



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1920
JAMO
SEP 01 2004

SECOND ENDORSEMENT on SMBR ltr 1920 SJA of 21 Jun 04

From: Commandant of the Marine Corps
To: Assistant Secretary of the Navy (M&RA)

Subj: REPORT OF BOARD OF INQUIRY IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR

1. Forwarded for review and final action.
2. The basic correspondence is the Board of Inquiry (BOI) report in (b)(7)(C) case.
3. A brief chronology of this case follows:

a. On 23 June 2003, while serving as a (b)(7)(C) Platoon Commander in Iraq, (b)(7)(C) and his Marines detained four Iraqi men for looting. (b)(7)(C) directed that the men be searched, stripped of their clothes (except for their shoes and underwear), and then released.

b. On 28 June 2003, (b)(7)(C) and his Marines fired upon and disabled a truck that attempted to speed through their checkpoint. Two Iraqi men, wounded by the Marines' fire, were given medical treatment and evacuated. The vehicle was searched for possible intelligence and intelligence support was requested. While searching the vehicle, the Marines uncovered clothing and seat cushions described as filthy and covered with unidentified stains. When it appeared that no intelligence could be gathered from these articles, (b)(7)(C) ordered them burned. (b)(7)(C) explained that this precautionary measure was intended to prevent the spread of fleas, lice, fruit flies and the disease leishmaniasis, an ailment becoming more common among the military in Southwest Asia. (b)(7)(C) also contended that such articles were commonly used by insurgents to conceal explosives on the sides of roads in other parts of Iraq. All other confiscated articles were turned into military intelligence.

c. On 1 August 2003, the Commanding General, 1st Marine Division imposed nonjudicial punishment upon (b)(7)(C) and found him guilty of violating Articles 103 (failing to report

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602 USMCR

and turn over captured property) and 133 (conduct unbecoming) of the Uniform Code of Military Justice. The Commanding General, 1st Marine Division awarded (b)(7)(C) forfeiture of \$2,034.00 pay per month for 1 month and a Letter of Censure. (b)(7)(C) did not appeal his nonjudicial punishment.

d. On 6 August 2003, (b)(7)(C) submitted an unqualified resignation in lieu of administrative separation processing for cause. He acknowledged that if his resignation request was approved, his service would be characterized as Honorable.

e. On 8 October 2003, (b)(7)(C) was demobilized and returned to the cognizance of U.S. Marine Corps Forces, Reserve.

f. On 9 October 2003, my predecessor recommended that (b)(7)(C) resignation request be approved and that he be separated with an Honorable characterization of service.

g. On 6 November 2003, you disapproved (b)(7)(C) resignation request and directed him to show cause for retention at a board of inquiry.

h. On 1 December 2003, my predecessor directed the Commander, U.S. Marine Corps Forces, Reserve to convene a board of inquiry.

i. On 6 April 2004, the board of inquiry substantiated the allegations of misconduct and recommended that (b)(7)(C) be separated with an Honorable characterization of service. However, one of the members submitted a minority report in which he substantiated the allegations of misconduct but recommended retention.

j. On 19 July 2004, Commander, Marine Forces Reserve recommended that the findings of the board of inquiry be approved and that (b)(7)(C) be separated with an Honorable characterization of service.

4. After careful review of the applicable law and regulations, (b)(7)(C) statements during his nonjudicial punishment, the statements of his character witnesses, the transcript of the board of inquiry and the recommendations of the chain of command, I am satisfied that (b)(7)(C) involuntary

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(b)(7)(C) (b)(6) - SSN 0602 USMCR

separation with an Honorable characterization of service should be approved.

5. In accordance with reference (a), I recommend that you approve (b)(7)(C) involuntary separation, and that his service be characterized as Honorable. Your approval of this recommendation will effect the recommended action. The separation code will be (b)(2).

H. P. Osman
H. P. OSMAN

Deputy Commandant for
Manpower and Reserve Affairs

SEP -8 2004

APPROVED/~~DISAPPROVED~~

William A. Navas, Jr.
William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4400 BALPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY REFER TO:

1920

SJA

19 JUL 2004

FIRST ENDORSEMENT on SMBR ltr 1920 SJA of 21 Jun 04

From: Commander, Marine Forces Reserve
To: Secretary of the Navy
Via: (1) Commandant of the Marine Corps (JAM)
(2) Commandant of the Marine Corps (DC/S M&RA)

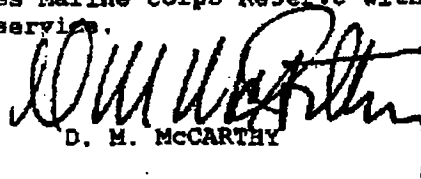
Subj: REPORT OF THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 70602 USMCR

Encl: (7) CFR ltr 1920 of 7 Jul 04

1. In accordance with reference (a), the Report of the Board of Inquiry (BOI) is forwarded for final action.
2. As indicated in enclosure (7), the Counsel for the Respondent was provided with the opportunity to review the Report of the BOI and submit additional written comments. Counsel for the Respondent submitted written comments, and objected to the BOI report, asserting the report mischaracterized the evidence presented at the BOI hearing. I have considered counsel's argument, and find that a preponderance of the evidence supports the Board's findings and recommendations and I concur with those findings and recommendations.
3. The record of the BOI reveals, and the BOI substantiated, that (b)(7)(C) failed to demonstrate acceptable qualities of leadership required of an officer of his grade. (b)(7)(C) endangered the welfare of his Marines by mistreating Iraqis under his charge thereby opening his Marines to Iraqi retaliation. In the first instance (b)(7)(C) ordered his Marines to strip Iraqi detainees to their underwear and sent them out on a public street in Al Kut, Iraq. In the second instance, (b)(7)(C) had his Marines burn the clothing of Iraqis stopped at a check point. (b)(7)(C) failed to treat these Iraqi detainees in accordance with Marine Corps orders and Geneva Convention standards. These findings clearly indicate this officer's lack of mobilization potential. Due to (b)(7)(C) service in Iraq and his unblemished prior record, the BOI recommended that (b)(7)(C) receive an Honorable discharge. However, anyone who reads this record should have no doubt that no Marine should ever again be subordinated to the command or supervision of this officer, whose documented conduct so deviates from accepted and recognized standards.
4. Accordingly, I recommend the findings and recommendations of

Subj: REPORT OF THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(7)(C) SSN 0602 USMCR

the Board be approved and that (b)(7)(C) be involuntarily separated from the United States Marine Corps Reserve with an Honorable characterization of service.


D. M. MCCARTHY

Copy to:
Respondent
Counsel for Respondent
Recorder



UNITED STATES MARINE CORPS
MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY REFER TO:
1920
SJA

JUN 21 2004

From: Senior Member (BOI)
To: Secretary of the Navy
Via: (1) Commander, Marine Forces Reserve
(2) Commandant of the Marine Corps (JAM)
(3) Commandant of the Marine Corps (DC/M&RA)

Subj: FINAL REPORT OF THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) SSN 0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16 (MARCORSEPMAN)
(c) MCO P5800.16A (LEGADMINMAN)
(d) CMC ltr 1920 JAMO of 1 Dec 03
(e) CMFR ltr 1920 SJA of 27 Feb 04

Encl: (1) Report of Findings and Recommendation
(2) Minority Report
(3) Acknowledgement of Service/Review of encl (3)
(4) BOI Transcript (verbatim)
(5) Government (original) Exhibits
(6) Respondent (original) Exhibits

1. In accordance with the references, a Board of Inquiry (BOI) was convened on 6 April 2004 and completed on 7 April 2004 at Marine Forces Reserve, New Orleans, Louisiana.

2. Enclosure (1) is the report of findings and recommendations by the board. Enclosure (2) is the Minority Report from a dissenting member. Enclosure (3), in accordance with references (a) and (c), is the acknowledgement of service and review of enclosure (4) by the Respondent's Counsel. The verbatim transcript is at enclosure (4). Enclosures (5) and (6) are the original Government and Respondent exhibits that were admitted into evidence.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the BOI was to make a recommendation on the retention of the Respondent. The specific bases for the BOI are set forth in enclosures (1) and (4), and reference (d).

4. ACTS ALLEGED. The specific allegations of misconduct against the Respondent are contained in the enclosures. The Respondent allegedly ordered members of his company to strip Iraqi detainees to their underwear and then send them out on a public street in Al Kut, Iraq, and that the Respondent burned the clothing and other items belonging to Iraqis stopped at a check point.

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6. FINDINGS. Enclosure (1) provides the findings for each reason for separation outlined in reference (d). The BOI substantiated Reason for Separation Substandard Performance of Duty, Misconduct, or Moral or Professional Dereliction as evidenced by: a failure to demonstrate acceptable qualities of leadership required of an officer of his grade.

7. RECOMMENDATIONS. The board substantiated the misconduct, and by majority vote recommended separation with an Honorable characterization of service. A minority report has been attached to the record.

8. SERVICE AND BACKGROUND. Per references (a) and (c), the Respondent's service record and background is as follows:

(b)(6) - Military Personnel File Personal Data

9. PRESERVICE MISCONDUCT CONSIDERED. None.

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(b)(7)(C) (b)(6) - SSN/0602 USMCR

In accordance with the requirement ref (a) I have reviewed and authenticated the transcript of subject BOI.

(b)(7)(C)

21 June 2004
Date

U.S. Marine Corps
Senior Member

BOI (BOARD OF INQUIRY)
IN THE CASE OF:

(b)(7)(C)

(b)(6) - SSN/0602 USMCR

Findings and Recommendation Report

NOTE 1: AS THE BOARD VOTES DURING DELIBERATION, THE SENIOR MEMBER INITIALS BLANKS ON THIS REPORT TO INDICATE THE BOARD'S DECISIONS. THE SENIOR MEMBER WILL THEN ANNOUNCE THE BOARD'S DECISIONS BY READING THIS REPORT WHEN THE BOARD RECONVENES.

(b)(7)(C) my duty as Senior Member of this BOI is to inform you as follows:

I. Findings of the Board of Inquiry

1. By a preponderance of the evidence, this BOI finds that you (have/have-not) demonstrated Substandard Performance of Duty, Misconduct, or Moral or Professional Dereliction by your:

- a. (b)(7)(C) Failure to demonstrate acceptable qualities of leadership required of an officer of your grade;
- b. _____ Failure to properly discharge duties expected of an officer of his grade and experience; and
- c. _____ Commission of a military or civilian offense which could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction.

Specifically:

NOTE 2: BASED UPON THE FINDINGS, THE SENIOR MEMBER WILL READ EITHER RECOMMENDATION PARAGRAPH 1 OR 2 BELOW, AS APPLICABLE.

II. Retention or Separation

1. (b)(7)(C) By majority vote, the BOI recommends that you be separated from the Naval service for the reason(s) listed above. The Board of Inquiry further recommends that your service be characterized as:

- (1) (b)(7)(C) _____ Honorable.

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Findings and Recommendation Report

(2) _____ General (Under Honorable Conditions).

(3) _____ Under Other than Honorable Conditions (OTH).

2. _____ By majority vote, the BOI finds that none of the reasons listed above warrant your separation from the Naval service and the case is, therefore, closed.

III. Minority Report

1. _____ (b)(7)(C) none.

2. _____ (b)(7)(C) Will be attached to the report of the board.

IV. Signatures

(b)(7)(C)

Date

Senior Member

(b)(7)(C)

7 APR 04

Date

Member

(b)(7)(C)

7 APR 04

Date

Member

NOTE 3: AFTER READING THE FINDINGS AND RECOMMENDATIONS REPORT DURING ANNOUNCEMENT OF THE FINDINGS AND RECOMMENDATIONS, THE HEARING GUIDE PROMPTS THE RECORDER TO SECURE A SIGNATURE FROM COUNSEL FOR THE RESPONDENT AT THAT TIME.

(b)(7)(C)

Counsel for the Respondent



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
6400 DAUPHINE ST
NEW ORLEANS, LOUISIANA 70140-5400

IN REPLY REFER TO:

1920

05710

7 Apr 2004

From: (b)(7)(C) USMC, Member, Board of Inquiry
To: (b)(7)(C) Board of Inquiry

Subj: MINORITY REPORT; CASE OF (b)(7)(C) (b)(6) - SSN
0602, USMCR

Ref: a) Board of Inquiry conducted 6-7 April 2004

1. Per the reference, the following MINORITY REPORT is submitted in this case. It is evident to this Board member that there was sufficient evidence presented to mitigate the actual charges brought during the Non-Judicial Punishment against (b)(7)(C). However, that is not the reason for the dissension in this matter.

2. The Board members carefully deliberated the merits of both the Government's case and that of the Plaintiff and found much merit to both. However, in reviewing the overall content of the exhibits entered, listening to the sworn testimony presented and placing the actions of the officer in question in the context of the situation that he found himself in, I dissented from the opinion that this officer should not be retained. It is my opinion that he should be retained in our Corps for the reasons contained in the following paragraphs.

3. The charges brought against (b)(7)(C) were correct, however, the actual NJP process was not followed to the fullest extent of the rule of law. That process includes processing the NJP at the company and Battalion level prior to forwarding to the Division level. This matter could have been handled appropriately at the Battalion level and saved the Government tremendous amounts of time and effort.

4. The process of NJP was not accurately recorded: there was not an MOS 4429 Court Reporter present during the NJP process. This led to the (b)(7)(C) to take notes and make a summary transcript of the proceedings. This led to, in my opinion, key points being left out of the transcript which could have impacted the decisions of those up the chain of command to either concur or not concur and forward the decision along.

5. The fact that (b)(7)(C) issued two sets of orders/guidance that, on the surface, are innocuous at best, does not mitigate the fact that one set of orders were issued to the Marines under his charge. If he had committed the act, stripping the Iraqi detainees, himself, the charge would have rendered itself mute. But, since the order was issued to those Marines, it stands as a failure to demonstrate acceptable qualities of leadership required of an officer of his grade. That being said, it does not necessarily mean that the decision was not sound. In fact, the decision to have the Iraqi detainees stripped down to their undergarments was innovative and not outside the realm of possibilities open to the

Subj: MINORITY REPORT; CASE OF (b)(7)(C) 0602, USMCR

Captain. That the action resulted in a charge of a violation of Art. 133 of the UCMJ only shows that the command was clearly looking to avoid creating a "tipping incident" and that they were influenced by the CNN effect, i.e., not having this particular event show up on the six o'clock news. The avoidance of that, especially in the absence of any specific training on the handling of detainees, is clearly evident.

6. It is my opinion that (b)(7)(C) demonstrated outstanding leadership in the application of his duties as a Platoon Commander assigned with the arduous duty of guarding a volatile ASP subject to numerous incursions into the area by unknown "civilians". As demonstrated when the ammunition in the ASP detonated, he thought first of his Marines and followed recommended EOD guidance on re-entry of the ASP. That an OE-234 radio antenna and some sleeping bags were lost/stolen is irrelevant when taking into account that the Marines were evacuated from a potentially life threatening situation. The (b)(7)(C) demonstrated forethought by having the Iraqi detainees stripped, planning on the fact that these individuals would need to return to their homes in order to get another set of clothes on. The deterrent intent was met, as these gentlemen did not return to the ASP in the subsequent days after the incident.

7. The concept of burning the "dirty" clothing doesn't constitute, in my mind, an attempt to humiliate anyone. If the Iraqi gentlemen were interested in obtaining their possessions, they could have simply asked for them when they returned to the vehicle from the hospital. That they did not show concern for their personal effects clearly shows that it was of little concern to them.

8. The other incidents mentioned in the witness statements regarding counseling sessions given by the Company Commander only demonstrate one clear thing: there was not any adult supervision or leadership provided at that unit. Had the Company Commander issued clear commander's guidance and intent, demonstrated leadership by example instead of not being present or clearly accessible, there would not have been any confusion on the parts of any of the participants involved. This lack of leadership can also be pinpointed to the Operations Officer, Executive Officer and the Battalion Commander.

9. The comparison given by the Deputy Division Commander that (b)(7)(C) actions and behavior were equivalent to those taken by William Calley at the massacre at My Lai are over the top and without merit. Granted, two "knucklehead" mistakes were made, but that does not mean that at some point down the road more egregious mistakes could be made that would jeopardize the lives of civilians or Marines. (b)(7)(C) actions showed that he had his Marines best interests at heart. Sound leadership at the company and Battalion levels would have allayed the fear that continued mistakes would ultimately have led to disaster.

10. During the course of the proceedings (b)(7)(C) demonstrated to me the potential for continued leadership and followership, provided that he is given strong and steady guidance and leadership himself. This is not possible at (b)(7)(C). Glaring failures exist there. My dissent is based on recognition of those facts and an

Subj: MINORITY REPORT; CASE OF
/0602, USMCR

(b)(7)(C)

(b)(7)(C)

understanding that during combat operations, many issues require solutions not contained within the normal "schoolhouse" textbooks. It is my opinion that (b)(7)(C) showed foresight, demonstrated concern for his Marines and concern for the Iraqi people during his tour in country and is clearly capable of continued service in other leadership billets and capacities. (b)(7)(C) should be retained for the good of the service and offered the opportunity to execute an Inter-Unit Transfer to another command either in duties related to his current MOS of 0602 Communications Officer or as a formally trained 0302 Infantry Officer. (b)(7)(C) may not ever evolve into a Joe Foss or Chesty Puller, but he does possess the potential to accomplish many good things over the course of a Marine Corps career.

(b)(7)(C)

Copy to:
SJA

DOD JUNE

1400



DEPARTMENT OF THE NAVY

NAVAL LEGAL SERVICE OFFICE
NEW ORLEANS DETACHMENT
2300 GENERAL MEYER AVENUE
NEW ORLEANS, LOUISIANA 70145-0100

IN REPLY REFER TO:

1920

CFR

7 JUL 04

From: (b)(7)(C) JAGC, USNR, Counsel
for the Respondent

To: Secretary of the Navy

Via: (1) Commander, Marine Forces Reserve
(2) Commandant of the Marine Corps (JAM)
(3) Commandant of the Marine Corps (DC/M&RA)

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)
(c) COMMARFORRES' ltr 1920 SJA undated
(d) SMbr's ltr 1920 dtd 21 Jun 04
(e) (b)(7)(C) Minority Report (b)(7)(C) dtd
7 Apr 04

Encl: (1) (b)(7)(C) ltr dtd 28 Jun 04

1. Respondent's counsel submits this memorandum as an attachment to Enclosure (4) to Reference (c), ACKNOWLEDGEMENT OF RECEIPT AND OPPORTUNITY TO REVIEW THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C) (b)(6) - SSN /0602 USMCR. This memorandum contains Counsel for the Respondent's written comments regarding the record of proceedings in the subject case as submitted by the Office of the Staff Judge Advocate, Marine Forces Reserve on approximately 24 June 2004.

2. Paragraph four (4) of reference (d), the Senior Member's report to the Secretary of the Navy, warrants further clarification and elaboration. This paragraph reduces the facts of this extremely complex case to a seemingly Government-favored oversimplification of the events in question. Indeed, this sort of summarization of facts and reports to the Secretary of the Navy regarding (b)(7)(C) case served as a point of contention during the Board of Inquiry (please see page 17 of the Record of Proceedings).

Paragraph four fails to fully and accurately characterize the circumstances that surrounded the two alleged incidents. The first clause of the second sentence states: "The Respondent allegedly ordered members of his company to strip Iraqi

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C)
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detainees to their underwear and send them out onto a public street in Al Kut, Iraq." This statement fails to mention that these "Iraqi detainees" had been captured three times prior to this incident for stealing U.S.-secured items from an Ammunition Supply Point (hereinafter "ASP"). It further fails to mention (as does paragraph five, *infra*) that (b)(7)(C) ordered the men to be have only their outer garments removed, but to be left with their T-shirts, shorts, and shoes. This paragraph further omits that these men were being released and were not the subject of some sort of "prisoner abuse" scandal. Most notably, this mention of the incident fails to reveal the complexity of the "ASP interloper" problem as was described by the Marines of (b)(7)(C). Particularly, this portion of the Senior Member's report omits mention of the dozens of Iraqi civilians who were killed and wounded by exploding ordnance in Al Kut ASPs. It fails to mention that each time these men were detained, (b)(7)(C) Marines were forced to enter non secure areas of the ASP and that this put the welfare of Marines under (b)(7)(C) at risk. It fails to mention that (b)(7)(C) issued this order in hopes that such measures would force the Iraqi ammunition thieves to, at the very least, return to their homes, thus preventing further exposure to risk of injury. Finally, the report fails to mention that the men were released at a bus stop and the Chaleby report (Respondent's Exhibit L), which indicates that Iraqi men are not uniquely humiliated by being seen in shorts and T-shirts.

The second clause of Paragraph four indicates that: "...the Respondent burned the clothing and other items belonging to Iraqis stopped at a check point." This statement additionally raises some concerns, in terms of its overall general accuracy and oversimplification of the incident. First, the Iraqis in question had not been "stopped" at a checkpoint as Paragraph four indicates. Rather, their truck had been shot off the road with small arms and .50 caliber machine gun fire after its drivers had attempted to blow through the checkpoint in their semi tractor-trailer, nearly running down several Marines. The paragraph fails to mention that (b)(7)(C) the ranking Marine on scene, ordered prompt medical care for the wounded Iraqi truck drivers and ensured their safe evacuation to a medical care facility. The paragraph further fails to mention that (b)(7)(C) and his men guarded the wrecked truck through the night and that, after it was clear that there was no way to tow the truck and that Human Intelligence Teams would not be arriving in the near future, (b)(7)(C) and his men set about to secure and seize items of potential intelligence value. The paragraph omits the poignant scientific and personal

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testimony that, when (b)(7)(C) attempted to place filthy articles of clothing into the Humvee, that (b)(7)(C) expressed to his Marines his well-founded fears that such articles may have sand flea, lice, tick, and fruit fly infestation. Furthermore, (b)(7)(C) issued the order to burn the clothing items with the understanding that trash should not be left along the side of the road: 1) for fear of use as an Improvised Explosive Device and 2) because subsequent units may then fall victim to any parasitic infestation. Respondent's Exhibits P through U detail the extensive parasite and disease issues that American troops faced and continue to face in this particular region of Iraq.

Accordingly, Counsel for the Respondent, while appreciating the need for brevity in such reports, feels that the facts as outlined in Paragraph four are incomplete and tend to unfairly characterize (b)(7)(C) as an "abuser of Iraqi civilians." Truly, a thorough examination of the complete facts in this case invites one to place (b)(7)(C) actions in context and ensure that a full, fair, and impartial explanation of the facts is considered.

3. Under the guise of outlining (b)(7)(C) position at the hearing, Paragraph five of reference (d) somewhat mischaracterizes the Respondent's Position at the Board. This paragraph (#5) within reference (d) substitutes for (b)(7)(C) actual position the statement that the Respondent "acknowledged that he committed the misconduct." This assessment of (b)(7)(C) position is misleading at best, reduces his defense to an admission of guilt accompanied by a plea for retention, and abandons any pretense of context. (b)(7)(C) instead testified precisely regarding the actions he took during these two incidents and contended that his actions did not implicate any of the alleged bases for separation. (b)(7)(C) true position regarding these incidents is outlined as follows..

a. Not misconduct. (b)(7)(C) acknowledged that he did, in fact, issue the orders to have the outer layer of clothing removed from the men who had unlawfully entered the Ammunition Supply Point and to burn the tattered clothing items secured from the wrecked tractor-trailer. (b)(7)(C) did not, however, "acknowledge that he committed the alleged misconduct." (b)(7)(C) contended that, after an examination of the facts as a whole, his decisions were rooted in a desire to protect his Marines from harm and to maximize mission efficiency and effectiveness. Counsel for the

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Respondent respectfully contends that it is insufficient to state simply that "[Respondent] did not believe his actions warranted separation." Instead, (b)(7)(C) position was that his actions, when viewed in the light of the combat action environment which surrounded them, did not constitute a substandard performance of duty, misconduct, or moral professional dereliction demonstrated by: 1) a failure to demonstrate acceptable qualities of leadership required of an officer of his grade; 2) a failure to properly discharge duties expected of an officer of his grade and experience; or 3) the commission of a military or civilian offense which could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction. Instead, (b)(7)(C) acknowledges that, with the benefit of hindsight, there may have been more prudent choices available. (b)(7)(C) further contends, however, that given the exigencies of the circumstances, decisions needed to be made and he acted decisively and in the best interests of the mission and the welfare of his Marines. (b)(7)(C) contends vehemently that, in no way, were his actions intended to degrade or humiliate the Iraqi people involved.

b. Matters in extenuation. (b)(7)(C) position before the Board included extensive evidence of extenuating circumstances surrounding the two incidents. Much of this evidence is outlined above. It cannot be overstated that the summarized versions contained within the Senior Member's report fail to mention extremely probative matters of extenuation and mitigation. These brief synopses fail to mention the dangers attendant to (b)(7)(C) position in Al Kut, along with dangers facing Iraqi civilians who unlawfully entered those Ammunition Supply Points. They fail to capture the reasoning, logic, and rationale behind (b)(7)(C) decisions. The Respondent's counsel went to extraordinary efforts to assist the board and subsequent reviewing authorities in developing a full picture of Al Kut during this timeframe. These matters are contained fully within the Record of Proceedings and provide critical context to (b)(7)(C) actions.

With regard to the Iraqis detained after being caught in the ASP, (b)(7)(C), a Government witness, testified in depth regarding the dangers of the ASPs and the vast looting problem. (b)(7)(C) characterized the Iraqi system of handling looters as "quite broken" and "totally broken." (Transcript at 141). Several witnesses, including (b)(7)(C) (b)(7)(C) and (b)(7)(C) relayed the story of a Marine in Weapons Company who was badly

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(b)(7)(C) (b)(7)(C) SSN 0602 USMCR

burned when Marines entered an ASP in order to prevent the vast removal of ordnance. The complete failure of the Iraqi police to handle the looting problem, when considered in light of the extraordinary dangers attendant to guarding the ASPs, place (b)(7)(C) attempts at crafting innovative solutions in the context where they belong.

The circumstances surrounding the checkpoint incident were equally harrowing. After (b)(7)(C) and his men had stopped 40 to 50 vehicles at an evening checkpoint without incident, a large tractor-trailer blew through the checkpoint, nearly hitting several Marines. (b)(7)(C) and his men were forced to disabled the truck. Then, after guarding the truck all night without relief and without supplies for an overnight camp, (b)(7)(C) repeatedly called in to the command position asking for support, asking for a wrecker, inquiring into relief. When finally ordered back to the compound without any relief, (b)(7)(C) and his men hastily searched the truck for anything of intelligence value. Items of intelligence value were placed in bags that the Marines had brought to the checkpoint the night before and turned over to the authorities. The decision to burn the tattered clothes, although made hastily after a night without sleep, was made for a tactical purpose. Standard Operating Procedure dictated that trash be burned in order to prevent use as an IED and to prevent the transmission of parasites and infectious diseases. (b)(7)(C) in a hurry to get his exposed squad back to the compound, classified the filthy clothing as trash and had it burned.

c. Good military character. A fundamental element of the Respondent's case involves (b)(7)(C) exemplary military character and performance of duties while in Al Kut, Iraq. Even the witnesses who testified on behalf of the Government, such as (b)(7)(C) and (b)(7)(C) characterized (b)(7)(C) as an officer who actively sought out knowledge and guidance regarding his position within Weapons Company, who was unafraid to make decisions, and who looked after the welfare of his Marines. Several Marines testified to (b)(7)(C) rapidly improving capabilities as an Infantry Officer, despite lack of any formal training and only one substantive drill as an Infantry Officer prior to activation. (b)(7)(C) after the alleged incidents, worked with (b)(7)(C) in the training of Iraqi Security Forces. (b)(7)(C) testified to (b)(7)(C) outstanding rapport with the Iraqi recruits and his impeccable performance of duties, even after being accused of misconduct. The Respondent presented to the Board

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR

roughly 12 letters from Marines who had worked with (b)(7)(C). These letters, written by the Marines who worked with (b)(7)(C) on a daily basis, detailed (b)(7)(C) skills, knowledge and leadership capabilities. A characterization of the Respondent's position without reference to the overwhelming evidence of good military character is a substantial oversight.

4. With regard to Paragraph six of reference (d), the findings portion states only that the misconduct was "substantiated" but fails to mention that two of the alleged bases, commission of a serious offense and failure to properly discharge duties expected of an officer his grade, were not substantiated.

5. Finally, Counsel for the Respondent respectfully invites attention to Paragraph seven of reference (d), which outlines the board's recommendation. This paragraph makes reference to the dissenting minority report, listed above as reference (e). (b)(7)(C) Minority Report accurately and fairly captures the attitudes and circumstances surrounding this alleged offense.

6. This submission has attempted to supplement and correct what Counsel for the Respondent perceives as grave deficiencies in reference (d) and to respectfully request that the board's recommendation for separation be vacated by the Secretary of Navy and that (b)(7)(C) be retained. Enclosure (1) is a brief letter from (b)(7)(C) and as Counsel for the Respondent, I respectfully invite your attention to it. I am confident that an examination of the verbatim Transcript of the Board and the exhibits will reveal that (b)(7)(C) is a tremendous asset and should be retained in the United States Marine Corps Reserve.

7. If there are any questions on this matter, I can be reached at (b)(7)(C) or (b)(7)(C). My email address is (b)(7)(C). Thank you for your time and consideration of these matters.

(b)(7)(C)

Counsel for the Respondent

28 June 04

From: (b)(7)(C) USMCR

To: Secretary of the Navy

Via: Chain of Command

SUBJ: STATEMENT REGARDING BOARD OF INQUIRY OF (b)(7)(C)
(b)(7)(C)

Sir:

I respectfully request that you read the Minority Report, written by (b)(7)(C) USMC, concerning my Board of Inquiry from events that occurred in Iraq last year with (b)(7)(C). The Minority Report succinctly offers insight that is essential to a just review of this case. The Minority Report also helps to show that my actions were logical and helped to solve a difficult, combat situation with no loss of life or injury (either my Marines or Iraqis).

Thank you very much for your consideration.

Very Respectfully,

(b)(7)(C)

ENCLOSURE (1)

DOD JUNE

1407



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY REFER TO:

1920

SJA

24 JUN 2004

From: Commander, Marine Forces Reserve
To: Counsel for Respondent

Subj: RECORD OF PROCEEDINGS FOR THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN/0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)

Encl: (1) Senior Member Report of BOI ltr of 21 Jun 04
(2) Findings and Recommendations
(3) BOI Transcript (verbatim)
(4) Acknowledgement of Service re: BOI Report

1. Per reference (a), the enclosures are provided for your review and action. Note enclosures (2) and (3) have already been provided to you.

2. You have ten (10) days (please note not "working" days) to review enclosures (1) through (3), and submit written comments to the Commandant of the Marine Corps and the Secretary of the Navy, via this command. Immediately upon receipt of this correspondence, please acknowledge its receipt by signing and dating enclosure (4) at paragraph (1), then faxing an advance copy to: (b)(7)(C) at (b)(7)(C) (b)(7)(C)

3. Within 10 days, the original acknowledgement (enclosure (4), and any written comments) must be mailed to:

OSJA, MARFORRES
(b)(7)(C)
Bldg 601/ Rm 5A413
4400 Dauphine St.
New Orleans, LA 70146-5400

4. The point of contact is (b)(7)(C) at (b)(7)(C)
(b)(7)(C)

(b)(7)(C)

By direction

DOD JUNE

1408

Jun-16-04 12:37 PM

Jun 16 04 08:53

A. RRES SJR NOLA

804 878 2707

T-517 P.002/003 F-004

804 478 0478

P.2

Jun-16-04 10:37 PM

804 878 2707

P-001 P.002/003 F-004

RECEIVED
1984
SJA

FIRST ENCLOSURE ON COMBUSTION* Itr 1980 SJA of 27 Feb 04

From: [REDACTED] PACT, [REDACTED] [REDACTED] for [REDACTED]
To: Commander, Marine Forces Reserve (Attn: [REDACTED])
4408 Dauphin Street, New Orleans, LA 70116-5400

Subj: ACKNOWLEDGMENT OF RECEIPT AND REVIEW ON THE VERACITY
TRANSCRIPT FOR THE RECORD OF SPEECH IN THE CASE OF [REDACTED]
[REDACTED] (UFG-SSV/0602 UNICA)

Encl: (1) COMBUSTION* Itr 1980 SJA of

1. For the references, I hereby acknowledge that on the 15th day
of July, 2004, I received enclosure (1). I understand
that I have five (5) working days from the date of receipt, to review
the enclosure and submit any notes, errors or corrections.

(b)(7)(C)

Date: 1 Jun 04

2. For the references, on the 8th day of June,
2004, I reviewed enclosure (1) and submitted the following:

a. I have neither commented nor noted
errors/corrections; or,

b. (b)(7)(C) I have noted the errors/corrections in the summarized
transcript itself, and/or commented as follows:

Civilian counsels last name is spelled

(b)(7)(C)

vice

(b)(7)(C)

c. See Attachment(s) for my comments regarding noted
errors or corrections.

(b)(7)(C)

Date: 8 Jun 04

ENCLOSURE (2)

DOD JUNE

1409



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY REFER TO:

1920

SJA

27 May '04

From: Commander
To: (b)(7)(C) JAGC, USNR, Counsel for Respondent

Subj: VERBATIM TRANSCRIPT FOR THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) SSN 0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)

Encl: (1) BOI Transcript
(2) CFR's acknowledgement of summarized transcript

1. Per references (a) and (b) the enclosures are provided for your review, and any necessary action.
2. As Counsel for the Respondent (CFR), you have five (5) working days to review and return the Board of Inquiry (BOI) summarized transcript, to include the statement in enclosure (2) that you reviewed the transcript and submitted any noted errors/corrections.
3. Within 5 working days enclosure (1) must be reviewed with any errors or corrections noted, and along with enclosure (2), mailed to:

OSJA, MARFORRES

(b)(7)(C)

Bldg 601, Rm 5A413

4400 Dauphine St.

New Orleans, LA 70146-5400

4. The subject point of contact is (b)(7)(C) at (b)(7)(C)
(b)(7)(C)

(b)(7)(C)

Copy to:
SJA, MarForRes

DOD JUNE

1410

VERBATIM TRANSCRIPT OF

BOARD OF INQUIRY

IN THE CASE OF

(b)(7)(C)

U.S. MARINE CORPS RESERVE

HELD ON

6 AND 7 APRIL 2004

AT

MARINE FORCES RESERVE, NEW ORLEANS, LA

PERSONS PRESENT

Senior Member of the Board (SRMEM):

Board Member (MEM):

Board Member (MEM):

Court Reporter:
Recorder (REC):
Civilian Counsel for
the Respondent (CCFR):

Counsel for the Respondent (CFR):
USNR

Respondent (RESP):

(b)(7)(C)

The Board of Inquiry was called to order at 0805 hours, 6 April 2004.

SRMBR: Okay. We can proceed whenever you are ready, Skipper.

REC: Yes, sir. Sir, the time is 0805. The date is the 6th of April 2004; and this board hearing is taking place at Marine Forces Reserve, New Orleans. The Commander of Marine Forces Reserve has convened this board in the case of (b)(7)(C) USMCR, by appointing order dated 27 February 2004.

The officers appointed to this BOI are as follows:

(b)(7)(C) as the SENIOR MEMBER.
(b)(7)(C), as a MEMBER;
and
(b)(7)(C) as a MEMBER.

All officers named in the appointing order are on active status and are present.

(b)(7)(C) USMCR, has been detailed as recorder for this BOI and is present.

(b)(7)(C) JAG Corps, U.S. Navy Reserve, has been detailed as detailed counsel for the respondent and is present.

(b)(7)(C) is serving as civilian counsel.

Both recorder and detailed counsel for the respondent are lawyers certified under Article 27(b) of the UCMJ.

(b)(7)(C) if you will, would you please state your qualifications for the record.

CCFR: Certainly.

Good morning, gentlemen. My name is (b)(7)(C). I am an attorney licensed in the states of Connecticut, Pennsylvania, the United States Supreme Court, of the district courts for Pennsylvania and for Connecticut, the United States Courts of Appeals for the Armed Forces, and also

certified under the UCMJ under 27(b); and I was a former judge advocate.

MBR: What's your specialty?

CCFR: Litigation, sir.

SRMBR: Litigation. Thank you.

REC: Members, (b)(7)(C) has been detailed as court reporter and has been previously sworn.

No legal advisor has been appointed. The respondent is present.

SRMBR: Okay. We will start with number two; right?

REC: Sir, we're on page four of four.

SRMBR: The record will reflect that this board is properly convened and constituted. The purpose of this board is to consider relevant facts in the case, and make findings on the reasons of separation and on separation from the United States Marine Corps. The specific reasons for separation for the board to consider are as follows:

The first reason for separation is substandard performance of duty as evidence by:

(A) failure to demonstrate acceptable qualities of leadership required of an officer of his grade;

(B) failure to properly discharge duties expected of an officer of his grade and experience; and

(C) commission of a military or civilian offense, which, if prosecuted under the UCMJ, could be punished by confinement of 6 months or more; and any other misconduct, which if prosecuted under the UCMJ, would require specific intent for conviction.

These reasons for separation are listed in a CMC Let?

Q. Ter dated 3 December 2003, to the respondent and a CMC Letter dated 1 December 2003, to the Commander of Marine Forces Reserve, and can be found in SecNav

Instruction 1920.6 Bravo, Enclosure 3.

I will now advise the respondent of his rights to counsel before the board. These rights were listed in the notification.

Does counsel desire that I explain these rights to the respondent?

CFR: Sir, the respondent would waive that.

SRMBR: Very well.

In addition to your rights to counsel, you have many other rights at this board. These were listed in the notification and acknowledgment of rights.

Does counsel desire that I explain these additional rights to the respondent?

CFR: No, sir. The respondent would also waive that.

SRMBR: Very well.

The purpose of this board is to give the respondent a full and impartial hearing and an opportunity to respond to and rebut the allegations which are the basis for referring this case to a board of inquiry.

After hearing evidence from both sides, the board will determine whether the preponderance of the evidence proves those allegations.

If a preponderance of the evidence does not support the allegations the case will be closed.

If the preponderance of the evidence supports the allegations, the board will recommend whether this respondent should be discharged.

If the board recommends discharge, it will also recommend the characterization of the discharge. Since a discharge would be at the grade the respondent currently holds, the board will not recommend a discharge grade if it recommends discharge.

Depending on the board's findings and

recommendations, final action on the case may be taken by the Commandant of the Marine Corps or the Secretary of the Navy.

The members are informed that Congress created two separate systems for adjudicating officer misconduct cases. The first system is the judicial system implemented by the Uniform Code of Military Justice. The purpose of the judicial system is to determine guilt and punishment, and such determinations are made at non-judicial punishment hearings or courts-martial.

The second system is the administrative system, which is implemented by statute and regulations. The purpose of the administrative system is not to punish but to determine whether an officer's performance or conduct warrants separation from the service. Thus, the board of inquiry examines allegations against an officer; and if it substantiates them, determines if the officer should be retained or separated.

The officer's commander reviews each case of officer misconduct and determines the most appropriate means of resolving the allegations against the officer: The judicial system alone, the administrative system alone, or both systems.

The judicial and administrative systems may work independently. For example, a board of inquiry may be held without an officer receiving non-judicial punishment. On the other hand, an officer may receive non-judicial punishment but never have the case referred to a board of inquiry.

Likewise, the systems may work together. For example, an officer may receive nonjudicial punishment and then have his case referred to a board of inquiry. Referring an officer's case to a board of inquiry after the officer's case has been to a court-martial or to a nonjudicial punishment hearing is not double jeopardy. Accordingly, this board of inquiry functions as an administrative rather than a judicial body. The rules of evidence applicable at courts-martial do not apply at this hearing. However, Article 31(b) of the UCMJ does apply. No military member may be compelled to

testify or produce evidence that will tend to incriminate that member or be required to answer questions not material to issues before the board.

The following will occur during the hearing: Presentation of the government's case; presentation of the respondent's case; rebuttal; closing arguments from counsel; instructions for the members; and deliberation by the members.

The members are cautioned not to make any decisions until after hearing all of the evidence, the final arguments of counsel, and instructions on deliberations.

All board proceedings will be conducted in this room while the board is in session. The board will consider any matters presented which is relevant to the issues before the board, whether written or oral, sworn or unsworn.

Real evidence, as distinguished from testimonial or documentary evidence, may be shown and admitted to the board and should be accurately described or reproduced for the record. The board may refuse to consider any oral or written matters presented if it is irrelevant, not authentic, or unnecessarily repetitive, or cumulative. However, evidence will not be excluded merely because it would be inadmissible in court. If evidence is classified, the provisions of the Department of the Navy information security regulations will be observed.

The burden of proof is on the government, and it never shifts. Board decisions are made by a majority vote based on the preponderance of the evidence, which is the standard of proof.

A preponderance, which is the same standard for nonjudicial punishment hearings, is less than beyond a reasonable doubt, which is the standard at a court-martial.

A preponderance of the evidence proves a fact, if the greater weight of evidence -- for example, fifty-one percent or more of the evidence supports the fact. The weight of evidence is not determined by the sheer number of witnesses or volume of

evidentiary matter. It is determined by the evidence which best accords with reason and probability. The board members will rely on their individual judgment and experience to determine the weight and credibility to be given to the evidence.

The senior member rules on all matters of procedure and evidence. The senior member rules on all challenges for cause except for challenges for cause to the senior member or legal advisor. The convening authority rules on those challenges for cause.

Since the procedures used at this hearing may be unfamiliar to the board members, the members are encouraged to ask questions during the hearing about those procedures. The hearing will be conducted in an atmosphere of decorum and dignity. Members and witnesses will be treated with respect and protected from questions which exceeds the bounds of proper examination and propriety or which are intended merely to harass, annoy, or humiliate. Witnesses will be excluded from the hearing until after their testimony is complete.

Does either side wish to question a member or legal advisor on possible grounds for challenge for cause?

REC: Sir, I have a few questions.

SRMBR: Okay.

REC: Do any of the members know (b)(7)(C) the respondent?

SRMBR: No.

MBR (b)(7)(C): No.

MBR (b)(7)(C): No.

REC: This case deals with allegations of mistreatment of Iraqis while he was in Operation Enduring Freedom Part I.

Have any of the members heard any of the facts of this case prior to seeing the actual exhibits?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: Both the government and the defense will call a number of witnesses. I'd just like to see if any of the members know any of these witnesses.

The government will call (b)(7)(C).

SRMBR: Don't know him.

REC: (b)(7)(C) ?

That's a negative response from the members.

(b)(7)(C) ?

SRMBR: No.

REC: Negative response.

(b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: And a (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: I believe the respondent would like to go through his witnesses as well.

CCFR: Yes. Good morning, gentlemen.

The respondent will be calling as their witnesses (b)(7)(C). Any of the members know --

SRMBR: No.

MBR (b)(7)(C) : What's (b)(7)(C) first name?

CCFR: (b)(7)(C).

That's a negative response from all members.

(b)(7)(C) ?

Negative response.

SRMBR: The name sounds familiar, but I don't know him.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) the respondent's father?

SRMBR: No.

MBR (b)(7)(C) : No.

MBR (b)(7)(C) : No.

CCFR: That about covers it.

REC: Just a few other questions, sir. This case has had a procedural history, which if you have already read, has gone up through I MEF; up to Lieutenant General Parks at DCMR; up to SecNav; and now it gets back down here. Do the members understand that the decision that's made today is your decision?

SRMBR: Yes.

REC: A positive response.

Would the members agree with me that -- have any members served in a combat setting?

SRMBR: Yes.

REC: Sir, would you explain what your billet was and your role.

MBR (b)(7)(C) : (b)(7)(C)

(b)(7)(C)

REC: Any other, gentlemen?

MBR (b)(7)(C) : I didn't get a Combat Action Ribbon, but I did serve in Kuwait and Baghdad from January till July of last year.

SRMBR: I was the [redacted] at Marine Forces Central Command, but we were headquartered in Bahrain during OIF.

REC: Would anything in your experience, do you think would either limit you or prejudice you in determining this case because you have served in a combat setting and this is dealing with a combat situation?

SRMBR: No.

REC: That's a negative response from the members.

Would the members agree with me that that -- if the board members determine that an officer -- if you can no longer trust an officer's judgment and that if the Marine Corps determined that they cannot

trust that officer's judgement, that that officer should not be an officer any longer?

SRMBR: Yeah, I don't think that --

CCFR: I would object to this.

SRMBR: We can just move on from that question.

CCFR: Thank you.

SRMBR: I don't think we need to disclose that.

REC: This procedure may last a long day. Is there anything in the members schedules that would inhibit them from lasting late into the afternoon or early evening?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: Thank you. Nothing further.

CCFR: Gentlemen, I have no inquiries to make. Thank you.

SRMBR: Does the recorder or the respondent wish to challenge any board member or the legal advisor for cause?

CCFR: The respondent does not, sir.

REC: And the recorder does not, sir.

SRMBR: Okay. Are both sides ready to proceed?

CCFR: Respondent is prepared, sir.

REC: Yes, sir.

SRMBR: Okay. Does either side have any motions?

REC: No.

SRMBR: Then the recorder may proceed with an opening

statement.

REC: Yes, sir.

Sir, we are here today because (b)(7)(C) failed. He failed in his mission. He failed his Marines who were serving under him. He failed his command, and he failed those that were expecting a lot out of this Marine officer. In June of -- on June 23d of 2003, (b)(7)(C) was the platoon commander of (b)(7)(C). His Marines had -- some of his Marines were in charge of guarding an ammo supply point out in the desert of Al Khut. There were a number of Iraqis who would go into this ASP and take brass, basically, in order to sell it on the market. These Marines had caught some of these Iraqis and told them to get away because it was a dangerous place for them to be because there was live ammunition there. They didn't want Iraqi civilians walking around in this area. They sent them away, and they came back.

At close to the end of this day, his Marines finally arrested these two Iraqis who they had seen before and brought them back to Al Khut, the city itself, which is probably like a half hour-, 40-minute drive from the ASP to this town.

You'll hear (b)(7)(C) testify later how he had seen these Iraqis before and how he brought them back to the title command post where (b)(7)(C) was present. (b)(7)(C) intent was to stop at the command post in order to get chow for his Marines because they had been out all day and then take these Iraqis to the Army MPs or the Iraqi police station for them to be processed. (b)(7)(C) saw (b)(7)(C) bring these Iraqis in; and because he was frustrated because he had seen them numerous times already on that day, he decided we're not going to send them off to be processed like the standard operating procedures. We're going to teach these Iraqis a lesson.

How he decided to do that was to order his Marines, junior Marines under him, to strip down these Iraqis into their undershirts and shorts. So (b)(7)(C) and his Marines carried out those actions. Also present was (b)(7)(C).

(b)(7)(C) and (b)(7)(C) who didn't want to get involved. He didn't want to get involved in that action, even though they had reservations about that order.

You are going to hear from witnesses, from (b)(7)(C) himself, who says, You know what; I should have said something; I shouldn't have done that. And about how this action of humiliation and the improper treatment of detainees could have lead to further repercussion down the line. These Iraqis were sent out of the command post half naked in the middle of the city for other Iraqis to see them. About a week later on the 28th, 29th of June, (b)(7)(C) Marines were at a checkpoint, and a vehicle tried to run that checkpoint; and they shot it up and stopped it. No one was -- the Iraqis in the truck were briefly or minorly injured, but no one was killed.

That following morning -- they had been up all night. This event happened at around midnight, and they were up all night guarding this vehicle waiting for battalion to finally take it away; and then, the next morning about 10:00, (b)(7)(C) had his Marines burn these Iraqis' clothing. So he -- they had already taken out their -- any money, any things of intelligence value; but again, out of frustration, out of not wanting to follow proper procedures, he burned their clothing and some mats; not of great value to anybody, but of value to these Iraqi civilians. It turned out later on that these Iraqis weren't terrorists. They weren't trying to do anything harmful. They were just confused and ran a checkpoint and deserved to have their property returned to them.

For these two offenses, (b)(7)(C) was sent to nonjudicial punishment. You will see in the recorder's exhibits that he accepted NJP, that he was afforded his rights; and he waived his right to a court-martial and accepted nonjudicial punishment. You will see that he plead guilty to the first offense, the 103 of mistreatment -- of mishandling of the enemy's or retaining property. He plead not guilty to 133, conduct unbecoming an officer; dealing with the stripping down of the Iraqis incident. But Brigadier General Kelly found him

guilty of that offense. He had a chance to appeal his NJP. He did not.

SRMBR: I think General Mattis held the NJP; didn't he?

CCFR: General Kelly did, sir.

SRMBR: He did

CCFR: Yes, sir.

SRMBR: Okay. Go on.

REC: You will see in Respondent's Exhibit 6 is the transcript of that nonjudicial punishment. In this NJP Brigadier General Kelly gives a very eloquent statement as to why this conduct is so serious. It diminishes their mission, and their mission was not only to conquer Iraq and subdue Iraq. It was to win the hearts and minds of those Iraqis, and his actions failed in that mission to -- you know, no worse -- no better friend and no worse enemy, is General Mathis's phrase; and that's what all the Marines over there are assigned to do.

(b)(7)(C) put in for an unqualified resignation, which means he asked for an honorable discharge. That went all the way up the Marine Corps chain of command up to Lieutenant General Parks. That was approved. The person who didn't approve it was SecNav. SecNav said, No, I would like you to do a board of inquiry. SecNav could have retained this officer if he wanted to. He didn't. He wants to hear from a board; and that's why we are here today, to determine whether or not this officer should be separated or retained and at what level if separated, what level of characterization of service: Honorable, general, or other-than-honorable.

(b)(7)(C) you will see in Respondent's Exhibit 7, also wrote a Congressional Inquiry into these matters. This happened on the 8th of October. All of these proceedings with the Generals and SecNav happened in -- around in October. I doubt if anybody saw or had a chance to read this when this was going through the process of going up to Headquarters Marine Corps, like the members when

they have a chance to read this congressional inquiry and look and see if the allegations that (b)(7)(C) makes makes sense, especially looking at the record that is here dealing with his NJP and his acknowledgment of his rights and his appeal rights.

You are going to hear from a number of witnesses today that will talk about what happened on the 23rd and the 28th of June and what kind of effects that those actions had on the Marines in the command and what potential effect it could have had to the other Marines in Al Khut. You are also going to hear from (b)(7)(C) and from other officers in his command who had other issues with his judgment. These are not the first two instances where his command had to pull him back and make him less aggressive, get his judgment in line. He will explain to you that he fears Marines being under his charge. This is a Marine officer who can't be trusted in leading Marines anymore. He endangers other people's lives. We're asking that you separate this officer based on his failure of leadership and his failure of judgement.

CCFR: Gentlemen, may I proceed?

SRMBR: Just a second. Okay. Counsel for the respondent may proceed with an open statement. Okay. When does the counsel, okay -- we don't need to do that. All right. I just want to make sure I got the script. Okay. Go ahead.

CCFR: Thank you, Gentlemen.

Gentlemen, the quality that I think I would ask that each member put into perspective is the fact that we are dealing here entirely within a one-month span during combat, during combat in Iraq. (b)(7)(C) isn't going to come up here and say that his combat-related responsibilities effected his attitude towards the Iraqis, that it effected his judgment in the sense he felt it would be justified to be vindictive. (b)(7)(C) and a number of other witness will explain to you the way the conditions were in combat, in an environment where you had Marines being injured, in an environment where you had unexploded ordinance, blowing up all

over the place, in an environment where you had a language barrier, in an environment where you had a weapons company that was out of control, that was in utter chaos from the very top to the very bottom. You had an environment in which you had mines on the side of the road, you had mortars on the sand, you have artillery shells which were being dragged out of ASP; and I guarantee that those are the same artillery shells which are being used to destroy our soldiers and Marines right now. (b)(7)(C) actions in every single regard, in every single thing he did when he was in Iraq, was for the welfare of his Marines, was for the accomplishment of his mission, and was for the respect of every single responsibility that he had as a United States Marine Corps officer. And you know what, gentlemen? At the end of the day -- at the end of the day, I hope that you ask (b)(7)(C) (b)(7)(C) how many of your Marines came back from Iraq; every single one of them. Every single one of his Marines made it home; and that's the evidence, gentlemen that you will hear.

This board of inquiry can be titled in one word as a "travesty." Listening to the board -- the recorder, and the recorder is doing the job that the (b)(7)(C) has to do; but when I was asked to take a look at this case, I kept digging because I said, there's got to be something else here. I'm a Marine officer. I understand what the responsibilities are of us as Marines, as Americans in performing our duties in Iraq. Here's a Marine officer that's volunteered -- (b)(7)(C) had no obligation to sign up for the Marine Corps Reserves. He completed his service obligations. He was a United States Naval Academy graduate, honorably discharged in 2002 and the service record material you, gentlemen, have is that he was a pristine officer. He was hand-picked for a very challenging mission, one of which was a joint task force mission where he was (b)(7)(C)

hand-selected by his battalion commander for that duty because of his skills and his conscious, his judgment, his initiative.

No, no, no. The recorder said (b)(7)(C) failed. Gentlemen, the command failed (b)(7)(C)

Catallo; and ultimately, ultimately, gentlemen, if the Marine Corps separates this officer, the Marine Corps has failed (b)(7)(C)

I could stand up here all morning and tell you what you should do, but I am going to let the evidence do the talking for us. I am not going to tell you to be a rubber stamp for the NJP and a rubber stamp for General Kelly and a rubber stamp for the Secretary of the Navy. Gentlemen, you have the luxury because it's your sole discretion and it's your sole prerogative to evaluate these witnesses and take a look at the evidence.

I will comment, however, the fact that the recorder brought up the NJP and the SecNav. When you take a look at the documents, which I'll show you of the endorsements after the NJP up to the SecNav, you will understand why SecNav disapproved it. I'll tell you why. I told this to (b)(7)(C) He did us a favor. He was about this low by the time he got finished up with his NJP in Iraq; but the endorsements as it went to General Kelly, to General Conway, to the commandant, and to the Secretary of the Navy got summarized. It got condensed; so that two-page endorsement from General Kelly to General Conway became a one-page endorsement to the Commandant and half-page endorsement to the SecNav; and the facts got completely distorted. It was a completely separate situation by the time you read what the Secretary of the Navy got to read. So, when you see that, you will not find any need to place any credibility on what that decision was. Because those -- those individuals frankly didn't have the luxury of seeing the facts.

I don't blame the Secretary of the Navy, the Commandant, or General Conway because thousands of Marines are looking at thousands of pieces of documents that are going through. The people that should have made sure that the right information went up was (b)(7)(C) Battalion, and they failed. In addition to the fact that witnesses will come up to talk about what occurred in Iraq, we have also put together for you, gentlemen, in the exhibits some information, which the government never bothered to do their homework in the first place.

We have a report from a former Iraqi citizen, a gentleman who spent 18 years there in depression; got out; is a model American citizen; and has provided some expert cultural interpretation of the situation for you. His assessment is (b)(7)(C) (b)(7)(C) actions were exactly appropriate and precisely the type of deterrent that would be effective to ensure that these Iraqis would stop going in, stealing ordinance, hurting themselves, and endangering the lives of the Marines.

The government also has, frankly, the audacity to criticize (b)(7)(C) and his Marines at a checkpoint where they had to disable a vehicle that was about to kill his Marines. They opened fire when this vehicle was ten meters away from their checkpoint, despite the fact they tried to get it to stop. We are not talking about the little sand dune buggies that exist in Iraq. We're talking about semi-tractor trailer truck that was bearing down on them. They needed to use a .50 cal to stop this thing in its tracks. They did it without killing the occupants of the vehicle because they were aiming at the wheels and the engine. Talk about restraint.

So when the vehicle gets disabled, (b)(7)(C) and his limited number of Marines are out there still trying to provide security at the checkpoint. They go into the vehicle. They find five hundred thousand dinar. They find a whole bunch of grain and other various belongings; and at this point of the engagement in June, Saddam Huesen hadn't been captured. All those individuals -- lists of individuals hadn't been captured. Those checkpoints were out there to track down folks like that. (b)(7)(C) was out there leading his men from the front, not from the CP. He's out at the checkpoint with his men.

What eventually happens, as you will hear, is that he didn't get a whole lot of support from the Company. They were out there to provide security to make sure the vehicle didn't go anywhere. It was disabled; couldn't get moved. Eventually, the order came down to search the vehicle, take out anything of value, which (b)(7)(C) did. They gave five hundred thousand dinar to the MPs. They put papers,

which looked like potential intelligence value, in bags. There were some tea sets and some other personal effects; but there were some seat cushions, and there were some clothing, important enemy property.

Now, at this point when this occurred

(b)(7)(C) and his Marines had been out in combat for twenty hours or so; and he asked to fall back to the CP because he's in a forward area. They weren't set up to be bivouacking for an extended period of time. (b)(7)(C) and anyone who's been to Iraq understands there's a massive bug problem over there. The Marines that are going over there are having their -- having uniforms treated with promethium. There is a terrible skin condition which our service people are receiving called lieshminiasis. We've provided some documentation for you in our Exhibits. It's nasty; not only nasty, it's possibly life threatening; and it degrades all combat efficiency and effectiveness. You can't donate blood if you've got the condition. It takes a year to heal, and this is what is occurring in Iraq because it's a filthy place.

(b)(7)(C) was trying to get his Marines out of that situation, trying to load up the material. He called for intelligence support, Hello, get in. The intel teams never came out. So (b)(7)(C) had to do the best job that he could with what he had. He picked up the belongings and equipment. As he was leaving, one of his Marines threw some of this clothing and these seat cushions in the truck.

(b)(7)(C) looks at it. They had a fruit fly problem in one of the other vehicles. He recognizes the fact that this place is a very dirty environment. He says, take it out, and we're going to burn it so it doesn't infest and infect the truck, the Marines' gear, and anybody else back at the CP. That's why he burns them.

You'll hear from witnesses that that's the SOP: You burn trash. It's the way you deal with it, because if you don't and if anyone's been studying what's going on in Iraq right now, they're using trash as disguises for IEDs. They are using animal carcasses for disguise of IEDs. They are using MRE wrappers for disguise of IEDs. You burn your trash. That's

what you do in combat. That's what he did. There is a statement from (b)(7)(C) from the preliminary investigation which said, We were told to burn it because it might have lice. (b)(7)(C) made that call at the scene as he's trying to gather the intelligence, make sure the money gets to the MPs, get his Marines safely out of the checkpoint; and the government says he failed.

I want to get to the evidence, gentlemen; but the last comment I want to make is that this is a beyond interesting case because the argument I will offer to you at the end is that I think this case is somewhat an indictment on the Reserve system. It's been well known that Marine Corps Reserves are hemorrhaging for the lack of company grade officers; and there are far more reserve officers who are filling billets in the reserves that are within their MOS because you simply can't find that match all the time. It just doesn't happen.

(b)(7)(C) one of them. He filled a grunt billet. How much time did he have to get ready for war as a grunt, leading a grunt platoon? Forty days. Forty days was his opportunity to learn how to be a grunt officer, and he spends a month doing the best job that he can. And crushing him because he's not perfect. That's insane. It would be just as insane as the fact that my squadron needs an MTO and I'm a 4402. Now I'm an 0402 and I'm going to be motor transport officer. Great. I hope I can do as well as job as (b)(7)(C) did in getting his Marines ready for combat because the Reserve system operates in that capacity; and you slice (b)(7)(C) out of this outfit, and you destroy his career, then you set a standard that is virtually impossible for any Reserve officer to ever meet; ever meet.

There is some documentation provided by some individuals who have some credibility in the world of the Marine Corps in combat. We have guys like (b)(7)(C) who has a silver star, two bronze stars, and five purple hearts in World War II, who knows a little bit about (b)(7)(C) situation. You have Colonel (b)(7)(C) retired, who has written a statement in support of (b)(7)(C) a combat veteran. You've got (b)(7)(C) who is going to come and testify to you today, who

he, himself, is a combat veteran of Vietnam and can tell you that combat is not an easy environment. You have to make tough decisions and you have to make them quick, otherwise, Marines die.

Gentlemen, those letters aren't put in there so that you can take a scale and balance it and say, Is the government's book lighter or is the respondent's book heavier. It's not the purpose. Please take as much time as you need to review all that material because it gotten valuable nuggets of information. (b)(7)(C) career is on the line; more than just his career, his reputation, his future, and his life. The ten years that he's given to his country is honorable. It's valuable. And the month he spent in combat you, Gentlemen, are going to destroy his career for that? What a travesty. It's a travesty.

Thank you Gentlemen.

REC: Sir, at this time I would like to offer all my exhibits into evidence.

SRMBR: Okay.

REC: And absent objection from the respondent, I assume you may want to take a recess for the members to look over both the packages.

SRMBR: Okay.

CCFR: Gentlemen, we have no objections. We would also, of course, ask that you consider the Respondent's Exhibits, which have been provided to you as well.

SRMBR: Okay. We'll talk a recess until 930.

CCFR: Okay, sir.

REC: Sir, for the record the time is 0845.

SRMBR: Thank you.

The Board of Inquiry recessed at 0845 hours, 6 April 2004.

The Board of Inquiry was called to order at 0930 hours, 6 April 2004.

SRMBR: This board will come to order. All persons who were present when the board recessed are again present. The recorder will note the time and the date.

Does the recorder have any witnesses?

REC: Yes, sir.

Sir, the time is 0930 on the 6th of April.

Sir, a procedural matter came up. Counsel and I would like to alert the board members. (b)(7)(C) (b)(7)(C) -- I'm sorry -- (b)(7)(C) is in the background. Normally, witnesses aren't allowed -- who are going to testify are not allowed in the procedure until they actually come and testify, but he's -- (b)(7)(C) will serve as a character witness, and I understand he's a long time family friend. So I don't have -- he would like to be present here in support of (b)(7)(C). I don't have a problem with that, but it's up to the board members.

SRMBR: That's fine with me as long as you don't have any objections. His father is going to testify as well, so, and he's here.

REC: Yes, sir.

CCFR: Thank you, sir.

REC: Sir, our first witness is (b)(7)(C).

(b)(7)(C) if you would stand in front of the witness stand and raise your right hand.

(b)(7)(C) USMC, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

- Q. Would you state your name for the record and spell your last name.
- A. (b)(7)(C) First name is spelled (b)(7)(C) last name is spelled (b)(7)(C)

Q. Are you currently a reservist or active duty?
A. Currently in the reserves; USMCR.

Q. What is your billet in the reserves?

A. I am the [REDACTED]

(b)(7)(C)

Q. What is your job in civilian life?

A. I am a maritime attorney at a law firm [REDACTED]

(b)(7)(C)

Q. If you could briefly tell the members a bit of your history in the Marine Corps: Your enlisted service, your officer service, and what sort of billets have you held.

A. Sure. I have been in the Marine Corps just over 15 years. [REDACTED]

(b)(7)(C)

- Q. And how many of those, sir, have been with (b)(7)(C) (b)(7)(C)?
- A. Probably close to 7 years.
- Q. And you served in a variety of billets in (b)(7)(C) (b)(7)(C)?
- A. I have held pretty much every billet in (b)(7)(C) (b)(7)(C), except (b)(7)(C) or (b)(7)(C) (b)(7)(C) at one period of time.
- Q. How do you know (b)(7)(C) (b)(7)(C)?
- A. (b)(7)(C) joined us -- I don't remember the exact date -- but it was some time -- I can't remember if he was there when I came back to the unit or not, but he was there after the September 11th timeframe when we were doing our pre-mobilization build up, doing drills; and I know him from the regularly scheduled CAX we had. I served with him there, and also we had a predeployment CAX in Twentynine Palms; and also from our deployment during Operation Iraqi Freedom.
- Q. What sort of training -- or what sort of development as a commissioned officer did he have since he's coming over as a comm officer?
- A. (b)(7)(C) did not go to IOC, which isn't uncommon. It's not uncommon because the reserve infantry officer's court is biannually. He had -- I can't recall the exact date he joined our unit, but he had whatever number of drills it was from the time he started until the time of our mobilization. I can't recall the exact number. He had two CAXs, and then he went to theater.
- Q. What was your opinion of (b)(7)(C) (b)(7)(C) prior to going in Iraq?
- A. In what respect, ma'am?
- Q. In his respect as knowledge as an officer, as being a -- tactically proficient in his new MOS?
- A. As an officer in general, I thought he was very knowledgeable, very intelligent. With his MOS, he zealously applied himself to learning his MOS; and I know he, you know, he was always studying or, you know, applying himself to learn his MOS; and I think he did a good job at that.

- Q. As part of your duties as (b)(7)(C) did that include training of the Marines as far as ROEs?
- A. Yes.
- Q. What was the training you gave or that you heard while you were in (b)(7)(C) about how to -- about ROE and prisoner SOP?
- A. My formal role in providing training to the Battalion didn't occur until part way through our deployment in Iraq. Prior to that, the training on ROE was provided during different training evolutions. Everything from our basic urban training skills we received in Camp Pendleton prior to our deployment. There was classes on prisoner-of-war handling, you know. So that was -- was essentially ROE handling on that specific issue. Then when we got into theater, there was law of war and specific theater ROE. The specific ROE that we would operate under was provided by a judge advocate in Kuwait prior to going in theater. Then after -- shortly after I became (b)(7)(C) there were a series of incidents, not just with our Battalion, but with just Marine Corps wide in theater that caused General Mattis, the SJA for Division and MEF, to order that all Marine Corps personnel would receive refresher training on the ROE; and I was given an order to do all hands in the Task Force across the Battalion in four days. I had to do ROE refresher training, and that is the formal training. Also with regard to ROE, it was a Battalion SOP -- and I'm not sure if it was higher than that -- but I know in our Battalion and our Company, it was a specific order that ROE would be discussed prior to any Marines going on any mission, whether it was convoy or resupply or patrol. ROE would be discussed and briefed during any permission orders.
- Q. In general terms, what was the mission of Division as you understand it as far as Iraqis, as far as the treatments of Iraqi civilians who weren't hostile?
- A. There is a couple of mantras that General Mattis put out as easy rule, one-liners for (b)(7)(C) (b)(7)(C) to remember. Some of those were in the New York Times, and those were briefed in our ROE; and they were common terms used and common knowledge across the Battalion. First was no

better friend, no worse enemy; and that's one of the things right there. No better friend, no worse enemy. If the Iraqis are peaceful, then they will have no better friend than 1st Marine Division. No worse enemy: If they cross the line, then we're going to jump and land on their head with both feet, and they are going to understand that. The other one was first do no harm, specifically towards civilian, another little one-liner that was in the ROE and one of the things that General Mattis also put out. Those are the little no-brainers that were put out there. Specifically, in the ROE with regard to civilians, the ROE specifically stated, it's pulling this directly from the Geneva Conventions and the Hue Conventions, the International Convention of Human Rights of 1948, comes directly from that is that civilians will be treated with dignity and respect or civilians and their property will be treated with dignity and respect; and it goes on beyond that, but that's the specific phrase that I can recall from that.

- Q. These events we're talking about at this BOI -- or focusing on those, they happened in late June. Were all these issues talked about prior to the events in mid-June?
- A. Well, obviously, not the sources of the ROE, but the ROE itself. The no better friend, no worse enemy, first do no harm, civilians and their property will be treated with dignity and respect were discussed. Also all the way down to your standard boot camp, TBS, five S's and a "T" of how to handle an EPW from that level all the way up to the ROE itself were discussed again. What aspect of the ROE would be discussed at a patrol briefing or something like that would vary; but during the formal training that was receive in Kuwait and during my refresher training, which the time frame of that refresher training was between July 1 and July 4, all of these -- those were discussed during that formal training, yes.
- Q. When did (b)(7)(C) arrive in Iraq?
- A. Around the beginning of April.
- Q. Okay. What was your mission? What happened after you arrived in Iraq?
- A. I was the (b)(7)(C). When we

first arrived [REDACTED] was securing the city of Al Khut, and there were four active duty infantry battalions in the province; and we turned over with [REDACTED] when we first arrived. I think within 48 hours, we did a turn over with Al Khut; and then over the next two weeks, we took over the entire province from the other battalions. I was in charge of my 68 Marines as an infantry platoon commander.

Q. We have got a map here, several maps that you forwarded on to me: One a larger map of Iraq, one of -- is the Wassi province, and one of Al Khut itself. If you could, I think --

REC: Can all the members see this, and counsel?

CCFR: That's fine.

REC: Okay. If you would explain a little bit more what the mission of [REDACTED] was in Al Khut.

WIT: Sure. In the bottom left-hand corner is an airfield. It's a large Iraqi airfield. It's called Blair Field, and we had Task Force Tarawa there for a little while until they pulled out; and that was also the Battalion CP. The Combat Service Support Detachment was there. MP Company, everybody -- everybody was based there to start with. We had -- my platoon was out by the front gate, which is up here. I had one section there with four mortars and a mortar firing point, and we also did the airfield's entry control point security right there. The other -- the maneuver companies, or line companies, were assigned certain sectors of the city; and the city was divided up into alphabetical sectors, and the line company was stationed in the city. Also, [REDACTED] was designated as [REDACTED] [REDACTED] It was plussed up with various assets, and we detached other assets out. [REDACTED] was stationed out on the Northeast side of the city right in this little open area. It doesn't appear on this map, but there is a little schoolhouse out there; and [REDACTED] was that schoolhouse, and it was the Battalion quick reaction force. [REDACTED] for the first portion was to provide the QRF, quick reaction force, to line companies, vehicle patrols; and also we were assigned certain sections of the city. We did vehicle patrols, foot

patrols, vehicle check points, riot control, humanitarian assistance, your normal security stabilization-type operation.

- Q. So at this point, after April, you were in security and stabilization.
- A. There was a -- it was a transitional phase pretty much where we had mortars set up -- half my mortars set up ready to fire; and eventually the mortars were taken down and boxed up, and we were all putting all the mortar boxes -- and we were down to probably anywhere from a 15-, 20-minute fire capability on the mortars; but my platoon was turned into provisional rifle -- essentially, two provisional rifle platoons of 68 Marines.
- Q. When approximately did that happen?
- A. That happened probably 3 or 4 weeks into the deployment.
- Q. So late April, early May?
- A. Something like that.
- Q. Okay. Could you -- this, sir, the first part, it deals with the ASP. Could you point out where that -- approximately where the ASP is. I know that's kind of difficult on this map.
- A. There are two ASPs.
- Q. This is the ASP dealing with the stripping of the Iraqis?
- A. That ASP was referred to as a field guard ASP. One of the missions we had been assigned from the Division was -- various things would come down from Division. Division would have some sort of intel that's called down, [REDACTED] you need to guard this ASP. One of the ASPs we were assigned to guard was the field guard ASP, which was 24 kilometers north, almost directly north of the city. This highway right here is the Badrah Highway, which goes from Al Khut to Badrah; and it's essentially the main -- the MSR between Iraq and Iran right here. Twenty-four miles up the road was a massive ASP with, you know, tussar rockets, 122-millimeter rockets, 122-millimeter RE, 120-millimeter mortar, all types of rounds. They had -- the reason we were guarding it is there were anti-aircraft guns on that ASP; and helicopter pilots would fly by, get a little nervous

about seeing the anti-aircraft guns there. That was one ASP we guarded; and (b)(7)(C) also guarded an ASP that was southeast of the city. There were other ASPs that were not guarded that were equal in size. One of those ASPs was right here in the city. This open area on this map is a Republican Guard Base for a division that was in the Baghdad division. This whole open area as far as the eye can see was 122-millimeter mortars, just thousands and thousands and thousands of rounds.

- Q. Is it fair to say there is an ASP --
A. The country is an ASP. This canal bank right here had 85-millimeter rounds, 100-millimeter tank rounds. The airfield had -- this is base housing up here. That was floor to ceiling RPGs, rockets, artillery. It was just about -- if you pull over in the desert somewhere and start walking off, you will start finding mortar rounds.
- Q. I'm sorry. What was the platoon that was guarding the northern ASP?
A. That was a rotating guard. We had a squad on that post, and it rotated between (b)(7)(C) platoon and my platoon.
- Q. Why weren't all these other ASPs guarded?
A. There's too many to guard.
- Q. Thank you. You can take your seat. What did your Marines do when they were guarding that northern ASP? What did you tell them they were supposed to do?
A. When they were assigned to guard that ASP, I was not there. I was already doing (b)(7)(C). From my understanding of talking to my Marines that were out there, it is a massive ASP. I have been to the ASP. I went out there to check on my Marines; and, also, right next to the ASP, the battalion set up a range for everything up to 60-millimeter mortars; and the Marines out there -- with a squad of Marines, it was too big to set up a perimeter. So they would set up, you know -- go up there in two HumVs, set up a CP with a radio; and then they would patrol a perimeter in a vehicle and patrol around the ASP. If they saw activity or something like that, they would react to it.

