americans are bad people. This is what they do. No, because this isn't the instance of an egregious act by an EPW guard. This is him walking in, making a bad mistake under the stress of two months being in the desert under constant fire and losing his temper essentially, after finding out that they're going to be deployed for three more months.

Is it a bad act? Yes, it is a bad act, and it deserves to be punished, sir. But it doesn't deserve to follow him around for the rest of his life. We need Marines like Lance Corporal Laak, combat veterans, that have already been there so that when we go back, we can do our job.

He's learned his lesson. He told you, Sir, I didn't know at the time that what I did was that big of a deal. He knows now. General deterrents is satisfied. The Marines sitting here from 1/4 know that if they go back over there and they do this again, they're going to face a court-martial. They're going to have a prosecutor sitting across the desk where they may be sitting that says they should get kicked out with a (b)(6)
(b)(6) and go to the brig for ten months. General deterrents is served by him being here and facing these charges.

He wants to stay in the Marine Corps. The command wants him to stay in. Captain (b)(6) testified to that. He does not need to be kicked out over this. Punishment? Yes. Brig time? Possibly. But not a bad-conduct discharge, Your Honor.

Thank you.

MJ: Very well. Court's closed for deliberations.

The court-martial closed at 1427, 19 November 2003.

The court-martial opened at 1444, 19 November 2003.

MJ: The Court will come to order. All parties present when the Court closed for deliberations are once again present.

This has been a difficult case. More difficult than most cases. I have to say that I take issue with the underlying premises of the government's argument on sentencing. Maybe it's just me, but I think this case is all about Iraqi EPW's. I have to say I disagree with the statement that nobody is going to get worked up about Iraqi EPW's while they're still our enemy.

I understand the concept that we treat enemy prisoners of war well because we want our own prisoners of war to be treated well. That is one of the underlying premises or principles to the law of armed conflict and international law. I know a little bit about that; I used to teach it. History has shown us time and time again that our enemies don't always follow the law of armed conflict. We treat enemy prisoners of war well, humanely, decently, because it's simply the right thing to do and it is the law. We do that -- we follow the

law regardless of how our enemies treat our prisoners of war. I want to make it clear for the record that I am not sentencing Lance Corporal Laak based upon some speculation as to how our own POW's might have been treated in Iraq or how they might be treated by Iraq or any other enemy in the future.

Captain (b)(6) response to what happened on 3 June 2003, frankly, was the right one. Apologize, tell those POW's they didn't deserve to be treated that way, and the assurance given that it won't happen again and that they'll be treated well and they'll be safe in our custody. The law demands that and we as Marines expect nothing less.

Accused and counsel please rise.

The accused and his counsel did as directed.

MJ: Lance Corporal Walter H. Laak, United States Marine Corps, it is my duty as military judge to inform you that this Court sentences you:

To be confined for a period of 120 days; to be reduced to the pay grade E-1; and to be discharged from the Marine Corps with a

(b)(6)

I do specifically recommend to the convening authority that he suspend the (b)(6) however, I do not have the power to do that myself.

You may be seated.

The accused and his counsel did as directed.

MJ: May I see Appellate Exhibit II, please.

DC: Permission to approach, sir.

MJ: Yes.

DC: I am handing the military judge what has been marked as Appellate Exhibit II.

MJ: Lance Corporal Laak, do you understand that the sentence limitation portion of your pretrial agreement has no effect on the sentence that I have just adjudged?

ACC: Yes, sir.

MJ: Do both counsel agree with that interpretation?

TC: Yes, sir.

DC: Yes, sir.

MJ: Very well.

I find the pretrial agreement as a whole to be in accord with appellate case law, not contrary to public policy or any my own notions of fairness, and the agreement is accepted.

I have already been handed what's been marked as Appellate Exhibit III, a statement containing your appellate and post-trial rights, Lance Corporal Laak.

Did you sign this document at the bottom of Page 2?

ACC: Yes, sir.

MJ: Did you read it over carefully and discuss its contents with Lieutenant Dewberry?

ACC: Yes, sir.

MJ: Do you believe that you fully understand what your appellate and post-rights are in this case?

ACC: Yes, sir.

