RECORD OF TRIAL

of

Travis, Matthew K. (b)(6) Sergeant

2d Battalion, 2d Marines USMC Camp Pendleton, CA

By

General Court-Martial

Convened by Commanding General

1st Marine Division (REIN)

Tried at

Forward Operations Base Fallujah, Al Fallujah, Iraq,
on 19 August 2004

TESTIMONY

EXHIBITS ADMITTED IN EVIDENCE

PROSECUTION

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
PE-1	Stipulation of fact	24	26
PE-2	Service record	78	81
PE-3	Newspaper article	78	84
PE-4	Photos	78	84

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DEFENSE

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
DE-A	Logbook pages	94	95
DE-B	Awards, certificates, and article	141	141
DE-C	Unsworn statement	156	156
DE-D	MCTFS BTR and Awards	156	156

* * * * *

APPELLATE

EXHIBIT	DESCRIPTION	OFFERED
AE-I	Trial schedule	7
AE-II	Pretrial agreement	59
AE-II	Pretrial agreement	63
AE-III	Sentence limits	64
AE-III	Sentence limits	167
AE-IV	Appellate rights	168

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_____ 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 _____, _____.

_____

PROCEEDINGS OF A GENERAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Forward Operations Base Fallujah, Al Fallujah, Iraq, at 2100, 8 June 2004, pursuant to the following order:

'TED STATES MARINE CORPS
'T MARINE DIVISION (REIN)
UIC 40120
FPO AP 96426-0120

IN REPLY REFER TO:
5810
SJA
GCMCO#02-04
MAY 2 3 2004

A general court-martial is hereby convened. It may proceed in Iraq, unless otherwise directed. The court-martial will be constituted as follows:

MEMBERS

Lieutenant Colonel (b)(6)
Major (b)(6)
Major
Major
Major
Captai
Captai
Captai

(b)(6)

Certified True Copy

MJ: This court is called to order at Camp Fallujah, Iraq, in the case of The United States versus Sergeant Matthew K. Travis, United States Marine Corps.

TC: Sir, this court is convened by The Commanding General, 1st Marine Division, by General Court-Martial Convening Order 2-04, dated 23 May 2004, copies of which have 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 and additional charges are as follows:

For original charges, Charge I, violation of UCMJ Article 81, conspiracy to commit assault;

Charge II, violation of UCMJ Article 92, dereliction in the performance of duties;

Charge III, violation of UCMJ Article 93, cruelty and maltreatment, one specification;

Charge IV, violation of UCMJ Article 107, one specification of false official statement;

Charge V, violation of UCMJ Article 128, one specification of assault;

As for additional charges, Charge I, violation of UCMJ Article 80, two specifications; the first, attempt to be cruel toward and maltreat an unknown Iraqi detainee; and Specification 2, attempt to commit an assault consummated by a battery;

Charge II, violation of UCMJ Article 81, conspiracy to commit cruelty and maltreatment; and Specification 2, conspiracy to commit cruelty and maltreatment;

Charge III, violation of UCMJ Article 92, violation of a lawful order, one specification;

Charge IV, violation of UCMJ Article 107, one specification of false official statement;

And Charge V, violation of UCMJ Article 128, assault consummated by a battery.

The original charges were preferred by Corporal (b)(6) (b)(6) United States Marine Corps, and the additional charges were preferred by Corporal (b)(6) , United States Marine Corps, both persons subject to the UCMJ, and sworn to before an officer authorized to administer oaths.

Upon the preferral of the original charges, the Commanding Officer of 2d Battalion, 2d Marines, directed an Article 32 investigation. Proceedings were held. The commanding officer then forwarded the charges and -- along with additional charges, to the Commanding General for disposition. The Commanding General has since referred these charges to this general court-martial. These charges have not been referred to any other convening order other than that stated in the referral block.

The charges have been referred to this court-martial by Major General (b)(6) United States Marine Corps, the convening authority.

The charges and additional charges were served on the accused on 1 June 2004. The five-day statutory waiting period has expired.

The accused and the following person detailed to this court-martial are present:

Major (b)(6) United States Marine Corps, as military judge;

Captain (b)(6) United States Marine Corps, as defense counsel;

Captain (b)(6) United States Marine Corps, as trial counsel.

The members are absent.

Sergeant (b)(6) has been detailed to this court-martial as the court reporter and has been previously sworn.

I have been detailed to this court-martial by the Officer In Charge of LSST-Iraq. I am qualified, certified, and sworn in accordance with Articles 27(b) and 42(a). And I have not acted in any disqualifying manner.

MJ: Thank you.

Captain (b)(6)

DC: Good evening, sir.

MJ: Good evening.

DC: I have been detailed to this court-martial by the Senior Defense Counsel of the LSSS Forward Iraq, Major (b)(6) I am qualified and certified under Article 27(b) and sworn under Article 42(a) of the Uniform Code of Military Justice. I have not acted in any manner which may tend to disqualify me in this case. And, sir, I am the sole detailed defense counsel for Sergeant Travis.

MJ: Would you state what awards and decorations Sergeant Travis is entitled to wear?

DC: Yes, sir. Sergeant Travis is entitled to wear the Navy Unit Commendation Medal, times two; the Meritorious Unit Commendation Medal; the Presidential Unit Citation Medal; the Marine Expeditionary Unit Medal, times two; the Sea Service Deployment Ribbon, times three; the Armed Forces Service Medal; the National Defense Service Medal; the Humanitarian Ribbon; the Joint Meritorious Unit Award; and the Kosovo Ribbon.

MJ: Thank you.

Are you Sergeant Travis, the accused in this case?

ACC: Yes, sir.

MJ: Thank you for standing. You may take your seat and you may remain seated throughout these proceedings unless I or your counsel ask you to stand.

ACC: Yes, sir.

MJ: You have the right to be represented in this court-martial by Captain (b)(6) your detailed defense counsel. You also have the right to be represented by military counsel of your own selection, provided the counsel you request is reasonably available.

Military defense counsel are provided to you free of charge. If you are represented by military counsel of

your own selection, then Captain (b)(6) would normally be excused. However, you could request that she continue to represent you along with the military counsel that you select. And the detailing authority would have the sole discretion to either grant or deny that request.

In addition to military defense counsel, you 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 rights to counsel?

ACC: Yes, sir.

MJ: By whom do you want to be represented?

ACC: Captain (b)(6)

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

ACC: No, sir.

MJ: I have been detailed by the Circuit Military Judge of the Sierra Judicial Circuit. I am certified in accordance with Articles 26(b) and (c) and sworn in accordance with Article 42(a) of the UCMJ. 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.

Do counsel for either side wish to voir dire or challenge the military judge?

TC: No, sir.

DC: No, sir.

MJ: Sergeant Travis, 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 are found guilty of an offense, the members will determine a sentence.

You are also advised that you may request to be tried by military judge alone instead of members. If that request is approved, the military judge will determine whether

you are guilty of any of the alleged offenses. And if you were found guilty of an offense, the military judge would determine an appropriate sentence.

Do you understand that?

ACC: Yes, sir.

MJ: Have you discussed these choices with your counsel?

ACC: Yes, sir.

MJ: I understand you would like to reserve your selection of forum at this time. Is that correct?

ACC: Correct, sir.

MJ: I will allow you to do so.

Your forum selection will be due on 12 July of 2004.

The accused will now be arraigned.

Captain (b)(6) , are there any corrections to the charges or additional charges and specifications?

TC: No, sir.

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

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

MJ: The reading will be omitted.

[The charge sheet follows and is not a numbered page.]

[END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. RANK/RATE	4. PAY GRADE
Travis, Matthew K.	(b)(6)	Sgt	E-5

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
2D Battalion, 2nd Marines, 1st MarDiv, Camp Pendleton, CA 92055-5380	29 Nov 00	4 yrs

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$2130.60	$100.00	$2230.60	Not Applicable	None

II. CHARGES AND SPECIFICATIONS

10. Charge I: Violation of the UCMJ, Article 81

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, conspire with Private First Class Andrew J. Sting, U. S. Marine Corps, Private First Class Jeremiah J. Trefny, U. S. Marine Corps, and Private First Class Joshua R. Gabbey, U. S. Marine Corps, to commit an offense under the Uniform Code of Military Justice, to wit: assault of an Iraqi national detainee, and in order to effect the object of the conspiracy the said PFC Sting pressed live electrical wires against the bare skin of the said detainee with the intent to cause an electrical shock.

Charge II: Violation of the UCMJ, Article 92

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, who knew of his duties at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, was derelict in the performance of those duties in that he willfully failed to treat an Iraqi detainee with dignity and respect and to protect the said Iraqi detainee from physical harm, as it was his duty to do.

(Continued on Supplemental Page)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER	d. DATE
(b)(6)	CPL	HqSvcBn, 1FSSG, MarForPac, CamPen, CA	040504

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of May, 20 04, 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)

Typed Name of Officer

Captain, USMC

Grade and Service

HqSvcBn, 1st FSSG, MarForPac, CamPen, CA

Organization of Officer

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

(b)(6)

Charge III: Violation of the UCMJ, Article 93

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, was cruel toward and did maltreat an unknown Iraqi national detainee, a person subject to his orders, by assisting and encouraging Private First Class Andrew J. Sting, U.S. Marine Corps, to press live electrical wires against the said detainee's bare skin, creating an electrical shock.

Charge IV: Violation of the UCMJ, Article 107

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 16 April 2004, with intent to deceive, make to Major (b)(6) U. S. Marine Corps, an official statement, to wit: "I was not present at the time of the detainee mistreatment," or words to that effect, which statement was totally false, and was then known by the said Sergeant Travis to be so false.

Charge V: Violation of the UCMJ, Article 128

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, commit an assault upon an unknown Iraqi national detainee by encouraging PFC Andrew J. Sting, U.S. Marine Corps, to commit and assisting PFC Sting in the commission of pressing live electrical wires against the said detainee's bare chest and back, creating an electrical shock, a means likely to produce death or grievous bodily harm.

12. On 5 May , 04 , 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.)*

(b)(6)
Typed Name of Immediate Commander

2d Bn, 2d Mar, 1st MarDiv, CamPen, CA
Organization of Immediate Commander

2nd Lieutenant
Grade

(b)(6)
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1300 hours, 10 May 20 04 at 2d Bn, 2d Mar, 1st MarDiv
Designation of Command or Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE[1] Commanding Officer

(b)(6)
Typed Name of Officer

Legal Officer
Official Capacity of Officer Signing

2nd Lieutenant
Grade

(b)(6)
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
1st Marine Division	Camp Blue Diamond, Iraq	MAY 2 5 2004

Referred for trial to the General court-martial convened by Court-Martial Convening Order #02-04

Dated 23 , May , 20 04 , subject to the following instructions:[2] None

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

(b)(6)
Typed Name of Officer

Commanding General
Official Capacity of Officer Signing

Major General
Grade

(b)(6)

15. On 1 JUNE , 20 04 , I (caused to be) served a copy hereof on (each of) the above named accused.

(b)(6)
Typed Name of Trial Counsel

Captain
Grade or Rank of Trial Counsel

(b)(6)

FOOTNOTES
1 – When an appropriate commander signs personally, inapplicable words are stricken.
2 – See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

Certified True Copy
(b)(6)

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. RANK/RATE	4. PAY GRADE
Travis, Matthew K.	(b)(6)	Sgt	E-5

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
2D Battalion, 2nd Marines, 1st MarDiv, Camp Pendleton, CA 92055-5380	29 Nov 00	4 yrs

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$2130.60	$100.00	$2230.60	Not Applicable	None

ADDITIONAL

II. CHARGES AND SPECIFICATIONS

10. Charge I: Violation of the UCMJ, Article 80

Specification 1: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, attempt to be cruel toward and maltreat an unknown Iraqi national detainee, a person subject to his orders, by encouraging Private First Class Andrew J. Sting, U.S. Marine Corps, to attach, and aiding in the attachment of, live electrical wires to the detainee's cage in order to electrically shock the detainee when he touched the cage.

Specification 2: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, attempt to commit an assault consummated by a battery on an unknown Iraqi national detainee by encouraging Private First Class Andrew J. Sting, U.S. Marine Corps, to attach, and aiding in the attachment of, live electrical wires to the detainee's cage in order to electrically shock the detainee when he touched the cage.

Charge II: Violation of the UCMJ, Article 81

Specification 1: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, conspire with Private First Class Andrew J. Sting, U. S. Marine Corps, Private First Class Jeremiah J. Trefny, U. S. Marine Corps, and Private First Class Joshua R. Gabbey, U. S. Marine Corps, to commit an offense under the Uniform Code of Military Justice, to wit: cruelty and maltreatment of an unknown Iraqi national detainee, a person subject to his orders, and in order to effect the object of the conspiracy the said PFC Sting attached live electrical wires to the cage of the detainee with the purpose of electrically shocking the detainee when the detainee touched the cage.

(Continued on Supplemental Page)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER	d. DATE
(b)(6)	CPL	HqSvcBn, 1FSSG, MarForPac, CamPen, CA	22 May 2004

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 22nd day of May, 20 04, 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)
Typed Name of Officer

HqSvcBn, 1st FSSG, MarForPac, CamPen, CA
Organization of Officer

Captain, USMC
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

(b)(6)

Specification 2: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, conspire with Private First Class Andrew J. Sting, U. S. Marine Corps, Private First Class Jeremiah J. Trefny, U. S. Marine Corps, and Private First Class Joshua R. Gabbey, U. S. Marine Corps, to commit an offense under the Uniform Code of Military Justice, to wit: cruelty and maltreatment of an Iraqi national detainee, a person subject to his orders, and in order to effect the object of the conspiracy the said PFC Sting pressed live electric wires against the person of the detainee to create an electrical shock.

Charge III: Violation of the UCMJ, Article 92

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, having received a lawful order issued by Major (b)(6) U. S. Marine Corps, not to discuss any information about the detainee abuse investigation with anyone, or words to that effect, an order which it was his duty to obey, did, at FOB Al Mahmuiya, Iraq, on or about 13 April 2004, fail to obey the same by wrongfully discussing the said investigation with Private First Class Andrew J. Sting, U. S. Marine Corp, and Private First Class Jeremiah J. Trefny, U. S. Marine Corps.

Charge IV: Violation of the UCMJ, Article 107

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 16 April 2004, with intent to deceive, make to Major (b)(6) U. S. Marine Corps, an official statement, to wit: "I had no knowledge of a detainee being shocked," or words to that effect, which statement was totally false, and was then known by the said Sergeant Travis to be so false.

Charge V: Violation of the UCMJ, Article 128

Specification: In that Sergeant Matthew K. Travis, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, commit an assault upon an unknown Iraqi national detainee by encouraging PFC Andrew J. Sting, U.S. Marine Corps, to commit, and assisting PFC Sting in the commission of, pressing live electrical wires against the said detainee's person, creating an electrical shock.

12. On 25 May ,20 04 , the accused was informed of the charges inst 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 ...de.)*

(b)(6) — 2d Bn, 2d Mar, 1st MarDiv, CamPen, CA
Typed Name of Immediate Commander — *Organization of Immediate Commander*

2nd Lieutenant
Grade

(b)(6)
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1300 hours, 25 May 20 04 at 2d Bn, 2d Mar,
Designation of Command or
1st MarDiv
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE[1] Commanding Officer

(b)(6) — Legal Officer
Typed Name of Officer — *Official Capacity of Officer Signing*

2nd Lieutenant
Grade

(b)(6)
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
1st Marine Division	Camp Blue Diamond, Iraq	MAY 2 5 2004

Referred for trial to the General court-martial convened by Court-Martial Convening Order #02-04

Dated 23 , May 20 04 ,subject to the following instructions:[2] To be tried in conjunction with the original charges of 4 May 2004.

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

(b)(6) — Commanding General
Typed Name of Officer — *Official Capacity of Officer Signing*

Major General
Grade

(b)(6)
Signature

15. On 1 JUNE ,20 04 , I (caused to be) served a copy hereof on (each of) the above named accused.

(b)(6) — Captain
Typed Name of Trial Counsel — *Grade or Rank of Trial Counsel*

(b)(6)
Signature

FOOTNOTES 1 – When an appropriate commander signs personally, inapplicable words are stricken.
2 – See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

C. ... A ... o True Copy
(b)(6)

MJ: Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Sergeant Travis, I now ask 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.

You may take your seat.

ACC: Yes, sir.

MJ: I understand you would like to reserve motions and pleas, Captain (b)(6)

DC: Yes, sir.

MJ: I will allow him to do so.

I received, prior to coming on the record, Appellate Exhibit I, which outlines the milestone trial dates.

Are all these dates agreed to by both counsel?

TC: Yes, sir.

DC: Yes, sir.

MJ: Now, I have changed one date. Originally, you had pleas and forum due on 10 July 2004, with a motions hearing on 12 July. Now, certain motions are precluded after pleas are entered. So I have moved the pleas and forum selection to occur after the conclusion of the motions hearing.

Does either counsel have any objection to that?

TC: No, sir.

DC: No, sir.

MJ: All right. So with the exception of changing the pleas and forum date to 12 July 2004, the court will order these dates to be complied with in the processing of this case. Significant is the next session of court for motions is 12 June 2004. And the trial is set starting on the 24th of July 2004.

Now, Captain (b)(6) are there any outstanding issues of discovery in this case right now?

DC: Yes, sir, there are.

MJ: Have you filed that discovery request with the trial counsel?

DC: I have.

MJ: I am going to give you a general advisement, counsel, that I want to be updated on any issues with regard to discovery, so that we can stay on this trial schedule, which, again, may be aggressive in this environment. And if there is going to be questions of superior officers involved in operational commitments, again, I am going to direct that interrogatories be used first. And after the interrogatories are answered, that follow-up appointments and personal interviews can occur afterwards, if necessary.

The way I intend on being informed, the way I like to be informed, is either in person, because you are both stationed out at Camp Al Taqaddum, or you can do it via e-mail by copying the opposing counsel. But all you should request is an 802 or a 39(a) session. I don't want to hear the dirty laundry through the e-mails.

Counsel understand that?

TC: Yes, sir.

DC: Yes, sir.

MJ: Is there anything else we need to address before taking a recess?

TC: Request an in-absentia warning, sir.

MJ: Sergeant Travis, you have been arraigned on the charges and additional charges and the specifications before this court. That is an important step in the processing of trial. What this means is your trial has begun. Now, since your trial has begun, you have been arraigned, if you were absent, this court can continue without you being present. Now, that would only happen if your absence was deemed voluntary. Now, the government has the responsibility of getting you here to trial and

making sure they have transportation. So if there is a problem with transportation and you can't make it, that is the government's problem. But if your absence is voluntary on your part, and I or another military judge hold a hearing, and we determine it was voluntary on your part, meaning you meant to miss and you tried to miss this session, this court may proceed without you being present. And that is a substantial right, to be present to defend yourself. And this court may proceed through a determination of findings and, if necessary, even through a determination of an appropriate sentence, without you being present, if your absence is voluntary.

Do you understand that?

ACC: Yes, sir.

MJ: So if something comes up that you can't meet the 12 July 2004, that's not going to work for you, or the trial date, you need to let Captain (b)(6) know so she'll file a continuance. If a continuance is not granted, you are required to be here in court.

Do you understand?

ACC: Yes, sir.

MJ: Anything further from either counsel prior to recess?

TC: No, sir.

MJ: Anything further, Captain (b)(6)

DC: I'm sorry, sir. No, sir.

MJ: The court is in recess.

The Article 39(a) session recessed at 2109, 19 August 2004.

The Article 39(a) session opened at 0930, 13 July 2004.

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

This court is being convened on the 13th of July instead of the 12th of July due to travel problems. Counsel and the military judge couldn't travel here on the 12th. So there has been a one-day delay.

During the period of time we have been in recess, we have had several 802 conferences. All of them were held between the trial and the defense counsel and myself, not in the presence of the accused. The purpose of those 802 conferences first centered around one of the government's key witnesses, a Corporal (b)(6) Thankfully, he was released or escaped from terrorists that were threatening to kill him. And he is now in Germany and heading to the United States, which would be the basis for the reason why I denied the government's request to allow the Article 32 testimony to be used in lieu of personal appearance.

We also discussed an IMC request the defense had submitted. And yesterday, the court was informed that the Commanding General, the convening authority, has forwarded that request to the commanding officer of the requested IMC. And it is anticipated that that request will be approved, which would necessitate a new continuance.

There is also several motions filed by the defense. I don't have the exact number. But there are several that are to be filed. And I inquired with the defense whether they wanted to continue to litigate those motions now or pause and wait to see if the IMC was approved, discussed with the new counsel, and find the status of Captain (b)(6) with regard to whether she will stay on this case or not. And I was told that defense's position was to withdraw the motions and refile them after figuring out which counsel will be staying on this case.

Last, we discussed new trial dates. There was a continuance request by the defense asking for more time. There were several outstanding issues of discovery. And there was the issue of the status of Corporal (b)(6) whether the government would be able to produce him live, here in Iraq, and when that would be able to occur.

Those issues are not resolved at this time.

And I informed counsel that I would set trial dates that would establish milestones for filing of motions, responses to motions, and a motions litigation date, and that we would, at the conclusions of motions, set a trial date. Hopefully by then, the defense will figure out what dates they would like to go to trial and the government would be able to figure out what dates they can have all their witnesses available for trial.

The last issue was a concern that has been raised throughout this trial, that witnesses are in a dangerous situation. Several of the witnesses have been interviewed at the Article 32. And there is some debate as to whether it is a complete deposition or not, which is one of the bases of the motions. But regardless, all the defense witnesses that the government said they would produce have not been deposed necessarily. I indicated to counsel that, to preserve the testimony of those witnesses, that the defense would be required to identify those Marines that they felt were necessary and essential, and I would order depositions of those witnesses to occur as soon as practical, my theory being that I want to preserve testimony, as several of these witnesses are engaged in combat operations. And I was disinclined to hear a motion to dismiss charges because a witness's testimony was not preserved that the defense had the ability to identify and get their testimony preserved ahead of time.

Finally, we had discussed dismissing certain charges as lesser included offenses. And today, I informed the counsel that I thought that it would be more prudent to wait until we find out which counsel will be representing Sergeant Travis so that when that happens there will be no lack of understanding, that everyone would understand what charges are lesser included, what charges are dismissed outright with prejudice, and which ones are just being dismissed as being lesser included. That was a subject of one of the motions. And in the government's answer, it indicated they were going to do that.

Does that fairly summarize the 802 conferences? I know we discussed a lot of things. But those are the key topics.

TC: Yes, sir.

DC: Yes, sir.

MJ: Now, Captain (b)(6) is it your desire to withdraw the motions that you currently have filed for the defense?

DC: Yes, sir.

MJ: Captain (b)(6) do you withdraw the motions that you filed for the government at this time?

TC: Yes, sir.

MJ: Captain (b)(6) , have you had communications with the counsel that has been requested to be an IMC in this case?

DC: Yes, sir.

MJ: And is it Lieutenant Colonel (b)(6)

DC: Yes, sir.

MJ: When do you anticipate that he will be receiving word whether he has been made available to be detailed to this case?

DC: Sir, I spoke to him last night, which was the 12th of July. And he thought that he should know within the next 48 hours.

MJ: All right. Here is what I am going to direct happen. Once the detailing and the counsel issue is resolved, provide me notice by way of 802, either e-mail or in person. I want to know what counsel are staying on this case and what counsel are detailed to this case for purposes of both the government and the defense through motions. If the counsel can work out a date that they would like to submit to the court for the filing of motions, the response to motions, and a motions litigation date, then we should schedule that for two dates and -- depending on how many motions are filed. But there are so many motions filed already, I think it would probably take two days. If those dates are agreed to, I will order the counsel to comply with those dates and set a 39(a). If counsel can not agree to dates, then the counsel should be prepared to request a 39(a) session. I will convene the court and I will hear argument from each counsel on what dates they propose for the filing of motions,

response to motions, and motions litigation only. At the conclusion, like I said before, of the motions, we will set trial dates because I am sure that one of the motions will revolve around witnesses' availability and continuances.

Either counsel have any questions about that?

TC: No, sir.

DC: No, sir.

MJ: Is there anything else that I need to address at this time before I take a recess until a 39(a) session for motions?

TC: No, sir.

DC: No, sir.

MJ: This court is in recess.

The Article 39(a) session recessed at 0937, 13 July 2004.

AUTHENTICATION OF THE RECORD OF TRIAL

Pages 11 through 15

in the case of

Sergeant Matthew K. Travis, (b)(6) , U.S. Marine Corps, 2d Battalion, 2d Marine Regiment, 1st Marine Division (REIN), Camp Pendleton, CA

Pursuant to R.C.M. 1104(a)(2)(B), the trial counsel authenticated the Article 39(a) session in lieu of the military judge.

The military judge, Major (b)(6) , was unavailable for authentication due to absence from the situs of the preparation of the record of trial.

(b)(6)

Captain, U.S. Marine Corps Reserve
Trial Counsel

040901

The Article 39(a) session was called to order at 1325, 19 August 2004.

MJ: This court is called to order at Al Fallujah, Iraq, in the case of The United States versus Sergeant Matthew K. Travis, United States Marine Corps.

At the previous session of court, the judge was Major (b)(6) The court reporter and trial counsel are the same. They have previously been sworn. Captain (b)(6) is still acting as the defense counsel. We have here, however, Lieutenant Colonel (b)(6) who as I understand was IMC'ed to the case.

Lieutenant Colonel (b)(6) if you would like to put on the record your qualifications, your legal status, status as to oath, whether you have acted in any disqualifying manner, and tell me about who is representing Sergeant Travis.

IMC: Yes, Your Honor. I am Lieutenant Colonel (b)(6) (b)(6) I am a judge advocate certified and sworn in accordance with Articles 27(b) and 42(a) of the UCMJ, respectively. I have acted in no disqualifying capacity. I come to this case via individual military counsel request from the accused, forwarded recommending approval by the Commanding General, 1st Marine Division, General (b)(6) and approved by Colonel (b)(6) Chief Defense Counsel of the Marine Corps. and endorsed by his successor, Colonel (b)(6) I am lead counsel in this case. And we will be having Captain (b)(6) act as assistant counsel for Sergeant Travis.

MJ: Very well. Thank you.

Previously, your rights to counsel were gone through with you, during the arraignment process of your trial, by the previous judge. Now that you have -- do you need me to repeat all those rights to you?

ACC: No, sir.

MJ: By whom do you wish to be represented?

ACC: Military judge alone.

MJ: Okay.

That's fine. I told him to sit earlier.

So go ahead and keep your seat while we are speaking. Counsel will stand up and down. That's fine. But I want you to keep your seat unless either I or your attorney ask you to stand. Okay?

ACC: Yes, sir.

MJ: You wish to be represented by who?

ACC: Lieutenant Colonel (b)(6)

MJ: And who else?

ACC: Captain (b)(6)

MJ: Okay. Both of them. Is that correct?

ACC: Yes, sir.

MJ: Okay. So Captain (b)(6) was your detailed defense counsel. So she was the one given to you automatically. Obviously, from what Lieutenant Colonel (b)(6) just told us, you put an individual military counsel request in for Lieutenant Colonel (b)(6) and it has been approved. And he is here. So do you wish to be represented by any other attorney, either military or civilian?

ACC: No, sir.

MJ: I have been detailed to this case by the Circuit Military Judge of the Transatlantic Circuit. I am certified in accordance with Articles 26(b) and (c) and sworn in accordance with Article 42(a) of the UCMJ. I have not acted in any disqualifying manner in this case. And I will not be a witness for either side in the case. And I am unaware of any matter which I believe may be a ground for challenge against me.

Do counsel for either side wish to voir dire or challenge the military judge?

TC: No, sir.

IMC: None from the defense, sir.

MJ: The statutory waiting period has expired. The accused was

already arraigned.

Also, at a previous session, you were given your forum rights, in other words by who you wanted to be tried, whether it was a members trial, which is like a jury trial, or by judge alone.

Do you need me to repeat those rights to you?

ACC: No, sir.

MJ: Now that you have had a chance to speak with your attorney -- and obviously from your guilty plea here today, it seems that you would request to be tried by military judge alone. Is that correct?

ACC: Yes, sir.

MJ: Are you requesting trial by military judge alone as part of a pretrial agreement that you have with the convening authority?

ACC: Yes, sir.

MJ: Has anyone tried to force or threaten you to forgo trial by members, including enlisted members?

ACC: No, sir.

MJ: So that is your freely made decision?

ACC: Yes, sir.

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

At an 802 conference that we held in the presence of both defense counsel, trial counsel, the accused, and obviously myself, before we came on the record, we discussed the maximum punishment applicable for the pleas of guilty for the accused, and also the aspect of whether Additional Charge I, Specifications 1 and 2, were either multiplicious or an unreasonable multiplication of charges. Both parties gave me their position. I did not rule off the record. However, we did discuss that issue. And we'll take that up later in the proceeding.

Do counsel for either side wish to add anything to my

summation of the 802 conference?

TC: No, sir.

IMC: No, Your Honor.

MJ: The accused was previously arraigned. However, we still need to get the pleas of the accused.

So accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Sergeant Travis, I now ask you how do you plead. But before receiving your pleas, I advise you that any motions to dismiss any of these charges or to grant any other relief should be made at this time.

Lieutenant Colonel (b)(6)

DC: Sir, the defense has no motions.

And through counsel, the accused pleads as follows:

To Charge I and the Sole Specification thereunder:	**Not Guilty.**
To Charge II and the Sole Specification thereunder:	**Guilty;**
To the Specification:	**Guilty, excepting The words "to treat an Iraqi detainee with dignity and respect and." Of the excepted words: Not Guilty. To the specification as excepted: Guilty. To the Charge: Guilty.**
To Charge III and the Sole Specification thereunder:	**Not guilty.**
Charge IV and the Sole Specification thereunder:	**Not guilty.**
Charge V and the Sole Specification thereunder:	**Not guilty.**

Additional Charge I:	**Guilty.**
Specification 1:	**Guilty.**
Specification 2:	**Guilty.**
Additional Charge II, of the Charge:	**Guilty.**
To Specification 1:	**Guilty, excepting The words "Private First Class Jeremiah J. Trefny, U.S. Marine Corps, and Private First Class Joshua R. Gabbey, U.S. Marine Corps." Of the excepted words: Not Guilty. To the Specification as excepted: Guilty.**
As to Specification 2:	**Not guilty.**
As to the Charge:	**Guilty.**
Additional Charge III:	**Not guilty.**
And the Sole Specification thereunder:	**Not guilty.**
Additional Charge IV and the Sole Specification thereunder:	**Guilty.**
Additional Charge V and the Sole Specification thereunder:	**Not guilty.**

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

The accused and his counsel did as directed.

MJ: Sergeant Travis, there is a lot of charges here. So I want to make sure that you understand your pleas. I know your counsel and I do. And I have seen the pretrial agreement. But in essence, your counsel just stated you are going to plead guilty to two attempts, one attempt to be cruel and maltreat -- cruelty and maltreatment, one attempt for an assault consummated by a battery; in addition, one conspiracy to maltreat; one specification of dereliction of duty; and one specification of false official statement. So there is five charges -- or five different charges.

Do you understand that?

ACC: Yes, sir.

MJ: Does that accord with your recollection?

ACC: Yes, sir.

MJ: Also, I asked your attorneys if they had any motions that they wanted to present. Some motions need to be entered before you enter pleas. In other words, they need to be brought up and litigated. There were some motions that are not part of the record that were in a file that I received upon coming to Iraq.

And I understand that those motions -- at some point, obviously, the case was perhaps going to be contested, so some motions were filed.

You need to understand that by your pleas of guilty you waive, or in other words you give up, the right to file all those motions or any adverse decision that could have come from those against you or any favorable decision that could have come on those against you.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. Sergeant Travis, I will only accept your guilty pleas if you understand their meaning and effect. I am now going to discuss all of your pleas of guilty with you to those five different specifications or charges.