- Q. What activity would they react to?
A. Iraqis in the ASP.
- Q. What would they do with Iraqis in the ASP?
A. Detain them, call back to [REDACTED] and ask for direction; and then [REDACTED] would tell them what to do with them, let them go or bring them back into town.
- Q. Why would the Iraqis go into the ASP?
A. The Iraqis were going into the ASPs with -- one of the common activities they would do is take brass. These artillery rounds got massive brass shells. If you went to the market at the center of town, they were selling them for recycling. In America, people collect cans. In Iraq they collected brass from the ASP. Another thing they would do is take the gun powder and they would pack it into cans and make homemade bombs and throw them in the Tigris River to go fishing. Another common thing they would do is collect the increments and gun powder and give it to their daughter and have them make a cooking fire with it. Frequently, at the front gate, and also after we moved from the schoolhouse to another location, we would, every once in a while, have a small girl come up to the front gate with severe burns from gun powder from trying to cook.
- Q. Were you aware of any incidents of Iraqis trying to take anything from the ASP in order to use it against Americans?
A. The entire time we were in -- the entire time we were deployed in Iraq, we did not have a single improvised explosive device used against us on the road or, you know, the things that are going on in Faluja where you see soldiers getting blown up by some bomb laying on the side of the road. That was something we were very attuned to. Towards the tail end of the deployment in the northern part of the province, there were some laying on the ground out of mortar rounds; but in Al Khut and for the most part of the province, in almost the entire duration of the deployment, there were no improvised explosive devices used against us in any vehicle checkpoint that I ever did; and also while I was [REDACTED] I did search vehicles when I saw activity as I was driving by, stopped and searched vehicles. Never found a single artillery round or explosive device in any vehicle.

- Q. So the Iraqis base this as a flea market or basically as a garbage dump to get stuff like brass?
- A. The field guard ASP was not being used as a garbage dump. The ASP that I referred to as the Republican Guard Base ASP, that was actually being used as a garbage dump. But mostly the activity in the ASPs were Iraqis going in there to take brass to make a dime, taking gun powder because propane cooking fuel, which is their main stay cooking fuel, was hard to come by. So they were using the gun powder to cook dinner with. We didn't have anybody stealing out of the ASPs, out of that ASP in particular -- taking any ordinance out of that ASP.
- Q. When your Marines picked up an Iraqi in the ASP, what were they supposed to do with that Iraqi?
- A. Five S's and a "T"; call higher. That's what the Marines did in this instance.
- Q. What would happen -- what would higher normally tell them?
- A. Usually, the course of action was to transport them to the Iraqi police station.
- Q. What would happen to them then?
- A. They would be handed over to the Iraqi justice system.
- Q. Do you know what happened to them in the Iraqi justice system after they were brought in for trespassing on an ASP?
- A. Trespassing on an ASP was usually treated as a rather minor offense by the Iraqi's court. It's a province of about a million, a million and a half people; and it's the only province in Iraq without a formal prison or a jail. So prison crowding, jail crowding was an issue. So you know, the murders and terrorists and those guys were on top priority of the list and somebody stealing brass out of the ASP was a low-grade offense for the Iraqi court system.
- Q. What were the Iraqi police like at this time? Were they the Iraqi police we heard about under Saddam Hussein, that they were feared and corrupt?
- A. When we first arrived, there was no Iraqi police system and we had our -- the Army had a military police company in the police station. When we would

arrest an Iraqi, we would bring him to the military police station for the MPs to handle. Quite often the Iraqi gentlemen that you arrested would urinate on himself and evacuate his bowels at the mere sight of the building. Everything was done under my oversight after I became (b)(7)(C). (b)(7)(C) (b)(7)(C) who's a (b)(7)(C) state trooper, took over the police department; and the military police ran the jail with Iraqi police once we were able to recruit them. They definitely weren't very professional corps police; but they were not, you know -- they did their job to the capability that they had, which was minimal.

- Q. So these weren't the murders and torturers?
A. They had a tendency to lash out; but again, we embedded Marine reservists with police experience in the Iraqi Police Department to try and teach them how to do it. I taught -- we set up police academies. I taught at that police academy. Marine Reserve police officers taught there, and also the Army MPs taught the police academy. So there was a program of formal education and supervision while we were there.
- Q. When did you go over to (b)(7)(C)?
A. About half way through the deployment, so actually, it was -- the exact date I started was 1 June 2003.
- Q. Did you serve on a checkpoint or have your Marines set up a checkpoint?
A. Yes.
- Q. What was that -- what is the procedures for that?
A. The procedures changed. What we did initially -- again, I refer to the basic urban skills training or BUST training, we were taught techniques to use, an SOP to use for setting up a vehicle checkpoint; and the initial strategy there was -- you don't want to advertise your vehicle checkpoint like they make the (b)(7)(C) police do here for DWI checkpoints. You have to run an ad in the paper before you can do it. You had hasty checkpoints or deliberate checkpoints, and we did both. Hasty checkpoint is you suspect some activity and you just set up a quick down and dirty checkpoint. Deliberate checkpoint, you would plan it out, have an op order, and rehearse and everything like that; but the hasty checkpoint might

just be block the road with two vehicles and some Marines and stop vehicles. Frequently, you know -- frequently, you would do it with a flashlight and a devil dog in the middle of the street stopping the vehicles. A deliberate checkpoint, you would have barbed wire, sand bags, or something to create an obstacle across the road. You would set it up, you know, better coordinated and more deliberate and longer term; but we did both types of those checkpoints all the time; and then later, the SOP changed to a more formal SOP because a lot of folks were getting killed that didn't need to get killed at these checkpoints. There was a requirement that you post signs in Arabic, plain out, military checkpoint, you must stop or you will be fired upon. A formal sign that we had Iraqi contractor make, paint, and you had to have a sign at each end of your checkpoint.

- Q. Did you have Iraqis trying to run your checkpoint?
A. I never personally had anyone try and run the checkpoint, you know. I had several that pushed you to the edge of do I fire or not fire, and there was -- there was a lot of car jacking, a lot of hijacking of trucks and cargo trucks over there, a lot of crime; and there was a tendency by the Iraqis when they saw -- they see a bunch of guys with guns at night, frequently, their first reaction was not to stop. So there was quite often a lot of tension there for the Marine and probably for the Iraqis themselves as to what's about to happen.
- Q. So the Iraqis thought the Marines were trying to rob them; and the Marines thought that, possibly, these guys, were actually trying to run over them?
A. Exactly. That's the moment of tension there. That Marine has to make a decision. The Iraqi has to make a decision, and that's why there was a change in the SOP to mandate these formal road block signs.
- Q. Once a Marine stopped a vehicle either because they fired upon it and they thought it was running them over or they thought they had -- they needed to search it, what were the processes for searching it and going through that vehicle?
A. Well, the process for searching a vehicle, whether -- my platoon and myself, we never fired upon a vehicle at a checkpoint; but the process to

search the vehicle would be the same, whether the vehicle was fired upon or not. You are going to have a cover team, Marines providing security facing outboard so the roadblock doesn't get hit. You are going to have Marines providing security on the vehicle, providing security on any vehicles that are, you know -- if you are building up a line of traffic, providing security on that; and then you are going to have a search team that would go in and search the vehicle, again depending on your mission or your orders or the time, you know, whatever you -- whatever the leader of the troops decided to do, how detailed the search would be, hasty search or pull the guy over and let other traffic go through while you rip that car apart looking for whatever. It varied.

Q.
A.

What would you seize and take out of a vehicle? You were looking for contraband items. The Iraqis were allowed to possess weapons up to AK-47. They were allowed to possess ammo for those weapons. One weapon per individual, but they were not allowed to possess the weapons outside of their home. They were essentially allowed to have the AK-47 over the doorway for home protection. They were not allowed to have weapons in public. Any Iraqi with a weapon, the weapon was confiscated, the ammunition was confiscated. You are looking for explosives; car bombs, which, again, I never personally found in any roadblock I did. You were looking for contraband amounts of money. Contraband amount of money, I can't remember what it was off the top of my head; but it was a very substantial sum of money; and that caused a lot of confusion for Marines at first because we watch drug movies where the drug lord has a brick of money and the exchange rate over in Iraq was about 1,500 dinar to one U.S. dollar, so there were many times you would pull over a vehicle and just be shocked by the number of bills; but the actual U.S. dollar amount might only be \$15, \$20. Again, I cannot recall the exact amount of money that it was; but it was in the thousands of U.S. dollars that you had to have before it was contraband. Any intelligence that you might find, but it's very unlikely that -- I don't recall ever having a translator at a checkpoint that I did to read any documents, but that's essentially what you are looking for.

- Q. How about clothing or personal items, that of the Iraqi's?
- A. No.
- Q. What were the Marines supposed to do with those items?
- A. Leave that alone. You search it to make sure there is no contraband item hidden in it, and that it is personal effects of the Iraqi and it's not any item that you are supposed to take from them.
- Q. There was some discussion of the defense exhibits about sand fleas and causing a disease lieshmaniasis.
- A. Lieshmaniasis.
- Q. Was that a concern?
- A. We received briefings on it before going into the country. You would have to ask the medical officer whether or not we had any reported cases of it or not. I don't recall any in (b)(7)(C) but essentially, you're reminded of your field hygiene, bug spray. I believe it was flea born, you know -- bug spray, personal hygiene, and also to stay away from the dogs. There was a lot of stray, you know -- tons of dogs over there.
- Q. Was that a concern of you or did you tell your Marines about that when they searched vehicles? You know, don't touch certain things because you may get a disease?
- A. No, no.
- Q. Okay. Would that give you reason, because you thought something might have lice or sand fleas, would that give you reason to burn particular items?
- A. No. The Marines were never given any instruction to burn personal effects of anyone at any time.
- Q. Have you read the investigation in this case, there was (b)(7)(C) s. He had spoken to the stripping incidents and the burning incident.
- A. Yes. It's part of my duties as (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

- Q. And looking at those witnesses' statements and your knowledge of the ROEs, did (b)(7)(C) actions of having his Marines take off the outer clothes of the Iraqis, does that follow the ROE or Battalion SOP on how to handle a detainee?
- A. No, it doesn't.
- Q. You mentioned, and the members have a copy of that this incident, could have been a tipping point. What do you mean by that?
- A. Tipping points is something that was also discussed during the ROE training in Kuwait in briefings throughout the deployment over there. Tipping points are something that -- it's a military term that the United States military picked up from the Israelis where you don't know what action -- you don't necessarily -- you don't fully understand the consequences of your actions, what they might incur. For example, a Palestinian child runs out in front of an Israeli armored personnel carrier, the Israeli soldier has no intent to kill the child; but the child gets run over by a tank. The next thing you know, the Gaza Strip is in turmoil. That's a tipping point. It could be a deliberate action or a non deliberate action by coalition forces in Iraq that could have drastic consequences, beyond out of proportion to the actual action. That's what a tipping point is; and that's what I was referring to that, you know. In this instance there was no drastic reaction from the local population; but this is an incident, that from my knowledge in close interaction with the numerous leaders of the local population, that this is exactly something that could have put the population of Al Khut in the streets.
- Q. We have an exhibit from defense from an Iraqi, basically saying that nudity -- that (b)(7)(C) (b)(7)(C) actions sending out his Marines -- these Iraqis half-dressed, wasn't really that bad. It wasn't really that humiliating in that culture.

There are things that are a lot worse.

Do you have an opinion as to -- first, what is your background in the Middle East?

A.

I lived in the Middle East for three and a half years, lived in Bahrain. I have been to Iran, Syria, Jordan, Egypt, Saudi Arabia, United Arab Emirates. I have been all over the Middle East. I have got something like five hostile country waivers even to enlist in the Marine Corps because I have been to so many Middle Eastern countries that were unfriendly to the United States. I have got a degree in (b)(7)(C)

(b)(7)(C) I have served in the Middle East on two occasions and two wars within the United States Marine Corps. part of my duties (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

their blown out street lights. I was -- suffice it to say, I was embedded in the local Al Kut, Iraqi culture for over three months on a daily basis. That's the background I have on the Middle East and, specifically, the City of Al Kut.

Q.

Given that, your three-month exposure to Al Kut and their citizens, what do you think their reaction

- could have been?
- A. Considering that they protested over the death of a horse, I think they would have protested if this was a more visible incident. (b)(7)(C) was in the city, it was on the very outskirts of the city. If this would have happened at the police station in the center of the city, surrounded by Iraqis, I think -- I think this would have been something that they would have been would -- have protested. I do know, from my understanding of Middle Eastern culture and the Iraqis that I work with on a daily basis, that shame plays a major role in their culture. And I use that to my advantage in my daily interaction (b)(7)(C).

I couldn't get them to work through kindness, I couldn't get them to work through threats, I was finally able to get them to work through shame. An Iraqi male being nude, not nude, but in his gym shorts, probably is not something shameful if they do it themselves because they used to swim in the Tigris like that. However, having a coalition soldier or soldiers forcefully strip them down in the middle of the city, that's shameful in our culture and I disagree with that, gentleman. I think it's shameful in their culture. Specifically in that city, it would be shameful.

- Q. During that investigation -- this is a two part question -- did you see any reason for (b)(7)(C) to strip down these Iraqis?
- A. No.
- Q. Did you see any reason for his Marines to burn their personal property at this checkpoint?
- A. No.
- Q. Do you have any other opinions or any other instances of (b)(7)(C) leadership of his Marines in Iraq that you believe is important for the board members to know about his judgement in handling his Marines or dealing with carrying out his orders?
- A. I have no first hand knowledge of anything derogatory. I am aware of things that I cannot testify about because I don't have first-hand knowledge, so I wouldn't want to render an opinion on anything that I do not have first-hand knowledge

of that others who are testifying may know about. The only other thing -- I think it's important for the members to know is, is (b)(7)(C) applied himself to learning his MOS? -- when I was at OCS, I was taught it takes all kinds, all kinds of leadership skills are available and viable in the Marine Corps and (b)(7)(C) is different than I am. You know, the only thing I can think of is, you know, we have the proverbial box we have to stay in and there's formal rules we have got the stay in. Perhaps my box is smaller than his and his is larger than mine. The only thing I can think of is that in the environment we were in, (b)(7)(C) (b)(7)(C) leaned very far forward and approached the edges of the box and the sand started to spill over the side and the lines of his box became ill defined and he stepped over the formal line of where that box is drawn. But, you know, I have no problem with him personally or professionally as far as operating in infantry skills and doing anything like that. I did not have a problem with him in that regard. I think he showed incredibly poor judgement in these two specific incidents.

REC: Thank you. I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

- Q. Good morning, (b)(7)(C).
- A. Good morning, sir.
- Q. My name is (b)(7)(C) and I'm a civil attorney out in Pennsylvania. I represent (b)(7)(C) here.
- How was life in Iraq in terms of the danger that existed out there?
- A. It was, you know, Iraq was essentially the quintessential hours of boredom with seconds of horror.
- Q. Were people getting shot at?
- A. People were getting shot at. I got shot at, (b)(7)(C) (b)(7)(C) got shot at. Iraqis were getting shot at by Iraqis.

Q. People were getting killed?
A. People were getting killed, but none of us, thankfully.

Q. The ASPs that you talked about with (b)(7)(C) were they dangerous environments?
A. They were dangerous environments in that the Iraqi methods of storing ordnance do not comport to Marine Corps or United States military standards and their disposal of out-of-date ordnance and things like that aren't to our standards. And I can recall several incidences of ordnance spontaneously combusting and igniting and exploding.

Q. Blowing up?
A. One day we thought that perhaps we were taking substantial artillery fire because of the nearby ASP to our position started going up like the 4th of July.

Q. Now the ASPs you are talking about near your position was the northern ASP?
A. There are two ASPs to the north. On that map, you can see, you have got the field guard ASP, which is off the map about 20 kilometers directly north of the city.

Q. Which is the one that your platoon was taking care of?
A. Correct. The ASP, there are two ASPs I know that started having explosions. (b)(7)(C) platoon had one. I can't recall specifically which ASP that was, but I know his platoon had an incident where the ASP started going up. There was another incident where, right about sundown, the ASP immediately northwest of our position in that republican guard base started going up.

Q. So it was knowledge that you had -- it's fair to say it was common knowledge in the company, that ordnance in these ASPs were self-detonating?
A. For whatever reason, they were self-detonating so much that the Army MPs would not go into the ASPs.

Q. What about EOD, what was their policy on that?
A. EOD, we had two EOD teams. We had one EOD assigned

to the Marine Aircraft Group, Helicopter Aircraft Group and we had one personally for [REDACTED] we had 6 EOD techs and their policy was -- the coalition policy which was if it's not an immediate threat to coalition forces or an immediate threat to Iraqi civilians, that nothing was going to be done about it because there's not enough EOD technicians in the world to take care of the ordnance problem over there.

- Q. Because there was so much ordnance laying around?
A. Correct. The EOD would do things where -- if for our mission we had to do something in this spot and we found ordnance, we would call back to EOD and we would get put on their list of taskers to go blow stuff up. One of the things they might go do, is if there is ordnance in a school, and the Iraqi school children need to go to school, that would be something that would be put on their list. Blowing up an ASP is not going to make it on their list.
- Q. Now, did you ever learn about whether any Iraqis had been killed trying to steal ammunition out of these ASPs?
A. Yes. They were killed by everything from ordnance blowing them into a pink mist -- there was another incident with [REDACTED] Platoon where an Iraqi juvenile boy was crushed by a building falling on him at an ASP.
- Q. Now, one of the missions that [REDACTED] (b)(7)(C) [REDACTED] had was not only provide security at the ASP so that looters weren't going to take things, but it was also to protect the Iraqis because it was understood they would injure themselves going into the ASPs. Correct?
A. That was an implied mission.
- Q. Implied how?
A. I don't recall ever being told to protect the Iraqis from themselves at the ASPs. I know the field guard ASP was specifically tasked and I know I was tasked because I was at the COC when the order came in. We were tasked to guard the field guard ASP because there were two 40-millimeter aircraft guns and a couple of 23-millimeter -- quad 23-millimeter antiaircraft guns that made the halo pilots nervous.

- Q. So when you say implied mission, is your testimony that you don't recall a direct order by anybody to have as part of your mission to protect the Iraqis from injuring themselves in the ASP.
- A. I do not -- that -- I cannot recall receiving that order and because I cannot recall that specific order, that is why I would say if I am told to guard an ASP for whatever, you know, go guard the ASP. That's an implied mission to me that I need to keep people out of the ASP because it's a dangerous place; and it would be humane to help them by protecting their lives so they don't go and injure themselves in this dangerous facility. Right?
- A. That would be one way of putting it.
- Q. Well, do you disagree with that?
- A. You know, I don't disagree with -- that it's humane to protect people from ordnance, no. The reason I say that would be one way of putting it is that the whole country is an ASP. If somebody wants to go blow themselves up, they don't need to go to the field guard ASP to do it. They could go to any number of places that are not guarded by Marines and they have equal opportunity to kill themselves with ordnance.
- Q. Were you in every single location in Iraq, (b)(7)(C)?
- A. No.
- Q. Now, let's talk a little bit about your involvement with (b)(7)(C).
- A. (b)(7)(C)?
- Q. (b)(7)(C). Sorry, (b)(7)(C). You started out as an enlisted Marine with (b)(7)(C)?
- A. Correct. No. I did not start out -- I started with (b)(7)(C) as an enlisted Marine. That's not as far as my Marine Corps goes, so, yes and no.
- Q. How long were you with (b)(7)(C) as an enlisted Marine?
- A. I was with (b)(7)(C) about six years straight. Three years enlisted, three years as a Lieutenant. Then I came on active duty and then I came back.
- Q. What would be your combined amount of time that you spent at (b)(7)(C)?
- A. Combined amount of time at (b)(7)(C), going on seven years.

- Q. And when you joined up at [REDACTED], were you an 0311 when you started out?
- A. I was a (b)(7)(C) [REDACTED] when I started out.
- Q. (b)(7)(C) [REDACTED]?
- A. Correct.
- Q. They didn't have any (b)(7)(C) [REDACTED] in the battalion; did they?
- A. No. But we had a lot of machine guns on the Hueys [REDACTED] (b)(7)(C) [REDACTED]
- Q. As an enlisted Marine with the battalion, did you go to any schools for your trade?
- A. Yes, I did. I sure did.
- Q. What schools did you go to?
- A. I went to 1st Marine Division Schools, Infantry Machine Gunner Course, MCIs.
- Q. And that helped you learn the trade of being an infantry Marine. Right?
- A. Yes.
- Q. And when you got commissioned and you joined back up with [REDACTED], did you at some point as a reservist with [REDACTED] go to the Reserve Infantry Officer's Course?
- A. No, I have not.
- Q. And in the timeframe that you have been with [REDACTED] how many CAX have you gone on?
- A. Let's see, I have been to three Combined Arms Exercises, one in (b)(7)(C) [REDACTED], one or two as the (b)(7)(C) [REDACTED]. [REDACTED] have been on Joint Task Force Six missions doing (b)(7)(C) [REDACTED] (b)(7)(C) [REDACTED] as a sergeant, doing long range patrolling for about a week at a time looking for marijuana and methamphetamine labs and marijuana gardens.
- Q. You would consider yourself as having had a fair amount of experience, then, as an infantry officer, at this point?
- A. Although I have not been to the Infantry Officer's Course, I think I have a good deal of experience in the infantry field considering I have been working in it for seven years.

Q. And this timeframe you spent with (b)(7)(C), have you been with the same detachment?

A. I was never with (b)(7)(C).

Q. I'm sorry (b)(7)(C).

A. I have always been with (b)(7)(C) except for the time I was assigned to the Battalion CP as the (b)(7)(C).

Q. So when you headed out to Iraq with some of your fellow Marines from (b)(7)(C), you had known (b)(7)(C) for a fair amount of time. Right?

A. I have known (b)(7)(C). I was a platoon sergeant for him, I was section leader for him, I have been -- I have known -- I have known a lot of officers. I have known the Battalion commander since he was a Captain and I was a sergeant -- the former Battalion commander.

Q. (b)(7)(C)?

A. Right.

Q. So you --

A. There is other personalities in (b)(7)(C) that -- having been there for seven years that I know.

Q. But you were friendly with (b)(7)(C) when you headed over to Iraq.

A. I was friendly with (b)(7)(C) (b)(7)(C) and many other people, yes, sir.

Q. You also went to high school with (b)(7)(C). Right?

A. No, I did not.

Q. You didn't go to high school with him?

A. No, I did not.

Q. You guys went to different high schools?

A. Yes, we did.

Q. Now, (b)(7)(C) did you ever go to any (b)(7)(C) training?

A. Yes, I did.

Q. And what sort of (b)(7)(C) training did you attend?

A. (b)(7)(C).

Q. When did you attend that school?
A. 1999.

Q. Now, are you talking about the (b)(7)(C) (b)(7)(C), where you need to attend to become a (b)(7)(C) or is there a separate course?
A. No. I'm talking about their (b)(7)(C) Course.

Q. For (b)(7)(C)
A. No. I'm talking about (b)(7)(C), MOS producing, (b)(7)(C).

Q. Okay.
A. I also have other training that is not military. I also have provided -- was requested by Marine Forces Reserve (b)(7)(C)
(b)(7)(C)
(b)(7)(C) impact of our current operations in Iraq on several occasions.

Q. We'll get there?
A. I have provided lectures to various (b)(7)(C) (b)(7)(C) ROE.

Q. We'll get there. I will let you explain that. But I want to first figure out the (b)(7)(C)
(b)(7)(C)

A. The same one as it was at the time I went to it, but yes, that is the course I am talking about.

Q. Okay. Now you are aware there is a separate (b)(7)(C) like a PME that you can attend. Right?
A. Yes, sure. Yes, I am aware.

Q. Did you attend that one?
A. No, I did not.

Q. Okay. Now, when your battalion and your company was getting ready to fight a war in Iraq, it was your understanding that you were going to be the (b)(7)(C) (b)(7)(C). Right?

A. Correct.

Q. Did you plan on being the (b)(7)(C) for the battalion when you headed over there?

A. No, I was not.

Q. So your focus in getting your Marines ready was from a tactical perspective and taking care of what mortarmen needed to do to get ready for war.

A. Exactly. There is one comment to that that I would like to --

Q. Sure.

A. I also had the collateral duty as the (b)(7)(C) (b)(7)(C) had. But my main focus was mortar platoon.

Q. (b)(7)(C) asked you a little bit about what your impressions were of (b)(7)(C) when you first met him, and you felt that he was zealously applied to learning his MOS; is that right?

A. Yes, and I would use those exact words again.

Q. What were some of the things that he did that you observed which led you to feel he was zealously applied to learning his new MOS?

A. The machine gunners bible, the machine guns and machine gun gunnery book, he was always reading that. He was always out in the sand, outside. If somebody walked up on him and didn't know what he was doing, they would think he had gone batty because he was playing with little toy vehicles in the sand, little combat vehicles and he was rehearsing in his mind the various vehicle formations of the (b)(7)(C) platoon. I know he, much to the chagrin of the motor transport section of our battalion, he was zealously leading his Marines in those formations across 29 Palms, popping a ton of tires and upsetting a lot of people. I don't mean to say that in a derogatory manner. I mean to say that he was aggressively leading those Marines in that CAX environment and not just sticking to trails.

Q. He was training his Marines for war?

A. Yes, he was.

- Q. And as a peer, you recognize that and you respected his efforts in getting his Marines ready for war?
- A. Having had to do that myself, coming from a different MOS, I greatly appreciated his efforts and I understood what he was going through and I felt that he was doing an excellent job at learning his MOS.
- Q. Now, the battalion gets activated, mobilizes, and heads out to Kuwait. Correct?
- A. Correct.
- Q. And the movement from Kuwait to Iraq, it was a convoy, a massive convoy out to your position in Iraq. Right?
- A. I personally did not go on the convoy. I was supposed to go on the convoy originally, but then I was sent as a (b)(7)(C) advance party since I had commanded and had experience in all three platoons, I was sent up on a C-130. (b)(7)(C) and a portion of (b)(7)(C) did go up on the convoy.
- Q. So you are aware of the fact that the main battalion was moved by convoy?
- A. The vehicles and a portion of it were, but there was a substantial -- I can't remember the exact split, but there was a ton of C-130 flights and I do know that he was on the long convoy, two-day convoy from Kuwait to Iraq.
- Q. And you are aware that -- who's (b)(7)(C) ?
- A. (b)(7)(C) is the (b)(7)(C) (b)(7)(C) right now.
- Q. Were you aware that (b)(7)(C) had (b)(7)(C) be the security officer for that convoy?
- A. Yes.
- Q. That is a pretty important role; wasn't it?
- A. Yes.
- Q. At some point while you were over in Iraq, you got moved from being the (b)(7)(C) to going into the (b)(7)(C) there in Iraq. Right?
- A. Yes.
- Q. And that was the beginning of June?

A. The exact first day that I did it was 1 June 2003.

Q. And who took over for your platoon?

A. I had a platoon sergeant, a staff sergeant, and I had two staff sergeant section leaders.

Q. Who became the platoon commander?

A. (b)(7)(C)

Q. And during that timeframe in June, May, in Iraq, were you aware of there being some problem with the company (b)(7)(C)?

A. I was aware of the problem with the company (b)(7)(C) before June.

Q. Tell the members about the problems you are aware of.

Would you like some water? We can take a break or something.

A. I don't know if you have any water in here. If it requires a break --

SRMBR: Come on up here, counselor.

WIT: With (b)(7)(C) the question is where should I begin.

Q. It's fair to say he was a problem in your unit in Iraq?

A. Yes.

Q. All right. Let me try to help simplify it then, and (b)(7)(C) eventually got relieved and sent back to the United States?

A. Correct.

Q. At one point, he essentially mutinied?

A. I don't know what point you are referring to, but again, I was not physically at (b)(7)(C) when a lot of things happened with (b)(7)(C). I was running around the post or running around the province doing my (b)(7)(C) duties, but I am aware of many things from talking with (b)(7)(C) other officers, having read investigations and things like that. I'm aware of them, but I physically was not present when many things happened.

Q. (b)(7)(C) was in (b)(7)(C)?
A. Yes, he was. He was the (b)(7)(C).

Q. He had his pistol lost or stolen?
A. That is the \$60,000 question.

Q. In any event, he ended up not having his pistol?
A. Correct.

Q. And you would agree, in your experience in the infantry world, a (b)(7)(C) is a pretty important player in the functioning of the company?
A. Yes, he should be.

Q. Now, when (b)(7)(C) came on board (b)(7)(C), who was the platoon commander for (b)(7)(C) platoon at the time?
A. It was probably --

Q. (b)(7)(C)
A. Yes. It was probably (b)(7)(C). I was trying to recall if he was there or not but it was probably (b)(7)(C).

Q. When (b)(7)(C) came on board, (b)(7)(C) had already been trying to work his Marines up to get ready for war over in Iraq; hadn't he?
A. Yes.

Q. And there was some friction, a little bit of discomfort that he had because he was being replaced with a brand new platoon commander; didn't he?
A. I was never present during any conversation with (b)(7)(C) and (b)(7)(C) when there was any discord. (b)(7)(C) has never told me anything like that. He is not the type of person that would tell me that. I don't have that type of relationship with him. I am aware (b)(7)(C) had some issues with his (b)(7)(C) as I did with mine because we were peers and we discussed those things amongst each other. The details which (b)(7)(C) talked to me enough to tell me he was having a problem with him. The exact problem he was having with him, I don't know, but my assumption was there was some dissatisfaction with (b)(7)(C) (b)(7)(C) to have a (b)(7)(C) come in and take over the platoon.

- Q. Okay. All right. Well, let's get back to Iraq with the situation with the ASP. You commented that it wasn't, at least to your knowledge, you weren't aware of there being any IED incidents while you were there; is that right?
- A. I am aware of IEDs being placed in the northern part of the province toward the tail end of the deployment, but nothing in the immediate vicinity of Al Kut. We did have hand grenades thrown, but not any improvised explosives.
- Q. Well, wouldn't you agree that it would be a tactical concern in guarding these ASPs that if Iraqis are stealing this ordnance, that it could be used in IEDs?
- A. I was present in the battalion CP when missions like that were assigned and discussed with Battalion Operation's Officer, (b)(7)(C) and the -- we had combined Army, Navy, and Air Force, approximately 15,000 service members there to guard a province the size of New Jersey. A million and a half people with, on that map alone, there was, I could probably point out ten different places where there is an ASP of some kind. We did not have the personnel available to guard every ammunition dump, ASP, or hiding point. So, there was an operational decision made that we were going to guard the ASPs that Division told us to guard.
- Q. My question is simply, though, wouldn't you agree that it should be a concern for those tactical commanders out in the field, that ordnance which had been taken from the field could be used to blow up Americans?
- A. Yes. And that is what I am saying. It is a concern and the response was, we don't have the time or the personnel available to guard all of these ASPs and there is an operational decision made weighing the risk and the benefit that we were only going to guard the ASPs that division assigned. But that was a concern, yes.
- Q. Well, which was the greater concern, you know, since you were with the battalion staff. Was there a greater concern with preventing people from stealing the ordnance to use as IEDs or was there a greater concern for preventing these tipping incidents with the Iraqis?

A. Greater concern about the tipping incidents. Our concern was to control the population, not to control the ammunition.

Q. Well, you are still obviously in the Marine Corps and I know you follow the news, it's fair to say that the situation in Iraq hasn't gotten any better; has it?

A. It's probably gotten worse, which raises the concern of tipping points.

Q. Well, this incident that occurred at the (b)(7)(C), which is the CP for the company. Right?

A. Correct.

Q. You weren't there during that incident?

A. No, I was not.

Q. And at that time, you had already been out of the (b)(7)(C) Right?

A. I was with (b)(7)(C) duties, yes.

Q. And with your familiarity with the investigation that occurred, the incident of the disrobing of these Iraqis occurred on the 23rd of June. Correct?

A. That sounds about right.

Q. You were taken out of your (b)(7)(C) role on June 1st?

A. I was never removed from that position, but I was doing other things, yes, and I was not physically present when that occurred.

Q. Did you consider yourself to still have responsibility as a (b)(7)(C) for (b)(7)(C)?

A. I was specifically told that I did and I was specifically directed to get to that platoon as much as possible to meet with the staff sergeants, as I hinted to, there were issues with my Staff NCOs and I was still the (b)(7)(C).

Q. And you still have responsibility for the leadership of the (b)(7)(C)?

A. Yes, I did.

Q. Now, on June 23rd, another officer from (b)(7)(C) (b)(7)(C) was also no longer present. Right? (b)(7)(C)

A. (b)(7)(C) I believe was on emergency leave.

Q. So, of the officers then that were remaining within (b)(7)(C) that were with -- I guess, still available was (b)(7)(C) and (b)(7)(C) Right?

A. Correct.

Q. Now, this incident where the Iraqis were captured, on all occasions, was in the field guard ASP; wasn't it?

A. On all occasions, you're talking about --

Q. On one particular day.

A. On that day, yes. I believe it is all from the field guard ASP.

Q. (b)(7)(C) is your Marine?

A. Yes, he is.

Q. And (b)(7)(C) had the responsibility for guarding security in that ASP?

A. Correct.

Q. Where were you?

A. At the time he arrested them, I wasn't at the field guard ASP. I wasn't at (b)(7)(C).

Q. You weren't at (b)(7)(C) you weren't with the (b)(7)(C) where were you?

A. I was in any number of places that -- I cannot recall where I was at June 23rd at whatever hour. I could tell you where I wasn't because I know I wasn't at the ASP and I wasn't at (b)(7)(C).

Q. Who was at (b)(7)(C)?

A. (b)(7)(C) I know was at (b)(7)(C) and there were other people at (b)(7)(C).

Q. Okay. So, it would be fair to say that (b)(7)(C) (b)(7)(C) had a leadership responsibility for your Marines in the (b)(7)(C) ASP. Right?

A. Correct.

Q. And (b)(7)(C) also had responsibility for his

A. Marines at the northern ASP; didn't he?
Are you talking about the southeastern ASP?

Q. There is two that (b)(7)(C) was taking care of. Right?

A. Right. Field Guard ASP is at the North and the Cat ASP was southeast.

Q. Tell me what you want to call that ASP?

A. Cat ASP.

Q. Cat ASP. That's what we'll call it.

Did he have a responsibility of taking care of and providing security to Cat ASP?

A. Yes, he did.

Q. Who was taking care of (b)(7)(C) business while he was gone?

A. His platoon sergeant was doing police duties and their -- I can't remember who was the senior in his platoon at that time. I don't know if (b)(7)(C) was back, but the only officer present at Cat on June 23rd at the time of these incidents was (b)(7)(C).

Q. Where was (b)(7)(C)?

A. It is my understanding that (b)(7)(C) was at a meeting at Battalion CP.

Q. So, two of his officers are no longer in this area where you were providing security, and the only officer present is (b)(7)(C) who has got double duty. Right?

A. Triple duty.

Q. Triple duty. And based upon your familiarity of the Marines, didn't your Marines express to you they were having a frustrating time handling this truck or this Iraqi looter trespassing problem?

A. No.

Q. Your Marines never complained to you about that?

A. No. My Marines have showed me the photographs of those Iraqis smoking Marlboro Reds and drinking water in the only shade available. My Marines arrested those guys and took care of them and transported them to (b)(7)(C).

- Q. I'm not talking about that incident. I'm talking about prior to that. Were you aware of Marines in (b)(7)(C) expressing a concern about every time they catch these looters and bring them to the police station, they're let go and they show back up.
- A. That was a frequent occurrence, not just with looters, but Iraq was a frustrating place. I don't specifically recall my Marines telling me that, but that is something they may have expressed.
- Q. They may have expressed this to you?
- A. They may have. I don't have a specific recollection.
- Q. Were you aware of the fact that prior to this June 23rd incident, it was frequent enough that every time you catch a looter in this ASP, bring them to the police station, they would be processed for a couple of minutes and let go?
- A. Correct.
- Q. Now, these folks that were in the ASP, were they dressed like in uniforms.
- A. Are you talking about the Iraqis?
- Q. Iraqis.
- A. The pictures I saw, they were dressed in typical Iraqi dress, anywhere from a dishdosh, which is what we called a man dress, a long shirt, goes down to your ankles, trousers -- just civilian attire.
- Q. Was there anything -- sitting here today, are you certain those weren't the insurgents that are planting IEDs right now?
- A. Am I certain they are not?
- Q. Are you a hundred percent confident that those folks that were out there stealing ordnance in the ASP aren't the insurgents that are planting the IEDs now which are killing our servicemen over in Iraq?
- A. I am not a hundred percent certain of that, but there is nothing I have read, seen, or been told that indicates those guys were doing anything other than trespassing on an ASP to steal brass to make a dime.
- Q. Are you saying that you are not aware of them ever

- stealing whole ordnance?
- A. What I am saying is the evidence in that investigation, my conversations with my Marines after the fact, all indicate that those guys were stealing brass.
- Q. I'm not talking about that incident. I'm talking about during your timeframe there in Iraq, isn't it true that they, the Iraqi looters, not just those folks on 23 June, have been caught stealing unexploded ordnance?
- A. I'm sure there's been incidents of people stealing unexploded ordnance.
- Q. When you say you are sure, are you not positive?
- A. Am I not positive? What I am saying is that, if I'm an Iraqi insurgent, I'm going to go steal some ordnance, but I'm not going to the one with the Marines on it. But I don't know if these guys were insurgents or not, I don't know that. I can't tell you they are not trying to kill somebody right now, I don't know.
- Q. Did you see them steal ordnance.
- A. Did I ever see anybody steal ordnance, no.
- Q. Are you aware of your Marines ever reporting to you that Iraqi looters had stolen unexploded ordnance?
- A. I am not aware of my Marines at the Field Guard ASP doing that, but I do not my Marines have caught people with mortar rounds. I know that the alpha sector there, the tip of the peninsula, there's an arms market, an active arm's market, where you can go down there a buy a Sam 7 on occasion. What I am saying is that there is a myriad number of places in that country that they can go to get ordnance.
- Q. Now, this ASP, this Field Guard ASP, did it also house or store some of the Battalion's own weapon ordnance?
- A. It was a rifle range.
- Q. Are you saying it had no ordnance at all from the Battalion stored there?
- A. I never saw any on any visits I went. The Battalion ASP was on Blair Field behind the wooden latreen. Behind a bunker that (b)(7)(C) who is also one of my Marines, that's where the battalion ASP

was.

Q. So you are certain that no Battalion ordnance was stored at the Field Guard ASP?

A. Not to my knowledge.

Q. As the (b)(7)(C) if ordnance was stored there, it should be something you would have been aware of.

A. Not necessarily.

Q. Why not?

A. Because I know where (b)(7)(C) ordnance is. I don't know where every speck of ordnance in the Battalion is. I do know where the Battalion's ASP was because my Marine, (b)(7)(C), is the only ordnance technician in the Battalion. The Battalion ASP was on Blair Field. (b)(7)(C) had an ASP on (b)(7)(C) where they had the javelin missiles, mortar rounds, large ordnance like that, and extra 50-cal, Mark-19 ammo, and things like that. I am not aware of any ordnance being stored at the Field Guard ASP from the Battalion. I have --

Q. Okay.

A. I may be incorrect, but I have serious doubts that any ordnance was stored there.

SRMBR: Okay. Counsel how many questions do you have?

CCFR: A few more, sir.

SRMBR: How much longer would you take?

CCFR: Would the board like to take a break, sir. It would probably depend on how long the witness responses are.

SRMBR: Yeah. Let's take a ten minute recess.

REC: Sir, for the record, the time is 1045 on the 6th of April.

SRMBR: Okay.

The Board of Inquiry recessed at 1045 hours, 6 April 2004.

The Board of Inquiry was called to order at 1058 hours, 6 April 2004.

SRMBR: The board will come to order. All parties present when the board recessed are again present. The recorder will note the time and date in the record of proceedings.

REC: Sir, the time is 1058 on the 6th of April.

SRMBR: Before we begin, how many witnesses do you plan on calling, (b)(7)(C)?

REC: Sir, I have four other witnesses, sir. They should not be as long as this one, sir.

SRMBR: Okay. How many witnesses do you have?

CCFR: Sir, I have (b)(7)(C) --

SRMBR: Three, four, five?

DC: Five.

SRMBR: Five. Okay. I understand (b)(7)(C) is an important witness, but lets make our point and move on.

CCFR: Yes, sir.

Questions by the civilian counsel continued:

Q. Okay. (b)(7)(C), you mentioned on direct that some of your involvements with the (b)(7)(C)

A. Correct.

Q. And you commented that sometimes you would have to shame them to get them to act?

A. Yes.

Q. What sort of things would you do to shame them?

A. The specific thing I did was over the course of approximately a month and a half. I tried to get them to (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

shaming them. Confronting them with their own inaction and telling them, you know, politicking and everything like that, essentially, shaming them with their own inaction. That's what I mean by shaming them, not stripping them.

- Q. And embarrassing them among their peers?
A. Essentially, yes. And, also, there is a cultural aspect to that, as well, that, you know, essentially, there is a cultural shame there as well. Almost an oriental sense of face in the Arab world and that's what I'm talking about, shaming them.
- Q. By embarrassing them in front of their colleagues.
A. Essentially, yes.
- Q. And you would also have to use threats?
A. Threats of firing them, yes.
- Q. Just taking their jobs away?
A. Yes. They are not doing the job, I am not going to pay them the tax payer's money.
- Q. Did you ever have to use or threaten them with any sort of force?
A. No. Except for (b)(7)(C) that pulled the gun on me.
- Q. And you pulled a gun on him?
A. Myself and (b)(7)(C) yes.
- Q. Now, you talked about your experience in the Middle East. How many total years did you have in the Middle East. You mentioned a few countries, but how long was your total stay?
A. Three and a half years the first time; eight months the second time; and six or seven months this last time.

Q. Okay. You speak Arabic?

A. No, I don't. I used to be able to at one point. I used to be able to speak Arabic well enough to get around Bahrain.

Q. Now, you heard from (b)(7)(C) that (b)(7)(C) (b)(7)(C) who is a former Iraqi citizen, still has family there, lived there for 18 years, in Saudi Arabia for five, commented about this case. Right?

A. Yes.

Q. Did you have a chance before this BOI to review this report?

A. No, I have not.

Q. But yet, with the information that (b)(7)(C) told you, you disagreed with his assessment?

A. I disagree with his assessment based upon my first-hand experience dealing with the complaints of the Iraqi people in that city, yes.

Q. Okay. He says that disrobing the detainees would not be considered humiliating or degrading by Iraqi customs. Do you disagree with that?

A. I disagree with that.

Q. Now, some -- because you have been there, you are probably familiar with some examples which are different in the West than the Arab culture, like it is in the United States culture in terms of respect, but for instance, showing the heels of your shoes to an Iraqi is insulting; isn't it?

A. In the manner in which you do it, yes. If you are just sitting down and your heels tend to -- they sit down with their heels exposed to each other.

Q. And it would be disrespectful, too, if you were approaching a group of individuals and you didn't speak to the senior male in the group and instead spoke to the female, that would be insulting to the senior male. Right?

A. Correct.

Q. Was it also your experience, when you were there, that the Iraqis respected strength as opposed to weakness?

A. Yes.

- Q. And that they would see weakness as, you know, they would seek to exploit the weakness that they saw?
- A. Yes.
- Q. Did -- was there any nonlethal force that was available to the Marines when they were guarding the ASP?
- A. Not that at that time, there was not, other than zip ties or fisticuffs. As far as gas or any nonlethal agents or batons or anything like that, no.
- Q. That had been taken away by the CG. Right?
- A. The CG of 1st Marine Division made that decision for no nonlethal.
- Q. Now, I want to show you the endorsement which you put together on the investigation.
- Gentlemen, it's Exhibit D in the respondent's exhibit package.
- Is that the endorsement that you put together?
- A. This looks like it, yes.
- Q. I want to point your attention to a sentence in paragraph number 2 that says all soldiers, sailors, and Marines of [REDACTED] were instructed in prisoner detainee handling procedures as well as instruction at company level authorization is required to confiscate anything and a receipt must be provided to the owner?
- A. Correct.
- Q. How many times do you recall receipts being provided to owners?
- A. I can recall no receipts at any checkpoints or anything like that that we ran because we never confiscated anything there. I have provided receipts and I have seen other Marines provide receipts for weapons that were taken. I have also received receipts issued from all across the province by the various companies when Marines, I'm sorry, not Marines, but Iraqis would come to me wanting their item returned.
- Q. Now, you have commented on this incident at the checkpoint in your investigation. Right?
- A. Correct.

Q. And you are aware that at that checkpoint after the Marines disabled the vehicle, two Iraqis were injured. Correct?

A. Yes.

Q. And that first aid was immediately applied to those Iraqis?

A. Yes.

Q. They were taken away to the ambulance?

A. Yes.

Q. Obviously, since they weren't there, you would have expected the Marines to provide them a receipt for the items that they took out of the truck. Right?

A. The items in the truck shouldn't have been taken in the first place.

Q. Well, you are familiar with the five hundred thousand dinar that was found?

A. Yes.

Q. And that was turned over to the police?

A. Correct.

Q. And you are aware that (b)(7)(C) had called in to have an intelligence team come and inspect the vehicle.

A. I'm aware of that, yes.

Q. You are aware that the intelligence team never came out to that checkpoint to conduct that search?

A. I don't recall whether they did or not. I don't have any specific recollection.

Q. At some point, (b)(7)(C) and his Marines had to gather up some of his belongings and they brought it back to (b)(7)(C); didn't they?

A. It is my understanding that they were supposed to guard the truck until relieved.

Q. But did they bring back some of those items they took from the truck back to (b)(7)(C)?

A. I do not know, I was not there when they returned.

Q. Last sentence there, that paragraph where you said the undersigned officer personally conducted this training with all units between 2 July 2003 and

5 July 2003.

- A. Do you see that?
Yes, I do.
- Q. What was the date of the incident involving the checkpoint?
- A. It was prior -- I don't recall the incident with the checkpoint offhand, but that's the dates that I provided the training to the entire Battalion Task Force.
- Q. Okay. Is it your recollection that the checkpoint incident occurred before you gave this refresher ROE?
- A. I'd have to look at the checkpoint investigation, the actual investigation itself to know what date it was. And that document speaks for itself.
- Q. I am showing the witness what's been marked as -- this is in the government's exhibits, but this is the command investigation; right, that (b)(7)(C) put together?
- A. This looks like it, yes.
- Q. Does that help you refresh your recollection as to when the checkpoint incident occurred.
- A. It would take me a couple of minutes to find it. It looks like on the subject line one was on 1 June and the other was on 29 June. I can also say that the reason that sentence is in there is if you look at the date of the investigation, it's 22 July and if you look at the date that the training was conducted, it was on 2 July and 5 July. The purpose of the sentence being in there is to report to Division that our training was actually completed because that was an issue. We were given a direct order to conduct our training and that was to inform Division that our Battalion had complied with their order and had conducted that refresher training.
- Q. But this was an endorsement on the investigation involving the checkpoint?
- A. Correct.
- Q. So, at that point, your briefing of this was irrelevant because it occurred after these incidents.

A. It is relevant. It is not to import that (b)(7)(C) received refresher training prior to that. It's in there to inform Division. Also, another aspect of this is, as with (b)(7)(C) investigation and my (b)(7)(C) on this, this document was written probably about 02 or 03 in the morning. So there's a lot of things you are trying to cram into a day and you are trying to analyze this as (b)(7)(C) (b)(7)(C) is trying to be a (b)(7)(C) as well as --

SRMBR: Okay. I think we have got it. The refresher ROE training --

WIT: Occurred after.

SRMBR: -- occurred after the incidents.

Questions by the civilian counsel continued:

Q. At the point that the investigation started heating up against (b)(7)(C) when did you become aware that he was going to be going to an NJP?

A. I became aware that he was going to be going to an NJP in a telephone conversation with the Deputy Staff Judge Advocate of 1st Marine Division.

Q. Okay. And you remember when (b)(7)(C) received the investigation package?

A. I don't recall when he received it. I can't recall when he received it, but I do have the vague recollection of (b)(7)(C) and (b)(7)(C) (b)(7)(C) asking for the investigation. One issue we did have over there was a lack of reproduction capability. Essentially, the lack of a photo copier, a functioning photo copier, so it was difficult, when you are working with one original to get it up to Division to get endorsements and get it back, allow them to view it or get Division to photo copy it. There were issues there with him getting an investigation.

Q. If (b)(7)(C) received the investigation on June 30th and his NJP was on August 1, is that your recollection?

A. I can't recall when he was NJP'd. The NJP will speak for itself as to when it was. I don't have any specific recollection of when his NJP was or

when he received the investigation.

- Q. Do you recall (b)(7)(C) for a copy of the investigation?
- A. I have vague recollection of that, yes.
- Q. Did you tell him you couldn't give him the investigation yet until you received (b)(7)(C) endorsement?
- A. I may have told him that, yes, and I could not give him an advanced copy until the investigation was finalized. If you give the investigation to the Battalion commander and he orders a reopening of the investigation or additional investigation, then it's not closed.
- Q. Okay.
- A. So I may have told him that, yes.
- CCFR: Gentlemen, you just have to give me one second because I have a few exhibits I want to use. Gentlemen, this isn't the government's exhibits, but I will use this for this purpose here.
- A. Is that (b)(7)(C) endorsement?
- A. This appears to be it, yes.
- Q. What's the date on it?
- A. 23 July 2003.
- Q. Do you have any knowledge as to when it was that you gave (b)(7)(C) a copy of the investigation?
- A. I don't recall.
- SRMBR: He's answered that question three times already.
- CCFR: Now this is the acknowledgments of rights form on the NJP. Correct? Does it help refresh your recollection as to when the NJP occurred?
- WIT: I wasn't present at the NJP, but, as I said earlier, the document speaks for itself. It appears that it occurred on August 1, 2003.
- CCFR: Thank you.
- Gentlemen, I don't have any further questions for (b)(7)(C) at this time. Thank you.

SRMBR: Okay. Redirect.

REDIRECT EXAMINATION

Questions by the recorder:

- Q. Sir, just for the sake of clarification, could you point out where the (b)(7)(C) Command Post is?
- A. Okay. I guess I didn't mention it, I mentioned (b)(7)(C) started out over here, I didn't mention where it went to. (b)(7)(C) moved to open up the school and get the kids in there. We moved to an Al Kut's Army terrorist facility right there across from the palm grove, that corner of the palm grove and that neighborhood right there.
- Q. And this is where the incident of the stripping occurred?
- A. Correct.
- Q. You mention that the Battalion was more -- Division was more concerned about controlling the population and not ordnance?
- A. Correct.
- Q. Why is that?
- A. Because there, number one, there is just so much ordnance everywhere. It's along the canal banks, it's in the schools, it's everywhere. It was just a monumental task to try to control all the ammunition and we would lose control of the city if we guarded every stash of ammunition.
- Q. You mentioned about your job as an (b)(7)(C) affairs when dealing with the Iraqis. And that was frustrating because the Iraqi (b)(7)(C) weren't listening to you and you explained to them over and over again what they were supposed to do and they didn't do it?
- A. Yes.
- Q. So you felt the need to counsel them basically and get them all together and counsel them together?
- A. Yes.
- Q. And that's why you felt that shame was appropriate.
- A. Yes. That's exactly what it was. You know, here is

a 36-year-old guy from America counseling 60, 70-year-old Iraqi judges on what they should be doing. They should be judges and judging. They were refusing to do that -- and threatening to fire them; and, you know, providing them funding and everything like that wasn't working. Giving them kindness and resources didn't work; threatening to fire them wasn't very successful; so, the only thing I had really left to do was to just lay it on the line for them. I threatened to fire every single one of them and just do it myself at that point.

- Q. This is about a month and a half of the same issues?
A. At least.
- Q. Is anywhere in procedures, an SOP, about an appropriate measures for Iraqis not responding to you is to take off their clothes?
A. No. It's in direct violation of international law, treaties, ROE, Marine Corps Orders.
- Q. In your billet there as (b)(7)(C) do you believe that your Marines understood that even prior to the training in July?
A. Yes. And I think their statement in the investigation reflect that.
- Q. So we are talking about privates, lance corporals, corporals, sergeants?
A. Yes.
- Q. This is probably self evident, but why do we have things like ROEs? Why is there such an emphasis placed on instruction and training, on training Marines in this subject?
A. Well, there's, you know, there are several reasons why you have ROE. Number one, is to ensure that -- to implement national policy, command policy, on what level of force we are going to use. There are, there's a reason to maintain the humanity of the conflict. Number one, psychologically in our own Marines, we put them in a moral conundrum that it's not natural for human beings to want to kill somebody else. So, you provide them guidelines within when to kill, when not to kill. You also try to make sure that our Marines are complying with international law and treaty law. We try to make sure that you don't stiffen the resistance of the

enemy by resorting to extralegal measures.

- Q. You also mentioned that during cross that those items at the checkpoint shouldn't -- those personal items shouldn't have been taken out of the truck?
- A. Correct.
- Q. What do you mean by that?
- A. They were not contraband. There's no reason whatsoever under the ROE or any instruction at all or even like I said before, your five S's and a "T" of EPW handling, you don't take the personal effects of people from them.
- Q. When did you meet (b)(7)(C)?
- A. I believe it was in 1995, when he got to (b)(7)(C) (b)(7)(C). I had been there about a year and he came in as a (b)(7)(C) off of active duty.
- Q. What is your relationship like with him?
- A. I have a friendly relationship with him. I see him at drills and I talk to him about business over the telephone.
- Q. There is also an allegation that (b)(7)(C) was out of control. Could you describe whether you felt, being a (b)(7)(C) in that company, whether it was out of control?
- A. It wasn't out of control. As with any command there was issues and those issues were dealt with. Whether it's an issue with an officer's judgement, Staff NCO or NCO judgement, Lance Corporals or PFCs, Marines broke the rules, Marines were NJP'd from Privates all the way up to Captain.
- REC: Nothing further.
- SRMR: Wait a minute. He's got -- recross and then you will answer our questions if we have any.

RECROSS-EXAMINATION

Questions by the civilian counsel:

- Q. (b)(7)(C) the ROE or the Marine Corps order doesn't specifically itemize disrobing as being a violation; does it?

- A. If you provide me the Marine Corps Order to refresh my recollection, I can tell you what it says and what it says specifically with regard to treating people with dignity and respect and they should not be exposed to public humiliation.
- Q. My question to you is, does it include the words "not to disrobe?"
- A. Well, it doesn't include the words "not to disrobe," but we are getting into semantics and what public shame and humiliation --
- Q. Insults?
- A. Insults. Forcible. And the only thing I have to respond to that is that there are cultural differences between American culture and Arabic culture. Their culture is far more guarded about sexual things and nudity and things like that than ours is. If I went outside this base and were forcibly stripped by the New Orleans police department, you would be shamed. You would be humiliated and then that goes for United States Marines stripping Iraqis, too.
- Q. Now, you provided in your endorsement your subjective interpretation that that conduct that occurred violated the order. Correct?
- A. In my subjective interpretation is also objecting based upon my legal training, also, my subjective and objective opinions have been endorsed by every general in the chain that has reviewed the investigation.
- Q. You were the one who initially put the connection between (b)(7)(C) conduct and your interpretation of the order. Correct?
- A. I was the one who interpreted the order initially and I am the one, along with everybody else in the chain of command, that has reviewed the investigation that agrees that what was done is in violation of this order. I started that, yes.
- CCFR: Thank you. Gentlemen, I don't think have I any further questions.
- SRMBR: Okay. Questions from the board.

EXAMINATION BY THE BOARD

Questions by the MBR (b)(7)(C):

- Q. Skipper, do you consider -- you made mention of the fact that although (b)(7)(C) didn't attend IOC or go to the reserve IOC course, you say he zealously applied himself. Do you consider him to be a good platoon commander?
- A. I think he was a good platoon commander, sir. I can tell you this, that (b)(7)(C) with a map over the hood of a HMMV can come up with a coordinate search plan in a matter of minutes, a solid, good coordinate search plan. We were able to do that on numerous occasions.
- Q. Are you familiar with anybody who has ever graduated from RIOC?
- A. Yes, I am.
- Q. Can you compare his skill level to those individuals as being on par, below par, above par?
- A. I don't, I don't think that the officer I'm thinking of -- I don't think reserve IOC did anything for him.
- Q. Okay.
- A. Reserve IOC is two weeks long and it's a check in the box. You got to -- to get the MOS, you got to have your two years in the school, and I don't think the school provides much benefits beyond the experience you get OJT certified.
- Q. Okay. Defense made reference of the fact that you have got the MOS, but you have never been to (b)(7)(C) course?
- A. No, sir, I have not, but --
- Q. But you do have the skill says -- required to interpret ROE and Geneva conventions and make a determination on whether there was a violation of any specific set of those requirements?
- A. Yes, sir. And as I said, in answering my question, sir. The Colonels here at MarForRes asked me to come and give lectures to Lieutenant Colonels and Colonels on the subjects and also I was one of two officers from the Battalion that participated in the

after action debriefings with 4th Marine Division.

MBR (b)(7)(C) :That's all I got.

SRMBR: Okay.

Questions by the MBR (b)(7)(C) :

- Q. Just a question on Exhibit 10, which is the first MarDiv ROE training, 10 North 3 Victor. Was that available prior to the deployment or was this what you wrote up after deployment?
- A. I did not write that and I don't know if I provided that when (b)(7)(C) gave me the defense request. There's also, it looks like, some powerpoint. Those items and powerpoint was produced by 1st Marine Division and that is the instruction tool that was used by the First Lieutenant in Kuwait as well as myself in the refresher training, sir. Those are products from 1st Marine Division. Those are not my products.
- Q. But was this done in country or was it done CONUS before you all left?
- A. We did not receive the theater specific ROE training until we were in Kuwait. We received that instruction, the powerpoint instruction, which is from the ROE for official use only, 10, was it whatever, Victory, the actual ROE itself is classified, but that's the declassified version of it.
- Q. The second question, the last question I have is how often did the Battalion commander come around to the different areas and different ASPs? I mean, what involvement or interaction took place?
- A. I doubt if he ever came around to the ASPs. I had frequent interaction with them because of my duties but going out to the actual companies themselves, (b)(7)(C) being in the city of Al Kut, I can't remember the exact number of times, but you can probably count them on one hand.

MBR (b)(7)(C) :Thank you.

Questions by the senior member:

- Q. Okay. I have a question about the order to guard

- the ASPs. Which ASPs; where the order came from; how it was articulated, and how it was promulgated. So, based on what you know, who issued the order to guard those two ASPs that are our primary points?
- A. It is my understanding that that came down from 1st Marine Division.
- Q. How did they convey that?
- A. That would be conveyed probably in a telephone call to (b)(7)(C).
- Q. Based upon intel?
- A. Based upon intel and it's primarily pilots were at the airfield, pilots fly over head, they see antiaircraft guns, they can't tell whether it's functional or not. And it got to the point where we were spray painting antiaircraft guns with red paint to let the pilots know that this is not functional. But they would call in with, AA gun, red 1, 2, 3, 4, 5, 6 and next thing you know, we were guarding it.
- Q. Okay. Someone would issue a verbal order from Division G-3 or wherever down to Battalion, to (b)(7)(C), and then the Battalion commander or the S-3 would issue it?
- A. It would probably come from the Battalion S-3, sir. The way things were functioning over there, the Battalion commander was also the provincial governor and he was eyeball deep in running the province. The day to day -- the operations officer ran operations, the XO ran the Battalion, and the Battalion commander was running around like a chicken with his head cut off dealing with the province.
- Q. Do you know whether the order from Battalion, the 3, down to (b)(7)(C) was a verbal order or a written order or --
- A. You would have to ask (b)(7)(C) about that, sir, but the order to (b)(7)(C) or myself or to whoever to guard the ASP would have been a verbal order. Probably, go guard the ASP.
- Q. Did you say that -- how long was the, if you know, how long was the security maintained on those two ASPs?
- A. I can't recall when they started, sir, but it was probably weeks if not longer.

Q. Based on that same verbal order, intel order, or concerns of the pilots that caused us to put Marines on the ground?

A. Yes, sir.

Q. What other, what other actions, you know, in your mind, are permissible under the ROE, you know, other than turning folks over to, Iraqis over to the Iraqi police for incursions into the ASP or whatever?

A. Under the ROE, it's very frustrating, those ROEs are a very frustrating set of ROEs. That's part of the problem, that's part of our role as leaders. What else could those Marines have done? There's not much else they could have done under those ROEs. They arrest them, they transport, they put them into the Iraqi system, and it's just a matter of when the Iraqi judges getting frustrated with seeing the same guys over and over. You have already heard about the illustrious Iraqi court system. You know, a New Orleans police officer arrests the same crack addict over and over and over again, doesn't give him a license to strip him down. He still arrests, takes him to the jail, books him. That's the same thing that we were operating with under those ROEs, sir.

Q. Okay. Just one last thing. Who was in charge of the EOD teams?

A. That was the --

Q. Specifically operational control, tactical control --

A. The (b)(7)(C) the [REDACTED] he was the guy that maintained the list and he would sign it to I can't remember the Gunnery Sergeant's name.

Q. Who were the teams attached to?

A. We had one team, direct support to us. And that was headed up by a Gunnery Sergeant. We had one team with the Marine Aircraft Group that we would have to go beg to get them to work, you know, they would support occasionally. So, essentially, you had six Marines, occasionally twelve Marines to take care of the EOD issues, massive EOD issues, in this entire province.

SRMBR: Okay. That's all the questions I have. Questions

by counsel?

REC: No question, sir.

CCFR: Nothing further, sir.

SRMBR: Okay. Thank you.

REC: Sir, if I may, I might like to keep (b)(7)(C) on recall. He's in the local area. We could have him by cell phone if the members have other questions for him later on in the day if we need to bring him back to testify.

SRMBR: Are you available?

WIT: Yes, sir. I am off for the whole day, I booked the whole day for this.

SRMBR: Okay. Very good.

REC: Sir, the government's next witness is (b)(7)(C). I'm hoping he would be a shorter witness possibly half an hour, or would the members like to break?

SRMBR: Call (b)(7)(C).

REC: Okay, sir.

(b)(7)(C), U.S. Marine Corps Reserve, was called as a telephonic witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. Please state your name for the record and spell your last name for the record?

A. (b)(7)(C), (b)(7)(C).

REC: Members and counsel, are you all able to hear him?

SRMBR: Yes.

Q. What is your present -- are you in the reserves or on active duty?

A. I drop to the IRR on March 5th.

Q. Okay. Are you planning to go back into the regular Marine Corps or USMCR?

A. I'm sorry, ma'am.

Q. Are you planning to go back into USMCR or regular Marine Corps?

A. It's a possibility that I will go back to the reserve.

Q. Okay. What is your present occupation?

A. Currently, I am unemployed at this time.

Q. What city, state do you live in?

A. (b)(7)(C)

Q. Okay. I am going to pull you back to the incidents that happened in Iraq that are the concern of this board of inquiry. What was your billet in OIF-1?

A. (b)(7)(C)

Q. Of what platoon?

A. (b)(7)(C)

Q. Okay. In (b)(7)(C) Correct?

A. Correct.

Q. What were some of your, your assignments as a (b)(7)(C) in that platoon?

A. Ma'am.

Q. What were some of your responsibilities as a (b)(7)(C) in that platoon?

A. Well, responsibilities as a (b)(7)(C), I actually had SOGT duties when my Marines were on post. My responsibilities to my squad to make sure they understood and knew that what we were doing as far as patrol orders are concerned, and supervised the guys and make sure they were doing their job.

Q. How long have you been in the Marine Corps?

A. Off and on, 12 years.

Q. And what's been, how much of that was active duty?

A. Probably about 3 years of active duty.

Q. Okay. What's been your MOS over the course of the

- 12 years?
- A. [REDACTED]
- Q. Okay. How long have you been a part of (b)(7)(C) [REDACTED]?
- A. Since 1990.
- Q. Okay. And how long have you been a (b)(7)(C) [REDACTED] in [REDACTED] platoon?
- A. My duties actually fluctuated depending on billeting that we had there. It's been all the way from [REDACTED] basically, of the whole platoon.
- Q. I'm going to bring you back to the 23rd of June, the incident when you were at the ASP and you brought back some Iraqis to the (b)(7)(C) [REDACTED] Command Post. Can you explain to the members what happened on, in the morning of that day and take me through the events of that day?
- A. Okay. Taking it from the top, all the way from the top, from the time we detained the first, the group the first time. Correct?
- Q. Yes, yes, please.
- A. Okay. On that morning, on that morning we were on post and we noticed a few Iraqis that were actually in the compound. So I assembled a team to go around and investigate and find out what they were doing. We rolled around half the compound. The compound is actually is a circular compound. We rode around half the compound and I had some Marines get out and motion for the Iraqis to come out of the compound. Finally they came out, we got them on the ground and searched them.

And then, at that time, I tried to explain to them -- none of the Iraqi subjects spoke English, so I drew on the ground, the perimeter of the compound and told them basically by throwing sand, you guys are not supposed to be in here and if I catch you in here again, we are going to arrest you by basically doing hand and arm singles or what have you. Just told them they would be arrested if they came back. A few hours later, some of my Marines spotted some Iraqis on the other side of the compound. We went to investigate again, and it was the same individuals. At that time --

Q. -- I'm sorry. I'm going to interrupt you for just a second. Who was in charge of the Marines that were guarding the ASP?

A. I'm sorry, ma'am, you broke up.

Q. Who was in charge of the Marines guarding the ASP?

A. Who was in charge at the location or who was in charge in the rear?

Q. Both.

A. At the location, I was in charge of those Marines.

Q. Okay. And in the rear?

A. I would have to assume it would be the CO or whoever was in charge at the time.

Q. Okay. How many other Marines were with you guarding the ASP at that time?

A. I had 8, 9 Marines and a doc, Navy doc.

Q. Okay. What happened after the first incident when you drew the pictures in the sand to try and explain to the Iraqis, what did you do to them?

A. We let them go.

Q. Okay. So you just let them go down the highway.

A. Right. There had no weapons, they were just in there milling around the compound. And, basically, I just explained to them, hey, guys, you don't need to be in here. If I catch you again, we are going to arrest you.

Q. Did you perform a search of the Iraqis?

A. Ma'am.

Q. Did you perform a search on the Iraqis at that time?

A. Yes, ma'am. Every time.

Q. What did they have on them the first time?

A. They were unarmed.

Q. Did they have anything, any brass and ordnance?

A. No, they did not.

Q. Okay. I interrupted you, I'm sorry. You were talking about the first time, you just let them go. Now, you're on to the second time.

A. The second time, we detained them, went back to the

main gate at the ASP, we had a radio there. I called it in and I was waiting on further instructions. At this time, (b)(7)(C) and another Marine, I am not too sure who that Marine was, drove up to our area and he saw the detainees on the ground; and, of course he asked, you know, why -- who are these guys and what did they do. So, anyway, I told him we were waiting on higher instructions on what to do with them. He said, well, don't worry about it. Just Put them in the back of my HMMV and I will take care of them. So we did. They disappeared for about three hours. About three hours later, the same individuals came back in a blue flatbed truck. One of my guys noticed a blue truck rolling across the desert, a couple thousand meters away, and it looked like it was trying to go around the back of our compound. So we waited for a while and then I sent another patrol out to check it out. And, sure enough, it was the same guys loading brass in the flatbed truck.

- Q. Okay. (b)(7)(C), I just want to break this down a little bit. On the second incident, you saw them, obviously your Marines saw them so they went and picked them up. Correct?
- A. Right.
- Q. And they brought them back to you?
- A. Right. Well, I was with them. I was with them at time. We brought them to the main gate, where we held them at the time.
- Q. How did you hold them? What did you do to keep them there?
- A. We had them sitting on the ground with their legs headed straight out. I had them underneath, they had built a wooden shack and we had some cammie netting over the top, so I kept them out of the sun. We kept them pretty much sitting down the whole time. They were -- they still had the flex cuffs on at the time.
- Q. Were they given water or cigarettes or anything?
- A. I don't know if we gave them water that time, but we did give them water the third time.
- Q. Okay. So you were just waiting to hear from higher of what they wanted to do with them?

A. Correct.

Q. And that is when (b)(7)(C) came up?

A. Correct.

Q. He took them in the back of his truck. And what was your understanding of what he was going to do with them?

A. I just figured he would take them to the police station or take them back to (b)(7)(C). I just assumed he would take them to the police station. Especially after the first time we detained them.

Q. And then a few hours later, you saw them in a blue pick-up truck?

A. Probably about three hours later. I'm not exactly sure of what time. Of course, I didn't know it was the same guys in the blue pick-up truck. We just saw the blue pick-up truck, which was very unusual, coming to our compound area at a different route and different angle, a couple of thousand meters away. I guess they were trying to sneak around the back.

Q. Okay.

A. Anyway, my Marines went to go and investigate the blue truck and they caught them out there loading up some brass. My Marines searched the vehicle, got the detainees on the ground, they searched them for weapons. We went ahead and flex cuffed all the detainees. We took the blue vehicle and drove it up to the front and I took all the detainees in the back of if hummer and we set them next to the guard post. There was an extra Iraqi there at that time and I guess it was his vehicle. I hadn't detained the other individual previously, it was the first time I saw this guy -- but, it was his vehicle.

As soon as we brought them back to the guard shack, I called higher to get instructions on what to do with them, I explained the situation. At that time, the CO came back, which was (b)(7)(C) and he instructed me to hold them and that as soon as we get off our shift, we were to bring them directly to the police department and explain to the MPs at the police department that that was the third time that we had detained the individuals in this sector.

Q. What do you think happened that second time?

- A. The second time, the way I understand it, I think the (b)(7)(C) just brought them out somewhere and let them go.
- Q. Why don't you think he brought them to the Iraqi police station?
- A. Well, I heard from another Marine, somebody told me he just let them go.
- Q. Okay.
- A. It was kind of funny, three hours later, they are coming back out there and I kinda figured they weren't sitting in the police station because they probably would have been detained for longer at the police station.
- Q. What was your experience of how long it took to process an Iraqi because he was detained for trespassing in the ASP?
- A. I'm sorry, can you restate the question?
- Q. In your experience of being a guard out there, when you transported an Iraqi to the Iraqi police, how long did it take Iraqi police to process that person?
- A. I am not sure of that, ma'am. I have never sat and watched the processing procedures at the police station.
- Q. Okay. But would it take a day or half a day or you just don't know.
- A. I really don't know. I couldn't speculate, ma'am.
- Q. Okay. So you were instructed by (b)(7)(C) to wait and hold them until the end of your shift and to bring them back to the Iraqi police station; is that right?
- A. That is correct.
- Q. Okay. What happened in between you seizing them and the end of your shift?
- A. Okay. When my shift ended, I was properly relieved by a Marine named (b)(7)(C). We loaded the detainees up and we were bringing them enroute to the police station -- which in that route, our compound is along that route. As we were heading to the police station, I realized it was about the time that our chow truck came by, so I decided to go

ahead and pull off in our compound and let half of my Marines out to go eat chow and I was going to take the rest of my Marines, myself, and the detainees to the police station to drop these Iraqi detainees off. We pulled into the compound, and, as soon as the vehicle stopped, we were met by (b)(7)(C) (b)(7)(C) and some other Marines that were out there in the front. And the (b)(7)(C) I think, was pretty displeased that we brought the detainees into the compound.

CCFR: (b)(7)(C) was that displeased or pleased?

WIT: I'm sorry?

CCFR: Was that displeased or pleased?

WIT: Displeased.

Questions by the civilian counsel continued:

Q. Why was he unhappy about you bringing these detainees into the compound?

A. Well, we had had a couple of patrols do that in the past. Marines had actually brought detainees into the compound. I had seen it done before. I just did it because I was trying to drop my Marines off at chow. There was nothing these detainees were going to see, anyway, of any intelligence value to them. The only reason I know he was displeased is because he wanted to know why these detainees were in the compound.

Q. What did they have on them when you seized them at the ASP. Were they carrying anything?

A. Most of them wore mismatched clothes, had mismatched clothing on. Most of them, I think, all of them had sandals. One of them had a traditional light dress on. The other ones mostly had just slacks or blue jeans or whatever and T-shirts.