MJ: It indicates that you would like your copy of the record of trial and staff judge advocate's recommendation to be served upon Lieutenant Dewberry as you counsel. Is that correct?

ACC: Yes, sir.

MJ: Very well. Appellate Exhibit III will be attached to the record of trial.

Anything else, counsel prior to adjournment?

TC: No, sir.

DC: No, sir.

MJ: Very well. This court-martial is adjourned.

The court-martial adjourned at 1450, 19 November 2003.

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of

Lance Corporal Walter H. Laak (b)(6), U.S. Marine Corps, 1st Battalion, 4th Marines, 1st Marine Division (REIN), Camp Pendleton, California 92055.

Pursuant to R.C.M. 1104(a)(2)(B), the record of trial in the foregoing case is authenticated solely by the trial counsel due to the military judge's return to reserve status.

I have examined the record of trial in the foregoing case.

J.S.R. MILLS
Captain, U.S. Marine Corps Reserve
Trial Counsel

04 0205

UNITED STATES MARINE CORPS
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
v.	)	SPECIAL COURT-MARTIAL
WALTER H. LAAK (b)(6) LANCE CORPORAL U.S. MARINE CORPS	)	PRETRIAL AGREEMENT

I, LANCE CORPORAL WALTER H. LAAK, U.S. Marine Corps, the accused in a Special Court-Martial, freely and voluntarily certify that:

1. For good consideration and after consultation with my defense counsel, First Lieutenant C. J. Dewberry, I agree to enter a plea of GUILTY to the charges and specifications as set forth in paragraph 10 below, provided that the sentence approved by the convening authority will not exceed the sentence agreed upon in the Sentence Limitation to this Agreement.

2. I am satisfied with my defense counsel in all respects.

3. I have been advised that this offer and Agreement cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications against me in this court-martial.

4. I understand that for the purpose of this Agreement, the sentence is considered to be in these five parts: (1) punitive discharge; (2) period of confinement; (3) amount of forfeiture of pay and/or allowances; (4) reduction in rate or grade; and, (5) any other lawful punishment (such as hard labor without confinement, restriction, reprimand, or fine).

5. Should the court-martial adjudge a sentence which is less, or a part thereof which is less, than that set forth and approved in the Maximum Sentence Limitation to this Agreement, then the convening authority may only approve the lesser sentence.

6. My defense counsel has fully advised me of the meaning and effect of the following UCMJ provisions: Article 57, Effective dates of sentences; Article 58b, Automatic forfeitures; Article 58a, Automatic reduction; and, JAGMAN section 0152c, Automatic reduction of enlisted accused. I also understand that if the adjudged sentence is subject to any of these provisions, this Agreement will have no effect on the application of those provisions on the adjudged sentence, unless the effect is specifically indicated in the Sentence Limitation to this Agreement.

7. My defense counsel has fully advised me of the meaning and effect of my guilty plea, and its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this Agreement, and that, depending on the circumstances, such discharge may be characterized as other than honorable.

APPELLATE EXHIBIT I

ORIGINAL

PAGE 1 OF 4

8. I understand that if my guilty plea does not remain in effect for any reason through the announcement of the sentence, then the convening authority may withdraw from this Agreement.

9. I understand that I may ask permission to withdraw my guilty plea at any time before sentence is announced, and that the military judge may permit me to do so.

10. I will plead as follows:

CHARGE		PLEA
Charge I:	**Violation of Article 92, UCMJ.**	Guilty
Spec :	Did on or about 2 June 2003, having knowledge of a lawful order, wrongfully violate such order by striking enemy prisoners of war.	Guilty
Charge II:	**Violation of Article 93, UCMJ.**	Guilty
Spec :	Did, on or about 3 June 2003, maltreat persons subject to his orders, by hitting them with his fists.	Guilty
Charge III:	**Violation of Article 128, UCMJ.**	Guilty
Spec :	Did, on or about 3 June 2003, unlawfully strike enemy prisoners of war.	Guilty

11. I agree to request trial by military judge alone, and waive my right to a trial by members.

12. For the purpose of this Agreement, misconduct is defined as any act or omission I commit in violation of the UCMJ.

13. All the provisions of this Agreement are material.

a. If I violate any provision of the Agreement or commit any misconduct before trial, the convening authority may withdraw from this Agreement; or

b. If I violate any provision of the Agreement or commit any misconduct between the date of trial and completion of my sentence, including suspension periods, the convening authority may order executed the full sentence, and I may lose the benefit of any disapproval or suspension provision contained in the Maximum Sentence Limitation portion, following a vacation hearing pursuant to Rule for Courts-Martial 1109, Manual for Courts-Martial (2000 edition).