And I want you to keep a copy of the charge sheets in front of you so that you may refer to them readily.

I see that you have that.

Any questions about that?

ACC: No, sir.

MJ: Sergeant Travis, 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-martial can find you guilty of the charges and specifications to which you have just entered pleas of guilty. Your pleas of guilty will not be accepted by me therefore 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 you are guilty, then you should not plead guilty for any reason.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. I want you to relax too, while you are sitting there. Okay? Just relax so you can pay attention.

Even if you believe you are guilty, you still have a legal and a moral right to enter a plea of not guilty and to require Captain (b)(6) to prove this case against you if he can by legal and competent evidence beyond a reasonable doubt.

If you were to plead not guilty, you would be presumed under the law to be innocent. And only by producing evidence and proving your guilt beyond a reasonable doubt could the government overcome that presumption of innocence to which you are entitled.

Do you understand that?

ACC: Yes, sir.

MJ: By your pleas of guilty to these charges and specifications you waive, or in other words you give up, certain important rights. You keep all of these rights with regards to the charges and specifications to which you have entered pleas of not guilty. So only for those specifications to which you have entered pleas of guilty do you give up the following rights:

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

Second, 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 on evidence presented by the government and, if you choose to do so, by the defense.

Third, the right to confront and cross-examine witnesses

that are called against you and to call witnesses on your own behalf.

Do you understand these rights?

ACC: Yes, sir.

MJ: Have you discussed these matters with your counsel? And do you agree to give up these three rights with regards to the charges and specifications to which you have entered pleas of guilty and to answer my questions?

ACC: Yes, sir.

MJ: Lieutenant Colonel (b)(6) what advice have you given your client as to the maximum punishment he is facing for only those charges and specifications to which he is pleading guilty?

IMC: Sir, the defense has calculated eight years.

MJ: Okay. And what about the rest of the punishment? What sort of discharge do you calculate?

IMC: Oh. I'm sorry, Your Honor. Yes. Dishonorable discharge, total forfeitures, eight years confinement, and any other lawful punishment.

MJ: Okay. And reduction to E-1?

IMC: Yes, Your Honor.

MJ: Do you agree with that, Captain (b)(6)

TC: Yes, sir.

MJ: As do I. According to my calculations, the maximum punishment you are facing for the charges and specifications to which you have entered pleas of guilty is confinement for a period of up to eight years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a discharge from the Naval service with a (b)(6)

Your attorney also said, "any other lawful punishment." Those are always options too. Those include restriction, a fine, other issues like that. I don't see a fine as being applicable here, however.

Do you have any questions about that?

ACC: No, sir.

MJ: Have you had enough time to discuss your case with -- I guess principally with Lieutenant Colonel (b)(6) because he's new on the case. So have you had enough time to discuss the case with him?

ACC: Yes, sir.

MJ: And also with Captain (b)(6)

ACC: Yes, sir.

MJ: Do you believe that their advice has been in your best interests?

ACC: Yes, sir.

MJ: Are you pleading guilty voluntarily?

ACC: Yes, sir.

MJ: Has anyone tried to force or threaten you to plead guilty?

ACC: No, sir.

MJ: In just a moment, you will be placed under oath by Captain (b)(6) And we are going to discuss the facts of your case. If what you say is not true here in court, the government could use your statements against you in a prosecution for perjury or making a false official statement. In addition, in this trial here today, the government may later ask that I consider all your statements against you in the sentencing phase of the trial.

Do you have any questions about that?

ACC: No, sir.

MJ: Please rise, face Captain (b)(6) , and he will swear you in.

The accused was sworn.

MJ: There is a stipulation of fact in this case.

And I thank both parties on the record, as I usually do, when I get these things in advance instead of five minutes before trial. So I appreciate getting the stipulation of fact.

Although I may still ask you a lot of questions, this gives me a good understanding of what happened, so I am not in the dark, on the stipulation of fact. The original stipulation of fact has been marked as Prosecution Exhibit 1 for identification.

I am now showing you this prosecution exhibit. Is this your signature which appears on -- although it is not numbered, it appears to be the fourth page?

ACC: Yes, sir.

MJ: Prior to signing this stipulation of fact, did you read it over completely and discuss it with your attorneys?

ACC: Yes, sir.

MJ: Do you understand everything contained in the stipulation of fact?

ACC: Yes, sir.

MJ: Is everything in the stipulation the truth?

ACC: Yes, sir.

MJ: Now, it is my experience that a lot of times the counsel, the lawyers, draft up these stipulations of fact. And that's understandable. However, if there is anything in here that is not true or that's inaccurate or overstates or understates a fact as we go through it, I want you to tell me. Okay?

ACC: Yes, sir.

MJ: Do counsel for both sides agree to the stipulation and that these are your signatures?

TC: Yes, sir.

IMC: Yes, Your Honor.

MJ: At this point, Sergeant Travis, we are going to discuss the

stipulation of fact to ensure that you understand it and agree to its uses. A stipulation of fact is an agreement between the trial counsel, the defense counsel, and yourself that the contents of the stipulation are true and, if entered into evidence, are uncontradicted facts in your case. You have a right not to enter into the stipulation of fact. And I am certainly not going to consider it as an exhibit without your consent.

Do you understand that?

ACC: Yes, sir.

MJ: Has anyone forced or threatened you to enter into the stipulation?

ACC: No, sir.

MJ: If I admit the stipulation into evidence, it will be used in one of three ways. First, I will use it to determine if you are in fact guilty. Second, I will use it to determine an appropriate sentence in your case. And lastly, appellate courts and reviewing authorities, when they look at your case after we're done here today, may also look at the stipulation of fact in ascertaining your case.

Do you understand and agree to those three uses?

ACC: Yes, sir.

MJ: Do counsel for both sides also agree?

TC: Yes, sir.

IMC: Yes, Your Honor.

MJ: Sergeant Travis, a stipulation of fact ordinarily cannot be contradicted. So if this stipulation of fact is contradicted after I accept your pleas, then it will be necessary for me to reopen my inquiry and to ask you more questions.

Do you understand that?

ACC: Yes, sir.

MJ: Lieutenant Colonel (b)(6) is there any objection to

Prosecution Exhibit 1 for identification?

IMC: No objection, Your Honor.

MJ: Prosecution Exhibit 1 for identification is admitted into evidence and the words "for identification" are stricken.

In just a moment, Sergeant Travis, I am going to explain the elements for each one of the offenses to which you are pleading 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 pled not guilty.

When I list each of the elements, I want you to ask yourself if it is true and whether you want to admit that it is true. Then I want you to be ready to talk to me about the particular facts of your case.

Do you have any questions about that?

ACC: No, sir.

MJ: Before we do that, please take a look at the top of the charge sheets, both of them. Is all the information contained in blocks one through nine accurate?

IMC: Your Honor, can we have a moment?

MJ: You may.

Blocks one through nine on the top of the charge sheets contain administrative data about you. I want to ensure that all that information is correct.

ACC: Sir, it is correct.

MJ: Did you enlist in the United States Marine Corps on 29 November 2000 for a period of four years?

ACC: Yes, sir.

MJ: Is that your second enlistment?

ACC: Yes, sir.

MJ: When was your first?

ACC: From '96 to 2000.

MJ: So at the time of all of these offenses, since they occurred on 13 April of this year, and 16 April of this year for the false official statement, you obviously, since you were in Iraq, were on active duty. Correct?

ACC: Yes, sir.

MJ: And you have never been discharged or released from active duty. Right?

ACC: No, sir.

MJ: Is that your Social Security number in Block 2?

ACC: Yes, sir. It is.

MJ: In each of the specifications and the charges to which you are entering pleas of guilty, is your name and rank correctly stated?

ACC: Yes, sir.

MJ: Okay. We are going to go through the charges exactly as they are on the charge sheet. I think that leaves us with the last charge as being the latest in date anyway, which is the 16 April false official statement.

So we are going to start with Article 92 where you pled guilty under Charge II. So under Charge II and the Sole Specification thereunder, you have pled guilty to the offense of dereliction of duty. The elements of that offense are as follows:

First, that you had certain prescribed duties, namely, to protect an Iraqi detainee from physical harm;

Second, that you had knowledge of those assigned duties, or that duty;

And third, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you were willfully derelict in the performance of those duties by, obviously, failing to protect the Iraqi detainee from physical harm.

Do you understand those three elements?

ACC: Yes, sir.

MJ: Do those elements correctly describe what you did?

ACC: Yes, sir.

MJ: Now, "FOB," is that forward observation base?

ACC: Yes, sir. It is.

MJ: And do you say that "Mahmudiyah"?

ACC: Mahmudiyah.

MJ: Mahmudiyah?

ACC: Yes, sir.

MJ: Okay. Where is that at?

ACC: It's east of Baghdad.

MJ: So obviously, you were stationed up there. Right?

ACC: Yes, sir.

MJ: Is that where the -- well, this individual that we are talking about, this unknown Iraqi national detainee, I guess, was being held in a cell, or a prison? What was out there?

ACC: It was our holding facility, sir.

MJ: Holding facility. Okay. What was your actual title?

ACC: I was the sergeant of the guard.

MJ: I have just read you the elements under Charge II and the Sole Specification. I need to read you some definitions.

A "duty" may be imposed by regulation, lawful order, or custom of the service. Because I spoke to you had a duty. Do you remember that?

ACC: Yes, sir.

MJ: A person is "derelict" in the performance of duty when he willfully fails to perform that duty or those duties or

when he performs them in a culpably inefficient manner.

"Dereliction" is defined as a failure in duty, a shortcoming, or a delinquency. And in this case, dereliction could have been either willfully or negligently be derelict.

You know "negligently" would be if your boss gave you an assignment to do, and you got busy and just didn't do it. You might have been derelict in your duties, but you didn't mean to do it. It was negligent.

"Willfully," just like it sounds, means that you intentionally did something to be derelict, to go against the order you had received, to not comply with the order that you received.

Do you understand that?

ACC: Yes, sir.

MJ: So in this case, do you agree that you were willfully derelict?

ACC: Yes, sir.

MJ: "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act.

All right. You had duties, according to your stipulation of fact, to act then as the sergeant of the guards. Is that correct?

ACC: That is correct.

MJ: When did you first get that duty?

ACC: When I first got to Al Mahmudiyah.

MJ: What date was that, about?

ACC: I don't know, sir.

MJ: What month?

ACC: March, sir.

MJ: So it was at least maybe a month before 13 April 2004?

ACC: Yes, sir.

MJ: Who told you about your duties?

ACC: Staff sergeant (b)(6) came in and woke me up and told me I had guard.

MJ: Staff Sergeant who?

ACC: Staff Sergeant (b)(6)

MJ: (b)(6)

ACC: Yes.

MJ: Okay. He told you, you had guard on that specific day. Correct?

ACC: Yes, sir.

MJ: Did you have guard previously also?

ACC: No, sir.

MJ: This was the first day?

ACC: Yes, sir.

MJ: Were your duties explained to you?

ACC: Yes, sir.

MJ: Did you understand what your duties were?

ACC: Yes, sir.

MJ: What do you think your duties were? You have pled guilty to being willfully derelict of your duties. What do you think your duties were in relation to this Iraqi detainee?

ACC: I was supposed to feed him, and make sure he gets head calls, make sure his medical needs are met, protect him from other Iraqis and other military personnel.

MJ: So to make sure that his health and comfort needs are being

taken care of and protect him from fellow Iraqi detainees?

ACC: Yes, sir.

MJ: And also from who?

ACC: Other military personnel.

MJ: Okay. Including other Marines?

ACC: Yes, sir.

MJ: Because maybe if some Marine's buddy got blown up or shot or something, he might want to take it out on the Iraqi?

ACC: Yes, sir.

MJ: Okay. I noticed when you pled, Lieutenant Colonel (b)(6) with the language being taken out that you did, the specification reads a little bit awkwardly in that it reads "and that he willfully failed to protect the said Iraqi detainee." And there is really no "said Iraqi detainee." It should just be "the Iraqi detainee" or "an Iraqi detainee."

Are you confused by that at all, Sergeant Travis?

ACC: No, sir.

MJ: Okay. In the stipulation of fact, it says that you were the senior NCO that was on-shift at that time, that you had junior Marines working for you. Is that correct?

ACC: That's correct, sir.

MJ: So when you say you were "sergeant of the guard," what billets were the people -- or did they have, the people who worked underneath you?

ACC: We all shared the same billets. The only thing that I done over them was fill out the paperwork.

MJ: And obviously, from the look of the charge sheet, they were junior in rank. Right?

ACC: Yes, sir.

MJ: So no matter what your duties are, I imagine you are going to have a supervisory role over them because you are a sergeant. Right?

ACC: Yes, sir.

MJ: And they were PFCs?

ACC: Yes, sir.

MJ: It also says that your OIC, Captain (b)(6) instructed you on your duties numerous times, your duties to -- about what to do with these Iraqi detainees? Is that true?

ACC: Yes, sir.

MJ: What is your MOS?

ACC: 0311.

MJ: And have you gone through all of the training on how to deal with EPWs, and such training as that, even without the Captain talking to you about this?

ACC: Yes, sir. I understand the five S's and the T.

MJ: Right. I couldn't remember it. Thank you. Segregate, et cetera, all that, the five S's and T?

ACC: Yes, sir.

MJ: Okay. So you agree then that, as the Specification states, that your duty was to protect the Iraqi -- or an Iraqi detainee from any physical harm. Is that correct?

ACC: That is correct, sir.

MJ: So this Staff Sergeant, he gave you the duty for that specific day. Is that right?

ACC: Yes, sir.

MJ: Staff Sergeant (b)(6) Is there any question in your mind about what you were supposed to do there?

ACC: No, sir.

MJ: Did he give you specific instructions?

ACC: Yes, sir.

MJ: And you performed the duty, I guess, for a little while that day. Right?

ACC: Yes, sir.

MJ: How long did you faithfully perform your duties of protecting and overseeing that Iraqi detainee before this incident happened?

ACC: For that day, it was around -- started around, like, 11, sir.

MJ: 1100, this happened?

ACC: Yes, sir. Our shift changes at 1230.

MJ: So 1100. Obviously not 2300. 1100. Right?

ACC: Yes, sir.

MJ: And what time did you go on?

ACC: We went on at 0630.

MJ: So about 1100 this incident happened. Right?

ACC: Yes, sir.

MJ: So at that point, you had already been taking care of your duties for, what, four and a half hours, I guess?

ACC: Yes, sir.

MJ: Do you agree that being derelict in the performance of your duties here to protect the Iraqi detainee from physical harm was willful on your part?

ACC: Yes, sir.

MJ: Obviously it is, because we are going to get to other charges when we talk about it. Right?

ACC: Yes, sir.

MJ: About the wires?

Could you have performed your duties properly to protect the Iraqi detainee from physical harm if you had wanted to?

ACC: Yes, sir.

MJ: Did you have any permission or authority from anyone to be derelict in the performance of your duty?

ACC: No, sir.

MJ: Did you think you had permission or authority from anyone to be derelict in the performance of your duty?

ACC: No, sir.

MJ: What do you think you could have done to have not been derelict?

ACC: Took it up the chain; asked the HET guys, the HET interpreters, to talk to him; or isolate him by himself.

MJ: So what did you do, in your own words -- we are obviously going to get there. But in your own words, how did you fail to protect the Iraqi detainee from physical harm? What harm came to him?

ACC: He got shocked.

MJ: Okay. That is from a later charge we are going to talk about. Right?

ACC: Yes, sir.

MJ: Okay. But when I talk to you about these charges, I have got to make sure that each charge stands on its own. That's why I am asking you sometimes what appear to be obvious questions. Okay?

ACC: Yes, sir.

MJ: So he got harmed by a shock from a wire. Right?

ACC: Yes, sir.

MJ: And that was when it touched his body and not his cell.

Right?

ACC: Yes, sir.

MJ: Did you call it a cell, or a holding tank, or what did you call it?

ACC: It's cages.

MJ: His cages -- or his cage?

ACC: Yes, sir.

MJ: Do you have any questions about Charge II and the Sole Specification thereunder?

ACC: No, sir.

MJ: Do counsel for either side desire any further inquiry?

TC: No, sir.

IMC: No, Your Honor.

MJ: Again, the stipulation of fact helps me in ascertaining your plea here. In fact, it says that physical harm actually did befall the detainee. Let's move on.

The other four charges are on the additional charge sheet.

The first one is, first two specifications under Additional Charge I, you pled guilty to the offense of attempting to commit a violation of the UCMJ.

Now, an "attempt" is what is called an inchoate crime. Okay? The law allows you sometimes to be punished for attempting to do something, even though you don't actually carry it out, just as long as you take a substantial step towards carrying it out.

Do you understand that?

ACC: Yes, sir.

MJ: It is the same thing with a conspiracy, with the exception that with the conspiracy you can be found guilty of conspiring and actually committing the crime.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. I am sure you have talked about this with your lawyers. I just want to get it on the record that you understand what is going on here. So when I talk to you about these attempts, it is necessary that I explain to you what an attempt is and also talk about the underlying offense that you are pleading guilty to attempting to commit.

Do you understand that?

ACC: Yes, sir.

MJ: Starting with Specification 1 under Additional Charge I, you have pled guilty to the offense of attempting to commit a violation of the UCMJ, namely cruel -- cruelty and maltreatment of an unknown Iraqi national detainee.

The elements of that offense are as follows:

First, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you did certain acts, that is encouraging Private First Class Andrew J. Sting, United States Marine Corps, to attach, and aiding in the attachment of, live electrical wires to the detainee's cage in order to electronically -- or, excuse me, electrically shock the detainee when he touched the cage;

Second, that the acts were done with the specific intent to commit the offense of cruelty and maltreatment;

Third, that the acts committed amounted to more than mere preparation, that is they were a substantial step and a direct movement toward the commission of the intended offense of cruelty and maltreatment;

And fourth, that such acts apparently tended to bring about the commission of the offense of cruelty and maltreatment, that is, the acts apparently would have resulted in the actual commission of the offense of cruelty and maltreatment but for a circumstance unknown to you or an intervening circumstance which prevented the completion of that offense.

Do you understand those elements?

ACC: Yes, sir.

MJ: That is a mouthful. But basically, it is explaining that, but for the fact that it didn't work when you all tried to shock the individual by wiring up the cage, it would have worked.

Do you agree with that?

ACC: Yes, sir.

MJ: In other words, you were trying to make it work. It just didn't work. Is that a correct assessment of what happened?

ACC: Yes, sir.

MJ: The elements of the attempted offense here -- the attempted offense was cruelty and maltreatment. Now, we just went through cruelty and maltreatment earlier.

The elements of that offense is that --

Or I'm sorry. We did not go through that earlier. We will go through it now.

The elements of cruelty and maltreatment are two:

First, that this unknown Iraqi national detainee was subject to your orders;

And second, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you were cruel toward and maltreated the unknown Iraqi national detainee by encouraging Private First Class Andrew J. Sting, United States Marine Corps, to attach, and aiding in the attachment of, live electrical wires to the detainee's cage in order to electrically shock the detainee when he touched the cage.

Those are the elements. Do you understand those?

ACC: Yes, sir.

MJ: Since we are on this Charge, I am going to read you the definitions of the -- of cruelty of maltreatment. Okay?

ACC: Yes, sir.

MJ: I want to make sure you understand those.

The cruelty or maltreatment must be real, although it does not have to be physical.

The imposition of necessary or proper duties on a Sailor or Marine and the requirement that those duties be performed does not establish this offense even though the duties are hard, difficult, or hazardous.

So certain things are going to be within the parameters of not being cruelty or maltreatment. In other words like a DI yelling at you in boot camp, it's authorized.

Do you understand that?

ACC: Yes, sir.

MJ: Other things, like attempting to shock somebody with live electrical wires who is under your care as sergeant of the guard would appear to me might qualify for cruelty or maltreatment.

Do you agree with that?

ACC: Yes, sir.

MJ: This is key. "Subject to the orders of," as it is in the element of cruelty and maltreatment, includes persons under the direct or immediate command of the accused, that is you, and all persons who by reason of some duty are required to obey the lawful orders of the accused, even if those persons are not in your direct chain of command.

In other words, here it looks like you can be cruel and maltreat this individual even though he is an Iraqi national detainee. He doesn't have to be a fellow Marine or Sailor.

Do you understand that?

ACC: Yes, sir.

MJ: Do you agree with that?

ACC: Yes, sir.

MJ: Have you had a chance to discuss this issue with your attorneys?

ACC: Yes, sir.

MJ: "Cruel" and "maltreated" refer to unwarranted, harmful, abusive, rough, or other unjustifiable treatment which under the circumstances results in physical or mental pain or suffering and is unwarranted, unjustified, and unnecessary for any lawful purpose.

Assault, improper punishment, and sexual harassment may constitute the offense.

Any questions about those definitions?

ACC: No, sir.

MJ: Do you believe that you were attempting to be cruel and to maltreat this unknown Iraqi national detainee?

ACC: Yes, sir.

MJ: When we first came on the record, you explained one of the things you could have done would be you could take this issue up through your chain of command. Right?

ACC: Yes, sir.

MJ: And I think you have mentioned that through your stipulation of fact. Also, you could have done other issues, I guess, to deal with the prisoner, have him removed or do something else other than shocking him with live electrical wires.

Do you agree with that?

ACC: Yes, sir.

MJ: Do you believe that it was necessary for you to carry out your duty as sergeant of the guard, to encourage and aid in the attachment of live electrical wires to his cage?

ACC: No, sir.

MJ: Do you believe that that constitutes cruelty or maltreatment toward somebody who is subject to your orders?

ACC: Yes, sir.

MJ: So on 13 April 2004, do you agree that you attempted to commit the offense of cruelty and maltreatment?

ACC: Yes, sir.

MJ: How do you think you specifically attempted to commit that crime?

ACC: By initiating it, sir.

MJ: What did you do?

ACC: I brought the wires in the tent.

MJ: You brought the wires from the tent?

ACC: Into the tent.

MJ: Into the tent? From where?

ACC: From outside, sir.

MJ: What kind of wires were they?

ACC: Comm wire.

MJ: Do you work in comm?

ACC: No, sir.

MJ: You knew they were wires of some sort, however, I guess?

ACC: Yes, sir.

MJ: Did you know that they were capable of carrying an electrical charge, as most wires are?

ACC: Yes, sir.

MJ: You brought them into the tent. And was this cage inside of the tent?

ACC: Yes, sir.

MJ: Was it air conditioned?

ACC: No, sir.

MJ: And when you brought the wires into the tent, tell me what happened then.

ACC: I brought the wires into the tent and I -- just asked me what I was going to do with them.

MJ: Who did?

ACC: PFC Sting. I told him I was going to attach them to the cage, keep him from touching the cage.

MJ: Why were you concerned about keeping him from touching the cage? It explains it in your stipulation of fact, but I would like to hear you say it?

ACC: The other day, he was throwing trash out and basically being obnoxious.

MJ: So it was an unruly Iraqi detainee?

ACC: Yes, sir.

MJ: He wasn't just sitting there like Caspar Milquetoast. Right?

ACC: No, sir.

MJ: All right. So he was being unruly. And so you told PFC Sting what you were going to do -- what you wanted to do?

ACC: Yes, sir.

MJ: And you actually brought the wire in, which I guess could count as a substantial step towards carrying that out. Wouldn't you agree with that?

ACC: Yes, sir.

MJ: Now, I noticed that -- later in a different charge, when we talk about conspiracy, which we will do. It's another sometimes difficult concept to understand -- your attorney took out PFC Trefny and PFC Gabbey out of that specification, in pleading guilty to it. Who are those individuals?

ACC: They were two members of the guard force also.

MJ: Okay. So this issue that we are talking about, this attempt, only dealt with PFC Sting. Is that correct?

ACC: Correct.

MJ: So it was just you and PFC Sting?

ACC: Yes, sir.

MJ: And what was your relationship with PFC Sting?

ACC: He was a member of my guard force.

MJ: So you had -- you were above him in the chain of command, I guess?

ACC: Yes, sir.

MJ: Captain (b)(6) did I already give the definition of what preparation consists of? I don't think I did.

TC: You did not, sir.

MJ: Okay. Thank you.

"Preparation" consists of devising or arranging the means necessary for the commission of an attempted offense. These acts which you did must amount to a substantial step and a direct movement toward the commission of the intended offense of cruelty and maltreatment.

A "substantial step" is one that is strongly corroborative of your criminal intent and is indicative of your resolve to commit the offense. Whether or not the offense of cruelty and maltreatment actually occurred or was completed, you must have intended every element of the cruelty and maltreatment.

Do you understand that?

ACC: Yes, sir.

MJ: In other words, if you sit around and you decide in your own mind that you are going to shock this Iraqi national detainee, that is not a crime. However, if you attempt to do so, that could be a crime if you take a substantial step towards committing that offense of cruelty and maltreatment.

Do you understand that?

ACC: Yes, sir.

MJ: So do you agree that, by going and getting the wire and discussing what you are going to do with PFC Sting, was a substantial step towards committing the crime of cruelty and maltreatment?

ACC: Yes, sir.

MJ: Besides getting the wire, it says here that you encouraged -- it says you encouraged him to attach, and then you aided in the attachment of, the live electrical wires. Is that true?

ACC: Yes, sir.

MJ: Tell me how that happened.

ACC: Well, I went and got the wires. And I told him my plan. I was going to do it. But I didn't go through with it. He went through with it. And he asked -- well, we agreed to attach them to the cage. And PFC Sting went ahead and attached them to the cage.

MJ: Okay. And how did he do that?

ACC: I guess, he plugged it into the converter box and attached them to the cage.

MJ: The stipulation of fact says that he had some experience or at least thought he had some experience because his dad was an electrician. Is that right?

ACC: Yes, sir. He said he trained under his dad for a couple of years before he came in the Marine Corps.

MJ: He obviously didn't know enough to make it work. Right?

ACC: I guess not, sir.

MJ: But if he would have known enough to make it work, you agree it would have been cruelty and maltreatment towards the Iraqi national detainee?

ACC: Yes, sir.

MJ: So in your own words, how do you believe that you encouraged him to attach the wires?

ACC: Because I told him the plan and I brought the wires into the tent.

MJ: Also, it says that you aided in the attachment of the wires to the detainee's cage. How did you do that?

ACC: Because I initiated it, sir.

MJ: We talked about how you could have avoided doing this. Correct?

ACC: Yes, sir.

MJ: Do you agree that you actually attempted to be cruel towards and to maltreat the Iraqi national detainee?

ACC: Yes, sir.

MJ: Do you believe that by encouraging and aiding in the efforts, that you attempted to do so?

ACC: Yes, sir.

MJ: Did you have a chance to speak with your attorneys about the concept of aiding and abetting?

ACC: Yes, sir.

MJ: You state in your stipulation of fact that you had no legal justification or excuse for your act.

Do you really believe that?

ACC: Yes, sir.

MJ: And obviously, getting the wire and talking with him on how to do it and encouraging and aiding in the attempted commission of this offense, those are clearly substantial steps made towards actually committing the offense.

Do you agree with that?

ACC: Yes, sir.

MJ: So this whole thing would have been successful if what?

ACC: If, I guess, the cage wasn't grounded or if the box worked.

MJ: Okay. So there was either too little of an electrical charge or perhaps there was a ground somewhere for the cage. Right?

ACC: Yes, sir.

MJ: That kind of stopped it, kind of like when you ground something on your car battery?

ACC: Yes, sir.

MJ: No one forced or coerced you into attempting to commit the offense of cruelty and maltreatment. Correct?

ACC: No, sir.

MJ: You could have avoided doing that if you had wanted to?

ACC: Yes, sir.

MJ: Again, your stipulation of fact is instructive on this Specification.

Do counsel for either side desire any further inquiry?

TC: No, sir.

IMC: No, Your Honor.

MJ: Sergeant Travis, do you need a break or are you okay?

ACC: I am good, sir.

MJ: Okay. My plan is to go through taking a guilty plea and going through the facts of the remaining three specifications and then we'll take a short break. Okay?

ACC: Yes, sir.

MJ: If you need a break before that, let me know.

Under Specification 2, we have another attempt. So I have already talked to you all about attempts. So you understand that now. Right?

ACC: Yes, sir.

MJ: Let me read you the elements under Specification 2. Here you have pled guilty to the offense of attempting to commit an assault consummated by a battery. The elements of that offense are as follows:

First, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you did certain acts, that is encouraging Private First Class Andrew J. Sting, U.S. Marine Corps, to attach, and aiding in the attachment of, live electrical wires to a detainee's cage in order to electrically shock the detainee when he touched the cage;

Second, that the act was done with the specific intent to commit the offense of committing assault -- or excuse me, assault consummated by a battery;

Third, that the act amounted to more than mere preparation. That is these acts were a substantial step and a direct movement toward the commission of the intended offense;

And fourth, that such acts apparently tended to bring about the commission of the offense of assault consummated by a battery. That is the act apparently would have resulted in the actual commission of assault consummated by a battery except for a circumstance unknown to you or an unexpected intervening circumstance which prevented completion of that offense.

Do you understand those elements?

ACC: Yes, sir.

MJ: Do those elements correctly describe what you did?

ACC: Yes, sir.

MJ: I already discussed the definition of "preparation." Do you need me to repeat that?

ACC: No, sir.

MJ: The elements of the underlying offense, however, I do need to discuss. In other words, I told you what an attempt is. Now I need to discuss the underlying offense of assault consummated by a battery.

The elements of that offense would be that on or about

13 April 2004, at FOB Al Mahmudiyah, Iraq, you did bodily harm to an unknown Iraqi national detainee;

Second, that you did so by the attachment of live electrical wires to the detainee's cage in order to electrically shock the detainee when he touched the cage;

And third, that the bodily harm was done with unlawful force or violence.

In other words, I understand that it looks like the issue with the cage, nothing happened. He didn't get any harm, did he?

ACC: No, sir.

MJ: But you attempted to commit an assault consummated by a battery.

Do you understand that?

ACC: Yes, sir.

MJ: That's fancy legal jargon, but a "battery" just means an offensive touching of some sort, either harmful or inappropriate. So it is called an assault consummated, going along, with a battery.

Do you understand that?

ACC: Yes, sir.

MJ: An "assault" is an attempt to offer with unlawful force or violence to do bodily harm to another.

An assault in which bodily harm is actually inflicted is called a "battery."

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 that definition?

ACC: Yes, sir.

MJ: In other words, sometimes people can give permission to be hit. Right? Like there are some people that are crazy and they play rugby. Right?

ACC: Yes, sir.

MJ: If you go out on a rugby field, you are giving permission to get hit. Aren't you?

ACC: Yes, sir.

MJ: But in this case, I doubt that the Iraqi national detainee was giving permission to be shocked. Right?

ACC: Yes, sir.

MJ: So he didn't consent to that. Do you agree with that?

ACC: Yes, sir.

MJ: We talked all about the attempt already before. So do you agree that you attempted to commit an assault consummated by a battery on 13 April 2004 against this Iraqi national detainee?

ACC: Yes, sir.

MJ: Tell me in your own words again how you attempted to do that.

ACC: I brought the wires in. I initiated it. I told PFC Sting my plan.

MJ: Any legal justification or excuse for your act?

ACC: No, sir.

MJ: You intended to commit an assault consummated by a battery. Correct?

ACC: Yes, sir.

MJ: In other words, again, just like we discussed, if it wasn't for the low voltage, if that's the right term, or the grounding of the cage, it would have happened. Right?

ACC: Yes, sir.

MJ: And do you believe that encouraging this PFC to attach and actually aiding in the attachment of the live electrical wires to the cage were more than just mere preparation, in other words, they were substantial steps towards committing the offense?

ACC: Yes, sir.

MJ: In other words, mere preparing or thinking about preparing isn't enough. You have to take a substantial step towards committing the offense.

Do you understand that?

ACC: Yes, sir.

MJ: Do you believe you did that here?

ACC: Yes, sir.

MJ: And again, you believe your attempts would have been successful but for the intervening cause. Right?