Q. Were they, were the Iraqis armed when you seized them?

A. No, they were not.

Q. Were they carrying any brass or ordnance on that third time?

A. On the third, time they were loading brass up.

Q. So, they were loading brass into this truck?
A. Correct.

Q. For what purpose?
A. I would have to assume for selling it for scrap.

Q. Okay.
A. They would come into the compound sometimes and blow some of the ammo up in order to retrieve the brass.

Q. Okay. So you brought the Marines into the compound.
(b)(7)(C) asked you why you did that, then what happened?
A. I basically explained to him, sir, we were ordered, I was ordered by the (b)(7)(C) to bring them to the police station. In route, I decided to stop and let half of my Marines off for chow; and, you know, we're getting right back in the vehicle and heading on to the police station with these guys. At this time, he stopped me and actually just wanted to release them at the gate. And I think I made a comment to the effect, sir, you know, these are the same guys I have detained three times today. They are just going to go right back out the gate, go back to the ASP and do the same thing tonight. So, I probably said something along those lines. And he said, well, no, just take them to the gate and he told us to strip their clothes off -- I am thinking he is trying to teach them a lesson. That is probably what his rationale was in the matter. Take them to the gate, strip their clothes off, and let them go.

And then I said, well, sir, they are going to get into a taxi and they are going to go straight back to the ASP, and he said, well, go ahead and take their money. So the first couple of Iraqis we took money from and we, I know I handed some off to the First Sergeant, and the other money, I don't know where the other Marines put the other money; but we were escorting the Iraqis to the front gate and we stripped their clothes off. All of the Iraqis wasn't totally dis clothed, they had clothes on, underwear or whatever they were wearing, undergarments that they were wearing. We took their outer clothing off and we released them at the gate.

Q. Did (b)(7)(C), did (b)(7)(C) tell you

why he didn't want you to bring them to the Iraqi police station?

A. No, ma'am.

Q. Did you explain to him that is what (b)(7)(C) who ordered you to do it?

A. No, ma'am, I did not. I may have, I may have told him that, that, hey, you know, we are supposed to go to the police station with these Marines. I don't know if I told him specifically, hey, I was ordered by the (b)(7)(C) to bring them. I do not recall.

Q. So, he tells you to take them to the gate and to take off their clothes prior to taking them to the gate. Correct?

A. Well, prior, before we were taking them to the gate, he told us to take their clothes off, so when we got to the gate, that is when we actually did it.

Q. Okay. How many Iraqis did you strip down?

A. Four or five, ma'am.

Q. Okay. Four or five. Did you actually have them pass through the gate and have them walk in the city?

A. We took their clothes off before they exited our gate and then they walked out of our gate right into the street.

Q. Did anybody give them their clothes back?

A. I do not recall, ma'am. I do not recall.

Q. What's right outside the gate? Explain to the members, just visually, what's there.

A. Directly outside of the gate is actually a four-lane highway or two lanes with a median. Across the street is a palm grove and to the direct -- actually, if you are facing out, looking outside the gate to the left, there is a creek and a lot of Iraqis come over there to service their vehicles with water. There's really nothing in front of the compound, directly in front of the compound. To the left front there are buildings that start a neighborhood.

Q. Do you have any idea if the Iraqis ever got their clothes back?

A. I think they did, but I'm not certain, ma'am.

Q. Okay.

A. Some of them may have walked out with clothes in their hands, I'm not sure.

Q. Okay. Were there other Iraqis outside of the gate walking around?

A. Yes. Well, there were always Iraqis outside the gate. It wasn't a large congregation of them, but there were always folks outside the gate, yes, ma'am.

Q. How many of your Marines assisted in this stripping down the Iraqis incident?

A. Probably about seven of us.

Q. And you assisted as well?

A. Yes, ma'am, I did.

Q. How was that accomplished?

A. Excuse me?

Q. How did you take their clothes off?

A. The individuals, I took an individual's clothes off. He had the traditional white gown clothing, and, basically, I just unsnapped it quick and just ripped it off.

Q. Okay. Are their hands still in flex cuffs?

A. No, ma'am. We took them off of them right before we undressed them.

Q. Did anybody question this command?

A. Well, you know, we all thought about it. I know I thought about it as we were doing it. I knew we were doing wrong. The only person that verbally questioned it after the fact was some Marines that were there for -- counter intelligence Marines that were pretty disturbed about what was going on.

Q. What did the counter intelligence Marines say?

A. They wanted to know what the hell we were doing. And I explained to them what we were ordered to do and they didn't like that too much at all. And I understand why, and I'm sure they brought that matter up with their higher.

Q. Why did you feel that it was wrong?

A. Well, I felt, basically, it was wrong because, you

know, we were supposed to bring these guys to the police station. We bring them to the front, undress them in front of all their friends, we just get them angry. And after that I thought, you know, these guys are mad enough to where, you know, they could possibly come back and shoot one of my Marines. So that is basically what I was worried about.

Q. Okay. What happened after this, after this -- what were the repercussions of this action?

A. An investigation followed and that happened pretty quick. And, then, I think, I noticed the (b)(7)(C) and a First Sergeant was relieved out there.

Q. What about in your squad, what was the effect in your squad of this order?

A. Well, we had debriefings every time we went out and we discussed the matter. And I took my guys to the rim and said, look, what happened here wasn't the right thing to do and, basically, try to, you know, use it as a learning experience for those guys and their future. Their, you know, their future leadership position is to look on this and say, hey, this is probably not the way this situation should have been handled. We debriefed and talked about it and they agreed.

Q. They agreed that it was a bad decision?

A. Correct.

Q. What about as far as chain of command and as far as, were the Marines confused about orders being issued to them and wondering whether or not it was a proper order or not?

A. No, ma'am. You know, I told the Marines what I was ordered to do and we did it. They have no problem at all with ever following orders. I'm sure that was something of a gray line to them and the initial order, it wasn't something serious enough for them to stop and say, hey, look, I shouldn't, we shouldn't be doing this. So, I think it was such a gray line that they went ahead and did it.

Q. Right. I know hindsight is 20/20, but would you have followed that order again?

A. No, ma'am.

Q. Why not?

A. Well, I just, you know, looking back on it, I realize it was the wrong thing to do, and, you know, I learned a lesson there that day that, you know. If I am told by a (b)(7)(C) to do something, even though it might be in a gray area and I feel it's wrong, that I need to stand up and say something about it. I knew it was wrong as we were doing it. It didn't feel right and I learned a lesson as well that day.

Q. Why did you feel that it was wrong? Was it because of your ROE training or just instinct?

A. Just the way we handled detainees and POWs. I mean, I have handled POWs in Desert Storm and we had extensive training on how to handle these folks and we would go to the extent to even give money back. I remember in Desert Storm, we owned the battlefield, we would give their money back to them. The only thing we would take away is weapons or any other contraband. We treated them right. I believe that I really believe that that's one thing that separates Americans from other nations, the way we handle our POWs.

REC: (b)(7)(C) I have no further questions for you, but counsel for the (b)(7)(C) may have some and the board members may have some questions for you.

WIT: Okay, ma'am.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) this is a (b)(7)(C). How are you this afternoon?

A. Doing great, sir. How are you?

Q. Doing good, thank you.

The ASP that you caught these Iraqis in, was that the Field Guard ASP?

A. That was our call sign for that site, yes, sir.

Q.. Okay. And that hadn't, it was the responsibility of (b)(7)(C) to guard that ASP?

A. Correct.

Q. And your platoon commander was who?

A. My platoon commander was (b)(7)(C).
Actually, at the time, he was actually detached and I had a Staff NCO that was acting as platoon commander.

Q. And who was that?

A. That would have been (b)(7)(C).

Q. All right. Now, do you know if (b)(7)(C) had been out there on that day on June 23rd, at all, to check your position?

A. I do not think so. Well, I know so, he did not, no, sir.

Q. Could you give us a general idea of sort of the dangers that existed in guarding this ASP?

A. Well, the area that we were guarding was not as large as other ASPs, but it was probably about a thousand meters in diameter. It had large burms and at night time, your Marines need to be on extra watch to make sure nobody is sneaking around the sides of the burms coming into the area. Another big factor, risk factor, was the fact that a lot of these Iraqis would go into these compounds at night and set explosions off in order to come back later on to pick up the brass, brass casings. So, that was a big worry with a lot of squad leaders and a lot of our staff.

Q. (b)(7)(C) while you had the duty to guard these ASPs, did you ever come across any Iraqis who had been injured trying to detonate the ordnance that was in there?

A. I have not, personally, no, but I have heard of plenty of cases.

Q. Had you heard of any cases in which Iraqis had been killed?

A. Yes.

Q. And then were you, were you aware of the other ASPs that the (b)(7)(C) Platoon guarded?

A. I was aware of it, I spent one night out there. It's very large.

Q. Larger than the one you were guarding?
A. Yes, sir.

Q. And prior to this June 23rd incident, where you and your Marines had detained some of these Iraqis, had there been previous occasions in which looters had gone into your ASP to try to steal material from it?
A. All the time, every night.

Q. Okay. Were they only stealing brass or did they at times also take unexploded ordnance?
A. That was also a big concern of ours. Knowing that explosive devices were being placed all throughout the region, we worried about that, but I have never caught anybody actually taking out live ammo. It was mainly brass.

Q. How is it that you were able to get access to this? Was it just, was it in the bunkers and the bunkers were unlocked, or was it just broken open and on the ground?
A. The bunkers were unlocked, ammo on the deck everywhere. It's nothing you would see in the United States, I guarantee that.

Q. Okay. On the day that you caught these Iraqis, how many Marines did you have with you on that particular day?
A. If I am not mistaken, I had nine including myself, and I had a Navy doc.

Q. And when you caught them with the truck, what, did you leave the truck up there?
A. No, we pulled the truck, I had a Marine drive the truck to our gate entrance. We left it at the gate entrance and we took the keys with us with the detainees.

Q. And when you got into, you know -- (b)(7)(C) is the (b)(7)(C) CP?
A. Correct.

Q. Was (b)(7)(C) there when you arrived?
A. I do not think so. I think he was at a meeting at the airfield. So, I think the person in charge at the time was (b)(7)(C) and that's the reason why he came out and was actually talking to me instead of someone else.

Q. All right. And do you know where (b)(7)(C) was?

A. I'm not sure. I'm not sure if he was on leave back in CONUS. I'm really not sure.

Q. Okay, Sergeant. Was he the (b)(7)(C) Platoon commander?

A. (b)(7)(C)?

Q. Yes.

A. Correct.

Q. Do you think he might have been back on emergency leave back in the United States?

A. It's possible.

Q. I want to skip ahead a little bit. You were investigated -- you were interviewed, I'm sorry, by a (b)(7)(C) who conducted an investigation on this incident?

A. Correct.

Q. And you provided a statement for him?

A. Correct.

Q. You don't happen to have that statement there do you?

A. No, sir, I don't.

Q. I have the statement here. I will ask you a question, this might be just a confusing point, but you testified on direct that (b)(7)(C) ordered to have their clothes taken. Right?

A. Right.

Q. Is it your recollection that he also order to have the money taken?

A. Correct.

Q. Are you sure it wasn't (b)(7)(C) who had issued that order?

A. You know, that is hazy. I do not know, because (b)(7)(C), I know (b)(7)(C) was the one taking the money up. That is a very good point, I am not sure that the (b)(7)(C) ordered it, ordered us to take the money, specifically, or if it was the (b)(7)(C). I'm really not sure on that one.

Q. I'm not trying to confuse you. I just happen to have the luxury of the statement and I'll just read a sentence here for you and you can tell me if it helps jog your memory.

A. Right.

Q. It says here, "(b)(7)(C) told me to take their money so they would not be able to take a taxi."

A. Okay.

Q. Does that help?

A. That helps. You know, I wrote the statement shortly after it happened and I would be more inclined to go with that statement than to sit here and say otherwise.

Q. (b)(7)(C) in your work in conducting security at this ASP, did you find, at all, that your Marines were a little bit frustrated with the fact that they couldn't keep the Iraqis from continuing to go into this ASP and loot?

A. I would have to say, yeah. My Marines did their jobs but we were frustrated that, you know, we wanted to be able to take these folks and take them down to the police station. Hopefully, these people would learn lessons not to come in there. I worried about the ASP blowing up and killing my Marines, so, yeah, I was very disturbed by it.

CCFR: Okay. (b)(7)(C) thank you very much for spending some time with us. I don't have any further questions.

Hold on one second, actually.

Gentlemen, do you have any questions for (b)(7)(C) (b)(7)(C)?

(b)(7)(C) the board members may ask you questions. Could you hold on please.

SRMBR: Yeah.

EXAMINATION BY THE BOARD

Questions by the MBR (b)(7)(C):

- Q. (b)(7)(C), (b)(7)(C), can you hear me okay?
- A. Doing fine, sir.
- Q. Was it apparent to you that (b)(7)(C) knew what (b)(7)(C) wanted done with these detainees?
- A. I would have to say absolutely not. You know, I explained that, hey, I was ordered by the CO to take these detainees to the police station and this is what happened in the process. I stopped to let my Marines off for chow. That's how the whole process got disrupted.
- Q. At no point, in that particular piece of the conversation, did it occur -- did (b)(7)(C) make a reference of having to call (b)(7)(C)?
- A. I do not think so because the events happened fairly quickly after I entered the compound, so I really don't think he had gone in and called him, no, sir.
- Q. Okay. Later on, you referenced that the counter intel Marines questioned the action of stripping the detainees down. Did they give specific reason for their concern?
- A. Well, they didn't really give any specific reason directly to me, but I fully understood why they were disturbed.
- Q. Explain that.
- A. Well, I mean, their job is to gain intelligence to help us out, and they used a lot Iraqi citizens to come in there and give us information and their credibility is everything. If our actions just really, you know, I think interfere with their ability to do their job at a hundred percent. That's what they were worried about and I understood that.

MBR (b)(7)(C): Okay. (b)(7)(C) thank you. I'm done.

Questions by the MBR (b)(7)(C):

Q. Okay. (b)(7)(C) (b)(7)(C)
 (b)(7)(C) how are you doing?

A. Good, sir.

Q. After this incident, how long did you stay guarding that ASP?

A. We continued guarding the ASP all the way up to the time that we pulled out of Al Kut, if I'm not mistaken. Well, actually, we were waiting on the Iraqi police to come take it over and the Ukrainians and I think, eventually, towards the end of our duty over there, the Ukrainians took it over eventually.

Q. So it was a significant amount of time then?

A. Yes, sir.

Q. Did you ever see those same Iraqis again?

A. No, sir.

Q. Did you ever see a lot of other Iraqis coming in, conducting recons, and trying to get brass? Basically, what happened to the security threat after that incident?

A. We would also have Iraqis come in at night time sneaking in the back. There was always penetration to that site.

Q. How did you handle the perpetrators after the incident?

A. The detainees we are speaking of, sir?

Q. No, no the subsequent ones.

A. Well, there were times where we ran into children, women and children. I remember on one occasion we had some women that were picking up brass back there and we went back there and tried to explain to them. We weren't going to detain them. I wasn't going to detain them unless they had live ammunition. They had brass, but we tried to explain to -- hey, you guys can't come back here, the best way we could try to explain to them. And in one case, we actually took the brass and tried to discourage them from coming back there and one of my Marines gave them five bucks. Because, really, the brass they were picking up was what they were trying to survive on.

MBR (b)(7)(C) :Right. Okay. Thanks for your service over there, (b)(7)(C). That's all I've got.

WIT: Yes, thank you.

Questions by the senior member:

SRMBR: (b)(7)(C) this is (b)(7)(C).

WIT: How are you doing, sir?

Q. Just a couple of questions. What were the attitudes of the Iraqis that you detained both out at Field Guard ASP and once you brought them back to (b)(7)(C)?

A. They were scared.

Q. Yeah.

A. I mean, they were really scared.

Q. Big eyes and scared?

A. Pretty much. They had one guy that was a little cockier than the rest of them and I guess he realized, hey, there is no letting us loose again. The other guys were pretty frightened and you could really tell on their face they were concerned about what was going to happen.

Q. Was that true when their clothes were removed?

A. I think so. They looked surprised and they were scared. They really didn't know what would happen to them.

Q. Okay.

A. None of them spoke English so they had no way to understand what was going on.

Q. Okay. Do you remember who gave you the order to go out and guard that ASP and how it was given?

A. Well, it took a process that we had been doing since we got to the compound. Actually, we would go around and guard different facilities just depending on what Battalion wanted us to do. The order came down from Battalion one day, hey, we need to get out there and guard this ASP. And I'm sure it came down from Battalion and it came to my CO and we formulated a plan on how we were going to work this out into our normal scheduled rotation.

Q. Okay. But you did stay on that ASP out, the Field Guard ASP, for some time, though?

A. Correct.

Q. Okay. Were there any written orders that you ever saw or written SOPs on ASP security?

A. We had ASP, we had SOP written down for all the areas we were guarding, so, I mean, I don't remember specifically reading SOP for Field Guard ASP, but I'm sure we had one somewhere.

Q. Yeah, in general.

A. Right. We had our own SOP for guarding the facility when we went out there. We had our SOP, how we were going to guard the facility day and night.

SRMBR: Okay. Thanks, (b)(7)(C).

WIT: Yes, sir.

SRMBR: Okay. Questions by counsel?

REC: Sir, I have no further questions.

CCFR: Sir, I have a few.

SRMBR: Okay.

RECROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C), are you still there?

A. Yes, sir.

Q. This is (b)(7)(C) again. I don't have too many more for you. When you said you called -- after you caught these Iraqis for the final time out there in the Field Guard, did you actually call back to (b)(7)(C)?

A. Correct. I called back to the compound, I called back to whoever was on duty and I informed them that we had these Iraqi detainees. This is the third time we detained them and whoever the watch officer is, I guess went and got the (b)(7)(C) and the (b)(7)(C) got on directly and I communicated directly to the (b)(7)(C).

Q. So you actually spoke with (b)(7)(C)?

A. Correct.

Q. And when you got down to the compound, are you sure that you had a discussion with (b)(7)(C) about that discussion?

A. About the discussion with the (b)(7)(C)?

Q. Right.

A. No, I'm not sure.

CCFR: Okay. Thank you, (b)(7)(C). I have no further questions.

REC: Sir, I have no further questions and I don't anticipate having this witness on recall.

SRMBR: Okay. All right.

Thank you, (b)(7)(C). I appreciate taking the time to respond to us.

WIT: Yes, sir, no problem.

The witness was excused from telephonic testimony.

REC: Sir, would you like to recess before the next witness?

SRMBR: Yeah, let's recess until 1300 for lunch.

REC: Yes, sir. Sir, for the record, the time is 1215 on the 6th of April.

SRMBR: The board will come to order. All but one persons who were present when the board recessed are again present. The recorder will note the time and date in the record of proceedings.

REC: Yes, sir, the time is 1300 on 6 April.

SRMBR: Okay. Additional witnesses.

REC: Sir, the next witness is (b)(7)(C)

(b)(7)(C) U.S. Marine Corps Reserve, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

- Q. Sir, if you will state your name for the record and spell your last name.
- A. (b)(7)(C) (b)(7)(C)
- Q. Okay. What is your present duty station and billet?
- A. Company commander of (b)(7)(C)
(b)(7)(C)
- Q. Is that in (b)(7)(C)?
- A. Correct.
- Q. Are you a reservist or active duty?
- A. Reserve.
- Q. What is your job outside of the Marine Corps?
- A. I work with the (b)(7)(C) as an inspector.
- Q. If you could, briefly tell the members your background in the Marine Corps, how long have you been in the Marine Corps and what various duty stations and billets you have held and also your reserve and active time?
- A. (b)(7)(C)
- Q. Sir, how many, how many years total have you been with (b)(7)(C)?

A. Total, over five.

Q. And what's been your training as an infantry officer?

A. Training, as far as schools?

Q. Yes.

A. Reserve IOC back in '95, Advanced Mortar Leader's Course, fire support and MAGTF operations in Little Creek, Virginia.

Q. Okay. How do you know (b)(7)(C) sir?

A. He joined the unit, I believe, in October 2002.

Q. And what was your contact with him after October 2002?

A. As a company commander/platoon commander relationship, one weekend a month until we got activated in March.

Q. In March of?

A. 2003.

Q. 2003. What was your contact with him after March of 2003?

A. Daily basis at 29 Palms and Kuwait and Al Kut.

Q. He was coming in as a (b)(7)(C) coming into an infantry company. What was his training, what did you do in order to get him prepared, in order to take that billet?

A. Like a lot of reserve officers in infantry, they come from other MOSs and they do on-the-job training in the platoon, rely heavily on the staff NCOs and advice from other officer's with experience. And when the chance comes up, they try to go to reserve OIC.

Q. And what was your opinion of (b)(7)(C) prior to going to Iraq?

A. Very eager, very intelligent, looking forward to doing his duty and going with us. He just wanted to do his job as a Marine officer.

Q. Did that opinion change over -- after you arrived in Iraq and over the course of that deployment?

A. No, not really. He was very eager, he continued to learn and try to improve his infantry skills. He

was always leading his Marines from the front, took a lot of initiative.

- Q. Were there times when you began to question his judgement?
- A. There were some incidences where I believed he made poor judgement and poor decisions that effected the Marines in his platoon and the company.
- Q. I would like to refer to Respondent's Exhibit -- or Recorder's Exhibit -- I'm sorry, 12, which is a record that you drafted, sir, about your counselings of (b)(7)(C). I'll give you a copy of it and ask you to explain some of these instances in more detail for the members.
- A. After each instance, I verbally counseled (b)(7)(C) (b)(7)(C) on why I thought they were bad decisions and he used poor judgment. And after this last incident, I decided to write the notes down of what happened.
- Q. Now, the first one deals with not remaining at a location where you ordered him to be?
- A. Right. His Marines were guarding a different ASP to the south and they -- because of the heat in one of the ASPs, some ammunition started going off and there were explosions and it was dangerous where the Marines were located, so they moved back to a safe position. The (b)(7)(C) and, I believe, the XO and a couple of other Marines went out to check it out and told the Marines they were in a safe location, stay there and continue guarding the ASP from a safe distance. Then, I believe (b)(7)(C) (b)(7)(C) showed up after and told his Marines to leave the ASP and return to (b)(7)(C). In doing so, I went back out with (b)(7)(C) (b)(7)(C) to check on the supplies and gear. The explosions had stopped and we were missing an OE-254 antenna, which we were short of anyway out there, of Marine's personal gear, tents, sleeping bags, and other items.
- Q.. Had (b)(7)(C) been told to not leave the position and tell his Marines not to leave the position?
- A. I talked to (b)(7)(C) he was the senior Marine on the duty, and he told me that he informed (b)(7)(C) they were ordered not to leave by

the [REDACTED].

Q. What was their response?

A. That's all that was said.

Q. So you counseled him about that he shouldn't have had his Marines leave that position?

A. Right.

Q. And the next one deals with shooting extra TOWS and Javelins?

A. Correct. (b)(7)(C) was leading a group of Marines, Javelin Marines and TOW gunners down to Anazuria, 2/25 had a range where they were allowed to fire some missiles. We were told from Division passed on to (b)(7)(C) three TOW missiles and three Javelin missiles. This was days, if not a week in advance, I went back to Battalion and asked them to request to Division that we shoot more and Division reiterated, only three of each. I informed (b)(7)(C) and the Javelin guys, three missiles each. I was told -- I didn't do it -- I was told they were informed only take three of each.

Q. What happened?

A. They, they ended up firing, I believe, four of one and five of the other and (b)(7)(C) explained that the range safety office of 2/25 said he checked with Division and said it was okay to shoot more; but didn't have names or anything and the Division actually called Battalion after that and asked why we fired more rounds.

Q.. What happened. Was there an investigation or was there anything else?

A. No.

Q. You just counseled the (b)(7)(C) about he shouldn't have shot over three?

A. Right. That he should have checked with his chain of command before doing so.

Q. Okay. The next incident deals with the stripping of Iraqis, which we'll talk about in more detail. I just wanted to go through things we haven't already talked about at this BOI.

There's the last sentence in that paragraph talks

about (b)(7)(C) request to shoot Iraqis. It's the last sentence of the long paragraph on the first page.

- A. Yeah. We were outside in the parking area between the buildings at (b)(7)(C) and, I believe it was out of frustration. It might have been after the ROE brief that (b)(7)(C) gave, but he requested that he be allowed to shoot fleeing Iraqis from the ASP and he felt it could be justified under Rules of Engagement 3, Phase 3, of the ROE and I said, absolutely not.
- Q. Did he give a reason why he thought he might be justified or why he wanted to do that?
- A. He, he said he had some good reasons and I didn't want to, I didn't let him explain. I didn't think there was ever a good reason to shoot them fleeing.
- Q. The next paragraph talks about you were giving him a counselling and he withdraw his pistol and put it on the table?
- A. Correct.
- Q. What was that about?
- A. I believe he was upset that I thought he made those poor decisions and thought I was relieving him and I'm not sure why he did that.
- Q. That just strikes me as very unusual. I mean, I guess if you would describe what was going on at that time and his demeanor?
- A. We were standing across a wooden table in the room and when he told me this, I wanted to explain I thought it was bad judgement this time and the previous times and he looked, visually, physically upset and I'm not sure why he did that.
- Q. (b)(7)(C) has been asking some questions to the other witnesses about how the order was given from the Division or Battalion about guarding this particular ASP, the Northern ASP, how did that happen, sir?
- A. The (b)(7)(C) tasks each company, each element. Everyday at the daily meetings, Division was tasking us with guarding ASPs in our area. And they pointed out those two that we had to guard. Not at the time, separately. First, it went to the South side, which (b)(7)(C) Platoon was mostly guarding

on their own. And then weeks later, we went to the North and we found out where it was, and we were tasked with guarding that as well.

Q. How was that order given?

A. Verbally, but there were little daily sheets of paper, like little taskers. I don't think we have a copy of that. I mean, everyday that was -- (b)(7)(C) (b)(7)(C) was securing two ASPs as well as whatever duties, whether there was appropriate distribution or security.

Q. How detailed was that tasker, sir?

A. Not very. It was, stay on it and our job was to keep Iraqis from entering to either steal ammunition or blow themselves up.

Q. How did you relay that tasker to your company?

A. Passed it on to patrol the perimeter because the interior was unsafe with unexploded ordnance. Not to enter it unless they absolutely had to, and if the Iraqis entered it, wait for them to come out, detain them or chase them away.

Q. Okay. And this was given -- a verbal order that?

A. It became a verbal SOP.

Q. Okay. On the day of June 23rd, the date of the stripping incident, were you at the command post on that day, sir, or for part of it?

A. Early in the day, we have a Battalion meeting every morning 0730. I was back for most of the day.

(b)(7)(C) radioed, said he apprehended some detainees that they caught multiple times. I instructed him to bring them to the police station and drop them off there and then I was called to a meeting at Battalion that afternoon.

Q. What typically happened to the detainees when the Marines guarding the ASP caught an Iraqi? What was the SOP for that situation?

A. If they tried to take anything out, make them put it back in just inside the burm and pretty much make them leave.

Q. So they were told to release them on the road or outside the ASP or should they bring them in to the Iraqi police station?

- A. Escort them a safe distance. Marines got frustrated a couple of times, like in this instance, when they kept catching the same guys over and over. And that's when I told them, every time it's multiple, you bring them to the police station.
- Q. Do you know what would happened to the Iraqis at the police station, sir.
- A. No. Sometimes they would hold them, sometimes they would release them right away.
- Q. So it just depended on circumstances. Sometimes it could be a minute, sometimes it could be a few hours or half a day or?
- A. Honestly, we didn't even know.
- Q. So you told (b)(7)(C) to bring them to the police station and then you went off to a Battalion meeting?
- A. Correct.
- Q. When did you learn about what happened with the stripping of the clothes, sir?
- A. Approximately a week ago when (b)(7)(C) told me about it.
- Q. What did he say, sir?
- A. He told me the incident where they caught them a bunch of times and when they were bringing them to the police station, they stopped off at (b)(7)(C) and he ordered them stripped down and marched out the front gate.
- Q. What was your response when you heard that, sir?
- A. It was first, disbelief because it was against the Rules of Engagement. Personally, I found it immoral to treat Iraqi civilians that way and I thought it was extremely poor judgment. Not only is it against the Rules of Engagement, the fact that it happened at (b)(7)(C) in front of the whole company and the whole city of Al Kut.
- Q. What did you do then, sir?
- A. I don't know if it was that afternoon or the next morning, I mentioned to the Battalion XO, up the chain of command for appropriate action pending.
- Q. Why did you think it was important to bring it up to

- the chain of command?
- A. I felt like it reflected on the company if it came back if somebody, you know, something had to be done. I felt like it was telling the Marines that it's okay to break the rules, it's okay to mistreat Iraqi civilians.
- Q. So, why did it take a week for you to hear about this event?
- A. I have no idea. None of the Marines in my command that knew about it mentioned it to me at that time. And then I asked, after informing the XO (b)(7)(C) (b)(7)(C) at the time, he was very upset about hearing that. Then I asked a few questions when I got back. (b)(7)(C) (b)(7)(C) and (b)(7)(C) (b)(7)(C) came to me because he had some information about what happened. I went back and told the Battalion XO and then I requested an investigation from the CO.
- Q. The members have a copy of this investigation, there's a preliminary inquiry that is about alleged statements you made to (b)(7)(C) about this incident. Something to the effect of, well, what are you doing? You should have taken them out in the desert and done this if you were going to do something like that.
- A. I never said should have or it was never meant as a suggestion or an alternate course of action. I was in disbelief, I couldn't believe that the order was given and the fact that it was given on our doorstep, you know. The fact that it was in front of everybody. I just couldn't believe that. If you are going to go against an order, it was going to be in front of everybody.
- Q. So it was more said in a sarcastic manner, sir?
- A. Correct.
- Q. You weren't really intentionally --
- A. No. That's why I told (b)(7)(C) to bring them to the police station.
- Q. Okay. The second incident we are talking about is on the 28th, 29th of June dealing with the burning of Iraqi clothing. This is dealing with (b)(7)(C) (b)(7)(C) Marines shot an Iraqi truck when it was going to go through their checkpoint. I believe

this was around midnight on the 28th.

- Were you aware of that incident, sir?
- A. Yes. I heard over the radio. They came and got me and I was informed of it over the radio. I informed the Battalion and we were instructed to provide medical attention. We contacted the ambulance to go out there and check on the Iraqis that were injured and we were told to man the site, don't leave there until relieved by either Army MPs or Marines that would come out the next day to try and get a record, and I passed that on to (b)(7)(C).
- Q. What did you specifically tell (b)(7)(C)?
- A. I don't remember the specifics, but it was, that's your post, stay there until relieved.
- Q. Okay.
- A. I had no idea how long it was going to be. Occasionally, I kept calling the Battalion to get an update on times so I could tell my Marines when they might get relieved.
- Q. Did you have any idea how long that would take?
- A. No.
- Q. What -- why did it take so long? This happened about around 2300, midnight, and now we are talking about they weren't relieved until 09 or 1000 the next day.
- A. I don't know if the Army couldn't send anybody at this time or were busy doing other things. They tried to get with CSSD to provide a heavyduty wrecker to come tow the truck away. And that just took awhile.
- Q. So basically, (b)(7)(C) Battalion didn't have the assets to haul away this truck that had been shot up?
- A. Correct.
- Q. And you are waiting for the Army or somebody to come and take it away?
- A. At the time, we didn't have Marines to come and relieve them, so the next day we sent Marines out to relieve who was out there.
- Q. What was SOP revolving around the personal

- belongings of Iraqis that were stopped at checkpoints? What were Marines supposed to do with those items?
- A. Search for contraband, if we turned the Iraq detainee over to the local police or MPs, turn all their articles over to them.
- Q. Okay. (b)(7)(C) had his Marines burn some of the personal items that were found in the truck of the Iraqis, basically indicating that they had lice or they were infected with something and he had them burned.
- Does that course of action make sense to you?
- A. No, not at all.
- Q. Okay. How come, sir?
- A. Well, the night before when they initially searched the vehicle and they didn't find any contraband, they left the articles in the truck. Then he came back to (b)(7)(C) later that night, I believe, went back out there and that's when he ordered his Marines to take the articles out of the vehicle and burn them, which they are already in the truck, why not leave them there. It was about lieshmaniasis or something.
- Q. Yes, sir.
- A. We were told by medical those were fleas on dogs, just keep the dogs away. We were never advised to burn clothing.
- Q. So that wasn't something that you had heard at that time that you can get sand fleas from this clothing or wherever and this could effect Marines, so you need to take extra precautions and you need to burn it?
- A. No.
- Q. Okay. Sir, is this a Marine officer you want back in your company?
- A. No, in light of what happened, absolutely not.
- Q. And why is that, sir?
- A. Well, there was the repetitive poor decisions that lead to lost gear, possibly getting other Marines in trouble for it. I believe if he was to come back to the unit and not realize that his actions were

wrong, that he would continue to possibly make poor decisions that could lead to Marines getting injured or worse.

Q. Is the Marine you described earlier intelligent and eager and trying to learn, so you are weighing that against those actions and you still come to this same conclusion?

A. Correct.

Q. That this Marine might be a danger to the Marines underneath him?

A. Correct.

REC: I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) my name is (b)(7)(C) I am one of the lawyers for (b)(7)(C)

How was it for you when you adjusted to learning the infantry trades from being an adjutant?

A. It was a big adjustment. What do you mean "how"?

Q. Did you find it to be a lot different than the work you had done as an adjutant?

A. Definitely. I mean, I learned from OJT on the weekends, advice from other officers and NCOs that knew what they were doing and went to reserve IOCs and multiple ATs.

Q. And by the time you and the Battalion went to Iraq, you had been with Weapons for at least five years working as an infantry officer?

A. Correct.

Q. Now, when (b)(7)(C) joined you in October 2002, you were -- this was his first work in the infantry field. Right?

A. Right.

Q. And basically, between the time he joined and the time the Battalion went to CAX, there were maybe three drills?

A. You mean, when we got activated?

Q. Correct. By the time you activated, there had only been three drills in which (b)(7)(C) had drilled?

A. Correct.

Q. And one of those was the Marine Corps Ball. Right?

A. And Toys-for-tots in December.

Q. So really out of that, there was only one really, say, tactical drill.

A. I'm not sure, but January and February are usually field drills.

Q. And you knew that (b)(7)(C) hadn't been to IOC?

A. Right.

Q. Did you have any concerns that because (b)(7)(C) didn't have this background that should he be coming with the company to Iraq?

A. No. He was trying to learn, worked hard. He had an outstanding (b)(7)(C) that had been in the infantry field as a TOW gunner in Desert Storm. He had been with us a while. I encouraged the (b)(7)(C) to learn from the (b)(7)(C) as much as possible.

Q. Did you notice whether there was any friction between (b)(7)(C) who (b)(7)(C) replaced as a (b)(7)(C) for that replacement.

A. There was friction, it was probably a little bit stemmed from the fact that (b)(7)(C) went from (b)(7)(C) to (b)(7)(C). And some of it was because, I believe, (b)(7)(C) was not listening to all of the advice of (b)(7)(C).

Q. Okay. Now, you mentioned on direct that your initial impression of (b)(7)(C) were very favorable, that he was eager to learn. What were some of the things you witnessed (b)(7)(C) doing getting himself prepared and getting his Marines prepared?

A. 29 Palms, he took initiative and tried to schedule more training out in the field of vehicle maneuvering when there wasn't any live fire. He was

in the books studying the vehicle tactics. He was trying to create SOPs for his platoon.

- Q. You noticed him working on his own to try to improve his skills?
- A. On his own and with (b)(7)(C) and, occasionally, he'd run things by me.
- Q. Now, the Battalion gets sent over to Kuwait -- and then Kuwait -- to put -- (b)(7)(C) gets assigned as a security officer for one of the convoys. Right?
- A. I believe so. I had to fly in ahead of time on the C-130, but that's probably true.
- Q. Do you have any recollection of the feedback that you heard from the person he reported to on how he handled that convoy?
- A. I don't remember feedback either way.
- Q. Do you remember when it was that you guys -- the (b)(7)(C) conducted operations in Al Kut?
- A. Probably, the first week or two in May.
- Q. And how soon after that do you recall being tasked with the responsibility for some of these ASPs, security missions?
- A. Three to five weeks, maybe. Not right away after we started.
- Q. So you think --
- A. I'm not sure. I know there were other security details. We first did a lot of foot patrols, we tried to do about five a day, we did vehicle patrols, there was convoy security. I'm not sure exactly when the ASP tasker was scheduled.
- Q. And you mentioned that OpsO would assign the missions. Would the OpsO go to you if it was your company that was going to be assigned?
- A. Right.
- Q. And then it would be your responsibility to go to your platoons to delegate to them what their field of operations were going to be?
- A. Right. Who was tasked with what.
- Q. The (b)(7)(C) platoon ASP, is that the larger of the two

- A. that (b)(7)(C) was providing security for? I don't remember which one was larger. It was the one to the South. They are both pretty large. It might have been larger.
- Q. What -- do you have any recollections as to what your rationale was for assigning (b)(7)(C) Platoon to that particular duty?
- A. It wasn't the whole platoon. They rotated CAAT teams, sometimes two to four vehicles. I wanted to have four vehicles at night. Instead of two hours traveling at one time. It was further away and they had the wheels.
- Q. Did you ever go, well, when did you become aware of explosions taking place in the (b)(7)(C) Platoon ASP?
- A. When (b)(7)(C) called me and advised me that there were explosions and they had to pull out to a safer area.
- Q. And it was your understanding that they had to pull out because they were actually getting shrapnel?
- A. They were, where there post was, was right on the berm, of barely inside some cement homes, cement buildings. That was close enough to where they felt it was unsafe so they moved a safe distance away.
- Q. Do you know a (b)(7)(C)?
- A. Yes.
- Q. Do you recall whether (b)(7)(C) received shrapnel in his -- hit his weapon as a result of one of the explosions that occurred in the ASP?
- A. I don't remember. I might have been told that but that's why they pulled out a quarter mile or so. It was pretty flat and open. It was an old base.
- Q. And did you ever find out or hear about a Marine that was injured in one of these ASPs?
- A. Yes.
- Q. It was one of your Marines?
- A. Right.
- Q. Do you know which one it was?
- A. Are we talking about (b)(7)(C)?
- Q. (b)(7)(C)?

- A. Right.
- Q. Explain how he got injured?
- A. Iraqis were looting ammunition from this ASP and they came -- well, two vehicles of Marines jumped in without letting the NCO in charge know what was going on. Some were in PT gear, flak and helmet -- which is totally against SOP -- went over to detain them, they apprehended them and made them put the ammunition inside the ASP and made them leave. And when -- there was a piece of propellant on the ground, I believe he flicked a cigarette, I don't know if it was intention to burn him or an accident, but when he turn away, it flashed and burned the back of his legs and arms. He had to be med evac'd.
- Q. So you understood that these ASPs were a very dangerous area?
- A. Right.
- Q. And when you assigned out the missions to patrol for (b)(7)(C) to patrol these ASPs, what were your mission parameters that you had given to your units?
- A. Patrol the perimeter from the outside. They weren't supposed to enter unless somebody's life might have been at stake. And that actually came from higher too, don't go in. Just to keep the Iraqis from taking ammunition and keep them from blowing themselves up by entering the ASP.
- Q. So it would be fair to say there is a couple of dual roles. One was a concern of ammunition that would be stolen?
- A. Right.
- Q. And another one was, we were looking out for the welfare of these Iraqis?
- A. Right.
- Q. Did you ever become informed or learned that Iraqis themselves were getting injured and killed inside these ASPs?
- A. Yes, I did.
- Q. How did you find out this information?
- A. Occasionally, in these ASPs, the ammunition would cook off. There was a building that collapsed

inside one of the ASPs and some Iraqi family members said they lost somebody that was inside the building and they wanted us to go look for them, but we called the Iraqi police and informed them about it.

Q. So it was a dangerous area.

Moving to the evening of the day of June 23rd when (b)(7)(C) had captured some Iraqis up in his ASP. What was your understanding of which platoon had responsibility for that ASP?

A. Well, that, (b)(7)(C) Platoon mostly had responsibility for the southern one, fell to (b)(7)(C) acting as rifle platoons to rotate the duties out there, different squads, eight to twelve Marines. Occasionally, I believe, Cat helped out up there and there was other security duties that we needed to fill in.

Q. Now, on this day, this particular day, who was the platoon commander for the (b)(7)(C)?

A. (b)(7)(C)

Q. Who was Platoon commander before (b)(7)(C)?

A. (b)(7)(C)

Q. How did it happen and what is your understanding of how that came to be -- (b)(7)(C) became the Platoon commander?

A. The senior man after (b)(7)(C) left the company.

Q. Was it your understanding that (b)(7)(C) no longer had responsibility for (b)(7)(C)?

A. I tried to have him oversee the duties, especially being an officer with the evaluations and concern for his Marines. I mean, every chance he got, he tried to come over but pretty much, (b)(7)(C) (b)(7)(C) was filling that duty.

Q.. Was it a clear debarkation of who was in charge of that platoon?

A. Probably not.

Q.. Also on that particular occasion, on June 23rd, who was the platoon for the (b)(7)(C) -- the platoon commander for the (b)(7)(C)?

A. (b)(7)(C)

Q. Was (b)(7)(C) around on that particular day?
A. I believe he was on emergency leave.

Q. So, you testified that, on that date also, you were at Battalion meeting of some sort.
A. Correct.

Q. Do you know what sort of meeting it was?
A. No. I may be able to find it in my record book, but I didn't usually volunteer to go over there for meetings. It was a pain for me and the Marines to get in two vehicles and travel all the way across town.

Q. So with you gone, who is the ranking officer of (b)(7)(C)?
A. (b)(7)(C)

Q. Which means he has responsibility for the ASP that was Field Guard and the ASP to the South. Right?
A. Right. I mean, I can be reached on radio for anything that needs to be, but he was the senior man in the company at the time.

Q. Did you ever have any discussions with him to let him know we were short of officers and he had some additional responsibilities and burdens to be aware of?
A. I don't remember, no.

Q. Did you think it was a lot for (b)(7)(C) to have to handle with this shortage of officers in the company at this point?
A. No, I didn't think it was.

Q. Why is that?
A. You are a Marine officer, you are a Marine (b)(7)(C) you need to accept the responsibility and be able to handle the responsibility. (b)(7)(C) was still there running the platoon, if needed, and other staff NCOs and strong NCOs that knew their jobs.

Q. Like who?
A. I don't know if he was there at the time, but (b)(7)(C), (b)(7)(C), (b)(7)(C) I could list almost all my sergeants and NCOs or Corporals.

Q. Okay. You brought a point about your staff NCOs. Did you have some problem in your company with some staff NCOs?

A. Yes, I did.

Q. I'm going to start with (b)(7)(C)

A. Okay.

Q. What went on with (b)(7)(C) in your company?

A. A lot. He wasn't the (b)(7)(C) what you would expect of a typical (b)(7)(C). He wanted to go into the airfield. I don't think he felt safe in our compound out in town. He had trouble, I think, with authority. He argued with me a couple of times when his opinion differed from mine.

Q. Did he get into a fight with (b)(7)(C)?

A. I was away on a two-day outing and when I came back, I found out about it.

Q. So he did get into a fight?

A. Yes.

Q. And what did you do about that?

A. I brought it up with the (b)(7)(C) and, actually, it was addressed to me by the CO that I should have been there to handle it, to try to get things -- to work things out. (b)(7)(C) did eventually come down and talk to staff NCOs.

Q. You said you spoke to the CO. Are you talking about (b)(7)(C)?

A. Correct.

Q. Did you understand that to be a counseling that he had given to you concerning that incident?

A. Yes, I did.

Q. Did (b)(7)(C) remain in your company?

A. Yes, he did.

Q. And then was there also a situation with (b)(7)(C) (b)(7)(C) that his pistol went missing?

A. Yeah, yeah there was.

Q. Was it your concern that he had lost it or another Marine stole it?

A. It couldn't be determined. It might have been another Marine stole it because he never really left the compound, so I don't know where he would have lost it except on the compound. And if he did lose it and somebody found it, same thing.

Q. At that point, how was the morale within (b)(7)(C) (b)(7)(C)?

A. Its was pretty low. I think, in general, with the Battalion being away from home in the heat, Marines wanted to be there for the fight and we just missed it. So they didn't see a need, you know, they didn't want to be there anymore.

Q. Are you also familiar with a situation where one of the docs had the morphine syringe stolen?

A. I'm trying to remember the circumstances around that.

Q. Do you remember that happening in your company?

A. Correct.

Q. Did you conduct any investigation to find out who stole the morphine?

A. I don't think we did. I'm not sure.

Q. Some of the other staff NCOs, did you have to relieve any of your staff NCOs who were assuming platoon commander billets?

A. Like --

Q. (b)(7)(C)?

A. I don't know if he was a permanent relief or if it was temporary.

Q. Okay. What do you recall about the situation involving (b)(7)(C) (b)(7)(C)?

REC: Sir, I am going to object. I think the objection is relevance in where this is a board about (b)(7)(C) (b)(7)(C), now we are traveling into every other problem that might have happened in (b)(7)(C) (b)(7)(C).

CCFR: Sir, I guess my response to that is --

SRMBR: So you are trying to make your point that there was chaos?

REC: There was chaos, there was a lot of problems going on within the company which made it very difficult for everyone to try to understand what their roles and responsibilities were, who they were supposed to be taking leadership from. The government is trying their case that (b)(7)(C) actions greatly disturbed the good order and discipline of the Marines and I think it's fair that we hear and recognize that (b)(7)(C) situation was, frankly, a product, perhaps, of a lot of problems that were occurring in (b)(7)(C) and that the bad morale and lack of good order and discipline existed as a result of things that were completely out of his control.

SRMBR: All right. Well, I think we have heard sufficient information on that from the witness and from the documents provided and from the other witnesses. So --

CCFR: Move along, sir?

SRMBR: Yeah, let's move on.

CCFR: Okay, sir.

Questions by the civilian counsel continued:

Q. You testified -- I am going to move back to the detainee incident. Where these Iraqis had their clothes removed.

It was (b)(7)(C) who brought this to your attention. Correct?

A. Correct.

Q. He was forthright in telling you what had happened; wasn't he?

A. Yes. As you saw in my counselling sheet, he said it in a bragging manner. That's the way I perceived it, that he was bragging to me about what he did.

Q. But you didn't have to go to him and find out what happened? He came to you and told you what occurred?

A. Right.

Q. And you had testified that one of the things that

- you thought was bad about this was that it could impact the relationship that the Marines had with the Iraqis. Right?
- A. One of the reasons.
- Q. Was there anything that -- was there any fall out that you are aware of from that incident with the relationship between the Iraqis and the Marines?
- A. Not that I can connect, no.
- Q. And, of course, you weren't there when this disrobing occurred. Right?
- A. Correct.
- Q. When (b)(7)(C) told you about this, did you tell him that he should have taken those detainees out to the desert and tell them they were Army MPs?
- A. No, I didn't say, should have. I said I can't believe there was no plausible deniability for this. It was a bad decision that you didn't even try to cover it up. I don't remember ever saying anything about Army MPs.
- Q. Now, you made a comment that there wasn't plausible deniability. You told (b)(7)(C) that there wasn't plausible deniability?
- A. I think I used those words like, I can't believe you violated this order and that you didn't even, like, it was such a bad decision that you did it outside our front door, basically.
- Q. Did you tell (b)(7)(C), though, that because of what he did, he didn't even have plausible deniability?
- A. I believe I said that.
- Q. Did you get investigated because of that comment that you gave to (b)(7)(C)?
- A. Yeah, I talked to the Battalion XO, (b)(7)(C).
- Q. When you said to (b)(7)(C) that you didn't have plausible deniability, was it your intention that there wasn't a way for (b)(7)(C) to cover up what he did?
- A. It was my disbelief that what he ordered done and that it was magnified -- not only was it a bad, unlawful order, but it was magnified that it happened at our compound.

Q. Wouldn't it have been more magnified if he tried to cover it up?

A. I was not suggesting that he cover it up.

Q. Well, I'm having a hard time understanding what you meant when you said plausible deniability.

A. It was a bad decision that he didn't even have plausible deniability. I mean, I told (b)(7)(C) (b)(7)(C) to bring the Iraqis to the police station, so, that was a clear idea of what to do.

CCFR: Sir, I am going to hand you an exhibit.

Gentlemen, we're going to make this into an exhibit. This is the preliminary inquiry of the statements made by (b)(7)(C) to (b)(7)(C).

Have you seen this investigation?

SRMBR: It's not part of our evidence here.

CCFR: It was referenced, sir, by government counsel in her direct. (b)(7)(C) has it.

REC: It's Recorder's Exhibit 11, sir.

SRMBR: Okay. Go ahead.

Questions by the civilian counsel continued:

Q. If you look at paragraph five where it says (b)(7)(C) (b)(7)(C) did use the words 'plausible deniability' in his counseling of (b)(7)(C) Right?

A. Right.

Q. All I'm asking is, what did you mean when you said that to (b)(7)(C)?

A. As it also states, "his intent was to point out that (b)(7)(C) had made a decision to violate Marine Corps Orders and chose to do it in front of the entire company."

Q. To me plausible deniability means something you can explain away or cover up. Is that -- do you have a different definition?

A. No.

Q. But in your interactions with (b)(7)(C) he

never tried to cover up what he did.

A. It was, it was like a disbelief or, in two areas, I couldn't believe that he made such a bad decision or gave such a illegal order and I guess I was referring to the fact that such a bad, you know, unlawful order that he didn't even try to cover it up. Not that I recommended or thought he should have.

Q. All I'm asking now is, (b)(7)(C) never tried to cover up anything that he did?

A. Not that I know of, no.

Q. Now, let's move on a little bit here to this checkpoint, which occurred after this detainee incident. Right?

A. I would have to look at the dates.

Q. June 29th, June 28th. Does that sound right to you?

A. I'd have to look, but I believe you are right.

Q. Well, while you were over in Iraq, did your Marines burn trash to get rid of it?

A. We had a trash bin.

Q. Did you burn the trash to get rid of it?

A. Yes, we did.

Q. Did you see other people burning trash for trash disposal?

A. Yes, we did.

Q. Was there a lot of garbage that was uncollected laying throughout Al Kut and other place in Iraq?

A. Yeah, it was.

Q. Pretty dirty?

A. Very dirty.

Q. So it wasn't uncommon to burn your trash to get rid of it; was it?

A. No, it wasn't.

Q. Prior to going into Iraq, had you been briefed by anybody about the fact that you can get these skin conditions from sand fleas?

A. I don't remember it being prior to, but while we were there, I believe we got the brief on it. Was

it lieshmaniasis?

Q. Sand fleas, the sand fleas that caused the disease.
A. Right.

Q. Do you recall whether your Marines had their uniforms treated with promethium before you headed over to Iraq?
A. I don't remember.

Q. Are you familiar with the fact that the insurgents over in Iraq are using trash to disguise IEDs that they are using to attack convoys?

SRMBR: Hey, counsel let's stick to the point. I think we know what you are trying to get at. Narrow down. Ask him directly.

CCFR: Sure.

SRMBR: If the issue is whether it was reasonable for the clothing to be burned in order to reduce the risk of disease spreading, then let's ask that question.

CCFR: Okay.

Questions by the civilian counsel continued:

Q. Do you think it's a concern if -- is a concern for the welfare of the Marines to ensure that lice or pesticides aren't spread throughout the barracks and through the Marines gear?

A. Yes.

Q. Now, concerning the checkpoint incident, were you aware that there was some money that was found on the truck?

A. Yes, I was.

Q. And it was your understanding that it was turned over to the police?

A. Right.

Q. Were you also aware that there were some papers that were found?

A. (No response from the witness)

Q. Some documents?

A. I was told that there were documents and that the Iraqis were looking for them and I asked (b)(7)(C) if the documents were burned and he stated no.

Q. Are you aware the documents were coming back to the CP for the intel teams to exam them?

A. I think (b)(7)(C) said he turned them over.

Q. Turned them over to the --

A. I believe, he did.

Q. -- to the intel teams?

A. Right. If I remember correctly.

Q. Was it your understanding that what was burned was some clothes and some seat cushions?

A. Initially, I didn't know what was burned, but later on I found out it was personal items out of the truck. I think eventually I saw a listing of items somewhere.

Q. But you understood them to be clothes, clothing items of some sort?

A. Right.

Q. And you said you thought it was wrong for him to burn their property, but looking at the circumstances of this incident, don't you agree it's fair to say that it was the Marine's concern that they were going to get run over by this truck.

A. Right?

A. Correct.

Q. Wouldn't you have considered that to be a threat to the lives with this truck that was barrelling down on their checkpoint?

A. Are we talking about the clothes or the shooting of the vehicle?

Q. Yes. The shooting of the vehicle.

A. Yes. They did what they were supposed to do.

Q. And you had no problems with the fact they shot at the vehicle and disabled it?

A. It turned out to be innocent civilian Iraqis and I wish it wouldn't have happened. We tried to improve our traffic checkpoints after that. That way they

would see it was us and would stop.

- Q. But, at the time, it could have been anybody's guess whether they were insurgents trying to hurt them or to blow through the checkpoint?
- A. Right.
- Q. Wasn't that part of (b)(7)(C) concern that this might have intelligence value because they tried to run the checkpoint which is why the vehicle was searched?
- A. Yeah. Expecting the vehicle to be searched for contraband or weapons or anything like that.
- Q. And as soon as the vehicle was stopped and the ambulance came, those detainees or those Iraqis were taken to the hospital. Right?
- A. I believe so, yes.
- Q. Do you recall (b)(7)(C) going out at night to check the lines?
- A. Yes, I do.
- Q. You remember thanking him for that?
- A. Yes, I do.
- Q. Was it your observation that (b)(7)(C) -- well, explain what you understand checking the lines to be?
- A. We had four corner posts manned 24-hours a day and at least two Marines at the front gate and two Marines manning shotguns on the roof of two buildings. And checking the post is walking around each one to make sure the Marines were awake and see if there is anything they needed.
- Q. Wasn't it your observation that (b)(7)(C) did this more than any other officer in the company did?
- A. Yes.
- Q. And did you recognize that as being a strong leadership quality of (b)(7)(C) to do that?
- A. Yes, I did.
- Q. All right. So at some point, (b)(7)(C) is relieved from his command as the platoon commander. Right?
- A. After the investigation, Battalion pulled him up

there.

Q. Did you ask to have him relieved?

A. No, I didn't.

Q. It was (b)(7)(C) call to relieve him?

A. Correct.

Q. Did (b)(7)(C) ask you whether or not you wanted (b)(7)(C) to be relieved?

A. He might have asked me, but if he did, I don't remember exactly, but I probably said, yes, I do.

Q. After he was relieved, what was he going to do after that while he was still in Iraq?

A. I believe he went and worked with (b)(7)(C) training Iraqi security guards.

Q. What did that involve, training these security guards?

A. Well, (b)(7)(C) had a couple of Marines who were training former Iraqi military to stand posts, guard ASPs, and other government sites. But I was also aware that once (b)(7)(C) found out that he wasn't at Battalion, he was actually with (b)(7)(C) (b)(7)(C) he was very upset about that.

Q. Did (b)(7)(C) stay with (b)(7)(C) continuing with the Facility Police Service?

A. I think, at that point, he did.

Q. The incidents that got (b)(7)(C) relieved were incidents which the command believed showed (b)(7)(C) (b)(7)(C) lack of respect for the Iraqis. Right?

A. Right.

Q. Did you think it was odd that he would then go work with (b)(7)(C) to train Iraqis?

A. No. I thought him and (b)(7)(C) had a personal relationship prior to going over, and I think he wanted to work with (b)(7)(C) to get away from Battalion, I think, soon after he was brought to work at the (b)(7)(C).

Q. Was there any concern he might not show the correct level of respect towards the Iraqis he was working to train?

A. No. I have no idea.

Q. Did you have any concern with that?

A. No.

Q. And as far as you know, how did he do in working with these Iraqis and training them to do their own police work?

A. I have no idea.

Q. (b)(7)(C) would know about that?

A. Yeah.

CCFR: Thank you (b)(7)(C), I don't think I have any further questions at this time.

SRMBR: Okay. Let's recess for ten. Come back at 1410 and we'll go to board questions.

REC: Sir, the time is 1400 on 6 April.

The board of inquiry recessed at 1400 hours, 6 April 2004.

The board of inquiry was called to order at 1410 hours, 6 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the court recessed are again present. The recorder will note the time and date for the record of proceedings and proceed with the witness.

REC: Sir, it's 1410 on 6 April.

REDIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, just a couple of follow up questions. You mentioned that once (b)(7)(C) was relieved that he worked with (b)(7)(C) for a while training Iraqi police. You didn't see a problem with him doing that, even after these last two instances. What did you mean by that, sir?

A. I wasn't concerned because I was more concerned with the effect it had on (b)(7)(C) Marines. And I felt they were better off now and I just, I had too much to focus on with them, I wasn't thinking

about the Iraqi civilians that he was working with.

Q. Okay. So you didn't -- so would you, would you have had a problem with him working with Iraqis?

A. Not if I had anything to do with it, no.

Q. So in other words, you wouldn't have wanted him to do that, but at the time, you just didn't --

A. I didn't think about it.

Q. Okay. Is it fair to say that when you counselled him about this plausible deniability we talked about, that that probably was a poor choice of words?

A. Reflecting back on it, it was a poor choice of words because he misinterpreted what I was saying. Yeah, I wouldn't use those words again.

Q. What platoon was (b)(7)(C) in, he's the Marine that got burns all over his body?

A. (b)(7)(C) platoon, (b)(7)(C).

Q. Okay. What, were the burns all over his body?

A. Back of his legs, back of his arms and I believe on his neck.

Q. So the areas that he had clothing on -- his PT gear? What kind of shorts was he wearing?

A. Green issue PT shorts.

Q. So he wasn't burned under those?

A. No.

Q. So, it's reasonable to assume that if he was wearing what he was supposed to wear that he wouldn't have been burned?

A. Knowing the NCO that was there, if he had been aware that they were doing what they were doing, he would have stopped them.

REC: Okay. Nothing further, sir.

SRMBR: Okay. Redirect.

CCFR: Nothing, Gentlemen.

SRMBR: Okay. (b)(7)(C).

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

- Q. Okay. The incident with the missiles with 2/25, did you ever question anybody in 2/25s chain of command about the extra missiles?
- A. I had no way to contact 2/25. It came up at Battalion or Division a day or two later. It came down, our Battalion said, why did you fire more. But then I guess the issue was dropped at Division because they never asked anybody at Battalion about it anymore.
- Q. Okay. Prior to or during the deployment, did you or anyone else in the unit receive specific training or classes on the handling of detainees?
- A. There was training we conducted at 29 Palms while we were out there, but it was self-initiated.
- Q. But it had nothing to do with detainees or it did have to do with --
- A. It was mostly enemy combatants.
- Q. But there was no specific training on detainees?
- A. Sir, I don't remember.
- Q. Okay. You mentioned in your statement, you have a lot of different incidents, not a lot, two different incidents where judgement on (b)(7)(C) part is questioned. Did you ever think to make a page 11 entry to reflect those or was it all just informal counselling that you took care of?
- A. It was all informal. I was hoping that the counseling would correct it.
- Q. Did (b)(7)(C) ever state to you directly, with regards to the vehicle incident, why he burned those clothes?
- A. No, sir, I never asked him why. At the time, I asked him if the papers were in the clothes that were burned. I didn't realize he was there when it happened at this time and because they were looking for the documents, I was trying to get back the documents. He said, no, that the documents were not in the clothes.

Q. All right. Did anyone -- other than the incident where (b)(7)(C) got burned, did --

A. (b)(7)(C).

Q. Did anybody else under (b)(7)(C) supervision, did they ever get injured or hurt?

A. I can't think of anyone, sir.

Q. So the quality of his leadership, you don't have an issue with -- his judgment you might have an issue with -- but his overall quality of his leadership, the way he persued his -- his own self-initiated OJT, the way he was trying to pick up and learn things on the fly prior to the deployment, whatever he was doing while he was there, you have no issue with. But the judgment on the three instances that you have got here, you did an informal counseling with the hopes that it would correct his behavior?

A. Yes, sir. He's got some outstanding qualities and characteristics and traits, but he had trouble with his relationship with his (b)(7)(C) (b)(7)(C). I had some concerns about that. I don't think he took to heart (b)(7)(C) (b)(7)(C) advice coming from experience.

Q. Is that personality driven, in your estimate?

A. Yes, sir.

MBR (b)(7)(C): That's all I have.

SRMBR: Okay. (b)(7)(C).

Questions by MBR (b)(7)(C):

Q. How many incidents were there regarding detainee processing from the company or the two different ASPs? And, if there were more than one, where does this one fit into it? Is this the very first, is this the 5th, or is this the 10th?

A. As far as taking them to the police station?

Q. Yeah. You mentioned the verbal SOP for patrolling the perimeters and handling the detainees after they came out of the area. What was the SOP, whether verbal or written, on how to handle detainees. How many incidents of them have there been up to this point and how many after?

A. It's mostly, escort them away from the ASP area,

like I said. A couple were repeat offenders.

Q. Were you always supposed to radio in contact when there were?

A. Yes, sir.

Q. And were they?

A. They'd radio we apprehended so many and escorted them away. It was at the southern ASP. They couldn't leave so they couldn't bring them to the police station, guys that had entered multiple times, so we tried to get in touch with the MPs, who are co-located with the Al Kut police to come over and pick them up. I believe they did that and it took a while.

Q. So were you involved in -- were you the decision maker in whether or not to let them go or bring them to the police department or to hold them and wait for the police to respond and then let them go?

A. If I was there, I got involved. But sometimes the NCOs, you know, they might, these guys are repeat and they would request they be taken to the police station and that was not a problem.

Q. All right. How far and how long in duration would it take to get somebody from the ASP into the police station?

A. Well, sir, I believe what they were doing, somewhat on their own initiative, was waiting until the end of their shift to be relieved by another squad, and then when they're coming back to (b)(7)(C) at the end of their shift, they would go an extra 10 or 15 minutes to drop them off.

Q. Before they would come back to the compound?

A. Right.

Q. Is there a problem with getting chow at all?

A. I don't know, no.

Q. Battalion commander guidance, did you receive a lot as far as processing detainees and taking them to the police station? Was the Battalion commander involved in setting the SOP?

A. It came up to me as more coming from the [REDACTED] instead of from the Battalion commander.

- Q. And then similar to (b)(7)(C) question, just regard, this is your professional opinion of (b)(7)(C) judgment during the situation and time you served out there with him. Did you see these incidents just as errors in judgment or did you see his lack of ability to handle the stresses of the entire scenario or entire situation? How do you --
- A. I'm not sure, sir. I saw it as a recurring problem. I don't know what his -- the reasoning was behind it.
- Q. Is that his decisions was he ever -- were you ever unsure of his ability to lead his Marines and take care of his Marines?
- A. I believe he intended to take care of them, but there were times where he -- I thought he was looking for a fight when there wasn't one and he might have gotten his Marines hurt doing it?

MBR (b)(7)(C): Thanks.

SRMBR: Okay. Just a couple of questions.

Questions by the SRMBR:

- Q. Was the daily task list, as far as ROE and other SOPs, do you think those were sufficient for your company and your platoons to execute their missions and various tasks?
- A. Yes, sir. Because it was only three or four recurring tasks that the Marines were well versed in the SOP in what they were doing. The NCOs were the experts. They were out there leading the Marines on the foot patrols, distributing propane, guarding of the bank, guarding the ASPs, and vehicle and convoy security. Those were the missions that we were doing almost daily so they were well versed in those.
- Q. Okay. And back in October 2002, how many platoon commanders were you short in the (b)(7)(C)?
- A. Just one. I had (b)(7)(C) was my XO, (b)(7)(C) and (b)(7)(C) and that's more than capable. And we lost (b)(7)(C) upon activation because he was FAP trained and we didn't have a FAP.

Q. So he went up to Battalion. But you had your weapons, the (b)(7)(C) was missing an officer?

A. Yes, sir.

Q. And did you interview (b)(7)(C) before he joined the unit or did you have some help decision making in the selection of (b)(7)(C)?

A. (b)(7)(C), the I&I, I think pretty much brought him on. I think I talked to him briefly. If I had a problem with him, obviously, I didn't have to take him into the company, but he was pretty much already with the company.

Q. Would you have felt comfortable just leaving (b)(7)(C) in charge of the platoon?

A. Yes, sir.

Q. Did you always have communications with your platoon commanders, radio or otherwise.

A. Almost always. The problem, when I left the immediate area, with VHF was really hard on long patrols, so they had cell phones they were supposed to call and check in whoever was in charge, whether it was the platoon commander or not.

Q. So each of the platoon commanders had phones?

A. No, sir, just on the long range patrols.

Q. But within the environs of Al Kut, you had Comm?

A. Yes, sir. The southern ASP, we had trouble at first, the comm was off and on and I believe we worked that problem out.

Q. Okay. I just wanted you to -- I think you mentioned once already, but you told (b)(7)(C) to take the Iraqis the third time they were apprehended to the Iraqi police station?

A. Yes, sir.

Q. And you told him that via radio?

A. Radio, yes, sir.

Q. Last question. What did you do with (b)(7)(C) (b)(7)(C)?

A. He was (b)(7)(C) brought it up that (b)(7)(C) ordered the Iraqis money to be taken from them. And when I found that out as well, that was involved in the investigation and I believe

the investigation recommended Battalion NJP so he was relieved of his duties and sent home.

Q. Okay. What about this altercation with (b)(7)(C) (b)(7)(C), it doesn't sound like that was followed up?
A. Well, I received a counselling from the Battalion commander saying I should have been there.

Q. What did you do to the (b)(7)(C)?
A. I talked to the Sergeant Major and the Battalion commander. They said that (b)(7)(C) going to stay there and that I have to work things out. I tried talking to him about, you know, counselling him on, hey, senior officer around, he's in charge when I'm not around.

Q. So you counseled him?
A. Yes, sir.

SRMBR: That's all the questions I have.

Any question from either side?

REC: I have no questions.

CCFR: Nothing further, Gentlemen, thank you.

SRMBR: Okay. Thank you very much.

REC: Sir, I don't believe I have anything further for this witness, but he does have a cell phone if we need to recall him for any reason.

SRMBR: Okay. Very good.

The witness was excused and exited the courtroom.

(b)(7)(C) U.S. Marine Corps Reserve, was called as a telephonic witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, if you will, state your name for the record and spell your last name?
A. My name is (b)(7)(C), last

name is spelled (b)(7)(C)

Q. And just a second.

Gentlemen, are you able to hear him?

Sir, if you could speak up just a little bit louder,
I am trying to get the max on this speaker phone.
Is this any better?

A.

Q. It is, sir.

Sir, what is your present status in the Marine
Corps, are you active or reserve?

A. Okay. I have a little trouble hearing your
question. Could you please repeat it.

Q. Sir, what is your present status in the Marine
Corps, are you active component or reserve?

A. I am a reserve officer in the SMCR, currently.

Q. Where do you live, sir?

A. I live just outside of (b)(7)(C).

Q. What is your present billet in the reserves?

A. I just left as the (b)(7)(C)
(b)(7)(C) and I am currently assigned
to (b)(7)(C).

Q. Earlier in this proceeding, we heard a lot about
(b)(7)(C) who was the (b)(7)(C); is that you?

A. That is me, correct. I was a (b)(7)(C) during that
time.

Q. If you can, can you give the board members just a
brief history of your experience in the Marine
Corps, your various billets and your active and
reserve time.

A. Okay, certainly. I entered the Marine Corps in
early 85 as an active duty officer. I am an

(b)(7)(C)

(b)(7)(C)

- Q. Okay. Sir, how do you know (b)(7)(C)?
- A. (b)(7)(C) was a member of (b)(7)(C) which is (b)(7)(C) and I got to know him, obviously, during our time in Iraq.
- Q. How much contact did you have with him, sir?
- A. Before we actually mobilized, very limited as (b)(7)(C) usually drilled separate from us, but once we activated both in the States and when we deployed overseas, I would probably see (b)(7)(C) anywhere from a weekly basis to a semi-weekly basis.
- Q. Okay. How did you become, we're here for this board of inquiry, mostly for the reasons of (b)(7)(C) (b)(7)(C) NJP for the stripping down of Iraqis and burning of Iraqi's clothing. How did you become aware of those incidences, sir?
- A. The incidences came to my attention through, I can't remember the specific Marine actually telling me, but I remember hearing reports that there was possibly some problems, some inappropriate stuff that went on at one of the persons, it was a semi-tractor/trailer truck that tried to run a checkpoint. It was disabled by firing on it and then subsequently the burning of the personal property happened. I don't exactly remember a name of anyone, I just heard it through kind of a rumor from different Marines that something inappropriate happened.
- Q. What was Battalion's actions after you learned of these events?
- A. We conducted -- assigned an officer to do an

investigation to look into what actually happened and subsequent detaining of those two Iraqis that were in the truck.

Q. Okay. What -- and then there eventually was an investigation members have a copy of it -- both of the truck and the striping incident. How did this get up at the Battalion level that it ended up at NJP?

A. I know from both of the investigations, the substantial evidence was, there was enough evidence of -- it was recommended to the Battalion commander, the CO, that we should go further with this case and recommend charges. And I know any time that we were doing an investigation, we let the SJAs at the level know. We would actually exchange emails with them and phone conversations. So they were kept current on any ongoing investigations or pending charges. So there was an ongoing dialog, I know, that was happening between Battalion and Division Staff, particularly with the division SJA.

Q. Who was that SJA, sir?

A. Gosh, I'm not sure of that, I mean, I can't remember right now.

Q. Is it a (b)(7)(C) ?

A. If you said the name I'd probably remember. I just can't off the top of my head. I don't remember who the SJA was at that time.

Q. Does (b)(7)(C) sound --

A. Yes. thanks for jogging my memory, (b)(7)(C) (b)(7)(C) There was also, he had several Majors on his staff, too, that was always in our loop as far as e-mail loop and phone conversations that we would talk to.

Q. (b)(7)(C) was in Africa at the time or at this moment, but why did Battalion feel it was necessary to take this up to Division?

A. Well, certainly, I know the evidence that came out of the investigation was serious enough that we considered formal UCMJ type charges, so I know that it was discussed at Division level and ultimately the opportunity for (b)(7)(C) to go to a Commanding General's NJP vice face formal UCMJ charges was offered. I'm not sure why the

Commanding General had our Battalion commander decide that that would be appropriate, but I know that that obviously was -- that opportunity was afforded to him to select that vice a formal court-martial.

- Q. What -- in your experience as an infantry officer, what is your opinion concerning what (b)(7)(C) did?
- A. As far as for the two different incidents, that's what you're referring to?
- Q. I am, sir.
- A. Certainly, I do not approve of it. It's conduct unbecoming for an officer to allow those incidents to happen or to take in those types of actions. Certainly we were in a wartime environment in a hostile country where a Marine leader, that's what we train for and that's what we're responsible for. So, I really can't condone that at all. I was disappointed that that type of activity did take place and I was bothered. So I consider those two acts to be pretty harsh. I can't condone them or approve of those two acts.
- Q. Why are your feelings so strong, sir, about that this is a wrong action, a poor action? Why are your feelings so harsh on this, sir?
- A. I guess I saw the impact of what those actions do to a small unit. I had an opportunity to talk to some Marines that were in that (b)(7)(C) and also from talking to other Marines that had talked to Marines within (b)(7)(C). A lot of the junior Marines, young Marines, young NCOs knew that some of the things that were going on were inappropriate. They put them in a predicament, questioning their leadership and just wondering what they were doing was fundamentally -- some of those things were wrong that they saw happening. So, it did have a negative impact on the unit as a whole for their cohesion and also just putting some of those young leaders kind of in a predicament of what's right and what's wrong.
- Q. How do you feel about having this officer return to your Battalion, sir?
- A. I'm sorry, I missed part of that.

- Q. What is your opinion about that officer returning to Battalion?
- A. I'm really not for that. I know he was given a chance, that's why he went to an NJP. It was a nonjudicial punishment. He was afforded the opportunity to go before the CG vice going in front of a formal court-martial with formal charges. I think it would be an injustice if he was given a chance to come back without -- I think he would first have to go before a formal court-martial. The NJP, in my opinion, was what he went before and took his punishment and we would kind of circumvent that if he was allowed to come right back to the unit.
- Q. So, is this an officer who you believe ought to be separated from the Marine Corps?
- A. That's correct.
- Q. Sir, let me, just a moment, sir -- did you have a chance to read (b)(7)(C) Congressional Inquiry, sir?
- A. I have not seen the congruent concerning (b)(7)(C) (b)(7)(C). I haven't been privied to that.
- Q. This is -- I'm going to read a line out of this congruent and you can give an opinion as to whether or not this is true or not. (b)(7)(C) writes, "In summary -- this is Recorder's Exhibit 7, "In summary, I was fined, told I must resign my commission, and go before a board of inquiry without a guarantee of my type of discharge, and immediately shipped out of country."
- Is that accurate, sir? Was he told that he must resign his commission?
- A. Yes, I believe he was told that he -- part of the punishment at the NJP was a fine, forfeitures, a resignation of his commission. Those are the two things that stick out in my mind that came out of the NJP.
- Q. Do you remember whether he was ever told that he had to or whether or not that the BOI processing would start, that is just part of the process?
- A. I am almost certain that he was told, because I know even before he left country, from the (b)(7)(C) Division SJA staff, we were sending documents back and forth from their headquarters to our Battalion

concerning the formal documents he would need to be signing to resign his commission.

