



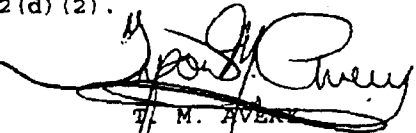
UNITED STATES MARINE CORPS
LEGAL SERVICES SUPPORT SECTION
1ST FORCE SERVICE SUPPORT GROUP
BOX 555607
CAMP PENDLETON, CALIFORNIA 92055-5607

UNITED STATES)
)
V.) SPECIAL COURT-MARTIAL
)
ROBERTS, Ryan S.) JUDGE ADVOCATE REVIEW
)
(b)6)
Lance Corporal)
U.S. Marine Corps)
)
Date of trial: 7 January 2003) Date: AUG 04 2004

1. Pursuant to Article 64(a), Uniform Code of Military Justice and Rule for Courts-Martial 1112, Manual for Courts-Martial (2002 Ed.), I have reviewed this case and concluded that:

- a. The court-martial had jurisdiction over the accused;
- b. The court-martial had jurisdiction over each offense as to which there is a finding of guilty which has not been disapproved;
- c. Each specification, in which a finding of guilty was not disapproved, stated an offense; and,
- d. The sentence as adjudged and approved was legal.

2. The accused submitted no matters that require response pursuant to Rule for Courts-Martial 1112(d)(2).


T. M. Avera
Captain
U.S. Marine Corps
Judge Advocate

DISTRIBUTION:
CO, 3dBn, 7thMar, 1stMarDiv (Rein)
Acc
Left hand side of accused's SRB
File

SUMMARIZED
RECORD OF TRIAL
(and accompanying papers)

of

ROBERTS, Ryan S.

(b)6

LCpl/E-3

3dBn, 7thMar
1stMarDiv (REIN), FMF

USMC

MCAGCC
Twentynine Palms, CA

By

SPECIAL COURT-MARTIAL

Convened by Commanding Officer

3d Battalion, 7th Marines
1st Marine Division (REIN), FMF
Marine Corps Air Ground Combat Center
Twentynine Palms, California 92278-8263

Tried at

Twentynine Palms, California, on 7 January 2004

UNITED STATES MARINE CORPS
Office of the Staff Judge Advocate
Defense Section
Box 788103
Marine Corps Air Ground Combat Center
Twentynine Palms, California 92278

5800
17/5
12 Nov 03

From: Lance Corporal Ryan S. Roberts, (b)6 USMC
To: Commanding Officer, 3rd Battalion 7th Marines
Via: Trial Counsel

Subj: WAIVER OF RIGHT TO ARTICLE 32 HEARING


Ref: (a) Chg sheet dtd 30 Oct 03
(b) R.C.M. 405, M.C.M. 2002


1. I am aware of the charges against me contained in reference (a). My defense counsel, Captain (b)(6) USMCR, a lawyer certified in accordance with Article 27 (b) UCMJ, has advised me that the charges have been referred to an investigation in accordance with reference (b).

2. I understand that I have the right to a formal investigation into the charges and specifications, and the right to representation by counsel at the investigation. I have discussed my rights with my defense counsel and I am satisfied with his advice.

3. I understand the purpose of an Article 32 pretrial investigation, and I am aware of the evidence available to the government to prove the charges and the existence of any possible defenses.

4. I hereby voluntarily waive my right to an investigation in accordance with the reference, understanding full well that my waiver may subject me to a trial by general court-martial for all the charges preferred against me.


RYAN S. ROBERTS
Accused
Lance Corporal, USMC


EDWARD C. MITCHELL
Detailed Defense Counsel
Captain, USMCR

SUMMARIZED
RECORD OF TRIAL
(and accompanying papers)

of

ROBERTS, Ryan S.

(b)(6)

LCpl/E-3

3dBn, 7thMar
1stMarDiv (REIN), FMF

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Twentynine Palms, CA

By

Special Court-Martial

Convened by Commanding Officer

3d Battalion, 7th Marines
1st Marine Division (REIN), FMF
Marine Corps Air Ground Combat Center
Twentynine Palms, California 92278-8263

Tried at

Twentynine Palms, California, on 7 January 2004

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 in the case of *United States v. Lance Corporal Ryan S. Roberts, U.S. Marine Corps*, delivered to me at _____ this _____ day of _____.

Capt E. C. Mitchell, USMC

for

LCpl R. S. Roberts, USMC

PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Marine Corps Air Ground Combat Center, Twentynine Palms, California, in the case of the United States v. Lance Corporal Ryan S. Roberts, U.S. Marine Corps, at 1011, 7 January 2004, pursuant to the following order:



UNITED STATES MARINE CORPS

3d Battalion, 7th Marines
1st Marine Division (Rein), FMF
Marine Corps Air Ground Combat Center
Twentynine Palms, California 92278-5263

In reply refer to:

5800

S-1

30 Oct 03

SPCMCO #1-03

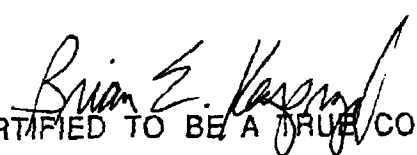
Pursuant to the authority in Article 23(a), Uniform Code of Military Justice and JAGMAN 0120b, a special court-martial is hereby convened to try any case brought before it. It shall meet at Marine Corps Air Ground Combat Center, Twentynine Palms, CA., unless otherwise directed. The special court-martial will be constituted as follows:

MEMBERS

Captain B. E. Mills, U. S. Marine Corps, President
First Lieutenant A. J. Condo, U. S. Marine Corps;
First Lieutenant R. G. Salcido, U. S. Marine Corps;
First Lieutenant D. B. Neal, U. S. Marine Corps;
First Lieutenant T. A. O'Neil, U. S. Marine Corps;


M. A. LOPEZ

Lieutenant Colonel, U. S. Marine Corps
Commanding


CERTIFIED TO BE A TRUE COPY

B.E. KASPRZYK
CAPT USMC

PERSONS PRESENT

Lieutenant Colonel F. A. Delzompo, U.S. Marine Corps, MILITARY JUDGE;
Captain B. E. Kasprzyk, U.S. Marine Corps, TRIAL COUNSEL;
Captain E. C. Mitchell, U.S. Marine Corps, DEFENSE COUNSEL.

PERSONS ABSENT

MEMBERS.

Lance Corporal Ryan S. Roberts, U.S. Marine Corps, the accused, was present and attired in the appropriate service uniform with all decorations and awards to which he was entitled.