ACC: Yes, sir.

MJ: Something unknown to you. Right?

ACC: Yes, sir.

MJ: No one coerced you into committing this offense. Right?

ACC: No, sir.

MJ: You could have avoiding committing it if you had wanted to?

ACC: Yes, sir.

MJ: Do counsel for either side desire any further inquiry into Specification 2?

TC: No, sir.

IMC: No, Your Honor.

MJ: The court will be in a brief recess.

The court-martial recessed at 1410, 19 August 2004.

The court-martial was called to order at 1416, 19 August 2004.

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

I believe I went through all of the inquiry on all of Additional Charge I, Specification 2.

So do counsel for either side desire any further inquiry?

TC: No, sir.

IMC: No, Your Honor.

MJ: Moving on to Add Charge II, Specification 1, this is the conspiracy charge.

Here, you have pled guilty to the offense of conspiracy. The elements of that offense are as follows:

First, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you entered into an agreement with Private First Class Andrew J. Sting, United States Marine Corps, to commit the offense of cruelty and maltreatment of an unknown Iraqi national detainee, an offense under the Uniform Code of Military Justice;

And second, that while the agreement continued to exist and while you remained a party to the agreement, you and or your coconspirator, namely PFC Sting, performed one or more of the overt acts alleged in the specification, namely attaching live electrical wires to the cage of the detainee with the purpose of electrically shocking the detainee when the detainee touched the cage.

And that was for the purpose of bringing about the object of the agreement.

Do you understand those two elements?

ACC: Yes, sir.

MJ: Again, that is another legal mouthful. It basically means that you are conspiring to commit the offense of cruelty and maltreatment.

"Conspiring" is when the law allows us to punish people for getting together and discussing crimes, but doing more than planning the crimes, discussing them and then taking an overt act to actually go towards the furtherance of that conspiracy.

Do you understand that?

ACC: Yes, sir.

MJ: Have you had enough chance to discuss with your attorneys the concept of a conspiracy?

ACC: Yes, sir.

MJ: Okay. Proof that the offense of cruelty and maltreatment actually occurred is not required. However, it must be proved beyond a reasonable doubt that the agreement included every element of the offense of cruelty and maltreatment.

The agreement in a conspiracy does not have to be in any particular form or expressed in formal words. It is sufficient if the minds of the parties reach a common understanding to accomplish the object of the conspiracy. And this may be proved by the conduct of the parties. The agreement does not have to express the manner in which the conspiracy is to be carried out or what part each conspirator is to play.

Do you understand that definition?

ACC: Yes, sir.

MJ: In other words, in your stipulation of fact, you talked about how you brought the wire out, you discussed it with him, et cetera. But maybe you didn't specifically say, you know, at 1121 I want you to take it and attach it to the voltmeter, at 1122 I want you to do this, but you still had in your mind that conspiracy to commit the cruelty and maltreatment and you made overt acts, or PFC Sting did, to carry out that conspiracy.

Do you understand that?

ACC: Yes, sir.

MJ: The definition I read also describes the concept of a

conspiracy doesn't have to be in exact words. The best way to think about that is if you watch a football game. Okay? And all the offensive team gets in a huddle. And then they get on the line, and they go out for a pass. And all of a sudden, the quarterback throws to somebody, and they lateral to somebody else, and it was all in the plan. Nobody knows about it that is watching it. But from those overt acts that are taken, we know what the object of that play was.

Do you understand that?

ACC: Yes, sir.

MJ: So that is the same way here, you know. Even if you did a symbol that said -- you know, gave him a nod of the head that said, Hey, go put the wires on the cage, or anything else, that would be a conspiracy. That would be -- the agreement doesn't have to be in a certain word.

Do you understand that?

ACC: Yes, sir.

MJ: You didn't have to say, Hey, let's conspire to do this. You just had to say, Hey, here is what we ought to do. You know, this guy is unruly. Let's rig up his cage. Let's give him a little shock.

Do you understand that?

ACC: Yes, sir.

MJ: Is that what you did here?

ACC: Yes, sir.

MJ: The overt act required for the offense does not have to be a criminal act. So in other words, just going out yourself and getting the wire and bringing it into the building maybe isn't a criminal act all by itself. But it is an overt act to carry out the conspiracy.

Do you understand that?

ACC: Yes, sir.

MJ: So it is required merely that the overt act be a clear

indication that the conspiracy is being carried out. The overt act may be done either at the time of or following the agreement.

The overt act must clearly be independent of the agreement itself. That is, it must be more than merely the act of entering into the agreement or an act necessary to reach the agreement. So the government would have a fatal charge here if they said, And in order to effect the conspiracy, you got together and discussed it. Discussing it is not the conspiracy. You have to do something more than that to try to carry it out.

Do you understand that?

ACC: Yes, sir.

MJ: So here, the overt act that they have alleged -- and it could be any overt act. But here, they say that the overt act is actually the commission of a crime, that PFC Sting has attached the live electrical wires to the cage.

Do you agree with that?

ACC: Yes, sir.

MJ: You are advised that there is no requirement that all the coconspirators be named in the Specification or that all the coconspirators be subject to military law. So you could have conspired with another Iraqi detainee for that matter.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. Now, just like an attempt, it is necessary when I give you the elements of conspiracy that I talk about the underlying offense of cruelty and maltreatment.

Now, we have gone through this on a previous charge. Haven't we?

ACC: Yes, sir.

MJ: Because the cruelty and maltreatment, we went through when we talked about the attempt. Right?

ACC: Yes, sir.

MJ: So the elements of that offense are as follows, for cruelty and maltreatment:

That an unknown Iraqi national detainee was subject to your orders;

And second, that on or about 13 April 2004, at FOB Al Mahmudiyah, Iraq, you were cruel toward and maltreated the Iraqi national detainee by attaching live electrical wires to the cage of the detainee with the purpose of electrically shocking the detainee when the detainee touched the cage.

Do you understand those underlying elements of cruelty and maltreatment?

ACC: Yes, sir.

MJ: So do you believe that you attempted to be cruel and to maltreat the Iraqi national detainee?

ACC: Yes, sir.

MJ: Okay. Again, the stipulation of fact is very instructive here.

Tell me what you think the -- how you think you conspired with PFC Sting?

ACC: I conspired because, like I said, I brought the wires in and I told him the plan of how we was going to rig the cages up.

MJ: Okay. Bringing the wires in, do you believe that that was an overt act to try to carry out the conspiracy?

ACC: Yes, sir.

MJ: And also the overt act of him actually attaching the live electrical wires, that obviously would be in furtherance of the conspiracy. Correct?

ACC: Yes, sir.

MJ: Okay. We have gone over this a couple times. So I understand the basics here.

It was a verbal agreement. Do you agree with that?

ACC: Yes, sir.

MJ: And his part, he was supposed to actually attach it. Right? You got the wire, and then he was going to attach it? Or were you going to attach it?

ACC: I was going to attach it, sir. But he took -- he took it and attached it himself, sir.

MJ: But he went and did it himself because he claimed he had this experience. Right?

ACC: Yes, sir.

MJ: You clearly heard and understood what was discussed between you and PFC Sting. Right?

ACC: Yes, sir.

MJ: English is your first language?

ACC: Yes, sir.

MJ: How about PFC Sting?

ACC: English also, sir.

MJ: And you were speaking English. Right?

ACC: Yes, sir.

MJ: It wasn't too noisy? You didn't have earplugs in?

ACC: No, sir.

MJ: Did you -- you agree that you were in agreement then with PFC Sting to actually commit the offense of being cruel and maltreat the Iraqi detainee?

ACC: Yes, sir.

MJ: Do you believe that your conspiracy encompassed each underlying element of the offense of cruelty and maltreatment?

ACC: Yes, sir.

MJ: Now, in this case the conspiracy was actually carried out, but it just didn't work. Right?

ACC: Yes, sir.

MJ: The overt act was conducted by PFC Sting. And when he did that overt act, the conspiracy was still ongoing. Right?

ACC: Yes, sir.

MJ: In other words, you can try to withdraw from a conspiracy. Before something happens, you can try to, you know, go tell the cops or go tell your boss or something and withdraw from the conspiracy. You never withdrew. Is that correct?

ACC: That's correct, sir.

MJ: You remained a party to the conspiracy. Is that right?

ACC: Yes, sir.

MJ: No one forced or coerced you into the conspiracy to commit cruelty and maltreatment?

ACC: No, sir.

MJ: You could have avoided joining the conspiracy with PFC Sting if you had wanted to. Right?

ACC: Yes, sir.

MJ: In fact, it would have been easy because you were the senior member. Right?

ACC: Yes, sir.

MJ: It was a freely made decision on your part?

ACC: Yes, sir.

MJ: I have got the facts, again, from other charges. So I am satisfied that there is enough here for this -- this plea.

Any further requests for further inquiry?

TC: No, sir.

IMC: No, Your Honor.

MJ: Okay. We have one more charge. This is the false official statement. So everything we have been talking about was on 13 April of 2004. This is 16 April 2004. And here, you are pleading guilty under Additional Charge IV and the Sole Specification thereunder to false official statement.

So my first question to you is who is Major (b)(6) (b)(6)

ACC: My Battalion XO.

MJ: Okay. And why did you make a false official statement to him?

ACC: I didn't want to get in trouble, sir.

MJ: Okay. Self-preservation. But was he conducting an investigation into this issue?

ACC: Yes, sir.

MJ: He was actually appointed as an investigating officer?

ACC: I believe so, sir.

MJ: Okay. Let me read you the elements under this charge. The elements are:

First, that on or about 16 April 2004. at FOB Al Mahmudiyah, Iraq, you made to Major (b)(6) United States Marine Corps, a certain official statement, that is, quote, I have no knowledge of a detainee being shocked, close quote, or words to that effect;

Second, that such statement was totally false;

Third, that you knew it to be false at the time that you made it;

And fourth, that the false statement was made with the intent to deceive.

Do you understand those four elements?

ACC: Yes, sir.

MJ: Do those four elements correctly describe what you did on this occasion?

ACC: Yes, sir.

MJ: Only one definition here that I need to read to you.

The term "intent to deceive" means to purposely mislead, to cheat, to trick another, or to cause another to believe as true that which is false.

Do you understand that definition?

ACC: Yes, sir.

MJ: Do you need some time, counsel?

IMC: Sir, we are just looking at the charge sheet. And there is a typographical error on the pretrial agreement. We need to address that when the time is appropriate. The pretrial agreement under Additional Charge IV says "on or about 13 April." It should read "on or about 16 April."

MJ: Okay.

Captain (b)(6) I am going to give the first portion of the pretrial agreement to you, Appellate Exhibit II, have you make that change, all parties initial it, one date. And also, cross out all the times that you have "Specification 1" where there is only one specification.

I only need the initials and a date by -- I'm sorry -- by the date change. If you are crossing out the "1" on the specification, that is fine. That doesn't need it.

Thank you.

IMC: I apologize to the court for the interruption.

MJ: No problem.

The idea is that we have the pretrial agreement be consistent with the stipulation of fact and with your pleas, so they all match up.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. Let me ask you some questions about the -- the last charge, the false official statement. Again, you have detailed this out in your stipulation of fact.

Do you agree that the statement that you made was an official statement?

ACC: Yes, sir.

MJ: Did you actually say, "I had no knowledge of the detainee being shocked," or did you say something different?

ACC: That is what I said, sir.

MJ: Did you write the statement or did you speak it?

ACC: I speak it (sic). And Major (b)(6) typed it down, sir.

MJ: Okay. So your statement, your false official statement, was oral?

ACC: Yes, sir.

MJ: You didn't write it out yourself?

ACC: No, sir.

MJ: Okay. I am not interested in what he wrote out.

Do you understand that?

ACC: Yes, sir.

MJ: Obviously, the statement pertained to what we have just been discussing. Did you make the statement in the line of duty? In other words, did you have a duty to make the statement?

ACC: No, sir.

MJ: You had the option of not making the statement?

ACC: Yes, sir.

MJ: And do you believe and admit that your statement was made to a person who, in receiving it, was discharging the functions of his particular office?

ACC: Yes, sir.

MJ: Now, I asked you if this was -- if there was an investigation ongoing. So was this part of an investigation?

ACC: Yes, sir.

MJ: When you lied to him?

ACC: Yes, sir.

MJ: Did he advise you of your rights under Article 31?

ACC: No, sir.

MJ: Have you spoken with your attorneys about this issue?

ACC: Yes, sir.

MJ: Do you understand that you might be able to make a motion on that issue?

ACC: Yes, sir.

MJ: Do you understand that by pleading guilty to this charge you waive the right to make that motion?

ACC: Yes, sir.

MJ: Do you understand that -- I am not saying whether that motion would be granted or not. But one of the issues is if you decide to make a statement, you would be under the duty to make a truthful statement.

Do you agree with that concept?

ACC: Yes, sir.

MJ: In other words, you could have said, I have nothing to say. Right?

ACC: Yes, sir.

MJ: But you chose to speak. Correct?

ACC: Yes, sir.

MJ: And in choosing to speak, you told him what we just discussed. Right?

ACC: Yes, sir.

MJ: And that was a flat-out lie?

ACC: Yes, sir.

MJ: Do you believe and admit that even if you had no duty to speak or to answer or to even provide a statement that, by choosing to do so, you had an official duty to do so truthfully?

ACC: Yes, sir.

MJ: The statement you made was totally false. Right?

ACC: Yes, sir. It was.

MJ: In what respect?

ACC: I knew the detainee was going to be shocked, sir.

MJ: You knew that he was?

ACC: Yes, sir.

MJ: Okay. Well, here is a question I have. But I am not sure if you spell it out in your stipulation of fact or not. You attempted to shock him by wiring this thing up to the cage. Was he ever shocked? Did he get shocked or not?

ACC: Not from the cage, sir.

MJ: Okay. So he did not get shocked from that. Why do you believe then -- "I have no knowledge of a detainee being shocked," why do you believe that was a lie?

ACC: We had planned to initially shock him, sir.

MJ: Okay. So when you said that, it was your intent to lie. You weren't just trying to be coy and say, Well, nobody was actually shocked. You were intending to lie to deceive him. Is that correct?

ACC: Yes, sir.

MJ: Again, so you wouldn't be caught. Right?

ACC: Yes, sir.

MJ: So this was done to make another believe that which was true -- to believe as true that which was false. Correct?

ACC: Yes, sir.

MJ: You made the statement voluntarily?

ACC: Yes, sir.

MJ: Did anyone force or coerce you to make the statement?

ACC: No, sir.

MJ: Did you have any legal justification for making the statement?

ACC: No, sir.

MJ: Could you have made a truthful statement if you had wanted to?

ACC: Yes, sir.

MJ: What do you believe your options were when he came to talk to you about this?

ACC: I could have told him that we initially was going to shock the detainees cage to --

MJ: So you could have admitted to what you did?

ACC: Yes, sir.

MJ: Or you could have done what?

ACC: Not say anything at all, sir.

MJ: Okay.

Do counsel for either side desire any further inquiry on any of the charges and specifications?

TC: No, sir.

IMC: No, Your Honor.

MJ: Finally, Sergeant Travis, do you believe and admit that, taken together, the elements that I listed for you, all the definitions I gave you, the stipulation of fact, and everything that we have just discussed correctly describe what you did on each occasion?

ACC: Yes, sir.

MJ: All right. There is a pretrial agreement in this case. And I have the first portion here in front of me. This is marked as Appellate Exhibit II.

Is this your signature which appears on the last page, it looks like the sixth page of the document?

ACC: Yes, sir.

MJ: Prior to signing this, did you read it over completely and discuss it with your attorneys?

ACC: Yes, sir.

MJ: Now, Appellate Exhibit III contains the sentence limitation portion of your pretrial agreement. I do not have that in front of me; however, you do.

Did you also sign that document?

ACC: Yes, sir.

MJ: Prior to signing that, did you read it over completely and discuss it with your attorneys?

ACC: Yes, sir.

MJ: Now, don't tell me what you deal is. Okay? I don't want to know what is on that document. So without telling me the particulars, do you at least understand the maximum sentence the convening authority may approve in your case?

ACC: Yes, sir.

MJ: In a pretrial agreement, Sergeant Travis, you agree to enter pleas of guilty to some of the charges and specifications. And you have done that. In return, the

convening authority agrees to approve and order executed no sentence greater than that set forth in the sentence limitation portion of your pretrial agreement.

What that means to you is as follows: If the sentence adjudged by me today is less than the one in your pretrial agreement, the convening authority cannot increase the sentence that I adjudge today. On the other hand, if the sentence that I adjudge today is greater than the one provided in your agreement, the convening authority would have to reduce the sentence that I award you to one no more severe than what you have in your agreement, or your deal.

Do you understand that?

ACC: Yes, sir.

MJ: Normally, the sentence limitation portion of a pretrial agreement is in five distinct parts to include punitive discharge, confinement or restraint, forfeiture or fine, reduction in pay grade, and other lawful punishments.

Are each of those distinct parts covered in the sentence limitation portion of your agreement?

ACC: Yes, sir.

MJ: You need to understand that administrative processing is separate from this trial and from your pretrial agreement. Therefore, any agreement that you may have regarding a punitive discharge does 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: 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 three months automatically reduces that individual to the lowest enlisted pay grade, E-1, by operation of law. This will apply in your case unless your pretrial agreement provides differently or the convening authority otherwise agrees to disapprove or suspend that automatic

reduction.

Do you understand that?

ACC: Yes, sir.

MJ: There is another automatic provision I want you to be aware of. As a result of Article 58(b) of the UCMJ, any approved court-martial sentence that includes a punitive discharge and any confinement or confinement for more than six months will result in the forfeiture of all pay and allowances due during the period of confinement. However, the convening authority, again, may defer and subsequently waive these automatic forfeitures as part of your pretrial agreement or otherwise, in which case the pay is normally given to a dependent.

Do you understand that?

ACC: Yes, sir.

MJ: Sergeant Travis, you may request to withdraw any of your pleas of guilty to any of these charges up until the time that I announce the sentence in this case. And if you have a good reason for your request, I will allow you to do so. However, if your pleas of guilty do not remain in effect up until the time that I announce the sentence in this case, then the pretrial agreement that we have just been discussing would become null and void, or of no effect.

Do you understand that?

ACC: Yes, sir.

MJ: Is this written agreement the entire agreement between you and the convening authority?

ACC: Yes, sir.

MJ: Are there any other agreements in this case?

ACC: No, sir.

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

ACC: Yes, sir.

MJ: Are you entering into the pretrial agreement voluntarily?

ACC: Yes, sir.

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

ACC: No, sir.

MJ: Have you fully discussed this agreement with both of your counsel and are you satisfied that their advice has been in your best interest?

ACC: Yes, sir.

MJ: Okay. Sergeant Travis, the law requires that I go through all the provisions of your pretrial agreement with you. So please follow along.

We have discussed Paragraphs 1 and 2.

Paragraph 3 says that if you decided to plead not guilty right now, the government could not use this pretrial agreement against you to try to prove your guilt.

Any questions?

ACC: No, sir.

MJ: We have discussed Paragraphs 4 and 5.

Paragraph 6 says that you have discussed with your attorney the meaning of the effective dates of sentences or of certain UCMJ provisions dealing with when certain things kick in, for example confinement would start today, et cetera.

Do you understand that?

ACC: Yes, sir.

MJ: Do you have any questions about Paragraph 6?

ACC: No, sir.

MJ: We have discussed Paragraphs 7 through 9.

Paragraph 10 contains all of your pleas, including the

exception language that your attorney referenced, Lieutenant Colonel (b)(6) when we took your pleas originally.

Now, I see here you have initialled the change of 16 April 2004. That, obviously, is the date that you wanted to have on there when you signed this agreement. Correct?

ACC: Yes, sir.

MJ: Under that Article 107 charge, the false official statement?

ACC: Yes, sir.

MJ: Paragraph 11 says that you agreed to enter into a stipulation of fact and that that stipulation can be used as an evidentiary basis. That means to prove your guilt, which -- or ascertain your guilt, which we just did.

Do you have any questions about Paragraph 11?

ACC: No, sir.

MJ: Paragraph 12 seems to be a common provision out here in Iraq. It says that you agree to waive the presence of any non-local witnesses at government expense. You are offering that. And you are stating that it does not interfere with your ability to present a sentencing case because you can present your sentencing through other means.

Do you have any questions about that paragraph?

ACC: No, sir.

MJ: Paragraph 13 says that, in exchange for your pleas of guilty as contained in this pretrial agreement, the convening authority agrees to withdraw without prejudice the language and the charges to which you have pled not guilty. And I guess that withdrawal -- it actually should be a withdrawal and dismissal, would ripen into prejudice upon announcement of my sentence. In other words, it is not just a withdrawal, it is a dismissal also. It just says "withdrawn" here, but I think that's the language that both parties wanted.

Do you understand that concept?

ACC: Yes, sir.

MJ: Is that the government's understanding, Captain (b)(6) , it is going to be withdrawn and dismissed with prejudice?

TC: Yes, sir.

MJ: Okay. Lieutenant Colonel (b)(6) you obviously agree with that?

IMC: Yes, Your Honor.

MJ: Okay. I am not going to change the pretrial agreement. I think that is a common understanding of the parties.

Paragraph 14 says that you agree to meet with the general court-martial convening authority, that is General Mattis, not only to offer the pretrial agreement to him, but to explain the comments that you made in the media regarding the case. Evidently, some comments you made were false.

Have you complied with this provision?

ACC: Yes, sir.

MJ: You have already met with the General?

ACC: Yes, sir.

MJ: Paragraph 15 goes kind of along with Paragraph 16. Paragraph 15 defines "misconduct" as any act or omission that you commit in violation of the UCMJ. It's a very broad definition of misconduct.

Do you understand that?

ACC: Yes, sir.

MJ: That is important because in the next paragraph, Paragraph 16, it says that if you do commit any sort of misconduct, even after today's date, after the day of trial today, you could lose the benefit of your pretrial agreement. They would have to give you a certain hearing, and you would have some rights that go along with that. But you could lose the benefit of your deal.

Do you understand that?

ACC: Yes, sir.

MJ: So it is very important to get the benefit of your deal that you behave yourself and abide by the UCMJ, even after today's trial.

Do you understand that?

ACC: Yes, sir.

MJ: We have discussed Paragraphs 17 and 18, because in 18 you requested to be tried by military judge alone.

That is still the case. Right?

ACC: Yes, sir.

MJ: And Paragraph 19 just simply states, I think, something we have already discussed, which is.this agreement is the agreement, there is nothing secret out there, there is no secret handshake, there's no secret deal, there's no other written document other than what we have here.

Is that correct?

ACC: Yes, sir.

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

ACC: No, sir.

MJ: Do counsel for both sides agree with the court's interpretation of the pretrial agreement?

TC: Yes, sir.

IMC: Yes, Your Honor.

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 by me.

Sergeant Travis, do you have any questions about the meaning and effect of your pleas of guilty?

ACC: No, sir.

MJ: For the last time, do you still wish to plead guilty as you have pled?

ACC: Yes, sir.

MJ: I find that Sergeant Travis has knowingly, intelligently, and consciously waived his rights against self-incrimination to a trial of the facts by this court-martial, and to confront the witnesses against him. I further find his pleas are made voluntarily and with a factual basis, and they are accepted by me.

Okay. Captain (b)(6) it is your time to speak up.

TC: Sir, the government moves to withdraw and dismiss the language and charges and the specifications to which the accused has pled not guilty, without prejudice, to ripen into prejudice upon the announcement of sentence.

MJ: Okay.

Lieutenant Colonel (b)(6) no objection?

IMC: No objection, Your Honor.

MJ: That request is granted. All of those charges and specifications and all of the language that your attorney has excepted out here when we originally took the pleas, and what is contained in your pretrial agreement, is no longer before the court. What we are not going to do, however, is renumber everything. We are going to keep all the same numbers. Because after the trial, when we want to dictate what happened here, we don't want anything to be confused. So we are going to keep all the same numbering. We are not going to change that around at all.

Do you understand that?

ACC: Yes, sir.

MJ: So that motion made by Captain (b)(6) is granted. All of that language and those charges and specifications are withdrawn and dismissed without prejudice. That means they can be brought against you again until I announce my sentence. Once I announce my sentence to you in this

case, then they will be dismissed with prejudice. That means the government can never bring that -- any of that stuff against you again.

Do you understand that?

ACC: Yes, sir.

MJ: So when I declare you guilty of all charges and specifications in just a moment, you are going to understand what that means. Right?

ACC: Yes, sir.

MJ: Okay. Now, before we went on the record, we discussed the issue of multiplicity, slash, an unreasonable multiplication of charges on some of these charges. Captain (b)(6) informed me that the charges would be different, or at least he had a different theory, as we went through them for a factual basis, and that they would not be an unreasonable multiplication of charges on the findings, but perhaps they might be on the sentencing. So we are still on the findings. I have yet to announce my findings in this case.

So at this point, does either side feel that any of these charges are an unreasonable multiplication of charges on the findings?

And I guess I might be binding you a little bit, Lieutenant Colonel (b)(6) because you have agreed to plead so in the pretrial agreement. So I am not going to even ask you. I understand --

IMC: Thank you, Your Honor.

MJ: -- to get the deal, you have pled that way.

So Captain (b)(6) let me put you on the defensive then. Explain to me how Additional Charge I, Specification 1 and Specification 2 are different because I heard the same identical things in the providence inquiry. And you asked for no further inquiry.

TC: Well, sir, the conduct with regard to pressing the wires -- or putting the wires on the cage is identical. However, the cruelty and maltreatment just encompasses more, which was addressed throughout the entire providency, in that

you have a detainee who is subject to somebody's orders and who is being walked around with a sandbag over his head and being flexicuffed and dealing with all these surrounding circumstances when he is being detained. An assault is a very specific thing taking place. An assault on a detainee who is subject to somebody's orders is just a different type of offense. And because of that, sir, we have two different offenses when they are pleaded and when they are pleaded guilty to.

That is the government's position.

MJ: Okay. I didn't hear anything from the accused. In the stipulation of fact, however, it talks about putting the bag over a detainee's head.

And what else did you mention?

TC: That a detainee is flexicuffed.

MJ: Okay. Both of those facts are in the stipulation of fact. Right?

TC: Yes, sir.

MJ: Okay. So that is evidence in front of me. I can consider that. Was that somehow cruelty and maltreatment, or was that SOP?

TC: It is SOP that the detainees have bags over their heads and are flexicuffed. It's -- but it is a different offense when we are talking about all these surrounding circumstances. It makes no difference that it's a detainee when we are talking about an assault charge. It is vitally important that it is a detainee who is subject to Sergeant Travis's orders when we are talking about cruelty and maltreatment. It just makes the offenses different so they can stand alone.

MJ: Okay. What actus reus did Sergeant Travis do that was different between those two specifications?

TC: The actus reus is not what is different, sir. It is the surrounding circumstances that would be different elements for each specification and make them different.

MJ: Okay. Give me just a moment. I want to look at a couple of other charges.

Okay. First issue is I disagree with you. So I am going to give you your choice. You can keep Specification 1 or Specification 2 under Additional Charge I.

Which one would you like to keep? Specification 1 entails one year. Specification 2 entails six months.

TC: Specification 1, sir.

MJ: Okay.

I am going to dismiss, as an unreasonable multiplication of charges, Specification 2 under Additional Charge I.

We have gone through the inquiry, and I am now dismissing that one.

That means the maximum punishment is now seven years.

Do you understand that, Sergeant Travis?

ACC: Yes, sir.

MJ: The more important question is -- I am not sure if the parties were thinking the same way I was, that I would have to hear the plea in order to ascertain whether something was an unreasonable multiplication of charges.

Captain (b)(6) , does the government still intend to be bound by the pretrial agreement, given my ruling, or do you wish to withdraw from it?

TC: We intend to be bound, sir. But I would like clarification on what we dismissed. We dismissed the assault specification. Is that correct?

MJ: Correct.

TC: And the maximum punishment for assault consummated by a battery is --

MJ: -- was six months.

TC: And did we not initially say that --

MJ: Oh, I'm sorry. So you -- you are saying I got the max punishment wrong?

TC: Yes, sir.

MJ: You're right.

TC: So it is --

MJ: I did the math incorrectly. It should be seven and a half years.

TC: Yes, sir.

MJ: Correct. Okay. Thank you. I took six months off, and that was the one that we dropped. It should be -- I mean I took a year off. But we dropped the six-month charge. So it should be seven and a half years as your max confinement exposure.

Do you understand that, Sergeant Travis?

ACC: Yes, sir.

MJ: Okay. It was eight years, we dropped the specification that dealt with six months. So eight years minus six months is seven and a half years.

Any questions?

ACC: No, sir.

MJ: Okay. As far as the findings are concerned, I am satisfied with those four remaining guilty pleas.

On sentencing, Captain (b)(6) I am still wondering about on sentencing if anything is an unreasonable multiplication of charges. So give that a little thought as we proceed.

The Article 81, conspiracy, you can be found guilty of a conspiracy and the underlying offense. I understand that. But you don't have him charged with a 93, the underlying offense of the conspiracy. You have the conspiracy and then you have another -- dealing with the cruelty and maltreatment, you have an Article 80. And then you have the 92, which I guess is kind of like the cruelty and maltreatment. So I am just wondering how those interplay as far as sentencing goes. So give that some thought, if you would. And we will deal with that issue in just a moment.

Okay. So in just a moment, I am going to declare you guilty of all charges and specifications. And that is going to be of the four specifications now, not five.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. And obviously, Sergeant Travis, you intend to still be bound by the pretrial agreement even though I have dismissed one of the specifications?

ACC: Yes, sir.

MJ: Because that is to your benefit. Right?

ACC: Yes, sir.

MJ: Okay. Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Sergeant Travis, it is my duty as military judge to inform you that this court-martial finds you:
To all charges and specifications: Guilty.

You may be seated.

The accused and his counsel did as directed

MJ: Are there any corrections or additions to the personal data on the charge sheet, Captain (b)(6)

TC: No, sir.

MJ: I see no pretrial confinement or restriction. But it is my habit of asking if you have done any pretrial confinement or restriction for these charges, Sergeant Travis. Have you?

ACC: No, sir.

MJ: The court will note the personal data on the charge sheet.

Sergeant Travis, at this point in the trial, this is where I was going to take a break originally. We can take another break if you need one. Do you need one?

ACC: No, sir.

MJ: All right. We have now entered the sentencing phase of the trial. So at this point, you have the right to present matters in extenuation and mitigation. That is matters about these offenses or about yourself that you want me to consider in determining an appropriate sentence. Included in your right to present such matters are the rights that you have to testify under oath, to make an unsworn statement, or to remain silent.

If you testify under oath, you may be cross-examined by Captain (b)(6) and questioned by me. If you decide to make an unsworn statement, you cannot be cross-examined by Captain (b)(6) and I will not ask you any questions either. However, Captain (b)(6) retains the right to rebut any statement of fact that you make in your unsworn statement.

Do you understand that?

ACC: Yes, sir.

MJ: If you decide to make an unsworn statement, you may do so orally or in writing, personally or through either one of your counsel or both of your counsel, or you may use any combination of those methods to get your evidence in front of me.

If you decide to exercise your right to remain silent, that cannot be held against you and will not be held by me against you in the sentencing phase of this trial.

Do you understand that?

ACC: Yes, sir.

MJ: Captain (b)(6) does the government have any evidence to present on sentencing?

TC: Yes, sir. First, the government requests that the court consider the matters addressed in providency for the purpose of sentencing.

MJ: Any objection?

IMC: No objection, Your Honor.

MJ: I will consider all those matters.

Anything further, Captain (b)(6)

TC: Sir, may I approach?

MJ: You may.

TC: The government offers Prosecution Exhibits 2 through 4 marked for identification and asks that they be admitted into evidence and that the words "for identification" be deleted.

The military judge perused the documents.