Q. Okay. Sir, I guess there's some ways of looking at this as possibly being just a poor judgment and that the Captain just made two bad judgment errors and maybe he could learn from this and go on.

A. Do you have an opinion regarding that?
Well, I don't disagree that they were poor judgment, but I think they were more than just poor judgment. There was criminal activity involved in it, violations of the Uniform Code of Military Justice, violations of our Rules of Engagement, and probably even violations of the Law of Land Warfare in contact in the way we should represent ourselves as Marines. So, yes, it was poor judgment, but also, I think it was, I'll use the word "criminal" violations.

Q. Sir, we just heard from (b)(7)(C). He testified that after -- that Major -- that after (b)(7)(C) (b)(7)(C) was relieved, he worked with (b)(7)(C) for awhile in training security forces and that you learned of that event.

A. What happened after you learned that he was working with Iraqis?
I didn't know that he was assigned exactly. I knew he was going to help (b)(7)(C) but I did not realize he was going to be out at the actual training compound working hand-in-hand with the Iraqi people. I was rather upset at that. As part of the intent that I got out of the NJP from the Commanding General was, he wanted him to, you know, not interface with Iraqis. I told (b)(7)(C) that he could no longer work at the actual compound where the Iraqis were training. He would have to do all his work away from the Battalion CP area, which is aboard the airfield where there was no Iraqis.

Q. We also heard a few things of problem in (b)(7)(C) (b)(7)(C).

A. What is your opinion, sir, about the leadership of that company and how that company was being run during this timeframe?
(b)(7)(C) had its share of problems. Not

unlike some of the other companies that struggled with just some of the day-to-day problems that we encountered over there. Was this the only incident where there was poor judgment, absolutely not. Every Marine leader over there struggled with leadership. (b)(7)(C) itself probably didn't struggle anymore than any other company did. They had their share of leadership problems. I know there was turmoil with the (b)(7)(C)

and his First Sergeant, First Sergeant (b)(7)(C). I know there were problems with Captain (b)(7)(C). I know they had many disagreements. I can't remember exactly what every disagreement was, but I know it caused us to get involved. Where myself actually -- I talked to (b)(7)(C) before, I talked to (b)(7)(C) and I know the Battalion Sergeant Major also had many chats with the company First Sergeant and several of the staff NCOs within (b)(7)(C). So did the company have problems, certainly they did. But nothing so monumental that it required anybody to be relieved or any action taken other than just other leaders stepping in and giving guidance and mentoring problems with the leadership.

- Q. (b)(7)(C) came into the company as a (b)(7)(C) and then he was given some on-the-job training to be an infantry officer.

Do you think he had enough training in order to perform his mission in Iraq, sir?

- A. I do. I know, as Marine officers, we are all coming out of the basic school, to basically, as a Marine officer, having fundamental infantry skills and certainly within the Marine Corps reserve, it's a problem that we struggle with, not just on our Battalion, I know it's reserve wide where you have a mismatch, especially in the officer corps. My entire time, almost 7 years working in the reserve, we have always had an MOS mismatch somewhere in the Battalion usually several. I'm not exactly sure in the time that (b)(7)(C) -- when he joined the Battalion and when we were activated or mobilized, exactly what type of training.

I know during our month and a half in 29 Palms, the type of training that was experienced on a daily basis out there as an infantry officer or a platoon

commander, and that is certainly enough. So I do believe that he had enough training as a platoon commander. If we didn't think he was, I know the company commander, the Battalion commander or anything in the chain would have said, you know, this officer is not capable of running a platoon. Also, the seniority of most of the officers that were doing platoon commander jobs, almost every one of them was a Captain or above that were actually doing platoon commander jobs, which is, traditionally in the Marine Corps, run by a 2nd Lieutenant or a 1st Lieutenant. So, (b)(7)(C) (b)(7)(C) I believe, at that time, had maybe six or more years as a Marine Corps officer. So I feel confident that he had fundamentally enough training to be successful as an infantry officer or platoon commander in an infantry battalion.

- Q. Sir, do any of these things, either his switch to his MOS or his -- or problems in (b)(7)(C) do either of those things mitigate or excuse these acts against the Iraqis?
- A. No, I don't think so. The two acts were directed directly to Iraqi individuals. In the case of the vehicle or to disable the vehicle and destroy the personal property. It was almost an act against those two Iraqi detainees. And then, in the other incident, where the detainees were stripped down and forced out of the compound, I mean, that was a direct act directed directly at those four or five Iraqi men.

So I don't know how any of these other, if some of these other issues that (b)(7)(C) may have struggled with in (b)(7)(C) with the company commander and the company (b)(7)(C) are mitigating circumstances or even a lack of training as an infantry officer. These were acts of humiliation directed directly at the detainees. So, I don't see how they could mitigate those types of acts.

REC: Okay. Sir, I have nothing further. The counsel for (b)(7)(C) will have some questions and the board members may have questions as well.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) this is (b)(7)(C) I'm
(b)(7)(C) civilian counsel. I do have some
questions for you.

What was your understanding of (b)(7)(C)
responsibility for guarding the ASP. The ASPs that
were in Al Kut.

A. The responsibility was to guard those ASPs. In
particular, I know, there was one on the east side
and I believe there was a northern one also. They
were rather large ammunition supplies and their
mission was to maintain three or four squad size
elements at those two locations on a continuous
basis, to run patrols around those two ASPs. Our
biggest fear was to keep the Iraqi people out and
prevent them from hurting themselves, and also from
looting. They were mostly after the brass in the
looting. That was their mission. I know they were
accomplishing it through rotating squad size
elements in and out of the ASP, but our mission was,
you know, around the clock, 24-hour-a-day,
7-days-a-week type mission.

Q. Now, what was -- what was your understanding of the
danger level of the hazards within those ASPs?

A. Multiple hazards before we assumed the missions in
both of those. We did have to bring in EOD to sweep
the area where the Marines were bivouacking,
establishing their post. And, also, pretty much on
the perimeter roads that ran around and just inside
the ASPs due to a number of reasons. Unexploded
ordnance was all throughout those ASPs as well as
there had been a lot of looting going on before we
got to those locations, so there was just ammunition
in addition to unburned increments from artillery
and other type of rounds that were strung about. It
was a very dangerous environment, very, very
dangerous.

Q. Were you aware of explosions going off in those
ASPs, essentially on their own?

A. We had several incidents in the ASP where the ASP
would essentially catch on fire, yeah. And

ammunition would cook off from the bunkers and actually exploded. There were several occasions in that ASP and other ASPs where we pretty much had to abandon it. We would have to pull the Marines out of there, to pull the Marines out of there and pull back down a mile or two from the ASPs.

- Q. Were you aware that Iraqis were getting injured or killed in these ASPs trying to loot them?
- A. Correct. Yes. We knew that usually when the fires started, it was probably created from an Iraqi getting in there and smoking or igniting some of the propellants that would cause an explosion. It is very tough to keep them from going in there.
- Q. Sir, what was the procedure that you were aware of for what the Marines are supposed to do when they caught these individuals stealing from the ASP?
- A. When individuals -- well, there was two kinds of standing orders for individuals who were doing bad things in Iraq. If it was an act against coalition forces or it was a criminal type act, in both cases, you know, Marines were allowed to detain these people and then they, once they were detained it was determined was this an act against coalition forces or just a criminal type activity or Iraqi law violation.
- If they were acts against coalition forces, they were handled through the military where they would actually go to a military detainee compound further down. They would be transported down South. If it was a criminal type activity, a violation of Iraqi type laws, they would be turned over to the Iraqi police.
- Q. And you said this was an order. Was it a written order of some sort?
- A. No. I don't -- I'm trying to think if that would have been written. I'm sure it would have been in documents that came from the Division. At our level, or even at the company level, if you are putting yourself out at the company level platoon, Division, they really didn't have to be that concerned over whether it was an act against Iraqi people or an act against coalition forces. That would all be determined once they were being detained and it would then be decided, should they

go to Iraqi justice system or should they go through a military detention system.

Q. And what was your experience with how the Iraqi justice system was handling these detainees that were caught in the ASP?

A. That system was quite broken. The Iraqis were struggling to keep the justice system going and we worked hand-in-hand with the them. But that system at that point in time was totally, I'll use the words "totally broken." I know detainees would possibly be detained for a couple of hours and then the Iraqi jailers would probably decide to release the detainees due to the fact that they didn't have room in their limited jail system. So I know it wasn't uncommon for somebody that was a looter to be right back on the street later on that afternoon or that evening or by the next morning.

Q. What was talked about at Battalion as to how we remedied or fix this problem of these repeat looters?

A. That was an ongoing problem. We didn't have a solution. We certainly related this over to our people who were working with the Iraqi justice system, which was very limited numbers of Marines that were actually working with the Iraqi justice system. To my knowledge, I know of two Marines that were part of our unit that were directly working with the Iraqi justice system.

Q. And who were those Marines?

A. One of them was our JAG officer at the time, he was actually a [REDACTED] within [REDACTED] I know he had a young Marine, an enlisted Marine, that was working with him. Those are really the only two that I know of that were working directly with the Iraqi justice system, I think within the Al Kut area.

Q. Did you ever go up to Division to find out what assistance you could get to create a better deterrent or punishment for these looters?

A. That was certainly not only sent up through correspondence emails, radio traffic, message traffic, but I personally sat in on conversations when we were visited from the operations officer from Division.

- Q. Sir, did you ever have a chance to talk to General Kelly about these problems?
- A. I never talked directly to General Kelly about that particular problem, but I know I did talk to the operation's officer and the Chief-of-Staff. The conversations were myself, the Battalion commander, our operation's officer, actually sat down and talked about some of the problems we had guarding these large ASPs. The one that (b)(7)(C) was involved in guarding was actually rather small compared to some of the larger ASPs that we were guarding throughout the Al Kut proper area in the Wassi province.
- Q. Do you remember how big that -- well, there were two ASPs that (b)(7)(C) had responsibilities for. Right?
- A. Correct. It was the one on the North side of town and one to the East side of town.
- Q. I know it's been a long time and it may be tough to recall, but what is your recollection as to the size of the ASP that was served on the South part of town?
- A. It was large. I wasn't trying to elude that it wasn't a large ASP. It would be the size of several acres, dozens of acres is the size of it.
- Q. Okay. So, recognizing that there was this ineffective Iraqi police system, how many -- sounds like you, you, your staff at the Battalion level and then you worked with the Division level staff to try to figure out a solution to this.
- Is that about right?
- A. Correct.
- Q. And was there ever a solution that was arrived?
- A. The solution was the continued 24-hour Marine presence. We augmented it with a combination of manned aerial flights and unmanned aerial flights, RTDs that flew over the different ASPs. But I'm not trying to say we had a perfect solution to it. It was a tough problem. There was no good solution at the time. The only good solution probably would have been to bring in an entire Battalion or other reinforced companies to put on each one of those ASPs.

And within our providence, we only had one battalion that was responsible for the whole providence. The one ASP to the South that we are referring to, that could have easily consumed a reinforced company to guard that, to properly guard where we could maintain integrity around the whole compound 24 hours a day, seven days a week. With the three or four squads out there, there's no way they had total knowledge of what was going on in that ASP all the time. The roaming patrols would deter and stumble upon people that were trying to loot, but if a looter wanted to get in there, the looters could certainly get in there.

- Q. Now, was it discussed at the Battalion level that one of the concerns of these looters being there was the fact that Marines going in trying to chase these folks out could themselves become injured in that process?
- A. That was a concern, that was a daily concern. The Marines were instructed to stay on the EOD swept roads, not to venture into certain areas of the ASP, but to stay on the, pretty much the perimeter roads that ran around the ASPs and that is where they would detain any people that were looting but not actually to chase them throughout the unsearched roads that ran all and out of the ASPs.
- Q. Were you aware of there being a Marine in (b)(7)(C) that was burned while he was trying to detain one of the looters in one of the ASPs?
- A. Absolutely. Actually I was on site shortly after that incident happened and recommended we need to do an investigation on that incident. It was a young Marine, and I believe three other Marines were involved, where they had seen some looters coming in and out of the ASP. They went in a vehicle over to where the looters were at to detain them. The Marine, himself, who was injured, I know he ignited -- it was a large quantity of unburned increments, I believe, artillery type increments and he got some severe burns on his body.
- Q. And it was your thought that this happened accidentally or deliberately?
- A. From what I read out of the investigation, I know the Marine himself, it was determined, ignited the propellant that burned him. I don't think he

understood how rapidly and how fiercely that those propellants burn. I don't think he thought he would be burned, he was at a safe enough distance where he was okay.

- Q. Okay. All right, sir.
- A. I don't think he intentionally meant to hurt himself. I know he wanted to destroy the propellant, but it certainly was a dangerous thing.
- Q. Okay. Now, one of the comments you had on direct was that you thought that (b)(7)(C) and (b)(7)(C) (b)(7)(C) had some problems. Are you confusing that with the (b)(7)(C) or (b)(7)(C) and (b)(7)(C) (b)(7)(C) incident where they got into a fight?
- A. It could be. I was under the assumption, though, not trying to confuse two incidents, but I was under the assumption that (b)(7)(C) had difficulty, not because of (b)(7)(C) or anybody else. I think he was having difficulty with everybody in that chain of command, company commander, platoon commanders, and several of the staff NCOs.
- Q. But you became personally aware of the incident between (b)(7)(C) and (b)(7)(C)?
- A. I believe -- was that a yelling and screaming match that ensued over? I forget what it was. Was that the incident or where they actually argued in front of a large group of Marines.
- Q. There was an incident like that, but I'm asking if you recall there being some problem between (b)(7)(C) and (b)(7)(C)?
- A. I can't remember anything specific as far as details. I don't have an incident that comes to memory where they had a personal conflict or any type of conflict. Maybe my assumption was, my assumption is that (b)(7)(C) had problems with -- from talking to him and talking to (b)(7)(C) (b)(7)(C) he had problems with just about everybody within the chain of command of (b)(7)(C). So if I'm assuming that he had a problem with (b)(7)(C) (b)(7)(C), I could be wrong.
- Q. Now, did you have any problems with (b)(7)(C) or did the Battalion have any problems with (b)(7)(C) (b)(7)(C)?

A. No, other than -- there were times when, certainly we would question a judgment or decision by (b)(7)(C). I know myself, I have talked to him on several occasions and I know the battalion commander talked to him on several occasions over any variety of things that happened over the course of time that we were there.

Nothing is coming to mind that was so severe that it warranted anything other than talking to another Marine officer. Finding out what made him come to a certain decision and talking through that decision with him. I can't remember anything that, actually think of a life threatening situation, grossly negligent type of situation.

Q. Do you recall conducting an investigation on (b)(7)(C) concerning a statement that he made to (b)(7)(C)?

A. I do. I think you meant to say (b)(7)(C).

Q. I'm sorry, I apologize.
A. I did a preliminary inquiry into a statement that he made. I believe after he discussed, after (b)(7)(C) and (b)(7)(C) discussed the incident where Iraqi detainees were stripped at the compound.

Q. And was there some comment of plausible deniability that (b)(7)(C) said which you thought was a problem?

A. The way I became aware of that situation was that the Battalion commander asked me to do an inquiry concerning the comment that was made or the comment that, I believe, (b)(7)(C) said he made where, something about plausible deniability. The fact that he brought the detainees into the Weapons' Company compound in front of all the other Marines, kind of nullified any plausible deniability he would have as to, you know, anything he did to those detainees. When I talked to (b)(7)(C) concerning that type of a comment, what I got out of it was it wasn't a kind of thing, you shouldn't have brought them here, but it was a comment, you know, what are you thinking. You did something bad, you did it in front of the Marines, you don't have any plausible deniability that you didn't do this.

Q. So when you talked to (b)(7)(C) about this, did

you understand that his use of plausible deniability was something that (b)(7)(C) now couldn't cover up?

A. No. I think he -- the way I read his comment when I talked to him -- and certainly this was after he said this comment, so I wasn't present when he actually said it; but he was using it more in the way of, you know, you really screwed up and not only did you screw up, you did it front of everybody. You know, you can't deny that you didn't do this.

Q. Well, did (b)(7)(C) ever deny that he did do it?

A. Not to my knowledge, no.

Q. So there wasn't ever a question of (b)(7)(C) trying to cover this up. Right?

A. Not to my knowledge. Once it was brought out in the open, I don't think he ever denied it.

Q. Are you aware that (b)(7)(C) brought this to the attention of (b)(7)(C)?

A. I am not sure, no. I am not sure if he brought it to him.

Q. Do you know that is what (b)(7)(C) did, is brought this information to (b)(7)(C)? Are you aware of that occurring?

A. I guess I am confused on the question. I know at some point -- for (b)(7)(C) to have made those comments, I know at some point they had to have told him. So I am not sure what the timeframe was when that happened.

Q. Maybe my question was bad. My question is, is it your understanding that (b)(7)(C) reported this detainee incident to (b)(7)(C)?

A. No. I am not sure that he did and when it happened. I'm not disputing the fact that he probably did, but I didn't know that he -- are you saying that he came to him shortly after the incident happened?

Q. I'm asking what you know.

A. I guess I don't know. I don't have a good timeframe on it. My assumption is that it was something discussed later, not right after the incident happened or, you know, hours or the day after it happened. I assumed it was something that was

discussed much later, many days later or a week later or more.

- Q. What -- just so that we are clear, what is it that you think occurred at this detainee incident at [REDACTED]?
- A. My understanding of that incident was that these were detainees brought from the ASP, from that actual ASP -- that's where they were detained -- brought inside the compound. At some point, they were ordered to strip off all their clothing, except for their underwear; and then shortly after that, they were forced to leave the front gate of [REDACTED] position, which goes right out into the community, basically, and were sent out through the front gate wearing only their underwear.
- Q. Were you aware that these detainees had been captured or detained on prior occasions that same day?
- A. [REDACTED] when I talked to him about the incident and some of the others, they did say that these Iraqi individual were people they had captured before.
- Q. And -- all right. When you had this discussion with Captain -- well, were you the officer who relieved of his duties?
- A. I don't have that power as the Battalion Executive Officer. That decision was actually made, was made in conjunction, I know, from the Battalion commander and the actual company commander.
- Q. Did you communicate this to [REDACTED]?
- A. I know that during that timeframe, I communicated that he would be relieved of duty, yes.
- Q. When you had this meeting, did you ever tell [REDACTED] what he should have done with these detainees?
- A. Yes. I discussed it with him. I talked about the frustrations that he himself and the Marines were experiencing with repeat offenders, people that were looting on a repeated basis. But I know I told him that it's not something that -- I can't influence if that person is let out by the Iraqi people or the Iraqi justice system. We just have to detain these people and let the system deal with them. Maybe not

the best answer, but I didn't, I certainly wouldn't give him any recommendations to do anything else.

Q. Okay. And on this checkpoint incident, this truck incident, you are aware that this was the truck that the Marines felt was going to blow through their checkpoint. Correct?

A. Correct.

Q. And the command didn't have any problem with the use of force to disable the vehicle. Right?

A. No.. The investigation clearly shows that the truck was, you know, a large truck and it was accelerating and possibly endangering the lives of some of the Marines at that checkpoint. So as far as them actually firing on the vehicle, that was appropriate. That was well within their Rules of Engagement, the inherent right of self-defense for those Marines.

Q. And you are aware those Iraqis were not killed. Right?

A. Correct. They actually weren't, didn't receive any bullet wounds. They received some superficial wounds probably from some of the broken glass and maybe being jarred around within the truck itself. They had very superficial injuries.

Q. And you had commented on (b)(7)(C) direct that (b)(7)(C) had burned their personal belongings.

Is it your understanding that he burned everything in the truck?

A. No. My understanding from the investigation was that he took some personal property out. I think some personal garments, some of their clothing and some of their paperwork, some of the documents they had within the vehicle, the cabin of the vehicle and actually burned those on the roadside close to the truck.

Q. Were you aware --

A. Not that they burned the whole cabin of the truck or anything like that, they took some stuff out of the truck and burned it.

Q. And were you aware that they had captured five

- hundred thousand dinar and had to turn that over to the police?
- A. I don't remember that part of it, not to dispute it. I wouldn't doubt that they had captured some dinar, too. I don't clearly remember that part, but it was in the investigation. I'm sure that they did that.
- Q. Did you ever hear that it was (b)(7)(C) rationale of burning the clothes was because he was concerned it might be bug infested and could contaminate the personal belongings of the Marines?
- A. No, I didn't. I don't remember hearing that, that that was one of the concerns that would have made him burn the personal belongings.
- Q. Sir, you read the preliminary investigation involving that incident. Correct?
- A. Correct.
- Q. And there were statements in that investigation which described the incident. Correct?
- A. Correct.
- Q. And you don't recall any of those statements talking about the rationale that was employed at the scene for why the clothing was burned?
- A. No. I don't. And I believe it was actually two investigations or inquiries done on that. I know the first one was routine for us to do at a minimal of a preliminary inquiry any time there was a shooting for Marines to discharge their weapons. So I don't remember on that one, I focused more around were they justifiable in discharging their weapons. I don't remember anything in there that even talked about burning personal property. I believe there was another investigation done after that, if I am not mistaken. It kind of eluded more towards the charges of destroying personal property.
- Q. Okay, sir.
- A. That's my --
- Q. What's that, sir.
- A. That's my recollection of that.
- Q. But do you recall reading the investigation conducted by (b)(7)(C)?
- A. Yes.

- Q. Okay. And you recall there being statements given by some of the Marines that were there at the checkpoint?
- A. Correct.
- Q. All right. Gentlemen, if you wouldn't mind -- sir, hold on one second here -- turn to Respondent's Exhibit K, if you would.
- Sir, I am going to read a portion of a statement by a Marine by the name of (b)(7)(C).
- Have you ever heard that name before?
- A. No, but go right ahead. I am assuming he is a devil dog in (b)(7)(C).
- Q. Yes, sir, he is.
- Gentlemen, what I am looking at here on my exhibit, it would be right after the rights page, turn one, turn 2. So the bottom will say, "went back to there."
- Sir, I am reading to you a sentence in this from (b)(7)(C). It says, "I went into the cab and placed some clothes, cassette tapes, and other items in a sack while someone else cleaned out the glove compartment. I also cleaned out the storage bins on the side of the trailer. I asked what to do with the seat cushions in the cab and I was told, they may have lice and to put them in a pile. That pile was lit on fire."
- Now, having heard that, does that refresh your recollection as to a rationale given for why those clothes were burned at the checkpoint?
- A. No, it doesn't. And I'm not trying to dispute the fact that they may have thought those clothes or some of the stuff within the cabin of the truck could be lice infected or vermin infected or whatever. I just don't recall reading that portion.
- Q. Okay.
- A. I'm sure it's in there, but that phrase just didn't stick out to me.
- Q. All right. If they were lice infested, wouldn't it

- have been advisable not to bring that into the barracks so that the rest of the barracks doesn't get contaminated?
- A. Certainly. I wouldn't recommend bringing any of that into the confines of where the Marines are billeted at, certainly not. I guess my only question on that, I am wondering why they wanted to bring anything that they would have seized in the cab of that truck into (b)(7)(C) area or into, you know, confined area. I would have thought that stuff would have been turned over to the military police or the Iraqi police that were going to detain those two individuals.
- Q. But you don't recall the five hundred thousand dinar that was given to the police. Right?
- A. No, I don't. And like I said, I don't dispute that. That was very routine and every, anytime we detained people that there was different quantities of dinar that were seized and turned over.
- Q. Now are you familiar, sir, that in circumstances where there was some belief that there might be some intelligence value to any of the documents, that it would be turned over to the HEP teams?
- A. I'm not sure what kind of intelligence value the documentation would have produced or if there was a thought that would be viable intelligence in that --
- Q. Was that the SOP, that if somebody felt there was some intelligence value, to ask for the HEP team's assistance?
- A. Well, absolutely. If they thought -- if the Marines out at the checkpoint or anywhere thought they might have uncovered some type of viable intelligence, they would certainly ask for help from Battalion to send a HEP team out there or anybody that could speak and read the dialect.
- Q. Were you aware that (b)(7)(C) had called Battalion for HEP assistance?
- A. Yes.
- Q. And you weren't at the checkpoint; were you, sir?
- A. No. I was never at that -- physically, at that sight.
- Q. So wouldn't it be the senior person at that sight to

make a determination as to what the potential value or intelligence value of that target might have been?

- A. Certainly. Certainly the senior Marine or any Marine who saw that and reported it the senior Marine, if they thought they some had viable intelligence, they should actually report that up and prosecute that further.
- Q. Now, are you aware that despite (b)(7)(C) request for HEP assistance, that he did not receive any?
- A. I don't particularly remember him not receiving it, but once again, I don't dispute that he didn't. We had very limited HEP assets in theater. That was a struggle that we struggled with almost on a daily basis on any operation. We didn't have enough intelligence Marines or actually translators or people that knew, you know, the dialect over there.
- Q. Okay. All right.
- A. So I am sure, I'm sure if he requested it and didn't get it, that would not be an uncommon thing that happened during the time we were over there.
- Q. Okay. Now, going back to the ASP -- and I will be short, I promise. Were you aware at the time -- this is back on June 23, 2003, were you aware of whether there were any shortages of the officers that were within (b)(7)(C) during that timeframe?
- A. I think they were short. They did not have, I don't believe they had an excess of officers at that point for the company. And I believe at that point, we had also, I believe the platoon commanders, (b)(7)(C) platoon commander, probably by that point, he's a (b)(7)(C) and he's the one that I referred to earlier. At that point, I believe he was helping out to establish an Iraqi justice system within Wassi province.
- Q. Okay. So you were also aware that (b)(7)(C) was away of emergency leave?
- A. Okay. That refreshed my memory. I know he did go home for a personal reason --
- Q. And --
- A. -- during that timeframe.

- Q. And that (b)(7)(C) at that point, who was the
platoon commander, was over with (b)(7)(C)
(b)(7)(C). Right?
- A. Correct.
- Q. So that left (b)(7)(C) and (b)(7)(C) as the
only two officers in (b)(7)(C). Right?
- A. Correct.
- Q. And were you precisely aware of that status on
June 23rd of 2003?
- A. Yes, I would have been.
- Q. How were you made aware of that?
- A. Well, at that point, I would know from the daily
muster sheets that we would review just -- and just
from reviewing it, the status of each company and
where they stood as far as how they were in not just
officers, but staff NCOs and manpower. So I know we
were aware of the fact that they only had their CO
and one other officer within the company at that
point.
- Q. Which was (b)(7)(C)?
- A. Correct.
- Q. And also at that point, you were familiar with the
fact that the (b)(7)(C) was a liability to the
company. Right?
- A. Yes. We would have known that he was having some
trouble, certainly.
- Q. Was there any consideration given to the Battalion
in trying to help out (b)(7)(C) while some of
their officers and some of their leadership was
down?
- A. That was looked at, but due to the fact the way the
missions were coming to (b)(7)(C), the
missions that were coming to them were not company
level missions or even platoon level missions. They
were usually being tasked with missions that
involved squad sized elements whether it be an NCO
or a staff NCO in charge of it. So there was no
decision to send them an extra officer or try to get
them an extra officer somewhere from the Battalion.
- Q. And --
- A. There weren't a lot of officers to go around

obviously, too. So, it's not something, I'm sure that would prevent an inordinate amount of time discussing either.

Q. How many officers were on the Battalion staff?

A. Well, the Battalion staff, certainly each shop had an officer in it. The (b)(7)(C) would have had multiple officers. I don't want to throw a guess out there, but the Battalion staff was pretty much, the table of organization.

Q. Okay. And at the time of this 23 June incident when these other officers were away, you were aware, then that (b)(7)(C) was still responsible for the security at the northern ASP and the eastern ASP?

A. Correct.

Q. Okay. Sir, do you have any knowledge as to whether those four detainees, which were, had their clothes removed, whether they were ever caught again stealing or looting from the ASP?

A. No. I don't have any knowledge if they were ever caught again. I wouldn't be surprised if they were.

Q. Did you have any knowledge as to whether or not the activity in the ASP that the (b)(7)(C) were guarding had been stopped in terms of looting after that incident?

A. No. I think there were probably, almost on a daily basis, other times that looters would try to get into that ASP.

Q. But do you know this for a fact, sir, or is that just a guess?

A. That's just a guess. That's no factual.

Q. And again, I want to bring you back to (b)(7)(C) (b)(7)(C) -- I hope I'm not butchering his name -- is it (b)(7)(C)?

A. I think it's (b)(7)(C).

Q. Okay. You read (b)(7)(C) investigation. Correct?

A. Correct.

Q. And that had a statement in there by a (b)(7)(C)

(b)(7)(C) who was a Marine in the (b)(7)(C).

A. Correct. I believe so.

Q. Do you have any recollection of that?
A. I don't recall his testimony or his statement in that investigation.

Q. Okay.

Members, if we could please turn to Respondent's Exhibit H at the very last page of devil dog (b)(7)(C) statement.

Sir, I just want to read you a sentence here and see if you recall having read that and having thought anything about that when you had a chance to read the (b)(7)(C) investigation. This is a statement here by (b)(7)(C) which is signed on July 9, 2003, which would have been two weeks after the detainee incident. And (b)(7)(C) says, "it should be noted that we haven't caught anyone at the ASP since."

A. Does that ring any bell to you, sir?
That doesn't jump right out, but I certainly do believe that that was a statement in there.

Q. So it would be fair to say, even though it certainly may have been the wrong move, this action of disrobing them, may, in fact, have created a tactical advantage at this ASP?

A. Yeah. I see what you are saying and especially the Marine that made that statement was a Marine that was on the site and was certainly on there weeks at a time. So, he probably would have better recollection than I would of who was detained and who wasn't.

Q. So, if in fact that is true, then they were at least successful in preventing anybody, and he says anybody, in that ASP, that's a good thing; isn't it?

A. Maybe the fact that nobody was looting anymore, but it's not something that I can condone and say that we would change Rules of Engagement and Rules of the Geneva Convention to win a tactical decision.

CCFR: Okay. All right. Sir, I don't have any other questions. Thank you very much for your time.

WIT: Thank you.

SRMBR: Okay. Redirect.

REC: I have no questions, sir.

SRMBR: Okay. (b)(7)(C) do you have any questions for the witness?

CCFR: Sir, the members may have some questions for you, so don't hang up.

WIT: Certainly. No, I will stay with you.

MBR (b)(7)(C): Okay. (b)(7)(C), this is (b)(7)(C).

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

Q. You made a reference to ROE and the Geneva Conventions. I asked a similar question to (b)(7)(C) (b)(7)(C). Did the unit receive any specific training or classes regarding the handling of detainees prior to or during the deployment?

A. We certainly did. Even before going into theater and while we were in Kuwait in base camp, we received formal classes on our ROE and how to apply them. Before we even left 29 Palms, the Battalion went through a week long MOUT environment type training at the MOUT facility aboard Camp Pendleton where detainee handling and treatment of detainees, searching the detainees and then handling the detainees, was practiced by all Marines. So, I'm not sure if I answered all of the question or not.

Q. Yes, you did.

MBR (b)(7)(C): Sir, that's all I have.

SRMBR: Okay. (b)(7)(C).

MBR (b)(7)(C): (b)(7)(C) this is (b)(7)(C).

Questions by MBR (b)(7)(C):

Q. Sir, was the rest of your Battalion as thinly spread out and over assigned as was (b)(7)(C)?

A. Yes, they all struggled. I know it might have been

hard for each individual company to see, but certainly from a Battalion perspective, companies could be spread out on a typical day. It was ranged from over 125-miles between units from where our CP was to our most outlined companies. It did vary on a daily, weekly basis. Elements could be as small as squad size level to be remotely 30, 40, 50-kilometer from the next friendly type units at other ASPs and other areas that we worked out in.

So, it was a struggle for the Battalion as far as manpower, logistics, and just to carry out the responsibility and lack of communication that all companies experienced a shortage of.

- Q. You are able to see that at least the company commanders pretty regularly -- at least the morning meeting, if not over the landline or some type of comm?
- A. Correct. There was daily communications at the company level to the company commanders. There was certainly -- it caused us to, the Battalion staff to, the Battalion staff was mostly based at the airfield right there at Al Kut, which was called Blair Field. It caused myself and the operations officer to go on the road almost on a daily basis so that we would have personal time in all the various locations throughout the Wassi providence. We actually would try to go on the road five to six days out of the week where we were traveling. We would go out to the company, platoon size positions to visit with the commanders there and bring them up on what we, you know, see what struggles they were having at their particular location.
- Q. I guess the last question I have is, or maybe a statement, is this the only incident of error in judgment that the Battalion had, you know, as far as officers are concerned or were there several other NJPs that, you know, had to get processed up the chain of command or were there others that the Battalion was able to handle at its level. I'm just wondering how this fits in the relative -- to the rest of the battalion?
- A. Let me paraphrase to make sure, because you broke up for one second.
- Q. Okay.

A: Was your question basically, were there other incidents within the battalion at the officer level that we dealt with any differently than in comparison to (b)(7)(C) is that the question?

Q. Yes, that's accurate.

A. We certainly did have over incidents where, I know the Battalion commander talked personally to other officers. I can't recall of any other incident. Most of those though were based off of something within the unit happening as far as a junior Marine did something wrong or something went wrong during an operation. I can't remember other incidents where an officer, it was really his conduct or what he personally did to an Iraqi citizen or an Iraqi detainee. There was no other similar circumstances. There were certain other officers that were talked to. You could say that it was a misjudgment of something that happened within their platoon, their squad, something that a junior Marine, junior enlisted Marine had done something stupid. We certainly had other incidences where some junior Marine may have acted inappropriately towards an Iraqi detainee, but it wasn't the officer himself who did that action.

MBR (b)(7)(C): Roger that. That's all, (b)(7)(C). Thank you and thanks for your service to the country, man. Oo-rah.

SRMBR: (b)(7)(C) this is (b)(7)(C)

WIT: Yes.

Questions by the SRMBR:

Q. You mentioned there are two acts that would determine what action would be taken with the detainees, an act against coalition or criminal act. Who would make that decision? Who would decide whether the detainees were acting against the coalition or if they were criminal?

A. Right. It would usually be determined, I wish I had a clear answer. The Battalion CO certainly would be cognizant of what was going on in any situation where we detained people. And a combination of the COC to include one of the key figures, would have been the Battalion intelligence officer would weigh

in on that. The battalion operations' officer would weigh in on that. Also, I know when detainees were routinely brought directly to the civilian police department in Al Kut and there was military American Army military police that were there, they would sometimes make that decision on whether or not this was an act, criminal activity or an act against the coalition forces.

- Q. Okay. To follow up on that, was the COC aware of the incident, the transportation of the Iraqis from Field Guard ASP to (b)(7)(C) when that occurred?
- A. Yeah, good question. I don't have a clear answer on that whether in that particular case, the COC knew at this point whether they had the detainees. I don't know if they knew when that one was occurring whether they had cognizance over it, that they had detained some individuals and bringing them back to the (b)(7)(C) compound.
- Q. Okay. And (b)(7)(C) was the company compound. Right?
- A. Correct. It was, that was the common name we used for (b)(7)(C) company size compound they maintained on the North side of town.
- Q. Where was the COC, where was the Battalion CP?
- A. Battalion COC would have been South of the city and the city was cut in half by the Tigris River. It actually wasn't cut in half, it ran just North of the airfield we were in. That was one of the reasons we wanted to maintain a company level position within the city on the side because of the roads.
- Q. Okay. So the COC was in the airport, at the airport?
- A. It was at the airfield, correct.
- SRMBR: Airfield. Okay. That's all the questions I have. Thank you very much.
- WIT: Thank you.
- REC: Sir, I have nothing further from this witness.
- SRMBR: Okay. Anything from --
- CCFR: No, sir.

SRMBR: Okay. Dismiss the witness.
REC: Okay, sir, that is all we have for you today.
WIT: Okay. I'm certainly available. If you need to call me back, I'll maintain this number for you.
REC: Okay, sir. Thank you.
WIT: Thank you.

The witness was excused from telephonic testimony.

REC: Sir, the government has nothing further to present. The defense, I believe, has several witnesses that are from out of town. There's three witness that are from (b)(7)(C) and I know it's getting late in the afternoon, but for their -- so they don't have to drive back and forth --

SRMBR: No, no, we're pressing on but we are going to take a break.

REC: Okay, sir.

SRMBR: Let's go into recess until 1550.

The Board of Inquiry recessed at 1540 hours, 6 April 2003.

The Board of Inquiry was called to order at 1553 hours, 6 April 2004.

SRMBR: The board will come to order. All persons who were present when the board last met are again present. The recorder will note the time and date for the record of proceedings.

REC: Sir, the time is 1553 on 6 April.

SRMBR: Okay. Proceed with your witnesses.

CCFR: Thank you, sir. Before I do and before I call my first witness, (b)(7)(C) I would just want to inform the board that it was initially -- we communicated to government counsel that we believe we would have enough evidence for two days. I am certainly prepared. We can push on through as long as this board desires for this evening, I just did

not want to get the board concerned that we had underestimated the amount of time we need. We don't need to take two days, but we had informed the government that it could be a two-day proceeding.

What we intend to do, sir, is call the witnesses who are from out of town so that we can maximize their time. (b)(7)(C) is standing by, so we will start with him.

(b)(7)(C) U.S. Marine Corps Reserve, was called as a telephonic witness by the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the civilian counsel:

- Q. If you will, state your name for the record and spell your last name.
- A. My name is (b)(7)(C) (b)(7)(C).
- Q. Good afternoon, (b)(7)(C).
- A. Good afternoon, sir.
- Q. Would just briefly introduce yourself to the members and run through your initial military background, please.
- A. Yes, sir. My name is (b)(7)(C) and I'm coming up to on 14 years in the Marine Corps both active duty and reserve. I have been on six

(b)(7)(C)

- Q. And, (b)(7)(C), what's your current status now in the military?
- A. I'm still a member of the IRR, sir.
- Q. All right. And do you know (b)(7)(C)?
- A. Yes, I do, sir.

Q. And how do you know (b)(7)(C) 2
A. I reported to (b)(7)(C) as a combat replacement in, I believe, 1 May 2003 in Al Kut, Iraq and I reported to the (b)(7)(C) (b)(7)(C) platoon, and (b)(7)(C) was my platoon commander.

Q. And in working with (b)(7)(C) as your platoon commander, what assessments did you have of working with him?
A. For the most part, I thought the (b)(7)(C) was a very professional officer.

Q. Okay. And did you realize he wasn't an infantry officer by trade?
A. Yes. We had talked about that and he told me that he was a comm officer by trade, and, you know, just a little bit about his background, and, you know, I talked to him a little about mine and we got along pretty well.

Q. And did you have a chance to see how (b)(7)(C) would work on learning the skills and trades as an infantryman?
A. Yes, sir. I think we worked together initially. I served as the (b)(7)(C) the platoon guide and the platoon sergeant was (b)(7)(C) and (b)(7)(C) and myself have been career infantry Marines and we worked with the (b)(7)(C). He had some ideas on stuff and he had a fairly open forum. He had final say on some things, and, you know, we discussed tactics and what to do and what not to do. So, you know, we did, you know, I did get to see him in the infantry element quite a bit.

Q. Did you trust him as your platoon commander?
A. Yes, sir.

Q. Okay. And describe for us a little bit about the situation that the platoon had as far as their mission responsibilities in Al Kut?
A. Well, sir, we had a very wide variety of missions being the (b)(7)(C) platoon. We had three sections, we're all vehicular mobile. So we were tasked with doing a real wide variety of missions, including long range patrols, waves, security, support for different organizations like the special forces and counter intelligence.

And we also did local security patrols in and around Al Kut. We escorted people to Baghdad and to the Iranian border. We supported the infantry companies at their different outposts as they rotated runs. There was just a whole bunch of things that we did.

- Q. And as the platoon commander for the [REDACTED] platoon, was [REDACTED] leading from the front?
- A. Yes, sir, he did, he did lead from the front. He definitely took a proactive stance. We actually had -- the sections were split up into doing very different tasks. So, the [REDACTED] I think, was very proactive along with myself and [REDACTED] in getting out to the different sections to see what they were doing. It was rare that the entire platoon was co-located at the same place at the same time because of our duties being pretty wide spread around the area.

He definitely lead from the front. He accompanied the patrols and he rotated from section to section. Sometimes I went with him, sometimes he went by himself and I went to a different section, and depending on our logistics and vehicle support, what we could get to. I always felt that, definitely he was always out there.

- Q. Okay. And even being a staff NCO, did you get a good pulse on whether the Marines in that platoon trusted and were inspired by [REDACTED]?
- A. Yes, sir. I think that the Marines, I didn't actually have the benefit of being with [REDACTED] through their predeployment stuff. I met them when they were already in Iraq. But I did -- my position, I did definitely understand the Marines, you know, feelings towards [REDACTED].

- Q. Would you say it was positive?
- A. I would say it was generally positive. I mean, I think the [REDACTED] was known as being very gung ho and outgoing. And, you know, so some people kind of poked fun at that and the [REDACTED] was, he was very interest in military history and stuff. So he would discuss history and stuff like that when we had downtime and stuff, but I would say, in general, it was positive.

- Q. In your observations, was he concerned about

- training the Marines to do their jobs?
- A. Absolutely. I would say that with both myself, (b)(7)(C) and the (b)(7)(C) working together as a team that, you know, are training the Marines on force protection while we're in Iraq and their own personal safety and the accomplishment of the missions that we were assigned were by far the most important thing.
- Q. Okay. Now, tell us a little bit about some of the challenges with guarding the ASPs that (b)(7)(C) platoon had to deal with?
- A. Well, we received, pretty early on in the mission for guarding the ammunition supply points and (b)(7)(C) actually had responsibility for two different ammunition supply points. (b)(7)(C) platoon had one and the other one was located between the (b)(7)(C) platoon and the (b)(7)(C) platoon with the rest of the (b)(7)(C) guys.
- Q. And let me interrupt you there, (b)(7)(C), because we have actually spent a lot of the day talking about these ASPs, but I guess my question to you is, was it your understanding, based upon being there, that these ASPs were a pretty dangerous environment?
- A. Absolutely. They were very dangerous.
- Q. What were some of the qualities that made them dangerous?
- A. Well, probably the first and foremost thing was they were filled with unexploded ordnance and dangerous munitions and they were strewn about the area. I mean, these were very, very large installations and, you know, a lot of them had had, the majority had significant battle damage and there was, you know, there was unexploded ordnance and, you know, debris from the buildings and just basically spread out over the entire area. And we did get, we did get the EOD guy to come out and look at it, but they were so tasked out that it was almost impossible for a small detachment to actually clear, you know, the entire ASP, which was never actually done as far as I know. So the unexploded ordnance was a definite issue, so we had to be very, very careful about that.
- Q. What about the challenges of the Iraqis going into

- the ASPs?
- A. Yes, sir. That proved to be a very challenging task because of the fact that the ASPs were very large and we did not have, you know, we have small units, squad sized or a section or even a half section size element, trying to guard these extremely large areas. So I would say it was anywhere from between 8 to 12 people guarding, you know, trying to keep people out of, you know, five to ten mile square radius area.
- Q. What was your understanding of -- did you come to learn what these Iraqis were doing in the ASP?
- A. Well, I think it was two-fold, sir. The Iraqis were coming in to take munitions from the bunkers that were blown up or even the ones that weren't blown up for, you know, for a couple of reasons. They were coming to take the munitions to sell out in town or to use, you know, for whatever reason, whether they sold it to insurgents to use as IEDs or they would use it for themselves for using parts of the explosives for, you know, cooking or heating, building fires, and stuff like that. And then they would also use the brass casings, they would melt down the brass casings and sell them in town and then also they used all the materials basically building material from the destroyed buildings and bunkers they could take, they would come and take to augment their houses or neighborhoods.
- Q. So while you were over there and while the [REDACTED] platoon was conducting these operations, it was a concern of yours based upon dealing with these Iraqis that they were stealing ammunition which could eventually be used against the American forces.
- A. Yes, sir. That is why we were there from the beginning I think. I think it was one of the initial reasons that the Battalion had assigned us the mission of guarding these due to the potential insurgents getting ahold of this ammunition and using it against us. And, fortunately, you know, it wasn't the use of IEDs, at the time it wasn't wide spread in the Wassi province in our area, but we were up in Bagdad in the northern area, we did hear of those incidents occurring.
- Q. And based upon your supervision of the Marines and,

you know, either your section, were you aware of (b)(7)(C) platoon Marines actually catching Iraqis stealing the unexploded ordnance?

A. Absolutely, sir. I spent, you know, numerous rotations in the ASPs with the different sections and it was, it was very common to, I mean, we could over a two or three-day period, I mean, we could catch, you know, 50 to a hundred Iraqis going in there and getting ordnance. They would come in at night, they would come in during the day in broad daylight, so it was definitely, it was definitely an issue.

Q. What options were you aware of that you and your Marines could use to accomplish the mission of guarding this ASP?

A. With concern to the Iraqis themselves, sir, or --

Q. In all facets?

A. Well, generally, what we did was we tried to adopt a very proactive patrolling measure where we occupied, basically, a site or patrol base inside of the ASP and we essentially, we would continuously patrol the perimeter both during the day and during the night.

Q. Let me interrupt you there, (b)(7)(C). I don't want to get you off track, but I guess what my question is, what was your understanding of how to process the detainees that were captured stealing this material?

A. Yes, sir. Okay. Well, initially we started out when we would either detain somebody, we would call the (b)(7)(C), the company tag and request somebody to come out like the quick reaction force to come out and pick up the prisoners. They would either be brought directly to the police station or sometimes they would be brought back to (b)(7)(C). But it eventually turned out that just due to sheer numbers of Iraqis that we were detaining or deterring from coming into the area, it just wasn't logistically feasible because we had a small presence on the ground and we couldn't break -- we couldn't cut a half section in half again to transport prisoners and leave, you know, one vehicle guarding the site. And the company didn't have the logistical support to come out and get detainees routinely. They would, under extreme circumstances, send a 5-ton or send the react team out, but they really had to be

on call for other missions.

- Q. So what was happening to the Iraqis that were getting caught?
- A. Essentially, basically what would happen is, you know, when the Iraqis would come in, if we could see them actually coming in before they got to the perimeter, we would pretty much just intersect them and tell them to leave. And it was difficult because sometimes, the majority of the time, we didn't have interpreters for, for that, you know, specific purpose and, you know, we tried to explain to the Iraqis, it is just as much for their own protection if they happen to be wandering through. Because a lot of them did cut through the ASP just to get to a different part of town, you know. There was unexploded ordnance and it's dangerous to go in there and some of them seemed really thankful, others seemed pissed off that they had to walk around the whole ASP. The ones that were inside, we would chase them, we would attempt to chase them down as much as it wasn't dangerous to us wandering in and about the exploded bunkers with ordnance and everything laying about the area.
- Q. So is it fair to say there wasn't a real good solution that you knew of to keep these folks out of the ASP?
- A. No, there really wasn't, sir. Not with the resources that we had available to us. We just did not, you know, we weren't able to do as efficient a job as possible. The main thing we were attempting to do, deter Iraqis from getting in there until the time that the Iraqi police force was trained and ready to assume that responsibility on their own.
- Q. Now, in your interactions and working with (b)(7)(C) (b)(7)(C) is he an officer that you would go back into combat with?
- A. Yes, sir, absolutely.
- Q. You have any hesitations about going back in combat with (b)(7)(C)?
- A. No, I do not, sir.
- CCFR: (b)(7)(C), thank you very much for your time. (b)(7)(C) may have some questions for you.

WIT: Yes, sir.

CROSS-EXAMINATION

Questions by the Recorder:

- Q. I just have a couple of questions for you, (b)(7)(C)
(b)(7)(C)
- A. Yes, ma'am.
- Q. Was (b)(7)(C) action of ordering his Marines to strip down Iraqis, in your opinion, was that a good decision?
- A. I'm sorry, can you repeat the question, ma'am?
- Q. (b)(7)(C) when he ordered his Marines to take off the outer clothes of the Iraqi detainees, was that a good decision?
- A. I probably wouldn't have done that, but, you know, it seemed, in a sense that -- I know that those Iraqis didn't ever go back to the ASP. That was just, you know, the technique that he used at the time.
- Q. But that is not an action that you yourself would have done?
- A. I probably would not have used that technique, ma'am.
- Q. Okay. How about if you were at a checkpoint and you saw some, saw some of the personal belongings of the Iraqis, clothing, mats, would you have burned that, burned that, those belongings?
- A. I think it depends on the situation, ma'am. I mean, if I just saw belongings standing there and, you know, we didn't go around burning things without, you know, for no reason whatsoever. But I know, in the one specific incident where I'm thinking of where it became an issue, it wasn't -- we did -- we collected information and equipment that we thought would be of some type of intelligence value after an incident at one of our checkpoints. We took that equipment and personal belongings and stuff to turn over to the counterintelligence people. The belongings that were left over that were burned, I, I actually didn't observe the burning incident itself, but I would not say that it was out of the

realm of ordinary procedure to burn equipment that's not, to make it, to render it not usable for the enemy. I would say that is not, that that would be a normal practice.

Q. So it might be normal practice to burn equipment that is useful for enemy purposes?

A. Yes, ma'am.

Q. Okay. But in this instance, this was obviously clothing and floor mats. Correct?

A. I believe it was, ma'am. I don't know, it just, when I actually saw it when we were leaving, I hadn't realized it was a fire or anything and it just looked like a bunch of rags to me.

REC: Okay. Nothing further, thank you.

CCFR: (b)(7)(C) ?

WIT: Yes, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q. I just have a few quick questions. When you saw the pile of clothes at the checkpoint, when you saw it, was it your assumption it looked like trash?

A. It looked like trash and rags to me, sir. It was already burning, so I can't say for sure.

Q. Were you aware of their being problems with sand fleas and bugs over in Iraq?

A. Absolutely, sir. It was a big problem everywhere in Iraq.

Q. If there was, if you had a concern that a pile of clothing had bugs or lice in it, would it be something that you would hesitate about burning?

A. No, sir. I mean it was common practice for us to burn all of our trash and, you know, I would probably burn something like that also.

CCFR: Thank you, (b)(7)(C)

SRMR: Okay. Questions from the board members, (b)(7)(C)

(b)(7)(C)
MBR (b)(7)(C) : (b)(7)(C) this is (b)(7)(C)
(b)(7)(C)

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C) :

- Q. You made a statement that your assessment is that (b)(7)(C) is a very professional officer for the most part?
- A. Yes, sir.
- Q. Did you notice any type of friction between (b)(7)(C) and (b)(7)(C) during the time you served with him?
- A. I did notice some type of friction, yes, sir, I did notice some. But I pretty much attributed that to some incidences that occurred before I arrived at the platoon for the predeployment training and some disagreements. I think there was some kind of liberty incident. There were some disagreements on the type of training that should be conducted during the predeployment training. I did notice there was some friction at various times, yes, sir.
- Q. So based on your experience, you would not classify that as unusual between a new OIC and staff NCOIC?
- A. It's not ideal, sir, but I don't think it's, I think it's not -- I think it's -- it happens sometimes.
- Q. Okay. In terms of the two incidents that are in question that went down, would you consider that detrimental to good order and discipline for the unit.
- A. No, personally I would not, sir. In both incidents, I was not there. I might have recommended a different course of action. However, many times that the (b)(7)(C) had asked my advice on things and taken my advice on different operational matters and unfortunately, he, you know, I wasn't there to provide guidance or my opinion on what should happen in those specific occasions, but, that's, you know, that's just my opinion, sir.
- MBR (b)(7)(C) : All right. That's all I have, sir.

SRMBR:

(b)(7)(C)

Questions by MBR (b)(7)(C):

- Q. (b)(7)(C) how are you doing?
A. Good, sir.
- Q. Did any of the Iraqis ever come armed into the ASPs?
A. Yes, they did, sir.
- Q. Okay.
A. Mostly at night. It was not uncommon for us to encounter or observe Iraqis inside the ASP that were armed and often times, different groups of Iraqis inside the ASP, would get into fire fights with each other and there were numerous times that we did receive, to one degree or another, some sort of direct fire from Iraqis inside the ASP, sir.
- Q. Did higher headquarters with HEP teams or counter intel teams ever come down and interrogate any of them or were you aware of that?
A. Basically, basically, sir, I know that there were a few instances where Iraqis, that were detained at the ASP, were questioned by the HEP teams or the Marines working with the Iraqi police, but actually not directly at the ASP. Some way or another, we had to transport the Iraqi from the ASP to either to Tiger base or to the police station.
- And if I'm not mistaken, one ASP that Cat had was probably from 7 or 8 kilometers outside of the city and the one the (b)(7)(C) had was about 12 kilometers out of the city. So, it was kind of out of the way for the Army MPs or the Marines working with the MPs or the HEP teams to just hop in a vehicle and zip out there to question somebody real quick and then come back. So, there were a few instances where they were transported either to police station or to (b)(7)(C) where they were questioned and then either released or taken to the police station for more questioning.
- Q. Last question is, outside of this one incident where they were -- they came back, the same ones came back three times, were there other Iraqis you might have recognized coming back over and over again?
A. Absolutely, sir.

Q. How did you deal with them on a repeated basis?
A. Basically, sir, if, you know, we tried to size up and evaluate, you know, the intent of the Iraqis and the action they were taking. Obviously, if we found the Iraqis with munitions, we considered that a lot more of a threat, a lot more of a reason to detain somebody than, for example, if they were loading up a bunch of brass and bringing in one of their doggy carts or whatever. So we kind of had to take it on a case by case basis.

And people that we thought were acting out of the ordinary or in some type of, some type of deceiving type of manner towards us, those were the guys that we usually detained and either requested Army MPs to come pick up or brought to (b)(7)(C) or the police station for further questioning. Because we didn't have the capability of, you know, talking to these guys most of the time.

Q. All right, (b)(7)(C)
A. We had to explain ourselves, but, you know, there was the language barrier that made that impossible a lot of times.

MBR (b)(7)(C): Thank you very much, (b)(7)(C).

WIT: Yes, sir.

SRMBR: (b)(7)(C) this is (b)(7)(C).

Questions by the SRMBR:

Q. Just got one question for you. You mentioned that you would not have used the technique of removing the Iraqis outer garments as a deterrent to keep them from coming back into the ASP.

A. I'd just like you to explain that as to why you wouldn't use that technique.
Well, sir, I think that I probably would have attempted to transport them to a different organization, either to Army MPs, the Iraqi police or, you know, the counterintelligence people because, you know, there was just a lot of unknowns. There is things I am not going to be able to understand that these people are trying to tell me or, you know, that we can, you know, we can make

understood to them. So, you know, I probably wouldn't have used that just because I thought I would have considered it to be a waste of my time where I had, you know, other responsibilities, administratively and operationally, where my time was of better use of.

And in that specific incident, of course a large number of people had seen these guys brought in. I happened to look outside and see these guys. I realized that, hey, those were the guys that we picked up this morning, the same guys; but other than that, I had some other administrative things I needed to take care of, so I left because there was a lot of people out there. Was it an effective deterrent, maybe, you know. I never saw those Iraqis again, but, you know, probably would have just handed them over to the MPs where they could have taken the time and effort to make a bigger impact than what actually occurred.

SRMBR: Okay. Thank you very much, (b)(7)(C)

Do we have any questions by counsel?

REC: No, sir.

CCFR: No, sir.

SRMBR: Okay. That's it. Thanks a lot.

You can go ahead and dismiss (b)(7)(C)

REC: (b)(7)(C), we have no further questions for you but thank you for your testimony today.

WIT: Okay, thank you, ma'am, any time.

The witness was excused from telephonic testimony:

CCFR: Sir, at this time, we'd like to call (b)(7)(C).

SRMBR: Okay.

(b)(7)(C), U.S. Marine Corps, was called as a telephonic witness by the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, if you would, state your name for the record and spell your last name.

A. (b)(7)(C) (b)(7)(C)

Q. I have to ask a few preliminary questions as the recorder.

A. Are you in the active component or reserve?
Active duty.

Q. What is your billet and present duty station?

A. I am the I&I for (b)(7)(C)

(b)(7)(C)

CCFR: Okay. Good afternoon (b)(7)(C)

WIT: Good afternoon.

Questions by the civilian counsel:

Q. If you would, please just give a brief introduction of your military background.

A. Okay. I came into the Marine Corps in 1991 OCS, TBS, IOC 3-6. Spent three years there, was in

(b)(7)(C)

Q. And when did you meet (b)(7)(C)?

A. I met (b)(7)(C) I believe, late Summer of 2002.

Q. And your meeting of him was in relation to him potentially joining (b)(7)(C). Correct?

A. As I recall, he called me on the phone several times and we had had a couple of conversations and then he came in to meet me.

Q. Okay. Explain how (b)(7)(C) got onboard with

- (b)(7)(C)
- A. Like I said, we had several phone conversations, I don't remember the exact number or the dates. He came in for a meeting. I was very impressed with (b)(7)(C) right off the bat. (b)(7)(C) was very well spoken, well read, Military history and things of this nature and certainly looking at a cross-section of reserve officers, I was impressed with (b)(7)(C).
- Q. And that impression is based upon comparison of other reserve officers you worked with?
- A. Correct.
- Q. And, at the time that (b)(7)(C) interviewed to come aboard, you understood he was a communications officer?
- A. Correct.
- Q. And he was interviewing for an infantry officer's billet?
- A. That is also correct, yes.
- Q. What thoughts went through your mind about that?
- A. I was glad to have him aboard in a reserve infantry company, throughout the Battalion really mismatched MOSSs are very common. In fact, I don't have right now -- I don't have a single infantry officer who is an infantry officer on active duty that have gone to the Reserve Infantry Officer's Course since coming on active duty, but they are all from various backgrounds.
- Q. So the fact that he was a mismatch --
- A. Was not at all unusual.
- Q. At the time of the interview, what was your understanding of (b)(7)(C) potential involvement with OIF?
- A. We were leaning forward to mobilization at that time.
- Q. Did you have a discussion with (b)(7)(C) about that?
- A. I'm sure we did discuss it during some of our meetings together. To what degree, I don't recall.
- Q. And at some point, (b)(7)(C) got activated. Right?

- A. Correct.
- Q. And you got to see (b)(7)(C) in action on a daily basis?
- A. Initially, yes. In fact, when he joined the unit, I think it was in the Fall, maybe October, I don't remember the exact dates once again, to make up a set year, he drilled almost full time for a month. So he was working there in the office with me in (b)(7)(C) where I observed him daily. He was kind of performing duties as my XO.
- Q. And what were your observations of his skills and his abilities at this point?
- A. Once again, very positive, really required very little supervision, a lot of initiative, and did everything I asked him.
- Q. And did you have a chance to observe (b)(7)(C) working to learn his new trade?
- A. Absolutely, he was always asking for manuals. He was the heavy machine gun's platoon commander, machine gun, vehicle capabilities, things of this nature. He worked very hard in that month and the months proceeding mobilization to learn the trade and prepare himself for mobilization.
- Q. And (b)(7)(C) did not have a chance to go to Reserve Infantry Officer's Course; did he?
- A. Correct. Not in the short time that he was there, there was not an opportunity for him to do that.
- Q. Okay. Were you impressed with his efforts in trying to learn his skills and get himself as ready as he could?
- A. Absolutely.
- Q. And in seeing his work ethic and compared to the other company grade officers that were there at the Battalion, what were your thoughts in comparing (b)(7)(C) to them?
- A. I'd say on the average, he was quite a bit more motivated. And, once again, he showed a lot of initiative in preparing himself through studying various publications and preparing for his duties.
- Q. And did you have a chance to see (b)(7)(C) interact with his Marines?

- A. Yes, I did. And I thought their reaction to him was very positive from the get go. There was a little bit of friction between he and his platoon sergeant, which in looking in the perspective that it was, that platoon sergeant had been the platoon commander of that platoon for several years as a (b)(7)(C) (b)(7)(C) and was -- probably assumed a certain ownership with the platoon and closeness with the Marines. And having someone -- I don't think it mattered if (b)(7)(C). If it was anybody coming in as a new platoon commander, there would have been a natural little bit of friction there, but I don't think that was anything that contributed to (b)(7)(C).
- Q. And that was particularly so because everybody knew that (b)(7)(C) would be heading into war?
- A. I think that might have accentuated it slightly, yes.
- Q. And as the I&I, you have a special responsibility to ensure that the interaction and the efforts of the officers to reserve offices there, are doing their job and, you know, leading Marines and being Marines. Right?
- A. Yes.
- Q. And what observations and what thoughts did you have about the way and manner in which (b)(7)(C) was preparing his Marines for combat?
- A. Well, I thought he was doing very well. And when we got to Iraq, I only had one time to work with (b)(7)(C) tactically in Iraq, and that was our first movement from Kuwait to Iraq. We had a 75 vehicle convoy of all the Battalions wheeled assets. We were taken up North, about 350-miles into Iraq and (b)(7)(C) served as my security officer for that movement. He and his Marines performed superbly. We didn't have a single incident on the way up and he did a great job.
- Q. And did you work closely with (b)(7)(C) as he was prepare for that particular mission?
- A. Absolutely. We put the order together and we were very thorough in briefing. We wanted to let the Marines know this was the real deal and not just another drill, so our issuing of orders and briefing, everything was very thorough and (b)(7)(C) participated in that also.

- Q. And did you, did you consider his efforts to be certainly commensurate with his grade or above?
- A. Certainly.
- Q. All right. Now, once you get into -- and sort of backing track here -- and taking in a snap shot a couple of months before you were in Iraq and a couple of months in Iraq, having been in (b)(7)(C) (b)(7)(C) can you, can you talk a little bit about some of the internal problems which existed in (b)(7)(C)?
- A. Sure. We suffered from a shortage of staff NCOs. Typically, we rate eight at the (b)(7)(C) and we would have anywhere usually, from two to four staff NCOs, so there was always a gap between Majors and Captains and down to the NCO level. So, it was our problem. There's also problems in an infantry company, various types of personnel turnover, things of this nature, but those things are natural and they are overcome.
- Q. Did -- during the time in the early portion of Iraq, were you aware of whether (b)(7)(C) had problems with (b)(7)(C)?
- A. I was aware of that, yes.
- Q. Now, during the time that (b)(7)(C) was in Iraq, you were assigned to a different area of operations with Battalion. Right?
- A. Yes.
- Q. What were your duties in that context?
- A. On the way over and once we got into Iraq, I was the (b)(7)(C) for the battalion. And once the major hostilities ceased, I was assigned to training Iraqi security forces in Al Kut, which is the same city that the Battalion was at. I was on my own with several Marines working with me.
- Q. And this was towards -- this is in the July timeframe?
- A. It was actually, we started recruiting in early June but we probably didn't get training up until about the end of June, 1 July.
- Q. Okay. Can you talk a little bit about what this program was and what it was supposed to accomplish?

- A. Essentially, I was tasked with creating and training a Battalion sized unit of Iraqi Security Forces for use in the Wassi province, which included recruiting, training, and then deployment throughout the province at all the government facilities and municipalities throughout the province.
- Q. Now, at some point while you were in Iraq, you became aware that (b)(7)(C) had been NJP'd and relieved from his job. Right?
- A. Correct.
- Q. And at some point, did you seek to, did you seek him out or invite him to work for you on training the FP --
- A. FPS, yes.
- Q. FPS.
- A. I did. It was initially, I think, after his relief, he was assigned to work in the 2 shop under (b)(7)(C) (b)(7)(C) who was another one of the who was serving as Battalion. And I asked him -- he and I were good friends being fellow (b)(7)(C) and I knew that his workload and the amount of work he probably had for (b)(7)(C) would have been minimal, and so I approached him about possibly getting (b)(7)(C) to work for me.
- Q. Were you interested in having his talents that you had been familiar with being a part of your team?
- A. Absolutely.
- Q. And what was it that you thought he could add and contribute to your effort?
- A. Well, I think (b)(7)(C) -- once again, on the average looking at a lot of the reserve officers who were available to assist me -- was the most infantryman like in his kind of outlook on things. He was a tough guy, physical fit guy, very confident. I could give him a task and I know he would go out and do it and get it done. So, I never had a problem with what he did for me.
- Q. Now, I know you weren't involved in (b)(7)(C) business when the problems occurred with the checkpoint and this detainee thing, but through the grapevine, you became aware of that. Right?
- A. I did. And it was not until I heard that (b)(7)(C) was

going to be relieved that there was an investigation pending.

- Q. And you were one of the officers who volunteered to speak up, who spoke on (b)(7)(C) behalf at the NJP. Correct?
- A. Correct.
- Q. Did you feel that you had much of an opportunity to talk about (b)(7)(C) traits during that process?
- A. Probably not in the detail that I would have liked.
- Q. Why is that?
- A. I'm not sure exactly.
- Q. Did the General limit what he wanted you or limit the amount of information that he made available for you to provide?
- A. I think he, intentionally or unintentionally, by the questions that he asked, that was the limit of it.
- Q. Because you were familiar with the fact that he had been relieved, you understood that he had been in trouble as a result of conduct towards Iraqis?
- A. Yes, yes.
- Q. Did you have any concerns in your mind in light of that, having him work for you with these Iraqis that you were training to be police officers?
- A. Absolutely not.
- Q. Could you explain why?
- A. Well, I guess, it is kind of a complicated answer. (b)(7)(C) performed well for me. I don't know if it was, perhaps, my particular style or experience or relationship. I knew that I could give him my intent and guidance and that it would be followed. And, really, when I asked him to come work for me, I wasn't really concerned if he had a problem interacting.
- Q. Because of your confidence in your leadership skills?
- A. Right.
- Q. As an I&I, of course, you have a unique role in somewhat evaluating the reserve officers that are

working for you, but did you have some concerns with the leadership that (b)(7)(C) had been providing at (b)(7)(C)?

A.

Yes.

Q.

Could you elaborate on that?

A.

I can. He was an adjutant on active duty and spent some time in the reserves, I think, with a track unit and had never really -- other than being a platoon commander -- a drilling platoon commander, never really had any substantial leadership experience. At the time, he was a platoon commander, certainly at (b)(7)(C) he had a very, very experienced (b)(7)(C) working with the platoon. It was the same (b)(7)(C) that was (b)(7)(C) platoon sergeant. Very competent, very capable which, in my estimation, probably didn't require him to do a whole heck of a lot.

Q.

What were some other problems that you saw in (b)(7)(C) leadership within (b)(7)(C)?

A.

I think, more than anything, based on his lack of experience in action, maybe taking too long to address certain problems and inability to correct problems in a timely and decisive manner.

Q.

Do you think that (b)(7)(C) is a good officer?

A.

I do. He certainly worked very well for me.

CCFR:

Sir, I don't think I have any other questions for you. Thank you.

WIT:

Okay.

REC:

Good afternoon, sir.

CROSS-EXAMINATION

Questions by the Recorder:

Q.

Sir, as part of your training of Iraqi police force, what was your duties, or their duties, after they were trained?

A.

Once they were trained and we'd established steps of force and unarmed force, various facilities throughout the province that Marines were guarding,

they took over those roles incrementally. It was kind of an essential part of our Battalion leaving Iraq was that we handed that over to the Iraqis.

Q. Were they put in charge of guarding ASPs?

A. Yes, they were.

Q. When did they start guarding ASPs, sir?

A. I don't remember exactly. There were three different ASPs that we assumed control of during the month of August.

Q. Did Iraqis trespass in those ASPs?

A. Absolutely.

Q. In August?

A. Yes, everyday. It was not unique.

Q. Okay. How did you process those Iraqis who trespassed?

A. We had established a guard force at each of the ASPs and they didn't have vehicles of their own. They were on foot, so when they caught trespassers, they would collect them up, we would make rounds to all the various sites during the day and when they had detainees for us, we would pick them up and take them to the police headquarters that was nearest the ASP in question.

Q. Ever have a repeat offender come back over and over again?

A. All the time.

Q. Did you ever -- did any of the Iraqi police force ever strip down any of these Iraqi offenders?

A. No.

Q. Did they ever, when they had possessions or personal belongings, burn their personal belongings?

A. No.

Q. Why is that?

A. Well, I don't think you would see that kind of interaction between Iraqis. Most of them knew each other in Al Kut. It was like a little big city. It was fairly sizable, but everyone seemed to know someone who knew someone. So, the chances of reprisals or things of this nature, they usually

handle each other as delicately as possible in situations like that so they wouldn't come back the next day with a gun.

Q. How about as a Marine, would you have advised (b)(7)(C) or condoned him in his actions of having his Marines strip down Iraqis?

A. I would not have, no.

Q. How about burning Iraqi's personal belongings even if they did have bugs on them?

A. I mean, generally speaking, I would say no, but I wasn't there, I don't know the situation, the specifics. I know kind of generally what happened, but generally speaking, I wouldn't have probably done that.

REC: Nothing further, sir. Thank you.

SRMBR: Okay.

MBR (b)(7)(C): Well, you just answered on of my questions, so I won't go there

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

Q. In the amount of time that you have been exposed to (b)(7)(C), would you say that his leadership style and leadership traits -- you characterized him as being the most infantry like of all the platoon commanders you had in the unit.

A. Would you characterize his leadership style and traits as positive and worthy of continued service? Well, sir -- and I haven't had a chance to talk to (b)(7)(C) a whole lot since we have been back, so it's a difficult question to answer. But I would say this -- and you probably know the answer having listened to the testimony today. If (b)(7)(C) has showed an acceptance for responsibility for what he did and was incorrect, I would certainly agree that he should be retained.

MBR (b)(7)(C): That's all I have.

SRMBR: Before we go, we missed the redirect. Did you have anything else before we --

CCFR: I did not have anything else further, sir.

SRMBR: Thank you.

(b)(7)(C)

Questions by MBR (b)(7)(C):

- Q. Good afternoon. Did you notice anything different in his behavior or leadership abilities after the incident when he came to you in FBS as opposed to before you deployed?
- A. Sir, I did not. When I saw him at the airfield on a few occasions before he came to work for me, as any officer in his situation, he was a little bit down, but he seemed to get right back into the swing of things as soon as he came to work for me.
- Q. If you could address for me the Battalion commander's involvement in his role as the leader of the Battalion as well as in the handling of this situation, how it went the way it did and is this the only way it could have gone.
- A. Sir, I don't know if this is the only way it could have gone. I think it's probably something that may have been able to be handled at the Battalion level, but it got very high visibility very quickly. The Colonel's involvement in the Battalion was largely limited because of his duties as the governor of the Province. The amount of time that we saw him, at the Battalion CP -- and I wasn't there that often myself -- but he would typically be there at the staff meeting in the morning and at the end of day, he would be there. But most of the day would be spent out doing his provincial duties.
- Q. The last question I have is at IOC, how detailed and involved can you explain the Law of Land Warfare and POW handling and detainee handling, how big is that package at IOC?
- A. Well, sir, I don't recall exactly or even more specifically, the package. I know that, yeah, we were all instructed on it. It's something that, I guess -- I think, I personally have a natural sense for it -- can look at a situation whether it's

really my instincts, will tell me that it's probably even if it's along the line, I'll go the right way. I can make a decision in that situation. It's a difficult situation. It's difficult to look through eyes here in New Orleans. If you are not there on the ground facing those frustrations in the heat with those same guys day after day coming back to steal ordnance and the same guys you are rounding up and, not to justify what (b)(7)(C) did, but it's a difficult situation SASO operations are one of the most difficult situations for an infantryman to be in.

MBR (b)(7)(C): Okay. That's all.

SRMR: Okay. I have a couple of questions.

WIT: Yes, sir.

Questions by the SRMR:

- Q. Who did you consult before joining (b)(7)(C) to the unit? Did you talk to (b)(7)(C)?
- A. Yes, sir, I did. I think I even had a conversation with the Battalion commander.
- Q. Did you talk to him on the phone?
- A. Yes, sir. I told him I had a perspective officer to join. Told him about his background, that he had been an academy grad and things of this nature. I was very impressed by him and they were very happy to have him. I don't know that the Battalion commander got a chance to meet (b)(7)(C) before he was joined, but I'm sure he did shortly after. He's local --
- Q. Did (b)(7)(C) ?
- A. Yes, (b)(7)(C) did.
- Q. He did?
- A. As far as I recall.
- Q. Okay. Just from your perspective, what was the relationship between (b)(7)(C) and (b)(7)(C) (b)(7)(C)?
- A. I think, sir, initially they had a good relationship. Knowing (b)(7)(C), like I said, he is a very aggressive gung ho type of guy and one of those

guys that's either, follow me or get the hell out of my way. And I think (b)(7)(C) hesitation or lack of guidance -- (b)(7)(C) was a platoon commander and lead his Marines.