14. This Agreement constitutes all the conditions and understandings of both the Government and myself regarding the pleas and sentence limitations in this case.

ORIGINAL

APPELLATE EXHIBIT I

PAGE 2 OF 4

15. The maximum sentence to be approved by the convening authority is contained in the Maximum Sentence Limitation to this Agreement.

ORIGINAL

APPELLATE EXHIBIT I
PAGE 3 OF 4

U. S. v. LCpl Walter H. Laak, (b)(6) , USMC, Pretrial Agreement Signature Page

Accused: Date: 031104

WALTER H. LAAK
Lance Corporal
U.S. Marine Corps

Defense Counsel: Date: 03.1.04

CURTIS J. DEWBERRY
First Lieutenant
U. S. Marine Corps

The foregoing pretrial agreement is approved.

FOR Date: 031103

~~J. A. TOOLAN~~ J. L. MAYER
Lt Colonel
U.S. Marine Corps
Commanding

ORIGINAL

APPELLATE EXHIBIT I
PAGE 4 OF 4

UNITED STATES MARINE CORPS
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES v. WALTER H. LAAK (b)(6) LANCE CORPORAL U.S. MARINE CORPS	SPECIAL COURT-MARTIAL SENTENCE LIMITATION

1. Punitive Discharge: As adjudged.

2. Confinement: As adjudged; however, if a punitive discharged is adjudged and if the accused submits a request for voluntary appellate leave to trial counsel within five (5) days of the date of trial, then all confinement in excess of one hundred and twenty (120) days will be suspended for a period of twelve (12) months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

This agreement constitues my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this agreement. The period of deferment will run from the date of trial until the date the convening authority acts on the sentence.

3. Adjudged Forfeitures: As adjudged.

4. Reduction: As adjudged.

5. Other lawful punishments: As adjudged.

ORIGINAL

APPELLATE EXHIBIT II
PAGE 1 OF 2

U. S. v. LCpl Walter H. Laak, (b)(6), USMC, Pretrial Agreement Signature Page

Accused: Walter H. Laak Date: 031104

WALTER H. LAAK
Lance Corporal
U.S. Marine Corps

Defense Counsel: Date: 03 11 04

CURTIS J. DEWBERRY
First Lieutenant
U. S. Marine Corps

The foregoing pretrial agreement is approved.

Date: 03 11 13

~~J. A. TOOLAN~~ ~~JL~~ ~~MVFa~~
Lt Colonel
U.S. Marine Corps
Commanding

ORIGINAL

APPELLATE EXHIBIT II
PAGE 2 OF 2

APPELLATE AND POST-TRIAL RIGHTS

You are advised that your defense counsel (DC) is required by law to fully explain to you the following post-trial and appellate rights, and, that you have the right to request the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Record of trial (ROT)

A copy of the ROT will be prepared and given to you. You may request that your copy of the ROT be delivered to your DC.

Staff Judge Advocate or Legal Officer's Recommendation (SJAR)

If you received a punitive discharge or were sentenced by a general court-martial, the convening authority (CA)'s staff judge advocate or legal advisor will submit an SJAR to the CA. Before forwarding the SJAR and the ROT to the CA, this legal advisor will serve a copy of the SJAR upon your DC. A separate copy will be served on you. If it is impracticable to serve the SJAR on you for reasons including, but not limited to, your transfer to a distant place, your unauthorized absence, or military exigency, your copy will be forwarded to your DC. You may also request on the record at this court-martial or in writing that your copy be sent to your DC instead of yourself.

Submission of Matters to the Convening Authority

You have a right to submit matters to the CA before that officer takes action on your case. In this regard, you have the right to request deferment of any sentence to confinement. These matters must be submitted within 10 days after a copy of the authenticated ROT or, if applicable, the SJAR, is served on you or your DC, whichever is later. The CA may extend these periods, for good cause, for not more than an additional 20 days. Failure to submit matters within the time prescribed waives the right to submit matters later.