Staff Sergeant J. J. Silvas, U.S. Marine Corps, the detailed court reporter who had been previously sworn, was present.

The trial counsel announced his legal qualifications and status as to oath; that he had been detailed by the Military Justice Officer, Marine Air Ground Task Force Training Command, Twentynine Palms, California; and that he had acted in no disqualifying capacity.

The detailed defense counsel announced his legal qualifications and status as to oath; that he had been detailed by the Senior Defense Counsel, Marine Air Ground Task Force Training Command, Twentynine Palms, California; that he had acted in no disqualifying capacity; and that no other defense counsel had been detailed to the case.

The military judge advised the accused of his rights concerning counsel.

The accused stated that he understood his rights with respect to counsel and that he chose to be defended solely by Captain Mitchell, his detailed defense counsel.

The military judge stated his legal qualifications and status as to oath and that he had been detailed by the Circuit Military Judge of the Sierra Judicial Circuit, Navy-Marine Corps Trial Judiciary. The prosecution and the accused were extended the right to challenge the military judge for cause. The military judge was not challenged for cause.

The military judge ascertained that the accused had been advised of his right to request trial by military judge alone and that the accused did desire to request trial by military judge alone.

After ascertaining that the accused had consulted with his defense counsel and had been informed of his right to request a trial by members, including one-third enlisted persons, the military judge approved the accused's request for trial by military judge alone.

The military judge announced that the court-martial was assembled.

The accused was arraigned on the following charges and specifications:

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) Roberts, Ryan S.		2. SSN (b)(6)	3. GRADE OR RANK LCpl	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 3d Battalion, 7 th Marines, 1 st Marine Division (Rein)FMF Marine Corps Air Ground Combat Center, Twentynine Palms, California 92278			6. CURRENT SERVICE	
			a. INITIAL DATE <i>EC</i> 24 Sept 1999 13 March 2003	b. TERM 4 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$1528.80	N/A	\$1528.80	N/A	
			9. DATE (S) IMPOSED	
			N/A	

II. CHARGES AND SPECIFICATIONS

CHARGE I: VIOLATION OF UCMJ, ARTICLE 92

Specification: In that Lance Corporal Ryan S. Roberts, U.S. Marine Corps, while on active duty, who knew of his duties at or near Karbala, Iraq, on or about 15 May 2003, was derelict in the performance of those duties in that he willfully failed to properly guard (b)(7)(c) an enemy prisoner of war, and to ~~protect him from maltreatment~~ *AS IT WAS HIS DUTY TO DO. avoid maltreating him e*

CHARGE II: VIOLATION OF UCMJ, ARTICLE 93

Specification: In that Lance Corporal Ryan S. Roberts, U.S. Marine Corps, while on active duty, did, at or near Karbala, Iraq, on or about 15 May 2003, maltreat (b)(7)(c) a person subject to his orders, by yelling at him, throwing water on him, and holding a loaded pistol to his head while a photograph was taken.

CHARGE III: VIOLATION OF UCMJ, ARTICLE 128

Specification 1: In that Lance Corporal Ryan S. Roberts, U.S. Marine Corps, while on active duty, did, at or near Karbala, Iraq, on or about 15 May 2003, unlawfully throw water on (b)(7)(c)

SEE SUPPLEMENTAL PAGE

IX. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) Castillo, Eric	b. GRADE Sgt	c. ORGANIZATION OF ACCUSER HqBn, MCAGCC, 29 Palms, CA 92278
d. SIGNATURE OF ACCUSER		e. DATE 30 October 2003

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 30TH day of OCTOBER, 2003, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

P. S. Rubin

Typed Name of Officer

Major

Grade

P. S. Rubin

Signature

HqBn, MCAGCC, 29 Palms, CA 92278

Organization of Officer

Judge Advocate

Official Capacity to Administer Oath
(See R.C.M 307(b)- must be commissioned officer)

2. On 30 OCTOBER 20 03, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

W. W. Mai
Typed Name of Immediate Commander

3rd Bn, 7th Mar, 1st MarDiv(Rein), FME
Organization of Immediate Commander

Second Lieutenant
Grade

[Signature]
Signature

V. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1630 hours, 30 OCT 20 03 at 3rd Bn, 7th Mar, 1st MarDiv(Rein), FME
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

For The 1 Commanding Officer

W. W. Mai
Typed Name of Officer

Legal Officer
Official Capacity of Officer Signing

Second Lieutenant
Grade

[Signature]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
3rd Bn, 7th Mar, 1st MarDiv(Rein), FME

b. PLACE
Twentynine Palms, CA

c. DATE 12 NOV 03

Referred for trial to the Special court-martial convened by SPCMCO# 1-03
dated 30 October 20 03, subject to the following instructions: None.

By //////////////////// of
Command or Order

M. A. Lopez
Typed Name of Officer

Commanding Officer
Official Capacity of Officer Signing

Lieutenant Colonel
Grade

[Signature]
Signature

15. On 13 November, 20 03, I caused to be served a copy hereof on (each of) the above named accused.

B. E. KASPRZYK
Typed Name of Trial Counsel

CAPTAIN
Grade or Rank of Trial Counsel

[Signature]
Signature

SUPPLEMENTAL PAGE

Specification 2: In that Lance Corporal Ryan S. Roberts, U.S. Marine Corps, while on active duty, did, at or near Karbala, Iraq, on or about 15 May 2003, commit an assault upon Najabe Al-Shami, by pointing at him with a dangerous weapon, to wit: a loaded firearm.

The military judge summarized an 802 conference in which a discussion was held concerning specifications under Charge I.

The trial counsel made a correction to Specification 2 of Charge III.

The defense had no motions to present.

The accused, through his counsel, entered the following pleas:

To all Charges and
Specifications thereunder:

Guilty.

The military judge inquired into the providence of the accused's pleas of guilty. The military judge informed the accused of his right to plead not guilty and to be tried by a court-martial and that at such court-martial the accused would have the right to confront the witnesses against him and the right against self-incrimination; that by pleading guilty the accused waived his rights to a trial of the offenses, to confront the witnesses against him, and his right against self-incrimination; and that the military judge would question the accused about the offenses to which the accused pleaded guilty and that if the accused answered those questions under oath, his answers, if false, could be used against the accused in a prosecution for perjury or false statement. The accused stated that he understood these rights and desired to waive them for the offenses to which he was pleading guilty.

The military judge ascertained that the accused had enough time to discuss his case with his counsel and that he was satisfied with the advice his counsel had given him.