Q. But its fair to say that the gung ho nature of (b)(7)(C) would cause friction with the more laid back, apparently more laid back, (b)(7)(C)

A. Sir, I think that is probably fair to say.

Q. Okay.

A. Yes, sir.

SRMBR: That's all the questions I have.

Does either counsel have anymore questions?

REC: I have no questions, sir.

CCFR: Sir, I apologize. I think I do have a few more.

RECROSS-EXAMINATION

Questions by the civilian counsel:

Q. Do you recall -- going back to when (b)(7)(C) joined the FBS, did you have any interaction with the Battalion XO concerning (b)(7)(C) while working for you?

A. No. Conversations pertaining to really what he had done other than just letting him know that, nobody ever actually gave me permission and said, here, you can have (b)(7)(C). I just pretty much went up, (b)(7)(C) (b)(7)(C) said he didn't really need him, I told the XO, he doesn't need him, I'm going to take him.

Q. So you had communicated to (b)(7)(C) ?

A. Yes.

Q. And did (b)(7)(C) at that time express any concern that he had to you?

A. He said, well, do you feel comfortable with that based on the nature. I said absolutely.

Q. Did he indicate to you that he was angry at all?

A. At me for asking or --

Q. You for asking?
A. No he didn't. We're good friends.

CCFR: Sir, thank you.

SRMBR: Okay. Thank you very much.

The witness was excused from telephonic testimony.

CCFR: Sir, we'll call our next witness, which is (b)(7)(C).
(b)(7)(C).

SRMBR: Yes.

(b)(7)(C) U.S. Marine Corps Reserve, was called as a witness by the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. If you will, state your name and spell your last name?
A. (b)(7)(C), (b)(7)(C).
Q. Are you a member of the USMCR?
A. Yes, I am.
Q. What is your billet and duty station in the USMCR?
A. I am the (b)(7)(C) of (b)(7)(C) and I'm a (b)(7)(C).

Questions by the civilian counsel:

Q. Good afternoon, (b)(7)(C). Would you please give a brief introduction about your military background to the members?

A.

(b)(7)(C)

Q. You are the platoon commander for what?

A. (b)(7)(C) platoon, (b)(7)(C)

Q. Do you know (b)(7)(C)?

A. I do.

Q. How did you get to know and meet (b)(7)(C)?

A. I met (b)(7)(C) when he joined the unit in the Fall of 2002 and we served together during Operation Iraqi Freedom.

Q. In the time that you have known him, have you developed any opinions about (b)(7)(C) as an officer?

A. We developed a repoir during the workups for that.

Q. What are you comments and thoughts about (b)(7)(C) as a Marine Corps officer?

A. Professional, conscientious, intelligent, well rounded.

Q. Did he seem to work hard?

A. He did. He worked very hard to learn his billet as a new platoon commander for (b)(7)(C).

Q. Did you get a chance to work with him as a peer and see how he ran his platoon?

A. Limitedly with his platoon, but I did observe him as, in the capacity of staff meetings and planning.

Q. Okay. And did it seem to you that (b)(7)(C) was making progress in understanding the infantry world?

A. (b)(7)(C) made a very concerted effort to learn his MOS, to learn his platoon, and I think he worked very hard at that.

Q. You mentioned a comment that he is a very conscientious person?

A. Yes.

Q. What do you base that on?

A. Conversations. Him wanting to study tactics, develop plans, and to know his people.

Q. Okay. Did you ever get a chance to see (b)(7)(C) interact with (b)(7)(C)?

A. Yeah. He was our company commander.

Q. Did you come up with any opinions as to what the relationship was like between (b)(7)(C) and (b)(7)(C)?

A. At what point?

Q. At any point.

A. Yeah.

Q. Okay. Did you have a concern that (b)(7)(C) didn't like (b)(7)(C)?

A. I don't know if he disliked (b)(7)(C). He never told me that he disliked (b)(7)(C). So I didn't get any feelings that it was anything personally against him that he just didn't like him.

Q. Did you have any observation that it seemed like there was a good relationship there?

A. In the beginning, I would say, yes.

Q. Did you notice if they changed at all as you got into Iraq?

A. Towards the end of our tour, yes.

Q. Okay. Towards the end, what was it you observed concerning that relationship?

A. Friction.

Q. Over what types of things?

A. I guess that we were looking for a little stronger stance from the commanding Officer so it was a little strain between the commander and his platoon commanders.

Q. You say platoon commanders plurally. Do you put yourself in that group?

A. I do.

Q. Did you have some frustrations with (b)(7)(C) because of a lack of guidance?

A. I did.

Q. Did you feel that your relationship was strained with (b)(7)(C) because of what you felt was some minor guidance?

A. I did.

Q. Was there ever a time in which (b)(7)(C) had somehow restricted you to, you know, the company vicinity or something like that?

A. I was ordered not to patrol with my platoon any longer for a while.

Q. He ordered you not to patrol with your platoon?
A. He did.

Q. And was that like a disciplinary type of thing?
A. I think so.

Q. So what were you supposed to do?
A. I didn't have any guidance on that, I don't know.

Q. So who was leading your platoon?
A. Nobody. Well, I was still involved with my platoon, I just couldn't patrol with them.

Q. And that was (b)(7)(C) call?
A. Yes.

Q. What did you think of that?
A. Well, personally, I didn't like it but professionally I had to obey it.

Q. Did you think that was potentially something that like warranted requesting mast or going to the Battalion?
A. Not at that time.

Q. At some point later?
A. But I didn't have to, it probably would have warranted that, sure, but I didn't have to. He relaxed that.

Q. Eventually?
A. Eventually, sure.

Q. Can we talk a little bit about the incident that happened between you and (b)(7)(C)?
A. Okay.

Q. What happened?
A. You, Gentlemen, want to hear that?

SRMBR: He asked.

WIT: Where would you like me to begin because that is a pretty lengthy story?

Questions by the civilian counsel continued:

Q. My understanding is that there was an incident in

A. which there was fight between the two of you.
 Okay. You want me to pick up there?

Q. Please.

A. I guess what's relevant to this, (b)(7)(C) I mean, as I was -- the commanding officer went on a raid, left me in charge of the company to move from one position to the next. I had specific orders from the company as a staff, we all developed a plan of action and this is how I wanted it to go and the following day, the plan was not executed very well. We got to our new position, (b)(7)(C) being the (b)(7)(C) platoon commander, and I went to the tops of different roofs, different positions deciding where we should place the machine guns, without making any final decisions; but just part of the planning process.

(b)(7)(C) was irate when we came back down from the roof tops and he pulled me, asked me to come outside so he could talk to me. Went outside and started to curse at me and counsel me like a PFC. So that's --

Q. Was this in front of the rest of the Marines?

A. It was.

Q. And how did you respond?

A. I told him to calm down and we could go away from the area and talk about it and he said "F" you. So I pushed him and I told him he was relieved, pack his stuff, he was going to the Sergeant Major, and he could sit and wait there until the CO comes back.

Q. When the CO came back, did he get reinstated?

A. He did.

Q. And whose call was it to reinstate him?

A. I assumed the company commander's.

Q. Which would be (b)(7)(C)?

A. Yes.

Q. (b)(7)(C) I don't have any other -- oh, I do. Knowing and having experienced and working with (b)(7)(C) is he somebody you would go back to combat with?

A. Sure, I would.

Q. You have any hesitation?
A. No.

CCFR: Thank you.

CROSS-EXAMINATION

Questions by the Recorder:

Q. Were you on emergency leave on the dates of the incidences that we are talking about at this BOI in late June?
A. Yes.

Q. So, you weren't present when these things happened?
A. That's correct.

Q. But would you agree with me that being an officer of Marines is a privilege?
A. Yes.

Q. That is something that the individual officer has responsibility and accountability for?
A. Yes.

Q. And that whatever else is going on with that officer, that that officer still has a duty to do his or her duties?
A. Certainly.

REC: Thank you.

SRMBR: Okay. Questions from the board members.

MBR (b)(7)(C): Okay (b)(7)(C) I'm (b)(7)(C)
(b)(7)(C)

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

Q. First thing I want to ask you is, you said you went to IOC. The full class or the short class?
A. The short class in 2002.

Q. Okay. In during the work ups -- and I have asked this question to several of the other witnesses -- did you or any of the Marines in the unit receive any specific training on the handling of detainees prior to the deployment or during deployment?

A. The training we received was just the Rules of Engagement brief.

Q. ROE and how to handle EPW?

A. Not specifically handing EPWs, but the ROE.

Q. Okay. Just the ROE itself. Okay. (b)(7)(C) ordered you not to go on patrol with your unit.

A. Did he give you a rationale as to why? He told me I was too close to my platoon. (b)(7)(C) and I went to the command, actually to the Executive Officer, the Battalion for guidance and I think that upset him, so that was maybe part of the punishment. Although not specifically said, I just took it as, roger that, sir. After about a week and a half, that went away.

Q. Okay. This fight with the (b)(7)(C), you believe that (b)(7)(C) reinstated the (b)(7)(C)?

A. Sir, it could have been the Battalion commander, it could have been (b)(7)(C). I'm not really sure.

Q. Were you counselled as to the fight itself?

A. Yes, sir.

Q. And in that counseling, I mean, what came out of that?

A. For me to stay out of company affairs?

Q. I'm sorry. Say that again?

A. For me to stay out of company affairs, company business, and that was it as far as my reprimand.

Q. But the fight was because you and (b)(7)(C) went up and did your site survey in your planning?

A. Yes, sir.

Q. And the (b)(7)(C) didn't think that was the right thing to do?

A. He thought that was his job and he was upset that he was not included. Actually, he had developed his

own plan, and I think he communicated to (b)(7)(C) (b)(7)(C) about their specific plan, which I was not privied to them doing a site survey. I was not privied to any plan they had. So he became upset that I was developing a new plan, without -- and acting on any plan, he became so upset to where he had to say something about it. But the way it happened was wrong. So we, unfortunately had a little scuffle in front of a handful of Marines.

- Q. Okay. So (b)(7)(C) coming back to the unit. Was it ever explained to you by (b)(7)(C) or the XO why he was reinstated?
- A. There was a big push by the Sergeant Major to make things work out for (b)(7)(C) so.
- Q. But they didn't ever say why? Was it a shortage of staff NCO leadership, good old boy network?
- A. No, sir, I wasn't privied to that.
- Q. So no one gave you a specific reason other than, just work it out?
- A. Yes, sir.
- Q. Do you have an additional 0302 MOS or are you just currently in an OJT status?
- A. Yes, sir.
- Q. Which one?
- A. It's formally been changed 0302, but I was a 6002 up until -- in the books, it was just recently changed.
- Q. Okay.
- A. But I had the two years of OJT, 0302, and the school in 2002.
- Q. Okay. So your elevation to (b)(7)(C)?
- A. Is recent, sir.
- Q. How resent?
- A. January, sir.
- Q. Okay. And the CO doesn't have an issue with that?
- A. As (b)(7)(C)?
- Q. Yeah.
- A. No, sir. He appointed me (b)(7)(C).

MBR (b)(7)(C): That's all I have, sir.

MBR (b)(7)(C): Good morning, (b)(7)(C).

WIT: Yes, sir.

Questions by MBR (b)(7)(C):

Q. For the months of May and June, how often did you interact with (b)(7)(C) regarding mission tactics and mission responsibilities that each of you had?

A. As peers, everyday.

Q. And did you have repeat infiltrators in your areas that you had to deal with?

A. I never pulled any ASP duty, I did a lot of patrolling.

Q. You discussed handling strategies and how to handle the Iraqis in whatever different aspects you said you had to deal with?

A. Not specifically with my peers, no, sir.

MBR (b)(7)(C): I have no further questions. Thanks.

SRMBR: I have no questions.

Questions by the counsel?

REC: I just have a follow up question on one of (b)(7)(C) (b)(7)(C) questions, sir.

SRMBR: Okay.

RECROSS-EXAMINATION

Questions by the Recorder:

Q. (b)(7)(C) I'm going to show you Respondent's Exhibit 10 -- Recorder's Exhibit 10. It's the ROEs for 1st Marine Division. You mentioned was training of the ROEs. Is this that training, if you recall? Have you seen that document?

A. Not that specific document, but I have -- we had crib sheets we used.

Q. Okay. Were the things that are mentioned in this document, was that the ROE training that you had been given in Kuwait?
A. Yes, it is.
Q. Okay. And this is prior -- obviously that was prior to you going into Iraq?
A. Yes.
REC: Okay. Thank you.
SRMBR: Okay. Any other questions?
CCFR: Yes, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) when you were told -- after (b)(7)(C) came back from this incident, you were told to stay out of company business. What did you understand that to mean?
A. Ordered me not to act as one of the staff members, to stay as a platoon commander. Although when I was told not to actually patrol with my platoon, that I was too close, I received that as a punishment for the fight that incurred that cost (b)(7)(C) problems with the Battalion commander. So I didn't argue the point, but I was disappointed in that call, but it's his company.
Q. Were you ever present in a situation where (b)(7)(C) had told you and (b)(7)(C) that you could receive orders from either First Sergeant or (b)(7)(C) for the company?
A. Did I ever hear that?
Q. Yeah.
A. No.
CCFR: I have no further questions, sir.
SRMBR: Okay. Anything? Okay.
Thank you, (b)(7)(C), you are dismissed.

WIT: Yes, sir.

The witness was excused and exited the courtroom.

CCFR: Do you want to take a quick break here?

SRMBR: Who's your next witness?

CCFR: Yes, sir. (b)(7)(C)

(b)(7)(C), U.S. Marine Corps, was called as a witness by the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. A couple of preliminary questions. Would you state your name for the record and spell your last name?

A. (b)(7)(C) (b)(7)(C)

Q. Are you a regular Marine, active duty Marine?

A. Yes, ma'am.

Q. What is your billet and present duty station?

A. I am (b)(7)(C) I'm the (b)(7)(C) for that company.

REC: Thank you.

Questions by the civilian counsel:

Q. Good morning, (b)(7)(C).

If you would, please introduce yourself to the members and give a little bit of a background as to your military experience and history. You may sit, by the way, too.

A. Gentlemen, I am (b)(7)(C). I have been in for approximately 19 years. I spent a three year tour

(b)(7)(C)

Q. Okay. Do you know (b)(7)(C) ?
A. Yes, sir.

Q. And when was it you first met him?
A. I think it was around November or December timeframe 2002.

Q. Okay. And this was when he was drilling at (b)(7)(C).
Right?
A. Yes, sir.

Q. And at the time (b)(7)(C) came onboard with (b)(7)(C), what platoon did he go into?
A. The (b)(7)(C) sir.

Q. And who was the platoon commander before?
A. (b)(7)(C).

Q. And are you close with (b)(7)(C)?
A. Not particularly, sir.

Q. Do you know of him?
A. Yes, sir.

Q. When (b)(7)(C) became platoon commander, do you have any knowledge as to whether (b)(7)(C) (b)(7)(C) was put off, perhaps, by the fact his job had been taken?
A. I could say with reasonable assurance that he was, in fact, put off that his job had been taken and he was like anybody else. I mean, (b)(7)(C) coming in, instituting his changes etctera, like everybody else, he had some resistance to those changes.

Q. It wasn't just because of (b)(7)(C) as much as being the fact that he was being replaced from his job?
A. Yes, sir. I mean, it would have been too early in the relationship period to be put off by anybody's specific personality, just the fact that he was no longer the man in charge.

Q. And, as a member of the (b)(7)(C), what observations did you have with (b)(7)(C) learning to become an infantry officer?
A. He was pretty diligent. I mean, he came in and asked for the publications and any information I

might have had, (b)(7)(C) platoon operations, (b)(7)(C) platoon operations, and he was trying to assimilate in there as quickly as he could.

Q. You understand he wasn't an 0302?

A. Yes, sir.

Q. Okay. And you headed out to Iraq with (b)(7)(C). Right?

A. Yes, sir.

Q. What was your role when you were over there with (b)(7)(C)?

A. As the (b)(7)(C) at times, I would sort of fill in as the (b)(7)(C) in a limited capacity. At times, I would fill in as the (b)(7)(C), depending on who was available at the time.

Q. In your responsibilities in the (b)(7)(C), did you have any knowledge about the responsibilities at (b)(7)(C) -- had some ASPs in Al Kut?

A. Yes, sir.

Q. And what understanding did you have about the threat situation with those ASPs?

A. The biggest threat being the unexploded ordnance and some of the ordnance out there being -- it had been contaminated by a lot of the Iraqi looters and thieves that were out there. They had taken it out of the original packaging, they just got propellant all over the fricken place, you know. God only knows what they might have done with some of system munitions, i.e., the fuses, the things like that, to go along with the artillery shells and everything else that was out there.

Q. Did you ever have any concerns while you were there that some of this unexploded ordnance could have fallen into the hands of people who were trying to hurt our Marines and soldiers?

A. Yes, sir. I mean, that was always a concern.

Q. That was always your concern or always the Battalion's concern?

A. I would think that would have to be everybody out there that was guarding that ASP's concern. I mean, there was, we were in a fair proximity to Iran. There were some Iranian agents operating in the Al

Kut area that we knew of as well as just there may have well been some disgruntled Iraqis that -- I mean, we took fire probably not on a daily basis, but probably every three, four, five days we'd take fire. Nothing of any large caliber or anything, but you would feel overtly threatened by it, but enough to give you the sense that those people didn't necessarily like us there.

Q. You were aware that the [REDACTED] position was the barracks formerly used by the Saddam Fedayeen?

A. Yes, sir.

Q. And you understood that Saddam Fedayeen to be some pretty bad people?

A. Yes, sir.

Q. And one of the ASPs was an ASP for the Iraqi Republican Guard?

A. Yes, sir.

Q. Was this commonly understood for the battalion staff?

A. I would think so. I mean, I don't know, at least the Republican Guard ASP. I mean, everybody had to have known that. It was never -- I mean, I wouldn't say it was published in an order, that, oh, this is a Republican Guard, but the Republican Guard compound was here and the ASP was right next to it. It had to be -- the connection would not have been very hard to make.

Q. Did anyone ever discuss a concern that possibly some of these former members of Saddam Fedayeen who were using the old [REDACTED] facility and some of the members of the Iraqi Republican Guard were still out there living in Al Kut?

A. We knew they were out there. Of course, they didn't go anywhere. I mean, they just took their uniforms off and blended in with the civilian population. Threw down their weapons or whatever. That was the whole purpose of the civilian defense force that we were trying to put together, the whole nine yards.

Q. You had this understanding when you were over in Iraq?

A. Yes, sir.

- Q. Do you recall having any discussion with anyone anybody in the Battalion staff about that?
- A. Not in particular, per se. I mean, I understood the vetting process that they were undergoing trying to find suitable members for the new civil service they were trying to elect, so on and so forth.

SRMBR: Where are you going with this, counsel?

CCFR: I'm going to move on, sir.

SRMBR: I was kind of losing your train, there.

CCFR: I'm sorry. Yes, sir.

Questions by the civilian counsel continued:

- Q. (b)(7)(C) while you were over -- while you were in operations, did you ever become aware of a situation involving the (b)(7)(C) where they had to leave an antenna behind?

A. Yes, sir.

- Q. What was your understanding about that situation?

A. Well, basically, pretty much without warning, the large ammunition supply point that would have been next to the Republican Guard area exploded. Whether that was caused by someone in the ASP or whether it was just caused by the ordnance itself being improperly stored and being very old and it being rather hot out, it just detonated, I don't know. But it was a rather large blast, probably in excess of five thousand pounds of explosives going off at once. The Marines that were out there guarding that ASP pulled back and began to evacuate that area. So in their haste to basically get out of the danger zone, they left some equipment back their at the ASP.

- Q. Were you aware that (b)(7)(C) ordered them not to go back there to retrieve it?

A. Not specifically, but I know they were not supposed to go probably within 2 or 3,000 meters of that area for at least 24 to 48 hours depending on when the last explosion was.

- Q. Where do you come up with that?

A. That was an EOD kind of running policy. They would

not go anywhere near the area within 24 hours after a recent explosion or fire.

- Q. And knowing what you knew about that situation, do you think that was a good move to leave that gear behind and get out of there as fast as they could?
- A. Given the situation, yes, sir. I mean, they did what they needed to do. Okay. You left an antenna and a couple of sleeping bags. It wasn't like you left weapons or any type of harmful ordnance. The antenna, being that we were rather short of them, we certainly would have liked to not left it, but when it comes down to leaving an antenna or possibly risking Marines getting blown up, then we will leave the antenna.
- Q. Would you want to work with (b)(7)(C) again if he was in the Marine Corps?
- A. As a caveat, I think that with a little more infantry training, I think, sure he'd be fine or, you know, working as a comm officer in that something that he was trained up into that capacity, I wouldn't have any reservations with it, sir.

CCFR: Thank you very much, (b)(7)(C).

CROSS-EXAMINATION

Questions by the Recorder:

- Q. (b)(7)(C), we spoke a day or two ago. Correct?
- A. Yes, ma'am.
- Q. And in that conversation, you mentioned something about the CNN factor?
- A. Yes, ma'am.
- Q. And the concept about us teaching Corporals. The members -- explain what you meant by that, particularly in context of this BOI.
- A. Probably just the fact that on the reserve side, if you compare say an active duty sergeant or an active duty Captain to a reserve Captain, those Marines have been overseas and they have done two or three deployments, they are used to ROEs, their used to working under the microscope, so to speak. So the active duty side gets a lot of training in the ROE,

gets a lot of training in and understands a little better, I think, the whole concept of the tactical Corporal as opposed to the reserve side that doesn't quite see -- as it was phrased, I have heard it phrased one time that they want the citizen soldiers because they bring a level of common sense to the battle field, where as sometimes, you know, the active duty side, there is missions where you are required to stand there and take it whether you believe you should or not.

- Q. We were talking about this in the context of the instances for which we are here today, of (b)(7)(C) had his Marines strip down the Iraqis and burning some of their personal belongings. And I asked if you would have advised on that course of conduct?
- A. Yes, ma'am. My answer was no, I wouldn't have. As far as stripping down the Iraqis that was probably, that was not the right answer or a solution to that problem. As far as burning any of the Iraqis property or anything, to me, it would have -- it posed no value one way or the other. I would have just left it or I would have thrown it back in the truck. I wouldn't have wasted my time or a pack of matches.
- Q. So the burning of the clothing doesn't make any sense to you?
- A. No, ma'am. I wouldn't see the point to it either way.
- Q. (b)(7)(C) seems to argue that the material was lice ridden and were possibly infectious and it could have been a health hazard to his Marines.
- Do you have a comment on that?
- A. Possibly, but then I wouldn't have touched them again.
- Q. Okay. You would have left it in the truck or left it on the side of the road?
- A. Yes, ma'am. I mean, if it posed no value to me, no military value, no intelligence value, I would have just left it.
- Q. And do you know, what are the sanitary conditions in Iraq?

- A. Rather hideous.
- Q. Why do you believe that stripping down the Iraqis was the wrong decision?
- A. I mean, this is a -- as we are all very well -- this is a Muslim's conservative country that dresses their women in their burbas and the whole nine yards. I mean, for them, any sort of public nudity or displays of affection or anything is very offensive to their religion, to their culture, so that's a big no no. The public ridicule, the whole nine yards, that's not the way to go with that. It doesn't win any public favor.
- Q. And you gave the response on direct about whether or not, (b)(7)(C) -- whether you would want to serve with (b)(7)(C) with a caveat?
- A. Yes, ma'am.
- Q. That caveat is either if he's in a different MOS or he gets more training?
- A. Yes, ma'am. I mean, how far out on this limb do I want to climb.
- Q. That's fine. Answer if you like, I don't want to push. I just want to clarify that.
- A. Yes, ma'am. I will qualify that saying that as I served with through the years in several different deployments with many different infantry battalions, these are all regular active duty infantry Battalions with Marines that served in command that that's what they have done for their entire time.
- In the Marine reserve community, that is not the case. As we have seen here today, you witness the only officer that comes in here that has a primary infantry MOS is (b)(7)(C). Every other officer under this command, including the company commander, all started out in a different MOS. So there is a difference in the level of experience that can be expected when serving under a reserve command. So, I guess I would qualify my statement with that, is it's different when you are working with people that have grown from boot camp on up doing a profession as opposed to trying to retrain a group of people that have had some training but not the level that you would see on the active duty side.

REC: Okay. I have nothing further.

SRMR: Okay. Questions from the board, (b)(7)(C)
(b)(7)(C)

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

- Q. (b)(7)(C), good afternoon.
- A. We don't know each other; do we?
- A. Sir, you have a familiar look, but I couldn't place it.
- Q. It's the haircut, it's got to be the haircut. It could be the shoes.
- A. The OE-34 is compatible with the PRK-113 and the O-117 only, if I'm not mistaken; is that correct?
- A. 119, or you could take it, you know, if you have got a vehicle plugged in, you hook it up to the amp and run a bigger antenna, I mean, it's just an antenna.
- Q. Yeah, but it's not common knowledge. If you were somebody out on the street and you just took it, you wouldn't know what to do with that?
- A. I wouldn't think so.
- Q. You said the EOD has had a running policy about everybody staying away 24 to 48 hours, at least two to three clicks away from a blast zone wherever there is ordnance going off.
- A. Yes, sir. Depending on the level. If there is a fire or smaller explosions, you know, the Marines might actually hold their post. But in this case, the EOD had been to some of these magazine areas before, so they knew which ones were okay. This one over here, it's on fire, but small arms or just bags of propellant or something like that, when it blows, it's not going to create a blast zone a thousand meters wide; where some of the other magazines -- I mean, these things were full of artillery shells or whatever. When it went off, it went off.
- Q. So the Republican Guard ASP was one of the bigger ones?

A. Yes, sir.

Q. And when it did, when the rounds started cooking off, it was hazardous?

A. Yes, sir.

Q. And so, in your opinion, the decision to vacate was a sound one?

A. Yes, sir.

Q. Okay.

A. I mean, those Marines, considering their proximity and some of those magazines were within two to three hundred meters of the outside perimeter of the berm. I mean, they were in fairly close proximity.

Q. Okay. In regards to the stripping incident, you said that it was probably not the right answer. And then you also, earlier on, made reference to what is commonly referred to as the CNN effect.

Do you believe that the course of events leading up to where we are today are based on political correctness and the CNN effect or is it just, it was just the wrong thing to do?

A. Perhaps some of both, sir. I mean, if you were in a less conservative country or, say, a European country, hypothetically where they would not look at that quite as harshly. I mean, they weren't stripped fully naked, so there might be other places where you can have somebody marched around in their underwear and that would be acceptable, whereas in the Middle East, that is unacceptable. So, I think it's a little of both.

Q. So did you notice, anywhere within the AOR, the company's AOR, was there any type of local reaction to the striping?

A. Sir, to my knowledge -- I was actually in the states due to a death in the family, so I was not present during the incident, so my knowledge is second or third hand at best; but no, sir, I am unaware of any public outcry or anything like that.

MBR (b)(7)(C) : Okay. Thank you. That's all I have.

SRMBR: (b)(7)(C) ?

Questions by MBR (b)(7)(C) :

- Q. (b)(7)(C), I just want to explore a little bit more to get a better visual on the infantry battalion reserve/active difference. Which active component infantry Battalions have you served with? Just give me a couple of them.
- A. 1/9, 1/1, 3/1, 1/5, 2/7.
- Q. Using (b)(7)(C), 2/8 from my experiences, as the (b)(7)(C) can you tell me what resources you had to set up your (b)(7)(C), your Battalion Command Center?
- A. We weren't on a Battalion level, sir. We were on a company level, but basically, we kept, obviously, a map of the operational area, log books for the radio log, rosters of personnel, various patrol overlays depending on who was out.
- Q. How long were you able to set up that CP there and how disciplined were the reporting procedures?
- A. The CP moved while I was back in the United States, so I would say, mid-June. It had moved from a compound that was kind of to the northeastern side of the city out to the western side of the city. So it would, I would assume during the one, the stripping incident, they probably hadn't been there very long, a week, two weeks, maybe.
- Q. How would you describe the overall company command and control and the Battalion command and control: strong, weak, inconsistent?
- A. I would say it was --
- Q. I mean, impossible given the current situation with everybody scattered to the winds.
- A. There was some rather large difficulties with command and control through the radio assets that we had. There were plenty of units that were strung out. This province is the size of Rhode Island. The Battalion did not have -- really have the communication assets to keep a very tight level of command and control. But overall, I would say the Battalion level command and control had to have been, you had to characterize it as weak at best. I mean, there was plenty of times when I called in saying, hey, I have two prisoners at (b)(7)(C). We have been here for fricken three weeks -- and they're asking me for my grid. I mean, you gotta be

kidding me. I've been here fricken three weeks, which was pretty much my response over the radio. Yelled at them a couple of times.

MBR (b)(7)(C): Thanks, (b)(7)(C).

That's all I have, sir.

SRMBR: Okay.

Questions by the SRMBR:

Q. (b)(7)(C) was the EOD policy or guidelines widely known, you know, the 24 to 48 hour, was that widely known throughout the Battalion or was that something you picked up from dealing with the teams?

A. I don't know about the Battalion, sir, because we picked up the missions specifically for the two ammunition supply points that we were guarding. The other ammunition supply points that were being guarded were more out towards Al Nasrieh or some of the other cities throughout the province. So what was going on or what they knew out there, I couldn't say. I wouldn't say it was, I know we knew because the EOD told (b)(7)(C) specifically at these ASPs. Whether or not they announced that through a Battalion policy letter or anything like that, I couldn't say.

Q. You don't know whether or not that was 1st Marine Division's policy?

A. No, sir.

SRMBR: Okay. Any question from the counsels?

REC: No, sir.

CCFR: No, sir.

SRMBR: Okay. That's all. Thank you very much, (b)(7)(C).

The witness was excused and exited the courtroom:

CCFR: Sir, I would like to ask that we take a quick recess. I believe all the out-of-state witnesses have been done.

SRMBR: How many more witness do you have?

CCFR: Well, sir, (b)(7)(C) would like to testify and we have (b)(7)(C) his father, and (b)(7)(C) (b)(7)(C) retired, would also like to testify.

SRMBR: Okay. Very good. Let's take about 20 minutes. Let's get back here at 1750.

CCFR: Yes, sir.

REC: Sir, for the record, the time is 1734 on 6 April.

The Board of Inquiry recessed at 1734 hours, 6 April 2004.

The Board of Inquiry was called to order at 1750 hours, 6 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the court recessed are again present. The recorder will note the time and date in the record of proceedings.

REC: Sir, the time is 1750 on 6 April.

SRMBR: Okay. Call your next witness.

CCFR: Thank you very much, sir. At this time, we'd like to call the respondent, (b)(7)(C) United States Marine Corps.

(b)(7)(C) U.S. Marine Corps Reserve, was called as a witness by the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. Are you the respondent in this case?
A. Yes, I am.

Questions by the civilian counsel:

Q. Good evening, (b)(7)(C).
A. Good evening.

Q. This is the first opportunity for the members to hear you and hear your side of what happened in

Iraq, but before we get into that, I'd like to have you talk a little bit about your background.

- A. Why don't you start from where you grew up?
Sure. I grew up in (b)(7)(C) I went to high school in (b)(7)(C). I was very active in a lot of extracurricular activities, both with sports and also the yearbook. I was editor for the yearbook for two years. I was on the track team, the baseball team, and also the basketball team for a while. Also, I was an Eagle Scout. I was very active in scouting up until the point I went to the Naval Academy, I was very active in scouting.
- Q. What year did you graduate high school?
A. I graduated in 1966.
- Q. What got you thinking about going into the Naval Academy?
A. Well, initially, my father was in the Marine Corps in Vietnam. He got out as a Captain. He was an artillery battery commander and BFO. He sort of got me initially interested in the Naval Service in general, both the Marine Corps and the Navy. And at that point, when I was young, I decided that I wanted to serve in some capacity. I wasn't sure if I wanted to be an officer or perhaps an enlisted man. But towards the end of my high school experience, I decided that I was going to try for both an ROTC scholarship and also try to get into the Naval Academy to be an officer.
- Q. And you got an appointment to the Naval Academy?
A. That's right.
- Q. What year did you graduate?
A. I graduated in 1966.
- Q. How was the Naval Academy?
A. Well, it was definitely a worthwhile experience. It was extremely difficult, but the people that I met there, I have been friends with since then. I anticipate being friends with them for the rest of my life.
- Q. And what was it that got you interested in the Marine Corps side of the Naval Service?
A. There are a total of 36 companies at the Naval

Academy and each company has one officer and only a Navy Lieutenant, and occasionally a Marine Captain who runs that. I watched the different officers very closely and the Marine Captains, I was much more impressed with. They took better care of their people, they were much more interested in their people's welfare, whether it was simple things like academics or also different types of issues that they might have. And I thought their bearing was very good.

Q. So you chose the Marine Corps way?

A. That's correct. I chose the Marines.

Q. And went to TBS and what, what company were you in?

A. I was in, I started off in (b)(7)(C) company. I broke my foot and so I had to go into holding for a month or two and then I completed my training in (b)(7)(C) company.

Q. And what did you do after you finished up at TBS?

A. When I was at the Naval Academy, I took the NFO test and got a flight contract. When I was at TBS, I talked to my SBC a couple of times and also my company commander about switching it to a ground MOS. I felt that I would probably like leading a platoon more than being a Naval Flight Officer. But they were very short of NFOs and essentially talked me out of it. I went down to Pensacola and was down there for just a short period of time and decided that was definitely not what I wanted to do and decided to switch to ground.

Q. All right. Where did that take you?

A. That took me into communications.

Q. And where did you attend your schooling in communications?

A. I went to Quantico. They have their Communications Information Systems Officer's Course in Quantico. It's a six month course. And after that, I deployed to Okinawa.

Q. And who did you -- on your deployment to Okinawa, what unit were you with?

A. I was with (b)(7)(C) Company.

- Q. And talk a little about your experience over there.
A. It was very positive. I was, I held two platoon commanding billets at the same time. I was the (b)(7)(C) Platoon Commander primarily. That was a position where (b)(7)(C) and (b)(7)(C) transported that information to the MEF. The other platoon that I ran was sort of a secondary duty. It was our (b)(7)(C) platoon. It was designed to be tasked out to the (b)(7)(C) (b)(7)(C)
- Q. And while you were over there with (b)(7)(C) did you get involved with what they call (b)(7)(C) (b)(7)(C)?
- A. That's correct. I was -- from the way I understand it, (b)(7)(C) was tasked with finding one communications officer throughout the MEF to send to (b)(7)(C) which was an (b)(7)(C) (b)(7)(C). My Battalion commander was tasked with finding one Lieutenant that he thought should go. He asked me if I wanted to do it. I thought about it, I said, absolutely, and volunteered to go.
- Q. And what did this (b)(7)(C) involve for you in that mission?
- A. It was sort of a dual mission. First of all, it was a very technical mission. I would work with -- I had a chief, a Navy chief, and had a radio operator, a radioman who worked with me. And we would go out and procure civilian equipment in Marisat, for example, and talk about radios. And then we would train detachments of radio operators, typically six or seven a month, because we did monthly deployments and these radio operators were detached to the small teams that would go out (b)(7)(C). The second portion of the mission was me actually deploying out there as a technical advisor and as a member of the teams, which would include digging, coordinating with the (b)(7)(C) (b)(7)(C)
- Q. So did you actually go into country?
- A. Yes.
- Q. And what countries did you go to in support of (b)(7)(C)?

(b)(7)(C) ?

A. We typically would phase in through (b)(7)(C). So we would go to (b)(7)(C) do our work up there, which was just a short period of time. I was in (b)(7)(C) for approximately one month and while there, I initially started off inspecting all the teams to see how they were doing. One of the radio operators had some sort of difficulty and he had to be transported out. He was an Air Force Sergeant, and so I picked up his duties and I became a radio operator for a Army Captain and his team of seven or eight people. And once that was finished, that was essentially the end of the (b)(7)(C). Later on, I went into (b)(7)(C) and that was about three weeks, maybe a little bit longer. Same type of deal, except in this case, we had a base camp that was (b)(7)(C).

(b)(7)(C) They had some communications issues out there. Actually, just flat out difficulties out there. Corrected those difficulties without too much of a problem. And from there, I just dug holes in the ground.

Q. Now, were you over there in a uniform capacity or were you dressed as civilians?

A. We were dressed in civilian clothes. Most of the

(b)(7)(C)

Q. What was your understanding of some of the sensitivity with diplomatic aspects of your mission over there?

A. Both of them were actually very sensitive being that they were (b)(7)(C). Two examples come very

(b)(7)(C)

(b)(7)(C)

- Q. And let me interrupt you. Question, did you understand it, did the folks that you were there with understand that you had a sense of responsibility to be good neighbors with these individuals to accomplish the mission?
- A. Absolutely, yes.
- Q. And did you feel that you and your Marines and soldiers and the other members of the team were successful in that?
- A. Yes, we were very successful.
- Q. How long were you involved in the (b)(7)(C) (b)(7)(C)?
- A. It was a six month TAD billet.
- Q. And after you finished up with that, where did you go?
- A. I returned to (b)(7)(C) (b)(7)(C). (b)(7)(C) Company had all their billets filled, so I was transferred to (b)(7)(C) Company and made the (b)(7)(C) for the Battalion as the (b)(7)(C).
- Q. And then from there, what was your next job?
- A. I went to Marine Corps Base Japan, (b)(7)(C). I was based out of Camp Foster, Okinawa and I became the (b)(7)(C) (b)(7)(C) for that section.
- Q. Ultimately, when did your active duty time wrap up?
- A. Well, I was at (b)(7)(C) for about 2 years and my active duty time wrapped up in (b)(7)(C).
- Q. Okay. And at that point, had you fulfilled your service obligations?
- A. Yes, I had fulfilled my service obligations.
- Q. And you decided to get out and do what?

- A. Well, I decided that I was going to do what a lot of young junior officers do, I was interested in sales and so I went to a lot of the junior officer hiring conferences and interviewed with a lot of companies and eventually got a position.
- Q. Who did you get this position with?
- A. I became a sales person for (b)(7)(C) Incorporated.
- Q. And that brought you down to (b)(7)(C) Right?
- A. That's right. It brought me down to (b)(7)(C).
- Q. Had you ever lived in (b)(7)(C) before?
- A. No, I never had.
- Q. And when you completed your service obligations, were you honorably discharged?
- A. Yes, I was.
- Q. Did you have any other responsibilities with the select Marine Corps reserve?
- A. No, I had none whatsoever.
- Q. So, you worked in the private sector, and how was that?
- A. Well, it was challenging, it was interesting. It was kind of a transition going from being a Marine to a salesman and it was definitely a change and I'm glad I made that decision.
- Q. Now, towards the -- at some point, you got interested in the Marine Corps reserves. How did that happen?
- A. Essentially, it was just from watching the news. It looked as if we were about to go to war, it looked as if we were about to go to war with Iraq. I felt as if I could be of some use to the Marine Corps. And I wanted to find a front line unit that I could join up with and potentially deploy. That's how I found (b)(7)(C). I called (b)(7)(C) and talked to him on several occasions, and essentially, he let me come on as platoon commander.
- Q. And you ended up with (b)(7)(C). That was your first exposure to being an infantry officer?
- A. That's correct.

- Q. Did you appreciate some of the responsibilities that you would have to have learning this new trade.
- A. Yes. I asked quite a few questions. I probably asked too many questions at some point; but I talked to (b)(7)(C) to try and learn from him; picked (b)(7)(C) brain quite a bit; tried to become familiar with call for fire and patrolling and vehicle tactics.
- Q. And did you try to acquire some PMs and things of that nature to get yourself schooled up on your trade?
- A. Uh-huh. I acquired quite a few of them, patrolling, the (b)(7)(C) (b)(7)(C) and I spent a couple of afternoons with maps in front of us and we would call fire missions back and forth. We even had a couple of radio operators come in and practice with us just to make sure our techniques were proper. And started to hump with some gear that I had purchased. Some of it with, sometimes with (b)(7)(C).
- Q. And you were the (b)(7)(C) Platoon commander.
- A. At that time I was the (b)(7)(C) platoon commander. It didn't become (b)(7)(C) platoon until we received a detachment of (b)(7)(C).
- Q. And once you received that detachment, you became the platoon commander?
- A. Right.
- Q. How was that?
- A. It was an interesting experience. It was actually very rewarding. It was difficult in a lot of respects because I hadn't been to either the IOC courses and so I was learning as I went. I relied very heavily on my staff NCOs and my NCOs to bring me up to speed. People like (b)(7)(C) and (b)(7)(C) spent a lot of time with me, taking apart and putting back together the (b)(7)(C) and going through the different types of tactics with those.
- Q. Okay. And when you finally got your platoon -- well, at some point (b)(7)(C) activated. Right?
- A. Right.
- Q. How many times did you drill with (b)(7)(C) prior to

- activation?
- A. I drilled with them starting in October. That was the rifle range and then after that, the Marine Corps ball; Toys-for-Tots; did a patrolling package; and then we deployed for mini CAX.
- Q. And after that, you activated?
- A. That's right.
- Q. What sort of things did you do to get your platoon ready for the responsibilities and missions that you had in Iraq?
- A. One of the first things I did was talked to (b)(7)(C) (b)(7)(C) to see what he thought our priority should be being that he had been with the (b)(7)(C) for such a long time. He got together with the different sergeants in the (b)(7)(C) section and they came up with four or five different types of training that he wanted to do. On the side, I wrote a few things that I wanted to accomplish, for example, NBC training, a lot of vehicle movements, especially at night. I wanted to get in as much shooting as possible and I wanted to get my NCOs used to directing the Marines.
- We added those things to what (b)(7)(C) (b)(7)(C) thought were important, to include; of course, more navigating and vehicle formations, which he was much more familiar than I was.
- And so, we spent a lot of time out in the field. When we weren't in the field, there were a lot of PME's that were going on. The sergeants would teach a lot of classes. I got a couple of the (b)(7)(C) Marines up at the schoolhouse to teach (b)(7)(C) to all of our guys and to use the simulators, so they became more familiar.
- Q. Okay. And at some point, the activation transitions into deployment. And when was that?
- A. We -- it was in the middle part of, middle part of April. That was when we flew out and we arrived in Kuwait and we were in Kuwait for roughly two weeks.
- Q. What sort of work and training did you conduct while you were in Kuwait?
- A. While there, we had heard quite a bit that land mines and basically improvised mines were a

difficulty that a lot of the Marine convoys had run into. So I had the battalion gunner give a couple of land mine classes, both on the familiarity of the weapon system itself, but also on the way that Iraqis were deploying them at that particular time.

Additionally, I created -- well, actually, I had one of my sergeants do this -- a 20-foot by 10-foot train model of Al Kut right there. I talked to the S-2 section, found out where the different units from (b)(7)(C) were located in Al Kut along with their different trouble spots to include one bridge where (b)(7)(C) was ambushed on. And I briefed my Marines with that.

- Q. And this was the same table your platoon set up?
A. That's correct, my platoon set it up.
- Q. And it was how big?
A. 20-feet by 10-feet.
- Q. And it was later used by other members of the Battalion?
A. That's right. (b)(7)(C) and his platoon used it afterward, sir.
- Q. Because at that point, you knew you were going to Al Kut?
A. Right. We knew we were going into Al Kut.
- Q. Now, did you know at that point, prior to going to Iraq that (b)(7)(C) platoon would have any responsibility for ASP missions?
A. No, we did not.
- Q. What were you being told would be your mission?
A. We were told that we would probably be doing a lot of long range patrolling. The Wasit Province, as you can see by that small map bordered by Iran in the North and a couple of other providences in the South, so we were expecting to go up and down the MSRs, which typically ran North/South from Badrah, which is on the Iranian border to Al Hay, which is right by the southern border of the province and from the East from Sieg Syed all the way to almost in Bagdad, which is where we ended.
- Q. If you want a reference, this is --

- A. I'm sorry.
- Q. You can do that and you'll be a little bit closer to the map so you can see.
- A. That was actually for that small map.
- Q. And, at some point, you get tasked with being involved with the convoy out to Al Kut?
- A. That's right. On the 29th on 4/29, we found out that we were going to be doing two convoys about 45 vehicles in each convoy going up to Al Kut. (b)(7)(C) (b)(7)(C) was one of the convoy commanders. I believe, (b)(7)(C) who was the (b)(7)(C), was the second convoy commander. (b)(7)(C) appointed me to be the (b)(7)(C). And so, once again, I got together with (b)(7)(C) and one or two of my other Marines and we tried to learn as much as possible about the tactical problems that convoys were having at that point.
- At that point, a lot of convoys had been ambushed by machine gun fire from the opposite side of bridges. So we came up with immediate action drills on how to deal with that. I had my point vehicles go forward of the actual convoy and check the rear side of the bridge whenever we came to one. We came up with immediate action drills for RPT attacks, something got hit by a land mine, and one or two other instances. After that, after we had those immediate action drills, I briefed the different (b)(7)(C) (b)(7)(C) on the convoy of how we were going to do that. And those elements weren't just (b)(7)(C) they also included the (b)(7)(C) platoons and also some (b)(7)(C) who were assisting in (b)(7)(C).
- Q. And then, eventually, was there a brief that you gave to a large number of Marines?
- A. Right. Around the 30th, (b)(7)(C) (b)(7)(C) (b)(7)(C) and myself briefed about 200 Marines on the convoy itself. It was practically everybody who was going to be on that convoy. (b)(7)(C) covered the initial portion, the situation. I covered a lot of the concept of operation, scheme and maneuver and the immediate action security type aspects of it. After that, (b)(7)(C) handled the communications and the admin part.
- Q. Okay. You rolled the convoy and how did it go?

- A. It went very well. We had very little problems with it. Perhaps looking back at it, it was just too big of a convoy, but we didn't have any difficulties getting up there.
- Q. Getting to Al Kut, when do you start learning about the responsibilities that you would have as (b)(7)(C) (b)(7)(C) Platoon commander?
- A. That took a little while to shake out. We got there on the 1st and for the first four or five days, we were interacting with 2/8. 2/8 had been the first three-week push up there. They had been in some pretty large battles, so they were very familiar with the area and also the Iraqi opposition. I started walking on a lot of patrols as an observer because, initially, 2/8 had their entire battalion staff and all their company grade officers walk with their enlisted Marines for the first week of being in Al Kut, just to familiarize themselves with the conditions. I did that and started to sit in vehicle patrols. (b)(7)(C) and myself, in addition to that, we started to do some patrols on our own. We used a lot of the different sectors and quadrants that 2/8 was using and slowly we worked our way up so the NCOs had walked on a couple of patrols in (b)(7)(C) then they started to drive with the 2/8 guys.
- Q- Now, I forgot to mention that or ask you of this, but before you left for Kuwait, do you recall any sort of ROE briefing that you received while in Kuwait?
- A. Yes. We had an ROE briefing from a First Lieutenant and his assistant. We didn't have any types of sheets that were given to us. They discussed a couple of situations, very vague type things for the most part. I remember overhearing some of the Marines afterwards being a little bit more confused about the ROE than they were before hand.
- Q. Did you receive any other ROE briefing while you were in Kuwait?
- A. No.
- Q. All right. So now you're in Al Kut, you are working with 2/8, obviously for the transition. When do you learn about the responsibilities that you would have in the ASPs?

A. I learned about two weeks into it. I think it was the second week of May, about two weeks after we had arrived. I knew that ASPs did exist around that area because I included them in my initial brief. 2/8 really wasn't guarding them to the level that we were expecting to be guarding them.

Q. (b)(7)(C) could you just draw on this, this board here, the rough area where you understood the (b)(7)(C) would have responsibility for ASP missions?

A. Sure. We started off with the ASP in the East.

Q. You can get up if you like.

A. Okay. This map is really is kind of hard to see because the Division, Republican Guard Division actually started right here. It extended roughly three to four clicks in this direction. The ASP itself was about three to three and a half clicks wide and it was five clicks long. Roughly 15 to 20 square miles. It had, I drove around this thing several times and you would actually see hundreds of rounds spilling out of three story high bunkers, 125 millimeter rounds, artillery rounds, just things all over the place. You would run across land mines just off the road. And the road being -- there was a circular trail -- actually, a rectangular trail going around the ASP, the land mines directly off that. Sometimes there was ammunition just off of that.

Q. Now, was there also, was there a second ASP that (b)(7)(C) had responsibility for?

A. Yes. That was the ASP that was eluded to earlier. That was about eight clicks up this highway heading towards Badrah, which is the border town on the Iranian border. It had, I saw at least two anti-aircraft guns there, Anti-aircraft guns the entire stay that I was with (b)(7)(C) Platoon had ammunition spilled all over the place. That ammunition was never policed up. Whoever put that ASP in, the American version of the ASP placed our position from 20 feet of approximately one hundred 40-millimeter rounds in the heat. There were also a couple of land mines that were marked off with rocks right by our Marines. This was primarily (b)(7)(C) (b)(7)(C) to cycle a squad to protect this. We received some added

ammunition later on from Blair field, Mark-19, rounds, 50-caliber rounds, and a lot of 762 rounds. They were primarily for (b)(7)(C) along with some ammunition for the other companies.

- Q. And that was stored at one of those ASPs?
A. That was stored on this northern ASP and that was stored in a little tent that was 20 feet from about a hundred 40-millimeter rounds in the sun. That was also where the Marines were guarding the entry point to that ASP. So, it was a dual ASP. It had Iraqi ordnance up there and it also had some of our ordnance.

- Q. Do you know what the rationale was for putting some of (b)(7)(C) ordnance there?

- A. Yes. The rationale was that they were going to set up a range roughly in this direction oriented, I believe. This way, for (b)(7)(C) and also

(b)(7)(C)

just completely flat ground going in this direction for miles. I couldn't tell you how far it was, it just went forever.

- Q. All right. You can have a seat.

Gentlemen, if I could direct your attention to Exhibit A -- and I don't intend to go through this entire thing, I just want (b)(7)(C) to explain to you what this exhibit is. We have heard a few incidences here today with issues of his judgment. I do not want to spend the time to go through all the single things that (b)(7)(C) did there, and that's what this is. So there's some comparison to the fact that, you know, the four incidences that are brought up here today wasn't the sole sum of (b)(7)(C) operations.

- A. Just briefly, describe what that exhibit is, please? Yes. Gentlemen, this is a log I put together concerning all the different operations and patrols that I went on and that I planned with my different sections -- with my different (b)(7)(C) sections. We had a variety of missions, but they could be broken down to several parts. First of all, we had to guard the ASP; secondly, (b)(7)(C) platoon developed, actually we

didn't develop, we stole this from the British in Northern Ireland, it's called Satellite Patrolling. We would support foot patrols that (b)(7)(C) and some of the other line companies would routinely do by vehicle patrols. And instead of just following along with the vehicles, we would actually have them take an erratic path through the different parts of town, roughly within 100 to 200 meters of the foot patrol to try to throw off anybody that could be trying to follow us and also to cover a greater area.

Additionally, I took part in several raids. In one raid, I was the (b)(7)(C) for a company reinforced raid on a factory. That factory was right here on the eastern side of the city. That raid included an LAR platoon, two (b)(7)(C) of mine, and over one company of infantry. And what I did, essentially, or what my responsibility was to quarant off this entire area right here, the West and the North and this portion and ensure that the raid was safely conducted and nobody would be able to get out. We thought this was a major arms' cache.

- Q. And the rest of this exhibit details other operations and patrols and various -- your entire history of some of the work that was done in Iraq?
- A. That's correct.
- Q. And members will have an opportunity to review that so we can get to some of the incidences which unfortunately bring you here today.
- A. At some point, do you recall being informed about (b)(7)(C) platoon's responsibility with an ASP?
- A. Yes. Once we were informed that we had to go out there and start guarding these things, roughly two weeks into the operation, (b)(7)(C) and I, we put together -- actually, he put together a rotation of how we were going to move the people in and out of there. The people being our troops. We were going to do a three day rotation and we discussed how we wanted to patrol that area.
- Q. Let me interrupt you. What point during the time, month, if you recall?
- A. That was May.

Q. End of May?

A. Towards the middle of May.

Q. Okay. And what do you recall as your mission parameters?

A. That was extremely difficult. I asked quite a few questions on what we were exactly supposed to be doing there, especially after seeing it, and seeing people move in and out it after the first few days that we were actually in there. I was told, essentially, that if we caught someone, it was up to the Iraqi police to deal with them. That was extremely difficult in that part of town because I only had four vehicles out there. And if I caught somebody, I would have to take two of those vehicles to take them to the police station. Mainly, because we didn't send a vehicle out by itself, generally. Rules of Engagement inside of that thing, I asked probably five times.

In the end, I ended up asking the (b)(7)(C) the day before I was relieved, what my Rules of Engagement were inside of the ASP. For (b)(7)(C) it was difficult to tell exactly what I was supposed to do. Essentially, myself and (b)(7)(C) started to create our own SOPs inside this thing. Later on, about the first part of June, we started to have a regular series of explosions inside of the ASP.

Q. Now, why was that a concern for you?

A. That was a concern for several different reasons. First of all, it was a concern for mission accomplishment. It's hard to guard something when it is regularly exploding. Secondly, the safety of my Marines was paramount. I had a Corporal get his rifle butt hit by a piece of shrapnel. He wasn't wearing his flak vest at the time because they were actually sitting down. The guys on guard duty were actually wearing all of their gear. He had his rifle in front of him like this. If he would have had it down half an inch, he would have been disembowed, he would have been killed.

Q. Was that (b)(7)(C)?

A. Yes, that was (b)(7)(C). My final concern -- actually, I had two other concerns. One is, I didn't know what this ammunition was going to be used for once it got outside of the ASP. We knew

that there was an arms' market down in the southern part of the city. Now, the arms' market was selling things like AK-47s, machine guns, and I believe, we captured some RPG parts, missiles, at one point that people were being sold. It was probable that some of those rounds were actually making their way to that arms market. And finally, a lot of Iraqis were getting killed or wounded going into this thing. Because, like some people said, probably the majority of the people going into that thing, were going there just to get some brass to sell. But once the explosions started to occur, people were getting killed left and right.

And typically, the Iraqis would set off the explosions. If they wanted to collect some brass, we kind of guessed by just seeing the remains of things, they would light increments or they would try to detonate artillery rounds, run like hell and hope they wouldn't get blown up, go back in, and get the stuff.

- Q. Now, did you ever come across situations that you are aware of, where Iraqi looters were actually stealing unexploded ordnance?
- A. That's difficult. The guys that went in at night shot at each other. I was actually out there when they were shooting at each other once or twice. In my mind, if you are going into an ASP with AK-47s and you find another group of Iraqis out there and you guys engage in a fire fight, you are probably not out there looking for brass. You are probably looking for ammunition to be used for something else.
- Q. And were your Marines capturing these detainees that were, these looters that were going into the ASP?
- A. We would try to capture them. We only captured a small number of them. In the middle part of June, I was informed by my sergeants -- and I actually saw this to a certain extent -- that a lot of Iraqis were dragging constantina wire across the patrol road and they were moving ordnance and putting it in the middle of the road. And so when my people would try to react to get them out of there, they had to stop, move the ordnance or go around the ordnance, move the constantina wire, and then continue.

Q. Okay. At some point, was there a situation where some of the Marines in your platoon left behind an antenna?

A. Yes.

Q. Would you talk about that a little bit?

A. Yes. That was towards the beginning when we were getting a lot of explosions, the beginning part of June. That was when things really started to explode, literally. I got sort of a frantic call from (b)(7)(C) who is (b)(7)(C), he's in charge of (b)(7)(C). And you could hear explosions in the background on the radio call, and he said, we're pulling back, the ASP is blowing up. And they pulled back from the initial part of the ASP, which is probably, the entrances would be located right about here, to a spot a good kilometer, a kilometer and a half behind it right there and they stopped.

Three members of the battalion staff went out there to check on them. I never really found out exactly who they were. I talked to (b)(7)(C)

about this for a few minutes. I think it was the XO, the S-3, and the EOD officer who was (b)(7)(C)

(b)(7)(C). The way (b)(7)(C) described it to me, and he said that the warrant officer suggested that there was really no reason or way that they could effectively guard this and he didn't see why we were out there. While this was occurring, I was getting a couple of vehicles together to go out there and check on this position to see what was going on. I got out there, the Battalion staff had already left. (b)(7)(C)

(b)(7)(C) described to me the situation, he described to me that multiple bunkers were exploding, fire balls were going all of the place, and that the position they were at, shrapnel was zinging by it. Now, the position that my Marines had fallen back to had a wide variety of unexploded ordnance around it itself.

They had -- I remember seeing at least two mortar rounds lying on the ground right by where these guys were located. And there was a land mine that my vehicle almost ran over right by these guys. I asked (b)(7)(C) what do you think about this position, you got all this stuff around you. He didn't feel too comfortable with it, but he asked

me after that, if he could go back into the ASP and retrieve an antenna, some sleeping bags, and some personal gear that was left behind.

Q. Now before that, had you received any report on what gear they did take back?

A. Yes. First thing I did when I got there, actually (b)(7)(C) told me right off, we got all our Marines. Nobody is injured. Got all our serialized weapons, all the serialized radios, all our crypto, all our vehicles are here. We didn't leave any ammunition behind. So right there, all the mission's essential equipment was with us.

Q. Okay. And later he asked you about the personal gear and the antenna, he asked you whether or not they could go back out there and retrieve it. Right?

A. Right.

Q. And your response to that was what?

A. Well, I thought about it for probably about 30 seconds. I was watching the smoke come up from the ASP. I mean, as a former CommO, I know that an EOE-254 is an important piece of gear, they're useful. By that same token, I knew that the EOD teams would not go into an area until -- like the (b)(7)(C) said earlier -- at least 24 hours after an explosion. And I was not going to send my Marines into a place that I wasn't willing to go for an antenna and some sleeping bags. And since the EOD guys had that sort of rule that they follow, I said, no, we're not going back in for that stuff until we have waited.

Q. Eventually, when the explosions had stopped, the gear had been stolen?

A. That's. Correct. The gear had been stolen.

Q. Did you receive any sort of counselling from (b)(7)(C) as a result of that?

A. Yes, I did. What I did while I was out there, due to the unexploded ordnance that was around the particular position that they had fallen back to, about a kilometer and a half from this ASP, I called the Battalion headquarters, and I requested permission for my people to fall back until an EOD can come out and clear a building or an area around

a building so they could go and guard this area from, roughly, a mile away from the entrance. The Battalion said that they were going to talk to the Battalion staff and hold on. I waited, I called back, they said they had left a message with the Battalion commander and the S-3, but as far as they were concerned, I could go back to (b)(7)(C) if I wanted to and that they would get back with me.

I drove my vehicles back to (b)(7)(C). (b)(7)(C) came back. He was extremely agitated and he was agitated by the fact that I contacted Battalion headquarters requesting permission to fall back until an EOD team went out there.

- Q. Why is it that you didn't contact (b)(7)(C)?
A. (b)(7)(C) I knew he was in some type of meeting at Battalion headquarters. It was in the morning period and I wanted to ensure that the Battalion knew exactly what was going on.
- Q. And so, what was his counselling to you?
A. Essentially he said, it was immature for me to contact the Battalion and he said it was stupid to leave the OE-254 out there.
- Q. Now, after that incident, did you get involved with some sort of propane distribution mission?
A. Uh-huh.
- Q. What was that all about?
A. (b)(7)(C) was tasked with organizing a propane distribution throughout Al Kut. The citizens of Al Kut would use, basically, big propane burners, kind of similar to what you have underneath your barbeques to cook their food. Up until that point, I think they had been using brush and grass and things like that because I saw a lot of women carrying large loads of light wood and things like that into their homes. (b)(7)(C) and, then, later on, myself, we would coordinate with the engineering plant, which was right here where all the propane was stored. The propane would come initially from Baghdad and there were several Iraqi engineers there that (b)(7)(C) and myself would work with. We would set up -- actually, we didn't set these positions up.

There was an Army civil affairs gentleman who picked different parts of Al Kut that needed propane, and then we would provide -- we being (b)(7)(C) platoon -- (b)(7)(C) platoon, and (b)(7)(C) platoon, would provide security and pass out that propane. (b)(7)(C) platoon typically assisted on those by providing vehicle support, but there were at least four or five missions where we, ourselves, ran the propane by ourselves. We had two or three vehicles go out there, my sergeants would set everything up. I observed the first two operations where my sergeants, (b)(7)(C) starting off and I believe (b)(7)(C) later on, where they would, essentially, quarin large groups of people, up to three, four, five hundred Iraqis into a tight controlled area, pass out this propane in a very fair manner for everyone who had a propane chit that was issued to them, and escort them back out so they could go to their houses.

- Q. And what sort of responsibility did (b)(7)(C) platoon have with ASPs simultaneous with the propane?
- A. We were doing them both at the same time along with doing some patrolling in there, too.
- Q. So as a platoon commander, your platoon was out at the ASP, out at the propane, and conducting patrols.
- A. That's right. We were all over the place. (b)(7)(C) (b)(7)(C) was very correct when he eluded to the fact that (b)(7)(C) myself, and (b)(7)(C) would get together, figure out how we wanted to divide everything up, and I would go observe one mission, maybe the (b)(7)(C) would go observe another, (b)(7)(C) would hang back. We didn't really do a whole lot on the observation of the propane and some of those patrols. We just wanted to be there to see what was going on in that situation.
- Q. Now, somewhere around that, what was the timeframe then when you were handling this propane?
- A. That was the later part of May and it continued probably through the first two weeks of June. It started to peter out. And from what I understand, it was supposed to ramp back up in August.
- Q. Now, at some point, you executed in a gunnery range event to shoot some missiles.

Was that, that was after the checkpoint incident?

A. That's correct. I think it was on the 25th of 26th.

Q. Okay. Now, let's talk about -- this is before the checkpoint incident. On the 23rd of June, what was going on around that timeframe in relation with the company?

A. Well, in relation to the operational tempo?

Q. Well, for instance, you know, what was going on in [REDACTED] what was going on in (b)(7)(C) ?

A. Well, the (b)(7)(C) were having some difficulties because the Marines were noting the tension between (b)(7)(C) (b)(7)(C) and (b)(7)(C). But for the most part, they were a very cohesive unit, the (b)(7)(C). They were well lead and they had a couple of good sergeants that kept everything together. (b)(7)(C) however, around the 21st of June, (b)(7)(C) relieved (b)(7)(C) of his platoon commander duties, came up to me and said, (b)(7)(C) I'm going to give you a leadership challenge. You're going to take (b)(7)(C) and (b)(7)(C) (b)(7)(C) is going to be the new [REDACTED] platoon commander. I said fine, roger that. I sat down with my (b)(7)(C) immediately after that news and asked him, how do we approach this, how do we integrate this person into our platoon.

Q. Now, where was (b)(7)(C) at this point?

A. (b)(7)(C) was doing his (b)(7)(C) type duties.

Q. So he was no longer with the [REDACTED] ?

A. No he wasn't.

Q. Okay.

A. From what I understand, (b)(7)(C) and his other two (b)(7)(C) one of whom was (b)(7)(C), went to the (b)(7)(C) (b)(7)(C) and they said that they felt they were being unfairly treated. All three of them felt they were being unfairly treated and that (b)(7)(C) (b)(7)(C) should stay with (b)(7)(C) as platoon commander. (b)(7)(C) said he agreed. He felt that (b)(7)(C) hadn't done adequate counselling on (b)(7)(C) before he relieved him. And, essentially, he was reinstated within 24 hours back to the platoon commander of (b)(7)(C) platoon.

- Q. And (b)(7)(C) came back with you?
A. Right. (b)(7)(C) came back with me.
- Q. And around that timeframe, (b)(7)(C) had to leave on emergency leave?
A. That's correct. He was gone on emergency leave for roughly two weeks.
- Q. Now, when he went on emergency leave, was that after the incident he had with the (b)(7)(C)?
A. Yes. His incident with the (b)(7)(C) was right when we made our transition from our initial position, which was right there, all the way to the Saddam Fedayeen headquarters right here. So that was around the 19th or so of May. He went on emergency leave in the latter half of June.
- Q. And where, didn't that, what was your understanding of where that placed you in perspective of your responsibilities in the company?
A. Well, it was a tricky situation. Normally, I would have been very comfortable just perhaps, I thought that, I normally would have thought that I would have been in a XO type position. And to a certain extent, I tried to conduct myself as such. And so, from time to time, I'd go out with (b)(7)(C) platoon or (b)(7)(C) platoon on their foot patrols just to be an observer. But (b)(7)(C) eluded to the fact that he didn't want either Hornsby or myself dealing with any type of company business and that, in essence, if we were out doing a mission, we should follow the directives of whoever was back at headquarters whether that was the (b)(7)(C), the (b)(7)(C), or (b)(7)(C).
- Couple that with the fact that, a lot of the times, I would stay awake for a good half of the night walking the lines or looking through our (b)(7)(C) sites, because we set up a (b)(7)(C) site on the top of the (b)(7)(C) position to look at the dead space around us. And (b)(7)(C) was very happy that I was checking the lines at night and he actually thanked me for it at some point, so I was somewhat confused as to what my role was besides being the (b)(7)(C) platoon commander.
- Q. And, to your knowledge, was there any other officers that were checking the lines at night?
A. No. I was up a lot at night. That's when a lot of

stuff happened, generally from about 1 to 3.

(b)(7)(C) talked about every fourth day or so, we took fire or there was fire in our area. That's very correct. It was almost to that schedule. So I would be awake at those times to see what was going on.

- Q. Now, during this time, had you already instructed one of your sergeants to keep a log on the explosions occurring at the southern ASP?
- A. About halfway through June, it got to a point where the southern ASP would have five to ten explosions a day. You would have everything from 60-millimeter rounds from a mortar go off to a hundred foot flame go into the air and firebursts go off from anti-aircraft rounds that got blown into the air. I saw this myself several times.

And so, since I was very confused on how exactly we were supposed to guard this thing, I had my sergeants starting off with (b)(7)(C) start a log of explosions; the magnitude of the explosion; roughly where in the ASP it was, and then after that was recorded, to contact the Battalion headquarters to let them know.

- Q. Did you ever try to -- at this point when you felt confused about how you were supposed to conduct your security, did you ask (b)(7)(C) for amplification on that?
- A. Yes. I probably asked him maybe two times a week.
- Q. And what was his response to you?
- A. At one point, he told me I asked too many questions and that to just continue doing what I'm doing.
- Q. Did you ever receive any clarification on your mission responsibility?
- A. Yes. The day before I was relieved, I did receive clarification but not from him.
- Q. Who then?
- A. (b)(7)(C)
- Q. All right. Now, on -- do you remember the incident of June 23rd?
- A. Yes, I do.

Q. How did your day start out?
A. Well, at that point, all three of my (b)(7)(C) sections were out. One section was at the ASP, another sections was down in Al Hay, which is south of Al Kut about halfway to the border. They were assisting one of the line companies down there which was a further mission we picked up about the initial part of June, and another company was on some type of long range patrol.

Q. Okay. And you were located at (b)(7)(C)?
A. That's right. Myself, (b)(7)(C) and (b)(7)(C) those were the only three people left in my platoon at (b)(7)(C).

Q. And this was the new (b)(7)(C) position?
A. That's correct. That was the old Saddam Fedayeen headquarters.

CCFR: And we have, Gentlemen an exhibit as a collection here.

Q. And in the package, was this, explain to the members what this is.
A. Sure. This is, Gentlemen, this is apparently, this is the Saddam Fedayeen symbol. Those are supposed to be the hands of Saddam Hussein and, basically, the sword of the State of Iraq defending Islam.

Q. And this was at the position that you guys were occupying?
A. That's correct. This was the position we were occupying. Along with that, there was a gigantic stone slab about 10 feet high by 5 feet wide that was right across from this. And this, essentially outlined, it was the Saddam Fedayeen headquarters. On the back of the slab, we found out from the special forces people who had this position earlier -- because most of them read Arabic -- that the back of the slab said, "This is Saddam Fedayeen, our duty is to kill all Jews and Americans."

Q. Okay. While you were there at (b)(7)(C) you were aware that (b)(7)(C) were guarding this ASP to the North?
A. Correct.

- Q. And at some point, you make your way up there. How come?
- A. At that point, we were doing a CMR inventory. The Battalion did not do a CMR inventory in 29 Palms before deploying. So, while we were out in Al Kut, they decided we need to count all of our serialized gear, find all our weapons, and make a record of that. And so, myself, (b)(7)(C), and (b)(7)(C) were driving to our different positions and essentially just marrying up serial numbers from the list of serial numbers that I carried with me in my pack to the weapons. There was a vehicle that we, there was a (b)(7)(C) vehicle out in this northern ASP. It was a broken vehicle and -- at any time, we had probably three broken vehicles and to ensure that we could always have four vehicles in the field per (b)(7)(C) team, we would swap out the stuff that was broken and use it as best as we could while motor transport could work on their items. So, we went out there, basically, just to check on the radio and the vehicle serial number of that one out there.
- Q. Now, the time you went up there on June 23rd, was there still ammunition that belonged to (b)(7)(C) stored up there?
- A. That's right. I had some of my 50-caliber, some of my Mark-19 ammo, a lot of 762 ammo. Basically, all my machine gun ammo that wasn't being carried in my vehicles was up in --
- Q. And you say, "mine," you are talking about it was ammunition dedicated to (b)(7)(C) platoon?
- A. That's correct. It was ammunition dedicated to (b)(7)(C) platoon. I'm assuming some of the 762 rounds were also a part of (b)(7)(C) didn't have any 762, but part of (b)(7)(C) because they had three 240-Golfs.
- Q. So you head up to Field Guard ASP, which is what it's referred to, and you meet up with (b)(7)(C)?
- A. That's right.
- Q. And what happens?
- A. I'm checking the equipment with (b)(7)(C) and (b)(7)(C), and (b)(7)(C) came up to me. He said, essentially, that he had a difficulty with three Iraqis. He said that he had

captured them two previous times. I took that to mean this was the third time that he had captured them. Apparently, I misunderstood him by his statement, but he captured them at least two times and they were moving in and out of the ASP.

Now, that ASP not only had our ammunition, but it also had Russian ammunition throughout that. He was very frustrated. I saw the way he actually tried to convince these guys not to come back. And after I saw him do that, I thought it would be a good idea that (b)(7)(C) and myself would just take them out of the ASP. (b)(7)(C) and I discussed it for a moment. We knew that, from personal experience and also from listening to our sergeants, that the Al Kut police department would not incarcerate anybody for something like that. I remember taking a prisoner in myself at one point and then seeing him ten minutes later walk out the door.

Q. He was a prisoner for -- you caught him doing what?
A. I believe he -- I'm trying to remember what he did. He was one of the guys captured at the ASP.

Q. So you are interacting with (b)(7)(C) then what happens?
A. Well, we take these gentlemen out, these Iraqis out. I decide I'm not going to take them to the police department and I figured that if I drove them to a point far enough away, that they would probably hitch a ride home. Now this road right here -- actually, gentlemen, would you mind if I get up?

SRMBR: Yeah.

WIT: Okay.

This is Al Kut right here and there is Badrah. This road right here actually starts in Al Kut and goes all the way up to Badrah. Just as kind of a background to this road, I did the first vehicle patrol up to Badrah to check on the Iranian border, which is extremely porous. There were 15 different guard shacks that used to be manned by Iraqi military that were -- only one of those was manned.

So consequently, there was a large number of Iranians moving into this area. And just from a

simple fact, there was a lot of vehicle traffic between and Al Kut. I decided to take these guys about three-miles North of ASP North, drop them off on the road, take off their flex cuffs, and assumed that they would hitch a ride, because I saw four or five trucks on the road at that time and I had also seen other Iraqis hitchhike on this road. I assumed that they would hitch a ride and go home, they didn't.

Q. Okay. Now, did you take anything from them at that point?

A. Yes, we searched them. There was kind of a switchblade folding knife that one of them had. I took that from him as a potential security problem, and I gave that to my sergeant, (b)(7)(C)

Q. Okay. Was there any money that you took from them?

A. No. We looked through their wallets real quick to see if maybe they had some sort of ID card or anything like that, but, no. We left all their money with them, all their personal possessions and we just let them go on the side of the road.