MJ: Let's take these one at the time. Any objection to Prosecution Exhibit 2, Lieutenant Colonel (b)(6)

IMC: Sir, to the exhibit as -- in its entirety, no. To sections thereof, yes.

MJ: Okay.

IMC: Specifically on page -- on the Page 11, the first Page 11, it is not in consistency with the IRAM.

MJ: Okay. Let's identify that page for the record. That is the one that has 20001219 up in the upper left-hand corner below the Article 137 block. It says 20001219.

IMC: I have --

MJ: It says he was entitled to combat --

IMC: Oh, yes, sir. Yes, sir. Yes, Your Honor. I was looking at another --

MJ: Okay. That's the page you are on. Right?

IMC: Yes, sir. And the Page 11 entry directly below that says, "counseled this day concerning." And it was signed by the accused but not signed by his commanding officer.

MJ: Okay. Anything else on that page?

IMC: Yes, sir. Yes, Your Honor. On the second column, the top, you see where it says "SNM" at the bottom. And then it says "CO" scratched out, and first sergeant right next to

that. That is First Sergeant (b)(6) Again, it is not signed by the accused's commanding officer. The entry directly below that, while the First Sergeant did not scratch out "CO," it is still the same signature there. And the entry directly below that, the same signature there. So we object to both of those.

MJ: Okay. So that entire page with the exception of the block that I used as an identifying mark?

IMC: Yes, Your Honor.

MJ: Okay. Let's stop right there.

Captain (b)(6) your response, first off, to the fact that the one on 2001, 9 March, on the left-hand side of the column, does not contain a signature for anybody in the chain of command, and then also the fact that it is the First Sergeant on these other three as opposed to the CO?

TC: As for the First Sergeant, I don't see a problem with the First Sergeant signing on behalf of the CO.

MJ: Why not?

TC: Because he is representing the command, and he is representing the CO with that signature.

MJ: So you are not aware that there is a requirement that actually has to be the CO, even though the CO -- the abbreviation "CO" are on the administrative --

TC: That is correct, sir.

MJ: Okay. What about the 2001, March 9th?

TC: I'm sorry, sir. Can I --

MJ: On the left-hand side.

TC: The argument being that it is incomplete because it does not have a signature at all, sir?

MJ: Of anybody other than the accused.

TC: Well, it has a -- it has the signature of the accused, sir, which would evidence that he was made aware of it and it was substantially conformed with the IRAM.

MJ: Okay. Your objection is overruled. I am considering all of these. I think it is substantially comportance with the IRAM to have the accused sign it and to give him a chance for rebuttal. It is dated and signed by the accused. The fact that it is signed by someone in the command is not dispositive to my ruling, especially for the fact that it is signed by the First Sergeant as opposed to the CO.

What is your next objection?

IMC: On the next page, Your Honor, the same objection as to the non-rec signed by the accused, not signed by the CO.

MJ: Okay. Same basis, Captain (b)(6)

TC: Yes, sir.

MJ: The objection is overruled. Next.

IMC: Next page, the first entry there is signed by the commanding -- it says "commanding officer," but then it says "XO," and it is not signed by the accused.

MJ: Now we have the reverse.

Captain (b)(6) , can you with a straight face make an argument reversing your prior position?

TC: Sir, I fortunately am not reversing my prior position because underneath it states that the -- that Sergeant Travis was not available for signature.

MJ: Due to terminal leave. Okay. Whatever that means.

The objection is sustained. I am not going to consider that. I am not going to consider that at all.

Your objection is sustained on that, Lieutenant Colonel (b)(6)

IMC: Thank you, sir. The next entry, the same objection. Again, it was signed by the First Sergeant. And on the next column, the first entry again signed by the First Sergeant.

MJ: Those objections are overruled. In my mind, what is dispositive here is that the Marine had a chance to rebut

it. The Marine saw it. The Marine acknowledged it, and signs it. And he did that. The signature that is not signed by him, I am not going to consider.

IMC: Yes, Your Honor. And the next page are a series of participated-in and entitlements. No objection to those.

MJ: Okay.

IMC: The next page, however, there are -- Page 11, there are entries on offenses and punishment that are more than two years old in relation to NJP -- or no, I take that back.

Did you --

I'm sorry. Can I talk to --

MJ: You may. Go ahead.

IMC: May I see the exhibit that the --

MJ: You may.

IMC: Approach?

MJ: Sure.

Colonel (b)(6) is looking at the page following the last Page 11, which --

IMC: Thank you, Your Honor.

MJ: Okay.

IMC: No further objection to that exhibit.

MJ: All right. And this is -- okay. This is just the BTR or the BIR, I guess, we'd call it?

Right, Captain (b)(6) that's all this is?

TC: Yes, sir.

MJ: Okay. So although not normally part of the SRB, it is put in here on the end, it looks like, of the SRB.

Okay. So I am going to consider -- Prosecution Exhibit 2 for identification is admitted into evidence. The words

"for identification" are stricken. I believe I am going to consider that whole exhibit except for that one entry that we spoke about. And I have actually crossed that out myself on the original exhibit, just so I don't read it or look at it during my deliberations.

How about Prosecution Exhibit 3, Colonel (b)(6)

IMC: I'm sorry. What is that?

MJ: That is a -- it looks like -- well, it looks -- it is a copy of a newspaper article from the Washington Post, it looks like.

IMC: We object to this, Your Honor, on relevance, on 1001 basis. There is no showing that this actually had any substantial direct impact on the unit. It is just a newspaper article. It has no relevance to this.

MJ: Okay. So the objection is under 1001 what?

IMC: 1001(b), Your Honor, it is not proper aggravation in that it's not -- it does have a -- we are missing the exact language but --

MJ: So you are saying it has to be an impact?

IMC: Yes, Your Honor.

MJ: Direct or adverse impact on the unit itself?

IMC: Yes, Your Honor.

MJ: And so with this newspaper article, you don't believe that that's the case?

IMC: There has been no showing of that, Your Honor.

MJ: Okay. Let me just check out what you are citing here. I know the rule. I just want to look it up.

1001(b)(4)?

IMC: Yes, Your Honor.

MJ: Is that what you are going under?

IMC: Yes. And I am talking about the sentence where it talks

about significant adverse impact on the mission, discipline, or efficiency of the command. Merely putting the article in does not present any evidence to this court that there was any such significant impact on the command.

MJ: Okay.

IMC: It is just a newspaper article. And what the trial counsel is asking you to do is draw an inference from the fact that a newspaper article was out there, that it had some impacts.

MJ: Your response, Captain (b)(6) How do you think -- why do you think it should be admissible under 1001(b)(4)?

TC: Sir, on its face, this is an aggravating factor that has directly attributed to the offenses that we are talking about. This article stemmed precisely from these offenses. So it is an aggravating factor. And it's something that has been made public. And it mentions the Marine Corps expressly, talks about the Marine Corps' disciplinary system and the command's rush to move this case. So on it's face, it is clear that it impacted the command. It is possible to have somebody come in and explain that this article was, I suppose, read or known. However, on its face, it directly affects both the command and the Marine Corps. In addition, it would go to general deterrence regardless because this is a published article that would be read by the population, read by other Marines. And furthermore, it goes to evidence of lack of rehabilitative potential because, in the case of Sergeant Travis, he was denying his guilt in this incident.

MJ: Colonel (b)(6)

IMC: Yes, Your Honor. The fact that Sergeant Travis sits here before you offering a plea of guilty directly contradicts the content of this article. So you have no evidence before you how those comments got in the media. You have no evidence before you as to the context in which any of those comments were made. And so it has no -- it has no link to anything other than the fact that it is a newspaper.

MJ: Your objection is overruled. I am going to consider it. The key factor in 1001(b)(4) is may present evidence, and

more importantly evidence in aggravation includes but is not limited to. And it lists those specific factors. So I believe this is relevant for most of the reasons that Captain (b)(6) explained. I believe it is relevant, which was your first objection. And second of all, I believe it is proper aggravation evidence under 1001(b)(4). The fact that he is here pleading guilty -- and I haven't read this article. If the article says that he wasn't guilty or whatever, I think it is not critical to my analysis. So I am going to admit that exhibit. Prosecution Exhibit 3 for identification is admitted into evidence. The words "for identification" are stricken.

How about Prosecution Exhibit 4? Any objection to -- it looks like four different pictures?

IMC: No objection, Your Honor.

MJ: Prosecution Exhibit 4 for identification is admitted into evidence. The words "for identification" are stricken. I'll read these during deliberations.

Any further evidence, Captain (b)(6)

TC: Yes, sir. The government calls Captain (b)(6)

MJ: Very well.

Captain (b)(6) before we take the next witness, we are going to take a break. I should have told you before you left.

Excuse me, Captain.

The court will be in recess for the next 10 minutes.

The court-martial recessed at 1509, 19 August 2004..

The court-martial was called to order at 1518, 19 August 2004.

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

Captain (b)(6) you were going to call Captain (b)(6)

TC: Yes, sir.

MJ: Go ahead please.

Counsel, please feel free to roam wherever you want to here. I understand the seating is a little awkward.

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

DIRECT EXAMINATION

Questions by the prosecution:

Q. Captain (b)(6) please state your name, rank, and unit.
A. (b)(6) I am a captain in the United States Marine Corps. And I am currently assigned to Battalion Task Force 2/2.

Q. How do you spell your last name?
A. (b)(6)

Q. How long have you been in the Marine Corps?
A. I was commissioned in the summer of 1998 in -- end of the summer, in Quantico, after OCS, but then went back, finished law school, and completed TBS in 2000.

Q. Are you a lawyer?
A. I am.

Q. Did you deploy with 2/2 in February of 2004?
A. I did.

Q. What were your duties in the month of April with 2/2?
A. In the month of April, and the entire time I have been with 2/2, as soon as we got to Iraq, I have been responsible -- I have been the judge advocate for the battalion. And my duties involve just advising the battalion commander on any of the legal issues that he encountered, advising him on investigation, rules of engagement, and detainee handling issues. And I was also the OIC of the detention facility.

Q. What does that mean, to be the OIC of the detention facility?
A. The Colonel assigned me to be responsible for the -- the actual running of the facility, from the guard force training to ensuring the well-being of the detainees, to basically establishing the files and the paperwork that was required on each detainee, things of that nature.

Q. Did you have Marines working for you?

A. I did.

Q. How many?
A. Sixteen. Sixteen Marines and then a staff NCO as well.

Q. Was Sergeant Travis one of those Marines?
A. He was.

Q. Were efforts made to instruct the Marines guarding at this detention facility on their duties as guards?
A. Yes. They were. I knew -- I knew the importance of it, just having seen cases in the past, being a lawyer, and also leading up to my assignment. It was one of the things that I knew that I was going to be involved with heavily. I didn't think I was going to be the OIC when I checked into the battalion, but --

Q. If you could, just give us a summary of the efforts that were made to teach the guards what their duties were.
A. I -- the first week that they were assigned their duties, and even the second week, we -- the entire battalion did right-seat-left-seat rides with the Army unit that was there, which means that the Marines who -- the Marines who were going to be guards basically sat and observed for several days what the Army was doing. And then after a few days of doing that, close to a week, then the Marines did it. And the Army observed and helped. Prior to that, I gave a brief prior to leaving, when we were in Camp Lejeune, that -- that touched on detainee handling, the importance of it. And I also, prior to the Marines assuming their duties, also held a class in the chow hall that instructed it.

Q. To your knowledge, was Sergeant Travis present at these briefs?
A. It was a battalion-wide brief before they left Camp Lejeune. So of course, with the entire battalion there, I couldn't say that he was. And I also -- unfortunately, I can't absolutely, positively put him at the chow hall brief either. I didn't -- I should have taken a roster, but I didn't.

Q. Should he have been there?
A. He -- he -- he should have been there when the -- when the Marines were -- when I got the list of the names from the company commanders on who they were willing to give up to be guards, I sent the information out that I wanted to see all the guards at the chow hall.

Q. In addition to those briefs, did you make any other efforts, individually, with the guards?
A. I did, always. I knew that just giving a one-hour class in the chow hall -- or one-and-a-half hour class in the chow hall wasn't going to cut it. You know, so in addition to the right-seat-left-seat rides they did with the Army, I was down at the detention facility more times than I would like to -- to think about.

Q. What types of things did you discuss with the guards at the detention facility?
A. Made sure that I individually verified with -- with each of them that they had read the SOP and that they understood it. I often told stories about, for example, the Lieutenant Colonel in the Army that had gotten court-martialed for detainee abuse. Reiterated, Hey, don't -- don't -- just tried to stress to them the importance of -- of taking care of these individuals, talked to them. I always was down there asking if they had any question, any issues. You know, and Sergeant Travis, to his credit, he -- he asked questions, more so -- more, in fact, than -- than the other guards. But they were always -- they were always questions that were geared around his -- his understanding of the rules. So --

Q. Did this all take place, then, before approximately 13 April 2004?
A. Yes.

Q. Did you ever mention electricity specifically?
A. I did, in fact.

Q. How was that?
A. In -- in -- in the stories that I would tell, Hey, you know, let's not -- don't be on CNN. Don't embarrass your mother. If something happens here, you know, this is going to be national consequences. Another theme was also, This is not Saddam's regime. And one of the things that he used to do to prisoners was he would shock them. And I, in fact, told the Marines on multiple occasions, you know, we don't shock people here, never -- when I said it, never thinking that it was even a possibility that it would happen. But it was just an example that I gave.

Q. What were Sergeant Travis's duties at that detention facility?

A. He was one of the sergeants of the shift.

Q. What is that? Was he an NCO of a shift?
A. He was. Each shift had a sergeant.

Q. What are the sergeants' responsibilities then, beyond regular guard duties?
A. Just -- he -- he was, in addition to the Staff Sergeant that I counted on, who was the -- the assistant to me, I just expected the sergeants and made it clear to them that they were responsibility for, you know, the conduct of the other Marines as well.

Q. Was it a leadership position then?
A. Absolutely.

Q. Can you recall, around the middle of April, how many detainees were in the facility, just a rough estimate?
A. It would fluctuate, depending on operations. We -- we never had -- we were never completely full. And it was 35. I can remember only, maybe, a period of three days that we had zero. I honestly couldn't say without -- without being -- being sure. I know I --

Q. Would it have been multiple detainees?
A. It -- yes. We -- we always had multiple detainees.

Q. Why would a -- why would an Iraqi national be detained in that facility?
A. For a variety of reasons. During the operations, the Marines are out there. And they are expected, at this time, especially during mid-April, it was a pretty -- pretty difficult time for the Marines that were out in the field operating. There was a -- a huge pilgrimage that was going on from north to south.

Q. Let me ask you this specifically, Captain (b)(6) For what reasons would you take an Iraqi national out of his town and put him in that detention facility?
A. Okay. Attacking coalition forces, threatening coalition forces, being a target where we gathered intelligence saying that he was -- he was a threat to coalition forces. Also if he potentially committed crimes against the local Iraqis, we were responsible for making sure that -- that that was -- that they were stopped from doing that as well.

Q. Now, these detained Iraqis, were they necessarily guilty

of any offense?

A. Not necessarily. In fact, a large percentage of them end up getting let go. Not, because after the HET team would meet with them and make a determination, then we would talk to the Marines and question them about why, why they were detained --

Q. Why would you let a detainee go?

A. Either because we didn't have enough evidence to get him admitted to the regional detention facility; we didn't have a case against the individual; or the Marines in the field, though meaning well, made a wrong call, made a wrong decision on detaining them. And at this time, it was still relatively new to a lot of the Marines in the field. So there was still some confusion. There was a lot of -- for example, digging in the fields I know is -- immediately, when the Marines just get here, they hear so much about digging mortar pits that, when they see somebody digging in the field, they were very aggressive in trying to stop something like that. So unfortunately, some individuals like that got detained when really all they were trying to do was irrigate their fields.

Q. To your knowledge, was the detainee in this case released?

A. Yes. He was.

Q. How can you say that?

A. Because when I was notified of the incident, two to -- two to three days after it had happened, and it was looked into, we had just released quite a few detainees. And it turned out that he was one of them.

Q. Where do you release these detainees?

A. We used -- we used to try to make the effort to release them to their town councils. But the town councils were -- to coordinate a meeting with the companies and the town councils became very difficult. So if I couldn't release them to the town councils through the company commanders, I would personally walk them to our meeting tent at the front of the FOB.

Q. Are these detainees then released back into society?

A. They are. Yes.

Q. Do you speak or did you speak with the detainees before they were released?

A. I always speak to the detainees that I released from the

meeting tent. And --

Q. Did you ever hear any complaints about a detainee being shocked?
A. Never.

TC: Captain (b)(6) Thank you. That is all I have.

MJ: Lieutenant Colonel (b)(6) cross-examination?

DC: Yes, sir. Thank you.

CROSS-EXAMINATION

Questions by the defense (Captain (b)(6)

Q. Captain (b)(6) your unit took over the detention facility sometime in March?
A. Yes. It would have been in March sometime.

Q. And the main purpose of the detention facility, as you stated on direct, was to take in or hold Iraqis that may have been taking actions against coalition forces? That was one reason. Correct?
A. That was one reason. Yes.

Q. And some of those detainees ended up being high-value targets that you had actually targeted before you went out to get them. Correct?
A. That is correct.

Q. Now, these detainees, would you say most of them were grown men such as the individuals in this -- in this room. Correct?
A. They would be. We --

Q. The majority were grown men?
A. Yes. They were.

Q. And this detainee that was allegedly shocked on the 13th of April was also a grown man. Correct?
A. I think --

Q. He wasn't a child?
A. No. He was not a minor.

Q. He wasn't? So he was a grown man. Correct?
A. He would --

Q. Yes or no?
A. Well, at the time, I didn't know how old he was. But later investigation by yourself showed that he was in his mid twenties.

Q. A grown man. Correct?
A. Yes.

Q. And some of these people that were actually detained would have taken or could have taken action against people from 2/2, like anti-coalition actions against Sergeant Travis's own unit. Correct?
A. Yes.

Q. Now, this detention facility, you said you are in charge of making sure that the sergeants were briefed --
A. I was.

Q. -- and the guard force in general?
A. That they knew their duty. Yes.

Q. But you also stated you don't know for sure that Sergeant Travis was actually at those briefs. Correct?
A. I -- I couldn't swear to that. No.

Q. And there is a standard operating procedure for that detention facility?
A. Yes. There was.

Q. And those detainees at that detention facility, if they are ever escorted outside the cage, are required to have sandbags over their head?
A. Prior to a frago being issued. Yes. They should have sandbags over their head.

MJ: Hang on a second.

Prior to what?

WIT: Sir, there was a frago that was issued banning the use of sandbags. So at the time that that was taking place, yes, they should have had a sandbag over their head.

Questions by the defense (Captain (b)(6) *(continued):*

Q. So prior to the 13th of April, when this detainee was shocked, the detainees that were coming out of their cell, whether they were going to the head or the HET building, had to have sandbags over their head?
A. Yes.

Q. And they were flexicuffed 24/7?
A. Yes. They were.

Q. And that was for security purposes. Correct?
A. Yes.

Q. Now, you stated that when you take -- or when you release these detainees, some of them you take to the -- to a tent or a meeting tent?
A. Yes.

Q. And you talk to every single one of these detainees when they leave?
A. I do.

Q. You personally do?
A. I do.

Q. Do you take a linguist with you?
A. I do.

Q. And you never ever heard any one of those detainees that you released back into society complain about their treatment?
A. Never.

Q. No one ever mentioned anything about getting shocked?
A. Never.

Q. No one complained whatsoever about the guards' treatment of them while they were at that facility?
A. No. They did not.

DC: Sir, permission to approach the witness?

MJ: Granted. Go ahead. We don't have a bailiff, so just go ahead.

DC: Actually, if I may show -- opposing counsel has a copy of this. Sir, it is Defense Exhibit A, just so you know what I am handing to him.

MJ: Okay.

Questions by the defense (Captain (b)(6) (continued):

Q. Captain (b)(6) could you please take a look at that, just thumb through the pages, if you will.

Do you recognize that?

A. Not really. But I am assuming it is the detainee logbook, photocopies.

Q. Okay. Well how do you recognize that it is probably the detainee logbook?

A. Because I see it says -- it has, The watch officer calls to inform facility, entries of HET Marines coming on and off deck, so I know what it is.

Q. And that is the -- well, when you say that is the "logbook," where is that logbook, where was that maintained?

A. At the detention facility.

Q. Were those guards at the detention facility required to maintain that logbook?

A. The sergeant was. Yes.

Q. And who gave them that -- that direction to maintain that?

A. The -- both the division SOP did, and I did as well.

Q. So as a part of a standard operating procedure and the daily procedures at that brig, the guard force was required to maintain that logbook?

A. Yes.

Q. And you do recognize that as excerpts from the logbook?

A. I do.

Q. Take your time if you need to take --

A. No. I do, definitely, now because I can see my initials at the top of every page, which is what I would do after I had reviewed it.

DC: Permission to approach, sir?

MJ: Go ahead.

Questions by the defense (Captain (b)(6) (continued):

Q. Captain (b)(6) , when I was talking to you about some of the procedures, per your SOP, that were required by the guards, you talked about the hood and also the flexicuffs.

Do you remember me asking you that?

A. Yes.

Q. On the 13th of April, around that time, at some point you instructed -- or Staff Sergeant (b)(6) was instructed to wire down plywood to the tops or some of those Hesco barriers. Correct?

A. The ones on the outside. Yes.

Q. On the outside of the tent?

A. On the outside. They were -- yes. There was wood on the top of the Hesco barriers on the outside. On the inside as well, but there was a -- it was tented on the inside. And the outsides were not.

Q. Okay. So fair to say the Hesco barriers on the outside of the tent, at some point they started wiring down plywood to the top?

A. Yes.

Q. And that was another security measure. Correct?

A. It was.

Q. And just prior to the 13th of April, about seven -- six or seven days later, a guard -- or excuse me, a detainee actually escaped from that facility. Correct?

A. Yes. He did.

MJ: Hang on a second. You said prior to 13 April?

DC: Yes, sir. About -- about a week prior to.

MJ: Okay. Thank you.

Questions by the defense (Captain (b)(6) (continued):

Q. And that detainee was never found, as far as you know?

A. No. He was not. We -- we didn't look for him.

Q. But he was never found?

A. No.

DC: Sir, at this point, I would like to offer Defense Exhibit A

for identification into evidence. We ask that the words "for identification" be stricken.

MJ: Captain (b)(6)

TC: No objection, sir.

MJ: Defense Exhibit A for identification is admitted into evidence. The words "for identification" are stricken.

Do you still need this with the witness?

DC: No, sir. I do not.

MJ: Okay. I will keep it. Go ahead.

DC: No further questions.

MJ: Redirect, Captain (b)(6)

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Captain (b)(6) , was it any secret that detainees were not to be shocked?

A. No.

MJ: Captain (b)(6) , I'm sorry. I didn't hear your question. Was is there any secret about what?

TC: Whether detainees were to be shocked.

MJ: Okay. And the answer was no? Is that right?

WIT: No, sir. They were not to be shocked.

MJ: Okay. Go ahead.

Questions by the prosecution (continued):

Q. Captain (b)(6) , were a detainee exiting the facility to complain about his treatment, would you have held him there longer to discuss it?

A. Absolutely.

TC: Thank you.

Thank you, sir.

MJ: Recross, Captain (b)(6)

DC: No, sir.

MJ: Okay.

The witness was excused and withdrew from the witness stand.

MJ: Captain (b)(6)

TC: Sir, the government calls Private Sting.

Private Andrew J. Sting, U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Private Sting, please state your name, rank, and unit.
A. Name is Andrew Joseph Sting. I'm a private. My unit is 2/2, Golf Company.

Q. How do you spell your last name?
A. S-T-I-N-G, sir.

Q. How long have you been in the Marine Corps?
A. Little over a year now, sir.

Q. When did you graduate from boot camp?
A. September 5th, sir.

Q. Of 2003?
A. Yes, sir.

Q. Did you deploy to Iraq in February of 2004?
A. Yes, sir.

Q. Were you part of 2/2 then?
A. Yes. I was, sir.

Q. Do you know Sergeant Travis?
A. Yes, I do, sir.

Q. How do you know him?
A. He was SOG on detainee watch, sir, for our shift.

Q. Were you a guard at the detention facility Mahmudiyah, Iraq?
A. Yes. I was, sir.

Q. Was that in the month of April 2004?
A. Yes, sir.

Q. Were you in a guard team?
A. Yes. I was, sir.

Q. Who all was on your guard team?
A. Myself, Private Trefny, Private Gabbey, and Sergeant Travis, sir.

Q. Do you recall what Sergeant Travis's billet was at that time?
A. He was basically in charge of us, sir, in charge of that shift.

Q. Was he in charge of you?
A. Yes, sir.

Q. What were your duties as a guard?
A. To look after the detainees, sir, and make sure they are fed and everything else.

Q. PFC Sting, did you end up pressing live electrical wires to a detainee's body on 13 April 2004?
A. Yes. I did, sir.

Q. How did that come about?
A. Are you asking, like -- I don't quite understand.

Q. How did the idea to shock a detainee come up?
A. Found wires or they were brought in. And the guy was out of hand all day.

Q. Who brought wires in?
A. Sergeant Travis, sir.

Q. Where did he bring them in from?
A. I honestly don't know, sir.

Q. Was that the first you had seen of those wires?
A. Yes, sir.

Q. What did he say when he brought the wires in?
A. He said, Look what I found, sir.

Q. What did you take that to mean?
A. Shock the cage, or shock the person, or look what we could do with them. I don't know, sir.

Q. You said you were -- you said this detainee was making noise?
A. Yes, sir.

Q. What does that mean?
A. He was talking. They were -- they are not allowed to talk. We tell them not to. Like, we had a list of words in their language on how to tell them, be quiet, go to sleep, no, yes. And we told him, you know, stop talking. Sergeant Travis told him to stop talking. And the guy just wouldn't.

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

Q. What did you and Sergeant Travis end up doing with those wires?
A. We ended up putting them on the cage, sir, and shocking the individual, sir.

Q. Was Sergeant Travis with you when this happened?
A. Which one, sir?

Q. When you put the wires on the cage, Sergeant Travis was with you?
A. Yes, sir.

Q. Did he help you put the wires on the cage at all?
A. In a way, sir. Yes.

Q. How do you mean?
A. He was just kind of there, sir. And, like, you know, said, Wrap them around, or whatever, sir, like, Wrap it around the cage, and just like that, sir.

Q. Did -- what was your impression as to what Sergeant Travis wanted you to do with those wires?
A. You mean, like, which time?

Q. With regard to the cage.
A. To get the guy to stop touching the cage, sir.

Q. Did you believe that Sergeant Travis wanted you to put those wires on the cage?

A. Yes, sir.

Q. Did it work?
A. I don't believe so, sir. No.

Q. Why do you say that?
A. There was no reaction from anybody. Like, they didn't pull back from the cage or nothing like that, sir.

Q. What happened when you realized that that wasn't going to work anymore?
A. I realized that it wouldn't do anything. The guy would just keep doing what he was doing.

Q. So what did you do?
A. I just shocked the guy, sir.

Q. What do you mean?
A. Took him out of his cage. And as he was walking in front of me, Gabbey, PFC -- Private Gabbey stopped him in front of me. And I shocked him, sir.

Q. How did you come up with the idea to actually shock the detainee on his body?
A. Sergeant Travis said, Let's get him. And he just -- I don't know how --

MJ: Hold on just a second.

Okay. Repeat the last thing you said. Sergeant Travis said what?

WIT: Let's get him, sir.

MJ: Go ahead.

Questions by the prosecution (continued):

Q. Did he say that after the attempt on the cage?
A. Yes, sir.

Q. And what did you take that to mean when he said, Let's get him?
A. To put the wires on the detainee, sir.

Q. Did you end up doing that?
A. Yes, sir.

Q. Who all was involved with that?
A. Everybody on that shift, sir.

Q. Would that be PFC Trefny, yourself, PFC Gabbey, and Sergeant Travis?
A. Yes, sir.

Q. Now, was Sergeant Travis present, watching you, when you shocked that detainee?
A. No. He was not, sir.

Q. Where was he then?
A. I believe he was outside, watching detainees outside, sir.

Q. At what point did he exit the tent?
A. Right before it happened, sir.

Q. Was it your -- or did you believe that Sergeant Travis wanted you to shock that detainee on his body?
A. I assumed so, sir.

Q. Where on the detainee's body did you shock him?
A. On his arm, sir, right here.

Q. Did the first attempt work?
A. No, sir.

MJ: Where was it, exactly?

WIT: When it worked, sir, it was right here.

MJ: Okay. On the top of the forearm, the witness is mentioning, with his palm facing down.

Go ahead.

Questions by the prosecution (continued):

Q. So that did not work, the first attempt?
A. The first attempt was here, sir. That one is the one that didn't work, sir.

TC: Oh, I'm sorry.

MJ: Okay. And the first attempt was on the right humerus, I guess, on the outside of the right arm. The second attempt was on the top of the right forearm.

Go ahead.

Questions by the prosecution (continued):

Q. And the first attempt, on the shoulder area, did not work?
A. Yes, sir.

Q. What did you do after that did not work?
A. Basically turned around and messed with the little box that we had, sir, the converter box, and then tried it again, sir.

Q. Did it work the second time?
A. I believe so, sir.

Q. How could you tell?
A. Just by, like, the guy pulled his arm away and, kind of like, lifted his mask up and looked at us.

Q. What was the detainee wearing?
A. Flexicuffs, sir, and a sandbag over his head.

Q. Could the detainee see anything?
A. I don't believe so, sir.

Q. Could he then use his hands for anything?
A. I don't -- what do you mean? Like use them to grab me? What?

Q. Did the flexicuffs cause him not to be able to use his hands?
A. For the most part. Yes, sir.

Q. How big was this detainee?
A. A little bit bigger than you, sir.

Q. Taller or --
A. Taller and a little bit wider, sir.

Q. And --

MJ: Captain (b)(6) do you want to describe for the record about how big you are?

TC: I am five foot eight inches tall, sir, and of a rather large build.

MJ: Okay. I was going to ask you to do that without exaggeration but -- okay. A muscular build then? That's fine. Go ahead.

TC: Sir, may I retrieve a prosecution exhibit?

MJ: You may. Which one would you like?

TC: Prosecution exhibit 2, sir.

MJ: Four?

TC: Prosecution Exhibit 4, sir.

MJ: Okay. Go ahead.

Questions by the prosecution (continued):

Q. PFC Sting, I am handing you Prosecution Exhibit 4. There are four pages there. Can you flip through that quickly and look at those pictures?

PFC Sting, do you recognize those pictures?

A. Yes. I do, sir.

Q. Please hold up that first picture, that first page, so that the military judge can see it.

What is that a picture of?

A. It is a picture of the entrance to the tent, the detainee center, sir.

Q. That is where -- that was the detention facility, the entrance to the detention facility?

A. Yes. It was, sir.

Q. Please flip to the second page and hold that up in the same way.

What is that a picture of?

A. It is a picture of the inside of the tent, sir.

Q. What is that on the left?

A. There, that is their cells, sir.

Q. Are those Hesco barriers turned into cells?

A. Yes. They are, sir.

Q. Okay. And on the right, are there other cells?
A. There is other smaller ones. Yes, sir.

Q. Flip to the next page please. Please show that to the military judge.

What is that a picture of?
A. It is a picture of the table where we did the paperwork at, sir. And there is the cages right there, sir.

Q. Is that near where you shocked the detainee?
A. Yes, sir.

Q. On that picture, can you show the judge where the detainee was standing?
A. Yes, sir.

Right about there, sir.

TC: The witness is pointing to a spot about one inch up and one inch from the left, bottom corner of that picture.

Questions by the prosecution (continued):

Q. Can you flip to the last picture please? Show that to the judge.

What is that a picture of?
A. It's a picture of the box that I used, sir.

Q. Is that where you plugged the wires into?
A. Yes, sir.

Q. Thank you, PFC Sting. I am going to retrieve that from you.

TC: Returning Prosecution Exhibit 2 -- I'm sorry, 4 to the judge.