The military judge questioned the accused and determined that the pleas of guilty were made voluntarily and were not the result of force or threat. The military judge informed the accused of the elements of the offenses and the maximum punishment which could be imposed for the offenses. The accused stated that he understood.

The trial counsel indicated that there was not a stipulation of fact in the case.

The military judge asked the accused about the offenses to which the accused pleaded guilty. Under oath, the accused testified substantially as follows:

(b)(7)(c) was in our possession because he surrendered to us. I went and got a camera and took a picture with my *loaded* e

nine-millimeter to his head. Before I started to leave, he started to complain about water. I threw water on him and raised my voice yelling at him. This all happened in a town in Iraq called Karbala during Operation Iraqi Freedom.

I was a member of 3/7 at the time. I was the Corporal of the Guard during the date of the events. The Sergeant of the Guard informed me that there was a EPW and that I may be required to provide Marines to guard. I did have a duty to guard EPWs on 15 May 2003. My duty as the Corporal of the Guard was to supervise the Marines on the guard as they performed their duties. I understand that Mr. (b)(7)(c) was an enemy prisoner of war at the time he came into the camp. I admit that he was entitled to EPW status and protection at the time. My duties as the Corporal of the Guard was to ensure that he was treated properly, guarded properly, and protected from maltreatment. I'm certain that I'm aware of the duty on 15 May 2003. I knew I was not supposed to mistreat prisoners of war.

I did all the maltreatments as alleged to Mr. (b)(7)(c). At the time, he was flexicuffed and sitting at the corner of the warehouse. He was not in uniform at the time and he did not have a weapon, but nonetheless, I knew he was an enemy prisoner of war. I yelled at him because he was complaining about water. Instead of allowing him to drink, I took the water and threw it on him.

I went and got my camera, came back, took him out of his corner, pulled out my weapon, took a picture, and then put him back in his corner. This happened before the yelling and throwing water at him occurred. I was in my uniform at the time. I was the only person that maltreated him. I realized I was doing something that was wrongful. I do not have any legal justification or excuse for my conduct, and nothing forced me to do it. This was a conscious and freely made decision on my part. I believe what I did constitutes dereliction of duty. My acts were willful and intentional. I'm satisfied that I'm guilty under Charge I. I do not have any reason that I should not be found guilty of this offense.

The military judge made a correction on the charge sheet and ascertained that there are no objections from both counsels.

The military judge ascertained that the defense counsel knew Mr. (b)(7)(c) to be an EPW.

The military judge ascertained that Mr. (b)(7)(c) was, in fact, subjected to the accused's orders on that particular day.

@

I did, in fact, maltreated Mr. (b)(7)(c) by yelling at him and throwing water on him, put a loaded pistol to his head while the photograph was taken. I do not have any legal justification or excuse for my actions. I am sure that I had a loaded magazine inserted into the weapon. There's nothing that caused me to treat Mr. (b)(7)(c) in this fashion. I did so because I was upset that he was complaining about the water situation. I took the picture because I want to keep it as a souvenir. I don't have any lawful reasons for my actions. I am satisfied that I am guilty as alleged under Charge II. I do not have any reason that I should not be found guilty of Charge II.

I believed that by throwing water at Mr. (b)(7)(c), he would get offended by me doing that. He did not consent to my actions. I did not have legal justification or excuse for doing so. I admit that it was unlawful. I am satisfied that I am guilty under Specification 1 of Charge III. I do not have any reason that I should not be found guilty.

Two Marines and I were there in uniform with weapons and Mr. (b)(7)(c) was there seated with his hands behind his back. I squatted him down, pulled my pistol out of my holster, and put it to his head. He was aware of it. I did so intentionally. I knew what I was doing. I believed that by doing that, I would scare him. I do not have any legal justification or excuse for putting that pistol to his head. I admit my conduct was unlawful. I believe that there was a concern for him that there was a possibility that I will shoot him. I understand that this weapon, a loaded firearm, was used in a manner likely to produce death or grievous bodily harm. I am satisfied that I am guilty as alleged under Specification 2 of Charge III. I do not have any reason that I should not be found guilty.

The military judge ascertained that there was a pretrial agreement in the case which had been marked as Appellate Exhibit I.

The military judge inquired into all but the sentence provisions of the pretrial agreement, which had been marked as Appellate Exhibit II, and ensured that the accused understood the pretrial agreement and that the parties agreed to its terms.

The military judge found the pretrial agreement to be in accord with appellate case law, not contrary to public policy or his own notions of fairness; and he accepted the agreement.

The military judge found that the accused knowingly, intelligently, and consciously waived his rights against self-incrimination, to a trial of the facts by a court-martial,

and his right to confront the witnesses against him. The military judge found the accused's pleas were made voluntarily and with a factual basis, and he accepted them.

The military judge ascertained from the trial counsel that the government moved to withdraw and dismiss without prejudice the charges and specifications to which the accused pled not guilty, such dismissal to ripen into prejudice upon the continued acceptance of the accused's pleas through sentencing. There was no objection from the defense.

The military judge announced the following findings:

Of all Charges and
Specifications before
the court:

Guilty.

The military judge announced that Charge I and Charge II were multiplicitous and would be considered as one offense for sentencing purposes.

The military judge ascertained that the data as to pay, service, and restraint of the accused as shown on the charge sheet was correct.

The trial counsel requested that the matters addressed during the providence inquiry be considered on sentencing. The defense did not object. The military judge stated that he would consider those matters.

The military judge advised the accused of his right to present matters in extenuation and mitigation, including his right to make a sworn or an unsworn statement or to remain silent. In response to the military judge, the accused stated that he understood his rights in extenuation and mitigation.

The trial counsel offered Prosecution Exhibits 1 and 2 for identification without objection from the defense. Prosecution Exhibits 1 and 2 for identification were admitted into evidence as Prosecution Exhibits 1 and 2.

The trial counsel had nothing further to present in aggravation.

The defense counsel offered Defense Exhibits Alpha, Bravo, and Charlie for identification. The prosecution had an objection on the disposable income of Defense Exhibit Charlie, which states a conclusion. The military judge overruled the objection, and admitted into evidence Defense Exhibits Alpha, Bravo, and Charlie

for identification as Defense Exhibits Alpha, Bravo, and Charlie.

[REDACTED] United States Marine Corps Reserve, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the defense:

I am currently a defense counsel assigned to the Marine Corps Air Ground Combat Center, Marine Air Ground Task Force Training Command, Twentynine Palms, California.