Q. And there was vehicle traffic there?

A. Quite a bit of it, yes.

Q. And was there other individuals standing around there?

A. Where we dropped them off, no, but on several patrols that I went up and down the Badrah road, there were plenty of people hitchhiking. In fact, all throughout the Wasit Province in the middle of the hottest parts of the day, it wouldn't be uncommon to see a gentlemen in his flowing garment that they wore, standing out in the middle of the desert just waiting to hitch a ride.

Q. What was your purpose, what was your intent on doing this?

A. Well, I knew the Iraqi police would let them go and that wouldn't be any type of deterrent. By that same token, I didn't want to beat them, I didn't want to do anything that would inflict any type of physical harm to them. And I was somewhat concerned they might get shot going back into the ASP since they had been captured two or three times already. And I decided that I would take sort of a middle

ground approach and just take them out far enough away from this thing that it would be a pain to walk into it again, but on a road where they could get a ride back into town.

Q. And, at some point later in that day, did you learn they went back to the ASP again?

A. That's correct. I learned that the three people went back into that ASP along with a fourth, a new person that apparently picked them up and drove them into it.

Q. How did you find out about that?

A. I had gone back to (b)(7)(C) at that point. (b)(7)(C) and I finished that portion of the CMR. (b)(7)(C) came in. I saw him drive in with these people and these Iraqis were essentially gawking at all of our equipment, all of our Marines. One of them just kind of had a strange look on his face like he was enjoying himself. I was surprised. I was surprised that the (b)(7)(C) brought them back into our position.

Q. Why was that a concern for you?

A. Well, it was a concern for me because all my (b)(7)(C) vehicles at that point were gone because they were out doing other types of patrolling exercises. But if they were there, they could have found out that I had 15 vehicles in my platoon, they actually saw all the vehicles that we did have there. They saw we had four vehicles. If they were relatively astute, they could have just looked around and seen where our guard positions were. We had them in the corners of the position along with machine gun positions on top. They could have seen how we were armed. Every Iraqi male was very familiar with small arms. Almost all of them owned an AK-47. And so they had a pretty good idea.

Q. So you were concerned that it was an intelligence breach?

A. Absolutely.

Q. Now, did you know (b)(7)(C) was going to come back to (b)(7)(C) with those detainees?

A. No.

Q. Did you ask or request (b)(7)(C) to come back

- to (b)(7)(C) with those detainees?
- A. No, no, I did not.
- Q. What was your understanding of (b)(7)(C) as to how they got there or why they got there?
- A. I asked him why he brought them here. I mentioned the fact that you brought them right into the middle of our compound, they could see our Motor T assets and they could size us up if they wanted to. He said that they were going to take them to the police station, that before he took them to the police station, he wanted his Marines to eat chow, eat hot chow.
- Q. All right. So, where were the detainees at this point?
- A. They were quite literally right in the middle of the camp. They were sitting in a truck, they had flex cuffs on but they didn't have any type of bag over their head, they could see everything that was going on. It was a very unsecured situation.
- Q. Were you and your Marines taking care of them at that point, making sure they had water or shade?
- A. Oh, yes. The sun was actually going down at that point. It wasn't that hot out. They were in the shade, the sun was actually very low in the ground or in the horizon. Earlier, (b)(7)(C) had mentioned that he had given them water, given them cigarettes. They basically took care of that for them. And they didn't look like they were really concerned about being in the middle of a Marine Corps post.
- Q. Okay. Now, at some point, a decision has to be made to move them. How did you get involved in that?
- A. Well, the (b)(7)(C) -- excuse me, the (b)(7)(C) (b)(7)(C) decided that he was going to walk them out of the position. I started to go back into my little quarters, the little room I stayed at, and I thought back to videos that I had seen of the Korean War and also World War II with the North Korean people's Army, the Chinese Army, and the Japanese Army. In a lot of those videos, the Marines would strip off the outer garments of the POWs and bring them into the camp and store them like that for extended periods of time. I thought about that for a moment. I knew that if we took them to the police

station, they were definitely going to be let out right away.

At this point, I had thought they had been captured four times, they had at least been captured three times. I was very concerned about the fact that it was (b)(7)(C) ammunition along with old Iraqi ammunition up there.

Q. That they were trying to get access to?
A. Yeah. They were trying to get access to it. And the tenacity and the sheer audacity these people showed by not even spacing out their raids by a day or two lead me to the conclusion that they would probably end back up there very soon. I thought to myself, how do I get these people to go home. That was the initial thought. How do I get them home. I didn't want to physically harm them in any way. I didn't want to beat them. I had seen one or two of the Marines make this kind of motion at them like they were going to shoot them coming back into the position.

Q. Not with their guns, with their fingers?
A. With their fingers. One of the NCOs actually said, Bang bang. We will shoot you if you come back in the ASP. I didn't want that to happen. And so I thought, going back to these earlier videos, that one way of ensuring these people go home, is if I take off their outer garments, not their underwear, not their shoes, leave them their money. If I take off their outer garments, they're at least going to have to go home to get on a new set of clothes.

And just that process in itself, would probably make them think twice about going into this or think again about going to this ASP that they had been in four times.

Q. And, what was the order that you gave?
A. I gave the order to take off their outer garments. If I can refer back to this map? There was a bus station right across the street from (b)(7)(C) that had buses going in and out of it roughly once every half hour. There weren't a whole lot of people in this area at that point.

Q. And (b)(7)(C) -- let me interrupt you. And,

gentlemen, I apologize, of all the copies that we made of photographs, there appears one that appears to be, that's more relevant, is just the miniaturized one. And why don't you explain to the members -- we'll make this an exhibit.

- A. This is pretty much the front position of (b)(7)(C). This is that large block that says "kill all Jews and Americans" on the back of it. This is one of the barracks blocks right here and this was the barracks block that (b)(7)(C) took them right out to. This is our front berm. This is our side berm, we had a position right here. The machine gun position is on top. Along with a couple of Marines at the front gate, which is located right about here. Now, as you can see, there are some houses right here that on the map would be over here, roughly 600 meters away. There were some houses also behind this. This is a very violent neighborhood. That's roughly 300 meters behind our position. And mainly, where this bus station was, there is a palm grove and a couple of car shops where they did repairs and a limited amount of traffic in that area.

- Q. (b)(7)(C) is there anything else you need to show the members on that picture?

A. No.

- Q. Okay. So, you gave the order, and what happened next?

- A. (b)(7)(C) and (b)(7)(C) took them to the front gate, they took off their outer garments, the men had T-shirts and boxer shorts or shorts underneath their garments, they had their shoes on. The Marines gave them back their money, we watched them march out the gate. Half of them got on the bus and another one got in a cab and they drove off.

- Q. Did you call any sort of a formation to have people see this?

A. No, not at all.

- Q. Did you take pictures?

A. No, I did not.

- Q. Were you trying to make a display or spectacle of these individuals?

A. No, I was not.

Q. Was it your intention to humiliate them?
A. No, not to humiliate them.

Q. Was it your intention to degrade them?
A. No.

Q. Your intention was to give them a deterrent to not come back into the ASP?
A. To give them a deterrent to not come back in the ASP and also to come up with the only way that I could find out to make them actually go back to their houses.

Q. Now, after having done that, having had some chance now to reflect, do you think that was the right call to make?
A. At that time, I did. In retrospect, no. I could have probably come up with something else. However, I had seen some Iraqis outside watering, well, trying to water their gardens in boxer shorts on patrols. I saw all sorts of manner of clothing that the males would wear, the women were very conservatively dressed, but I did note that a lot of Iraqi males would just kind of scant around in their boxers from time to time. So I didn't necessarily think that was going to be a humiliation.

Q. Did you think that you were violating any Marine Corps Order by what you did?
A. No, not at all.

Q. You know now that some people, (b)(7)(C) considers it a Geneva Code violation?
A. Yes.

Q. Knowing that, would you ever issue the same order again?
A. Well, being in the situation I'm at right now, no, I would not.

Q. Do you think you learned a lesson from that?
A. Yes, I certainly did.

Q. Recognizing the fact that there are some challenging things for you at that particular time and the lack of leadership that was involved, you know, do you recognize now that perhaps you could have gone or should have gone to the police station or somewhere

else to try to find some other mechanism to deal with these detainees?

- A. Well, like I mentioned earlier, I talked to (b)(7)(C) quite a few times on how we have to handle things inside the ASP. While doing that, I mentioned the fact that the police department was basically a revolving door and how are we supposed to deal with that. I couldn't really get any good guidance in that regard, so I kind of had the feeling that I was sort of damned if I do, damned if I don't. I had to make some type of decision. There weren't a lot of options that were open to me. I definitely didn't want to do what some other people suggested, which was to beat them down.

- Q. If you were back there again, and you had the same call that you have to make, what would you do?
- A. I have thought about that. I definitely wouldn't strip them down. In this case, I would probably take the ultra conservative choice and drive them to the police station. Actually, no, I wouldn't drive them to the police station, I would drive them to the MPs directly and turn them over to the MPs, explain to them they have been caught four times and hopefully they could deal with it before turning it over to the Iraqi police.

- Q. Okay. Now, after this incident occurred, how soon after that did you report what occurred to (b)(7)(C)?

- A. Well, (b)(7)(C) was at some type of meeting as far as I understood. He came back within an hour after that position -- excuse me, after I made that decision and I reported it to him immediately. My demeanor was not bragging at all. At that point, I did not feel good, I felt as if I was in a catch 22 with these ASPs, especially with an ASP that had some of my own ammunition in it and the company's ammunition. I felt depressed that there was no viable way of handling these people, and I expressed that. I said, sir, I feel as if I was in a catch 22 situation. We caught these guys four times, this is what I did. They were released out the front gate, they had their money back, and they left and didn't come back. I told them they went to the bus station.

- Q. And what was (b)(7)(C) response when you

explained this to him?

A. Well, this is what I remember and I remember this quite distinctly because I was, quite frankly, surprised. He said, (b)(7)(C) that was extremely stupid. You should have taken them out into the desert, done the same thing to them, said you were Army MPs that way we can have plausible deniability.

Q. When he said to you "plausible deniability," what did you interpret that to be?

A. Essentially, that if he wouldn't have known about it, he wouldn't have cared, and now that he knows about it, he might have to do something.

Q. Did you have any intentions of covering up what you had done?

A. No. I told him immediately afterwards. In fact, I did it out the front gate, if I wanted to cover it up, I would have done it elsewhere.

CCFR: All right. Now, Gentlemen, I just want to move this along. We did bring some of these video tapes that are (b)(7)(C) father's possession are the ones he mentioned. They're very small snippets. I'll leave it up to the board's discretion if they want to review that during deliberations. I only do that because it's not untrue that that material exists on there?

SRMBR: Video tapes of what?

CCFR: There are video tapes of Marines detaining POWs and stripping them down to their underwear.

SRMBR: What era?

CCFR: World War II and Korea, which are both instances after the Geneva convention had been established. And I'll leave it up to the board's discretion.

REC: Sir, as the government, I would object on the relevance of those videos. I mean, I'm not contesting that he saw those videos. I just don't believe that is relevant in this proceeding. Those are different battles, different wars and that operations are not relevant to what happened in this one.

SRMBR: Well, my question is, you know, was going to be, where did you get the idea, you know, what made you think of that? And, if it's true the idea came from historical videos of Marines in the Korean War and World War II doing that, then that's sufficient for me.

CCFR: And, Gentlemen, for the record on the transcript, one of them is this Quest of the Korean War: *A Time in Hell*, and this one is *Death Tide Tarawa: The Historical Battle Series*, and this other one is from the History Channel, *The Fellowship of Battle*.

SRMBR: Well, we'll just reserve the right to look at them if we deem it necessary.

Questions by the civilian counsel continued:

Q. After you informed (b)(7)(C) about this, did you continue doing your job the best you could?
A. Yes.

Q. Did you take off your pack, if you will, and throw up your hands and say, you know, there is nothing else I can do?
A. No, not at all.

Q. You kept marching forward?
A. Kept marching forward. We had too many missions to have that sort of luxury to step back and say, hey, look, I'm not in the mood to play with this anymore. We were right in the middle of Al Kut, Iraq.

Q. Were your Marines taking fire?
A. My Marines were taking fire quite regularly. I took fire a couple of times. We just had to continue moving forward doing the best we could with what we had.

Q. Now, somewhere between a few days later, did you get involved in participating in a missile shooting?
A. Yes. It was about the 25th or 26th of June.

Q. What sort of shoot was this going to be?
A. It was supposed to be a combined (b)(7)(C) shoot. I had never been -- actually, I had never seen either of the systems fire before. And (b)(7)(C) team was going to go down to

Nazaria. It was 2/25, it was a New York Battalion that was actually running the shoot. They had the OICs, they were the range OICs, they did most of the coordination with Division for this particular shoot. I went down as an observer to try to learn how these systems actually operate out of a book setting.

Q. Now, prior to going out there, was it some understanding for you that Division had designated a (b)(7)(C) shoot?

A. Yes, it was. Division mentioned that they wanted to do (b)(7)(C). And I asked (b)(7)(C) (b)(7)(C) if we could fire more, and I guess he contacted higher and requested more and that was turned down. It was supposed to be (b)(7)(C) (b)(7)(C). But once we actually got down to Nazaria, the situation changed somewhat. We had brought some extra missiles.

(b)(7)(C) had, I think, a total of seven or eight and he asked me if we could fire more just before we went down to Al Nasrieh. I said, as of right now, no. We were only supposed to fire three and three, but if the situation changes, we'll see how it goes. Got down to Nazaria, went through the briefs that the range OICs, both a Major and a Gunnery Sergeant, were putting together. They, being 2/25, I'm not positive what type of coordination they did with Division. I was not there for that, but they ended up shooting about fifteen (b)(7)(C) and five (b)(7)(C) and they also were supposed to fire three and three. And being that they were controlling the range at that time, we took the opportunity to fire one more (b)(7)(C) one more (b)(7)(C) so we fired four and four, but the extra (b)(7)(C) we fired was a dud. It landed 30 feet in front of us and didn't work.

Q. Now, in making that call, did you feel that the word from Division had changed because the OICs were running the range and allowed the 2/25 to fire more?

A. At that point, I really wasn't even thinking that deeply into it. I was just following the instructions of 2/25 who set up the range and coordinated with Division for it. So, it just seemed logical that they had taken care of whatever type of coordination they had.

- Q. So, at this point, would it be fair to say you weren't receiving a lot of feed back and communication with (b)(7)(C) about what to be doing and how to be conducting operations over there?
- A. No, not typically. (b)(7)(C) and I probably did the bulk of the planning.
- Q. After the shoot, you get back and find out (b)(7)(C) (b)(7)(C) is not happy with the fact that you fired two extra missiles?
- A. It didn't really happen that way. I got a radio call from (b)(7)(C) when I was about 10 clicks from Al Kut going North on that central road. He said (b)(7)(C) you need to talk to the S-3. I'm concerned that you might get in trouble about firing an extra missile. I said, roger that. That was the extent of the amount of time with (b)(7)(C) concerning that issue. I drove directly to the 3 shop at Blair Airfield.
- (b)(7)(C) the S-3, asked me why we fired a total of two extra missiles, and I said, sir, I wasn't running the range. I basically was going with the direction of the range OIC. And he said that was fine him and go back to the position. When I got back to the position, (b)(7)(C) asked me how the conversation went with 3. I told him exactly what I said and he said that's fine, I was concerned you might get in trouble. And left it at that.
- Q. Okay. Now, looking back at that, should you have done something like call back to (b)(7)(C) or called back to battalion to get some clarification on that?
- A. I suppose so knowing now that apparently someone did not do coordination with the range OIC. I should have, but maybe what I should have done was had my sergeants unload those extra rounds.
- Q. So you didn't --
- A. So we didn't even bring it up.
- Q. Another lesson learned?
- A. Yeah, it definitely was a lesson learned.
- Q. A couple of days later, somehow you get a tasking to go and patrol a checkpoint?

A. That's correct. 1st Marine Division started to task each one of the seven infantry battalions in theater at that point, start running checkpoints on the main supply routes. I asked higher, being my company commander, what type of SOP they particularly want us to set checkpoint up by, and he said there was none. And so, I talked to (b)(7)(C). We had a checkpoint class when we were in Camp Pendleton MOUT training. So, we separated. I drew one picture of the way I thought the checkpoint should look, he drew another picture of the way he thought the checkpoint should look. We compared notes and the drawings were practically the same, so we just went with that SOP.

I double checked with the company commander on any special instructions that he might have and he said that all you needed -- the only instruction that he had, that he wanted me to do was go down to the MP station that said in Arabic "This is American military outpost checkpoint. Please comply with instructions." I was not actually running that checkpoint. At that point, my sergeants were running all the patrols. Myself, (b)(7)(C), (b)(7)(C) and (b)(7)(C) would go along to spot check things, at the most. It was the same technique that 2/8 would do. So, (b)(7)(C) who was in charge of that checkpoint, he and myself went into the MP station, we asked for that sign. That sign was being used elsewhere so we didn't have the sign. I contacted back -- actually, I had (b)(7)(C) contact back to (b)(7)(C) let them know we didn't have a sign and ask him if he still wants us to do the checkpoint. Yes, we were still supposed to do the checkpoint. So we went up to the position and (b)(7)(C) set everything up.

Q. Now, how many Marines were out there with you?

A. It was about 11. We had two vehicles worth of Marines, so actually, it was nine, about nine and one corpsman.

Q. And aside from sort of the obvious, setting up the checkpoint, what was your mission tasking?

A. Well, my mission tasking was to run a checkpoint. As far as I understood it, we were supposed to look for contraband. Contraband would be any type of weapons. They were not allowed to carry weapons

inside their cars. They could have weapons in their houses, but not in their cars, not even AK-47s. To look for any type of explosives, any type of military information that they might have.

- Q. And you were supposed to be doing the searching as you were stopping the vehicles?
- A. That's right. It was more of an inferred order. Division was a little bit vague about the checkpoints. They just wanted us to start patrolling the MSRs a little bit more.
- Q. What guidance did you get from (b)(7)(C)?
- A. To go out, set up a checkpoint, if there is contraband, take care of it.
- Q. Okay. So did you set up a checkpoint?
- A. Yes, we did.
- Q. Did you start conducting operations?
- A. Uh-huh.
- Q. How many vehicles did you stop before the tractor trailer starting coming towards your position?
- A. Well, if I could first throw this in. It was a checkpoint on both sides of the road. We had a northern portion of it and a southern portion of it. We were located right about here on this major road. Our ASP was over here. This is a high crime, high problem area for the Battalion. We set that checkpoint up and both, together, both the northern and southern portion of the checkpoint checked roughly 45 to 50 vehicles without incident.
- Q. And do you have a personal recollection of seeing this truck approach the checkpoint?
- A. Oh, yes.
- Q. Explain what you saw.
- A. I was assisting (b)(7)(C) on the southern portion of that checkpoint. We had (b)(7)(C) who was out about fifty meters from us with a flashlight trying to wave vehicles down. And another 30 meters in front of (b)(7)(C) we had about 10 or 15 glow sticks spread out to try to alert the drivers. (b)(7)(C) had set up a (b)(7)(C) vehicle with (b)(7)(C). It had a Mark-19 on it, so we disengaged the Mark-19 -- we didn't want

to fire grenades on a vehicle that would try to run a checkpoint -- and (b)(7)(C) had a rifle. He was, essentially, the security for this checkpoint, so we had six people in that southern portion.

This large truck started coming at us. It was a Mercedes and it had two beds on it. It looked basically like an old 1950s version of the two bed trail trucks you see on the highways. It was stacked high with bags of something. We could see that it was really heavily loaded. (b)(7)(C) tried to flag this thing down. Instead of slowing down, he actually started to speed up to a considerable rate. (b)(7)(C) continued to try to flag him down and (b)(7)(C) moved out of the way, got out of the road. This vehicle was probably about 40, 45 meters from us at this point.

Q. When it was speeding up?

A. It had been speeding up for about 50 meters beyond that.

Q. Was one of the indications of the fact that it was speeding up the fact that the engine sound was louder?

A. Yeah. Well, it was roaring. Also, the driver starting to flash his lights. He started to honk his horn. And by then, he was probably going about 40 miles an hour, 45 or so. The vehicle got within literally 30 feet of myself, (b)(7)(C). At that point, we knew -- at least I knew it was going to go right through the checkpoint, a gigantic truck, and so, I opened fire on it. I was aiming at the engine block. I was trying to knock out the engine. I remember hitting it because there were sparks going off all around the engine.

(b)(7)(C) to the left of me was firing, (b)(7)(C) to the left of him was firing, and then (b)(7)(C) was firing also. And so, we were sort of hitting it from an angle. The vehicle passed us and the fifty gunner let loose a few burst. We saw the rounds come within ten feet of us at head level so (b)(7)(C), myself, and (b)(7)(C) flattened out. By about the third or fourth burst, they had a good burst in the engine block along with all M16 fire from (b)(7)(C) and a couple of other guys up there and

they knocked the thing out. The vehicle skidded to a halt and almost flipped into a ditch about 150 meters from where I was standing.

Q. And cease fire was called?

A. That's right. I remember hearing (b)(7)(C) start yelling, cease fire, once the vehicle stopped moving.

Q. And these Iraqis came out of the cab?

A. They sort of fell out of the cab.

Q. Did they appear injured?

A. Yes. One of them had a hole here and a hole here. (b)(7)(C) thought they were bullet wounds, so he patched that man up, and the other one had a big gash in the back of his head, he was actually missing part of his scalp, and so he also did first aid on him.

Q. So the Marines were performing triage on these Iraqis?

A. Yes.

Q. And was a call placed then to get an ambulance out there?

A. Yes, I contacted (b)(7)(C). I gave them a spot report, told them what was going on, that we didn't have any casualties. There were two Iraqi casualties. That we have this big truck full of stuff that needs to be searched and he said he'd get an ambulance and the MPs out there.

Q. Why was it you called in for an ambulance?

A. I'm sorry?

Q. Why did you call for an ambulance?

A. We called for an ambulance because they were wounded. There was no way that our (b)(7)(C) could do real good care on them, especially if they were shot.

Q. You had some concern because of the way the vehicle was trying to get to the checkpoint, there might be something of intelligence value in there?

A. Absolutely. Since we had 45 to 50 other vehicles that stopped without a problem, we assumed this guy sped through for a reason.

Q. And he had this big trailer of bags?
A. Right. The bags were probably 50-pound bags?

Q. Did you have any idea what was in those bags before you searched the vehicle?
A. We had an idea in some of those bags because some of our rounds hit them. There was rice trickling out of them.

Q. But before the shooting started?
A. No. I just knew it was piled high with something.

Q. Okay. All right. And you requested some intel assistance?
A. That's correct. We requested intel assistance.

Q. Why did you do that?
A. Well, it just seemed to be the smart thing to do. None of my men spoke or read any Arabic. We had the -- I guess the basic rudimentary idea of how to search a vehicle from the little bit that we learned in Camp Pendleton; but we had two head teams which were collocated with us inside (b)(7)(C). And those guys didn't go out at night very often -- and I know this just because I was by them all the time, saw their operational tempo, and it made much more sense, in my mind, and also (b)(7)(C) mind to bring out the professionals, the guys who actually could do a good search and see if there was information of worth inside this vehicle. Plus, there were literally ten feet deep of bags and we couldn't get at the stuff underneath those bags. It's possible that something besides rice could have been hidden underneath those bags.

Q. And meanwhile, did you still have responsibility for the checkpoint's mission?
A. Yes. (b)(7)(C) decided to continue with the checkpoint after the wounded people were evacuated and we had turned in a wad of money, a roll of money, 500,000 dinars to the Iraqi police that came out with the MPs. We continued with the checkpoint. We probably checked another thirty vehicles, and, at that point, called back to (b)(7)(C) and requested permission to shut down the checkpoint.

Q. Why was that?
A. We had been out there searching vehicles from

roughly 2200 to 2330, which was roughly the time frame that they'd actually be out there for. They didn't want us to be out there for an hour or two. It was supposed to be, go out there, do your checkpoint search, come back. That's why we only had about nine guys with us.

Q. What happened?

A. (b)(7)(C) and myself, we had an impression from the MPs that the MPs were going to come back out to relieve us. We got that impression because a staff sergeant who was escorting the ambulance and the three or four MP vehicles said that he was going to talk to his OIC and have vehicles come back out to guard this vehicle since he didn't think that was necessarily our function. When I called back to (b)(7)(C) to request permission to regress from the situation or when the MPs were coming out, I was told that the MPs are not coming out, that you guys are going to be guarding this thing and do you need anymore supplies. At that point, we had enough water probably for three days and enough food for two, so we were fine in that regard. It was a little bit uncomfortable being in the middle of the desert with nine guys by a burned out vehicle by a couple of high crime areas. But I just said, okay. Roger that, and asked about the intel team. I was told the intel team wouldn't come out until the following morning.

Q. So, did you guy set up in a "D"?

A. We set up in a "D".

Q. What happened the next day?

A. Well, throughout the night, I stayed with the patrol, I didn't go back to (b)(7)(C). (b)(7)(C) and myself had been awake the whole night, we didn't sleep at all. We let our gunners sleep, specifically our machine gunners. We did roughly a 50 percent on, 50 percent off. That following morning, around 08, or actually earlier than that, I contacted (b)(7)(C) to see where the HEP team was and they said they really didn't know. We probably aren't going to have intelligence come out there until later. And I asked what do you want us to do.

At that point, (b)(7)(C) was not at the (b)(7)(C) (b)(7)(C) was not there, they only

had the Sergeant of the Guard. (b)(7)(C)
I requested to (b)(7)(C) that I talk to
(b)(7)(C) whenever he comes back.
Around 9:30 or 10, we finally got in touch with. I
finally got in touch with (b)(7)(C)
And (b)(7)(C) said he would work to
get a wrecker out there and he would try to see if
he could get some intel teams out there and to wait.
We waited, a wrecker really didn't come out for a
while. I want to say around 1100 or so, a wrecker
got out there and they tried to move the vehicle.

Q. How did that work?
A. It didn't work at all. It was just too heavy. They
basically almost burned out their tires trying to
spin this, just to move it.

Q. So then what happened?
A. Well, I contacted (b)(7)(C) and said the wrecker can't
move. what do you want me to do. And (b)(7)(C)
(b)(7)(C) asked me what the wrecker guys
thought about the wrecker not being able to move it.
So I double checked with them and they told me that
unless they had some real heavy assets -- I'm not
sure what that would be, because this was a big
truck that was trying to move this other truck --
that they weren't going to be able to budge this
thing at all. And so I asked (b)(7)(C) what he
wanted me to do, going back to (b)(7)(C)
earlier directive that if he's not in the CP, I
follow the directions from the company Gunny or the
First Sergeant. I asked the (b)(7)(C) what he wanted
and he said, well, you can't move it, you might as
well come back.

I double checked with the intel teams and they
weren't going to be coming out for one reason or
another. So I thought about that for a second or
so, a minute, and told my guys to search the vehicle
and to take anything that looked like it had
intelligence value, papers, documents, there was a
cassette tape in there, cassette tapes, anything
that had writing on it. And to pile that in the
sand bags and also to take all the personal items
that were inside of it and to pile those into
sandbags also.

Q. Why did you have sandbags?

- A. We carried extra sandbags just in case we had to mount a 50 on the ground. We needed to have a couple of sandbags over the thing or it jumps all over the place and you can't hit anything.
- Q. And how was it that someone had gone into the vehicle to get the 500,000 dinar?
- A. Well, neither one was really formal searches. That was a real hasty search right away after the guys had been wounded. We wanted to see if they had AKs in there, we wanted to see if they had grenades in the cab of the vehicle, the area which was easy to access. Instead, they just found this gigantic roll of dinars.
- Q. Why was it you decided to turn it over to the police?
- A. Well, it wasn't ours, so we decided that it was the Iraqi police's job to take care of anything along that nature. Those guys were wounded, they were going to the police station, excuse me, the hospital. It just seemed logical. I didn't want to have this wad of money out there.
- Q. So you go and have your Marines police up things that look as if they would have intelligence value?
- A. Right.
- Q. And did they go ahead and do that?
- A. They did.
- Q. As they were completing that, were you looking to move, egress from the situation.
- A. Yes. We were simultaneously searching the vehicle, about three or four people were searching the vehicle while we were moving our vehicles forward because we had actually pulled back about a hundred meters or so off the road into a more or less, a less conspicuous position. We were getting all our gear together, double checking to make sure we had everything that we brought out there initially, and policing up our own trash to include some glow sticks that we had out there.
- Q. Did one of your Marines grab some clothing and pillow items from the truck?
- A. Um hum. They were actually grabbing stuff from all over the place. The truck was large and it had a

bunch of bins in the side of it. In those bins, they had a tea set that I remember seeing, there was some other cutlery type items, maybe some cups, little tea type things, and they were putting everything as they went into the sandbags. The problem is, we ran out of sandbags. We only had a few of them. By then, we had been using quite a bit for other things. So they loaded all those things in sandbags, they had taken all the clothing out of the vehicle to search inside the clothing for any kind of documents. The clothing looked pretty ratty. Also, they took the seat cover off the vehicle to search inside the seat cover and to search inside of the cushion of the vehicle to see if anything was stuffed up into it.

We learned something about that in our hasty search class. They didn't find anything in there. My Marines next started to throw the clothing into the back of one of my vehicles. (b)(7)(C) was the person who was doing that. He took one of these long dish dashes, man dresses things, and threw it into the back of my vehicle. I remember, the clothing kind of covered all the stuff in the back because it was long and flowing. It was kind of yellowish looking and I had a sick feeling in my stomach at that point. It didn't look right, it didn't feel right. And one of my vehicles earlier had picked up some kind of fruit fly infestation. Going back to (b)(7)(C) the guy that almost got hit with the fragment in the stomach, I don't know what these guys did, but inside the vehicle, they had probably a hundred flies on any given day, and they couldn't get the stuff out.

- Q. How did the Iraqi men look in terms of their cleanliness when you saw them?
- A. Very dirty, disheveled. A lot of Iraqi men would take more time than American men to sort of primp themselves up before they go out in town. We'd see that in barber shops and all sorts of things like that. They were kind of -- they didn't have a lot of money, but they tried to look as good as they could. These guys did not look that at all. They looked kind of nasty, actually.
- Q. Okay. And the clothes that you saw in the back of your vehicle, they looked clean or they looked

- dirty?
- A. They looked dirty.
- Q. And seeing that, what did you tell your Marines to do with this clothing?
- A. I told (b)(7)(C) get that out of the vehicle, burn it, it's trash, it doesn't need to be in there.
- Q. Did you have some conversation with (b)(7)(C) about the fact it might have lice?
- A. I don't remember having a conversation specifically, these were the thoughts that were going on in my head. I think that was from my Marines discussing this amongst themselves that this stuff looks dirty and it might have lice.
- Q. So it was gathered up and were seat cushions put in there as well?
- A. Well, not a cushion, but the covering of one of the seats because we had thrown that in this pile of rags and dirty clothes while we were searching the vehicle.
- Q. How big was this pile?
- A. It was maybe this high and maybe this wide. It was maybe four garments. At that point, we had already taken their tea sets, taken some of their other personal items, their eating utensils, cassette tapes, all their papers and their documents and put that stuff and securing that in our sandbags. So this was what was left.
- Q. All right. And, did you consider this to be trash?
- A. Yes. I considered it to be trash and also just didn't like the idea of leaving a pile of anything out there in the theater probably because we were briefing that in the Czechnian War, the Russians had a large problem with their troops rooting through crap on the sides of the streets and then the Czechnians using that to booby trap something. That thought kind of flashed through my head, and so it just seemed appropriate to burn it.
- Q. And, had you burned trash before?
- A. Oh yeah, we burned trash all the time. We had a gigantic pit of the stuff. There was all sorts of things that we would burn. We would burn our own MRE wrappers; we would burn our own old clothing, if

it got soiled; we had a lot of guys with dysentery; so we burned that stuff, we burn our crap or shit.

Q. So, when this was being burned, were you concerned for your Marines' welfare about infecting their gear and bringing it back to (b)(7)(C)?

A. Absolutely. I didn't want to take the chance of another fruit fly infestation or lice or whatever else could be inside of someone's clothing.

Q. Okay. So what happened after that?

A. Well, we drove back to (b)(7)(C).

Q. At that point, had anyone inspected or had a chance to inspect the bags of rice that were on the trailer?

A. No. We didn't really have a chance to do that. Some of my guys crawled on top of the trailer and started poking around the stuff they could get at. They poked around also at the external bags but they really couldn't get at the internal stuff, they couldn't get at the bed underneath it, it would have been kind of a long, tedious job to give that truck a thorough search.

Q. Okay. Did you also have some concern that somebody, some other Americans or coalition force may come out there to inspect the truck?

A. I assumed that at some point, somebody would come out there to inspect it. It seemed logical to me that the intelligence teams, once they finished whatever they were doing, would view that as an important item and come out and take a look at it.

Q. And burning the clothes, was it also a concern that you didn't know whether or not, whether some enemy force may get it or whether some other Americans may show up and decided it might be a nice souvenir?

A. Sure. Almost every one of my Marines had a Saddam Fedayeen helmet. We picked those things up. They found other souvenirs, telescopic sights, all sorts of other things. It didn't seem outside the realm of possibilities to take someone's clothing as a souvenir, especially something as exotic as one of those outer garments.

- Q. Did you try to discourage a Marine from collecting souvenirs?
- A. It depends on the souvenir. The helmets, that was no big deal, the sights themselves, not a problem. No ammunition, nothing that could explode. I did discouraged them from rooting around in stuff out in the streets on patrols. In fact, they were very well discipline in that regard. Never saw them do that, but it was always a potential that one of the other platoons might do that at some point.
- Q.. Okay. After you got back to (b)(7)(C) did you have a chance to talk to (b)(7)(C) about the checkpoint?
- A. Yes.
- Q. And what happened?
- A. (b)(7)(C) and I wrote up a report on the checkpoint. We covered the major incidences of that checkpoint and it was recorded in the logbook.
- Q.. And what feedback did you receive from (b)(7)(C) concerning that?
- A. Well, we thought we did -- he actually didn't have a problem with the checkpoint itself. Initially, he was irritated that we had returned and no one was guarding the vehicle. I explained that to him by talking to him about the conversation I had with (b)(7)(C) who was essentially running the company at that time. And once I mentioned that (b)(7)(C) told me to come back, he didn't ask, he didn't say anything at all.
- Q. Okay. All right. Now, here we are June 28th. When do you find out that you are being investigated for this detainee incident?
- A. Well, I was relieved by (b)(7)(C) on the 3rd of July. My understanding from him was that the relief was going to be the end of it; but several days later, after I started working in the shop, (b)(7)(C) came up to me and said I was being, that there was an investigation concerning me. They did not have any charges on the investigation. I asked him what I was being charged with he said nothing as of yet and he wanted me to make a statement concerning those two particular issues.
- Q. Okay. Now, your conversation with (b)(7)(C) occurred after you had been relieved. Right?

- A. That's correct. I don't remember the exact date. I want to say it was around 8 July, probably four or five days after I had been relieved.
- Q. So by the time you had spoke to (b)(7)(C), you understood that somebody in the Battalion wasn't happy with some of the actions you had taken?
- A. Yes.
- Q. Who did you believe was unhappy with your performance?
- A. (b)(7)(C) and (b)(7)(C).
- Q. Okay. How did you feel when you got relieved?
- A. I felt horrible, it was probably the worst day of my life.
- Q. So (b)(7)(C) approached you about writing something, recognizing that you had gotten in trouble with (b)(7)(C) and relieved. What was your approach on helping out?
- A. Well at this point I had already talked to (b)(7)(C). (b)(7)(C) I told him what I had done, I had been relieved. I thought that was that. After telling (b)(7)(C) what I had done, I didn't feel obligated for an open ended investigation where I didn't even know what I was being charged with to talk to the government. I said look, I waive my -- I am not going to make a statement concerning this situation.
- Q. Okay. And did you become aware that this investigation was sort of building steam towards you?
- A. Yes. I actually -- when I was back at Blair airfield, I was living right across the tent from (b)(7)(C). (b)(7)(C) mentioned that he was looking into possible Geneva Convention violations concerning what I did. Every once in a while, over the roughly three and a half week period that I had before I was NJP'd, he would sort of chat with me a little bit.
- Q. Okay. You were aware that the investigation was taking place?
- A. Yes. I was aware that the investigation was taking place.

Q. How did you feel at this point?
A. Well, I was feeling as if they were kind of kicking me while I was down already. I mean, they had fired me and the impression I got from (b)(7)(C) was that was that. He said that this conversation is going no further than me, you are relieved, get out of here. I was trying to make myself as useful as possible to the Battalion. I was working in the assisting (b)(7)(C), reading a lot of reports. He used some of my patrolling experience to get a better view point of the city itself. Not a happy time, that's for sure.

Q. Okay. Did you continue on doing your job?
A. Yes, I did.

Q. At some point, you got pulled in by (b)(7)(C) to help out with him. Right?
A. That's right. About the 17th, 16th or 17th of July, he coordinated with (b)(7)(C) and he wanted to know if I wanted to be the XO for his facility protective service.

Q. What did you think about that opportunity?
A. It sounded great. It got me out of the tent, got me back out doing something besides reading a computer all day. I thought also that whatever would occur to me, occur with me during this investigation, at least I was continuing forward, that I wasn't sulking back in the rear.

Q. And did you put your full effort towards this project?
A. Yes.

Q. Did you harbor any bad feelings towards the Iraqis?
A. No.

Q. In any of the actions that you did, you know, with the detainees and with the burning, did you do that out of spite or malice towards those Iraqis?
A. No, I didn't.

Q. And, when you had the opportunity to work in the FPS, did you think, I don't want to work with Iraqis?
A. No. I actually, I was kind of excited by that. It sounded somewhat similar to the JTF mission that I

had done before. I didn't have any ill harbored feelings towards the Iraqis at all. I might have had some ill harbored feelings towards one or two members of the command, but that was about the extent of it.

- Q. Okay. And what were your responsibilities and jobs with FPS?
- A. Well, I was the defacto Executive Officer. That entailed ensuring that the training schedule, the logistics of the training schedule that (b)(7)(C) had set up for these people was taken care of. I would spot check a series of buildings that were being constructed. I actually took part in PT with the FPS guys, maybe every other morning. I was a demonstrator, showing them how to run the actual obstacle course. I got a lot of supplies out in town with my Staff Sergeant and a couple other Lance Corporals. I worked very closely with the coterie that were teaching the FPS. All those men were former Iraqi Army, Airborne, and Special Forces soldiers, specifically, sergeants. So, I was talking with them continuously.

- Q. (b)(7)(C) -- (b)(7)(C) why don't you come closer up there.

- Why don't you explain to the members what this picture is.
- A. This is the first graduation of the first FPS class. It had about 185 men in it. That's (b)(7)(C) that's Colonel Couvillon, I'm taking the photograph, I'm right behind them. Some of what we did with the FPS -- and it was (b)(7)(C) idea -- was to introduce them to close order drill to develop a sense of comradeship and that sort of thing. And so, each one of the platoons was symbolized by a different color flag. This one had a white one, there was a black one, a green one. And so they marched in, and essentially, it was kind of like a small version of a boot camp. They received a couple of speeches, one from (b)(7)(C) one from (b)(7)(C). Of course, we had an interpreter there to tell them what was going on. We had honor graduates, there were a total of eight. Those guys were really fun to work with because they were very excited about this mission.

- Q. Now, did you understand that a part of this program was also to develop a sense of comraderie with the Iraqi people as sort of a nation building aspect?
- A. Oh, sure. You can see that by this flag here. There is a hand with an American flag on it and a hand with a Iraqi flag on it and they are both shaking each others hands. So that was a lot of it right there.

Myself, (b)(7)(C), (b)(7)(C), (b)(7)(C), (b)(7)(C), we spent a lot of time with the Iraqis. We spent a lot of personal time just listening to them, listening to the instructors go through their curriculums and helping them out.

- Q. What is this picture here?
- A. This was a good day. This was us at the rifle range. We taught the different members of the class how to shoot the AK-47 from a standing, kneeling, and also from a prone position.
- Q. Now, is this individual here a member of the FPS?
- A. Yes. And also that person right there is a member of the FPS.
- Q. Who?
- A. There's a person behind me.
- Q. And that's --
- A. That's me. All the members of the staff kept an eye on the actual training aspect of it. We let the sergeants, the Special Forces sergeants, do 95 percent of the instruction. We would just help out occasionally, just walking up and down the line, making sure they had adequate ammunition for the different rates of fire and spot checking. For example, a couple of these gentlemen were school teachers and they had kind of a difficulty learning how to shoot an AK-47?
- Q. Why don't you explain -- what was this scene?
- A. This was right after that initial parade sequence. This was a series of graduates right here and they were just tickled, they were very happy about having a job, being a part of the FPS. They were very proud of their uniforms and they just wanted to come up and have a picture taken with me. They had a picture taken with some of the other guys, too.

Q. How did you feel about that?
A. I thought it was kind of fun, it was kind of interesting. It was a pretty relaxed environment with these guys. They worked hard and we assisted them with what they needed.

Q. Are you proud of them?
A. I was very proud of them. Especially considering what they looked like when they first came in and how they ended up. They did more in probably two or three weeks than any other group of people I had seen.

CCFR: Gentlemen, these photographs are in the exhibit package that the respondent has provided.

Q. Moving in a sort of happier scene to a less one.
Sometime in August, you got NJP?
A. Correct. I was NJP'd on the 1st of August.

Q. Do you recall when it was that you finally got to see the investigation which was the foundation for your NJP?
A. I received that the day before the investigation -- excuse me, the NJP. I took that entire day to read through everything to try to familiarize myself with it.

Q. And who did you request to give you this investigation? Who did you ask, who did you ask to have the investigation?
A. I asked (b)(7)(C) I asked him probably about the Monday before the NJP and I was NJP'd on a Friday, about five days ahead of time.

Q. And you received this investigation the day before the NJP?
A. Right.

CCFR: And I believe the investigation package is contained in Government's Exhibit, as a whole, number 8.
Let me just point this out to you, (b)(7)(C).
Gentlemen, excerpts of that have been included in the Respondent's Exhibit package.
The command -- if you look at Exhibit 8, if you

would, (b)(7)(C).

WIT: Sure.

- Q. Was that essentially, was it (b)(7)(C) investigation that you received on the 30th?
- A. No. I received (b)(7)(C) investigation along with the endorsement from (b)(7)(C) (b)(7)(C) (b)(7)(C), and the statements that were involved with the investigation.
- Q. Okay. And when you had asked (b)(7)(C) to receive a copy of this investigation, what was it that he told you as to what the hold up was?
- A. He said that (b)(7)(C) hadn't finished his endorsement letter and that once he had the endorsement letter finished, that he can give me that copy. He wanted me to have, in his words, the whole investigation.
- Q. And when you received this investigation, how much time did you have to contact a defense counsel?
- A. I had to contact him immediately.
- Q. Because you had your NJP the next day?
- A. Pretty much, yes.
- Q. Did you get in touch with some sort of defense counsel?
- A. Actually, I got in touch with the defense counsel two nights before the NJP before they had actually given me the investigation.
- Q. Did you get a chance to speak to this defense counsel again?
- A. Yes. I spoke to him about 10 minutes or 15 minutes over the phone.
- Q. Okay. Now, at the NJP, you were told that you were being charged with an orders violation for potentially Geneva Convention violations from taking the clothes of these detainees and a second charge relating to the destruction of these Iraqis' property with the clothes?
- A. Right.
- Q. How did you plead to those two charges?
- A. The first charge, with regards to destroying the

property, I pled guilty, because, in fact, I had destroyed the property. I talked to (b)(7)(C) (b)(7)(C) a couple of nights before or the night and a half before I actually got the NJP and I explained -- or we talked about that, and he thought that due to the small amount of clothing and also the fact that it possibly had some type of disease that in an NJP hearing with a General Officer, you probably would be able to be allowed to express the reasoning behind the action. So he agreed with that.

- Q. Now, why was it you pled not guilty to the incident where they alleged you violated the order?
- A. Well, I didn't believe I did anything that was conduct unbecoming of an officer. It was definitely a unique situation, but I felt that I had a viable reason for it. I wasn't trying to humiliate these guys, I was just trying to find a way to get them out of there, find a way to get them back to their house.
- Q. And when you had issued those orders, you didn't consciously recognize that you were violating any order; did you?
- A. No, not at all.
- Q. Of course, recognizing the lessons that you have learned, you are not saying by pleading not guilty that you didn't wish you had a chance to take back that decision?
- A. That's correct. I mean, if I could take it back right now to remedy this situation, I would.
- Q. Now what happened at this NJP?
- A. I was in an NJP with (b)(7)(C) which is (b)(7)(C) (b)(7)(C). There was a (b)(7)(C) who was there with me. I found out later his name was (b)(7)(C). (b)(7)(C) was there and (b)(7)(C) was there. They were standing directly behind me.
- Q. How did this NJP go?
- A. Essentially, (b)(7)(C) asked me how I pled to the first case. I said, I plead guilty, sir. And he said okay, we're not going to discuss that. How do you plead to the second case?

Q. Which was the orders' violation?
A. The orders' violation, the stripping of the prisoners and for that one, I pled not guilty. And for the next, probably 15 minutes, I was doing my best to try to explain the rationale behind the multiple captures, the danger of the ASP, the fact that we had our own ammo there, the police department, and the fact I wasn't doing this just to screw with these guys. I was doing this to actually get them to go home.

Q. And how was his response to that?
A. Well, his response was -- he started to -- he said that, essentially, that if I would have put them in prison for a time period, he would have understood that. He couldn't really see where I was coming from. A couple of times, he shouted me down, swore at me. At one point I, at this point, I really wasn't sure how to proceed with the NJP. I was doing my best to try to explain where I was coming from, but it was kind of limited.

Essentially, he declared me guilty on both accounts and went into a very long speech on how what I did was similar to the break downs in discipline that Lieutenant Cally's platoon started to do months before they started to have their problems with that particular village in Malay.

Q. And who -- did you know -- did you know who Lieutenant Cally was?
A. Oh, yeah, I knew who he was.

Q. How did you feel about being compared to Lieutenant Cally?
A. I thought it was a completely different situation. I thought there was no bearing whatsoever between murdering a large number of people and burning a small number of clothes that might have had lice in it and doing what I did to those four detainees.

Q. How did that make you feel as a person?
A. About that point, I started to get a little bit mad, to be quite frank, because it just seemed as if there was no way I could get across my opinion, but I felt somewhat ridiculous more than anything being compared to Lieutenant Cally.

- Q. Okay. You had some folks that came and testified on your behalf. Who were they?
- A. That's right. I had some of the same people that came in today, (b)(7)(C), (b)(7)(C), (b)(7)(C), and also (b)(7)(C).
- Q. Okay. The NJP wraps up, and then what happens next?
- A. At this point, I am escorted -- well, I am told I'm guilty. (b)(7)(C) said he was going to fine me and then he was going to take away my commission. He said I just didn't have whatever, I think he called it, the special thing that made Marine officers different. At that point, I felt horrible, he took me out, actually, (b)(7)(C) took me out to a back room and left me there for a moment and then came back with a two-page document that outlined all the, their version of all of the incidences, of the two incidences, declared that I was guilty on both accounts, and also stated what I did could have been a possible tipping point, something along those lines. And they compared me to the former Iraqi regime by being brutal and inconsiderate.
- Q. This was how long after the NJP?
- A. This was immediately after, literally 2 minutes afterwards.
- Q. And this documentation was already prepared?
- A. It was already prepared. It was pages. It was long. In fact, I have it back at my house. (b)(7)(C) said he advised me to sign it, take the NJP to avoid a court-martial and they would work to get me an honorable discharge. At that point, he left me. A moment or two later, (b)(7)(C) came in, and I had never spoken to him about these incidences at all up until this point. The only person I discussed them with in the Battalion staff was (b)(7)(C) and he said, essentially, that it was a shame that this happened. He thought that one or two minor mistakes was too bad. He said, just sign the paper work, I will put you in for an honorable discharge and hopefully, we don't want this to get out for other people to hear.
- Q. And at that time in the conversation with (b)(7)(C) (b)(7)(C) that had been -- how many times

- had you talked to (b)(7)(C) in your entire experience in the Battalion?
- A. In my entire experience with the Battalion, I believe I talked with (b)(7)(C) three times. Once when we were loading on the planes to go to 29 Palms, he introduced himself, I introduced myself, that was it. A second time, he wanted to know how my platoon was preparing itself for operating inside the cities. I discussed different types of firing techniques with the Mark-19 using a forward spotter to guide the rounds and same thing with a 50-cal. And the final time I talked to him was giving him a short intelligence brief while I was working for (b)(7)(C). It was just a routine type thing. It had nothing to do with any of these incidences.
- Q. And then this last time after the NJP, that was the 4th time you had spoken to him?
- A. That's right.
- Q. Then what happened?
- A. I signed the paperwork accepting the nonjudicial punishment, was told I had five days to appeal if I wanted to.
- Going back to (b)(7)(C), he said that I was going to be on the first plane leaving theater and he told (b)(7)(C) to get me out of there. So I went back to the Battalion, I went back to the FPS area. I had no idea when the first plane was coming in, so I actually went back to doing my duty as the (b)(7)(C). I worked there until the 3rd, then they pulled me out. (b)(7)(C) on the night of the 2nd presented me with three pieces of paper. I had not written these pieces of paper, they were pretyped. Basically, it was going along the lines of, I would request an honorable discharge in lieu of a board of inquiry. I would request a general discharge in lieu of a board of inquiry, I would request an other-than-honorable discharge in lieu of a board of inquiry.
- Q. Or a resignation of your commission?
- A. And a resignation of my commission in lieu of a board of inquiry. I had been counseled by (b)(7)(C). I had been counseled by

(b)(7)(C) been told by the General that he wanted to take my commission away. I didn't really see what kind of options I had at that point. So (b)(7)(C) said that he thought that if he was in my position, what he would do is sign the honorable one due to the nature of what I did, and we would probably avoid a board of inquiry.

- Q. And so?
- A. And so resign my commission honorably.
- Q. So you signed it?
- A. I signed it.
- Q. At this point, how are you feeling?
- A. Bad, not very good at all. I felt as if, I definitely felt as if the deck was stacked.
- Q. Now, you get back on the airplane and back to the United States. And do you start thinking about what had happened and what you were going to do with picking up your life?
- A. Yes, I thought about that. I talked to all my family members, trying to come up with viable options for what I could do. After talking to my parents, they couldn't believe what had happened or at least the way it had happened. And so we tried to figure out how to remedy the situation and also how I could actually pick up the pieces and start doing something useful and put as much of the bad aspects behind me.
- Q. And what did you do?
- A. Well, with regard to civilian aspect of it?
- Q. Yeah.
- A. Well, I wasn't really in the mood to go back to sales at that point. I wanted to do something sort of low key. I have always been interested in history and so I wanted to go back to [REDACTED] and enroll in their history department or their language department, but at that point, I didn't have the money to do it. So, I probably did the best thing one could do in (b)(7)(C) when one doesn't have a job, I became a bartender. There is no shortage of bars there and that's what I have been doing ever since.

- Q. Did you go to some sort of night school to learn how to do bartending?
- A. I went to a bartending night school.
- Q. Is that what you are doing now?
- A. That's what I'm doing now.
- Q. And, some point along the way, is it fair to say that you said, might have made some mistakes, but I didn't deserve to be kicked out and treated the way that I did?
- A. That's right.
- Q. You decided maybe you wanted to try to fight this?
- A. Yes. I looked at it and I didn't see any type of way I could do it that effectively, so I did what some people did and I, essentially, contacted my Congressman.
- Q. And you submitted basically what is known as a congressional inquiry request?
- A. That's right.
- Q. And did you ever, what was your thought process in what you were hoping to accomplish?
- A. Well, at that point, I decided I didn't want to resign my commission. I felt that, essentially, I was put in a position where I had a lot of bad choices and only one bad choice to choose from without any real good counsel around me to talk to. So, I reevaluated the situation, especially after talking to my family, most of whom were in the military in combat, and I got their impressions of what occurred and I felt as if I might not get my commission back, but I am going to try the best I can and just give it a try.
- Q. Now, at what point did you learn that the Secretary of the Navy had disapproved your request for resignation?
- A. That was when I was contacted by a (b)(7)(C) and said that I was going to be going to a board of inquiry.
- Q. Despite the fact that you tried to resign, you were told that the Secretary of the Navy wanted to put you in front of a BOI?
- A. Right.

- Q. And how did you feel about that?
A. At that point, it didn't surprise me too much, but I felt bad about it. I thought it was pretty shitty.
- Q. And the rest is history, so to speak?
A. That's correct.
- Q. What is it you hope that you can do and convince this board to do for you?
A. Well, I would hope that they would see that the actions that I took were taken for tactical reasons. It might have made unique and probably not the best decisions at the time, but they were made, at least I made a decision in situations. I didn't have a lot of guidance throughout those two months and that, essentially, I did the best that I could with what I had. I would hope that you, Gentlemen, would see that I am sincere about wanting to get my commission back so I have the option of going back to serve the Marines or the option of other types of federal service, if I decide to do that.
- Q. And do you feel that your decisions that you made while you were, you know -- wish you could take some of them back -- were made in the best interest of trying to protect your men?
A. Yes. That is what I was focusing on the whole time. Those ASPs were extraordinarily dangerous. I briefed my higher headquarters, my company commander numerous times on the problems with the ASP. And when I went to talk to (b)(7)(C) on the 2nd of July, he was very, he didn't know that the ASPs were having explosions. He didn't know of the large influx of people going into them. That concerned him.
- Q. Now, were your decisions also made because you were looking after the welfare of the Iraqi people?
A. Yes, inevitably. If those people had gone back into that ASP, it's possible they could have been shot. If they are dead, that's definitely worse off than being stripped down to their shorts and getting on a bus and going home. Those ASPs, I couldn't tell you how many people died inside of them. Some of my guys guessed dozens, maybe upwards of a hundred. They saw groups of five people run in there and five people didn't run back out. So trying to come up with a coherent plan to secure the ASP is not just

the ammunition, but also for the safety of my Marines and the safety of the Iraqis who kept going into them. It was very much in my mind.

Q. Now, (b)(7)(C) if you had the opportunity and the board decided to vote for your retention, if you were asked to go into combat next week, would you willingly go?

A. Absolutely. I actually asked to be extended over there before I was relieved. It was an interesting mission. Of course, now it would obviously be a lot more frightening, but I would go back.

CCFR: Gentlemen, if I may have just one second, I think I have my questions wrapped up. I just want to confer with my co-counsel.

SRMBR: Okay.

CCFR: (b)(7)(C) I don't have any further questions.
(b)(7)(C) has some, please answer hers.

Gentlemen, would you like to take a break or shall we carry forward?

SRMBR: No.

Cross?

REC: Sir, if we would take ten minutes.

SRMBR: We'll take a ten-minute recess.

The Board of Inquiry recessed at 2017 hours, 6 April 2004.

The Board of Inquiry was called to order at 2030 hours, 6 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the board recessed are again present.

The recorder will note the time and date in the record of proceedings.

REC: Sir, the time and date is 2030 on 6 April.

SRMBR: Thank you.

CROSS-EXAMINATION

Questions by the Recorder:

- Q.. I am going to show you some documents, (b)(7)(C) (b)(7)(C). This is in Record's Exhibit 4, that is the first endorsement on CG, 1stMarDiv's letter notifying you of the Article 15 proceeding.
- A. Is this your signature?
Yes, it is.
- Q. And this is the correct date, the 1st of August 2003?
- A. Yes.
- Q. Now, this letter states "I hereby acknowledge understanding the advice stated the commander's notification letter," which is this first letter of 28 July 2003.
- A. Did you have a chance to go over that letter prior to signing the notification?
May I see the first one, please?
- Q. Sure.
- A. Yes, I did.
- Q. Okay. And that 28 July letter states what violations you are charged with. Correct?
- A. Correct.
- Q. And in the notification, the endorsement, this first paragraph says that "I hereby acknowledge and understand my right to demand trial by court-martial in lieu of NJP. I do not demand trial by court-martial and willingly accept punishment under the Article 15 of the UCMJ and I have had opportunity to consult with a lawyer."
- A. Correct.
- Q. Is all that true, do you understand you had the right to demand a trial by court-martial?
- A. Yes. In fact, (b)(7)(C) and I discussed the possibility of requesting a court-martial and I was advised by him that due to the nature of the offenses, that they were probably not going to be a

career ender, that was, essentially, what he said. And to just try to explain as best you could why you did those particular things; and he didn't think that a General Court-Martial was necessary. And also, I found out from (b)(7)(C) earlier, roughly two or three days beforehand before the actual NJP that the Battalion was not going, or excuse me, that the Division was not going to seek a General Court-Martial and that led me to believe that some other type of processing would occur where I would be able to explain myself.

Q. So you willingly accepted the NJP?
A. Yes.

Q. I'm turning to Recorder's Exhibit 6, which is the record of nonjudicial punishment. It's the summarized transcript of what occurred at that NJP. Its --

CCFR: Excuse me, I don't really have an objection. I just want to make clear on the record that it's a summarized, it's a summary. It's not a transcript like from a literal interpretation of what occurred, so I just don't want there to be a confusion that this is, in fact, a verbatim.

SRMBR: I understand. We read it. We know what it is.

REC: It is this CG's --

SRMBR: My question is, who did the summary?

REC: It doesn't say, sir, I don't know.

SRMBR: Some recorder at the proceedings?

REC: I assume so, sir. A court reporter just like (b)(7)(C) (b)(7)(C). Otherwise, I don't know for sure.

WIT: There was no court reporter there at all.

SRMBR: Okay.

MBR (b)(7)(C): Was there any tape recording going on?

WIT: Not that I saw, sir. They didn't say they were going to be recording it. It was just (b)(7)(C)

(b)(7)(C) to my right, (b)(7)(C) and
(b)(7)(C) directly behind me to my left, and
(b)(7)(C) standing in front of me. I didn't see
any recording instruments. They didn't say anything
that they were going to be recording.

MBR (b)(7)(C): Thank you.

Questions by the recorder continued:

Q- In this summarized transcript, this commanding General says he asked you if you had been fully informed of your rights to NJP including your 31 Bravo rights and if you were aware of the charges against him -- against you -- and then it says that (b)(7)(C) acknowledged and understood all his rights and that he voluntarily accepted NJP; is that correct?

A. That is correct.

Q- On page 2 of the transcript, the CG states that he reviewed the evidence with you, specifically, (b)(7)(C) investigation. He then asked if you were aware of the government evidence. You stated, yes, and that you did not desire further review?

A. That's not entirely true.

Gentlemen, I brought up the point that two people who were in that investigation were not entirely truthful with what they said, one being (b)(7)(C) (b)(7)(C), the other being my company commander. The (b)(7)(C) stated that I had forced him to disrobe those people and escort them out of the front gate. That did not occur at all. When I tried to bring that up to the General, that was one of the points where I was yelled at and told to "shut the fuck up" by the General. And also, essentially, the other issue didn't come out until later.

Q. And then this other issue is on page 3, I believe, about (b)(7)(C) account is inaccurate. This is your accused comments here that is in the transcript?

A. Right.

Q. But, any other objection to the evidence besides those two things or your chance to review?

A. Well, I assumed I would have a chance to explain myself with regards to the burning of the clothing. I did not have a chance to do that for whatever reason.

Q. But you had pled guilty to that charge?

A. That's correct.

Q. Did you consider yourself guilty of that charge?

A. I considered that I did destroy that clothing.

Q. The summarized transcript on page 2 states that you stated that you didn't have an excuse for that. That that was stupid and you don't really have a good explanation as to why you did it?

A. That's not true. I kind of wished somebody would have recorded this, but I was not allowed to explain why I did that. I, in fact, he merely asked me, did you burn the clothing, do you plead guilty or not guilty. I said, I plead guilty; and then we moved directly on to the next particular instance.

Q. So this whole paragraph on the page 2 is completely inaccurate and you stated the first incident was stupid and that you didn't have a very good reason for it.

A. Is that completely inaccurate?

A. May I see that whole paragraph?

SRMBR: Sure. What I am referring to is the accused's comments.

CCFR: I would just ask if the witness is going to be cross-examined on this that he have a copy to review as he's being questioned on it.

REC: Sure, yes, sir, that's fine.

WIT: No, parts of it are correct. I did plead guilty to the first charge as I talked to (b)(7)(C) about. I did burn the clothing. (b)(7)(C) felt that by pleading guilty, well, not by pleading guilty, but that I would be allowed to explain myself. I didn't get a chance to explain myself and I certainly didn't say what I did was stupid. However, in retrospect, I would not burn the clothing. I feel as if, no, I didn't say this at

all.

Q. Thank you. I will retrieve this from you.

You stated that after -- on direct, you stated that after the NJP, you felt that you weren't able to give your side of the story to the General; is that right?

A. With regard to the first incident, I wasn't. With regards to the second, I got a lot of it out, but I was shouted down at one point or another. In his final statement, I got the impression that he understood that I was trying to remedy the situation. I just don't think he understood that I was trying to remedy the situation, kind of an unwinnable situation, as best as I could.

Q. So you had some misgivings about the NJP after you left the NJP?

A. Yes.

Q. Now, the time after you were at division and when you were sitting by yourself, when (b)(7)(C) came back he had some documents for you to sign; is that correct?

A. Yes.

Q. How long were you sitting there by yourself?

A. Maybe, a minute at the most. It was a very, very short period of time.

Q. Now, one of those documents, Recorder's Exhibit 4, which is the acknowledgement of NJP Appeal Rights that is dated August 1st?

A. Yes.

Q. Now, is that your signature?

A. Yes, it is.

Q. And your initials?

A. Uh-huh.

Q. And your initials indicate that you do not intend to appeal the imposition of NJP?

A. Correct.

Q. And that you desire to submit a request in resignation of lieu of admin sep processing?

A. Correct.

Q. You also, on that same day, I imagine this occurred at the same time, you received a punitive letter of reprimand?

A. Right.

CCFR: What exhibit is that, (b)(7)(C) ?

REC: That's in Recorder's Exhibit 5.

Q.. And there was a letter, I believe, that last paragraph you referenced about comparing your actions to what the former Iraqis did?

A. I'm sorry?

Q. That last paragraph on the first page, I believe, this is mentioned a letter that you received. I just want to demonstrate to the members this is the same letter that you are talking about where it talks about your actions being compared to what former Iraqis did.

A. Yes, that's correct. Specifically that last sentence.

Q. You had a chance to read over that document on that day?

A. Yes.

Q. This is the third page to that. Is that your signature?

A. Yes.

Q. And your initials?

A. Um hum.

Q. And this page is indicating that you do not intend to appeal your letter of reprimand. Correct?

A. Correct.

Q. I'm turning to Recorder's Exhibit 7. This is the section dealing with your Congressional inquiry. You stated here, on the 4th paragraph, that "I was never formerly charged with the Uniform Code of Military Justice"?

A. That's correct.

Q. Is that your understanding?

- A. Well, that investigation -- I never knew what I was essentially charged with and I did not know who had charged me. Essentially, between the timeframe up until just beforehand of the NJP, I didn't even have a copy. I really didn't know what was going on, what the focus was of the investigation. I had a chance to find out in the end. (b)(7)(C) mentioned that he was looking into Geneva Convention violations of me, but I didn't see that investigation until the day before the NJP.
- Q. On the day before the notification of rights, I believe you said on direct, that (b)(7)(C) prior to the NJP notification, told that you were being investigated with possible Geneva Convention violations?
- A. Kind of. What it was that before (b)(7)(C) relieved me of duty on the 3rd, (b)(7)(C) pulled me aside and said that I'm looking into possible Geneva Convention violations on you and that's probably part of the reason you are seeing (b)(7)(C) (b)(7)(C) right now.
- Q. Okay. You were informed of the charges against you; weren't you, at the NJP?
- A. Yes, definitely by then.
- Q. Okay. So you were formally charged with a violation of the UCMJ; weren't you?
- A. Inevitably. But my understanding was that formal charges would include, you are going to be charged with this and this, and then they do the investigation, not necessarily find out exactly what I'm being charged with the day beforehand just by having a series of documents handed to me for me to dig through.
- Q. I think we are playing a bit of word games here. You are saying you were never formally charged with violations of the UCMJ. Now, I read that sentence as you are saying, you're telling your Congressman that I was never formally charged with a UCMJ violation, whereas, we have documents, several of them, showing that you were charged with UCMJ violations and you were aware of what those violations were.
- A. At the NJP, by then, I definitely was.

Q. You also state that I was, you were told that you must resign your commission in lieu of a board of inquiry without a guarantee of any type of discharge. Is that -- is that still your testimony?
A. Can you repeat that?

Q. Sure. This is the last paragraph, it's the first sentence.

A. That's correct.

Q. So you are, you are standing by that statement that you were told you must resign your commission and that you were not guaranteed a type of discharge?

A. (b)(7)(C) said, literally, I am taking your commission away from you, and after work, the paperwork started to roll through. I don't have a lot of background with the legal nuances of a Division level NJP, so that could be where, it was very confusing.

Q. Did you read in your notification -- this is back on Recorder's Exhibit 4 -- your notification is on page 3 of that notification, of what the maximum punishments could be at NJP.

Did you at least talk with your defense counsel -- well, I can't get into client matters -- but did you at least read -- this is page 3, I am referring to, paragraph 4 -- the maximum punishment that could be imposed in an NJP: reprimanded; 30-day arrest in quarters, or 60-day restriction; forfeit half of one months pay for two months?

CCFR: Now, I'd like to object, sir. This is all documentation that is provided already to the board. I mean, the purpose here is evaluating the fitness for conduct. (b)(7)(C) has admitted that he accepted NJP. This process here isn't to appeal or to reverse the NJP or the documentation which exists in his record. The papers and documents speak for themselves.

SRMBR: That okay. We'll let the recorder proceed.

Questions by the recorder continued:

Q. Did you recall that part of the notification dealing with max punishments?

- A. I didn't quite understand the first part of your question.
- Q. Okay. This is part of the 28 July letter from the General to you notifying you of your NJP. This is that last paragraph talking about max punishments. Typically, most people that go to NJP want to know what could happen to him or her in NJP. Would you agree with me on that, that knowing what your potential punishments are are pretty important in making your decision whether you want to take NJP or go to court?
- A. Yes.
- Q. Okay. So max punishment would be something that is an important section. The max punishment section here states you could accept NJP, the max punishment is reprimand, 30-days arrest in quarters or 60 days restriction, and to forfeit half of one months pay for two months.
- Do you have a recollection as to your understanding of what the max punishment was based on this notification letter?
- A. Yes, just that.
- Q. Okay. Any place in that max punishment or that notification letter, does it state that the General could take your commission away from you?
- A. No.
- Q. If the General could take your commission away from you, don't you think you would have been notified of that?
- A. I have no idea.
- Q. Don't you think that would be in your max punishment, which a Lieutenant Colonel of the SJA Division signed off on as a proper notification, don't you think that would have been part of that notification?
- A. Well, all I know is that's what the General said to me.
- Q. Turning to Recorder's Exhibit 3, which is your request for resignation for cause. This is dated the 6th of August 2003.
- A. Yes.

Q. As that states -- is that about right?
A. No. I actually signed that before I flew on the 3rd or 4th. That's not my handwriting.

Q. For the date, is that your signature on the page though?
A. That is my signature.

Q. So, you would have signed that, what do you think, on the 2nd or 3rd?
A. I believe it was on the night of the 2nd and I flew on the 3rd.

Q. Now, the first paragraph says "pursuant to the references, I voluntarily tenure my unqualified resignation of my commission in the United States Marine Corps Reserve in lieu of processing for administrative cause." Correct?
A. Uh-huh.

Q. The second paragraph, the last phrase says "I shall subsequently receive a certificate of honorable discharge from the Naval Service;" is that correct?
A. Uh-huh.

Q. So this document states you will receive an honorable discharge assuming that it's approved by SecNav?
A. Assuming it is approved by SecNav and by everybody else in the change of command.

Q. So in your -- back to Recorder's Exhibit 7, your Congressional inquiry where you state "I was told I must resign my commission in lieu of board of inquiry without a guarantee of any type of discharge."
That document states you are requesting an honorable discharge. Correct?
A. I am requesting an honorable discharge, but there is no guarantee of that.

Q. Well, the guarantee is that's what you are requesting and that that was your understanding you can't get anything lower than your own request without you being notified.
A. I was told by (b)(7)(C) and also by (b)(7)(C) when they handed me this paperwork, that they

suggested that I sign the honorable portion of it, which I was going to anyway. (b)(7)(C) simply told me that he felt that it probably would be an honorable discharge, but they couldn't guarantee it. (b)(7)(C) reiterated the same thing and that I'll probably find out within three to six weeks.

- Q. Okay. The second sentence of that paragraph says, "I believe that both of my decisions were justified and good moves in the long run and I think the standard I was judged by was too harsh." That's in that last paragraph.
- A. Is that still your belief?
I feel that there were justifications for them. I believe now I would definitely do something different looking at the circumstance. However, I think both of those situations, I had the interest of my Marines and their welfare and mission accomplishment at heart and that's exactly what I meant by that statement. I felt that I was judged pretty harshly.
- Q. This, this document was written on the 8th of October; correct, 2003?
- A. Yes.
- Q. And now we are sitting at a board of inquiry in front of three officers in the beginning of April. Correct?
- A. Uh-huh.
- Q. Why did you have, why do you have a change of heart. Here, you are saying, I was justified in what I did. Now, you are saying, I am justified, but I probably wouldn't do it again?
- A. Well, it's not really a change of heart. I've had a lot of time to reflect and consider this. I have talked to a lot of different people concerning this situation. They understood the idea I was trying to get across, what I was trying to do. The fact that I was trying to come up with a solution that would both save American lives potentially and also Iraqi lives. Now, sitting here in a board of inquiry because of this, I realize that, well, there might have been another option out there. And if I could redo it, I definitely would.

Q. So this is your testimony, that your actions were motivated out of concern for your Marines, both of them?

A. Uh-huh.

Q. Okay. Let's go through your actions here. I should have had this marked right around here. Is the command post of (b)(7)(C) Correct?

A. Sure. Do you want me to point out the exact area?

Q. No. I think as long as we have a general idea, that's alright.

A. Okay.

Q. I believe, from other conversations, the Iraqi police was around here?

A. Correct.

Q. The ASP was located about 20 kilometers?

A. No.

Q. How far?

A. 20 kilometers was, I don't know where that came from. It's about 10 clicks up, 7 miles at the most.

Q. So that's 7 miles North of the perimeter of the city?

A. Actually 7 miles from -- 10 kilometers from this point right here up this road.

Q. Okay. For the record, you are pointing to one of these black lines basically.

A. No. I was pointing towards the road's intersection. The main supply route right here and this road, which is the road -- which is the road between Al Kut and Badrah.

Q. Okay. I think it might just be easier if you point with a tack.

A. Which point do you want me to point out?

Q. The point where you were talking, it's 7 clicks away from.

SRMBR: You can turn that a little bit so that the counsel can see the map better if that's necessary.

CCFR: Thank you, sir. I'll stand over here.

The respondent did as directed.

WIT: Well, that's about 7-miles, roughly 10-kilometers from here.

Questions by the recorder continued:

Q. Okay. So, these Iraqis, the first time that you saw them on that morning -- we're talking the day of the 23rd -- is when you went up to check on, on the ASP and see how things were doing up there?

A. No. I really wasn't going to check on the ASP. I was going up there to specifically to find the serial numbers of a radio and a CAAT vehicle up there.

Q. Okay. But while doing that, you ran into (b)(7)(C) (b)(7)(C)?

A. Yeah. Just talking to him for a moment.

Q. And (b)(7)(C) told you that earlier that day, he had seen these same Iraqis that were sitting there with flex cuffs in the ASP?

A. No. He said that he had captured them. I took it to be he had captured them two times previously from that time.

Q. But you learned from his testimony that he meant just one time?

A. Right. Apparently, he had just captured them one time previous to this time.

Q. So there was some misunderstanding between you and him over how many times?

A. Right.

Q. Okay. And then you decided well, I will go ahead and take care of these Iraqis?

A. Uh-huh.

Q. Did you call higher and ask for an opinion on what to do after, in what you thought, was the third time they had been caught.

A. No.

Q. (b)(7)(C) he certainly did that in his case; didn't he?

A. We had already called in to say that they had been

captured.