Questions by the prosecution (continued):

Q. What kind of wires did you use when you successfully shocked the detainee?
A. I don't know if you ever heard of Romex, what Romex wires are?

Q. I do not know.
A. It is, like, basic household wiring. I just -- it

usually has three wires inside. We just took -- I just took the -- I just took the wires, the inside ones, out. And each one was about that long. There was two of them.

TC: The witness indicated with his fingers a length probably about three and a half feet long?

WIT: And attached to that was -- it looked like to be the remains of maybe like a lamp outlet plug that had been cut off and the ends had been kind of pulled apart and spliced.

Questions by the prosecution (continued):

Q. Did you plug that into the converter you showed us?
A. Yes. I did, sir.

Q. You plugged that in and then touched the other ends to the detainee?
A. Yes, sir.

Q. Private Sting, had Sergeant Travis not brought in those wires initially, would you have ended up shocking that detainee?
A. If they weren't there, sir, I don't -- I don't think we would have.

Q. Would you have come up with that idea by yourself?
A. I don't believe so, sir. No.

Q. Did you ever ask Sergeant Travis if it was okay if you shocked the detainee?
A. I don't think I ever actually physically asked him, sir. No.

Q. Private Sting, what has happened to you since this incident?
A. I got a year in the brig. And a (b)(6) sir.

Q. Did you go to a court-martial?
A. Yes. I did, sir.

Q. When you say "a (b)(6) do you mean a (b)(6) discharge?
A. Yes, sir.

Q. Private Sting, did you hope to stay in the Marine Corps?
A. I do, sir. Yes.

Q. I missed one thing I wanted to ask you about, Private Sting. And that is a discussion that took place following the incident, where Major (b)(6) was conducting an investigation. Do you recall that discussion with Sergeant Travis?
A. The one on the bridge, sir?

Q. Yes.
A. I don't -- I don't remember exact words that were said. But yes, I remember.

Q. What was the conversation about?
A. The incident and what we got questioned about, sir.

Q. You were talking about -- were you talking with Sergeant Travis about the investigation?
A. I think we were talking about what was -- what we said and what happened, sir. Yes.

Q. Did you resolve anything with this conversation?
A. What do you mean?

Q. At that point, did you feel like you were going to be the one to accept responsibility for this?
A. Yes, sir. I -- I originally said I would.

Q. When -- who did you say that to?
A. I think, Trefny, sir.

Q. And in this other conversation, was both Private -- were both Private Trefny and Sergeant Travis present?
A. Yes, sir.

Q. Did Sergeant Travis ever indicate to you that he would take responsibility along with you?
A. No, sir.

TC: Private Sting, thanks. That is all I have at this time.

MJ: Colonel (b)(6)

IMC: Thank you, sir.

CROSS-EXAMINATION

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Good afternoon, Private Sting.
A. Good afternoon, sir.

Q. I would like to clarify one thing real quick. You got convicted because you actually stung -- you actually shocked that prisoner. Right?
A. Yes. I did, sir.

Q. Not because -- it is not Sergeant Travis's fault that you -- that you are in the brig. You pled guilty. Right?
A. Yes. I did, sir.

Q. Thank you. I would like to focus your attention for the moment on the conditions at Mahmudiyah. All right?
A. Yes, sir.

Q. Let's talk about the living conditions for the Marines. Would you agree that they are austere living conditions?
A. Yes, sir.

Q. Would you agree that it was dirty?
A. Yes, sir.

Q. Dusty?
A. Yes, sir.

Q. Hot?
A. Yes. It was, sir.

Q. Miserable?
A. Yes, sir.

Q. Eating tray rats?
A. Yes, sir.

Q. Showers don't always work?
A. Yes, sir.

Q. Some degree of stress involved in that for all the Marines. Right?
A. Yes. There was, sir.

Q. You are also under small arms attack from time to time?
A. Yes, sir.

Q. Mortar attacks?
A. Yes, sir.

Q. Sometimes rather severe mortar attacks?
A. Couple times, sir. Yes.

Q. That also creates some degree of stress for the Marines there. Correct?
A. Yes. It does, sir.

Q. Your duties there, you are providing camp security. Right?
A. Yes, sir.

Q. You're doing duty on guard post. Correct?
A. Yes, sir.

Q. You're going on patrols. Right?
A. Yes. We were, sir.

Q. You are guarding detainees also. Right?
A. Yes, sir.

Q. Some very important duties. Right?
A. Yes. They were, sir.

Q. Subjecting yourselves to hostile fire and potential conflicts with the enemy. Right?
A. Yes, sir.

Q. Also creating some degree of stress?
A. Yes. It did, sir.

Q. So in some, this was kind of a stressful occupation for the Marines in Mahmudiyah. Right?
A. Yes. It was, sir.

Q. The living conditions, the hostile fire, the working conditions, all created some degree of stress on you, Sergeant Travis, and all the Marines at Mahmudiyah?
A. Yes, sir.

Q. Let's focus your attention, for the moment now, on the detainees. Would you agree that these guys were generally bad people?

A. I honestly couldn't tell you, sir. But they had to be in there for a reason. So yes, sir.

Q. Okay. Well, let's talk about why they are in there. Would you agree that these individuals were apprehended by U.S. or coalition forces?
A. Yes, sir.

Q. And they are apprehended, presumably, because they are either suspected of or have engaged in insurgency activities against U.S. or coalition forces?
A. Yes, sir.

Q. And that would include Marines?
A. Yes. It does, sir.

Q. That would include Marines from 2/2?
A. Yes, sir.

Q. That would include Marines from Golf Company, 2/2?
A. Yes, sir.

Q. That would include Marines from your platoon?
A. Yes, sir.

Q. That would include you?
A. Yes, sir.

Q. And these were individuals that had been detained by 2/2 from time to time. Correct?
A. Yes, sir.

Q. Because they are suspected of or had engaged in insurgency activities against 2/2. Correct?
A. Yes, sir.

Q. And these guys, they are all males. Right?
A. Yes, sir.

Q. And they are living, essentially, inside a Hesco barrier?
A. Yes. They were, sir.

Q. Inside a tent?
A. Yes, sir.

Q. No air conditioning?
A. There was one, sir. But it didn't do, like, that much good.

Q. Well, was it hot in there?
A. Yes, sir.

Q. Did they smell?
A. Yes, sir.

Q. Did the Marines smell?
A. Yes, sir.

Q. Was the odor inside the tent kind of oppressive?
A. Extremely, sir.

Q. And these detainees are flex-cuffed 24/7?
A. Yes, sir.

Q. Right in front of them like this?
A. Yes.

Q. Like I'm doing?

IMC: And for the record, I have got my -- my hands crossed.

WIT: It wasn't crossed like that, sir. They were like this. They were more side-by-side.

IMC: For the record, the witness is holding up his hands perpendicular to the floor with his fists closed and his wrists approximately two inches apart.

Questions by the defense (Lieutenant Colonel (b)(6) *(continued):*

Q. And they are that way 24/7?
A. Yes, sir.

Q. Inside these Hesco barriers?
A. Yes, sir.

Q. And when they move outside of the Hesco barriers, they have to be escorted?
A. Yes. They do, sir.

Q. They have to have a sandbag over their head?
A. Yes, sir.

Q. And they are still flexicuffed?
A. Yes, sir.

Q. And that is even just to make a head call?

A. Yes. It is, sir.

Q. So they are also moving from the Hesco barriers to interrogations?
A. Yes, sir.

Q. And we are not talking about interrogations by local Jacksonville police officers. Are we?
A. No, sir.

Q. We are talking about interrogations by trained human exploitation team members. Correct?
A. Yes, sir.

Q. People that are authorized to use certain types of techniques in order to encourage cooperation. Right?
A. Yes, sir.

Q. Who are specifically trained to interrogate insurgents and enemy combatants. Correct?
A. Yes, sir.

Q. All of this also creates some degree of difficulty for the detainees. Right?
A. Yes. It was, sir.

Q. So would you agree then that it was also a stressful situation for the detainees?
A. Yes, sir.

Q. Some of them are somewhat unhappy about the conditions in which they lived?
A. Yes, sir.

Q. Some of them are unhappy about being detained?
A. Yes, sir.

Q. So in summary, we have a situation where the Marines are under some degree of stress. Right?
A. Yes. They were, sir.

Q. And we have a situation where the detainees are under some degree of stress. Correct?
A. Yes, sir.

Q. So would you agree, then, there is a potentially volatile situation inside that tent?
A. Extremely. Yes, sir.

Q. I would like to focus your attention now, for the moment, on this particular detainee in question. All right?
A. Yes, sir.

Q. You don't know his name?
A. No, sir.

Q. Don't know who he is?
A. No, sir.

Q. Don't know why he was there?
A. No, sir.

Q. In fact, he was ultimately released?
A. Yes. He was, sir.

Q. And it's fair to say he is not here today?
A. No, sir. He is not here.

Q. And ultimately it was apparently determined that this detainee had not been engaging in insurgency action?
A. I don't know, sir.

Q. Well, let me ask you a hypothetical question. If an individual is detained wrongfully under those circumstances, would he be even more upset, hypothetically speaking?
A. I would assume so. Yes.

Q. And this particular detainee was, in fact, rather vocal?
A. Yes. He was, sir.

Q. Hard to get along with?
A. Yes, sir.

Q. Throwing trash out of his cell?
A. Yes, sir.

Q. Wouldn't quit rattling his cage?
A. Yes, sir.

Q. Wouldn't submit to authority?
A. Yes, sir.

Q. Wouldn't submit to the measures that you had been trained on as far as how to control the detainee?
A. Yes, sir.

Q. Wouldn't respond to your verbal commands?
A. No. He would not, sir.

Q. So you have a situation here where you have Marines under stress, detainees under stress, and then this one detainee creating kind of a spike. Right?
A. Yes, sir.

Q. Making things worse. Right?
A. Yes, sir.

Q. And he is not responding to the normal types of authority. Right?
A. No. He was not, sir.

Q. And so something had to be done to get that guy under control. Right?
A. Yes, sir.

Q. To protect that volatile situation from exploding. Right?
A. Yes, sir.

Q. Now, it is at that point that Sergeant Travis brings the wires into the tent. Right?
A. Yes, sir.

Q. In an effort to try and find some means to bring the situation under control. Right?
A. Yes, sir.

Q. Now, Private Sting, this is a very important question. Okay? So I want you to focus on this one and answer as clearly as you can. When did Sergeant Travis tell you to put those wires, physically, on that detainee's body?
A. You -- you mean he actually told me to put them on his body?

Q. That is what I am asking. That is why I want you to focus your attention on this question. When did Sergeant Travis come up to you and tell you to put those wires on that detainee's body?
A. He didn't, sir.

Q. Thank you. In fact, when you did that, he was outside of the tent?
A. When we actually did it. Yes, sir.

Q. Let's focus on your background a little bit. Okay?
A. Yes, sir.

Q. Now, you have worked electrical before?
A. Yes. I have, sir.

Q. As a matter of fact, you worked it with your father?
A. Yes, sir.

Q. And he kind of trained you in electrical?
A. Yes, sir.

Q. And you are familiar with voltage?
A. Yes, sir.

Q. The difference between volts and hertz and watts and all that other stuff?
A. Yes, sir.

Q. And the voltage that was used, when you stung -- when you -- when you shocked, or stung, that prisoner was 110. Right?
A. Yes, sir.

Q. And you are familiar with what 110 can do. Right?
A. Yes. I am, sir.

Q. You have previously described it as kind of a tingle. Correct?
A. Yes, sir.

Q. Nothing more than that?
A. I wouldn't say so.

Q. In your experience as a trained electrician, someone can survive a brief --

TC: Objection, relevance. The witness is not an expert.

MJ: Response?

DC: I am not asking him to testify as an expert, Your Honor. I am asking him to testify as a lay witness and offer a lay opinion as to someone who has worked with electrical before.

MJ: The objection is overruled.

You can answer it. I believe you can answer it from your experience. Go ahead.

Did you get the question out?

IMC: I don't think I did, Your Honor.

MJ: Okay. Go ahead.

Questions by the defense (Lieutenant Colonel (b)(6) (continued):

Q. The question was, in your experience working with electrical, someone could sustain a brief touch with 110 with no lasting physical harm?
A. Yes, sir.

Q. Just a brief tingling sensation?
A. Yes, sir.

Q. Now, you have previously pled guilty to shocking this prisoner. Right?
A. Yes. I did, sir.

Q. And that was part of a plea agreement you had with the government?
A. Yes. It was, sir.

Q. And as part of that plea agreement, you agreed to testify here today?
A. Yes. I did, sir.

IMC: Nothing further, Your Honor.

MJ: Redirect, Captain (b)(6) Go ahead.

TC: Thank you.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Private Sting, you pleaded guilty at a general court-martial?
A. Yes. I did, sir.

Q. What guidance did you receive, if any, regarding your future testimony?

A. I was basically just told to tell the truth, sir.

Q. Is that what you have done?
A. Yes, sir.

Q. Private Sting, these conditions we talked about -- you talked about with the defense counsel, at the detention facility, did you feel that those in any way justified shocking a detainee?
A. No, sir.

Q. And this animosity between the detainees and the guards that the defense counsel had mentioned, you said there was some kind of animosity. Right?
A. Yes, sir.

Q. Well, tell me, Private Sting, who wins in that fight between the guards and the detainees?
A. I don't quite understand what you are asking, sir.

Q. Well, when the detainees leave their cages, they have sandbags over their heads. Right?
A. Yes, sir.

Q. They are flexicuffed?
A. Yes, sir.

Q. Do they have much of a chance in this dealing with this animosity between the guards and the detainees?
A. Do you mean if they fight back, if they'd win, sir?

Q. Can they fight back?
A. I guess if they really tried, sir.

Q. Would they be doing that by flailing around with their flexicuffed hands?
A. Pretty much, sir.

TC: Thank you.

Thank you, sir.

MJ: Any recross, Lieutenant Colonel (b)(6)

IMC: No, Your Honor.

MJ: There was no objection by the defense, but I am not going to consider as relevant in my analysis how much time the

accused got (sic).

I think it is relevant that he went to a court-martial, he struck a deal, and he agreed to testify against Sergeant Travis.

As far as how much time he received, I am not going to consider that at all as relevant evidence in the sentencing proceedings.

I will consider the fact that he went to a general court-martial, because there was no objection. The fact that he went to a court-martial is significant, I guess.

I do not have any questions for you, Private Sting.

Captain (b)(6)

TC: Sir, I would at least like to respond to that.

MJ: Yes. Go ahead.

TC: The government doesn't believe that the sentence that Private Sting received should be considered in evaluating a proper sentence with Sergeant Travis. However, the fact that Private Sting is serving a sentence to confinement that is rather lengthy is a direct result of the conduct we are talking about. And that is an aggravating factor directly resulting from Sergeant Travis's conduct.

MJ: And I agree with that. I am just not going to consider the amount of time that he is spending as relevant. I will agree that he is spending time in the brig and that he went to a general court-martial. But the fact that he did something -- I just see it as too tenuous here. I don't think I would let it go in front of the members, and I am not going to consider the amount of time as relevant to my analysis. So -- but I understand your -- your response and should have given you a chance to respond anyway, about that it was some lengthy period of confinement.

Lieutenant Colonel (b)(6)

IMC: Yes, Your Honor, if I could have one brief follow-up question based on that exchange?

MJ: Sure.

RECROSS-EXAMINATION

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Private Sting, are you in the brig right now?
A. Yes. I am, sir.

Q. I thought you were at Camp Mahmudiyah?
A. This is my brig time, sir.

Q. So you are not actually in the brig?
A. No, sir.

IMC: Oh. Thank you.

MJ: Any follow-up, Captain (b)(6)

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Private Sting, were you ever in the brig?
A. Yes. I was, sir.

Q. Did you exit the brig at some point?
A. Yes. I have, sir.

Q. Why did you exit the brig?
A. To come back and testify, sir.

Q. Are you out fighting with your unit right now?
A. No, sir.

TC: Thank you.

Thank you, sir.

MJ: Lieutenant Colonel (b)(6) anything further?

IMC: No, sir.

The witness was excused and withdrew from the witness stand.

MJ: Captain (b)(6)

TC: Sir, the government calls Private Trefny.

Private Jeremiah J. Trefny, U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified as follows:

MJ: How do you say his name?

TC: Trefny, sir.

WIT: Trefny, sir.

MJ: Okay. Thank you.

DIRECT EXAMINATION

Questions by the prosecution:

Q. Private Trefny, please state your name, rank, and unit.
A. Jeremiah Trefny. I'm a private, sir. 2/2, Golf Company.

Q. How do you spell your last name?
A. T-R-E-F-N-Y.

Q. Private Trefny, how long have you been in the Marine Corps?
A. A little bit over a year, sir.

Q. When did you graduate from boot camp?
A. September of 2003, sir.

Q. Did you deploy with 2/2 to Iraq in February of 2004?
A. Yes. I did, sir.

Q. Were you at the Al Mahmudiyah detention facility in April of 2004?
A. Yes, sir.

Q. Did you partake in an incident where a detainee was shocked with live electrical wires?
A. Yes. I did, sir.

Q. Was Sergeant Travis part of that event?
A. Yes, sir.

Q. How did the idea to shock a detainee come up?
A. Sergeant Travis showed us the wires, sir. And we kind of took it from there.

Q. Did he say anything when he brought in the wires?
A. He had mentioned how it would make him be quiet.

Q. How did he say that?
A. He say no-es-coot (phonetic), this will make him es-coot.

Q. You said "no-es-coot"?
A. Yes, sir.

Q. What does that mean?
A. It's Iraqi for shut up, I believe, sir.

Q. How did you all respond to Sergeant Travis bringing in those wires and saying "no-es-coot"?
A. We shocked the prisoner, sir.

Q. Did Sergeant -- to your knowledge, was Sergeant Travis aware that you were going to shock that detainee?
A. I believe so. I can't be positive. I can't say, like, he did know, a hundred percent.

Q. Why do you say you "believe"?
A. That is just what I believe, sir.

Q. Was he present at the conversation?
A. Well, he -- well, he -- he gave us the wires, sir. That's why I thought he probably knew we were going to do it.

MJ: I need you to keep your voice up, okay, so I can hear.

WIT: Roger that, sir.

MJ: Okay. I heard the last part. Go ahead.

Questions by the prosecution (continued):

Q. You said Sergeant Travis gave you the wires?
A. Yes, sir.

Q. When he gave you those wires, did you believe that it was his intention that you would shock that detainee?
A. Yes, sir.

Q. Do you believe you would have come up with that idea of shocking the detainee without Sergeant Travis bringing in the wires?
A. I don't know, sir. I --

Q. Had you thought of it before Sergeant Travis brought in the wires?
A. No, sir.

Q. What has happened since, to you, after this incident?
A. I am in jail. And I got a (b)(6) sir.

Q. Did you go to a special court-martial?
A. Yes. I did, sir.

Q. Did you plead guilty at that special court-martial?
A. Yes. I did, sir.

Q. And when you say you are "in jail," you are serving a sentence to confinement?
A. Yes, sir.

Q. At the very moment, are you -- did you exit the detention facility within the last couple days to come here?
A. I was actually at Mahmudiyah in the last couple days, sir.

Q. Were you serving at Camp Arifjan detention facility a while back?
A. Yes, sir.

Q. Did you leave there to come testify?
A. Yes, sir.

Q. Did you have a -- after this detainee was shocked, do you recall Major (b)(6) performing an investigation?
A. Yes, sir.

Q. Did he interview you?
A. Yes. He did, sir.

Q. After that interview, and after Major (b)(6) had conducted this investigation for that day, did you speak with Sergeant Travis and Private Sting?
A. Yes. I did, sir.

Q. What was the nature of that discussion?
A. We were just curious as to who gave all the details about what happened. That was pretty much the gist of it.

Q. Had you been ordered not to discuss that investigation?
A. Yes. I was, sir.

Q. After the detainee was shocked, what came of those wires?
A. I took them and threw them away, sir.

Q. Why did you throw them away?
A. I thought it would pretty much be evidence.

Q. Did Sergeant Travis mention those wires?
A. He had -- he had mentioned before, like I said, you know, how we shouldn't let the Staff Sergeant see them. We all knew if the Staff Sergeant seen them, he would take them.

Q. But at this time, when you threw away those wires, was that at the direction of Sergeant Travis?
A. No, sir. I did that pretty much on my own.

Q. Private Trefny do you recall speaking with me about this on numerous occasions in the past?
A. Yes, sir.

Q. Do you recall telling me that Sergeant Travis told you to get rid of those wires so that Staff Sergeant (b)(6) wouldn't find them.
A. He -- well, he -- he told me to make sure, like, he didn't see them. I think that was down, like, at the facility. So I took them back to the hooch. But, like, the actual throwing away was -- after they had questioned us, I, myself, pretty much decided to throw them away in the dumpster.

Q. Did Sergeant Travis then tell you to make sure Staff Sergeant (b)(6) did not see the wires?
A. Yes, sir.

Q. What did you feel was the purpose -- did you think that you would use those wires again?
A. Me personally? Probably, sir. Yes.

Q. You would use those wires to shock the detainee again?
A. Yes, sir.

Q. On that same detainee possibly?
A. Not necessarily the same one. He was being cooperative after that, sir.

Q. Did that appear to be Sergeant Travis's intention in maintaining those wires, as well?

DC: Objection. Calls for speculation.

MJ: Response?

TC: I am just asking the witness to talk about his direct observation when Sergeant Travis was telling him to keep -- keep wires.

MJ: You can ask him in a different format. The objection is sustained. It is speculation.

Questions by the prosecution (continued):

Q. Private Trefny, had those wires remained open or out in the tent, did you believe Staff Sergeant (b)(6) would take those wires?
A. If he saw them? Yes, sir.

Q. And if those wires were taken, you would not be able to use them again?
A. Yes, sir.

Q. And Sergeant Travis was the one who told you to make sure Staff Sergeant (b)(6) did not see those wires again?
A. Yes, sir. He said it while we were down there, kind of like don't let him see them.

Q. I'm sorry? Can you repeat that?
A. It was more like when we were there, he just mentioned it, like, Don't let Staff Sergeant (b)(6) --

DC: Objection. Asked and answered.

WIT: Okay.

MJ: I am having a hard time hearing the witness. I am going to overrule that. I believe Captain (b)(6) was too.

Answer the question again. What did he specifically say?

WIT: He just mentioned, like, not to let him see them, because he would take them from us.

MJ: Okay. Go ahead.

TC: Thank you, Private Trefny. That is all I have.

MJ: Captain (b)(6) cross-examination?

DC: Yes, sir. And before, sir, I would like to renew our --

renew the objection to the relevance of a (b)(6) especially based on the interchange between what you said you would consider before concerning Private Sting's sentence.

MJ: Captain (b)(6) same response as before?

TC: Yes, sir.

MJ: Okay. The objection is sustained. I do not need -- I need to consider that these individuals went to a court-martial, that they are related to this case, that Sergeant Travis may have had a hand in that. What discharge the people received or how much time they did, to me, is irrelevant. And I am not going to consider it. So the objection is sustained.

Go ahead.

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense (Captain (b)(6)

Q. Private Trefny, there were four members on your guard force --
A. Yes, ma'am.

Q. -- on your shift. Correct?
A. Yes, ma'am.

Q. And your shift would last, on the norm, about six hours?
A. Yes, ma'am.

Q. At the detention facility, there would be detainees sometimes inside the tent?
A. Yes, ma'am.

Q. As well as sometimes, even though there was some inside the tent, there might be detainees outside the tent as well?
A. Yes, ma'am.

Q. You have got four members on your guard force?
A. Yes, ma'am.

Q. And at times, there would be up to 20 detainees in that

facility. Correct?
A. Yes, ma'am. There could be -- there was times where there was more.

Q. Okay. And so that means sometimes there was ratio of four guards to 20 -- 20 Iraqi detainees?
A. Yes, ma'am.

Q. And the majority of those detainees at the facility were grown men. Correct?
A. Yes, ma'am.

Q. And this detainee in particular, that was shocked on the 13th of April, was a grown man?
A. Yes, ma'am.

Q. He was not a child?
A. No, ma'am.

Q. Your duties on the guard force were to ensure that these detainees were fed? That was one of the duties?
A. Yes, ma'am.

Q. That they were watered -- or that they received water and hydration?
A. Yes, ma'am.

Q. You would also have to escort them out to another building where HET would interrogate them. Correct?
A. Yes, ma'am.

Q. And when you escorted them, anytime, outside of their cage, they had to have sandbags on their head?
A. Yes, ma'am.

Q. And they had to be flexicuffed?
A. Yes, ma'am.

Q. They actually had to be flexicuffed 24/7, even while they were in the cage. Correct?
A. Yes, ma'am.

Q. And that was because they could pose a security problem?
A. Yes, ma'am.

Q. And they could be dangerous, possibly. Correct?
A. Yes, ma'am.

Q. In fact, these detainees that actually came to that facility, some of them would have been apprehended because they were partaking in anti-coalition activities, some against 2/2. Correct?
A. Yes, ma'am.

Q. Your own unit?
A. Yes, ma'am.

Q. Your own unit might be the capturing unit?
A. Yes, ma'am.

Q. Your own unit might have been in a firefight with some of these detainees?
A. Yes, ma'am.

Q. Some of these detainees may have been firing off mortars at your own unit?
A. Yes, ma'am.

Q. And yet, you had to take care of them?
A. Yes. We did, ma'am.

Q. And you were supposed to make sure that there was discipline within that facility?
A. Yes, ma'am.

Q. And this detainee was giving you problems?
A. Yes. He was, ma'am.

Q. He was throwing trash over the side?
A. Yes, ma'am.

Q. And he was talking when he wasn't supposed to?
A. Yes, ma'am.

Q. That causes some problems, doesn't it, when you are trying to maintain discipline?
A. Yeah. See, he had a lot of the other prisoners talking and not wanting to listen to us as well, ma'am.

Q. So it is kind of cancerous? It spreads, doesn't it?
A. Yes, ma'am.

Q. And when you have got four members of a guard force against possibly 20 other adult males in a facility, that's a little unnerving --
A. Yes. It is, ma'am.

Q. -- when it is starting to be some problems. Correct?
A. Yes, ma'am.

Q. And those Hesco barriers, within which these detainees were maintained, really didn't have a great lock on each individual cage. Did they?
A. No, ma'am.

Q. They could wiggle that and probably get themselves out. Couldn't they?
A. Yeah. You -- you could easily just kick it with your foot. It pops open, ma'am.

Q. In fact, just a week earlier, before the 13th of April, a detainee had actually escaped?
A. Yes. He had, ma'am.

Q. Now, he didn't escape on your watch?

TC: Objection, relevance.

MJ: Response?

DC: Sir, the relevance is we have been talking about the environment within which the guard force is -- is required to act. And these stresses are all extremely relevant in evidence in mitigation concerning how the stresses in that -- in that detention facility --

MJ: So you are going to tie the fact that a detainee split a week or two earlier to the amount of stress that they were feeling at this time?

DC: Yes, sir.

MJ: Is that your point? Okay. The objection is overruled. I will let you ask it. Go ahead.

Questions by the defense (Captain (b)(6) *(continued):*

Q. So a detainee had actually escaped a week prior. Correct?
A. Yes, ma'am.

Q. He was never found, to your knowledge?
A. Not to my knowledge, ma'am.

Q. In fact, on the 13th of April, Staff Sergeant (b)(6) was

actually -- they were starting to wire down plywood to the tops of some of these cages outside because they were worried about detainees escaping?

A. Yes, ma'am.

Q. And Iraqi detainees running around outside in your camp creates a problem. Doesn't it?

A. Yes. It does, ma'am.

Q. And wouldn't you say that it is important that Iraqi detainees aren't talking to each other when they are told not to because they could be formulating a plan, possibly?

A. Yes, ma'am.

Q. That is part of the reason they are supposed to listen to the guards. Correct?

A. Yes, ma'am.

Q. That was hot in that tent?

A. Extremely hot, ma'am.

Q. And there was bad odor in that tent from all the bodies. Correct?

A. Yes, ma'am.

Q. And it is not unlikely, and it wasn't unusual, for your unit to receive mortars. Was it?

A. No. It was not, ma'am.

Q. And in fact, on this day in particular, before this detainee was shocked, you had just received mortars, that morning. Correct?

A. Yes, ma'am.

Q. And that adds to the stress. Doesn't it?

A. Yes. It does, ma'am.

Q. But yet this detainee was just not listening?

A. We tried things. He just -- he would not listen, ma'am.

Q. Now, the detainee actually ended up getting shocked by Private Sting?

A. Yes, ma'am.

Q. Right. Private Sting was the one who put the wires on the body of the detainee?

A. Yes, ma'am.

Q. You never ever heard Sergeant Travis describe to Private Sting, Take those wires and place them on the body of that detainee. Did you?
A. No, ma'am.

Q. Private Trefny, you -- you are also currently out at Al Mahmudiyah right now, surrounding these proceedings? You are not down at the brig in Arifjan. Correct?
A. No, ma'am.

Q. All right. You have been up here with -- with your unit -- or at Al Mahmudiyah?
A. Yes, ma'am.

Q. And you are testifying here today because you have to testify. Correct?
A. Yes, ma'am.

DC: No further questions.

MJ: Captain (b)(6) , any redirect?

TC: No, sir.

The witness was excused and withdrew from the witness stand.

TC: Sir, the government calls Lieutenant (b)(6) And we have one witness after that.

MJ: Okay. What I'm going to do is I'm going to take another five-minute break to give everybody a chance to stretch their legs. So the court will be in recess for five minutes.

The court-martial recessed at 1622, 19 August 2004.

The court-martial was called to order at 1630, 19 August 2004.

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

Captain (b)(6)

TC: Sir, the government calls First Lieutenant (b)(6)

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

DIRECT EXAMINATION

Questions by the prosecution:

Q. Lieutenant (b)(6) please state your name, rank, and unit.
A. First Lieutenant (b)(6)

Q. How do you spell your last name?
A. (b)(6)

Q. To what unit do you belong?
A. I belong to 2d Battalion, 2d Marines.

Q. What is your billet?
A. Platoon commander, sir.

Q. Platoon commander for whom?
A. Golf Company, 2d Platoon.

Q. Lieutenant (b)(6) how long have you been the platoon commander?
A. Almost a year, sir.

Q. Do you know Private Sting and Private Trefny?
A. Yes. I do, sir.

Q. How do you know them?
A. They were in my platoon, sir.

Q. Are they in your platoon now?
A. Negative, sir.

Q. Was -- what was your opinion of Private Trefny?
A. Trefny was a very good Marine, always listened to orders. I never had any problems with him regarding anything that he was told to do.

Q. How about Private Sting?
A. Same thing with Sting, sir, outstanding Marine, never had any disrespect issues or disobedience to orders.

Q. Lieutenant (b)(6) did you consider those Marines to be an asset to your platoon?

A. Absolutely, sir.

Q. And you mentioned that those Marines are no longer with your platoon?
A. That's correct, sir.

Q. Why are they not?
A. Because of this whole deal, sir.

Q. Has your platoon suffered in their absence?
A. It is two less bodies, sir. And the line platoons are never T/O, so absolutely.

Q. And what -- when you say a "line" platoon, what does that mean?
A. Regular Marine Corps rifle platoon, sir.

Q. Has your platoon taken part in combat?
A. Yes, sir.

Q. Over the last few months?
A. Yes, sir.

Q. How many times, would you say?
A. Direct fire, sir, or indirect fire?

Q. Just -- just in general, taking direct and indirect fire?
A. I would say 15 or 20 times, sir.

Q. Could you have used those two extra Marines in those times?
A. Absolutely, sir.

TC: Thank you, Lieutenant (b)(6) That's all I have.

Thank you, sir.

MJ: Lieutenant Colonel (b)(6)

IMC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Lieutenant (b)(6) you are an infantry platoon commander?