I have been on active duty in the Marine Corps for approximately three years. I've also held the billet of prosecutor. In January of 2003, I deployed to Operation Iraqi Freedom and served as a Staff Judge Advocate to the Military Governor of Karbala in Iraq. While I was there, my chief duties was as the legal advisor to the military governor of the city. I have knowledge of the accused, but don't remember the exact date.

I recall while in Karbala one night, I was called to the attention of the commanding officer, [REDACTED] who told me that it was brought to his attention that there was some allegations of mistreatment of an enemy prisoner of war. He was asking for my advice on how to proceed with the investigation.

My role in the proceedings that occurred was to oversee the investigation and make sure things were done right. A thorough investigation was done by the command because of the potential for this to be an international incident. My knowledge as to (b)(7)(c) was that he was alleged to have been an Iraqi Intelligence Service Agent. (b)(7)(c)

Questions by the prosecution:

I did have interactions with the accused during the investigation. I did have an opportunity to observe the accused's conduct during the time. We read him his rights and he waived them. He told us the whole story and we continued with the investigation. [REDACTED] was extremely cooperative during the investigation.

The witness was excused and withdrew from the courtroom.

[REDACTED] United States Marine Corps, was called as a witness by the defense, was sworn, and

testified substantially as follows:

Questions by the defense:

I have been in the Marine Corps for sixteen years. My current billet is NBC Defense Officer for 3d battalion, 7th Marines. I came into the Marine Corps at 1987 with 1st Battalion, 2nd Marines until October of 1994; went through 2nd FSSG as a group inspector; after one year, we started up CBIRF team leader; from there, went to be the staff NCOIC of the NBC section at 8th Motor Transport Battalion; from there, NBC Chief for the 31st MEU; from there, 8th Marines as the NBC Defense Chief; and then joined 3d battalion, 7th Marines after TBS and NBC school in August 2000, each of them were leadership billets.

Lance Corporal Roberts is a member of 3d Battalion, 7th Marines. I first met him in August 2000. I observed Lance Corporal Roberts for the last six months since September 2003. Over the last six months, except for the two leave periods, we've been working over ten hours a day. He was a member of the security detachment with the log train. His duties after he came back from the war was NBC defense specialist. His performance has been outstanding. His attitude towards Marine Corps is fifty-fifty because of this court-martial. He has no problem with military superiors. My opinion of his military character was based upon his work ethics, dependability, motivation, efficiency, military appearance, professionalism, military courtesy, bearing. My opinion for him is that he is a NBC defense specialist and a good Marine when he works around me.

CROSS-EXAMINATION

Questions by the prosecution:

I understand all of the crimes he's admitted here today. I know that he was derelict in the performance of his duties and that he failed to avoid maltreating another human being, but for me, he is still a good Marine.

The witness was excused and withdrew from the courtroom.

UNSWORN STATEMENT

I was born in (b)(6)

(b)(6)

was recruited. My family moves around all the time because my parents were separated and they would get into arguments with each other. I get along with everyone. I went to Stroudsburg High

School, but I didn't enjoy that experience because I was poor.

My plans after high school was to join the Marine Corps. I choose to join the Marine Corps for all the skills I needed in the future. I joined the Marine Corps on September 21, 1999. I did very well in boot camp. The drill instructors thought I was a natural leader so they put me as a squad leader for 3rd squad, and then I graduated boot camp with meritorious PFC. We missed a lot of things in MCT due to weather and I was kind of upset about that.

My current MOS is 5700, NBC defense training. I was a supply warehouse clerk before that and worked as the warehouse chief at 3/7 supply. My MOS was changed while I was at Kuwait when I reenlisted. I enjoy my current MOS. My feelings towards the Marine Corps was that I like everything about it. My plans for the future before the incident was to go to NBC school and after that I was hoping to go to CBIRF. I just want to learn the skills from the NBC field before I get out of Marine Corps.

I deployed to the Middle East for about nine months. Some of the experience during this deployment was sandstorms, cold, hunger, my supply boss stepped on a land mine and blew up, civilians being shot, and driving an ambulance truck to check bodies all over the places.

I feel sorry for what I've done. I didn't mean to harm Mr. (b)(7)(c). I want to stay in the Marine Corps to go to NBC school and go back to Iraq. I've been doing very well in my job. I've been married for 3 years now and I have one son. My wife doesn't have a job. I am the only person who financially takes care of my wife and son.

The defense had nothing further to present.

The trial counsel had nothing to present in rebuttal.

The trial counsel presented argument on sentence.

The defense counsel presented argument on sentence.

After Deliberating
The military judge announced the following sentence:

To be reduced to the pay grade of E-1, to forfeit \$500 pay per month for a period of 3 months, and to be confined for a period of 90 days.

The military judge examined Appellate Exhibit II, the sentencing limitation provisions of the pretrial agreement. The military judge ensured that the accused understood its meaning and effect on the sentence adjudged and that both sides agreed with the military judge's interpretation.

The military judge stated that he continued to find the pretrial agreement to be in accord with appellate case law, not contrary to public policy or his own notion of fairness; and he accepted agreement.

The military judge ascertained that the accused had read and discussed Appellate Exhibit III, his appellate rights, with his defense counsel. The military judge further ascertained that the accused understood his appellate rights and did not have any questions of the military judge.


The military judge ascertained that the accused desired that his copy of the record of trial be served on his defense counsel, Captain (b)(6)

The court-martial adjourned at 1423, 7 January 2004.

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of


Lance Corporal Ryan S. Roberts, (b)(6) U.S. Marine
Corps, 3d Battalion, 7th Marines, 1st Marine Division (REIN), FMF,
located at Marine Corps Air Ground Combat Center, Twentynine
Palms, California.


F. A. DELZOMPO
Lieutenant Colonel, U.S. Marine Corps
Military Judge

25 MAR 04
Date

The record of trial in the foregoing case was not examined by the
trial counsel due to the trial counsel's participation in
deployment operations in support of Operation Iraqi Freedom II.

examinated the record of trial in the foregoing case.