- Q. Did you call in to ask what to do about them being captured?
- A. No.
- Q. You took it upon yourself to drive them North about three kilometers. Right?
- A. Probably closer to three miles which would be about six clicks, five clicks.
- Q. Okay. So about five or six clicks North and dropped them off?
- A. Correct.
- Q. Okay. And that was so that they would just learn a lesson?
- A. That was that they would hopefully hitch a ride and go home.
- Q. Okay. Hitch a ride and go home. Couldn't they have hitched a ride from the Iraqi police station and gone home?
- A. Perhaps.
- Q. It's a much longer -- it's about seven clicks from Al Kut to here; right? Then how many miles or how many clicks from there over to the Iraqi police station?
- A. Would you like me to measure it for you?
- Q. No. Approximate is fine.
- A. Just a second. About five.
- Q. So, total, it's about 12 clicks from where the ASP is to the Iraqi police station. Correct?
- A. Closer to 15.
- Q. Okay. So it's about 15. So 15 clicks down to the police station and five or six clicks from where you dropped them off?
- A. Uh-huh.
- Q. Now, isn't it more reasonable that even -- as you say, the Iraqi police would have just dumped them off and processed them for a minute and let them go, they have got a much longer distance to go back up to that ASP. Correct?

- A. Which part, the much longer distance or the reasonable part that you started?
- Q. It would have been a much longer distance for them to go from the Iraqi police station back up to the ASP?
- A. Yes, it would have.
- Q. Okay. So if your concern is keeping them out of the ASP, wouldn't it have been to take them to the farthest point?
- A. The reason why I didn't take them there is because, essentially, they would have been processed right away. And with people who are deliberately trying to get into an ASP -- they have been captured once, they have been captured twice, so that's two times. You take them down to the police station. They say, okay, no problem, and send them back out. Essentially, that's really no deterrent right there either.
- Q. Well, did they have a vehicle with them at this time?
- A. Not that I could see.
- Q. Okay. So they would have either had to hitch a ride back from the Iraqi police station, 15 clicks away, or walked it. Now, you dropped them off five or six clicks away, they would have either had to have hitchhiked or walked. Correct?
- A. Uh-huh.
- Q. So this one is three times as further away than was your solution. Correct?
- A. Yes.
- Q. Normally, three times the distance means three times the time in getting something back. Marines earlier today testified that -- it was (b)(7)(C) testified that it was standard operation procedure, if a Marine -- and (b)(7)(C) testified, his direction was, if the Iraqis had gone into that ASP multiple times, it was standard SOP to take them to the MPs, Army MPs, or to take them to the Iraqi police station; is that correct?
- A. Um hum.
- Q. So when you dumped them off of this highway, that

wasn't standard SOP; was it?

A. No.

Q. And you didn't call anybody to see if it was okay to alternate from standard SOP?

A. No.

Q. Then you come back to (b)(7)(C) and you see Captain -- I'm sorry, you see (b)(7)(C) bringing these Iraqis into the camp. Okay. You don't like it because they are possibly showing intelligence value or they're possibly may get a feel for what's going on and you didn't think that was a good idea?

A. Going with SOPs, we tried not to bring prisoners into our position. It happened from time to time, but inevitably, I ensured that my platoon did not do that. So that became our own SOP and the other, the company pretty much as a whole started to do the same thing.

Q. Your decision was to teach them a lesson because they had come back, you thought, a fourth time, but in reality it turns out a third time, that you would take off their clothes and send them out. Not all their clothes, but most of their clothes basically.

A. I'm sorry, what's the question?

Q. Did you believe you were going to teach them a lesson in doing this and that would be a deterrent to them?

A. It was more along the lines of that was the only way I could guarantee they would go home, because if they didn't have their stuff there with them, they would have to go home to get a new set.

Q. Who ordered the money to be taken away from them?

A. I don't know.

Q. Were you aware of that order?

A. No.

Q. Did you tell your Marines about taking any of the money away from them?

A. No?

Q. So as far as you understood, they had their money on them when they left the area?

A. Yes.

Q.. Your deterrent, you just wanted to keep them away from the ASP for as long as possible; is that right?

A. I wanted to keep them away permanently.

Q.. Permanently. How would this idea of making them go home to get their clothes keep them away from the ASP permanently?

A. Inevitably, it probably wouldn't, but it would take more time to go back home, get more stuff, instead of going to the police station, getting processed in, let's say, ten minutes, hitching a ride, driving back out, or any of the other options that I could think of or that have been illustrated here.

Q. Did you know where these Iraqis lived?

A. No.

Q. Do you have -- so they could have lived right around here. Correct? Just a half a mile away from your compound. Correct?

A. Well, the bus that they got into in the bus station across the street was going in the opposite direction, so I think they lived in town some place.

Q. So they lived in town some place. So you don't know where these people lived. They could have lived across -- when you ordered them to take off their clothes, you didn't know where they lived; did you?

A. No, I said that already.

Q. They could have lived across the street. They could have, essentially, gone in their house, put on -- go across the street, put on some more clothes, and walked or hitched a ride back out to the ASP?

A. Uh-huh.

Q. Or you could have taken them down to the Iraqi police station?

A. And they could have lived right by the police station, walked out the door, and got a ride back up.

Q. The point is, you don't know. You don't know where they lived, you were just acting. Correct? And your action was, your intent was to try to get them permanently away out of that ASP?

A. My hope was to get them permanently away from the ASP. My intent was to get them back to their house

to take up enough time so they would actually think about it and not want to go back to the ASP.

- Q. You don't think that this was humiliating to them?
A. I don't think it was humiliating.
- Q. You don't think that if you were stripped down to just your shirt and shorts, that you wouldn't find that humiliating?
A. No, not in this situation as a prisoner of war or a detainee. I wouldn't like it, and certainly wouldn't like it, but they had been in the ASP a few times already.
- Q. Why wouldn't you like it?
A. Same reason anybody else wouldn't like it.
- Q. Why is that?
A. Well, first of all, I don't have my outer garments on.
- Q. So, this action, you didn't want them to like this action; did you?
A. I wasn't too concerned whether they liked it or not. I didn't think it would humiliate them. I definitely didn't want to beat them and I definitely didn't want to harm them physically. I didn't want to steal any of their personal items, their money or anything like that. I just thought the only way I could ensure that they would go home and that is the action I took.
- Q. Did you ask anybody's opinion before issuing this order?
A. Yes.
- Q. Whose opinion did you ask?
A. (b)(7)(C).
- Q. What did he tell you?
A. He smiled, he laughed, he said, you are the ranking officer in charge. Let's do it.
- Q. Did you ask anyone higher up?
A. No.
- Q. Did you see any other Marines or any other Army MPs strip down Iraqis?

A. No.

Q. Did you receive any direction that this would be an appropriate action to take for a repeat offender?

A. I didn't receive any information whether it would be appropriate or not appropriate.

Q. Your mission at this time was stabilization, security stabilization. Correct?

A. Uh-huh.

Q. In a lot of ways, you are acting like a police force in certain ways?

A. In a very, very loose sense. Most police forces don't have to deal with automatic weapons fire every third night, most police forces don't have to deal with rival tribes having fire fights with each other --

Q. But in a sense of your actions out at the ASP, in a sense of the Iraqis going in, in and out, in and out, this is -- and you trying to guard this particular area, you're guarding it, you are taking people away who are trespassing, it's more like a police action?

A. Or, no, I don't really think of it as a police action, because there was military equipment there. I had 50-caliber rounds, I had Mark-19 rounds. I have read plenty of history of people guarding ammo dumps where they took considerably more severe measures than I took. I didn't want to take that. I didn't think it was part of the Rules of Engagement. The police station, that wasn't working at all. A lot of my Marines were very frustrated about it, and so I tried to pick a human, maybe, too creative middle ground.

SRMBR: Hey, skipper.

REC: Sir.

SRMBR: I hate to interrupt, but I think it might be best if we recess for the evening and reconvene in the morning. Is that possible or all the --

CCFR: That's fine, sir.

SRMBR: The other witnesses and people are going to be

available?

CCFR: Yes, sir.

SRMBR: Okay. What I would like to do then is do that and then continue with you in the morning at 0800. I have some questions for some additional questions for (b)(7)(C) and (b)(7)(C) and (b)(7)(C) whomever was at the NJP proceedings, and we can do that, you know, over the phone if they're in (b)(7)(C). Okay.

REC: Sir, for the record, the time is 2110 on 6 April and we are adjourned for the evening.

SRMBR: We convene at 0800 tomorrow.

The Board of Inquiry recessed at 2110 hours, 6 April 2004.

The Board of Inquiry was called to order at 0800 hours, 7 April 2004.

SRMBR: The board will come to order. All persons who were present when the board recessed are again present.

The recorder will note the time and date in the record of proceedings.

REC: Sir, the time is 0800 on 7 April.

SRMBR: Okay. You may proceed with your cross-examination. Do you swear him in again?

CCFR: He's already sworn in, sir.

SRMBR: Good.

Questions by the recorder continued:

Q. (b)(7)(C) the last point where we were at just to recap for the -- to get us back on where we were going -- I asked you if you would have felt humiliated if somebody had stripped you down to your T-shirt and PT shorts. And I believe your response was, no I would not have.

Is this exactly what you said?

A. In that situation, I probably would not have if I was trying to steal ammunition that many times.

Q. And you testified on direct that you got this idea of stripping down Iraqis from watching videos of actions taken against POWs in Vietnam and Korea?

A. Korea and World War II, yes.

Q. And these were POWs. Correct?

A. I'm not positive, I think so, yes.

Q. Would you agree with me that there is a difference between a POW and a detainee who is a civilian?

A. I would agree there's a difference.

Q. Let's move to the incident on the 29th of June. There is no contention here, the government is not arguing that there was a wrong action dealing with the shooting of the vehicle or anything like that or the search of the vehicle or the turning of the money over to the police. The issue that the government has is generally the issue of the burning of the clothes.

Now, that was about 2300, midnight, when your Marines shot up that vehicle. Correct?

A. I think it was 2245.

Q. 2245. So at 2245, the vehicle was shot up, your Marines got an ambulance for those Iraqis, took them away, and you turned over the money to the Iraqi police?

A. That's correct.

Q. And then from that point on, you were told to stand guard over that vehicle?

A. Right.

Q. Your Marines were out there from 2245 until that following morning about 0900?

A. I think we left probably close to around 1100.

Q. 1100. Were you relieved at 1100?

A. No.

Q. Was there anybody watching that vehicle at 1100?

A. No.

- Q. Okay. And (b)(7)(C) had told you to stay in that vehicle until you were relieved. Correct?
- A. That's correct, yes.
- Q. Okay. Now you had your Marines go through the belongings, their belongings on this vehicle for intelligence purposes. Correct?
- A. That's right.
- Q. And this included their personal belongings and some things like their tea pots and some things that were in canisters on the side of the truck. Right?
- A. Correct.
- Q. Now, once you saw that these things that, the clothing had something ugly looking on it, something yellow and nasty looking on it, you directed -- the Marines were just going to throw it in these little sandbags that you had? They were going to throw it in the truck, you didn't want that vehicle to get infested with whatever was on that?
- A. We were out of sandbags and I didn't want my vehicle to be infected. In retrospect, what I probably should have done was had my guys take the tea sets and some of the other items out of the sandbags, stuffed the clothes in the sandbags, zip tied that, and then done that. So, I definitely could have definitely done that particular incident much better.
- Q. You looked at these items of clothing?
- A. Yes.
- Q. Did you really think that there was any intelligence value in those items of clothing?
- A. Not the clothing per se, but the pockets had different pieces of paper with Arabic writing in them, identification, things like that.
- Q. You described these items as trash yesterday?
- A. Uh-huh.
- Q. Well, is it trash or something that has intelligence value?
- A. Well, we took everything that we thought had intelligence value out of it.
- Q. So instead of finding another way to transport what

- you thought had intelligence value because they had little slips of paper in it, you burned it instead? So essentially, you went and destroyed what you thought had intelligence value?
- A. No. Actually, the mistake I made was destroying the clothing. I had my guys take everything that had writing on it or any piece of paper out of it. We did that correctly from an intelligence aspect of it.
- Q. Okay. Why burn the clothing, why burn this trash? (b)(7)(C) testified yesterday that he wouldn't have wasted a match on this thing.
- A. After listening to that testimony, he was right. I could have done that better. I could have just had my guys throw it in the vehicle, we could have closed the vehicle and left. It was a hasty decision, it seemed like a good idea at the time. I have had a lot of time to think about it since then. In essence, there was really no dire need to burn the stuff.
- Q. You had a lot of time to think about it from the date, the date of your Congruent; correct? On 8 October 2003 is when you dated that?
- A. Uh-huh.
- Q. These incidences happened, you were NJP'd in August. This is what you state about that incident, "I destroyed a small amount of captured clothing from a destroyed vehicle at a checkpoint. The clothes were dirty, possibly lice ridden, and posed no intelligence or other value to the government of the United States and had some value to the enemy."
- Are you stating here that you believe that those Iraqis were the enemy?
- A. At that time, I couldn't be sure. They were detained by the MPs. They were supposed to have been interrogated at some point. That vehicle was supposed to have a thorough search, so I didn't know if they were the enemy or if they weren't.
- Q. Hadn't they come back that morning, that morning and tried to look for their stuff?
- A. We had two men come back in bandages around 0900. I was about 60-meters from where they were at. They tried to get into the vehicle. Myself and my

Marines were extremely surprised that they were not in some type of detention. I had (b)(7)(C) and (b)(7)(C) put them back into their vehicle and sent them on their way.

- Q. So obviously by this morning, whoever had detained them and interviewed them didn't think that they were the enemy. They didn't think they were a threat or else they would have been detained?
- A. Well, I assumed that if they would have been interviewed or interrogated, that somebody would have called me and told me about that since I was guarding their vehicle.
- Q. Well, they're there. And you have had since -- they're there, so obviously, no one is going to release them if they think they are the enemy. So they are there, essentially, these were just civilians who thought you all were going to rob them and so they ran the checkpoint and now they want their stuff back. And certainly by this Congruent in October, you had the time to look over this investigation which determined that these people were not in a preliminary inquiry which was done -- we have not included any of these in the exhibits -- determined these people were not the enemy or they were not terrorists they were just Iraqis who were confused, tragically; isn't that correct?
- A. I don't know, I don't know if they were interrogated. No one ever mentioned that to me. (b)(7)(C) and myself, we were very interested in making sure that anything that was inside that vehicle was turned over to the HEP teams. These people had been released or let go by the hospital probably eight or nine hours earlier. And so, at that point, it was still considered to be some type of intelligence asset. I couldn't tell you about the other aspects involved with that decision.
- Q. Was that standard operating procedure in your company to burn possessions of Iraqis?
- A. We very rarely had possessions of Iraqis, but, no, it wasn't.
- Q. Did you call anybody and ask if you could burn what you thought was trash because you thought it might be dangerous?
- A. No.

Q. Do you understand the concept of a tactical corporal?

A. Yes.

Q. Basically, that means that we go into high viz places, places where we are not in full combat but we are trying to win over the hearts and minds of the people who we -- in that particular country for this operation.

A. Do you have a problem with that concept?

A. No.

Q. That's basically an action that 30 seconds of misconduct of a Lance Corporal that's caught on CNN or that's caught anywhere could end up blowing up in our face, basically?

A. Yes.

Q. Did those thoughts occur to you when you were going through these instances that you were stripping down Iraqis and sending them out in public?

A. I did think about that at the time, yes.

Q. Did you think about that when you were burning their personal property?

A. At that point, I couldn't tell you, I don't know.

Q. So you thought about this when you were stripping them down and you still continued with your actions?

A. Yes. In retrospect, I would handle it differently. I would take them to the MPs instead of the Iraqi police. That SOP was clearly not working and hopefully the MPs would deal with it. But, yes, I did think about it.

Q. We had witnesses come in here and come and testify: (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) that repeatedly, they saw repeat offenders come into these ASPs. That was frustrating, time consuming. (b)(7)(C) talked about his frustrating experience dealing with the civilian jurists, a month and a half of him, you know, trying to do something and still frustrated.

A. So, a lot of other Marines had very frustrating experiences over there. Correct?

A. Correct.

Q. Now, none of these Marines are -- burned or took off any of the clothing or did anything to harm these other Iraqis; did they?

A. I don't know, not that I'm aware of.

Q. You mentioned the other day that (b)(7)(C) was not giving you good advice on the ROEs for the ASPs. Did you speak to (b)(7)(C) about your concern about ROEs in the ASP?

A. Yes, I did. I spoke to (b)(7)(C) a couple of times. The last time I spoke with him was on the 1st of July and I asked him if he thought it would be appropriate if I should visit (b)(7)(C) in the (b)(7)(C) and talk to him and what his thoughts were on that matter, and he said, yes, it sounds like a good idea.

Q. Did you speak to him prior to the 1st of July?

A. Yes.

Q. And what advice did he give you?

A. He and I talked a couple of times about the confusing nature of that particular company. We never really came to a good conclusion.

Q. Did you talk to him specifically about your questions about the ROEs and, you know, this, you know, maybe just talking to him about hypotheticals. Well, you know, this happened, I saw this happening, what have you seen?

A. No hypotheticals, no.

Q. (b)(7)(C) is, you know, you know, he was the (b)(7)(C) at the time at the Battalion. You didn't think he was qualified to talk, at least to bounce back ideas or hypotheticals about what might happen in the ASP?

A. I never thought of that. A day or so after the incident at (b)(7)(C), I did talk to him about that. I mentioned what I had done. His reaction was he started to laugh. So I didn't mention hypotheticals. That actually would be a good idea, though. I probably should have.

Q. You stated that you did these actions because you were trying to look out for the welfare of your Marines and you were trying to look out for the welfare of the Iraqis?

A. Yes.

- Q.. Do you realize what kind of conflict you caused in your, in the Marines there who you issued that order to strip the Iraqis?
- A. Yes.
- Q. (b)(7)(C) testified earlier that he had to talk with his Marines later on, give them a debrief about what to do when an officer or somebody higher gives them an order that they don't agree with?
- A. Yes.
- Q.. Is that something you want Marines to be discussing about in a combat zone?
- A. No.
- Q. This is a statement from a (b)(7)(C) He basically -- and he says in the investigation, "none of us were in any place that I know of to question the order. So we followed the order and let them go. The order was given by (b)(7)(C). This is the order concerning the stripping of the Iraqis." So this private seems to be indicating that he knows that it was wrong, but he couldn't do anything about it because he was following your order.
- Do you agree that there is a break down of good order and discipline?
- A. No, I would not agree with that. I would say, though, after looking at the situation for a long time, I could have handled it better, but I made a decision. I was decisive about that and I tried to do something that would be both effective and also not entail seriously injuring anyone.
- Q. You have heard the phrase, no better friend, no worse enemy. Correct?
- A. Yes.
- Q. Prior to these incidences, you had also heard the phrase, first do no harm. Correct?
- A. Yes.
- Q. You were familiar with the ROEs of treating all civilians humanely. Correct?
- A. Yes.
- Q. Prior to the incidences, you had heard the ROE about

respect private property and possessions. Correct? So you knew all these things. In addition, you had four years of the Naval Academy, OCS, TBC, 6 years as a commissioned officer. All of this in your background, all this knowledge based. Correct?

A.

Correct.

Q.

And yet you still made these decisions and every Marine who came up here and testified yesterday, even the ones who testified on your behalf, said, I wouldn't have done that. None of them could look these members in the eye and say, they all had this gut reaction that that was wrong; isn't that correct?

A.

Yes.

REC: I have nothing further.

SRMBR: Okay. Questions from the board members? Redirect?

CCFR: Redirect, thank you, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q.

Good morning, (b)(7)(C).

A.

Good morning.

Q.

Yesterday, the (b)(7)(C) was pointing out the map of Al Kut and asking you about the fact that it would have been a greater distance to bring them down to the police station than to bring them to where you brought them as sort of suggesting that perhaps the punishment would have been greater had you actually gone to the police station for them to walk. Right?

A.

Correct?

Q.

Where was the other ASP?

A.

The other ASP is located right here. So if you did bring them down to the police station, essentially, they would be equal distance to two points, actually closer to this ASP, which had more ammunition in it.

Q.

Okay. When you were out there on the line having a lot of responsibility, taking fire every now and

- then, did you feel that you had the luxury to sit and analyze all the available options that you could use and that might be available to you?
- A. No. Not all of them, typically though, I tried to come up with a couple of different ideas and then go from there.
- Q. You were asked on cross about whether you called back to (b)(7)(C) to burn the clothes and you said you didn't.
- A. Why didn't you call back to (b)(7)(C) on that? At this time, I did not think it that big a decision, to be honest with you. I was in the field, I had searched the vehicle as best I could. (b)(7)(C) told me to return. We had been out there for a considerable period of time at that point and, basically, it was a quick hasty decision.
- Q. And you were also asked about the fact that if you left that position, you left the vehicle.
- A. Why was it that you left it? That was after the truck company had tried to move it for a considerable period of time. They said they couldn't move it. I contacted (b)(7)(C) and this took place over a period of probably a couple of hours. I talked to (b)(7)(C) and (b)(7)(C) and mentioned that they can't move the vehicle, what do you suggest, do we stay out here, should we come back? He said, since you can't move the vehicle, you might as well come on back. So we pulled everything out that we thought might have intelligence value, plus we also pulled out some personal possessions to return to the Iraqis, the tea sets and things like that, and left.
- Q. Did you think the clothes had any intelligence value in and of themselves?
- A. The clothes themselves, no.
- Q. Why did you feel it was appropriate to get authorization from (b)(7)(C)?
- A. Well, he was the company (b)(7)(C) and the company SOP was if a platoon commander is in the field and the company commander isn't there, essentially, the platoon commander would take tactical direction from the (b)(7)(C) or maybe

the company (b)(7)(C) . Plus, to be honest with you, I trusted his judgment. He had a good head on his shoulders. I had no problems with that.

Q- Okay. You were asked on cross about your collective military experience having been at the Naval Academy, OCS, TBS, Comm school, tours.

A. How many times have you served in combat?
This was the first time.

CCFR: No further questions, sir.

REC: I have no questions, sir.

SRMBR: Okay. Questions from the board members?

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C) :

Q. Okay. (b)(7)(C)
A. Yes, sir.

Q- In the next series of answers, I don't want to hear the word "retrospect." Okay?
A. Okay.

Q. In regard to the stripping incident, what was your mindset at the time they needed to pick up -- you need to strip their clothes down?

A. My mindset was, I tried to think of a way to get them out of there, a way to get them to go home, maybe give them some time to think about not going to the ASP again. That's why I did it.

Q. Okay. How many Marines were actually there when you ordered the Iraqis to get stripped down?

A. I think all told, sir, 10 to 15.

Q. 10 to 15, which is not the entire unit?

A. No, sir.

Q. Okay. Have you ever received a Geneva Convention briefing?

A. I don't think so, sir, no.

- Q. Okay. The ROE, you did have a chance, you did have a chance to review?
- A. Yes, sir. We did have the rule, the Level 3 ROE, which was the Combat Ops Type ROE.
- Q. Define that.
- A. Essentially, the brief that we got when we first got into Kuwait, they were going from 3 Alpha, which is Intense Combat Operations to 3 Bravo, Less Intense Combat Operations. Those are the hypotheticals we got, sir.
- From there, anything that we had was kind of word of mouth or just informal SOPs.
- Q. When you told the (b)(7)(C) what you were going to do or what you were going to do, he responded how?
- A. Yes, sir. He smiled at me, he said, you are the ranking officer in charge, and yes, sir.
- Q. Okay. Yesterday you made a statement that someone made a suggestion to beat them down?
- A. Yes, sir.
- Q. Who did that?
- A. The (b)(7)(C) sir.
- Q. The --
- A. (b)(7)(C).
- Q. Okay. Let's focus on, right now, the plausible deniability statement. Where was that meeting with you and (b)(7)(C)? Where was that conducted at when this went down?
- A. Sir, that was (b)(7)(C) and myself at one room in the corner of this Saddam Fedayeen headquarters, that was inside that room. We were pretty much by ourselves.
- Q. Okay. Now, let's go to the vehicle shooting incident or let's not call it an incident, let's call it an event. When you were taking the personal items, the items that you thought had some intelligence merit, did you inventory those items?
- A. No, sir.
- Q. So it was just, put it in the sandbags, I think this

has some value, let's put it in the sandbags. You did a hasty search of the vehicle. There was clothing. You took the seat cover off, and then you decided, what? That it was that -- it was probably infested with some type of thing or it was just plain natty and dirty and all that?

A. It was natty and dirty, sir.

Q. So you didn't see any bugs or anything like that?

A. No, sir, I didn't. It was real quick and when he, when (b)(7)(C) threw one of the items of clothes on the back of our HMMV, my gear, actually not my gear, it was his gear, I just had a sick feeling in my stomach that something wasn't right with it.

Q. Okay. And when you called back to (b)(7)(C) -- and (b)(7)(C) is the actual --

A. Yes, sir.

Q. You are asking for instructions about what to do in regards to the vehicle itself and he responded to you, what?

A. He said that since the truckers can't move it and you have been out there, you might as well -- and they think you should come in -- you might as well come in.

Q. Okay. What is your state of mind in this entire period, from the stripping incident all the way down to the vehicle event? You're tired, you're frustrated?

A. Yes, sir. I am tired and frustrated.

Q. Do you think you are making rash decisions?

A. The second one, yes -- at the time, no.

Q. Okay. Let's flip back to the stripping day again. You testified that after you stripped them down, you told them to leave the compound, they went across the street to the bus station?

A. Yes.

Q. You actually saw them get on a bus. You testified that you saw another one get into a vehicle and they drove away?

A. Yes, sir.

Q.. And I believe you said they were driving in the opposite direction?

A. I think so, yes, sir.

Q.. Okay. Granted these guy are not enemy combatants or they haven't been classified as enemy combatants, but let's reverse the situation here. Let's say you are going into the ASP, what do you expect to have happen to you if you are caught?

A. To be honest with you, I probably expect to be shot.

Q. What time did you burn the clothes at the vehicle?

A. Just before we left, sir. I want to say that was 1030 or 1100.

Q.. What time did the two Iraqi gentlemen get back to the vehicle?

A. They got around there around 0800, 0830.

Q. Did they express any distress about the vehicle itself?

A. They were, we were pulled back to a defensive position about 60 meters from the vehicle. I had (b)(7)(C) go up there. I didn't hear what they were saying, they were kind of making a lot of noise in Arabic and they were waving their hands all over the place. (b)(7)(C) (b)(7)(C) when they came back, they weren't sure exactly what they wanted, whether they wanted to pick up their stuff or they wanted to get the truck. I think they were pretty pissed off about the truck because I remember seeing them point at the engine block, sir.

Q. To your knowledge, did they ever get their personal effects back?

A. I think so, sir, because those tea sets and what not, we turned those over to the intelligence team and I think they gave them back to them.

MBR (b)(7)(C): That's all I have, sir.

SRMBR: Thank you.

Questions by MBR (b)(7)(C):

Q. When you checked in with the Battalion, did you talk to the Battalion commander, did you report to him?

A. No, sir.

Q. He never called you on the phone?

A. No, sir.

Q. When you were doing your workups or when you were at CAX, did you do a CAX before you went in?

A. Yes, sir.

Q. Did you sit in on commander intent, delivery of commander intent within or Comm Op briefings, or were you in the CP watching him issue orders to the Battalion?

A. No, sir. He gave one or two briefs but the one brief that sticks in my mind was him introducing himself to the entire Battalion.

Q. Where was that?

A. That was in the theater of 29 Palms.

Q. And then was there another opportunity where the Battalion commander got in front of the unit prior to the deployment or prior to crossing the line of departure from Kuwait or was there time for that? Was there any other opportunity where he pulled all his officers in and talked to them? Did that ever happen?

A. We had one incident, not incident, we had one situation when we were in the officer's club in 29 Palms where the Regimental commander came down. I think the Battalion commander said a few words, introduced the Regimental commander and then the Regimental commander talked to us, sir.

Q. Did the Battalion issue a lot of written orders during this time in theater, written Comm Ops, written commander's intents, and were you privied to them; did you read them?

A. What they would do, sir, is they would write sort of a task list for the day to include some concept of operations. And (b)(7)(C) that is what he was referring to when he said he was reading or passing on orders, for example, for the missile shoot.

Q. So would you say in written form you received a daily commander's intent or guidance from the commander or would you say guidance from the commander was lacking, nonexistent, or intermittent?

A. I don't know, sir, if I am qualified to answer that being that I was new to an infantry Battalion.

Q. But you had been with them for four months?

A. Yes, sir.

Q. Did you or did you not know his intent with regards to your platoon's mission within your company?

A. I didn't know what his intent was with regards to my platoon, sir.

Q. Switching a little bit here. But mentors, did you have any mentors or counselings for the time you were in the unit prior to these incidences, whether they be good or bad?

A. With (b)(7)(C) yes, sir.

Q. Okay. Did anybody ever pull you to the side and say, hey, you need to temper some of that aggressiveness or did anybody say, keep on doing what you are doing? What kind of feedback were you getting?

A. After the (b)(7)(C) got into a fight, (b)(7)(C) talked to the (b)(7)(C) myself, and (b)(7)(C) all together and that was sort of the intent of it dealing with all three of us.

Q. How was (b)(7)(C) did he attend the NJP?

A. Yes, sir.

Q. Was he able to speak in your behalf?

A. Yes, sir.

Q. How was his testimony received by the Deputy General?

A. He listened to it, sir.

Q. I want to talk about command and control within the battalion and the company now, specific with staying with the vehicle. Would you say, how would you describe the procedures for, you have got two vehicles that are going to go to the police station. Were they briefed to the Ops center and were they tracked as far as their location and did they have checkpoints along the way? Were the reporting procedures disciplined enough so that somebody always knew somebody was out and they were going to

- track them and stay on top of them until they came in?
- A. The company -- I have a pretty good feeling that they knew that, sir. We did have a series of probably 60 checkpoints set up throughout the Al Kut area. The procedure with (b)(7)(C) platoon was to radio, we are leaving right now. If it was a long distance type thing, you would generally have a half-way point where you would call in. Typically, in the city, you didn't have to worry about that so much. But once you arrived, you would have to call back to (b)(7)(C) and report. As for the Battalion, I don't think so, sir.
- Q. So with regards to what the (b)(7)(C) said, go ahead and disengage. You had given them enough data. The situation changed, so it wasn't just a rash decision to say, okay, we're out of here, we've been waiting too long, it's time to go?
- A. That's right, sir.
- Q. So would you say everything, the movement control and the reporting of detainees and the waiting for instructions from higher headquarters was all done in somewhat a disciplined and deliberate mode?
- A. Yes, sir. I was on the radio probably every half hour to Battalion to try to get a wrecker out there. It took probably two and a half hours, maybe three. There was a lot of radio communication.
- Q. Just to reverse the roles for a minute. You are the company commander and (b)(7)(C) comes and tells you he stripped these detainees.
- A. How do you handle this situation? I probably would have thought about it for a bit, sir, and then as a company commander, I definitely would not want to have that happen in my company to be honest with you, now that I think about it. I probably would have counselled him along the lines of saying, well, you tried something. It was aggressive, perhaps a little bit stupid, let's try this and this next time. Maybe talk to the Marines about it.
- Q. And then the last question is, the Battalion commander hears about this from some other Marines and comes to see you as a company commander with

questions.

A. How do you handle that situation?
As a company commander, sir?

Q. You are the company commander?

A. I would tell him exactly what happened and how I dealt with it, sir.

MBR (b)(7)(C): Thank you.

SRMBR: Okay. I am going to jump around a little bit here.

Questions by the SRMBR:

Q. Tell me what's the purpose of the Rules of Engagement?

A. Sir, the purpose of the Rules of Engagement is to ensure that we are able to accomplish our mission but also to make sure that the Rules of Land Warfare are followed.

Q. Okay. So you would agree that they are important in that combat environment?

A. Yes, sir.

Q. And far more real to your daily activities than they would be if you were in training?

A. Yes, sir.

Q. When you called back -- well, several times -- I got a couple questions here that are related to you calling back during the semi trailer truck event with the Iraqis in the ASP.

A. You said you talked to (b)(7)(C) and you said you talked to Battalion a couple of times? Yes, sir.

Q. Who other than (b)(7)(C) at (b)(7)(C) did you talk to?

A. I talked to --

Q. In your numerous radio transmissions?

A. I talked to (b)(7)(C) he was the sergeant of the guard, sir. I talked to him three maybe four times.

Q. And where was (b)(7)(C)?
A. I don't know, sir.

Q. At some meeting somewhere?
A. I assumed so, sir. He was typically going to meetings.

Q. Was there a means for you in an emergency situation to talk to (b)(7)(C) no matter where he was?
A. If he was at Blair Field, yes, sir.

Q. But not if he was in some other location?
A. Just depending on radio transmissions. Typically, I could get in touch with him.

Q. Via radio in his HMMV, pretty much wherever he went or was with someone who did. Right?
A. Yes, sir.

Q. And he kept you informed of his locations?
A. Most of the time, sir.

Q. Most of the time?
A. Yes, sir.

Q. Okay. On the truck deal, just so I get the timing right, you -- the Iraqis showed up about 0800, you left about 11?
A. Yes, sir.

Q. And you left the Iraqis and the truck there on the road?
A. No, sir. I had (b)(7)(C) and (b)(7)(C) put them back in their cab and send them back. They were covered in bandages. I wasn't sure what I was supposed to do with two wounded Iraqis.

Q. Now, this was the following morning when they returned?
A. That's what I'm referring to, sir.

Q. Okay.
A. I didn't know what I was supposed to do with these guys. I had assumed that they were going to be held and interrogated. I had heard nothing about that. I really didn't want to have two Iraqis out at my position who were covered with bandages. I didn't think that would look too good. Plus, if someone

starts bleeding, all I have is the corpsman right there. Along with the fact I had no idea what they were saying.

Q. Okay. Did they drive the truck away?

A. No, sir. The truck was shot up.

Q. So you put them in the cab and then you went back to (b)(7)(C)?

A. We put them in the cab, they drove back to wherever they came from, sir.

Q. So the truck was running?

MBR (b)(7)(C): No, sir, a taxi cab.

WIT: A taxi cab, sir. Someone else was driving them.

Questions by the SRMBR continued:

Q. Okay. You got legal counsel, prior to your NJP, from (b)(7)(C)?

A. Yes, sir.

Q. Okay. Go over again what he advised you of?

A. I described the incidences, sir. He advised me to explain the situation to the General. He felt that would be possible. I decided that I wanted to plead guilty to burning the stuff, because inevitably, I did burn it, and explain that to him. He thought that was fine. He also advised me to plead not guilty to the other charge, the conduct unbecoming.

Q. Okay. Did he explain to you about NJP procedures?

A. Yes, sir.

Q. Walk you through the protocol, what was going to happen?

A. Not so much the protocol, more along the lines of, we talked maybe four or five minutes concerning, kind of a thumbnail of it. He didn't go too deep into protocol aspects, sir.

Q. Okay. So he didn't go into the procedures of an NJP and having the charges read to you?

A. No, sir.

Q. Your rights concerning those charges; your pleas;

A. what would happen after a decision was made?
 No, sir.

Q. He didn't talk to you about that?
 A. No, not really. I think he said something along the lines of that he felt both of them were relatively minor and that NJP would actually be somewhat of a vehicle for me to explain my actions.

Q. Okay. What did the Battalion commander say in your NJP?
 A. He didn't say anything, sir.

Q. Was he asked?
 A. No, sir, I don't think so.

Q. Did you talk to the Battalion commander prior to the NJP?
 A. No, sir.

Q. How old are you?
 A. 29, sir.

Q. How long had you been a Captain before you deployed with (b)(7)(C)?
 A. Since June of 2000, sir.

Q. And you were in the IRR prior to that, right, or when you separated?
 A. Yes, sir.

Q. You were in the IRR and hadn't been on duty?
 A. Right.

Q. Prior to going to (b)(7)(C)?
 A. That's correct.

Q. Okay. (b)(7)(C) was the (b)(7)(C) right, of (b)(7)(C)?
 A. He was, sir, for a period of time and then after the (b)(7)(C) thing, he was told he wasn't the (b)(7)(C) and to stay out of company business.

Q. Okay. Was there any consideration given to replacing him or fleeting you up to being (b)(7)(C) particularly when (b)(7)(C) went on emergency leave?
 A. No, sir.

Q. No discussion at all about that option?
A. No. I was also told, pretty much, to focus on (b)(7)(C) and that the (b)(7)(C) or perhaps the (b)(7)(C) would take care of some of those issues or responsibilities.

SRMBR: Okay. That's all the questions I have.

REC: I don't have any questions, sir.

SRMBR: Counsel, questions?

CCFR: Sir, I don't have any other questions.

SRMBR: Okay. Very good. Thank you, (b)(7)(C)

The respondent was excused and returned to counsel table.

CCFR: Can we take a brief five minute break, sir?

SRMBR: Okay. Five-minute break. We'll reconvene at 0850.

The Board of Inquiry recessed at 0844 hours, 7 April 2004.

The Board of Inquiry was called to order at 0850 hours, 7 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the court recessed are again present.

The recorder will note the time and date on the record of the proceedings.

REC: Sir, the time is 0850 on 7 April 2004.

SRMBR: Okay. Any more witnesses?

CCFR: No, sir. But we do have some additional exhibits.

SRMBR: Did you say no more witnesses?

CCFR: No more witnesses.

DC: Sir, may I approach?

SRMBR: Pardon me?

DC: May I approach?

SRMBR: Yes, indeed.

DC: Sir, I am handing you what's been marked as Respondent's Exhibit Romeo Romeo, along with Sierra Sierra, Tango Tango, and Uniform Uniform. Two of these are already in the government's exhibits but they are (b)(7)(C) most recent fitness reports, (b)(7)(C) brief, I'm sorry, preliminary inquiry, and the ROE.

SRMBR: Okay. And (b)(7)(C) you have seen all these?

REC: I have no objections, sir.

SRMBR: No objections. Okay.

CCFR: Gentlemen, the respondent concludes with their evidence.

SRMBR: Okay. This fitness report was already in there.

REC: Yes, sir. I believe they have a number of duplicates that are already in the recorder's exhibits.

SRMBR: But we don't have a completed report because the reviewing officer is not --

REC: Yes, sir. I believe that (b)(7)(C) wasn't able to locate (b)(7)(C) for a signature so he is waiting for that in order to get it finalized.

SRMBR: Okay. Does the government have any rebuttal evidence?

REC: Yes, sir. I would like to call (b)(7)(C) over the cell phone.

SRMBR: Okay.

DIRECT EXAMINATION

Questions by the Recorder:

Q. (b)(7)(C) this is (b)(7)(C)

A. Yes, ma'am.

Q. I will remind you you are still under oath from yesterday.

A. Right.

Q. I just wanted to ask you some questions dealing with (b)(7)(C) platoon ammunition that was kept on the field ASP?

A. Okay.

Q. What -- how much ammunition, how much (b)(7)(C) platoon ammunition was kept up there?

A. I would say it varied. We didn't usually store ammo out there regularly. I really couldn't say.

Q. Okay. How often would (b)(7)(C) platoon store its ammunition up there?

A. I would say rarely.

Q. Okay. Did any other company or any other platoon at (b)(7)(C) store their ammunition up there?

A. No, ma'am, not to my knowledge.

Q. Okay. What was the purpose of them storing this ammunition up there?

A. Well, I don't really recall the purpose of the exact storing ammo directly at the site. I do know that there was a, a firing range that was made behind the ASP that was used by forces in the area, the coalition forces in the area.

Q. Where was this ammunition stored?

A. It was stored at the guard shack or the guard entrance to the ASP?

Q. Okay. How often was there a Marine stationed there?

A. Twenty-four hours a day, 7 days a week.

Q. And how many Marines were stationed at the guard shack?

A. Well, an entire squad would be, but at times, when we normally did patrols, there would be at least three to four Marines at the post.

Q. How likely is it that an Iraqi could have trespassed on the ASP and gotten this ammunition?

A. That wouldn't happen at all.

Q. And you also stated that this was a rare occurrence

A. for (b)(7)(C) ammunition to be up there?
I would say, yes. I mean, I would say it would be rare, right.

REC: Okay. Thank you I have no further questions. There may be questions from the counsel or from the board members. Thank you.

WIT: Okay, yes, ma'am.

CCFR: I have no questions.

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

Q. Just one. (b)(7)(C) this is
(b)(7)(C)

A. Yes, sir, good morning.

Q. You stated that the ammunition for Coalition Forces were stored at the guard shack; is that correct?

A. No, sir. The ammo, the only time I ever saw ammo there was for (b)(7)(C) platoon. And for some reason or another, they couldn't shoot and they just stored the ammo there with us since we were there guarding the ASP. If you are asking me was the range used by Coalition Forces, yes, it was.

Q. Okay. Well, in reference to (b)(7)(C) platoon ammunition, was it SOP that it be stored at the guard shack or was it supposed to be stored in one of the bunkers at the ASP?

A. No. We wouldn't use the ASP at all. We were not even allowed to even go in the ASP.

SRMBR: Okay. That's all I have. Thank you.

MBR (b)(7)(C): Okay. We have no more questions (b)(7)(C)
(b)(7)(C), thank you very much.

(b)(7)(C) will dismiss you.

WIT: You are welcome.

REC: (b)(7)(C), thank you. We have nothing further.

WIT: Yes ma'am, thank you.

The witness was excused from telephonic testimony.

REC: Sir, the other witness would be someone who was there at the NJP. I am trying to get an SJA who was out there, (b)(7)(C) but he's at Pendleton. So if I could check my messages and see if he's there, it's 0700 out there.

SRMBR: Well, first of all, does the government have any rebuttal evidence other than the additional -- or not the government, the respondent have any additional?

CCFR: Sir, we don't know. I mean, typically, we might have rebuttal after the government finishes its rebuttal. It's in its rebuttal stage right now.

SRMBR: Well, (b)(7)(C) was rebuttal. Actually, the request for a witness at the NJP was a board member request. That was a my request, at least I'm considering it my request.

CCFR: In that case, we don't have any, thank you, sir.

SRMBR: And the next thing is, does any member of the board want to recall a witness we called, call any additional witnesses, to obtain further evidence?

Yes, I'd like you to do the best you can with it. We'll recess here. Try to get somebody that was there, (b)(7)(C) perhaps he is available. I believe he was there.

REC: Yes, sir. The only person who was there the entire time would be (b)(7)(C) (b)(7)(C) (b)(7)(C) and possibly (b)(7)(C). He was actually there. (b)(7)(C) and (b)(7)(C) are out of the country. (b)(7)(C) could testify, but there's also, one of my questions is about procedures and so I thought having the SJA testify, he can answer some broader questions.

SRMBR: Okay.

REC: So if I can't find him, then I will call (b)(7)(C)

(b)(7)(C) sir.

SRMBR: Okay. Very good.

MBR (b)(7)(C): You just made mention of procedures?

REC: Yes. I got a feeling that the board members had a few, or maybe not, but had some questions about NJP notification and appeal rights and things like that, when it was offered. So that's why I am having the SJA testify. He might be able to clarify some of those issues.

MBR (b)(7)(C): I can't speak for the other two board members, but for me, there is the issue of corroboration of testimony.

SRMBR: Right. That's what we are trying to do.

REC: Okay.

SRMBR: And there is a procedural issue because I specifically would like a little more information on how the NJP summary was compiled.

REC: Okay, sir.

SRMBR: Whether there was a recorder present at the NJP, which is a procedural matter. So I think you are right on with the SJA. And (b)(7)(C) has an additional question.

MBR (b)(7)(C): Did either ask, counsel for the government ask the Battalion commander to attend this proceeding?

REC: Yes.

SRMBR: This BOI.

CCFR: Sir, I would like to say that I will submit the witness list that the respondent has asked for. We requested (b)(7)(C) to testify, we requested (b)(7)(C) to testify, (b)(7)(C) to testify, (b)(7)(C) to testify, they were denied. They were not recommended by trial counsel to approve those requests and the recommendations of

the trial counsel were approved by the General. So we asked to have them present and they were denied.

REC: Yes, sir. The reason for all those denials, they were all out of the area. If you gentlemen would like to get into the rules of witnesses -- immediate -- this is a board of inquiry, not a court-martial. The commander will make available people who are in the immediate area so Baton Rouge, New Orleans is immediate area, (b)(7)(C) (b)(7)(C). I would like to testify as well, but he's in Africa. Obviously, we're not going to fly him back here for a BOI. A lot of these other Marines are located in Tennessee, Alabama, so out of the area. So they could testify via, telephone which (b)(7)(C) did.

SRMBR: Okay. Thank you.

REC: Okay. And these were also ruled on by the convening authority as well.

SRMBR: Okay. Thank you. We will recess until you coordinate a witness for us and then come back when we hear from you.

REC: Yes, sir. Hopefully I will have an answer for you in 10 or 15 minutes. If not, I will let you know, sir, and you can make a decision whether you just want to go forward without --

SRMBR: Okay. Thank you.

REC: For the record, the time is 0905, 7 April.

The Board of Inquiry recessed at 0905 hours, 7 April 2004.

The Board of Inquiry was called to order at 0930 hours, 7 April 2004.

SRMBR: We'll reconvene. All the members present when the board recessed are again present.

Please record the time.

REC: Sir, the time is 0930 on 7 April.

CCFR: Sir, before we call this witness, two things I want

to do is; one, introduce as exhibits the witness request and the responses from the government and the General on this so it's part of the record. So if you Gentlemen are interested in seeing it, it would be numbered as the next exhibit in order.

SRMBR: Okay.

CCFR: Secondly, that I wanted to just simply raise for the record is if you turn to Government's Exhibit 6, which is the summarized transcript of the NJP proceedings, the first page has a list of individuals who were present.

SRMBR: Uh-huh.

CCFR: Now, it's my understanding that the government wants to call (b)(7)(C) to talk about his recollection of what occurred at the NJP. His name isn't identified as one of these individuals who was present. I do have an objection to him testifying. I understand that the latitude that the board has and I just want it clear on the record. This exhibit does not reflect that he was in attendance.

SRMBR: Okay. Let's call him up.

REC: Yes, sir.

(b)(7)(C) U.S. Marine Corps , was called as a telephonic witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, would you state your name for the record and spell your last name?

A. (b)(7)(C) last name is (b)(7)(C)

Q. What is your present billet and duty station?

A. I am the (b)(7)(C) at Marine Corps Base Camp Pendleton, California.

Q. Sir, if you could give a brief history of your career in the Marine Corps to the members.

A. I joined the Marine Corps in 1992, completed OCS,

completed TBS in '95, while at Naval Justice School,

(b)(7)(C)

CCFR: Excuse me. I have an objection. This was a witness that the board called and the government's rebuttal case is already gone. I think that it would be appropriate for the board to initiate these questions since it's your witness.

REC: All right, sir.

Sir, the board members are going to ask you questions.

SRMBR: All right. I will start.

This is (b)(7)(C)

WIT: Yes, sir.

EXAMINATION BY THE BOARD

Questions by the :

Q. (b)(7)(C), how are you doing?

A. Just fine, sir.

Q- First question is, were you present for the entire NJP proceedings held on (b)(7)(C) by Brigadier General Kelly?

A. I was, sir. I actually served as a scribe. Didn't have a lot of clerical support, so, that basically fell on me, sir.

Q. Okay. Your name isn't on the summary of the NJP results, though?

A. That's correct, sir.

Q. Is that normal practice not to have, since you were present, not to have you on that list?

A. Yes, sir.

Q.. Okay. I just wanted to ask you a little bit -- you just took notes basically; right, for this.

A. I did, sir.

Q. And then summarized it in the document that we have afterwards. Right?

A. That's exactly what I did, sir.

Q.. Okay. Can you tell me about the, about (b)(7)(C) (b)(7)(C) you know, presence, demeanor, and attitude during the NJP?

A. Yes, sir. I'd say after seeing three other NJPs total, he was not the most remorseful or apologetic person I have ever seen in a commanding General's NJP. Not that he was disrespectful, but he was very defensive, I think, is probably the best way to describe it. I got the impression in some ways, he didn't feel that he had done anything wrong and I think that kind of came through pretty quickly to everyone present. This was a little different than your standard, I'm going to command, fall on my sword NJP, which is kind of the norm for most officer cases.

Q. Okay. Did, you think General Kelly provided (b)(7)(C) (b)(7)(C) with ample opportunity to either, you know, present mitigating evidence to the charge he pled guilty for and to explain the charge he pled not guilty for?

A. Yes, sir. I believe he had plenty of opportunity to express himself and present the evidence that he had for the General to consider.

Q. Did the general ever interrupt him and tell him to be quiet?

A. Sir, I don't remember him telling him to be quiet, but I do know General Kelly got very upset, particularly about the aspect of the orders. And General Kelly's background, I'm not sure if you are familiar with, he was prior enlisted Marine and he had reached the rank of sergeant. And I think that has really influenced his leadership style and his expectations of what officers are going to do. I believe he expects officers to be mentors and issue reasonable orders, lawful orders, and not put their subordinates in the horns of a dilemma. And I

really think that's what really got to General Kelly in this case.

In both cases, the orders were questioned by the subordinates. I think the (b)(7)(C) in one case and maybe a (b)(7)(C) in the other instance, and it just seemed that (b)(7)(C) didn't understand that that's what the real harm was. Not so much the embarrassment for the Iraqis or the loss of property, but as a leader, he put his subordinates in a position to, number one, to question his leadership and his orders; and then two, to force them to basically execute orders that most people would look at and say, clearly, this is wrong.

- Q. Okay. We read the summary and the summary pretty much reflects that. When did the, was it early on in the proceedings that the General expressed his anger?
- A. No, sir. It was definitely towards the end. It was almost a lecture, like a father-to-son lecture, if you will, as I recall it. It was that kind of information, you know, the crutch of the problem is not the impact this may have on our ability to maintain good order and discipline and the effect it has on the relationship. All that's important but the real problem is that as a leader, you have an obligation to your Marines. And for an officer to behave in that fashion, he just recalled his own experiences as a junior NCO. And then the reverence he had for officers and he couldn't understand why (b)(7)(C) would put that in the context of understanding the effects his actions had on those junior Marines.
- Q. Okay. (b)(7)(C) was advised by (b)(7)(C) (b)(7)(C). Do you know (b)(7)(C)?
- A. Yes, sir. (b)(7)(C) was one of the defense counsels from (b)(7)(C) Legal Service Support Section. I don't know if they ever met in person. For most of the time we were in Iraq, the (b)(7)(C) guys were down in Kuwait. So it may have been via telephone. I don't recall, sir, for sure.
- Q. I think they met, based on evidence we have seen, they met in person. But did (b)(7)(C), you know, ever talk to you or talk to a more senior

- judge advocate in the course of giving advice to (b)(7)(C). You know, going to officer's NJP, it's pretty serious business. (b)(7)(C) is a pretty junior, young officer?
- A. Yes, sir. I think, ethically, it would be kind of difficult for us to advise or coach (b)(7)(C) (b)(7)(C) on the proper course of action. We are there to provide support and advice to the commanding General and our commanders. If (b)(7)(C) had questions, either about whether or not this was a good case for NJP, you know, he has folks in his defense counsel chain of command that are available to him. I don't think that (b)(7)(C) talked to him about the validity or whether or not this was a decent deal for his client. That would be inappropriate.
- Q. Okay. And the rest of his defense team or seniors were down in Kuwait, right, or were they up there with you?
- A. Yes, sir. As I recall, the (b)(7)(C) pulled out most of their folks in May, June timeframe. They left a team of about four or five. What (b)(7)(C) would do, periodically, is get on the PX convoys that would come up, they went through all the areas. They would stop, you would be able to get your Gatorade and if someone had a legal assistance or defense counsel related question, (b)(7)(C) was there to field those. I don't know if there was another defense counsel in Kuwait. My understanding is that most of them were actually back here in Camp Pendleton.
- SRMBR: Okay. That's all the questions I have.
- Is there any other questions from the board members?
- MBR (b)(7)(C): This is (b)(7)(C). How are you doing?
- WIT: Yes, sir.
- Questions by MBR (b)(7)(C):
- Q. I had one question, can't remember if I've seen it in the transcript or not. At one point, did the General make a comment that he could have understood if (b)(7)(C) had detained the Iraqis, at least he'd have understood where he was coming from?

A. Sir, to be honest, I don't really recall the details or the actual commentary. I think based on the way that we were doing things at the time, that would have been reasonable based on the Rules of Engagement and based on current operations. I think if the General became frustrated with anything, it was this notion that, you know, you could see the frustration, the actions, both of them, really speak to the level of frustration in dealing with the locals. Going that step, stripping these guys and embarrassing them in public is really kind of out of touch with what Arabic sensitivities are and the loss of face involved there. These guys show up at the same ASP three or four times, they are not getting it, clearly. I think they would be good candidates to go into our detention system for a while. So, I wouldn't be surprised if the General said that, but to be honest, sir, I don't recall him, specifically him saying that.

Q. Did you see any moment of insight from (b)(7)(C) when, at least trying to understand the difference between his decision and his decision to put his Marines in a precarious situation? Did you see that he sensed the difference between the two?

A. Sir, I didn't get the impression that it sunk in. I'm not surprised. It's a very awkward position to be in. You're deployed, you're in the General's office and you're getting your butt chewed and I don't think that's always going to be a case where the enlightenment is going to come. I think he heard what the General was saying, I just don't think, at the time, he had a chance to process all of it and put it in a context. I found him to be very defensive and that's natural given that your judgment and your decisions are being questioned.

But like I said, from most other officer NJPs, I think that's kind of played out before you go in to see the CG because I think that there's always a danger that if you are not coming clean and if you are not remorseful, the CG is going to say, time out. It looks like you don't value these proceedings, you don't understand the gravity of your situation. You need to go to a court-martial to sort that out.

Q. Actually, I have one more. Was there a certain

moment were the CG said, I am going to take your commission, and could you describe what that meant?
A. Sir, I don't believe he said he would take his commission. I think he questioned whether or not (b)(7)(C) was fit to lead Marines anymore. I think he may have mentioned it in the context of, that is a possibility, but General Kelly is smart enough to know that that decision of, you know, of anything with someone's career is not his call. That's something that is down the line for the show cause authority and ultimately with the SecNav. I don't recall him saying that, but I do remember him talking about the notion of, you know, there may be a board of inquiry, there may be some time where you have to justify why you need to stay on active duty.

MBR (b)(7)(C): Okay. Thank you, (b)(7)(C).

SRMBR: This is (b)(7)(C) again, (b)(7)(C).

WIT: Yes, sir.

Questions by the :

Q. How many officer NJPs have you been involved in?
Did you hear me?

A. I'm sorry, sir, you are breaking up.

Q. Sure. How many officer NJPs have you been involved in?

A. Sir, it's a total of three or four, I think, in my time with the Division.

Q. All with Brigadier General Kelly?

A. No, sir. At least two were with General Matteson.

SRMBR: Okay. I am going to let -- well, okay, go ahead.

MBR (b)(7)(C): (b)(7)(C) this is (b)(7)(C)
(b)(7)(C)

WIT: Yes, sir.

Questions by MBR (b)(7)(C):

Q. What is the requirement for submission of transcripts for NJPs?

A. Provision of transcripts, sir?

Q. No. What is the requirement for the submission of transcripts for all NJPs?

A. If possible, sir, it's supposed to be verbatim.

Q. Okay. If possible. Was there a scribe in the area?

A. No, sir.

Q. They were called away for some other duty?

A. No, sir. There were no court reporters left in theater. When (b)(7)(C) left in May, June timeframe, they left a skeleton crew of approximately four officers and that was it.

Q. The Division doesn't have any court reporters?

A. No, sir. That changed, I think back in the early '90s, when they created Legal Services Support Section. That kind of economy of force type thing. They own all the court reporters, I think, Marine Corps Base owns one.

Q. Okay. Do you have any experience as a court reporter?

A. No, sir. Absolutely not.

Q. Okay. But the best case scenario is to have a verbatim transcript for the NJP proceeding. Correct?

A. Yes, sir.

Q. Okay. Let's carry this on a little bit farther. At what point was the NJP decision presented to (b)(7)(C)?

A. (b)(7)(C)? Probably two or three days before it was actually conducted, sir.

Q. The decision to hold the NJP was two to three days before it was actually held. And then the General's decision following the proceedings was presented to (b)(7)(C) when?

A. Right there, sir.

Q. In?

A. (b)(7)(C) before he left, the General's work space, knew what the sentence was and knew what the findings were and knew verbally what General Kelly was going to recommend in terms of show cause or not.

MBR (b)(7)(C): Okay. That's all I have. Thank you.

SRMBR: Okay. I am going to let counsels follow up here with (b)(7)(C) going first.

DIRECT EXAMINATION

Questions by the Recorder:

- Q. Sir, did, did the General ever tell (b)(7)(C) to shut up?
- A. I don't recall him saying that at all.
- Q. Okay. Or shut the fuck up?
- A. Again, I don't recall General Kelly saying that at all.
- Q. Does that sound like something that General Kelly would tell an officer at an NJP?
- A. It was the first one I have seen with General Kelly. I don't believe that is the type of thing he would say. He may have said something that he had done was fucked up. I don't put that past him. He can be a little coarse at times. But again, I don't remember him telling (b)(7)(C) to shut the fuck up at all.
- Q. Okay. Did (b)(7)(C) this is in your summarized transcript when he's talking about the burning of the clothes incident, you have in the summarized transcript that (b)(7)(C) says that it was stupid, that it was a bad mistake. It was just a dumb decision.
- A. Is that approximately what he said, sir?
- A. I tried to be as accurate as possible, particularly with his commentary because it was his NJP. To be honest, I don't recall exactly what he said in there, but I would trust my memory at the time of writing that down instantaneously as he was going through that that's what was said.
- Q. Sir, why wasn't your name listed in the individuals who participated in the NJP or present at the NJP?
- A. In the other NJPs I conducted, I never listed myself as being there as a scribe. I just list the key players and witnesses present.

Q. Okay. And I guess, sir, this goes without saying, but this is an officer NJP. Obviously all these proceedings are going to go up to a higher level, and you took -- because there wasn't a court reporter available -- you took your duties as a scribe seriously?

A. Yes. Absolutely.

REC: Thank you. I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) ?

A. Yes.

Q. My name is (b)(7)(C), I am a civilian attorney for (b)(7)(C). I have some questions for you.

A. Did anyone have a tape recorder?
No, sir.

Q. The entire -- you didn't -- did anyone look for a tape recorder?

A. I didn't look for one, sir. The only folks that may have had one was maybe the NCIS agents. We had approximately two off and on throughout our proceedings out there. But no, sir, I didn't look for a tape recorder.

Q. Did anyone have -- did they -- did anyone bring like boom boxes out to the field that had tape decks?

A. No, sir. We were traveling pretty light. Shoot, we didn't get cuffs until June timeframe. We were pretty much just whatever you can carry on your back.

Q. Did -- to your knowledge, did anyone approach NCIS with the opportunity to get ahold of one of these tape recorders?

A. No, sir.

Q. And when you said you took notes on this, do you still have those notes?

A. No, sir. I don't have anything from my time in the Division. Everything I left up there was either on

the laptop computer, which, I believe, is redeployed with the folks that replaced me or is up in the SJA's office with some of the other assorted notes and things I had on hand at the time.

- Q. Do you remember how long it was after the NJP that you transcribed -- to create the summarized transcript?
- A. Yes, sir. It would have been the same day if not the next day. Quick turnaround time on these things. The Generals don't have a lot of time to deal with administrative matters in that environment. Pretty much, as soon as we got done, (b)(7)(C) may have talked to the commander of (b)(7)(C) and I probably turned around and started typing almost immediately.
- Q. You said that it wasn't your practice to put your name on the transcript?
- A. That's correct, sir.
- Q. Is that just the policy that you have or do you think that is some sort of legal policy in the Marine Corps?
- A. To be honest, sir, like I said, I have handled about three or four officer NJPs. Prior to that, my boss was actually doing them, (b)(7)(C). During the other, probably almost three years worth of time, he did all the officer NJPs himself. So basically, what I did, was I worked off his model. He was the SJA and he was present and he was listed. There was no other scribe present. This is kind of a different circumstance than the ones I had seen previously.
- Q. My question to you, (b)(7)(C), was is this standard operating procedure by some sort of JagMan or some sort of order that the scribe isn't included in the list of people in attendance?
- A. Sir, I don't recall. All I know is the examples I had seen before. There was never a scribe listed on it. It was just the parties present.
- Q. And you were a person present?
- A. Yes, sir. Not a party.
- Q. Well, you also listed the witnesses here as well. Right?

A. Right. Because anyone that had a speaking role, I listed.

Q. The caption says, "the following individuals were present." And then there's the list of the various players, including the SJA. Right?

A. Yes, sir.

Q. Now you said that your assessment was that (b)(7)(C) (b)(7)(C) wasn't all that apologetic?

A. Yes, sir.

Q. You understood that he pled guilty to one of the offenses and not guilty to other. Right?

A. Yes, sir.

Q. If he pled not guilty, isn't that your understanding that he has an intention to try to defend that charge?

A. Absolutely, sir.

Q. Now, you said in your other NJPs, people sort of fell own their sword. Right?

A. Yes, sir.

Q. And in those other NJPs, did those individuals plead guilty to all the offenses that were in front of them?

A. Probably about 80 percent of them, yes, sir.

Q. So is it your experience more often or not that when people showed up to NJP, they were pleading guilty to everything and they were just trying to work on what the repercussions would become out of the NJP?

A. Absolutely, sir.

Q. And, of course, you don't disagree that (b)(7)(C) (b)(7)(C) has a right to try to present a case on his behalf at NJP?

A. Absolutely not, sir. That is completely his right to do that.

Q. So when you said he wasn't that apologetic, he did plead guilty to one of the offenses. Right?

A. He did.

Q. And, in fact, in your summation, the way you summarized it, you claimed that he acknowledged that

A. it was a stupid mistake?
Right after being questioned by the General, yes, sir.

Q. Okay. So he fell on his sword on that one. Right?
A. Eventually, yes, sir.

Q. But he pled guilty going in?
A. To one offense, yes, sir.

Q. The comment about, that was a stupid mistake, is in reference to the charge he pled guilty to.
Do you understand that?
A. Yes, sir.

Q. All right. These other officer NJPs that you said you were involved with, were they, you were the scribe for each one of those?
A. Yes, sir. If I recall, it was the two other ones we conducted out there in Iraq.

Q. Okay. So (b)(7)(C) was the third?
A. Yes, sir. It may not have been the third in order, but it was one of three I recall doing out there.

CCFR: (b)(7)(C), thank you very much. I don't have any further questions for you.

SRMBR: Okay. Any further questions from the board?
Okay. Thank you very much, (b)(7)(C) Wait, one more question.

EXAMINATION BY THE BOARD

Questions by MBR (b)(7)(C):

Q. (b)(7)(C) this is (b)(7)(C) again.
I am looking over the transcript.
Did the General ever ask any of the witnesses for their account of what happened?
A. Sir, I don't believe he did. What I remember about this NJP is that it was unusual in that the

witnesses, there was some enlisted witnesses, enlisted character witnesses. Ordinarily it's officers. If a (b)(7)(C) is going NJP, it's his platoon commander, his Lieutenant Colonel, folks of that nature. And I want to say that the one witness that came in and tried to take some of the responsibility said he had encouraged (b)(7)(C) (b)(7)(C) to be more aggressive. I think that contributed to General Kelly's uneasiness. But beyond that, sir, I don't recall him asking. I don't remember the specific questions posed to folks.

MBR (b)(7)(C): Thank you, (b)(7)(C)

SRMBR: (b)(7)(C)

Questions by the :

Q. (b)(7)(C) the Battalion commander and (b)(7)(C) company commander, (b)(7)(C) were there as well. Right?

A. They were present, sir, but I don't recall if they were called to testify or not, but I remember before going in there was a pretty large group of folks. They had been the (b)(7)(C) I want to say the (b)(7)(C) as well, the active duty Marine officer that trained (b)(7)(C) company.

Q. In the summary of the transcript, it says (b)(7)(C) (b)(7)(C) (b)(7)(C) and the two enlisted, the two Staff NCOs. No summary of what (b)(7)(C) (b)(7)(C) or (b)(7)(C) said, so we are assuming they said nothing?

A. Yes, sir. Like I said, I remember there was a group that was present before we went in and there was a smaller group that actually testified. But again, off the top of my head, who was there, I would go with the transcript because I tried to be pretty accurate about who actually came in, who had a speaking part, and the substance of what they said.

SRMBR: Okay. Thank you very much, (b)(7)(C). I appreciate your time.

WIT: No problem, Gentlemen. If you have any further questions, I will be here today.

SRMBR: Thank you.

The witness was excused from telephonic testimony.

Okay. We'll move to the closing arguments phase.

REC: Yes, sir. I'm sorry. We have an issue with the exhibit.

CCFR: I was just making sure that we got that, published it, you didn't have an objection to it.

REC: No. I didn't have an objection with it, but I would like to have a copy of it.

CCFR: Gentlemen, it is practice when we introduce additional exhibits to let the other side see that and we left it on the (b)(7)(C) table. This would be Victor Victor.

SRMBR: Okay. We have already passed that, so is there anything else, any evidence or any other --

REC: Sir, I have additional matters on, these are exhibits dealing with -- or procedural matters. One is just characterization of service out of the SecNav Instruction, what rates an honorable, general, or OTH. The other one is an exhibit out of the UCMJ dealing with the articles that possibly could have been involved here. This, if you will, sir, I believe you have a findings worksheet.

SRMBR: Yes, I do.

REC: And on that findings worksheet, one of the things that could be a basis for the misconduct is commission of a serious offense. And the definition of commission of a serious offense is something that could be, that has up to six months of confinement. So, these are articles that show what the maximum punishments are to show if that meets that definition or not.

SRMBR: Okay.

REC: So at this time, I would like to publish that to the members.

SRMBR: All right. We'll receive that.

Okay. Closing arguments.

Are both sides prepared for argument?

CCFR: Sir, I would just ask for a five minute break, if we could, just to organize some of this stuff up and then we'll be ready to go and push all the way through.

SRMBR: Okay. We'll take a five-minute break. But when we come back, I want to work through both closing arguments before we take another break.

CCFR: Absolutely, sir.

SRMBR: Organization is good only if it makes the next session shorter.

CCFR: Absolutely.

SRMBR: So we'll take a ten minute recess, reconvene at 1015.

The Board of Inquiry recessed at 1004 hours, 7 April 2004.

The Board of Inquiry was called to order at 1015 hours, 7 April 2004.

SRMBR: Okay. This board is reconvened with all required personnel present.

Please state the time that we reconvened.

REC: Yes, sir. The time is 1015 on 7 April 2004.

SRMBR: We will begin closing arguments. We will limit closing arguments to 30 minutes per counsel.

REC: Yes, sir.

SRMBR: Okay. Clock starts now.

REC: Yes, sir. (b)(7)(C) actions here are outrageous. They are -- they strike a sensibility of what a Marine officer should do or what a Marine should do when handling detainees. He had his

Marines strip down four, five Iraqis down to their underwear and sent them out in the street in public. The other incident, he ordered his Marine to burn personal belongings of Iraqis. He didn't do this conduct himself, he got his Marines involved. He gave his Marines illegal orders. These actions were against the Rules of Engagement, which he and his Marines had been lectured about, he knew about. Every single Marine who testified, even respondent's witnesses, said that it was a bad decision. I would have advised him against it.

Even if there are problems, if the members believe there were problems with the NJP, problems with the procedures with (b)(7)(C) being a junior officer with all this happening very quickly, the members still have all of these witness statements. The members can still look at these witnesses statements and make a decision on their own, if this thing happened or not. If he did strip these Iraqis or not, if this was a bad action. If these burning of these clothes happened or not. This is what we're here for. I don't believe there was anything wrong with how that NJP happened. Albeit, it would have happened a little different here, but obviously we're here in New Orleans, we are not there in a combat situation.

We can't trust this Marine officer any longer. Every individual in his chain of command, his company commander says he doesn't want him back in his company. He doesn't trust him with Marines, he would endanger other Marines' lives. His (b)(7)(C) (b)(7)(C) Battalion commander, endorsed his honorable discharge. His General, General Kelly, said, I am going to make you, I will have you show cause because I do not believe you should be an officer any longer. And that commander up to Lieutenant General Parks, all of them endorsed his honorable discharge. They do not believe this officer should serve any longer in the Marine Corps.

(b)(7)(C) is experienced, he is a smart individual. He is not like a Lance Corporal going in there, no clue what he is doing. The General referenced that in his script. He said, you know, if you were a Lance Corporal, you would probably be sitting here at NJP getting a counseling and that's

it, but you are not. He struck on the theme of officership and how this is a violation of officership and that's what really got him. He gave his Marines an illegal order. He didn't show the discipline that he needed to. All these Marines were frustrated. All these Marines were tired, and still they didn't do these actions that (b)(7)(C) did. They were looking for him for leadership and he failed.

Also, he drove down the Division in good order and discipline in that command. No command is perfect, but instead of coming here, falling on the sword, what does he do? Everybody else in the battalion is blamed; (b)(7)(C) bad leader; (b)(7)(C) bad influence, disruptive to the command; (b)(7)(C), I guess, too intrusive. Everybody else has a fault in this, you can probably poke holes in any of our commands, you know, personalities involved. We all have disagreements, but you heard from (b)(7)(C) (b)(7)(C) was working, you know, it was working. And even if it wasn't working, even if everything was to hell, that doesn't excuse his actions. He made these actions. He decided to strip down Iraqis. He decided to burn their clothing, deliberate decisions, deliberate actions. These aren't dereliction of duty, he didn't understand what his responsibilities were. No, these were deliberate actions that he ordered his Marines to do.

Do you really sense any remorse here from this officer for his actions, that he really learned his lesson. I didn't, I submit to you that he doesn't feel it. I don't believe that he feels it. He's here now, he's in front of you and this is serious and he knows that. He knows that in order to get past this, he's got to convince you that he feels bad, but I don't believe that he does. The witnesses who testified for him, (b)(7)(C) (b)(7)(C) (b)(7)(C) they made a caveat on the question, would you serve with him again. Well, yes. (b)(7)(C) caveated, if he understands what he did was wrong, if he had shown true remorse. Has he? You heard him testify and heard the evidence presented. That's going to be your call. I would submit that he has not, given the language that he used in

describing how he did.

In addition, we have a document that he drafted up all on his own without the benefit of his counsel, of two attorneys being there. And that document is his Congressional inquiry of October 2003. What does he say in that Congressional inquiry? In the second paragraph, he says that, "I captured four Iraqis trying to steal ammunition from my company's ammunition supply point." That's inaccurate. We know that wasn't the company's ammunition supply point. (b)(7)(C) just testified that sometimes, very rarely, they kept some munitions at that ASP. That was very rare. In no way was that the company ASP. He talks about that these clothing that he destroyed, that it was possessions of the enemy. These weren't the enemy, these were Iraqis who went and misunderstood what the Americans were doing and blew through it.

He also says that he was told that he must resign his commission. We have a statement from, in that Respondent's Exhibit 7, from (b)(7)(C) (b)(7)(C) were he said, no one ever told him that he must resign his commission. He was counseled that that might be a better course of action for him, otherwise, you are going to go through this kind of proceeding, but no one ever told him he must resign. So instead of taking responsibility, he mischaracterizes what happened at the NJP, what happened dealing with his resignation, and what the actual facts were of his case. This Congruent is not the actions of a Marine who is sorry for his actions, he feels remorse, and feels they were bad. He believes he was justified.

(b)(7)(C) testified that, you know, he has heard the ROEs, he's gotten some training, they are in his brain, but, you know, he feels that he has the gut for this. Do you believe this officer has the gut for this, that put in a different situation back in combat or even back here, when he's faced with a difficult situation, that he's got the gut that's going to lead him in the right direction; that is not going to endanger his Marines; not going to endanger civilians; not going to endanger other armed forces. I would submit that he does not.

And that is why he needs to be separated. Because this officer thinks that he is a smart guy, thinks that he is a creative guy, thinks out of the box, and he wants to go implement his decisions. Well, guess what, his decisions were wrong. He didn't ask for anybody's opinion, didn't ask for any advice, just went and did them. That makes him dangerous to the people who have to follow his orders and the people who have to live with whatever he carries out.

At this time, I will save it for my rebuttal.

SRMBR: Okay, very good.

Counsel.

CCFR: Thank you, Gentlemen. Gentlemen, I am not going to try and belabor trying to explain to you what combat is since I have never been there and you, Gentlemen, have. You have heard the testimony from (b)(7)(C) (b)(7)(C) he and other people who have. And I think it goes without saying, unless you are there, unless you are there on the line, unless you are there making the calls and you have got Marines under your command, it's very difficult to question that at the time. It's very difficult to say after the fact when you are sitting back here to say what we could have done, what we should have done. This isn't the NFL. We don't have pregame meetings where we can go put it up on the video and analyze all the plays and get ready for Superbowl Sunday. We don't have that luxury.