A. Yes, sir.

Q. Of a platoon of Marines trained to engage in combat operations?
A. Yes, sir.

Q. As part of combat operations, would you agree that losses are a possibility?
A. Absolutely, sir.

Q. So casualties, via KIA or WIA, are a possibility?
A. Yes, sir.

Q. And when those losses occur, your platoon can still fight. Right?
A. Yes, sir.

Q. So the loss of two Marines due to casualties isn't going to cause the unit to stop fighting. Right?
A. That's correct, sir.

Q. But the loss of these two Marines because of a conviction has reduced your combat effectiveness?
A. I don't know if that is what the Captain was saying, sir. I think --

Q. Well, has it reduced your combat effectiveness?
A. It hasn't reduced our combat effectiveness. It is two less Marines you have on deck, sir.

Q. That is not the question I am asking. Has the loss of these two Marines reduced your combat effectiveness?
A. Yes, sir.

Q. Okay. So if you lose two Marines out of an infantry platoon, that platoon can no longer fight?
A. No, sir.

Q. But you just said that this reduced your combat effectiveness.
A. It has reduced it. It hasn't negated it, sir.

Q. Okay. So your platoon can still fight?
A. Yes, sir.

Q. Okay. I would like to clear up something in relation to these two Marines and their time in confinement. There has been some testimony in regards to them being in the

brig and just being up here for testimony. Okay. Is that your understanding?
A. Can you rephrase that, sir? I'm not --

Q.. Yes.
A. I am not catching it.

Q. How long have these Marines been out of the brig?
A. Out of the brig?

Q. Right.
A. I would say a month and a half, sir.

Q.. So they have been up with 2/2 a month and a half?
A. I would say around there, sir.

Q. So it is not like they were -- they were just brought up last week for this testimony?
A. That is correct, sir.

Q. Okay. And they have been working in the unit?
A. No, sir.

Q. What have they been doing?
A. Filling sandbags.

Q. That is not working?
A. Not -- not in a -- in a combat environment, sir.

Q. Understood. But they have been working at the headquarters element. Correct?
A. Yes, sir.

IMC: Okay. Thank you. Nothing further.

MJ: Redirect, Captain (b)(6)

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Lieutenant (b)(6) those Marines are no longer part of your platoon?
A. That's correct, sir.

TC: Thank you.

Thank you, sir.

MJ: Any recross?

IMC: No, Your Honor.

The witness was excused and withdrew from the witness stand.

TC: Sir, the government calls its final witness, Major (b)(6)

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

DIRECT EXAMINATION

Questions by the prosecution:

Q. Sir, please state your name, rank, and unit.
A. It's (b)(6) Major. I'm with 2d Battalion, 2d Marines.

Q. What is your billet?
A. I'm the executive officer for the battalion.

Q. What do you duties entail, sir?
A. I supervise the activities of the staff, the general ongoings of the battalion, both in the administrative side and I integrate the actions of the staff in support of operations.

Q. Sir, are you aware of a detainee abuse incident that took place in the middle of April 2004?
A. Yes. I am.

Q. Sir, how were the guards in that facility staffed?
A. They were drawn from throughout the platoons within the battalion, with an NCO assigned over them, in charge, and then organized into various watch sections.

Q. How did this detainee abuse incident come to light?
A. It was reported to me through the chain of command by Corporal (b)(6), who was a HET interpreter who had -- at the time, he said he had witnessed this abuse case happen. And he reported it. And it was eventually brought to my attention.

Q. What was the first thing you did when you realized, when this incident was brought to your attention?

A. What -- what was the first thing I did? I'm sorry.

Q. What did you do with regard to that guard force, when this --
A. What I had to do was I -- I immediately relieved the guard force because of the accusation. Obviously, because of the impending investigation, it required me to remove that guard force.

Q. How big was the guard force?
A. What was it? Twenty-three, or twenty Marines, something like that.

Q. Did you need to continue to staff the detention facility?
A. Well, we still had detainees within the detention facility. So it required me having to stand up an entire new guard force, do a hasty training session after finding new personnel, to include new staff NCOs and NCOs, and then form a new guard force that day.

Q. Did that place any kind of burden on the command?
A. Well, the result was that I had to pull a staff noncommissioned officer, which, I mean, there are obviously not that many within the battalion. I had to pull one of those out of a platoon. I had to pull NCOs from amongst the ranks, plus the junior Marines, to stand up as guards. So we're taking combat power away from the platoons to now do administrative duties and functions in the rear.

Q. Sir, what are 2d Battalion's, 2d Marines, responsibilities in support of Operation Iraqi Freedom II?
A. We are conducting combat operations; counterinsurgency; and support and stability operations, SASO, throughout AO Warlord in the Mahmudiyah area, about an 800 square kilometer area.

Q. When you say "conducting combat operations," has 2/2 taken part in combat operations?
A. Yes. Since only a few short weeks after -- well, immediately, in terms of patrolling. More along the lines of what people traditionally think of as engaging the enemy, yes, from firefights in Lutafiyah through fighting in Fallujah.

Q. Has 2/2 taken casualties?
A. We have. I think the number is now nearly 130 Marines

have been wounded in the battalion, 5 killed.

Q. Was 2/2 partaking in combat operations throughout the month of April 2004?
A. Yes. In particular on 9 and 11 April, two battalion-minus sized operations in Lutafiyah itself.

Q. When you said you had to take Marines from their combat duties and put them in administrative duties, are these duties we just discussed those which you were referring to?
A. You mean the administrative duties?

Q. The -- we just discussed 2/2's involvement in combat operations.
A. Correct.

Q. Are these combat operations the operations from which Marines were pulled?
A. Yes. Yes, they were. Yes, they were.

Q. Would those Marines have been out fighting otherwise?
A. Those Marines would have been out fighting. But now, they were pulled back to become detention facility guards.

Q. Sir, will 2/2 be handling detainees in the future?
A. Yes.

Q. Why is that?
A. Well, we still have probably another two months here. Every day, we are conducting operations. I would say a few times a week, we are actually detaining personnel that we have to then screen and process. Plus, I fully expect, in looking at the broader picture, that this Iraq conflict is going to continue for a while. My opinion, I am sure, is probably that we will be back at some point, or at least we will train to prepare to come back as well.

Q. In which case, detainee -- the detention of Iraqi civilians, again, will be one the responsibilities of the battalion?

DC: Objection. That calls for speculation.

MJ: Response?

TC: Sir, the XO is not speculating about the present duties and what will certainly be the future duties of his battalion.

MJ: The objection is overruled.

You can answer the question.

WIT: Could you repeat the question please?

Questions by the prosecution (continued):

Q. Were 2/2 to deploy again in sport of Operation Iraqi Freedom III, would detainee -- would the detention of Iraqis again be a responsibility of the battalion?
A. Yes.

Q. Sir, will 2d Battalion, 2d Marine Regiment, hear the results of this court-martial?
A. Yes. They will.

Q. Why do you say that?
A. Well, it is an -- it's a -- an opportunity to use as a learning opportunity, to teach the future guards, the future -- just all the Marines, really, on the responsibilities of how to properly handle detainees.

Q. Sir, are you aware of a newspaper article entitled "Marine Sergeant to Face Court-Martial" that came out a couple months ago in the Washington Post?
A. Yes.

Q. Have you been able to read that article?
A. Yes. I have. I don't -- I vaguely recall it. Yes, I do.

Q. To your knowledge, have other Marines in the battalion read that article?
A. I am not aware of them having read it. No.

Q. Did -- have the staff read the article, or has it been discussed?
A. It had been discussed that there was an article released. And I am sure -- no, I think -- I am not sure. I am trying to recall if it appeared in the Early Bird or not. But I am sure it was out there on the internet. So I am confident in saying that, yes, there is members of the staff that have -- know of the article and have probably

read it.

TC: Thank you, sir. That is all I have.

MJ: Lieutenant Colonel (b)(6)

IMC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Good afternoon, Major (b)(6)
A. Good afternoon.

Q. I would like to focus your attention very briefly on the detention facility. We have already discussed this to some degree here today. But for purposes of clarity, this is kind of an austere environment. Right?
A. Yes, sir.

Q. It's a somewhat hostile environment?
A. The general environment? Yes, sir. It is.

Q. Subjected to hostile fire, mortar fire, et cetera?
A. Yes, sir.

Q. Sometimes direct, sometimes indirect?
A. Yes, sir.

Q. These detainees are not always the nicest people in the world?
A. No. That is why we detain them. Yes, sir.

Q. Because they have been engaged in or are suspected of engaging in insurgency activity?
A. Yes, sir.

Q. Fair to say that there is some degree of stress both for the Marines and the detainees?
A. Yes, sir.

Q. So these Marines are presented with a challenging environment?
A. Yes, sir. They are.

Q. As a matter of fact, would it be fair to say that the

battalion staff has kind of a leadership challenge in front of it in making sure these Marines are properly trained and properly prepared to handle --

A. Yes, sir.

Q. -- the situation?

A. Yes, sir.

Q. Because it's potentially volatile?

A. Yes, sir. Yes, sir.

Q. And so this detention facility created not only a leadership challenge for the Marines there in the facility but also for the leadership of the battalion itself?

A. Yes, sir.

Q. I would like to focus your attention on the predeployment training that you went to. Okay?

A. Yes, sir.

Q. Is it true that, prior to the deployment, General Mattis came out and spoke to your battalion?

A. Yes, sir. He did.

Q. And at that meeting, he mentioned the fact that he was adding something to the 1st Marine Division credo, right, which is, No better friend, no worse enemy. He was adding, First, do no harm?

A. Yes, sir.

Q. And he talked about how we are going to respect the Iraqi people?

A. Yes, sir.

Q. And how we are going to treat them with respect?

A. Yes, sir.

Q. And your entire battalion was -- was supposed to be there. Right?

A. Yes, sir. That was a requirement the General laid out.

Q. Are you -- didn't you know that General Mattis gave that same brief to all battalions?

A. Yes, sir. My understanding was that his -- he required that any Marine coming into theater was required to get the brief from him and his staff.

Q. Did you know that your battalion had the lowest number of Marines at that brief of all battalions in the division?
A. No, sir. I wasn't.

Q. Did you know that Sergeant Travis wasn't there because he was required to be at other training --
A. No, sir.

Q. -- as were a number of other Marines?
A. No, sir.

Q. Now, Sergeant Travis has remained with 2/2 for some time now. Right?
A. Yes, sir.

Q. He continues to carry his weapon?
A. Yes, sir.

Q. He continues to participate in operations with the battalion. Right?
A. Yes, sir.

Q. Continues to stand guard post? If you don't know, that is fine.
A. I don't -- I am not sure if he -- he is associated with the guard somehow, sir. I don't recall the specific duties.

Q. Still subject to hostile fire since that time?
A. Yes, sir.

Q. Received mortar fire since that time?
A. Yes, sir.

Q. And continues to be a participating member of the battalion?
A. Yes, sir.

Q. And as far as you know, he has continued to do a good job within the battalion?
A. Yes, sir.

IMC: Nothing further.

MJ: Redirect? Go ahead.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Sir, what is 2/2's role in cultivating a relationship with the Iraqi population?
A. One of the -- the important things that you need to do is develop a positive, trusting relationship with the Iraqi people. Because if you don't, then they are more likely to support the insurgents. So the importance of fighting an insurgency, a major portion of that, is to treat the detainees -- not the detainees, but the Iraqi people as a whole, however you come in contact with them, humanely and with respect to ensure that, you know, they understand our good intentions and our good will.

Q. You mentioned that Sergeant Travis participates with the battalion still. Is that the case?
A. Yes.

Q. Why is he still with the battalion?
A. Why is he with -- still with the battalion?

Q. Right. Where else could he go?
A. He -- nowhere. I -- I mean, he is our Marine, so we are responsible to maintain control of him.

TC: Thank you, sir.

Thank you, sir.

MJ: Any recross, Lieutenant Colonel (b)(6)

IMC: No, Your Honor.

MJ: I have no questions for you, Major (b)(6)

The witness was excused and withdrew from the witness stand.

MJ: Captain (b)(6)

TC: Sir, the government rests.

MJ: Very well. Lieutenant Colonel (b)(6) before your start your case in sentencing, if you have any -- I was given Defense Exhibit A. And I am going to review all this stuff in my deliberations, obviously. But is there a

certain portion of this exhibit that you want me to look at or would you like me to read each page? I mean, why is it being offered? Because there is, you know, 30 pages here of small print.

IMC: Yes, Your Honor. We don't intend for the military judge to scrutinize each and every line. The purpose of that was to show the military judge exactly what they were doing at the facility, the number of detainees that were actually there, and to give the military judge the impression of what was actually going on at that facility. We understand that there are -- there are entries in there that neither you nor I can make heads nor tails of.

MJ: Okay. I am going to read -- I am going to read it to the best of my ability then. If there is parts I can't read, then you are saying those aren't real critical?

IMC: No, Your Honor. We just want to give the military judge an impression of how many detainees were at the facility in the relevant time period.

MJ: Okay. Great. Thank you. You can proceed with your case in sentencing if you have any evidence.

IMC: Yes, Your Honor. We'll start with the documentary evidence, with Defense Exhibit B for identification.

If I may approach, Your Honor?

MJ: You may.

IMC: I'm handing the military judge what has been marked, for purposes of identification, as Defense Exhibit B, and ask that the words "for identification" be stricken. That is a compilation of some of extenuation and mitigation documents, basically OMPF-type documents, and a newspaper article in relation to Sergeant Travis's return from the first operations here in Iraq.

MJ: Captain (b)(6) any objection? It is a compilation of a bunch of different items. Do we need to break it down, or do you have any objection?

TC: No objection, sir.

MJ: Defense Exhibit B for identification is admitted into

evidence. The words "for identification" are stricken.

Go ahead.

IMC: Your honor, at this time we call Sergeant (b)(6) (sic).

MJ: Very well.

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

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your name, rank, and unit.
A. Sergeant (b)(6) 2d Battalion, 2d Marines, 2d Marine Division.

Q. How do you spell your last name?
A. (b)(6)

TC: Thank you.

MJ: Lieutenant Colonel (b)(6) go ahead.

IMC: Thank you, sir.

And for the record, I referred to him as "Sergeant (b)(6) " I misspoke. He's Sergeant (b)(6)

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Good afternoon, Sergeant (b)(6)
A. Good afternoon, sir.

Q. I'd like to talk to you a little bit this afternoon about your contact with Sergeant Travis. Okay?
A. Yes, sir.

Q. Do you know Sergeant Travis?
A. Yes, sir.

Q. How do you know Sergeant Travis?
A. I met Sergeant Travis back in 2000. I had just came back from a Med float. I met him since 2000 until now, sir.

Q. Give the military judge a feel for your time in the

Marine Corps since -- since you enlisted.

A. I joined the Marine Corps in July, 25th, 1999. I joined the fleet, 2d Battalion, 2d Marines. I came down to the unit as a brand new Marine. Pretty good, sir. I mean my -- my NCOs were locked on.

Q. Let me -- let me ask you this: Have you participated in any other military operations, other than OIF II?

A. Yes, sir.

Q. Why don't you identify some of those to the military judge?

A. We participated in Operation Silent Lance, in Macedonia, and then Turkey, training with the Turkish Army, with the Tunisians and with the Spanish. And back in -- from now on, I got attached to Delta Force in -- during Djibouti, JOC -- JOF --

Q. CJTF-HOA?

A. CJ -- yes, sir. And after that, we came down to Iraq. And so that is about it, sir.

Q. And what awards do you hold?

A. Say again, sir?

Q. What awards do you hold?

A. Right now, I hold Meritorious Unit Citation, a MUC; Combat Action; Good Conduct, Sea Service with a star, bronze star; the War on Terrorism Expeditionary Medal, National Defense, NATO Kosovo.

Q. Okay. Now, you have been with your present unit since 2000?

A. 1999, sir.

Q. 1999?

A. Yes, sir.

Q. You have been with 2d Battalion, 2d Marines, the entire time?

A. Yes, sir. Four years and a half, sir.

Q. And when did you first come to know Sergeant Travis?

A. When I came back from Med 2000, sir.

Q. And have you known him continually since that time?

A. Yes, sir.

Q. About how many times out of the week would you say you see Sergeant Travis?
A. Every day, sir.

Q. And about how many hours out of the day would you say you have individual, one-on-one contact with Sergeant Travis?
A. Well, most of the time, sir, we -- we train Marines. I was in -- I believe, he was in 2d Platoon. I was in 1st Platoon. So the rooms are real close. He -- I knew he was a prior enlisted. And he came back in the Marine Corps. So I was about to pick up NCO. So I was trying to get the good stuff, you know, out of everybody, for me when I picked up. And that's why I hang around with him. I see good influence on him. And that is why I stay in the Marine Corps. I mean, looking at Marines like him and just everyone, my senior Marines.

Q. Have you been in military operations other than OIF with Sergeant Travis?
A. Yes, sir. Fort A. P. Hill -- well, there is so many, sir. I can't remember.

Q. Is it fair to say that you have deployed with Sergeant Travis on numerous occasions?
A. Yes, sir. Several times.

Q. You have had opportunities to observe him in the field?
A. Yes, sir.

Q. Opportunities to observe him in garrison?
A. Yes, sir.

Q. You have had opportunities to observe him on liberty?
A. Yes, sir.

Q. Based on your contacts with Sergeant Travis and your times with Sergeant Travis, do you feel like you have been able to form an opinion as to his military character?
A. Yes, sir.

Q. And what is that?
A. Well, sir, I mean Sergeant Travis, sir, is an extraordinary Marine.

Q. Pardon?
A. He's an extraordinary -- extraordinary Marine -- he's a good-to-go Marine.

Q. Extraordinary?
A. Yes, sir. He's good to go. I mean, he's always taking care of his Marines first, you know, even though sometimes he gets shafted. But he always takes care of his Marines. Good leadership. Making difficult decisions on the spot. I got him at great respects. And some of the knowledge, he passed me on to show some to my junior Marines. And it has paid off.

Q. Now, have you had contact with Sergeant Travis since he was accused of these crimes?
A. Yes, sir.

Q. Well, let me back up a second. Are you aware of the charges pending against Sergeant Travis?
A. Well, I didn't know at first, sir. But then I found out the day I got replaced from my duties.

Q. Now, as you sit here in this courtroom here today, do you know the charges to which Sergeant Travis pled guilty?
A. No, sir. Not exactly.

Q. Do you know that he pled guilty to conspiracy to maltreat a detainee in relation to attaching electrical wires to a cage?
A. No, sir.

Q. Does that affect your opinion?
A. No, sir.

Q. Since Sergeant Travis has been suspected of these crimes --
A. Yes, sir.

Q. -- have you had contact with him?
A. Yes. I have, sir.

Q. And how has his conduct been since that time?
A. It's still the same, sir. He hasn't changed at all. He is good to go. He is still motivated. You know, I mean, what else can I say about him? He's a -- now that I found out, you told me about this, for me, it is real hard to believe. But that is just an opinion, sir. I mean, I don't believe --

Q. We are not interested in your opinions in that regard. But I'm -- as to whether he did it or not, because that is an established fact. He pled guilty.

A. Roger that, sir.

Q. What we are interested in is how that affects your opinion of him as a Marine.
A. I still think he is good to go, sir. I mean --

Q. Would you serve with him again?
A. Yes, sir. Anytime.

Q. Would you serve with him in this theater again?
A. Yes, sir. Anytime.

Q. Would you serve with him under hostile fire again?
A. Anytime, sir.

IMC: Nothing further.

MJ: Cross-examination, Captain (b)(6)

TC: Thank you, sir.

CROSS-EXAMINATION

Questions by the prosecution:

Q. Sergeant (b)(6) you strike me as a pretty squared-away Marine. Do you like being a Marine?
A. Yes, sir. I do, sir.

Q. You like being a sergeant?
A. Yes. I do, sir.

Q. How long have you been a sergeant?
A. I have been a sergeant since 2004, January, sir.

Q. How long have you been in the Marine Corps?
A. Four years and a half, sir.

Q. So you are making pretty quick work of it, huh?
A. Hard work, sir.

Q. Good job.
A. Thank you, sir.

Q. Did you like being a corporal?
A. No, sir.

Q. You didn't?
A. I didn't like it, sir, because I had the sergeant pick on me the whole time, always trying to, like, showing off, sir. I mean, it is hard to pick up sergeant. I busted my ass. And even though sometimes it was shitty, sir, you had to suck it up and just follow the orders of the squad leader.

Q. Pretty proud to be a sergeant?
A. I am, sir.

Q. Why?
A. Well, sir, nobody -- not a lot of people, sir, get to pick up sergeant. And I believe now the Marine Corps is getting a little bit softer. I mean, now it is about numbers. The unit that I am with right now, 2d Battalion, 2d Marines, is locked on. I mean, I have seen, like, 1/8, their sergeants compared to our sergeants in 2/2. I mean --

Q. All right, Sergeant (b)(6) I am thinking I am getting your point here. You are saying it is pretty big deal to be a sergeant in 2/2?
A. Yes, sir.

Q. And probably because the sergeants in 2/2, hey, are probably more locked on than the other sergeants in the other battalions. Is that the case?
A. I have seen it, sir.

Q. Okay. Is sergeant, say, an important rank for 2/2?
A. Say again, sir?

Q. I mean, is it important that 2/2 has sergeants like you?
A. Well, sir, not just me, sir. I mean, the other sergeants, everybody, got different leadership strengths, traits.

Q. In general, is the rank of sergeant important to the Marine Corps?
A. Yes, sir.

Q. Why is that?
A. It's the backbone of the Marine Corps, sir.

Q. Why are the sergeants the backbone of the Marine Corps?
A. Well, sir, I mean, if you look to history, sir, I mean, the sergeants are the one that get the Marines -- lead

the Marines in firefights. You know, they don't need an officer. An officer say, Hey, take that hill. It's up to the sergeant, to the NCOs, corporals, and senior lance corporals to take charge and accomplish the mission, sir.

Q. Sergeant (b)(6) do you lead Marines?
A. Yes, sir.

Q. Do those Marines do what you tell them?
A. Yes, sir.

Q. Do you take care of them?
A. I do, sir.

Q. Is it important that you take care of them?
A. Yes, sir.

Q. Do they follow your orders?
A. Yes, sir.

Q. And they respect that you are a noncommissioned officer in this United States Marine Corps?
A. Yes, sir.

Q. Does that mean something to you, to be a noncommissioned officer?
A. Yes, sir. It means a lot, sir. Family tradition, sir.

Q. Sergeant (b)(6) you had mentioned that Sergeant Travis was a good-to-go sergeant. Right?
A. Yes, sir. I still think he is good to go, sir.

Q. You have mentioned that he takes care of his Marines?
A. Yes. He does, sir. I have seen it a couple of times?

Q. You have seen Sergeant Travis take care of his Marines?
A. Always, sir.

Q. Sergeant (b)(6) do you really understand the charges to which Sergeant Travis pleaded guilty today?
A. Yes, sir.

Q. Do you understand that Sergeant Travis basically got his private first class -- the PFCs that work for him, to shock an Iraqi national detainee?
A. I don't know, sir, to be honest with you.

Q. Are you saying you don't know that that happened?

A. No. I mean, I just found out right now, sir, that he pleaded guilty. I did not know that, sir.

Q. Okay. Well --
A. So it shocks me.

Q. Does it shock you because that's not the conduct you would expect from a 2/2 sergeant in the Marine Corps?
A. No, sir. I don't expect that from any sergeant at all.

Q. Is it pretty disappointing to you as a sergeant of Marines and a sergeant from 2/2 that a fellow sergeant of yours would have his private first class shock -- attempt to shock an Iraqi detainee?

IMC: Your Honor, I'm going to object because that's -- that's a mischaracterization of what the accused has pled to. It's a mischaracterization as to what is in the stipulation of fact.

MJ: How so?

IMC: Well, he is saying that he told Sting to shock him. And that is not what happened.

MJ: I am going to sustain the objection if that's the language you used, Captain (b)(6) I don't remember the exact language. You can rephrase the question or ask it again if you think you asked it properly.

TC: Yes, sir.

Questions by the prosecution (continued):

Q. Sergeant (b)(6)
A. Yes, sir.

Q. Does it disappoint you to know that Sergeant Travis brought wires in to a private first class with the intention of having that private first class shock a detainee?
A. Sir, I didn't expect Sergeant Travis to take that -- to take those wires inside, sir. But it disappoints me that he pled guilty because I don't -- I don't expect that from him, sir, at all.

Q. So to know that he did that, does that affect your opinion of Sergeant Travis?

A. Well, sir, I don't know, sir. He didn't tell me, you know --

Q. Sergeant (b)(6)
A. Yes, sir.

Q. Sergeant Travis has pleaded guilty at a general court-martial for that precise offense. It happened. Knowing that that happened, does that affect your opinion of Sergeant Travis as a sergeant of Marines?
A. Yes, sir.

TC: Thank you.

Thank you, sir.

MJ: Any redirect, Lieutenant Colonel (b)(6)

REDIRECT EXAMINATION

Questions by the defense (Lieutenant Colonel (b)(6)

Q. Would you continue to serve with Sergeant Travis?
A. Yes, sir.

Q. Would you serve with him in combat?
A. Yes, sir.

MJ: Recross?

TC: No, sir.

MJ: I do not have any questions for you.

The witness was excused and withdrew from the witness stand.

MJ: Lieutenant Colonel (b)(6)

IMC: Yes, sir. At this time, Sergeant Travis would like to read an unsworn statement.

MJ: Okay.

Sergeant Travis, please speak slowly so I can take notes. Okay?

ACC: Yes, sir. Good afternoon, sir.

MJ: Good afternoon.

ACC: My name is Sergeant Matthew Travis. I would like to begin by apologizing to the members of my unit, 2/2, the Marines in my division, and to all Marines in general for what I have done and for the shame that I have brought upon them and the Marine Corps in general.

I also would like to thank you for your time today, sir, and for giving me the opportunity to speak to you as a man and as a Marine.

I am originally from (b)(6)
(b)(6)

I grew up in (b)(6) which consists of 20,000 people. I went to (b)(6) High School, played football, ran track. and mainly focused on wrestling. My mom, (b)(6) is still back in (b)(6) I have one

I am very close to my whole family. Before I came out here, I would call them at least three times a week. While I am out here, I'm only calling them once. When I call home to speak to my mom, she'll tell me hold while she calls one of my siblings so we can all talk to each other at the same time. I miss my family a lot.

I graduated from high school in May 1996. In July 1996, I went to boot camp at Parris Island. I went into the Marine Corps because I wanted to better myself. I thought it would make me a better man. Since I graduated from high school, at least 10 of my friends that I hang out with have been shot. And at least 20 of them are now in jail or prison either over girls or drugs. I wanted to get away from this environment. That is the biggest reason I chose to join the military. I chose the Marine

Corps out of all branches because I thought it was the hardest branch and I didn't think too many people could make it through the training.

When I graduated boot camp, I was super excited. My mom, brother, and my aunt and uncle all came to the ceremony. I was so proud to be a Marine. After boot camp, I went through SOI. And following SOI, I got picked up with 3d Battalion, 6th Marines, Kilo Company. I am 03' by MOS.

I was with 3/6 in '97. I went on a Mediterranean float for seven months. Originally, it was supposed to be six, but we ended up getting extended. At the time, Saddam Hussein wasn't allowing inspectors to view his factories, so they had us floating off the coast of Kuwait, ready to go in if he hit -- if he didn't allow them in.

After the float, in 1998, I spent a month down in Puerto Rico, Haiti, and Cuba, helping to build houses for the people that lost them due to a hurricane. I felt really great about this. People, including the Mayor, were very thankful for this.

From August of '99 until March 2000, I went on another Mediterranean float. This time we went out to the Black Sea and trained with the Romanians.

Each time we went on a Mediterranean float, I took part in Operation Bright Star, which was in Egypt, and Noble Shirley, which used to take place in Israel.

July 2000, I got out of the Marine Corps. I was out until November. And then I decided to reenlist. I had a factory job making 12 bucks an hour in Jacksonville, North Carolina. I chose to reenlist because I missed the Corps' camaraderie. I got out the same time a bunch of my friends did. And toward the end of the year, we all started joining up again.

When I reenlisted in November 2000, this is when I got attached to 2/2, Echo Company. I started training again right away. I remember coming back from CAX, September of 2001, and watching the events of September 11th the very next day. We had gotten back on the 10th. It made me mad. I feel like they brought the war to us and not us to them. They killed a lot of innocent civilians.

Following this, 2/2 got tasked with being a

quick-reaction battalion in case anything had happened on the East Coast. We also started training to get ready for what was supposed to be a scheduled six-month deployment. But it turned into a nine-month pump.

It last -- it lasted from August of 2002 to May of 2003. The deployment took my unit a lot of places, one of them being Kosovo. While we were there, we did border patrols, set up OPs to prevent illegal border crossings to stop Albanians from smuggling weapons into the country and also from coming in to killing and looting from the people that live in Kosovo.

For the remainder of this pump, we went through the Suez Canal off the coast of Africa and eventually ended up in Djibouti. What sticks in my mind from this pump is that while we were afloat, we got a message that there was a ship from Iraq which was carrying Scuds to Syria. The name of the ship was the Sosan. That was very exciting. And I was proud of our forces for raiding the ship.

In Djibouti, we did ops with CIA and special forces to guard the Predator. Sometime in March of 2003, while in the Persian Gulf, we raided a ship that had been laying mines and had mines on it. That was a successful operation as well and one I felt privileged to be a part of, as it was my company that actually conducted the raid.

After this, we were tasked to go into Iraq. We flew into Wolverine and then started to make our way north to Nazariyah. Outside of Nazariyah, we linked up with Fox Company because, earlier, a convoy got hit and left a Marine. The Marine was killed, and Iraqis were dragging his body through the city. My company, along with Fox, was tasked with going into the city and trying to find the body. We never found it. Other than this, our company would do blocking positions in order to allow the other units to make their way north to Baghdad. We would conduct raids in the cities in search of weapons. All in all, the first time I came to Iraq, in OIF I, my company was here for about 30 to 40 days. This is how we ended this pump.

After that, I went back to the rear. Later on that year, I went to H&S Company and was made the battalion SACO. In February of 2004, my unit started getting ready, started training up again to come over a second time. We

left Lejeune on March 1st and got up into Iraq in mid-March. I had flown up from Kuwait as part of the rear party. And once I got here, I found out that I was going to be on guard at the detainee facility.

By the time the 13th of April came around, I had already been working as a guard at the detention facility for about a month. Working at the detention facility was kind of stressful and frustrating at times. We had detainees come in who had been fighting against my own unit and other Marines. It was not uncommon to receive mortar fire while we were at Mahmudiyah. There was a very bad odor inside the tent. And the language barrier could get frustrating when you were trying to communicate with the detainees.

Most of the detainees were grown men of my size or bigger. Some were high-value targets who were very dangerous. For instance, one detainee, we nicknamed him Redbeard, he was known for killing American troops. His brother was there and had a reputation for killing troops as well. He was one of many very dangerous detainees within our facility.

We had four guards per shift. Sometimes we had as many as 20 detainees to the four of us at one time. We were responsible for making sure they had food, water, could make head calls, and their medical needs were taken care of.

On the 13th of April, the day the detainee got shocked, I lost my patience. I got frustrated, made a very poor, stupid decision. I was not thinking. I did not act as an NCO should have. I was SOG, and I was responsible for the Marines under me. I let them down. I let my unit down. I let the Marine Corps and I let the detainee down. If I could turn back time, I would. But now all I can do is try to make the right decision and take responsibility for my actions.

Sir, as I mentioned earlier, my family is the most important thing to me. However, the Marine Corps is also very important to me because they are also a part of what I consider my family. I am here to take my punishment like a man. But it is my strong desire to remain in the Corps. I would like to come back to Iraq a third time for OIF II, tack 2. General Mattis told me a few days ago that he would fight beside me again. I would like to

fight by my fellow Marines.