E. C. MITCHELL
Captain, U.S. Marine Corps
Defense Counsel

8 MAR 04
Date

CHARACTER STATEMENT FOR LCPL RYAN S. ROBERTS

Please return this form to the individual Marine or to Captain (b)(6) Detailed Defense Counsel,
SJA Office, Defense, Box 788103 MAGCC, Twentynine Palms, CA 92210. Phone: DSN 230-5257
FAX: DSN 230-8297. [Commercial (760) 830-xxxx] Email: (b)(6) @29palms.usmc.mil

I. YOUR INFORMATION

NAME: (b)(6) _____, RANK: SGT
First M.I. Last

SSN: (b)(6) _____

CURRENT UNIT: RECRUITING STATION NEW JERSEY

Your address: (b)(6) _____

Your phone number and email: (b)(6) _____

My current duty assignment (describe position / billet) Administration Clerk

Description of my military service (i.e. years served, previous billets/duty assignments, personal awards, military, training/education) I have served for almost five years now. I was attached to the Commanding General's Center Adjutant's Office in Twentynine Palms, California. I have two Navy Achievement Medals, one Navy Unit Commendation Medal, National Defense, and one Good Conduct Medal. I have been attending college for three years now, and will graduate next fall.

Do you anticipate being TAD or transferred from your unit any time during the next three (3) to six (6) months? YES NO (circle one) If so, when?

I have known this Marine for 7 years. Our relationship was professional / social (circle one) and can be described as follows (i.e. "I was his NCOIC" or "she was my next door neighbor"):
Lance Corporal Roberts and I attended the same high school, and then were stationed together in Twentynine Palms, California after we both joined the United States Marine Corps.

My observation period was on a (circle one) hourly / daily / weekly basis for approximately _____ hours per week.

II. QUESTIONS REGARDING THIS MARINE
(IF ADDITIONAL SPACE NEEDED FOR ANSWERS, PLEASE ATTACH PAGES)

1. What were this Marine's military duties when you observed them? (Describe)

Lance Corporal Roberts was the Headquarters Battalion mail clerk while I was stationed with him.

2. How did/does this Marine perform those duties? (Describe)

Lance Corporal Roberts was very knowledgeable of his duties and carried his duties out to the fullest of his potential. There were several mail clerks assigned to the Battalion during my tenure there, and LCpl Roberts was by far the best worker I had seen. He was the "go-to" Marine if you needed help with almost anything. He was always looking out for junior Marines and showed this by helping with tasks that he was not assigned.

3. How would you rate/rank this Marine in comparison to all other Marines or Sailors with whom you have worked?

Lance Corporal Roberts is a Marine that I would want to cover my back if we were in a hostile environment. This Marine knows his MOS inside and out and was a true leader. On several occasions I saw this Marine doing very strenuous physical fitness exercises during liberty, just to test his abilities. He leads by example. I would not hesitate for one minute to serve with this Marine again.

I would place this Marine in the top 5 % of all Marines I have known. (1% being the best and 100% being the lowest)

4. Would you desire to work with this Marine in the future? **YES/NO** (circle one) Why?

(explain) Lance Corporal Roberts is a true leader and an overachiever. I wish that I could obtain the motivation and dedication that this Marine possesses.

5. Would you be willing to serve with this Marine in combat? **YES/NO** (circle one) Why?

Yes, and although I outrank this Marine, I would go to his for answers. He is the typical "Poster Marine."

6. What are your opinions about this Marine's honesty/truthfulness? (examples?)

I have never had a reason to not trust this Marine. I would trust him with my life if necessary.

7. Are you aware that this Marine has presently been charged with an offense? YES/NO (circle one)
What is the nature of that offense?

Yes, I am fully aware of what Lance Corporal Roberts did, but I do not think the Marine's career should be jeopardized because of his mistake.

8. Do you believe this conduct will continue or reoccur? YES/NO (circle one) Why or Why not?

No, I believe that Lance Corporal Roberts had bad judgment on what he did but that this type of action will never happen again.

9. Can this Marine be rehabilitated? YES/NO (circle one) Why or Why not?

Yes, because this is not an addiction, this is something that happened one time and should have never happened.

10. How does this Marine deal with stressful situations/environments? (examples?)

Lance Corporal Roberts was in a hostile environment when the situation occurred. I tend to think that this Marine would handle stress to the best of his abilities.

11. Please include any additional comments that you would like to add concerning this Marine.
Lance Corporal Roberts is not only a true friend, but also a great Marine. I have never seen a Marine with the amount of motivation that he possesses. He is a true leader, that made an honest mistake. Everyone makes a mistake in his life. This was his mistake. I have 110% confidence that Lance Corporal Roberts will bounce back from this and still be the "poster Marine" that I described before.

I have attached 0 additional pages.

I swear (or affirm) that all of the above is true and correct to the best of my knowledge.

Signature: _____
(b)(6)

Date: 03/11/13

CHARACTER STATEMENT FOR LCPL RYAN S. ROBERTS

Please return this form to the individual Marine or to Captain (b)(6) Detailed Defense Counsel,
SJA Office, Defense, Box 788103 MAGCC, Twentynine Palms, CA 92278. Phone: DSN 230-5257
FAX: DSN 230-8297. [Commercial (760) 830-xxxx] Email: (b)(6) 29palms.usmc.mil

I. YOUR INFORMATION

NAME: (b)(6)

RANK SGT

First

M.I.

Last

SSN: (b)(6)

CURRENT UNIT: H&HS Station Property MCAS Miramar San Diego CA

Your address: (b)(6)

Your phone number and email: (b)(6)

My current duty assignment (describe position / billet) Station-CMR NCO, Training NCO

Description of my military service (i.e. years served, previous billets/duty assignments, personal awards, military training/education): I have served for about 53 months now, 13 months of second enlistment. I was CMR NCO for H&S CO with 3/7 about 1 year ago. Served at 3/7 from Jan 2000 to Oct 2002. Personal awards are (1) Letter of Appreciation, (1) Navy Unit Commendation, (1) Sea Service Deployment Ribbon, (1) National Defence Service Medal (1) Marine Corps Good Conduct Medal Corporals Corse

Do you anticipate being TAD or transferred from your unit any time during the next three (3) to six (6) months? YES/NO (circle one) If so, when?

I have known this Marine for 36 months. Our relationship was professional / social (circle one) and can be described as follows (i.e. "I was his NCOIC" or "she was my next door neighbor"). Our work relationship was professional, and social at the same time. We were the same rank during most of our time together. We both deployed to Okinawa, I got to know him well. I know his wife, his son, and his sister. He is really good on providing for his family. I never had any problems with LCpl Roberts, before I left 3/7 I was promoted to Cpl and he remained a LCpl. During that time he always referred to me as Cpl (b)(6). Always followed orders, and maintained professionalism.

My observation period was on a (circle one) hourly / daily / weekly basis for approximately 60 hours per week.

II. QUESTIONS REGARDING THIS MARINE

Defense Exhibit 4

(IF ADDITIONAL SPACE NEEDED FOR ANSWERS, PLEASE ATTACH PAGES)

1. What were this Marine's military duties when you observed them? (Describe) He was a Warehouse Clerk for 3/7 Supply, he dealt with everything that had to do with the warehouse.