Action by the Convening Authority

The CA will take action on the sentence adjudged and may, in his discretion, take action on findings of guilty. The action to be taken on the findings and sentence is within the sole discretion of the CA and is a matter of command prerogative. The CA is not required to review the case for legal errors or factual sufficiency. In taking action on the sentence, the CA may approve, disapprove, commute, or suspend the sentence in whole or in part. The CA may never increase the severity of the sentence. The CA is not empowered to reverse a finding of not guilty; however, the CA may change a finding of guilty to a charge or specification to a finding of guilty to a lesser offense included within that charge or specification, may disapprove a finding of guilty and order a rehearing, or may set aside and dismiss any charge or specification.

Review

If you were tried by a special court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge, your case will be reviewed under the direction of the staff judge advocate for the CA's superior general court-martial convening authority (GCMCA). You may suggest, in writing, possible legal errors for the judge advocate to consider and that judge advocate must file a written response to legal errors noted by you. After such review, and completion of any required action by the GCMCA, you may request the Judge Advocate General of the Navy (TJAG) to take corrective action. Such a request must be filed within two years of the CA's action, unless the time is extended for good cause.

If you were tried by a general court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge or at least one year's confinement, your case will be forwarded to TJAG. You may suggest in writing, possible legal errors or other matters for consideration by TJAG. The ROT may be examined for any legal errors

APPELLATE EXHIBIT III

PAGE 1 OF 2

and for appropriateness of the sentence and TJAG may take corrective action, if appropriate.

If your sentence, as finally approved by the CA, includes a punitive discharge (regardless of the type of court-martial), dismissal, a year or more of confinement, or death, your case will be reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for legal errors, factual sufficiency, and appropriateness of sentence. This review is automatic. Following this, your case could be reviewed by the United States Court of Appeals for the Armed Forces (CAAF), and finally it might be reviewed by the United States Supreme Court.

Waiver of Review

You may waive appellate review, giving up the foregoing rights, or you may withdraw your case from appellate review at a later time. Once you file a waiver of withdrawal, your decision is final and appellate review is barred. If you waive or withdraw appellate review, your case will be reviewed by a judge advocate for certain legal errors. You may submit, in writing, suggestions of legal errors for consideration by the judge advocate, who must file a written response to each. The judge advocate's review will be sent to the GCMCA for final action. Within two years after such final action, you may request TJAG to take corrective action in your case. The two year period may be extended for good cause. You have the right to the advice and assistance of counsel in exercising or deciding to waive your post-trial and appellate rights.

Right to Counsel

It is your DC's responsibility to represent you during the CA's action stage of your court-martial conviction. Your DC is responsible for examining the ROT for error and, where applicable, the SJAR for errors or omissions. It is your DC's obligation to advise and assist you in preparing matters for submission to the CA for consideration prior to action being taken on the ROT.

If your case is reviewed by NMCCA, military counsel will be appointed to represent you at no cost to you and, if you choose, you may engage a civilian counsel at no expense to the United States. If your case should be reviewed by CAAF or by the United States Supreme Court, you would continue to have the same appellate counsel rights before these courts.

Acknowledgment

I acknowledge (1) that prior to adjournment of my court-martial, I was provided with the above written advice; (2) that I have read and I understand my post-trial and appellate rights; (3) that I discussed my rights with my DC prior to signing this form; and (4) that the military judge will discuss my appellate rights with me on the record prior to adjournment of the court, if I so desire.

I specifically request that my copy of the ROT be delivered to:

_____ me. WL my counsel, First Lieutenant Curt J. Dewberry.

I specifically request that my copy of the SJAR be delivered to:

_____ me. WL my counsel, First Lieutenant Curt J. Dewberry.

Curt J. Dewberry
First Lieutenant
USMC
Detailed Defense Counsel

Walter H. Laak
Lance Corporal
USMC
Accused

APPELLATE EXHIBIT III
PAGE 2 OF 2

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - This form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (*chronology sheet*) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (*unless included at the point of arraignment in the record*).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (*e.g., requests concerning delay, witnesses and depositions*).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (*real or documentary*), and briefs of counsel submitted at trial.