Since this has happened, I have tried to do my best to keep a smile on my face, keep working as hard as I can, and remain strong for the sake of my family, who has also suffered by this, and contribute to the Marine Corps's mission in Iraq.

After this happened, I was pulled off guard force and began doing other duties. 2/2 moved off Al Mahmudiyah and went to Fallujah for awhile. While I was there, I escorted Iraqis around, supervising them when they fix electrical problems and clean up the FOB.

After Fallujah, we convoyed out to a general's house that had been confiscated. On the way there, on the way to that place, we took fire in the way of sniper and AK fire.

Then we got moved out to Camp Sadan, also known by us as Camp Suicide. We called it because it was a really small camp on the edge of Fallujah. Every two days, we would take incoming. Our living quarters consisted of a metal frame with only cammie netting on top for shade, not too good for protecting Marines from incoming mortars.

H&S Company was in charge of security at Camp Suicide. I personally was an SOG in charge, making sure the guards who were posted at different posts had food, water, and ammo.

After Camp Suicide, 2/2 went back into Camp Fallujah. While I was there, I went on some convoy resupply missions. Now, we are back out at Al Mahmudiyah. This time around, I have been helping with the refortification of buildings; escorting Iraqis as they refill water, take out the trash, work on concrete, fix electric problems. And I have been out at -- on guard post at Gate 3. Personnels come onto the base. This involves searching the personnel, making sure they are safe to come onto the camp.

Sir, I am standing before you today for a number of reasons. One, I am here to take responsibility for my actions. Two, I want to be able to look my family and fellow Marines in the eye and tell them I have learned from this and I will take my punishment like a man.

I would like to be able to look in the mirror and know that I still have got integrity. I would like to be able to tell my daughters and show them by example that, when you do something wrong, you can either try to make it right or just quit. I do not want to quit. I want to be a Marine.

I thank you for your time today, sir. And I respectfully -- I'll respect the decision you make. Respectfully, Sergeant Travis.

MJ: Thank you, Sergeant Travis.

Lieutenant Colonel (b)(6) anything further?

TC: Yes, sir. I would like to present the court with a typed copy of that unsworn statement --

MJ: Very well. Thank you.

IMC: -- previously marked as Defense Exhibit C for identification, and ask the military judge that the words "for identification" be stricken.

MJ: Do you have any objection, Captain (b)(6)

TC: No, sir.

MJ: Defense Exhibit C for identification is admitted into evidence. The words "for identification" are stricken.

IMC: Lastly, Your Honor, I have one document that has not yet been marked. I would like to have it marked as the next defense exhibit in order if I could please, and I could approach.

The court reporter did as directed.

IMC: Retrieving from the court reporter what has been marked as Defense Exhibit D for identification, a print-off from the MCTFS awards page of the accused, indicating that -- his awards. I think there may be some additional awards on here as to what is in the previous print-out, Your Honor, because as I understand since this incident he has received the Global War on Terrorism Expeditionary Medal and the Marine Corps Good Conduct Medal.

I am handing that to the military judge and ask that the

words "for identification" be stricken.

MJ: Captain (b)(6) do you have any objection to Defense Exhibit D?

TC: No, sir.

MJ: The exhibit is admitted into evidence. The words "for identification" are stricken.

One of my questions was about his awards. So you have provided me with that. But you have said that he also has, in addition to what is on here, the Good Conduct Medal?

IMC: I'm sorry, Your Honor. This is reflected on it. That is a current printout.

MJ: Okay. This is a current. And it has the GWOTEM on here too?

IMC: Yes, Your Honor.

MJ: Thank you. Anything further?

IMC: No, sir. The defense rests.

MJ: Sergeant Travis, in looking back at the charges and the stipulation of fact, it appears that, in my mind, the Article 92 charge, where you were derelict in the performance of your duties by failing to protect the Iraqi detainees from physical harm, does not relate to the incident of attaching the wires to the cage. That has to do with the subsequent misconduct of the people under your charge shocking people.

Is that more correct?

ACC: Yes, sir.

MJ: That is kind of what it says in the stipulation of fact. I mean, it encompasses everything. But principally, I see that as the direction of that charge. And I don't think that was entirely clear, at least to me, earlier.

Captain (b)(6) , do you have a case in rebuttal?

TC: No, sir.

MJ: The court is prepared to hear argument.

Captain (b)(6) go ahead.

TC: Sir, it is a very sinister act to take advantage of another human being who is under your absolute and total control. When you have somebody who doesn't speak your language, who is confined, doesn't want to be confined, and is confused, and is scared, it says a lot about you when you are the person who decides that that person should somehow be tortured.

And I use the word "torture" because it fits what we are talking about. I don't know what kind of a shock is generated when somebody is shocked with 110 volts. I don't know. I am not an expert. And no expert here can really talk about it. But I do know that if you are the person with a sandbag over your head who is flexicuffed or who is in a cell and can't understand what the other Marines around you are saying, if you are that person, then you are being tortured.

And it says a lot about the person who causes that to happen. It is wrong to abuse other human beings simply because they are human beings. It is wrong on its face. It is wrong to abuse Iraqi national detainees because the Marine Corps is here to help them.

These are confusing times for everybody. But the mission for the Marines is not confusing. Our job is to ensure that those Iraqi nationals know that there is no worse enemy, no better friend. And when we start torturing those Iraqi nationals who are in our detention facilities because they are throwing trash out of their cells, that is sinister. And it says a lot about the person who takes advantage of his position.

Sergeant Travis's conduct, sir, is sinister for additional reasons because Sergeant Travis tortured an Iraqi detainee through the use of private first classes who worked for him. A noncommissioned officer in this Marine Corps had his junior Marines abuse that Iraqi detainee. And what has come of them? They have been court-martialed. What kind of leadership is that? It is sinister to have your privates, your private first classes and your junior Marines doing your dirty work.

It is sinister in addition to that because once it

happens and you decide to lie about it and let your junior Marines, the ones that work for you, take the fall, that is sinister. To even discuss that in the same sentence as being a noncommissioned officer of Marines is sickening.

But it goes even beyond that, because it is sinister to then sell out your battalion and blame them and to call them out in a nationally or internationally publicized newspaper article, to say that it wasn't his fault at all, Not my fault, not this NCO's fault. No. It must have been the PFCs' fault. Or if it wasn't their fault, it must have been the battalion's fault. And why was it their fault? Because first of all, I am looking at 17 years for something I didn't do.

Talking about the preparation for the detainee facility, "'It was a last-minute thing,' he wrote. 'We didn't get good training.'" Did 2/2 forget to train Sergeant Travis and tell him that he is not supposed to be shocking Iraqi national detainees? Was there some confusion there? Because that seems like common sense. Torturing other human beings is pretty obvious. And shocking them is pretty obviously wrong.

And then, in dealing with Sergeant Travis's misconduct, whose fault is that? Well, it's the Marine Corps's because they are rushing his and other criminal cases to avoid embarrassment similar to that suffered by the Army. Right. The Marine Corps's embarrassment, now where did that embarrassment come from? Did it come from the noncommissioned officer of Marines who had his junior Marines shock that detainee? Is that the embarrassment he is talking about?

"'The Marines want to get this over [as] quickly as possible so it doesn't give them a black eye.'" When they saw and heard about what the Army was doing, they tried to hurry with the trial and keep it on the hush. Yes. I wonder why the Marine Corps was trying to deal with Sergeant Travis's misconduct? Probably because it was criminal, and probably because it was that absolutely contradictory to our mission that something had to be done. But what does Sergeant Travis do? Although now he says he is accepting the blame, he blames the Marine Corps, and he blames his junior Marines.

That is the pinnacle of being sinister. And it says an

awful lot about the noncommissioned officer of Marines who will allow all those things to happen.

Sergeant Travis says he came from a difficult background and all his friends were in jail or many of them were, they have gotten in trouble. And he loves the Marine Corps. Well, sir, there is no doubt that we are all Uncle Sam's misguided children. Every one of us comes from some strange background. But if you can get over the bar, if you have got what it takes, then you can be one of us. You have a clean slate. Nobody cares anymore. You are one of this family. But you have to behave like a Marine. You can't ruin your other Marines. You can't take advantage of your position of leadership over them, and your position of absolute power over another human being.

There are a number of reasons, sir, why we sentence a Marine at a court-martial. One reason is specific deterrence. Sergeant Travis says today that he has learned his lesson. But that must be recent. Because from this letter, or this newspaper article, you can see that that was not the case very long ago. Sergeant Travis needs to learn that he needs to be responsible for his own actions and that he will be punished for what he does. And whether he is in the Marine Corps or outside the Marine Corps or anywhere, he can not abuse other human beings.

There is the issue of general deterrence. Major (b)(6) explained that 2d Battalion, 2d Marine Regiment, will hear about the results of this court-martial. They will know. And 2/2 will be partaking in detention facility operations again in the future. Those Marines need to understand how incredibly serious taking care of other human beings is.

Another reason, and a legitimate reason, sir, is punishment. Punishment is swift, is hard, and it hurts. That is the very nature of punishment. When you punish Marines who partake in criminal acts at the expense of many, many others, it is important to send a message to the other rock-solid sergeants in this Marine Corps, sergeants like Sergeant (b)(6) who came in here and bragged to us about how great the sergeants in 2/2 are. Sergeant (b)(6) deserves to know that this court-martial will address these issues when other sergeants betray his Marine Corps, because that rank is too important, this

mission is too important, Sergeant Travis's conduct is too serious.

The appropriate sentence is of the absolute necessity in this case, sir. When thinking of number of years maximum confinement, the government is not asking for maximum confinement, but we are asking for a fair amount of confinement. We talked about attempted cruelty and maltreatment. We need to look at this Iraqi national detainee, the importance of the mission, the purpose for the Marine Corps being out here. And look at his conduct in that context.

His cruelty and maltreatment -- or his attempted cruelty and maltreatment is the most significant type that could be conceived of under that Article because it's abusing somebody that we are sent here precisely to protect. That is one year of confinement.

The conspiracy, the conspiracy to commit cruelty and maltreatment, that is equally serious. And it is serious because Sergeant Travis elected to include his junior Marines -- or at least, as the charge reads now, one of his junior Marines in his conspiracy to harm that human being. That is another year.

Dereliction of duty, sir, because it goes beyond attempting to shock the detainee through the cage. Sergeant Travis then, as you saw through the witnesses, watched on or enabled Private Trefny and Private Sting to shock that detainee. He allowed it to happen purposefully. It happened because of him. He was willfully derelict in his very, very obvious duties to protect that human being.

And false official statement, if it all wasn't enough as it is, Sergeant Travis trying to cover it up for himself and letting his junior Marines take the fall, that is a terribly significant false official statement. But again the government doesn't request the max, sir. We request what is fair.

And adding those together, the fair sentence to confinement in this case is three years and six months because Sergeant Travis needs time to consider what he has done. And the Marine Corps, and those Marines who have been ruined by him, need to know that his conduct has been addressed.

Reduction to E-1, of course, because Sergeant Travis has dishonored whatever rank he held and whatever title he has held.

And a discharge, a dishonorable discharge. This court can choose between no discharge, or a (b)(6) (b)(6) and a -- maybe a (b)(6) occurs when you shock a detainee. Maybe that -- maybe that is (b)(6) It falls in that lower level of (b)(6) . But what does it say about you when you allow that to happen, you work it through your junior Marines, then you sell out your junior Marines, then you sell out the Marine Corps, you sell your battalion? Sergeant Travis has dishonored his Marine Corps. He has dishonored his family. His conduct has been (b)(6) And a (b)(6) is the only appropriate discharge in this case.

Again, sir, the mission is too serious. This conduct is too severe. And it needs to be addressed today.

Sir, the appropriate sentence in this case is three and a half years confinement, reduction to E-1, and a (b)(6)

Thank you.

MJ: Thank you, Captain (b)(6)

Lieutenant Colonel (b)(6)

IMC: Sir, first, I would like to raise an objection to a portion of the government counsel's argument. In deference to the forum, to the court, and to counsel, I chose not to object in the middle of the argument. However, use of the term "torture" is inflammatory. It is not shown by the evidence. Torture is something that is not raised by the facts in this case. We object to the use of that term. We think it is inappropriate to assign it to this case.

MJ: Captain (b)(6) do you wish to respond?

TC: Sir, when I used the word "torture," I premised it in my closing. And I will stick to the definition I used there.

MJ: Your objection is sustained as to the wording. what it is commonly noted as. I do believe that Captain (b)(6) explained what he meant by that, so I will consider what he said. But to the actual term "torture," I sustain the objection.

IMC: Thank you, Your Honor.

Your Honor, a couple of things here before I roll into the heart of my argument. First off, I'd like to focus on the government's -- the government is very focused on the newspaper article.

All they have, Your Honor, is a newspaper article. It is what it is. And that is all that it is. We have no idea how these comments got there. There is no evidence that the government has presented to you to show that Sergeant Travis said these things to this reporter or that Sergeant Travis may have said these things to his mother who said them to the reporter, or that Sergeant Travis may have said them to somebody else who said them to the reporter. We just don't know. So you can't draw any conclusions from this newspaper article. It is what it is, Your Honor. It is a newspaper article. The lack of evidence is not evidence.

Additionally on that point, government counsel made it appear in his argument as if Sergeant Travis had set this whole chain of events in motion in a sinister attempt to trick Sergeant -- trick these other Marines into shocking this detainee. That is not what happened. It's not what the facts presented to this court say. It's not what the facts in the stipulation of fact say. What happened is Sergeant Travis wanted to attach those wires to that cage. He set that ball in motion, but not with malice aforethought, with the idea that, Well, jeez, if I get this going down this road then I'll walk out the door and now they will shock the guy because that's really what I want to have happen.

In typical government fashion, they have taken something with a logical story to an illogical conclusion. That is not what happened. What happened was Sergeant Travis wanted to control that detainee. Sergeant Travis thought of the idea of hooking those wires on that cage. And the other guys took it from there. That was his mistake. That was his mistake, in bringing those wires in there. And that is what he is here to pled guilty for here

today, to take responsibility for that action. Bringing those wires in there, coming up with that idea and the events that followed from them.

With that in mind, Your Honor, I would like to focus the court's attention on four basic areas; first, the environment at Mahmudiyah; second, the type of people we had at that facility; which leads you to the third point, an understanding of why Sergeant Travis did what he did; and finally, fourth, Sergeant Travis himself.

Sir, you have heard a lot of testimony here today in relation to the environment there at Mahmudiyah. It is pretty clear this was a stressful place. It was stressful on the Marines, hard living, hard working, dangerous, dirty, smelly, difficult place to be; stressful on the detainees, also hard living, equally dangerous for them, equally dirty if not more so dirty for them. Also a difficult place to be.

Who were these people? These were people that are apprehended by 2/2 in the conduct of military operations in support of OIF, people who are either suspected of or have engaged in insurgency activities against U.S. forces, but not just U.S. forces, 2/2 Marines. These are individuals who have been engaging in combat operations against these Marines.

So what you got is a dirty, nasty, smelly tent filled with 20 or 30 detainees who hate you and four Marines trying to keep that tempest in that teapot. And then all of a sudden you have got this one guy. There is always one guy. But in this case you have got the one guy who just won't shut up. He keeps talking and talking and talking. They are using what little Arabic they know to try and get that guy to shut up, and he won't.

So Sergeant Travis is in a situation where the skills that he has been given and the training that he received is not working. He sees a potentially hazardous situation, and he makes a bad decision. The decision was to bring those wires into that tent. This wasn't a sinister act. This was an act out of frustration. This was an act out of exhaustion. This was an act out of fear. This was an act done because of the situation.

Based on what we know about Sergeant Travis, I think it is fair to say that he is not going to be going back to

Camp Lejeune and shocking people in the barracks when they don't do what he -- what he's told. That environment isn't going to foster that type of -- of -- that type of situation. The environment here, however, did. And he made a bad decision.

Finally, sir, I want to talk for a moment about Sergeant Travis. I have explained to you the situation, who these guys are, talked to you about why we believe Sergeant Travis made the decision that he did. But let's look at Sergeant Travis and the value that he does have to the Marine Corps even despite this guilty plea here today.

When you look at the documents submitted in the defense exhibits, you are going to see a Marine who has extensive experience in military operations. Just his awards page alone speaks to where he has been and what he has done. Now, he doesn't have the benefit of sitting in a courtroom at Camp Lejeune, North Carolina, sitting in his charlies so you can look at his ribbons. But you do have the awards page in front of you. And you can see exactly where this Marine has been based on those awards. You can also see, looking at the documents that we provided you, experiences he has had, the operations he has been on, the letters of appreciation he has received, the letters of commendation he has received, the MCI training he has taken.

This is a motivated Marine. This is a Marine that we have a significant amount of investment in as a Marine Corps. This is a Marine who has experience not just in military operations, but in this theater, and not just once but twice. And this is a Marine who has asked you for the opportunity to maybe come back here again, not make mistakes again, but get the chance to come back and prove to you, to everybody sitting in this courtroom, and to the Marine Corps at large, and yes even General Mattis who he met with the other day, to show that he can do it right at whatever grade you determine, whatever rank you determine.

Your Honor, when you look at this case in this light, this is a special court-martial at a general court-martial. This is a case that deserves a special-court-martial sentence.

Three and a half years confinement is excessive. I have a hard time trying to gauge what level of confinement

Sergeant Travis should have, but I know it should be less than a year. Perhaps it should be some sort of combination, some sort of a hard labor without confinement. Perhaps if he got hard labor without confinement for two months, he could stay here and work with his battalion doing hard labor at Mahmudiyah and then return to Camp Lejeune with his unit. Perhaps some sort of restriction when he gets to Camp Lejeune. Perhaps some confinement is warranted at the Camp Lejeune base brig. But some combination of restraint time of liberty we think is appropriate -- is appropriate here. Some combination of confinement mixed with restraint on liberty of some other form is what we think is appropriate, equally less than a year.

Reduction. Sergeant Travis fully understands that, when he walks out of this courtroom, it is unlikely that he will have an NCO rank. He understands that. And we understand the military judge has the authority to reduce him to E-1. And viewed in the light of the evidence presented in this court, that may be an appropriate decision. However, there is also the issue of his family.

MJ: Of his what?

IMC: Of his family. The issue of his daughter and daughter on the way. So what we ask the military judge to do is consider either giving him a break on reduction by leaving him an E-3 or giving him a break on forfeitures. (b)(6) We don't do anybody any good to punish those people who aren't even in this country. We need to take care of them as well.

The discharge. Your Honor, we believe that Sergeant Travis has value to this Marine Corps and that he should be retained. We say this not only because of what has been presented to you in the form of documentary evidence, but more importantly by virtue of his conduct since this misconduct. And again, keeping in mind that we have no idea how that information got in the media. So we have to set that aside. And then we have to look at just what evidence we have before this court, that he has been with 2/2 ever since this incident took place, he's been working with 2/2, he has been on guard post, he's been SOG.

Can you believe that they took this guy who they didn't want anywhere near detainees and then made him the SOG? And then the government has had the gall to say that he deserves a dishonorable discharge. It doesn't make any sense. It flies in the face of logic.

He has been guarding Iraqi workers. He has been working at the gates. He has been performing his job as a Marine. So, Your Honor, we ask that you retain him. Keep him on active duty. Give him the opportunity to demonstrate to you, this courtroom, and to the Marine Corps at large that he made a mistake and he can recover.

We all fall down, sir. Not everybody gets up. Some of us need help getting up. Sergeant Travis fell. He wants that little goose from this court to help him get back up and start back out right.

Thank you.

MJ: Thank you, Lieutenant Colonel (b)(6)

The court is closed for deliberations.

The court-martial closed at 1743, 19 August 2004.

The court-martial opened at 1815, 19 August 2004.

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

Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Sergeant Travis, it is my duty as military judge to inform you that this court sentences you as follows:

To be reduced to pay grade E-1;
To be confined for 15 months;
And to be discharged from the Naval Service with a
(b)(6)

You may be seated.

The accused and his counsel did as directed.

MJ: May I have the sentence limitation portion of the pretrial

agreement?

IMC: Yes, Your Honor. If I may approach?

MJ: You may.

IMC: I'm handing to the military judge what has been marked as Appellate Exhibit III, two pages.

MJ: Punitive discharge may be awarded and approved as adjudged.

Confinement, capped your confinement at 18 months. I gave you 15 months. And the reason for that was in light of all your service that you have given, putting yourself in harm's way and all your deployments in the past. That's why I gave you less time than I could have in this case --

ACC: Yes, sir.

MJ: -- along with some other factors.

So it appears that since everything is as adjudged except for the confinement, that the pretrial agreement doesn't have any impact on my sentence.

Do counsel for both sides agree with that interpretation?

TC: Yes, sir.

IMC: Yes, Your Honor.

MJ: Do you understand the effect of the sentence limitation portion of your pretrial agreement, Sergeant Travis?

ACC: Yes, sir.

MJ: Okay. In other words, my sentence that I gave you can be approved as I have adjudged it.

Do you understand that?

ACC: Yes, sir.

MJ: I continue to find the pretrial agreement as a whole to be in accord with appellate case law, not contrary to public policy or my own notions of fairness. And the agreement continues to be accepted.

I have here Appellate Exhibit IV, which is the appellate and post trial rights statement.

Is this your signature which appears on Page 2 above your name?

ACC: Yes, sir.

MJ: Prior to signing this document, did you read it over completely and discuss it with your attorneys?

ACC: Yes, sir.

MJ: Do you understand all of the appellate rights contained within this document?

ACC: Yes, sir.

MJ: This appellate exhibit indicates that you want your copy of the record of trial and your legal letter to be delivered to your attorney. And by that, I mean your lead attorney, Lieutenant Colonel (b)(6)

Is that correct?

ACC: Yes, sir.

MJ: This appellate exhibit, along with all others, will be attached to the record.

Anything further from counsel prior to adjournment?

TC: No, sir.

IMC: No, Your Honor.

MJ: This court-martial is adjourned.

The court-martial adjourned at 1820, 19 August 2004.

AUTHENTICATION OF THE RECORD OF TRIAL

16 through 170

in the case of

Sergeant Matthew K. Travis, (b)(6) , U.S. Marine Corps, 2d Battalion, 2d Marines, 1st Marine Division (REIN), Camp Pendleton, CA

(b)(6)

Major, U.S. Marine Corps
Military Judge
040904

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

(b)(6)

Captain, U.S. Marine Corps Reserve
Trial Counsel
040701

UNITED STATES MARINE CORPS

IN THE TRANSATLANTIC JUDICIAL CIRCUIT

UNITED STATES v. MATTHEW K. TRAVIS (b)(6) SERGEANT UNITED STATES MARINE CORPS	STIPULATION OF FACT

Summary of Facts: On 13 April 2004, Sgt Travis was a member of the Guard Force at the detention facility located at the forward operating base Al Mahmudiya in Iraq. On 13 April 2004, Sgt Travis was the senior guard force member at the detention facility. The Marines under his charge and on his same shift were the following: Private First Class Jeremiah J. Trefny, USMC; Private First Class Andrew J. Sting, USMC; and Private First Class Joshua R. Gabbey. These Marines were tasked with guarding detainees who came into the facility.

On the morning of 13 April, 2004, a certain detainee was causing trouble for the guards. The detainee was being loud and throwing trash out from his cell. The Marines, including Sgt Travis, became irritated with the detainee and wanted to find a way to quiet him down. Sgt Travis came up with the idea of attaching wires to the detainee's cage. Sgt Travis thought the detainee would stop grabbing the cage and quiet down if he was shocked upon touching the cage.

Sgt Travis came up with this idea of attaching the wires to the cage. He brought the wires into the tent, and when PFC Sting asked him what they were for, Sgt Travis explained his intent to wire them to the cage in order to shock the detainee upon touching the cage. The two then engaged in conversation in which PFC Sting explained that he had actual experience with electricity due to working with his father who was an electrician. This conversation lasted approximately five minutes. Sgt Travis believed that PFC Sting intended to find a way to send an electric current into the cage. PFC Sting asked Sgt Travis if it was O.K. if he attached the wires to the cage, and Sgt Travis replied, "Yes."

PFC Sting did eventually attach the wires to the cage from a 110 volt converter box on the table. This did not cause the cage to become electrified, however, as evidenced by the detainee's continued grabbing of the cage. Following this failed attempt, PFC Sting removed the wires from the cage. PFC Sting's next attempt amounted to pressing the ends of the live electrical wires directly against the body of the detainee as PFC Trefney looked on and provided assistance and PFC Gabbey walked the detainee back to his cell

Prosecution Exhibit 1
Page 1 of 4 page(s)

following a routine head call. After two attempts the new plan worked. PFC Sting pressed the ends of the live electrical wires against the detainee and created a shock. Sgt Travis was not inside the tent when the detainee ultimately was shocked.

Charge II and the s/s/t/u:

On 13 April 2004, Sgt Travis was derelict in the performance of his duties in that he willfully failed to protect an Iraqi detainee from physical harm. As the senior guard on post that morning, Sgt Travis' duty to ensure that all detainees were safeguarded while being detained at the facility. He knew that his billet as the senior NCO on that shift was also to ensure that his junior Marines, PFCs Sting, Trefny, and Gabbey did the same. Sgt Travis' OIC, Captain (b)(6) had instructed him on these duties numerous times.

Sgt Travis agrees and believes that he was derelict in the performance of his duties by indicating to PFC Sting that shocking a detainee with live electrical wires was acceptable. Sgt Travis was additionally derelict in that he brought in the wires and presented his plan to PFC Sting. Sgt Travis understood that some type of physical harm likely would ensue from this conversation with PFC Sting. As such, Sgt Travis was failing to protect the detainee from physical harm. Ultimately, physical harm did befall the detainee as PFC Sting and PFC Trefney were able successfully to shock the detainee.

Additional Charge I and s/1/t/u:

On 13 April 2004, Sgt Travis did attempt to be cruel toward and maltreat and unknown Iraqi national detainee, a person subject to his orders, by encouraging PFC Andrew J. Sting, USMC, to attach electrical wires to the detainee's cage. Sgt Travis "aided" in the attachment of these wires by procuring the necessary wires and giving them to PFC Sting. Sgt Travis "encouraged" PFC Sting by explaining how the plan would work and intimating to PFC Sting that shocking the detainee by attaching wires to the cage was a good idea.

Sgt Travis knows and believes that this act would be cruel and would subject the detainee to maltreatment. Sgt Travis agrees that some degree of physical suffering would occur if the detainee were to feel a shock when he touched the cage. Additionally, Sgt Travis knows and believes that this treatment was unwarranted and was not for any lawful purpose. Sgt Travis could have exercised other avenues in order to prevent the detainee from talking. At the very least, Sgt Travis could have approached his superiors with the problem and asked for their guidance on how to prevent this detainee from talking. He does not believe he had legal authority to attempt to shock the detainee by attaching wires to his cage.

Sgt Travis believes that the Iraqi national was subject to his orders and authority. Detainees are unarmed and kept in cages. When released from the cage detainees are flexicuffed and have their heads covered with sandbags. In short, a detainee has no reasonable choice other than to follow every order he receives from the Marine guards.

Prosecution Exhibit 1
Page 2 of 4 page(s)

Additional Charge I and s/2/t/u:
On 13 April, 2004, Sgt Travis attempted to commit an assault committed by a battery upon an unknown Iraqi detainee at the detention facility. Sgt Travis participated in this attempted battery by encouraging PFC Sting to attach, and taking steps to aid in the attachment of, live electrical wires to the detainee's cage. Sgt Travis specifically intended that the wires he procured and brought into the tent would be used to shock the detainee. Sgt Travis believes that the act of gathering the wires and actually telling PFC Sting what they were going to be used for was more than a mere preparatory step toward the commission of assault and battery. First, Sgt Travis laid the wires on the table by the 110 volt electrical converter. Next, Sgt Travis talked to PFC Sting about attaching the wires to the cage. Sgt Travis understood that PFC Sting would attempt to electrify the detainee's cage. Ultimately, the plan failed, though not for lack of effort on the parts of Sgt Travis and PFC Sting. The plan failed either because the cage could not carry the current or the power transformer was not generating electricity.

Sgt Travis did not have any legal justification for his actions. No one coerced him or forced him into attempting to shock the detainee. In fact, Sgt Travis knew that this action was unlawful and explicitly prohibited at the detention facility.

Additional Charge II and s/1/t/u:
On 13 April 2004, Sgt Travis conspired with PFC Sting to be cruel toward and maltreat an unknown Iraqi national detainee, a person subject to his orders. Following their conversation, Sgt Travis and PFC Sting understood the plan to be that PFC Sting would attach wires to the detainee's cage. Though these words were not expressly stated, the plan was obvious to both Sgt Travis and PFC Sting based on their discussion. PFC Sting made the affirmative overt act toward the plan by actually placing the wires on the cage in accordance with the plan. For these reasons, Sgt Travis agrees and believes that he is guilty of conspiring to commit cruelty and maltreatment of the detainee.

Additional Charge IV and s/s/t/u:
On 17 April 2004 Sgt Travis made a false official statement to Major (b)(6) the executive officer for 2/2. Major (b)(6) was conducting an investigation into the detainee abuse incident. One of the first questions Major (b)(6) asked Sgt Travis was whether Sgt Travis had any knowledge of a detainee being shocked. Sgt Travis responded that he did not. This statement was deceitful. Sgt Travis knew that he had brought electrical wires into the tent and that PFC Sting and he had discussed the possibility of shocking the detainee. In addition, following the conversation, Sgt Travis expected PFC Sting to make efforts to shock the detainee. As such, it was a lie to tell Major (b)(6) that he had no knowledge whatsoever. Sgt Travis agrees and believes that by responding to Major (b)(6) question with a "no," he essentially was making words to the effect that he had no knowledge of a detainee being shocked. Sgt Travis agrees that by answering "no" rather than telling him of the steps taken to attach the wires to the cage that it was his intent to hide that fact from Major (b)(6)

Prosecution Exhibit 1
Page 3 of 4 page(s)

SIGNATURE PAGE OF THE STIPULATION OF FACT
IN THE CASE OF U.S. V. SGT MATTHEW K. TRAVIS, USMC

(b)(6)

Accused

Individual Military Counsel / Trial Counsel

(b)(6)

Defense Counsel

Prosecution Exhibit 1
Page 4 of 4 page(s)

Marine Sergeant to Face Court-Martial in Abuse

Four Charged in Case of Iraqi Prisoner Receiving Electric Shocks at Makeshift Detention Facility

By Sewell Chan
Washington Post Staff Writer

A 27-year-old Marine sergeant faces a court-martial in the abuse of an Iraqi prisoner who was given electric shocks at a makeshift detention facility, Marine officials said.

Sgt. Matthew K. Travis, of Frederick, Ky., is the highest-ranking of four Marines who have been charged in the April 13 incident. Two privates pleaded guilty last month to abusing the prisoner and were given prison sentences and bad-conduct discharges. A third private faces a court-martial in late June.

At a military hearing Tuesday in western Iraq, Travis was scheduled to face a general court-martial from July 24 to 28. He was charged in May with conspiracy to commit cruelty and maltreatment, conspiracy to commit assault, dereliction of duty, attempted cruelty and maltreatment, making a false official statement, assault consummated by a battery, attempted assault consummated by a battery and disobeying a lawful order.

In several e-mails responding to questions from The Washington Post, Travis said he was not present at the time of the incident, which occurred inside a temporary holding facility in Mahmudiyah, about 20 miles south of Baghdad. "I'm looking at 17 years for something I didn't do," he wrote.

The Marines have disclosed little about the abuse incident. Maj. Douglas M. Powell, a senior Marine Corps spokesman at the Pentagon, said he was unable to provide any information about the cases and referred questions to Marine officers in Iraq who can be reached only by e-mail.