2. How did/does this Marine perform those duties? (Describe)

The Job was always done, he would always have ideas on how to make things a lot more smother.

3. How would you rate/rank this Marine in comparison to all other Marines or Sailors with whom you have worked? I think would rank this Marine in the above average category. He always had ideas giving him that extra edge over everyone else.

10% I would place this Marine in the top 10% of all Marines I have known. (1% being the best and 100% being the lowest)

4. Would you desire to work with this Marine in the future? **YES/NO** (circle one) Why? (explain) He is a great worker, works hard and gets the job done.

5. Would you be willing to serve with this Marine in combat? **YES/NO** (circle one) Why? The only Marines I have ever trained with for Combat were those of 3/7 Supply and LCpl Roberts was there during the training. I would not want to go to combat with some one I don't know and have not trained with.

6. What are your opinions about this Marine's honesty/truthfulness? (examples?) I think he is as honest and truthfull as the next guy, he is a Marine and Marines tend to exaggerate. I never had an issue with him lying to me or being dishonest.

7. Are you aware that this Marine has presently been charged with an offense? **YES/NO** (circle one) What is the nature of that offense? I don't know the exatc offence, but I know the reason. He mistreated a POW in Iraq.

8. Do you believe this conduct will continue or reoccur? **YES/NO** (circle one) Why or Why not?

No I don't think this will continue with this Marine, but it goes on with other troops that are out in Iraq right now. If you give that Iraqi a chance he will shoot you in the back. LCpl Roberts made a mistake and I know he would not do that again.

9. Can this Marine be rehabilitated? **YES/NO** (circle one) Why or Why not? He made a mistake he can easily be rehabilitated, there was no harm to anyone. It was just a bad judgment act.

10. How does this Marine deal with stressful situations/environments? (examples?) I think he handles himself real well, when we were under a stressfull work load he got his job done the same way he did when it was normal.

11. Please include any additional comments that you would like to add concerning this Marine.

I swear (or affirm) that all of the above is true and correct to the best of my knowledge.

Date:

3

7 7

January 7, 2004

I'm writing in regards of my (b)(6) Ryan S. Roberts. I don't agree with what my (b)(6) is getting in trouble for. Why would I? I want you to know that Roberts is a great marine, man. (b)(6) and (b)(6) My biggest worry out of this whole thing is my (b)(6) He misses his (b)(6) so much, and so do I. He's at that stage where everything is daddy. Everything he says (b)(6) put me to sleep, call (b)(6) tuck me in and you get the picture. Every time my husband leaves our (b)(6) rebels and he becomes this little kid that doesn't want to listen to anything you tell him. Please, Mr. I don't want him to miss more of his (b)(6) life and I definitely don't want my (b)(6) to keep asking me where (b)(6) is and wondering why he keeps leaving him. Our (b)(6) shouldn't have to go through that. He has a (b)(6) When my (b)(6) first left for Iraq my (b)(6) was only (b)(6) and he would open he would run to the door yelling (b)(6) and it wouldn't be him. Do you have any idea how heart breaking that is? I cried every time. Now he will do cute things like every time the phone will ring he'll say, is that (b)(6) if a car pulls in the driveway he'll go mummy. home and it's not him. Even his daycare tells me that every time Ryan leaves he gets out of hand or he starts to cry when I drop him off. My (b)(6) missed our (b)(6) birth, seen him at (b)(6) and then went back to Japan and didn't see him until (b)(6) When he was (b)(6) Roberts left for Iraq, didn't come back until he was (b)(6) By then he was talking sentences, potty trained, using the computer for his kid games on his own, dressing himself, brushing his teeth, driving 4 wheelers and so much more. He even missed his first steps b/c he was in the field. I know that these are things that we all have to go through as military wives and we don't plan these things to happen they just do. I'm just asking you please don't send my (b)(6) to the brig (those damn army guys got off and they beat the crap out of that Iraqi, or keep one of the best marines you have and send him to school. I bet you didn't know my (b)(6) ran the best warehouse on the west coast. It's not on his file though because his hire ups took the credit for it. That's one of the most interesting things to me. There's more, like in Iraq he did all this work for something I don't remember and someone else got a medal for it and he even apologized to Ryan. He made it through hypothermia and I'm sure there's so much more. See a good marine never complains he just sucks it up and moves on. My (b)(6) will never complain about these things and I think that it's wrong that you guys only see the bad things, they never get credit for the good. Your about to get rid of one of the best marines you guys ever had and most

of all he survived war. No matter what kind of hell he went through and no matter what he did he's a hero, he's a survivor and he will always be a marine.

I just want my family back so we can move on. Please Sir, really think about this one. Our men were trained to hate and go over there and kill these people there in hot weather, sleeping on the ground and eating mess. What our boys do to these Iraq's they don't realize what they're doing, they don't think it's wrong, they're probably thinking you killed my men and I'm away from my family.

Well Sir, I just want to say thank you for your time and reading this letter. I hope you decide to keep my son as a marine.

(b)(6)

Thank you,

(b)(6)

Defense Exhibit 23

January 7, 2004

Sir,

I'm writing in regards of my (b)(6) Ryan S. Roberts. I don't agree with what my (b)(6) is getting in trouble for. Why would I? I want you to know that Roberts is a great marine, man, (b)(6) and (b)(6). My biggest worry out of this whole thing is my (b)(6). He misses his (b)(6) so much, and so do I. He's at that stage where everything is daddy. Everything he says (b)(6) put me to sleep, call (b)(6) tuck me in and you get the picture. Every time my husband leaves our (b)(6) rebels and he becomes this little kid that doesn't want to listen to anything you tell him. Please, Mr. I don't want him to miss more of his (b)(6) life and I definitely don't want my (b)(6) to keep asking me where (b)(6) is and wondering why he keeps leaving him. Our (b)(6) shouldn't have to go through that. He has a (b)(6). When my (b)(6) first left for Iraq my (b)(6) was only (b)(6). Every time that door would open he would run to the door yelling (b)(6) and it wouldn't be him. Do you have any idea how heart breaking that is? I cried every time. Now he will do cute things like every time the phone will ring he'll say, is that (b)(6). If a car pulls in the driveway he'll go mommy, (b)(6) home and it's not him. Even his daycare tells me that every time Ryan leaves he gets out of hand or he starts to cry when I drop him off. My (b)(6) missed our (b)(6) birth, seen him at (b)(6) old and then went back to Japan and didn't see him until (b)(6). When he was (b)(6) Roberts left for Iraq, didn't come back until he was (b)(6). By then he was talking sentences, potty trained, using the computer for his kid games on his own, dressing himself, brushing his teeth, driving 4 wheelers and so much more. He even missed his first steps b/c he was in the field. I know that these are things that we all have to go through as military wives and we don't plan these things to happen they just do. I'm just asking you please don't send my (b)(6) to the brig (those damn army guys got off and they beat the crap out of that Iraqi) or keep one of the best marines you have and send him to school. I bet you didn't know my (b)(6) ran the best warehouse on the west coast. It's not on his file though because his hire ups took the credit for it. That's one of the most interesting things to me. There's more, like in Iraq he did all this work for something, I don't remember and someone else got a medal for it and he even apologized to Ryan. He made it through hypothermia and I'm sure there's so much more. See a good marine never complains he just sucks it up and moves on. My (b)(6) will never complain about these things and I think that it's wrong that you guys only see the bad things, they never get credit for the good. Your about to get rid of one of the best marines you guys ever had and most

Defense Exhibit B

of all he survived war. No matter what kind of hell he went through and no matter what he did he's a hero, he's a survivor and he will always be a marine!

I just want my family back so we can move on. Please Sir, really think about this one. Our men were trained to hate and go over there and kill these people. There in hot weather, sleeping on the ground and eating mae's. What our boys do to these Iraq's they don't realize what they're doing, they don't think it's wrong, they're probably thinking you killed my men and I'm away from my family.

Well Sir, I just want to say thank you for your time and reading this letter. I hope you decide to keep my as a marine.

(b)(6)

Thank you,

(b)(6)

Defense Exhibit B

2 ✓ 2

'04 BASIC ALLOWANCE FOR HOUSING RATES

RANK:	E-3
ZIP CODE:	92277
MHA:	CA032 - TWENTY NINE PALMS MCB, CA
MONTHLY ALLOWANCE:	
WITH DEPENDENTS:	\$ 618.00
WITHOUT DEPENDENTS:	\$ 498.00

Need additional information on BAH?

[BAH questions and comments.](#)

[Return to Previous](#)



Defense Exhibit C

2 6-2

1/7/2004

IN THE SIERRA JUDICIAL CIRCUIT

SPECIAL COURT-MARTIAL

UNITED STATES) MEMORANDUM OF PRETRIAL AGREEMENT
)
v.)
)
Ryan S. Roberts)
)
(b)(6))
Lance Corporal)
U.S. Marine Corps)

I, Lance Corporal Ryan S. Roberts, 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, I agree to enter a plea of GUILTY to the charges and specifications listed below, provided that the sentence approved by the convening authority will not exceed the sentence agreed upon in the Maximum Sentence Limitation to this Agreement.

2. I am satisfied with my defense counsel, Captain (b)(6) 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; and, (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; and, Article 58b, Automatic forfeitures. I also understand that if the adjudged sentence is subject to either provision, this Agreement will have no effect on the application of either provision on the adjudged sentence, unless the effect is specifically indicated in the Maximum Sentence Limitation to this Agreement.

7. My defense counsel has fully advised me of the meaning and effect of my guilty pleas, and their 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

8. I understand that if my guilty pleas do 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 pleas at any time before sentence is announced, and that the military judge may permit me to do so.

10. I will plead as follows:

<u>CHARGE</u>	<u>PLEA</u>
Charge I: Violation of Article 92	GUILTY
Spec: Did, on or about 15 May 2003 was derelict in the performance of his duties by willfully failing to protect an enemy prisoner of war from maltreatment..	GUILTY
Charge II: Violation of Article 93	GUILTY
Spec: Did, on or about 15 May 2003, maltreat an enemy prisoner of war.	GUILTY
Charge III: Violation of Article 128	GUILTY
Spec 1: Did, on or about 15 May 2003, unlawfully throw water at an enemy prisoner of war.	GUILTY
Spec 2: Did, on or about 15 May 2003, commit an assault on an enemy prisoner of war by pointing at him a loaded firearm.	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.

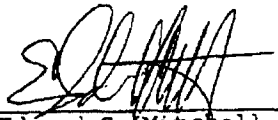
a. If I violate any provision or commit any misconduct before trial, the convening authority may withdraw from this Agreement.

b. If I violate any provision or commit any misconduct between the date of trial and completion of any suspension period, after a vacation hearing pursuant to R.C.M. 1109, I could lose the benefit of any suspension provision contained in the Maximum Sentence Limitation to this Agreement.

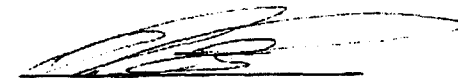
14. This Agreement constitutes all the conditions and understandings of both the Government and myself regarding the pleas and sentence limitations in this case.

Appellate Exhibit I

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


Edward C. Mitchell
Major, U.S. Marine Corps
Defense Counsel

Date: 03/11/12


Ryan S. Roberts
Lance Corporal
U.S. Marine Corps
Accused

Date: 03/11/12

The foregoing pretrial agreement is approved.


Convening Authority

Date: 20 Nov 03

Appellate Exhibit I

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IN THE SIERRA JUDICIAL CIRCUIT

SPECIAL COURT-MARTIAL

UNITED STATES) MAXIMUM SENTENCE LIMITATION
)
v.)
)
Ryan S. Roberts)
(b)(6))
Lance Corporal)
U.S. Marine Corps)

1. Punitive Discharge: As adjudged. If a punitive discharge is awarded I agree to request to be placed on voluntary appellate leave within five days of either (1) the date sentence is adjudged, or (2) my release from confinement, whichever is later.

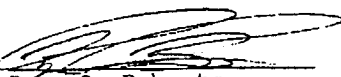
2. Confinement: As adjudged.

3. Forfeitures: As adjudged.

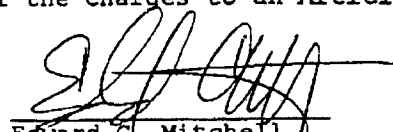
4. Reduction: As adjudged.

5. Other lawful punishments: As adjudged.

In return for my pleas of guilty, the convening authority agrees to refer the charges and specifications to a special court-martial. Should I fail to plead providently, or the military judge refuses to accept my plea for any reason, the special court-martial convening authority may withdraw from this pretrial agreement and, in his discretion, refer the charges to an Article 32 Pretrial Investigation.