Most of the hearings involving treatment of detainees in Iraq last centered on the Army's actions at Abu Ghraib prison and other centers. The other significant prison abuse incident involving the Marines is the death of Nagem Sadoon Hatab, an Iraqi who died at Camp Whitehorse, a facility near Nasiriyah, last June. Two Marines face a court-martial in that death.

The four Marines charged in the electric-shock case are Infantrymen from one unit, Company G of the 2nd Battalion, 2nd Marine Regiment, based at Camp Lejeune, N.C. They left for Iraq in February.

According to Travis, the unit was given little notice and virtually no preparation before being assigned to guard prisoners. "It was a last-minute thing," he wrote. "We didn't get good training."

A Marine spokesman in Iraq said in a statement that unit members were told they would be handling detainees as part of a general pre-deployment training that included instructions on how to conduct patrols, searches and other combat operations. The spokesman, Lt. Eric M. Knapp, did not say whether the unit received specialized training for prison guard duty.

The unit took control of the facility in Mahmudiyah from the Army's 82nd Airborne Division on March 24. About a month later, the unit was reassigned to help put down the insurgency that swept the western city of Fallujah.

On April 13, a group of Marines allegedly disciplined an Iraqi prisoner who had been misbehaving by shocking him with a live power wire attached to a generator that delivered 110 volts of electricity.

Pfc. Andrew J. Sting and Pfc. Jeremiah J. Trofacy, both 19, pleaded guilty May 14 to charges related to the abuse. Sting was sentenced to one year in confinement and Trofacy received eight months. A third Marine, Pfc. Joshua R. Gebbey, also 19, faces a court-martial next month on similar charges.

According to Travis, the holding facility was small, with 16 detainees confined in a caged tent and about 20 others in metal cages.

"We would punish a detainee for talking or misbehaving by making him stand for about 45 min[utes] or put[ting] him in a cage outside by himself," Travis wrote.

Travis contends the Marines are making him and the other criminal cases to avoid embarrassment similar to that suffered by the Army.

"The Marines want to get this over [as] quickly as possible so it doesn't give them a black eye," Travis said. "When they saw and heard about what the Army was doing, they tried to hurry with the trial and keep it on hush."

A senior Marine defense lawyer also has expressed concern. The lawyer, Lt. Col. Colby C. Vokey, emphasized that he was not accusing the Marine Corps of any impropriety, but said the speed with which Sting and Trofacy were found guilty was unusual. Vokey is the Marine Corps's regional defense counsel for the western United States and oversees the defense lawyers for the four Marines charged in the abuse.

"The process from the time of charge to the guilty plea was very quick, much more rapid than is common with the court-martial process," Vokey said in a telephone interview from Camp Pendleton, Calif. "It has been one of my concerns in the case. I just can't give you a reason why they proceeded so fast, other than to say that the case proceeded much faster than the standard case proceeds. There was a feeling of urgency on the part of the prosecution that these cases be tried quickly."

Sting's father, Jeff Sting, said his son told him he had been given "about 30 minutes" to accept the plea offer from the military. "He wasn't offered the opportunity to seek any advice from beyond his legal counsel," Jeff Sting said in an interview. Sting's military lawyer, Maj. Steven P. Logan, did not respond to requests for comment.

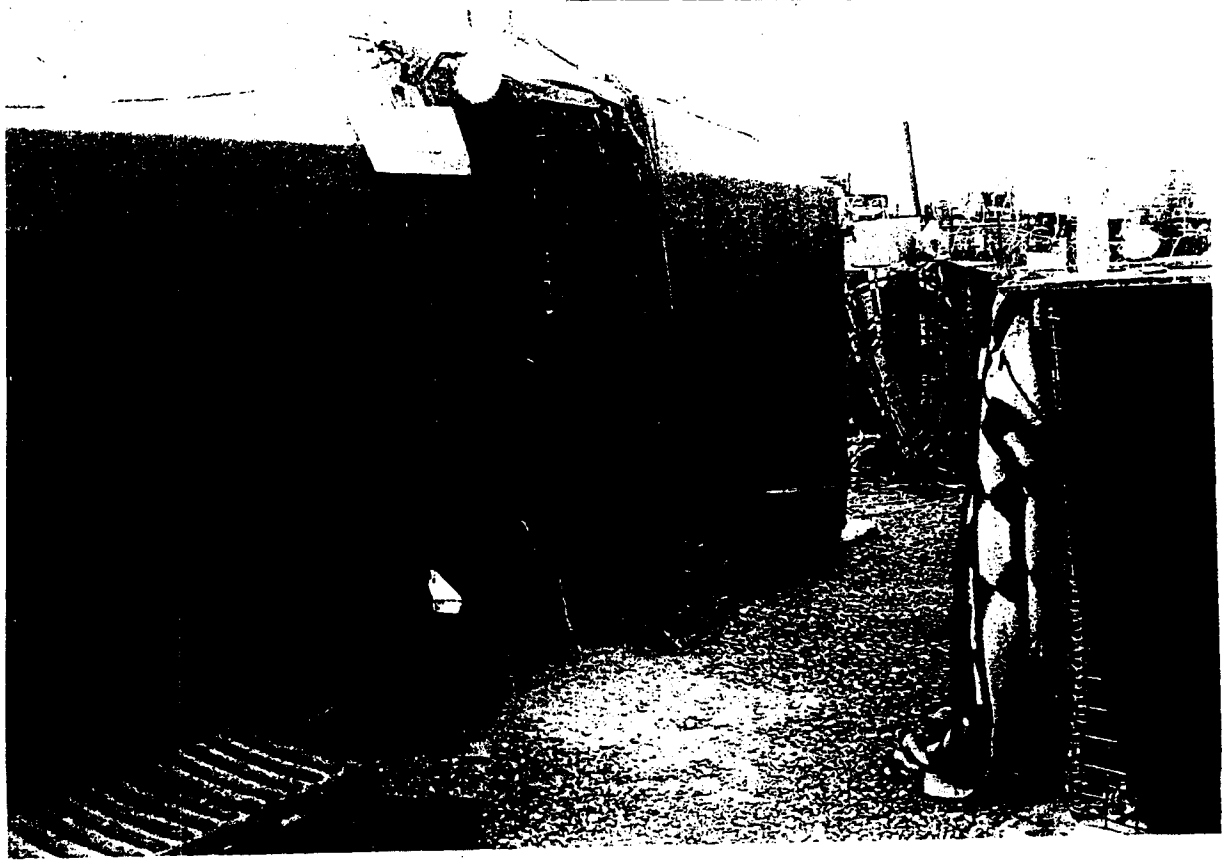
Knapp defended the handling of Sting's case. "The court-martial was not rushed," he wrote. "Sting had a pretrial agreement and was pleading guilty. There was nothing to wait around for once he decided this had received a pretrial agreement."

Knapp also disputed that the timing of the court-martial was related to Abu Ghraib. The investigation into abuse at that prison began in January, and the photographs of abuse that created a public scandal were released in late April.

"The investigation and decision to charge those Marines was made in early April," when the electric-shock abuse was discovered, he said. "So it is ridiculous to say that this was in response to Abu Ghraib, because the dates don't coincide. No one here knew anything about Abu Ghraib yet."

[illegible] tactics were very aggressive for their actions, a factor that may

Prosecution Exhibit 3
Page 1 of 1 page(s)



Prosecution Exhibit 4
Page 1 of 4 page(s)

Prosecution Exhibit 4
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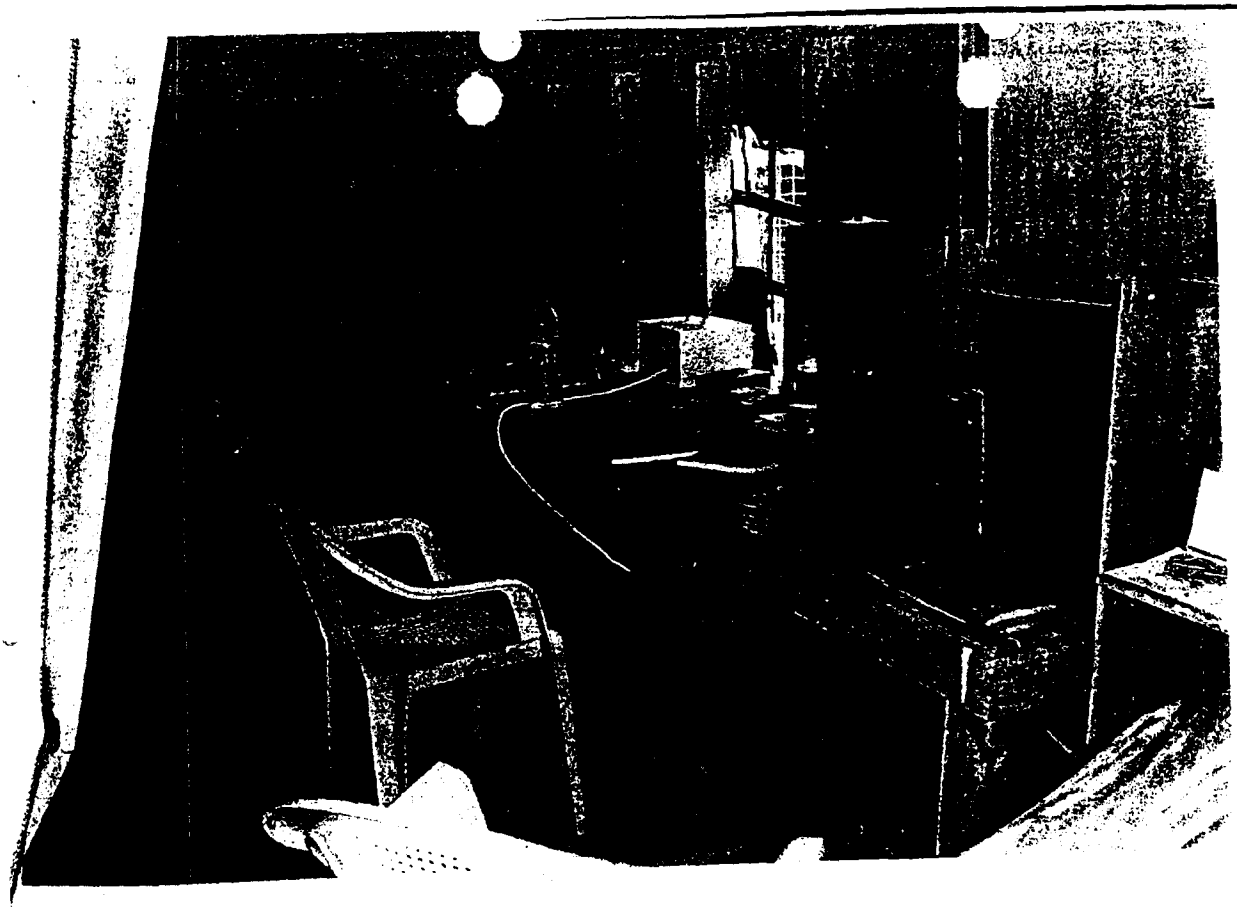
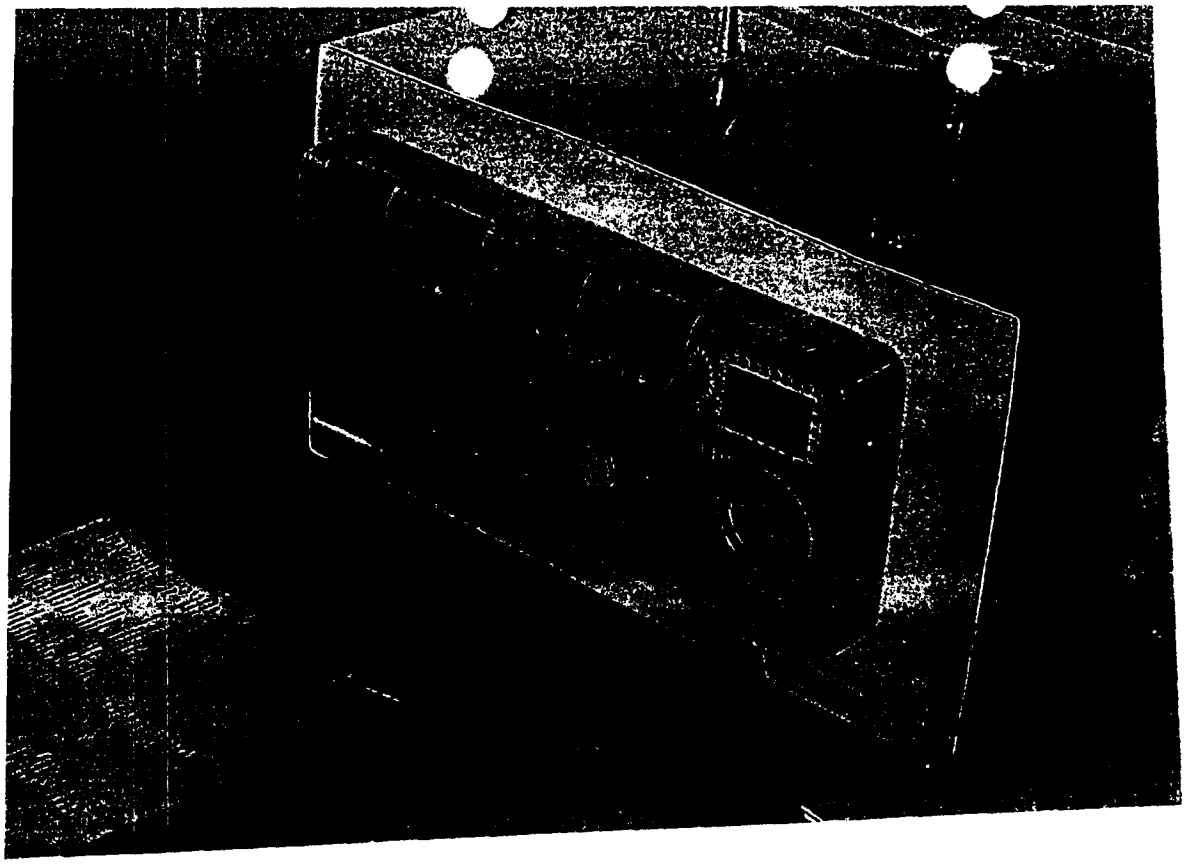


Prosecution Exhibit 4
Page 3 of 4 page(s)

Prosecution Exhibit 4
Page 3 of 4 page(s)



Prosecution Exhibit 4
Page 4 of 4 page(s)

Good afternoon, Sir. My name is Sgt Matthew Travis. I would like to begin by apologizing to the members of my unit, 2/2, the Marines in my Division, and to all Marines in general for what I have done and for any shame I have brought upon them and the Marine Corps in General. I also would like to thank you for your time today, Sir, and for giving my this opportunity to speak to you as man, and as a Marine.

I am originally from (b)(6)
(b)(6)

I grew up in (b)(6) which consists of about 20,000 people. I went to (b)(6)
(b)(6) , where I plaved football. ran for the track team. but mainly focused on wrestling. My Mom, (b)(6) I have one
(b)(6) I am very close to my whole family. Before I came out here, I would call all of them at least three times a week, but while I am out here, I am only able to call them each about once a week. Whenever I call home to speak to my Mom, she'll tell me to hold, while she calls up one of my siblings, so we can all talk to eachother at the same time. I miss my family a lot.

I graduated from High School in May of 1996. In July of 96 I went to Boot Camp at Parris Island. I joined the Marine Corps because I wanted to better myself. I thought it would make me a better man. Since I graduated from High School, at least 10 of the friends I used to hang out with have been shot, and at least 20 are now in jail or prison either over girls or drugs. I wanted to get away from this environment...and that is the biggest reason I chose to join the military. I chose the Marine Corps of all the branches because I thought it was the hardest branch and I didn't think too many people could make it through the training. When I graduated from Boot Camp I was super excited. My Mom, brother, and my Aunt and Uncle all came to the ceremony...I was so proud to be a Marine.

After boot camp, I went to SOI. Then, following SOI, I got picked up with 3/6, Kilo Company. I am an 0311 by MOS. When I was with 3/6, in 1997, I went on a Mediterranean float for 7 months. Originally it was only supposed to be 6 months, but we ended up getting extended. At that time, Saddam Houssein wasn't allowing inspectors to view his factories, so they had us floating off the coast of Kuwait, ready to go in if he didn't allow them in. After that float, in 1998 I spent a month down in Puerto Rico, Haiti and Cuba helping to build houses for the people that had lost houses due to a Hurricane. I felt really good about this. The people, including the Mayor were very thankful for this. From August of 99 until about March of 2000, I went on another

Defense Exhibit C
Page 1 of 4 page(s)

Mediterranean float, this time we went up through the Black Sea and trained with the Romanians. Each time I went on a Mediterranean float, I took part in Operation Bright Star and Noble Shirley, which used to take place in Israel. In July of 2000, I got out of the Marine Corps. I was out for out until November, but then I decided to reenlist. I had had a factory job making 12 bucks an hour in Jacksonville, N.C., I chose to reenlist because I missed the Corps, the comraderie. I got out the same time as a bunch of my friends, and towards the end of the year, we all started joining up again.

When I reenlisted in November of 2000, this is when I got attached to 2/2, Echo Company. I started in training again, right away. I remember coming back from CAX in September of 2001, and watching the events of September 11th the very next day. We had gotten back on the 10th. It made me mad, I felt like they brought the war to us and not us to them. They killed a lot of innocent civilians. Following this, 2/2 got tasked with being a Quick Reaction Force Battalion in case anything were to happen on the East Coast. We also started training to get ready for what was supposed to be a scheduled 6 month deployment, but it turned into a 9 month pump; it lasted from August of 2002 until May of 2003. That deployment took my unit a lot of places, one of them being Kosovo. While we were there we did border patrols, set up OPs to prevent illegal border crossings, to stop the Albanians from smuggling weapons into the country and also from coming into kill and loot from the people that lived in Kosovo. For the remainder of this pump we went through the Suez Canal, off the coast of Africa, and eventually ended up in Jiboudi. What sticks in my mind from this pump is that while we were afloat, we got a message that there was a ship from Iraq which was carrying scuds to Syria, the name of the ship was the Sosan. That was very exciting and I was proud of our forces for raiding that ship. In Jiboudi we did ops with the CIA and special forces to guard the Predator. Sometime in March of 2003, while we in the Persian Gulf, we raided a ship that had been laying mines and had mines on it. That was a successful operation as well and one I felt privileged to be a part of, as it was my company that actually conducted the raid. After this we were tasked to go into Iraq. We flew into Wolverine and then started to move north into Nazariyah. Outside of Nazariyah we linked up with Fox Company because earlier, a convoy got hit and left a Marine behind. That Marine was killed and the Iraqis were dragging his body through the city. My company along with Fox was tasked with going into the city to try to find the body. We never found him. Other than this our company would do blocking positions in order to allow the other units to make their way North to Baghdad, we would conduct raids in the cities in search of weapons. All in all, the first time I came to Iraq, during OIF I, my company was here for about 30 to 40 days. This is how we ended out that Pump.

After that I went back to the rear. Later on that year I went to H&S Company and was made the Bn SACO. In February of 2004 my unit started getting trained up again to come over a second time. We left Lejeune on March 1st, and got up here into Iraq in mid-March. I had flown up from Kuwait as part of the rear party and once I got up here, I found out that I was going to be a guard at the detention facility. By the time the 13th of April came around, I had already been working as a guard at the detention facility for about one month. Working at the detention facility was kind of stressful and frustrating at times. We had detainees coming in who had been fighting against my own unit and

other Marines, it was not uncommon to receive mortar fire while we were at Mahmadiyah, there was a very bad odor inside of the tent, and the language barrier could get frustrating when you were trying to communicate with the detainees. Most of the detainees were grown men of my size or bigger. Some were high value targets who were very dangerous. For instance, one of the detainees we nicknamed Red Beard. He was known for killing American troops. His brother was there and had a reputation for killing troops as well. He was one of many very dangerous detainees within our facility. We had four guards per shift. Sometimes we had as many as twenty detainees to the four of us at one time. We were responsible for making sure they had food, water, could make head calls, and that their medical needs were taken care of. On the 13th of April, the day the detainee got shocked, I lost my patience. I got frustrated, and made a very poor, stupid decision. I was not thinking. I did not act as an NCO should have. I was the SOG, and was responsible for the Marines under me. I let them down. I let my unit down. I let the Marine Corps down, and I let that detainee down. If I could turn back time I would, but now all I can do is try to make the right decision and take responsibility for my actions. Sir, as I mentioned earlier, my family is the most important thing to me; however, the Marine Corps is also very important to me, because they are also a part of what I consider family. I am here to take my punishment like a man, but it is my strongest desire to remain in the Corps. I would like to come back to Iraq a third for OIF II-2. General Mattis told me a few days ago that he would ~~not mind~~ fighting beside me again. I would like to fight by my fellow Marines.

Since this has happened, I have tried to do my best to keep a smile on my face, keep working as hard as I can, remain strong for the sake of my family who is also affected by this, and to contribute to the Marine Corp's mission in Iraq. After this happened I was pulled off of the guard force and began to do other duties. 2/2 moved off of Al Mahmadiyah and went to Fallujah for awhile. While I was there I escorted Iraqis around and supervised them when they fixed electrical problems and cleaned up the FOB. After Fallujah, we convoyed out to a General's House that had been confiscated. On the way to that place we took fire in the way of sniper and AK fire. Then we got moved out to Camp Zadan, also known by us as Camp Suicide. We called it that because it was a really small camp on the edge of Fallujah. Every two days we would take incoming. Our living quarters consisted of a metal frame with only cammie netting on top for shade...not too good for protecting the Marines from incoming mortars. H&S Company was in charge of security at Camp Suicide. I, personally, was an SOG in charge of making sure the guards who were posted at different posts had enough food, water, and ammo. After Camp Suicide 2/2 went back into Camp Fallujah; while I was there I went on some convoy resupply missions. Now we are back out at Al Mahmadiyah. This time around, I have been helping with the refortification of a building, escorting Iraqis as they refill water, take out trash, work with concrete, fix electrical problems, and I have been out on the guard post at Gate 3 where the personnel come onto the base. This involves searching the personnel and making sure they are safe to come onto the camp.

Sir, I am standing before you today for a number of reasons: One, I am here to take responsibility for my actions; Two, I want to be able to look my family and fellow Marines in the eye and tell them I have learned from this and I will take my punishment

Defense Exhibit C
Page 3 of 4 page(s)

like a man. I would like to be able to look in the mirror and know I have still got integrity. I would like to be able to tell my daughters, and show them by example, that when you do something wrong, you can either try to make it right or just quit. I do not want to quite. I want to be a Marine. I thank you for your time today, Sir, and I respect any decision you make.

Respectfully,
Sgt Travis

Defense Exhibit C
Page 4 of 4 page(s)

TRIAL DATES

U.S. v. IBRAHIM

ARRAIGNMENT: 8 JUNE 04

WITNESS REQUEST DUE: 22 JUNE 04

GOV'T RESPONSE DUE: 26 JUNE 04

MOTIONS DUE: 29 JUNE 04

RESPONSES DUE: 6 JULY 04

MOTIONS HEARING: 12 ~~13~~ July 04

NOTICE OF CERTAIN DEFENSES: 5 July 04

QUESTIONNAIRES TO DEF: 18 ~~13~~ July 04

PLEAS/FORUM SELECTION: 12 ~~20~~ July 04

VOIR DIRE DUE: 22 July 04

TRIAL: 24-28 JULY 04 ~~19-22 JULY 04~~

(b)(6)

TRIAL COUNSEL:

DEFENSE COUNSEL:

Appellate Exhibit I
Page 1 of 1 page(s)

UNITED STATES MARINE CORPS

IN THE TRANSATLANTIC JUDICIAL CIRCUIT

UNITED STATES	)	
v.	)	GENERAL COURT-MARTIAL
MATTHEW K TRAVIS (b)(6) SERGEANT UNITED STATES MARINE COPRS	)	SENTENCE LIMITATION

1. Punitive Discharge: As adjudged.

2. Confinement: As adjudged; however, should a punitive discharge be adjudged the accused agrees to submit an appellate leave request within five (5) days of trial, then all confinement in excess of ~~nine hundred and ten (910) days~~ 18 months 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. In addition, this constitutes my request for, and the convening authority's approval of, deferment of confinement for a period to extend until the date I enter into a military detention facility or fourteen (14) days from the date of trial, whichever is earlier.

3. Forfeitures: As adjudged.

4. Reduction: As adjudged.

5. Other lawful punishments: As adjudged.

This agreement constitutes 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.

Appellate Exhibit II
Page 1 of 2 page(s)

SIGNATURE PAGE OF THE SENTENCE LIMITATION
PORTION OF THE PRETRIAL AGREEMENT

Accused: Matthew Travis Date: 040817

M. K. TRAVIS
Sergeant
U.S. Marine Corps

Individual Military Counsel: (b)(6) Date: 17 Aug 04

Lieutenant Colonel
U. S. Marine Corps

Detailed Counsel: (b)(6) Date: 17 Aug 04

Captain
U.S. Marine Corps

The foregoing pretrial agreement is approved.

(b)(6) Date: 18 Aug 04

Major General
U.S. Marine Corps
Commanding

Appellate Exhibit II
Page 2 of 2 page(s)

UNITED STATES MARINE CORPS

IN THE TRANSATLANTIC JUDICIAL CIRCUIT

UNITED STATES v. MATTHEW K. TRAVIS (b)(6) SERGEANT UNITED STATES MARINE CORPS	GENERAL COURT-MARTIAL PRETRIAL AGREEMENT

I, SERGEANT MATTHEW K. TRAVIS, (b)(6) , the accused in a General 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 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 detailed defense counsel, Captain (b)(6) and my individual military counsel, Lieutenant Colonel (b)(6) , in all respects and believe their advice to be in my best interest.

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

Appellate Exhibit III
Page 1 of 6 page(s)

Charge IV:	**Violation of Article 107, UCMJ**	**NOT GUILTY**
Spec 1: JSM 040919	On or about 16 Apr 04, made a false official statement with intent to deceive	NOT GUILTY
Charge V:	**Violation of Article 128, UCMJ**	**NOT GUILTY**
Spec 1: JSM 040919	On or about 13 Apr 04, did commit an assault upon an unknown Iraq detainee by pressing live electrical wires against the detainee's bare chest and back, creating a shock, a means likely to produce death or grievous bodily harm	NOT GUILTY
Add Charge I:	**Violation of Article 80, UCMJ**	**GUILTY**
Spec 1:	On or about 13 Apr 04, attempted to be cruel toward and maltreat an unknown Iraqi national detainee by encouraging PFC Sting to attach, and aiding in the attachment of live electrical wires to the detainee's cage	GUILTY
Spec 2 :	On or about 13 Apr 04, attempted to commit an assault consummated by a battery on an unknown Iraqi national detainee by encouraging PFC Sting to attach, and aiding in the attachment of, live electrical wires to the detainee's cage	GUILTY
Add Charge II:	**Violation of Article 81, UCMJ**	**GUILTY**
Spec 1:	On or about 13 Apr 04, conspired with PFCs Sting, Trefny, and Gabbey to be cruel to and maltreat and unknown Iraqi detainee by attaching live electrical wires to the cage of the detainee	GUILTY, excepting the words, "Private First Class Jeremiah J. Trefny, U.S. Marine Corps, and Private First Class Joshua R. Gabbey, U.S. Marine Corps"; of the excepted words, Not Guilty; of the Specification as excepted, Guilty
Spec 2 :	On or about 13 Apr 04, conspired with PFCs Sting, Trefny, and Gabbey, to be cruel to and maltreat an unknown Iraqi	NOT GUILTY

Appellate Exhibit III
Page 2 of 6 page(s)

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.

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 81, UCMJ**	**NOT GUILTY**
Spec:	On or about 13 April 04, did conspire with PFC Trefny, PFC Sting, and PFC Gabbey to assault an Iraqi detainee by pressing live electrical wires against the bare skin of the detainee	NOT GUILTY
Charge II:	**Violation of Article 92, UCMJ**	**GUILTY**
Spec X: JAM 040819	On or about 13 Apr 04, was derelict in the performance of those duties in that he willfully failed to treat an Iraqi detainee with dignity and respect at to protect the detainee from physical harm	GUILTY, excepting the words, "to treat an Iraqi detainee with dignity and respect and"; of the excepted words, Not Guilty; to the specification as excepted, Guilty.
Charge III:	**Violation of Article 93, UCMJ**	**NOT GUILTY**
Spec X: JAM 040819	On or about 13 Apr 04, was cruel toward and did maltreat an unknown Iraqi national detainee, by assisting and encouraging PFC Sting to press live electrical wires against the detainee's bare skin, creating an electrical shock	NOT GUILTY

Appellate Exhibit III
Page 3 of 6 page(s)

	detainee by pressing live electrical wires against the person of the detainee	
Add Charge III:	**Violation of Article 92, UCMJ**	**NOT GUILTY**
Spec X: JSM 040819	On or about 13 Apr 04, disobeyed a lawful order not to discuss any information about the investigation with anyone	NOT GUILTY
Add Charge IV:	**Violation of Article 107, UCMJ**	**GUILTY**
Spec X: JSM	On or about 13 JSM 040819 MRT 040819 CJM 040819 Apr 04, with intent to deceive, did make to Major (b)(6) an official statement, to wit: "I had no knowledge of a detainee being shocked."	GUILTY
Add Charge V:	**Violation of Article 128, UCMJ**	**NOT GUILTY**
Spec X:	On or about 13 Apr 04, did commit an assault upon an unknown Iraqi detainee by encouraging and assisting PFC Sting in pressing live electrical wires against the said detainee's person	NOT GUILTY

11. As an inducement for acceptance of this agreement, I agree to enter into a stipulation of fact. I agree that the facts contained therein are true and that these facts cannot be contradicted by either side. I also agree not to object to the Stipulation of Fact on any evidentiary basis.

12. I agree to waive the presence of any non-local witnesses at government expense. I offer this as an inducement to the Convening Authority for acceptance of this agreement. This provision does not interfere with my ability to effectively present a sentencing case.

13. In exchange for my pleas of Guilty, the convening authority agrees to withdraw without prejudice the language and charges to which I have pleaded Not Guilty, to ripen into prejudice upon announcement of the sentence.

14. As an inducement for acceptance of this agreement, and as a means of a proffer under Military Rules of Evidence 410, I agree to meet with the General Court-Martial Convening Authority to offer this pretrial agreement and to explain that the comments I made in the media regarding this case were false.

Appellate Exhibit III
Page 4 of 6 page(s)

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

16. 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 of Courts-Martial 1109, Manual for Courts-Martial (2002 edition).

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

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

19. There are no other agreements, oral or written, express or implied, between myself and the convening authority, or any other representative of the government, except those written and contained in this agreement.

Appellate Exhibit III
Page 5 of 6 page(s)

SIGNATURE PAGE OF THE PRETRIAL AGREEMENT

Accused: Matthew Travis Date: 040817

MATTHEW K. TRAVIS
Sergeant
U.S. Marine Corps

Individual Military Counsel: (b)(6) Date: 17 Aug 04

Lieutenant Colonel
U. S. Marine Corps

(b)(6)

Detailed Counsel: Date: 17 Aug 04

Captain
U.S. Marine Corps

The foregoing pretrial agreement is approved.

(b)(6) Date: 18 Aug 04

Major General
U.S. Marine Corps
Commanding

Appellate Exhibit III
Page 6 of 6 page(s)

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 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.

Appellate Exhibit IV
Page 1 of 2 page(s)

1

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, a judge advocate will review your case 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. Your 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
☑ to my counsel (Lieutenant Colonel (b)(6)

I specifically request that my written copy of the staff judge advocate/legal officer recommendation be delivered:
☐ to me
☑ to my counsel (Lieutenant Colonel (b)(6)

Matthew Travis
ACCUSED:
Matthew K. Travis
(b)(6)
U.S. Marine Corps

040819
DATE

(b)(6)

19 Aug 04
DATE

Lieutenant Colonel
USMC

Appellate Exhibit IV
Page 2 of 2 page(s)

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 in 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.