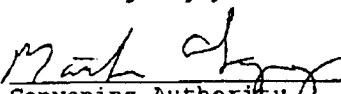

Ryan S. Roberts
Lance Corporal
U.S. Marine Corps
Accused

Date: 03/1/12


Edward C. Mitchell
Captain
U.S. Marine Corps
Defense Counsel

Date: 03/1/12

The foregoing pretrial agreement is approved.


Convening Authority

20 Nov 03
Date

Appellate Exhibit II

APPELLATE AND POST-TRIAL RIGHTS

You are advised that your counsel 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

A copy of the record of trial will be prepared and given to you. You may request that your copy of the record of trial be delivered to your defense counsel.

Staff Judge Advocate or Legal Officer's Recommendation

If you received a punitive discharge or were sentenced by a general court-martial, the convening authority's staff judge advocate or legal advisor will submit a recommendation to the convening authority. Before forwarding the recommendation and the record of trial to the convening authority, this legal advisor will serve a copy of the written review and recommendation upon your defense counsel. A separate copy will be served on you. If it is impracticable to serve the recommendation 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 defense counsel. You may also request on the record at this court-martial or in writing that your copy be sent to your defense counsel instead of yourself.

Submission of Matters to the Convening Authority

You have a right to submit matters to the convening authority 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 record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer is served on you or your defense counsel, whichever is later. The convening authority 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 convening authority 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 convening authority and 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. Under no circumstances may the convening authority increase the severity of the sentence. 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.

Review

If you were tried by a special court-martial and your sentence, as finally approved by the convening authority, does not include a punitive discharge, your case will be reviewed under the direction of the staff judge advocate for the convening authority's superior general court-martial convening authority. 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 general court-martial convening authority, you may request the Judge Advocate General of the Navy to take corrective action. Such a request must be filed within two years of the convening authority'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 convening authority, does not include a punitive discharge or at least one year's confinement, your case will be forwarded to the Office of the Judge Advocate General. You may suggest, in writing, possible legal errors or other matters for consideration by the Judge Advocate General. The record may be examined for any legal errors and for appropriateness of the sentence and the Judge Advocate General may take corrective action, if appropriate.

If your sentence, as finally approved by the convening authority, includes a punitive discharge (regardless of the type of court-martial), dismissal, a year's confinement or more, or death your case will be reviewed by the Navy-Marine Corps Court of Criminal Appeals for legal error, 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, 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 or 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 error for consideration by the judge advocate, who must file a written response to each. The judge advocate's review will be sent to the general court-martial convening authority for final action. Within two years after such final action, you may request the Judge Advocate General 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 defense counsel's responsibility to represent you during the convening authority's action stage of your court-martial conviction. You defense counsel is responsible for examining the record of trial for errors and, where applicable, the post-trial recommendation of the staff judge advocate or legal officer for errors or omissions. It is your defense counsel's obligation to advise and assist you in preparing matters for submission to the convening authority for consideration prior to action being taken on the record of trial.

If your case is reviewed by the Navy-Marine Corps Court of Criminal Appeals, military counsel will be appointed to represent you at no cost to you and, if you choose, you may engage civilian counsel at no expense to the United States. If your case should be reviewed by the United States Court of Appeals for the Armed Forces or by the United States Supreme Court, you would continue to have the same appellate counsel rights before these courts.

Acknowledgement

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 understand my post-trial and appellate rights; (3) that I have discussed them with my lawyer 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 record of trial be delivered to ~~(me)~~

(my counsel) Capt Mitchell).

I specifically request that my written copy of the staff judge advocate/legal officer

recommendation be delivered to ~~(me)~~ (my counsel Capt Mitchell).

5 Jan 04
DATE

[Signature]
SIGNATURE OF ACCUSED

5 Jan 04
DATE

[Signature]
SIGNATURE OF DEFENSE COUNSEL

Appellate Exhibit III

2

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UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
MARINE AIR GROUND TASK FORCE TRAINING COMMAND
MARINE CORPS AIR GROUND COMBAT CENTER
TWENTYNINE PALMS, CALIFORNIA 92278


5800
17/5
22 DEC 03

From: Defense Counsel
To: Military Judge
Via: Trial Counsel

Subj: REQUEST FOR CONTINUANCE IN THE SPECIAL COURT-MARTIAL CASE
OF LCPL Ryan S. ROBERTS, USMC

1. I respectfully request a continuance in the subject case
which is docketed for an arraignment/plea on 22 DEC 2003
until 7 JAN 2004.

2. The reason for this request is:
CASE PREPARATION * THE OPPORTUNITY TO MEET w/CLIENT.


E.C. MITCHELL
Capt, USMC

FIRST ENDORSEMENT

From: Trial Counsel
To: Military Judge

1. Having reviewed the defense request for a continuance in the
subject case and the reason therefor, I ~~do~~ do not object to a
continuance.



Trial Counsel 22 DEC 03

SECOND ENDORSEMENT

From: Military Judge
To: Trial Counsel, Defense Counsel

1. The foregoing continuance is GRANTED / DENIED.

F. A. Delzompo
LtCol, U.S. Marine Corps
Military Judge


Military Judge 24 DEC 03

INSTRUCTIONS FOR PREPARING AND ARRANGING DD FORM 491, RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 13, or applicable 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. When an Article 39(a) session is held in a special court-martial with a military judge, DD Form 491-1 should be used and combined with DD Form 491 to complete the record of trial. Those procedures covered at the Article 39(a) session and summarized in DD Form 491-1 will not be resummarized in DD Form 491.

DELETIONS - In preparing the record, inapplicable words of the printed text must be deleted. Deletions may be made by striking over the inapplicable word or phrase, or by ruling it out in ink. When several consecutive lines are to be deleted, a single line, ruled in ink, from upper left to lower right will suffice. No deletion or remark is necessary when there are no exceptions after an item ending "except as indicated below."

RECORDING TESTIMONY - A summarized record need contain only a summarized report of the testimony.

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

ARRANGEMENT - When forwarded to a judge advocate for 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 5, 7, and 13e will be inserted by the convening or reviewing authority, as appropriate, and items 8 and 12 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 491.

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

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

4. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is of a GCM and 4 copies if it is of a SPCM.

5. When required, signed review of reviewing judge advocate, in duplicate, together with all clemency papers, including clemency recommendations by court members.

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

7. DD Form 458, "Charge Sheet" (unless included at the appropriate place in a summarized record).

8. Congressional inquiries and replies, if any.

9. 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.

10. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

11. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

12. Records of former trials.

13. 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.

(1) Record of Article 39(a) session at appropriate place in proceedings.

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.