The (b)(7)(C) argued, oh well, look past the discrepancies in the NJP, look past the fact they didn't do the documentation correct, look past the fact it wasn't a verbatim transcript because they are out there in Iraq fighting a war. However, the (b)(7)(C) doesn't want to look past the fact that (b)(7)(C) was also in that situation. (b)(7)(C) (b)(7)(C) and his defense team isn't saying that everything is justified because of all the problems around him. What our effort had been to do is to demonstrate the fact that (b)(7)(C) is a good officer. He is an outstanding officer who made some bad calls, made some maybe some questionable calls. But (b)(7)(C) was decisive, (b)(7)(C)

took leadership, (b)(7)(C), when he said he was justified, his intent was that he had a reason behind it. And the reason behind it was honest, it was moral, it was the qualities of integrity and honor and courage.

And I thought that we were supposed to be teaching our young officers because he was working out there on the line being one of the few officers to frankly really care about their Marines in (b)(7)(C) making a decision. He didn't want to see his sergeants be injured when the ASP was exploding, so he let them come back. And this was the right call and even according to (b)(7)(C). And what happens to (b)(7)(C) for looking out for his Marines, he is reamed out for leaving an antenna behind.

(b)(7)(C) had never shot at the range. He goes out to the range and he is being told by the OIC of the range that we can fire more missiles. His Marines are in combat, you would think that is an important thing to be familiar with is your ability to operate your weapon systems. They fire two extra, one happens to be a dud. Imagine if that dud was the one that was fired in combat or defense. And he is reamed out for that. The instances of taking care of the ASPs and guarding the ASPs at the timeframe that detainee incident happened, (b)(7)(C) (b)(7)(C) was the only person leading, leading that company. Where was (b)(7)(C)? He is also absent, always away when something is going on, some mysterious meeting location. Frankly, I don't know much about how the infantry operates entirely, but it seems awfully odd that when (b)(7)(C) is short officers in that company, (b)(7)(C) is out there in his legal stuff, (b)(7)(C) (b)(7)(C) is being Governor, (b)(7)(C), no fault of his own, is overseas back on emergency leave. Here he is trying to run this operation with things going on all over the place.

Now, you know what, we might not be here if (b)(7)(C) (b)(7)(C) took the option of saying, I am just going to sit back and let somebody else deal with it. Because it seems like that would be the more successful course of action in (b)(7)(C) Hide, make yourself unaccountable, make yourself

invisible. Well, that wasn't his mindset, that wasn't the type of officer he was. He is a gung ho type of officer. He is the young type of hard charging, initiative, motivated individuals that we seem to seek out and pull out from our community and then breed that into them in TBS and OCS, and to be, you know, adapt, overcome, improvise, overcome. That's what he tried to do. When he took the actions that he took on 23 June, he had prior knowledge that Iraqis were already hurting themselves, getting injured, he had prior knowledge of Marines being injured, he had prior knowledge of an ineffective, broken deterrent system which everyone agreed and testified was exactly what was going on.

He tried to do something different. Okay. It wasn't the right call, but he tried to do something, he tried to fix it. Now, we are so worried about this tipping incident, we are so worried about the public outcry, and it's legitimate, but you know what, no one ever talked about any effort to try to find these guys and ask them, were you humiliated, were you insulted. No one ever came back and complained. They just walked on to their bus or their taxi cabs and went on their way. We're so concerned about protecting these very Iraqis, we don't even know their names, we don't know who they are. We know nothing happened. It wasn't this tipping incident. The would've's and could've's and should've's can go on forever. But what we do know is nothing happened.

Okay. Because the government doesn't have a tipping incident to say, there really was a reaction to the problem, they want to say, it destroyed morale, it destroyed good order and discipline and that's the reason why it was relevant and necessary to bring up the issues in (b)(7)(C) (b)(7)(C) wants to say, oh no, no, no. We are trying to cover up here as the defense team for (b)(7)(C) is trying to blame everybody else. What they are saying is his actions impacted good order and discipline, which is certainly a very legitimate quality to have in any military organization. What really was the impact of good order and discipline in (b)(7)(C)? Was it the fact that (b)(7)(C) (b)(7)(C) and (b)(7)(C) got into a fight

while they were trying to set up a tactical position? Was perhaps morale pretty weak because (b)(7)(C) wasn't going to lead, was nowhere in sight? Was there some poor discipline and poor morale in that outfit because (b)(7)(C) and (b)(7)(C) had been relieved of their platoons and reinstated by the (b)(7)(C) of (b)(7)(C)? Was there some bad morale and break down in good order and discipline because (b)(7)(C) the Battalion commander, was nowhere to be found?

Gentlemen, I submit those, if there is any explanation for the lack of good order and discipline and problems within (b)(7)(C) those are far greater, far greater of a cancer. It's always an interesting side bar to suggest, well, he hasn't learned his lesson. Frankly, it's kind of impossible how that could be, not only out in theater was he relieved on the spot, and once relieved, he was NJP'd. Once NJP'd, he was reamed out and told he needs to resign his commission, and he tries to do it. He signs the paperwork. He comes back here and finds out, oh, no, we're not going to accept your resignation, we want to put you through a BOI process to really put some bad paper in your history.

And gentlemen, I highly suggest you look closely at the endorsements that went up there and the descriptions of the incidences which got to the Secretary of the Navy because the descriptions of the incidences that got to the Secretary of the Navy is not the descriptions of the incidences that are contained in the facts of the PFCs, of the Corporals, of the Sergeants, of the individuals who are there on the line, who wrote about the incident. The information, which was passed up the chain of command, never indicated how many times those Iraqis were detained. None of those incidences contained what (b)(7)(C) mindset and purpose and intent was. Intent, if it was to go and be mean to the Iraqis, well, maybe there's some legitimacy in this. No one ever explained that when they talk about the burning incident on the truck, no one ever explained that he gave back the 500,000 thousand dinar. He brought back most of the stuff to the HEP teams. What he burned were dirty clothes. They

never explained to the Secretary of the Navy that he thought it was lice infested. On the documentation which we submitted to you, absolutely shows that was a legitimate problem out there. And it is a legitimate problem. And there was a valid tactical purpose.

Okay. (b)(7)(C) described them as Iraqi enemies. Do we really know who is and who is not an enemy out there anymore. They're not wearing their uniforms. This particular scene at the checkpoint incident, this truck tried to run through. It should be the commander's perspective at that scene, to consider that to be a hostile act. If someone is going to run through your checkpoint like we had in Beirut where a bomb destroyed 200 plus Marines, that's a pretty hostile act. If they are going to go run through your checkpoint where you have ten Marines, that's a pretty hostile act. (b)(7)(C) didn't speak Arabic, neither did his individuals. What they did, though, when the Iraqis were injured, is they treated them and got them to the hospital. If he was so, if he had such hate and discontent and malice towards these individuals, let them bleed to death on the side of the road. Take and burn their money. Don't bother calling the HEP teams. He did.

The one thing that he did wrong was he burned the clothes, which was the least significant of all the things he did out there on that particular day. All the great things he did out there on that day. He stopped that truck; he preserved that money; he called for intelligence; he evaluated the threat; he evaluated the work of the vehicle; he communicated with (b)(7)(C) and (b)(7)(C) was nowhere in site. He set up the defense, he provided security for his men. He did all right up until burning some stinking clothes. And his purpose for that was so that the rest of his Marines wouldn't be infested with whatever disease that exists. And frankly, no matter what spin (b)(7)(C) wants to put on this thing, (b)(7)(C) has taken his lumps and he's learned his lessons and the boiled down result of this is that this is a mountain out of a mole hill. That's not to say that it isn't important, but for God's sakes, this is a combat environment, this is a combat scenario, he did the best that he

could, took the initiative that was necessary, and lead his Marines and got them home safely.

If there was an inkling that this was all done because he truly was a person who couldn't be trusted with safeguarding the lives and reputations of the Iraqis, why put him in the FPS. If that was such a major concern, if he had such discontent, why put him in such a high visible, high contact position that he was in. I mean, this isn't, you know, this is a snap shot, here is a man who has already been relieved of his command, punished for what he's done, continuing on with the mission, doing his job and making friends with these individuals. It makes no sense, but you know, you said, you wonder, well, there's some pretty smart people over there and there are. Pretty smart people said it's worth while going to an NJP.

Gentlemen, just like the example that (b)(7)(C) gave about the fact that the NJP may not have been procedurally perfect because of their scenario, let's face it. General (b)(7)(C) has got eight to 10,000 Marines he's worried about while he's over there. How many different combat operations that he is worried about. How much time do you think he had to investigate and learn about (b)(7)(C) situation? And if, in fact, the information he was receiving was coming from (b)(7)(C) (b)(7)(C), which, sounds like from (b)(7)(C) is what happened, does he really know? And if you get the broken down and digested version of what occurred, you can spin anything to any situation to look any way. I don't necessarily blame General (b)(7)(C) for what he did. I don't know if General (b)(7)(C) got the straight scoop and (b)(7)(C) hope, anyway, that that would occur.

Let's face it, that's really not what NJP exists for. It's a quick mechanism to instill military justice. It didn't happen. So he takes his lumps, he comes home, he thinks about it, recognizing that building himself back up from where he was when he left and he was angry. He was an angry individual. Angry about the fact that he didn't feel that he had, you know, a real voice in his situation and he wrote the Congressional inquiry. He should be judged, Gentlemen, on his conduct in the line, his

conduct on what he did. Let's not make this a red herring of what is really at heart here. The government would love to do that. And that's why we spent all sorts of time on the NJP and the Congressional inquiry, which all occurred after the incidences that brought him here.

Evaluate him on his tactical decisions that he made out in the field and whether or not those incidences warrant giving (b)(7)(C) the chance to remain in the United States Marine Corps. These other individuals would go back to combat with him. He would go back into combat. Gentlemen, the situation out there isn't getting any better. Twelve of our Marines were killed yesterday. The situation isn't getting anymore delicate. The reserve system is very much counted upon in support of those efforts and it is what it is. We don't have the luxury of getting reserve officers in identical matches in their MOS. And we rely upon those who are senior in that command to ensure those individuals are trained, prepared, and ready. Did that happen in this particular case, not entirely.

So in evaluating his value and in evaluating his future, also, Gentlemen, please don't look at the fact that well, while you may sit here and recognize is he going to become a Colonel in the Marine Corps, Lieutenant Colonel in the Marine Corps, a Major in the Marine Corps, I ask that that not be a consideration because that's not really the purpose of the board. Let the promotion branch decide that. They are going to see this paperwork. Incidentally, they are going to see his adverse fitness report which (b)(7)(C) prepared on April 4, 2004. A little bit of a late fitness report. They'll have this documentation, they'll have the punitive letter of reprimand in his file. Let them make a decision as to whether or not (b)(7)(C) has a future here.

This opportunity is to let him retain his dignity, let him retain his commission, let him leave eventually, if it happens, with an honorable characterization, with an honorable future and past of what he accomplished and what he did for his country. Thank you.

SRMBR: Okay. Anything in rebuttal, (b)(7)(C) ?

REC: Yes, sir. Twelve Marines died yesterday and this is the kind of officer who the defense is asking to send back? This kind of officer can't be trusted in this kind of environment and that is where he is asking to go back to. Concerning the endorsements and what the General knew, based on experience on how things get forwarded up and the level of care that the general officer or the SecNav would look at in particular in deciding an officer's future, I believe that officer does not have merit. General officers take care of what they sign. The Secretary of the Navy takes care of what he signs. They are going to look at that package and make sure this is the right decision.

Why was he sent back to the Iraqi police force? Well, the concern here is not that he, that he had a racial problem with Iraqis, the concern is that he was frustrated, he was tired, he made bad decisions. Kept in an environment where you have got (b)(7)(C) (b)(7)(C) looking over him all the time, he was probably alright. Put in an environment where he was on his own with the frustrations there, that's where the problem lies. That's where he will be back to as a (b)(7)(C) as an officer making his own decisions not under the thumb of a field grade officer. I don't think there is some kind of conspiracy here to screw (b)(7)(C) out of his commission that (b)(7)(C) (b)(7)(C) all these individuals didn't like him and wanted him out and that is why all this misinformation got spun up to the General. That doesn't make any sense.

You are here to evaluate his character, well, his character as an officer. Not just his tactical decisions, maybe his tactical decisions were poor, but how do those decisions reflect on his character and that's why all of his behavior becomes relevant in a board of inquiry. At a BOI, we look at an officer's entire record, what he's done to determine his character determine whether or not to separate him. Why do we do that, because that's what is expected of an officer. You look at that Congruent to look at his intent to look at how he presented himself in the Marine Corps and others. You look at his actions here today on the stand. Go over his

testimony and think about what he said. The government says that he lied. He stated that the General told him to shut up, the General told him to, shut the fuck up. The General told him that I am going to take your commission away from him, that he never told that -- (b)(7)(C) says I never said that this was stupid concerning his actions. Well, we have the summarized transcript, we have the testimony of (b)(7)(C) because that makes sense, that those things that he said happened, didn't.

The big issue here, I believe, is whether or not this officer can be sent back to the (b)(7)(C) (b)(7)(C) of the world or the (b)(7)(C). The people who were there taking his order, his illegal order. Can we trust this person with junior Marines again? The government asks that he be separated and that the members look at the characterization of his service, look at the general, look at the other-than-honorable. Don't believe that he rates an honorable discharge especially after his actions at this board and his actions subsequently. A general discharge or an OTH maybe appropriate. Thank you.

SRMBR: Okay. Does either side have anything further to present?

REC: No, sir.

CCFR: No, sir.

SRMBR: Okay. I will go over instructions on deliberations. The board will make the following determinations by majority vote based on a preponderance of the evidence presented at this hearing. If the board finds that the evidence does not substantiate the allegations, the board will recommend that the case be closed. If the board finds that the evidence substantiates the allegations, the board will make one of two recommendations. It will recommend that the respondent, notwithstanding the substantiated allegations, be retained and that the case be closed or it will recommend that the respondent be discharged. The board must recommend discharge if it substantiates unlawful drug involvement. If the board recommends discharge, it must recommend characterization. If the basis for discharge is

substandard performance, the characterization must be honorable. If the basis includes misconduct or moral or professional dereliction, the board may recommend honorable, general, or other-than-honorable characterization.

If a board is advised that conduct by a member of the reserve component who is not on active duty or active duty for training, may form the basis for characterization as other-than-honorable conditions only if such conduct directly effects the performance of the members military duties. Such conduct may form the basis for characterization as general, under honorable conditions, only if such conduct had an adverse effect on the overall effectiveness on the Naval Service including military morale and efficiency. If a member tests positive for presence of illegal drugs in the member's body while in an active duty or inactive duty status, the member's drug use shall be deemed to have directly effected his readiness and performance of military duties.

Board deliberations include a full and free discussion of all matters presented for the board's consideration. The board will decide it's findings and recommendations by a majority of votes. The senior member will record the findings and recommendations on the findings and recommendations worksheet by placing his or her initials in the blank beside any finding or recommendation decided by majority vote. Instructions are at the top of the worksheet. I have the original worksheet.

Does either side object to the worksheet?

REC: No, sir.

CCFR: No, sir, but may I just see it real quick.

Thank you, sir. No objection.

SRMBR: Okay. During deliberations, the board will review the guidance of SecNav Instruction 1920.6 Bravo on determining retention and characterization.

Does the recorder object?

REC: Sir, no, sir.

SRMBR: Respondent?

CCFR: No, sir.

SRMBR: Does either side have any questions or anything further?

REC: No, sir.

CCFR: No, sir.

SRMBR: Okay. The board closed for deliberations at 1050 hours on 7 April 2004. All parties except board members will leave the hearing room.

The Board of Inquiry closed for deliberations at 1050 hours, 7 April 2004.

The Board of Inquiry opened at 1345 hours, 7 April 2004.

SRMBR: Okay. We'll reconvene the board.

REC: Sir, the time is 1345 on 7 April 2004.

SRMBR: Okay. (b)(7)(C).

ACCFR: Yes, sir.

SRMBR: My duty as senior member of this BOI is to inform you as follows:

Findings of the board of inquiry:

By a preponderance of the evidence, this BOI finds you have demonstrated substandard performance of duty, misconduct, or moral and professional dereliction by your failure to demonstrate acceptable qualities of leadership required of an officer of your grade. By majority vote, the BOI recommends that you be separated from the Naval Service for the reason listed above. The board of inquiry further recommends that your service be characterized as honorable.

REC: Sir, I have no questions, sir.

SRMBR: I have a question.

REC: I'm sorry. Yes, sir.

SRMBR: That concludes the board of inquiry.

CCFR: Well, sir, until we find out whether or not the minority vote can be identified, I'd like to have that on the record.

SRMBR: Okay. I got the last page, here.

REC: Yes, sir. It is required. So, it does have to be written and we'll send you a sample format, sir.

SRMBR: Okay.

REC: The following member will be submitting minority reports: (b)(7)(C)

This minority report will be made as an enclosure to the board reports.

SRMBR: Does anyone have any other business to bring before the board?

REC: No, sir.

CCFR: Nothing further.

SRMBR: Okay. The board is adjourned.

The Board of Inquiry adjourned at 1349 hours, 7 April 2004.

**BOARD OF INQUIRY
IN THE CASE OF:**

(b)(7)(C)

(b)(6) - SSN 0602 USMCR

GOVERNMENT EXHIBITS

1. Board of Inquiry Appointing Order and Continuance Approval
2. Initiation of BOI proceedings and notification documents
3. Unqualified resignation request, endorsements and report of NJP
4. Notification of NJP hearing, rights acknowledgment and appeal rights
5. Punitive letter of reprimand and acknowledgment
6. Transcript of NJP hearing of 1 August 2003, Report of NJP and endorsement
7. Congressional Inquiry and command response
8. Command investigation and endorsements
 - a. Statement of (b)(7)(C) concerning stripping incident
 - b. Statement of (b)(7)(C) concerning stripping incident
 - c. Duty log book entry concerning checkpoint shooting
 - d. (b)(7)(C) statement concerning checkpoint shooting
9. MCO 3451.1 and Geneva Convention concerning treatment of captured persons
10. 1st MARDIV's ROE training
11. Preliminary inquiry into statements made by (b)(7)(C) to (b)(7)(C)
12. Record of counseling given by (b)(7)(C) to (b)(7)(C)
13. Information concerning (b)(7)(C)
14. Documents from OMPF and fitness reports



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LA 70146-5400

IN REPLY REFER TO:
1920

SJA

27 FEB 2004

From: Commander, Marine Forces Reserve

To: (b)(7)(C) (b)(6) - SSN /9906 USMCR

Subj: APPOINTING ORDER FOR THE BOARD OF INQUIRY IN THE CASE OF

(b)(7)(C) (b)(6) - SSN /0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.6E (MARCORSEPMAN)
(c) ForO P5800.6 w/ CH 1 (MFR LEGAL SOP)

1. In accordance with the references, you are hereby appointed as the Senior Member (SRMBR) of the Board of Inquiry (BOI) in the case of (b)(7)(C). The following officers are appointed as members:

a. (b)(7)(C) (b)(6) - SSN 3002 USMC

b. (b)(7)(C) (b)(6) - SSN 7202 USMCR

2. You will be guided in the performance of your duties by the provisions of reference (a). The BOI hearing shall be held on 30 March 2004, at Headquarters, Marine Forces Reserve, New Orleans, Louisiana, in the courtroom of the Office of the Staff Judge Advocate, or as otherwise directed. The hearing is anticipated to take no more than one day.


D. M. MCCARTHY

Copy to:
BOI Members
Recorder
Counsel for Respondent



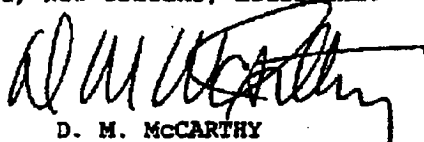
UNITED STATES MARINE CORPS

**MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400**

IN REPLY REFER TO:
1920
SJA
02 MAR 2004

From: Commander, Marine Forces Reserve
To: (b)(7)(C) JAGC, USNR, Counsel for the
Respondent
Subj: REQUEST FOR DELAY IN THE BOARD OF INQUIRY (BOI) ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR
Ref: (a) (b)(7)(C) ltr 1920 AOIC of 26 Feb 04

1. Your request in the reference for a delay in the subject BOI is approved. The BOI will convene on 6 April 2004 at Headquarters Battalion, Marine Forces Reserve, New Orleans, Louisiana.


D. M. MCCARTHY

Copy to:
Recorder




DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20380-1000

MEMORANDUM FOR COMMANDANT OF THE MARINE CORPS

SUBJECT: (b)(7)(C) USMCR, (b)(6) - SSN 70602

I have disapproved (b)(7)(C) unqualified resignation request for an Honorable characterization of service in lieu of processing for administrative separation. Due to the nature of his misconduct, I am directing that he Show Cause for retention in the Naval Service.


William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)

NOV 6 2003



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1920
JAMO
DEC 01 2003

From: Commandant of the Marine Corps
To: Commander, U.S. Marine Forces, Reserve

Subj: BOARD OF INQUIRY IN THE CASE OF (b)(7)(C)
(b)(6) - SSN 70602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) ASN (M&RA) ltr of 6 Nov 03
(c) CG, 1st MarDiv ltr 5812 17/jal of 10 Aug 03
(d) LEGADMINMAN

1. Pursuant to paragraph 13d of reference (a), I have been designated as Show Cause Authority for the Marine Corps. In that capacity, I have reviewed reference (b). Based upon the allegations of misconduct documented in reference (c), the Assistant Secretary of the Navy for Manpower and Reserve Affairs directed administrative separation proceedings be commenced for a recommendation as to (b)(7)(C) suitability for future service.

2. Accordingly, you are directed to convene a Board of Inquiry under the provisions of reference (b) to consider (b)(7)(C) case. The specific reasons for separation to be considered by the Board are substandard performance of duty, misconduct, or moral or professional dereliction as evidenced by one or more of the following:

a. Failure to demonstrate acceptable qualities of leadership required of an officer of his grade;

b. Failure to properly discharge duties expected of an officer of his grade and experience; and

c. Commission of a military or civilian offense which could be punished by confinement of 6 months or more and any other misconduct which would require specific intent for conviction.

3. (b)(7)(C) will be notified by separate correspondence that separation proceedings have been initiated and of his right to 30 days delay in which to prepare his case.

DOD JUNE

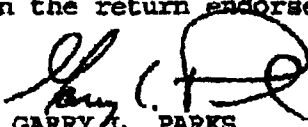
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Subj: BOARD OF INQUIRY IN THE CASE OF (b)(7)(C)
(b)(6) - SSN /0602 USMCR

4. The written report of the Board of Inquiry should be forwarded to this Headquarters (JAM). A verbatim transcript of the proceedings is required in any case where the Board finds that the allegations of misconduct are supported by a preponderance of the evidence.

5. Correspondence relating to this and all other officer administrative separation processing cases should be mailed using Federal Express. Use of the U.S. Postal Service will result in undue delay due to mandatory offsite irradiation.

6. Reference (d) provides time goals for processing officer administrative separation cases. Failure to comply with these standards should be addressed in the return endorsement.


GARRY L. PARKS
Deputy Commandant for
Manpower and Reserve Affairs

Copy to:
CG, I MEF
CG, 1st MarDiv



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1776

IN REPLY REFER TO:

1920
JAMO
DEC 03 2003

From: Commandant of the Marine Corps
To: (b)(7)(C) (b)(6) - SSN 0602 USMCR
Via: Commander, U.S. Marine Forces, Reserve

Subj: NOTIFICATION OF BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6B
(b) CMC ltr 1920 JAMO 1 Dec 03

Encl: (1) Rights of a Respondent
(2) Acknowledgment of Notice

1. Pursuant to references (a) and (b), you are notified that a Board of Inquiry will be convened to make a recommendation on your retention in the U.S. Marine Corps. The specific reason for separation to be considered by the Board is substandard performance of duty, misconduct, and moral or professional dereliction as evidenced by one of the following:

a. Failure to demonstrate acceptable qualities of leadership required of an officer of his grade;

b. Failure to properly discharge duties expected of an officer of his grade and experience; and

c. Commission of a military or civilian offense which could be punished by confinement of 6 months or more and any other misconduct which would require specific intent for conviction.

2. The Board of Inquiry will make the following determinations, by majority vote, based on evidence presented at the hearing:

a. A finding on the reason(s) for separation. This finding is based on a preponderance of the evidence standard; and

b. One of the following:

(1) If the board finds that one or more of the reasons for separation are supported by sufficient evidence to warrant separation, it may recommend your separation and make an additional recommendation as to the appropriate characterization of service; or

Subj: NOTIFICATION OF BOARD OF INQUIRY

(2) If the board finds that the reasons for separation are not supported by sufficient evidence to warrant separation for cause, your case will be closed.

3. The most adverse characterization of service that may be recommended by the Board is Under Other Than Honorable Conditions.

4. You have 30 days in which to prepare your case. As the respondent, you are entitled to exercise the rights set forth in enclosure (1). Your failure to invoke any of these rights will not be considered as a bar to the Board of Inquiry proceedings.

5. This letter is the notice required by reference (a). You will be notified of the names of the Board members and of the date and location of the hearing by the senior member of the Board.

6. You are directed to acknowledge this notification by completing enclosure (2) and returning it to this Headquarters (JAM) within 5 working days of receipt.

(b)(7)(C)

By direction

RIGHTS OF A RESPONDENT

(a) The Respondent shall be given the following rights, which may be exercised or waived:

(1) 30 days to prepare his or her case with reasonable additional time, as determined necessary by the Board of Inquiry. The respondent may, for good cause, further petition the convening authority in a timely manner, for a continuance.

(2) The right to counsel, as provided in paragraph (b) below.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the Board of Inquiry.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the DC (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of Board of Inquiry proceedings. Failure to provide any information or the name of a witness shall not preclude the Board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board of Inquiry.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required, the convening authority shall appoint a new member who is qualified. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

Enclosure (1)
Page 1 of 3

(7) The right to request from the convening authority or the Board of Inquiry the appearance before the Board of any witness whose testimony is considered to be pertinent to the case.

(8) The right to submit, at any time before the Board convenes or during the proceedings, any matter from the respondent's service record, letter answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the Board of Inquiry. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by Article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the Board of Inquiry.

(11) The respondent or counsel may present argument on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the Board of Inquiry for consideration of the Secretary of the Navy.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the Board of Inquiry proceedings, findings, or recommendations.

Enclosure (1)
Page 2 of 3

(b) Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per Article 27(b)(1), UCMJ.

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in Section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the convening authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

(c) Waiver

(1) Respondent may waive any of the aforementioned rights before the Board of Inquiry convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph (a) of this enclosure.

Enclosure (1)
Page 3 of 3

1920
JAMO

From: (b)(7)(C) (b)(6) - SSN 0602 USMCR
To: Commandant of the Marine Corps (JAM)
Via: Commander, U.S. Marine Forces, Reserve

Subj: ACKNOWLEDGMENT OF NOTICE

Ref: (a) CMC ltr 1920 JAMO of DEC 03 2003

1. I acknowledge that I was notified by the reference that my case will be heard by a Board of Inquiry. I understand that I have 30 days in which to prepare my case and that I am entitled to exercise the rights set forth in enclosure (1) of the reference.

2. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date notified _____

Enclosure (2)



UNITED STATES MARINE CORPS

**MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400**

IN REPLY REFER TO:
1920
SJA
06 JAN 2004

FIRST ENDORSEMENT on CMC ltr 1920 JAMO of 1 Dec 03

From: **Commander, Marine Forces Reserve**
To: (b)(7)(C) USMCR, (b)(6) HOME ADDRESS PHONE

Subj: **NOTIFICATION OF BOARD OF INQUIRY**

1. Pursuant to the basic correspondence, you are notified that a Board of Inquiry (BOI) will be convened to make a recommendation on your retention in the U. S. Marine Corps Reserve. Upon receipt of this letter, you are directed to sign and date enclosure (2) of the basic correspondence, a copy of which must be received by this office within five (5) working days from receipt of this letter. An advanced copy may be faxed to the Office of the Staff Judge Advocate (OSJA) at CML: (504) 678-0478. The original must be mailed to:

**SJA, MARFORRES
ATTN: Military Justice Officer
4400 Dauphine Street, BLDG 601
New Orleans, LA 70146-5400**

2. My intention is to hold the BOI sometime during the month of February 2004. The exact date, time, and place of this hearing will be determined, and you will be duly notified. A military defense counsel (Counsel for the Respondent---CFR) will be detailed to your case. Any question or defense related matter should be directed to (b)(7)(C) USMCR. He may be contacted at the Navy Legal Service Office (NLSO), Detachment New Orleans, LA; CML: (504) 678-2520/2522.

(b)(7)(C)

By direction of the
Commander

Copy to:
CFR

1920
JAMO

From: (b)(7)(C) (b)(6) - SSN 70602 USMCR
To: Commandant of the Marine Corps (JAM)
Via: Commander, U.S. Marine Forces, Reserve

Subj: ACKNOWLEDGMENT OF NOTICE

Ref: (a) CMC ltr 1920 JAMO of DEC 03 2003

1. I acknowledge that I was notified by the reference that my case will be heard by a Board of Inquiry. I understand that I have 30 days in which to prepare my case and that I am entitled to exercise the rights set forth in enclosure (1) of the reference.

2. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date notified 19 Jan 04

Enclosure (2)



UNITED STATES MARINE CORPS
OFFICE
1ST MARINE DIVISION, FMF
AL MUT, IRAQ

IN REPLY REFER TO:
1920
SJA/jal
6 Aug 03

From: (b)(7)(C) [redacted] 0602 USMC
To: Secretary of the Navy
Via: (1) Commanding Officer, 3rd Battalion, 23rd Marines
(2) Commanding General, 1st Marine Division (Rein)
(3) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

Ref: (a) MCO P1900.16F (MARCORSEPMAN), paragraph 4104
(b) SECNAVINST 1920.0B

1. Pursuant to references (a) and (b), I voluntarily tender my unqualified resignation of my commission in the United States Marine Corps Reserve in lieu of processing for administrative separation for cause.
2. My resignation is offered under paragraph 4104.3a of reference (a). I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I shall subsequently receive a certificate of honorable discharge from the naval service.
3. This resignation is based on my recent Commanding General's non-judicial punishment for violations of Articles 103 and 133 of the Uniform Code of Military Justice.
4. Pursuant to reference (b), I understand that a Reserve commission is normally not authorized for officers resigning for cause and I do not desire such a commission.
5. I understand that if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.) I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)



UNITED STATES MARINE CORPS
1ST MARINE DIVISION, MAR. UNIT
ONE 42410
FPO AF 96428-2410

IN REPLY REFER TO
1900
CO
9 Aug 2003

FIRST ENDORSEMENT on (b)(7)(C) ltr 1920 SJA/jal of 6 Aug 2003

From: Commanding Officer, 3d Battalion, 23d Marines, 1st Marine Division
To: Secretary of the Navy
Via: (1) Commanding General, 1st Marine Division (Rein)
(2) Commander, Marine Forces Reserve, 4400 Dauphine Street,
New Orleans, LA 70145-5400
(3) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

1. Forwarded, recommending approval.

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
CAMP BABYLON, IRAQ
UIC 39702
FPO AP 96425-8702

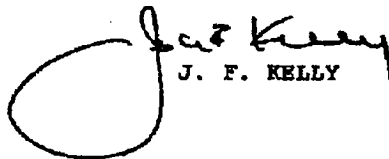
IN REPLY REFER TO:
1920
SJA/jal
10 Aug 03

SECOND ENDORSEMENT on (b)(7)(C) ltr 1920 SJA/jal of 6 Aug 03

From: Commanding General, 1st Marine Division (Rein)
To: Secretary of the Navy
Via: (1) Commanding General, I Marine Expeditionary Force
(2) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

1. Forwarded, recommending approval.
2. Although (b)(7)(C) was the subject of Commanding General's non-judicial punishment on 1 August 2003, I believe that his service was otherwise unblemished, and that his expeditious separation is in the best interests of the Marine Corps.


J. F. KELLY



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1778

IN REPLY REFER TO:
1920
JAMO
OCT 09 2003

SECOND ENDORSEMENT on CG, 1stMarDiv's ltr 5812 17/jal
of 10 Aug 03

From: Commandant of the Marine Corps
To: Assistant Secretary of the Navy (M&RA)

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR

1. Forwarded for review and final action.
2. The basic correspondence is the Report of Nonjudicial Punishment in (b)(7)(C) case. (b)(7)(C) unqualified resignation request in lieu of processing for administrative separation and its accompanying endorsements are included as enclosure (8) of the basic correspondence.
3. A brief chronology of this case follows:
 - a. On 23 June 2003, while serving as a (b)(7)(C) Platoon Commander in Iraq, (b)(7)(C) and his Marines detained four Iraqi men for looting. (b)(7)(C) directed that the men be searched, stripped of their clothes (except for their shoes and underwear), and then released.
 - b. In a separate incident, on 28 June 2003, (b)(7)(C) and his Marines fired upon and disabled a truck that attempted to speed through their checkpoint. Two Iraqi men, wounded by the Marines' fire, were given medical treatment and evacuated. When the men returned the next day to recover their personal belongings, (b)(7)(C) denied them access and instructed his Marines to burn the Iraqi men's property.
 - c. On 1 August 2003, the Commanding General, 1st Marine Division (Reinforced) imposed nonjudicial punishment upon (b)(7)(C) and found him guilty of violating Articles 103 (failing to secure captured or abandoned property) and 133 (conduct unbecoming) of the Uniform Code of Military Justice. The Commanding General, 1st Marine Division (Reinforced) awarded (b)(7)(C) forfeiture of \$2034.00 pay per month for one month and a Letter of Censure.

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 70602 USMCR

d. On 6 August 2003, (b)(7)(C) submitted an unqualified resignation in lieu of administrative separation processing for cause. He acknowledged that if his resignation request is approved, his service will be characterized as Honorable.

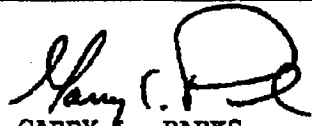
e. On 9 August 2003, the Commanding Officer, (b)(7)(C) (b)(7)(C) recommended that (b)(7)(C) resignation request be approved.

f. On 10 August 2003, the Commanding General, 1st Marine Division, recommended that (b)(7)(C) resignation request be approved.


g. On 30 August 2003, the Commanding General, I Marine Expeditionary Force, recommended that (b)(7)(C) resignation be approved.

4. After careful review of the applicable law and regulations, (b)(7)(C) statements during his nonjudicial punishment, the statements of his character witnesses, and the recommendations of the chain of command, I am satisfied that (b)(7)(C) unqualified resignation in lieu of processing for administrative separation should be approved.

5. In accordance with reference (a), I recommend that you approve (b)(7)(C) unqualified resignation request, and that his service be characterized as Honorable. Your approval of this recommendation will effect the recommended action. The separation code will be [REDACTED].


GARRY L. PARKS
Deputy Commandant for
Manpower and Reserve Affairs

~~APPROVED~~/DISAPPROVED


William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
UNC 39858
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 98813-1786

IN REPLY REFER TO:
5800
SJA/jal
28 Jul 03

From: Commanding General, 1st Marine Division (Rein)
To: (b)(7)(C) (b)(6) SSN /0602 USMCR

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

Ref: (a) Paragraph 4, Part V, MCM (2000 ed.)
(b) SECNAVINST 1920.6B

1. You are hereby notified that it is my intention to conduct an Article 15 hearing in accordance with reference (a). Prior to that hearing, you are advised of the following:

a. That you are accused of the following:

1. A violation of Article 103, UCMJ failing to report and turn over captured or abandoned property: In that (b)(7)(C) U.S. Marine Corps Reserve, on active duty, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned.

2. A violation of Article 133, UCMJ, conduct unbecoming an officer and gentleman: In that (b)(7)(C) U.S. Marine Corps Reserve, did, on active duty, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

b. That you may, upon request, examine available statements and evidence upon which the allegations are based.

c. That you have the right not to make any statement concerning these offenses.

d. That any statement you do make may be used against you during these proceedings or in trial by court-martial or in administrative separation proceedings under reference (b).

e. That you may consult with a lawyer, either a civilian attorney retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

f. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing or, if you waive such personal appearance, to submit written matters for consideration;

(2) To be advised of the offenses of which you are suspected;

(3) That you will not be compelled to make any statement regarding offenses charged and that any statement you do make can be used against you;

(4) To be present during the presentation of all information against you, including the testimony of witnesses present and the receipt of written statement. Copies of any statements will be furnished to you;

(5) To have made available to you for inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation or defense of alleged charges. Matters in mitigation do not constitute a defense but do reduce the degree of culpability such matters might include a fine military record, either previous or subsequent to the alleged offenses. Matters in extenuation are matters which render an offense less aggravated or reprehensible than it would otherwise be, but such matters do not also constitute a defense. A matter offered in defense is offered as a reason in law or in fact why you should not be found guilty of the charges alleged;

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative. It is your own obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer; and

(8) To have the proceedings open to the public unless good cause for closing the proceedings can be shown or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

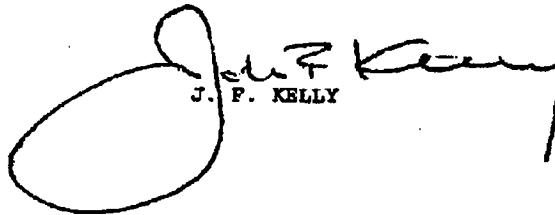
2. A report of this nonjudicial punishment (NJP) will be made to the Commandant of the Marine Corps (CMC) and you may be subject to involuntary separation proceedings directed by CMC. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

3. You are further advised that if NJP is imposed, you have the right to appeal to the next superior authority within 5 working days, if you consider the punishment unjust or disproportionate to the offenses for which it is imposed.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

4. Unless attached to or embarked in a vessel, you have a right to refuse NJP. If you refuse NJP, charges could be referred for trial by general court-martial. If charges are referred to a general court-martial you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept NJP is to be reprimanded (orally or in writing), 30 days arrest in quarters or 60 days restriction and to forfeit half of one month's pay for two months.

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within five (5) days.


J. F. KELLY



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (Rein)
LIC 39858
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 98813-1786

IN REPLY REFER TO:
5800
SJA/jal
AUG 01 2003

FIRST ENDORSEMENT on CG, 1st MarDiv (Rein) ltr 5800 SJA/jal of 28 Jul 03

From: (b)(7)(C) (b)(6) - SSN /0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

1. I hereby acknowledge my understanding of the advice stated in the Commander's notification letter, and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. Prior to taking this decision, I have had the opportunity to consult with a lawyer.

2. I also acknowledge that if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred and if I received advanced education assistance (USNA, ROTC, FLEP, etc...), that I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date: 8/1/03

Witness

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)

UIC 39858

BOX 1786

CAMP BABYLON, IRAQ

FPO AP 96613-1786

IN REPLY REFER TO:

5800

SJA/jal

AUG 01 2003

From: (b)(7)(C) (b)(7)(C) SSN (b)(7)(C) 0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: ACKNOWLEDGEMENT AND RIGHTS FORM

1. Knowing and understanding all of my rights as set forth in the notification letter dated 28 July 2003, I desire to exercise the following rights:

a. Lawyer

I wish to talk to a military lawyer before completing the remainder of this form.

I wish to talk to a civilian lawyer before completing the remainder of this form.

(b)(7)(C) I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

(b)(7)(C)

(b)(7)(C)

1 Aug 03
(Date)

28 July 03

I talked to (b)(7)(C), a lawyer, on

(b)(7)(C)

(b)(7)(C)

1 Aug 03
(Date)

b. Right to refuse nonjudicial punishment

I refuse nonjudicial punishment.

(b)(7)(C) I accept nonjudicial punishment. I understand that acceptance of nonjudicial punishment does not preclude further administrative action against me.

DOD JUNE

1784

Subj: ACKNOWLEDGEMENT AND RIGHTS FORM

c. Personal appearance

☒ I request a personal appearance before the Commanding Officer.

☐ I waive a personal appearance.

☐ I do not desire to submit any written matters for consideration.

☐ Written matters are attached.

d. Elections at personal appearance

☒ I request that the following witnesses be present at my nonjudicial punishment proceeding: (b)(7)(C)

(b)(7)(C)

☒ I request that my nonjudicial punishment proceeding be open to the public.

(b)(7)(C)

(b)(7)(C)

9 Aug 03
(Date)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT

(b)(7)(C)	SSN 0692	USMCR	(b)(7)(C)
Name	SSN	Rank/Branch	Unit

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(b)(7)(C) (1) I am suspected of having committed the following offenses:

a. A violation of Article 103, UCMJ failing to report and turn over captured or abandoned property: In that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned.

b. A violation of Article 133, UCMJ, conduct unbecoming an officer and gentleman: In that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

(b)(7)(C) (2) I have the right to remain silent;

(b)(7)(C) (3) Any statement I do make may be used as evidence against me in trial by court-martial;

(b)(7)(C) (4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and

(b)(7)(C) (5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT (cont'd)

WAIVER OF RIGHTS

[REDACTED] I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that,

[REDACTED] (1) I expressly desire to waive my right to remain silent;

[REDACTED] (2) I expressly desire to make a statement;

[REDACTED] (3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning;

[REDACTED] (4) I expressly do not desire to have such a lawyer present with me during this interview; and

[REDACTED] (5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any type having been used against me.

(b)(7)(C)

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
UIC 38858
BOX 1788
CAMP BABYLON, IRAQ
FPO AP 96613-1788

IN REPLY REFER TO:

5800

17/jal

AUG 01 2003

From: (b)(7)(C) (b)(6) - SSN 0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: ACKNOWLEDGEMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

Ref: (a) SECNAVINST 1920.5B
(b) MCO P1900.16F (MARCORSEPMAN)

1. I, (b)(7)(C) (b)(6) - SSN 0602 USMCR, assigned to (b)(7)(C) have been informed of the following facts concerning my right of appeal as a result of the Commanding General's nonjudicial punishment held on 1 August 2003.
2. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances, which I believe will make it extremely difficult or not practical to submit an appeal within the 5-day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.
 - a. The appeal must be in writing.
 - b. There are only two grounds for appeal; that is:
 - (1) The punishment was unjust;
 - (2) The punishment was disproportionate to the offense for which it was imposed.
3. I understand that, if I submit an appeal, it must be referred to a military lawyer for consideration and advice before action is taken on the appeal.
4. _____ I intend to appeal the imposition of NJP.

(b)(7)(C)

I do not intend to appeal the imposition of NJP.

DOD JUNE

1788

Subj: ACKNOWLEDGEMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

5. I have been notified of my right to submit a request for resignation in lieu of administrative separation processing.

(b)(7)(C) desire to submit a request for resignation in lieu of administrative separation processing in accordance with reference (a) and (b).

_____ I do not desire to submit a request for resignation in lieu of administrative separation processing.

(b)(7)(C)

USMCR

Aug 03
(date)

(b)(7)(C)

8/1/03
(date)

(b)(7)(C)

PRINT NAME AND RANK

(b)(7)(C) ✓ **(b)(7)(C)**



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)

UIC 39858

BOX 1786

CAMP BABYLON, IRAQ

FPO AP 96813-1786

IN REPLY REFER TO:

5800

SJA/jal

1 Aug 03

~~FOR OFFICIAL USE ONLY~~

From: Commanding General

To: (b)(7)(C) (b)(7)(C) - SSN /0602 USMCR

Subj: PUNITIVE LETTER OF REPRIMAND

Ref: (a) (b)(7)(C) Command Investigation of 22 Jul 03
(b) UCMJ Art 15
(c) Part V, MCM 2000 Ed.
(d) JAGMAN 0114

1. Reference (a) contains a factual summary that forms the basis for the allegations of misconduct committed by you, specifically one specification of wrongful disposition of captured property, and one specification of conduct unbecoming an officer and gentleman. This report was used as a partial basis for my decision to subject you to nonjudicial punishment under reference (b). Prior to your hearing, you were advised that you had the right to refuse the imposition of nonjudicial punishment and request trial by court-martial. You elected to accept nonjudicial punishment.

2. At your nonjudicial punishment, you were found to have perpetrated violations of the Uniform Code of Military Justice. Specifically, you were found to have committed the following: a violation of Article 103, UCMJ, in that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned; and a violation of Article 133, UCMJ, conduct unbecoming an officer and gentleman, in that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

3. These actions clearly show that you have failed to adhere to the rules and regulations governing the conduct and comportment of a Marine Corps Officer within the Department of the Navy. Your degrading treatment of Iraqi detainees and their property, and issuance of unlawful orders to your junior Marines, were utterly disgraceful. You completely destroyed the special trust and confidence of your commander, your superiors and peers, and in doing so, undermined your position as a commissioned officer. Your actions, reminiscent of the conduct of the former Iraqi regime, shamed us all while eroding the good will forged by the battalion during stability and security operations in the Wasit Province.



UNITED STATES MARINE CORPS

CAMP BABYLON, IRAQ
UKC 39858
BOX 1788
FPO AP 98813-1788

IN REPLY REFER TO:
5812
SJA/jal
AUG 01 2003

~~FOR OFFICIAL USE ONLY~~

From: (b)(7)(C) (b)(7)(C) /0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: ACKNOWLEDGMENT OF PUNITIVE LETTER OF REPRIMAND

Ref: (a) Punitive Letter of Reprimand dtd 1 Aug 03
(b) JAGMAN 0114(d)

1. I acknowledge receipt of reference (a), as part of the punishment awarded at my non-judicial punishment hearing conducted on 1 August 2003.
2. I understand that reference (a) will be forwarded to the Headquarters, U.S. Marine Corps and become part of my official record.
3. Under reference (b):

_____ a. I DO desire to appeal the issuance of my letter of reprimand.

☒ b. I DO NOT desire to appeal the issuance of my letter of reprimand. Although I am not appealing I

_____ (1) DO desire to submit a statement to be attached to my letter of reprimand.

☒ (2) DO NOT desire to submit a statement to be attached to my letter of reprimand.

(b)(7)(C)

DOD JUNE

1791

RECORD OF NONJUDICIAL PUNISHMENT PROCEEDINGS

IN THE CASE OF

(b)(7)(C)

(b)(6) SSN 0602 USMCR

HELD AT 1ST MARINE DIVISION COMMAND POST, AT 0615Z, ON
1 AUGUST 2003, AT CAMP BABYLON, AL HILLAH, IRAQ, BY THE
COMMANDING GENERAL, 1ST MARINE DIVISION (REIN).

AT 0615Z, (b)(7)(C) FORMALLY REPORTED TO THE COMMANDING
GENERAL FOR THE IMPOSITION OF OFFICE HOURS.

THE FOLLOWING INDIVIDUALS WERE PRESENT:

COMMANDING GENERAL: BRIGADIER GENERAL J. F. KELLY, USMC;
ACCUSED: (b)(7)(C) USMCR;
CO, (b)(7)(C) (b)(7)(C) USMCR;
CO, (b)(7)(C) (b)(7)(C) USMCR;
SJA: (b)(7)(C) USMC;

THE FOLLOWING WITNESSES WERE PRESENT:

(b)(7)(C)

CG'S comments: The Commanding General asked (b)(7)(C) if
he had been fully informed of his rights at NJP to include his
Art. 31(b) rights. He further inquired of (b)(7)(C) if he
was aware of the charges pending against him and whether he was
willing to accept NJP.

ACC's comments: (b)(7)(C) acknowledged that he understood
all of his rights as explained in the notification of Article 15
dated 28 July 2003. He further stated that he understood his
rights under Article 31(b) and intended to make a statement at
the appropriate time. Additionally, he admitted he had reviewed
the charges against him and would accept NJP.

CG's comments: The Commanding General then asked the SJA to summarize the charges. (The SJA then read the following charges).

1) A violation of Article 103, UCMJ, to wit: In that (b)(7)(C) USMCR, on active duty, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession, to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned.

2) A violation of Article 133, UCMJ, to wit: In that (b)(7)(C) USMCR, on active duty, did, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

CG's comments: The Commanding General then reviewed the evidence with (b)(7)(C). Specifically, the Commanding General commented that he had fully reviewed the investigation authored by (b)(7)(C) dated 22 July 2003, as well as (b)(7)(C) (b)(7)(C) Basic Individual Record and Basic Training Record. Further, he stated that he would consider all the above as evidence in the present hearing. He then asked (b)(7)(C) if he was aware of, and had he reviewed the above-mentioned evidence.

Acc's comments: (b)(7)(C) acknowledged he was aware of the evidence and did not desire further review.

CG's comments: The Commanding General then asked (b)(7)(C) how he pled to each charge.

Acc's comments: (b)(7)(C) pled guilty to the first charge, failure to report and turn over captured property, but pled not guilty to the second offense of unbecoming conduct by mistreating detainees. He stated that for the first incident, he behaved stupidly and was guilty of having the property burned. He said that the unit seized a lot of property during that incident, including a large amount of suspected illegal funds, which were turned over to the military police. Burning their property was just stupid, and he admitted that he did not have a good reason for doing it. For the second incident, he stated that some of the statements in the investigation were incorrect, specifically that he did not coerce the (b)(7)(C) to strip the Iraqis and send them outdoors, and second that he was not "counseled" by the company commander, (b)(7)(C) for his actions.

CG's comments: In a series of questions, the Commanding General then asked (b)(7)(C) to discuss the second offense, and whether he ordered the (b)(7)(C) and junior Marines to strip the men or not, or was there a break down in communication.

ACC's comments: I did tell the (b)(7)(C) to strip the men down and send them out of the compound. I did this because we had captured the same men at the same ammunition supply point (ASP) four times within the previous eight hours. I was concerned with the safety of my Marines, and the Iraqis, who kept returning to this dangerous place. I was trying to come up with a way to teach these men a lesson without seriously injuring them. We had previously taken looters to the Iraqi police, but they simply released the men after we left, and they would go right back to looting.

CG's comments: I'm trying to understand your point; you ordered the men stripped down, but you do not think you are guilty of the offense because you have an explanation for your conduct, mainly that your actions were designed to teach the Iraqis to stay out of the ASP?

ACC's comments: Yes, sir. Also, (b)(7)(C) account in the report is inaccurate. I was not bragging about what we had done to the Iraqis, but (b)(7)(C) pulled me aside and said that because I had it done at the company compound, there was no longer any sort of "plausible deniability", and that I should have done it in a deserted area instead. He also said that we are now military police, not Marines. (based on these comments, the Commanding General directed the Battalion Commander to inquire into the truth of these allegations against (b)(7)(C)

CG's comments: Do you have any witnesses to present on the merits, or as character witnesses?

ACC's comments: (b)(7)(C) stated that he had four character witnesses available to testify on his behalf.

The following witnesses testified at the NJP:

(b)(7)(C): Character witness. Serves as the (b)(7)(C). Met (b)(7)(C) when he was brought back on active duty a month prior to the mobilization of the rest of the company. During that month, (b)(7)(C) performed superbly. (b)(7)(C) worked hard to learn what he needed to know to serve in an infantry MOS. They did not have much contact again until recently, due to the investigation. For the last three weeks or so, (b)(7)(C) has worked directly for (b)(7)(C) helping to train the new Iraqi Facility Protective Service (FPS). He is proactive and conscientious; always humanitarian in his dealings with the Iraqis; could not ask this officer to work harder or do more.

(b)(7)(C): Character witness. Serves as the (b)(7)(C) platoon commander (b)(7)(C), so they are peers (b)(7)(C) (b)(7)(C) is the (b)(7)(C) platoon commander). Has known (b)(7)(C) for over 10 months; he is professional, intelligent and personable. Believes (b)(7)(C) has good character.

CG's comments: It is unusual for enlisted Marines to testify on behalf of an officer at non-judicial punishment proceedings. Professionally, I am embarrassed. As a former enlisted leader, I had the utmost respect for commissioned officers. You are here to answer questions about the (b)(7)(C) character, unless he has other questions he would like you to answer.

(b)(7)(C): Character witness. Believes (b)(7)(C) is very conscientious. Not an infantryman by trade, but he worked hard to learn what he needed to know to take care of himself and his Marines. Routinely stops by to ask for staff NCO guidance on tricks of the trade and tactics and techniques. Has a favorable opinion of (b)(7)(C) believes he still has the drive to continue serving, despite these events.

CG's comments: It is embarrassing for me as an officer to have to call you in here today. As a former enlisted Marine, I find it unusual to have an enlisted Marine speaking on behalf of an officer at his non-judicial punishment. However, the (b)(7)(C) requested your presence, so I will grant him that wish. I will ask you some questions about his character, and then the (b)(7)(C) may ask that you answer additional questions.

(b)(7)(C): Character witness. Serves as the Platoon Sergeant for (b)(7)(C) platoon. They have served together since the unit was activated. (b)(7)(C) (b)(7)(C) has done an excellent job; worked closely together. No problems since they first arrived in Iraq. His sole intent was to take good care of his Marines and ensure that they go home in one piece. Believes he is responsible for the (b)(7)(C) problems, because he encouraged the (b)(7)(C) to be aggressive during operations and patrols. Told the (b)(7)(C) that it was important to be firm but fair when dealing with the Iraqi citizens. Believes he may have encouraged the (b)(7)(C) to be overly aggressive.

CG's comments: Do you have any more witnesses or anything else to offer?

ACC's comments: No, sir.

CG's comments: The Commanding General stated that (b)(7)(C) (b)(7)(C) is not a bad guy, and that he has known of few bad Marine Corps officers. In fact, there is probably only one really bad Marine officer shows himself once a year. Considering that there are about 16,000 Marine officers, that is not too bad. The bad ones are involved in things like pedophilia, really bad things. You are not a bad guy, far from it. What you did, though, directly erodes good order and discipline in your unit. As I re-read the investigation, I noticed the number of junior Marines that said that they questioned your orders to strip the men and send them out the gate. It is all about what we learn at The Basic School: officership. There is no question that you have worked hard to improve yourself, to learn to be an infantryman, but the real issue is officership. You gave your Marines an illegal order, and forced some of them to question your orders. This really is a good order and discipline issue. If you were a Lance Corporal accused of these offenses, you would probably find yourself in front of your Company Commander, maybe your Battalion Commander. But an officer that gives illegal orders is a serious matter that deserves close attention; the impact on good order and discipline of the unit can be devastating.

I enjoy military history, and have studied war crimes, mostly during Viet Nam. You are probably familiar with My Lai. A case like that doesn't happen overnight; it's the result of a series of things, a gradual breakdown in good order and discipline. Rusty Callie was not much of an officer, a product of the times and society, as the war wound down and people lost interest in the military and maintaining standards. You are not as bad as Callie, in fact he was not a real officer. In order to understand how a My Lai happens, you have to go back in time to the first time Callie turned his head and ignored bad behavior from his men. During the initial stages of his tour, he tolerated his men stealing from the people that they captured; he turned a blind eye. Over time, Callie started to do the same things. He would take cigarettes from vendors in the market, because how could they stop him? He failed to prevent rapes or hold the men accountable, and eventually participated in gang rapes himself. In one incident, somewhat similar to what you did, their base was repeatedly disturbed by a group of women that kept on coming to the camp. He had them apprehended, stripped naked, and then sent away. It's a slippery slope, on that challenges cops on a daily basis. One day you take an apple from the fruit stand, and later you take bribes. It's a step-by-step process that occurs gradually.

The only reason your men followed your order was because of what they learn in boot camp: respect and trust of officers. It's the reason why they go out on patrol every night, even when they know it's safer to stay in their compound. Unless you have worn enlisted rank, you never fully understand the high regard the Marines have for their officers. The UCMJ doesn't motivate them,

and neither does the threat of NJP. A look or a word from a respected officer sends them into action. You eroded trust, but not acting like an officer. I don't think you should be an officer any more, because you have missed the point of being an officer.

CG's comments: Despite his pleas, the Commanding General then formally found (b)(7)(C) guilty of all charges. He then asked (b)(7)(C) if there was anything else that he wished to offer in the way of witnesses, personal statements or other evidence?

ACC's comments: (b)(7)(C) declined to submit anything further.

CG's comments: I could have sent this case to an Article 32 pretrial hearing, which could lead to a general court-martial, but I didn't want to see you at a court, suffering through the investigation. I wanted you to understand that with great power comes huge responsibility. This is an important issue. Although the effects were minor, with no one hurt or killed, you still broke the law. I'm not sure what experiences you had that lead you to do this. The worst thing from this process is that your career in the Marine Corps is over; you will probably never be promoted again. I have considered your explanation about why you had the men stripped down, and it is some explanation for your actions.

CG's comments: The Commanding General then determined the offenses were appropriate for disposition at office hours. He further found that (b)(7)(C) did commit the offenses charged. Specifically, he noted (b)(7)(C) original pleas, and stated that despite (b)(7)(C) statements and explanations to the contrary, he believed he was guilty of both offenses. He then sentenced him to receive:

A letter of reprimand AND

Forfeitures of \$2034.00 pay per month for one month, for a total of \$2034.00.

CG's comments: The Commanding General once again expressed his disappointment and displeasure with (b)(7)(C) conduct. I will recommend that you show cause for retention in the Marine Corps. It can be a long, embarrassing process. What you do next is completely up to you. Worst part of this whole situation is that you gave Marines an illegal order, and I'm not sure you understood the impact it had on good order and discipline. Breakdowns in good order and discipline can lead to terrible things; never starts that way, it's a slow, gradual process of erosion. My Lai is one example, but I can think of 20 others.

What you did was really, really stupid. When an officer makes a mistake, they pay dearly for it. The forfeitures are really nothing compared to the impact on your career, and the punitive letter that becomes a part of your permanent record. I task your Commanding Officer with ensuring that your Marines understand what happened here today, why it happened, and the impact on your career. I also direct him to send you from this theater, once you have had a chance to consider your appeal rights and exercise those rights, if you desire. Five days should be a reasonable amount of time to draft an appeal to Lieutenant General Conway or Major General Stalder, if you should choose to do that. Do you have anything else you would like to say or have me consider before we conclude?

ACC's comments: No, sir.

CG's comments: The hearing is closed, you are dismissed.

THE PROCEEDINGS CONCLUDED AT 0717Z, on 1 August 2003.



UNITED STATES MARINE CORPS

1st Marine Division (Rein)
Camp Babylon, Iraq
UNC 38702
FPO AP 96428-9702

IN REPLY REFER TO:
5812
17/jal
10 Aug 03

~~FOR OFFICIAL USE ONLY~~

From: Commanding General, 1st Marine Division (Rein)
To: Commandant of the Marine Corps (JAM), Headquarters, U.S. Marine Corps,
Washington, D.C. 20380-0001
Via: Commanding General, I Marine Expeditionary Force

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(7)(C) /0602 USMCR

Ref: (a) MCO P5800.16 (LEGADMINMAN)
(b) Manual for Courts-Martial, 2002 ed.
(c) JAGINST 5800.7 (JAGMAN)
(d) Uniform Code of Military Justice (UCMJ)
(e) SECNAVINST 1920.6B
(f) MCO P1900.16F (MARCORSEPMAN)

Encl: (1) Command Investigation of 22 Jul 03 w/enclosures
(2) Notification of NJP of 28 Jul 03 w/accepting endorsement
(3) Accused's Rights and Acknowledgement Statement w/31b Rights
(4) Copy of CG, 1st Marine Division PLR of 1 Aug 03
(5) Acknowledgment of receipt of PLR of 1 Aug 03
(6) Record of NJP Hearing of 1 Aug 2003
(7) Acknowledgement of NJP Appeal Rights of 1 Aug Jul 03
(8) Letter of Resignation of 6 Aug 03 w/endorsements

1. The subject report is submitted per paragraph 4003 of reference (a).

2. On 1 August 2003, following the applicable provisions of references (b), (c) and (d), nonjudicial punishment (NJP) was imposed by the undersigned on (b)(7)(C). The charges and disposition thereof are as follows:

<u>Charges</u>	<u>Plea</u>	<u>Finding</u>	<u>Appeal/Status</u>
Article 103	G	G	Not Appealed
Article 133	NG	G	Not Appealed

3. (b)(7)(C) was notified of the intent to impose NJP, and voluntarily accepted NJP, enclosure (3). The following punishment was imposed: Forfeitures of \$2034.00 pay per month for one month, for total forfeitures of; (b)(7)(C) also received a punitive letter of reprimand, enclosure (4).

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(7)(C) SSN 0602 USMCR

4. The circumstances giving rise to the imposition of nonjudicial punishment, as outlined in enclosure (1), are as follows: On 23 June 2003, while on patrol in Al Kut, Iraq, (b)(7)(C) Marines captured four Iraqi men looting an ammunition supply point. Three of the men had been detained for the same offense at the same location earlier that day. (b)(7)(C) ordered the men delivered to the (b)(7)(C) compound. Once there he directed the Marines to strip the men naked and send them out onto the streets, in order to "teach them a lesson". The Marines stripped the men down to their underwear and shoes, and then sent them out of the compound as ordered. On 28 June 2003, also in Al Kut, (b)(7)(C) unit was manning a vehicle checkpoint. A semi truck approached, refused to slow down, flashed its lights and beeped its horn as it attempted to "run" the checkpoint. The Marines, fearful of being run over, fired in self-defense, disabling the vehicle. The two Iraqi male occupants were injured. (b)(7)(C) men triaged the injured Iraqis and transported them to a local hospital for further treatment. The next day, the men returned, seeking to recover their personal effects from the vehicle. (b)(7)(C) chased the men off, and ordered his Marines to destroy the contents of the truck by burning all of it.

5. A record of the NJP hearing conducted in accordance with paragraph 4, part V of reference (b) is contained in enclosure (6). The accused was present at the hearing and was accorded all rights, including the right to consult with a lawyer, enclosure (3). (b)(7)(C) accepted nonjudicial punishment and did not demand a trial by court-martial. Nonjudicial punishment was imposed in accordance with section 0110 of reference (c) and Article 15 of reference (d). All requirements of paragraph 4, Part V, of reference (b) have been satisfied.

6. (b)(7)(C) has been accorded the opportunity to read the report of nonjudicial punishment in this case and did not desire to exercise the right to appeal, enclosure (7). On 1 August 2003, (b)(7)(C) indicated that he did not desire to appeal the issuance of the punitive letter of reprimand, enclosure (5).

7. (b)(7)(C) treatment of two different groups of Iraqi detainees demonstrates a high level of frustration and a lack of respect for their welfare. His failure to appreciate the fragility of our relationship with the Iraqi people, and the negative impact his unlawful orders had on his junior Marines, cause me serious doubts about his suitability for further service. At the end of the non-judicial punishment proceedings, I informed him that I would recommend that he be required to show cause for retention in the Marine Corps. In enclosure (7), he indicated that he would tender his resignation in lieu of administrative separation processing. His unqualified resignation is attached as enclosure (8). I concur with the Commanding Officer, (b)(7)(C) that the characterization of service should be under Honorable conditions.


J. F. KELLY

Copy to:
SJA, Marine Forces Reserve
CO, (b)(7)(C)
(b)(7)(C)
File

FOR OFFICIAL USE



UNITED STATES MARINE CORPS
I MARINE EXPEDITIONARY FORCE, FMF
UIC 43801
FPO AP 90813-3801

IN REPLY REFER TO:

1920

SJA/ [REDACTED]
30 AUG 03

FIRST ENDORSEMENT on CG, 1stMarDiv, ltr 5812 17/jal of 10 Aug 03

From: Commanding General, I Marine Expeditionary Force
To: Commandant of the Marine Corps (JAM),
Headquarters Marine Corps, Washington D.C. 203080-0001

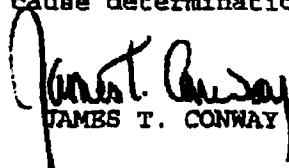
Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN [REDACTED] 0602 USMCR

1. Pursuant to paragraph 13d of reference (e), I have been designated the Show Cause Authority for officer misconduct cases arising within I MEF.

2. (b)(7)(C) received Non-judicial Punishment from the Commanding General, 1st Marine Division, on 1 August 2003 and subsequently submitted his request for unqualified resignation of commission from the Marine Corps Reserve in lieu of processing for administrative separation for cause.

3. (b)(7)(C) is a reserve officer who was activated in support of Operation Iraqi Freedom with (b)(7)(C). (b)(7)(C) was returned to CONUS shortly after his Non-judicial Punishment and will demobilize within the next several weeks when the remainder of his unit returns to CONUS. He will likely transfer from the Gaining Force Commander (GFC), I MEF, and return to the reserve establishment before his request to resign is answered and a Board of Inquiry could be convened.

4. Accordingly, I am forwarding this Report of Non-judicial Punishment to you for your show cause determination.


JAMES T. CONWAY

8 October 2003

From: (b)(7)(C) USMC

To: The Honorable William A. Navas, Jr., Assistant Secretary of the Navy (M&RA)

CC: Senator Mark Dayton (D-MN)

Subj: Unjust Non-Judicial Punishment of (b)(7)(C) while deployed in Iraq during Operation Iraqi Freedom.

Dear Sir:

I am a graduate of the United States Naval Academy and served almost six years of active duty in the United States Marine Corps. I was discharged honorably as a Captain in February of [redacted] and pursued a civilian career. As the US government began to make preparations for freeing Iraq from the Saddam Hussein regime, I joined my local USMC Reserve Unit, (b)(7)(C) in hopes of deploying with them to serve my country. I was assigned as Platoon Commander, (b)(7)(C) Platoon of the (b)(7)(C) under (b)(7)(C).

While deployed to Iraq, I was accused of Conduct Unbecoming of an Officer and Willful Destruction of Property. Concerning the first incident, I captured four Iraqis trying to steal ammunition from my Company's ammunition supply point. My troops and I captured them four separate times in less than an eight-hour period. We didn't possess adequate prisoner of war facilities and were instructed to turn all prisoners over to the Iraqi police, who only detained prisoners for ten or fifteen minutes before releasing them. After the fourth time the [redacted] were captured, I confiscated their clothing and made them walk home in their T-shirts and shorts, to impress upon them—without causing any physical harm to the prisoners—that they shouldn't return to the ammo dump to try and steal ammunition. They didn't return. When I reported my action to my Company Commander, I was told that I should have taken the prisoners into the desert, stripped them, and told them we were Army Military Police.

The second incident involved my section and I destroying a small amount of captured clothing from a destroyed vehicle at a checkpoint. The clothing was dirty, possibly lice-ridden, and posed no intelligence or other value to the Government of the United States and had some value to the enemy.

I was never formally charged with a violation of the Uniform Code of Military Justice, and to this day do not know who charged me. I also received very confusing legal advice from two lawyers, one of whom suggested I take the Non-Judicial Punishment. When I received Non-Judicial Punishment, the paperwork stating that I was guilty with my specific punishment was already complete, as if the verdict was already passed.

In summary, I was fined, told that I must resign my commission in lieu of a Board of Inquiry without a guarantee of my type of discharge, and immediately shipped out of country. I believe that both of my decisions were justified and good moves in the long run, and I think that the standard I was judged by was too harsh. I do not pose a danger to others or myself, since the courses of action I followed were harmless under very trying circumstances. I want to continue to serve my country and retain my commission.

Respectfully,

(b)(7)(C)

(b)(6) - HOME ADDRESS/PHONE

*For: ded for ASN's consideration
letter response to respondent*

(b)(7)(C)

DOD JUNE

1802



UNITED STATES MARINE CORPS
5TH MARINE DIVISION, FMF, USMC
4400 DANDY STREET
NEW ORLEANS, LOUISIANA 70146-3400

IN REPLY REFER TO:

5730

G-1

JAN 6 2004

THIRD ENDORSEMENT on CG, 1st MarDiv, ltr dtd 10 Aug 03

From: Commanding General
To: Commandant of the Marine Corps, (OLAC), Headquarters
U.S. Marine Corps, Washington DC
Via: Commander, Marine Forces Reserve

Subj: CONGRESSIONAL/SPECIAL INTEREST CORRESPONDENCE, RE:
(b)(7)(C) (b)(6) - SSN 0602 USMCR

1. Forwarded for appropriate action.

(b)(7)(C)

Adjutant



UNITED STATES MARINE CORPS
230 MARINE BL, 4TH MARINE DIVISION, F14F
100 CONRAD CORSE DRIVE
SAN BRUNO, CALIFORNIA 94066-0005

PLEASE REFER TO

5800

Regt / Adj

JAN 06 2007

FIFTH ENDORSEMENT on CMC telescoper memorandum 5730 OLAC-5d
of 30 Dec 03.

From: Commanding Officer
To: Commandant of the Marine Corps (OLAC)
Via (1) Commanding General, 4th Marine Division
(2) Commander, Marine Forces Reserve

Subj: CONGRESSIONAL/SPECIAL INTEREST CORRESPONDENCE, RE:
[REDACTED] JRG SSN [REDACTED] 0602 USMCR

1. Forwarded, all actions complete.

(b)(7)(C)

By direction

DOD JUNE

1804



UNITED STATES MARINE CORPS

4TH MARINE DIVISION, FMF, USMC
489 WHEELER AVENUE, BUILDING 46, BOX 1
NAVAL AIR STATION, JOINT RESERVE BASE
NEW ORLEANS, LOUISIANA 70149-3077

IN REPLY REFER TO:
5730
5-1
5 Jan 04

FOURTH ENDORSEMENT on CMC (OLAC), HMC WASHDC ltr 5730 OLAC-50
of 30 Dec 2003

From: Inspector-Instructor, (b)(7)(C)
To: Commandant of the Marine Corps (OLAC),
Headquarters, U.S. Marine Corps, Washington, DC
Via: (1) Commanding Officer, (b)(7)(C)
(2) Commanding General, 4th Marine Division, New Orleans, LA
(3) Commander, Marine Forces Reserve, New Orleans, LA
Subj: RESPONSE TO CONGRESSIONAL/SPECIAL INTEREST CORRESPONDENCE,
RE: (b)(7)(C) (b)(6)-SSN 0602 USMCR
Encl: (2) Report of Nonjudicial Punishment of 10 Aug 03 w/o encls
(3) Email from (b)(7)(C) of 31 Dec 2003

1. Returned.
2. In response to Congressional/Special Interest, enclosures (2) and (3) are provided.
3. (b)(7)(C) was the subject of Commanding General's Nonjudicial Punishment on 1 August 2003. As a result of the NJP, (b)(7)(C) was found guilty of violations of Articles 103 and 133 of the Uniformed Code of Military Justice per enclosure (2). The punishment awarded was not disproportionate for the violations.
4. (b)(7)(C) (Battalion Commander of (b)(7)(C) at that time) witnessed the NJP conducted by Brigadier General Kelly and personally counseled (b)(7)(C) following the proceedings as indicated in enclosure (3).
5. The retention of (b)(7)(C) is clearly not in the best interest of the U.S. Marine Corps or the Naval Service.

(b)(7)(C)

Aug 5, 1997 7:57PM

16-2883 P. 2/3



UNITED STATES MARINE CORPS

Marine Division (MCD)
Camp Lejeune, NC
MC 2908
PO Box 2908-0702

WREPLY REPORT
2012
27/Jul
16 Aug 93

FOR OFFICIAL USE ONLY

From: Commanding General, 1st Marine Division (Rein)
To: Commandant of the Marine Corps (JMC), Headquarters, U.S. Marine Corps,
Washington, D.C. 20360-6001
Via: Commanding General, I Marine Expeditionary Force

Subj: REPORT OF NON-JUDICIAL PUNISHMENT IN THE CASE OF [REDACTED]
[REDACTED] /9402 USMC

Ref: (a) MCO 5500.16 (JANUARY 1987)
(b) Manual for Courts-Martial, 2002 ed.
(c) JAGINST 5500.7 (JANUARY 1987)
(d) Uniform Code of Military Justice (UCMJ)
(e) SECNAVINST 1020.08
(f) MCO 5100.16 (JANUARY 1987)

Encl: (1) Command Investigation of 22 Jul 93 w/enclosures
(2) Notification of RJP of 20 Jul 93 w/accepting endorsement
(3) Accused's Rights and Acknowledgment Statement w/31b Rights
(4) Copy of CG, 1st Marine Division VLR of 1 Aug 93
(5) Acknowledgment of receipt of VLR of 1 Aug 93
(6) Record of RJP Hearing of 1 Aug 1993
(7) Acknowledgment of RJP Appeal Rights of 1 Aug Jul 93
(8) Letter of Resignation of 6 Aug 93 w/endorsements

1. The subject report is submitted per paragraph 4003 of reference (a).
2. On 1 August 1993, following the applicable provisions of references (b), (c) and (d), non-judicial punishment (NJP) was imposed by the undersigned on [REDACTED]. The charges and disposition thereof are as follows:

Charge	File	Finding	Appeal/Status
Article 102	0	0	Not Appealed
Article 133	0	0	Not Appealed

3. [REDACTED] was notified of the intent to impose RJP, and voluntarily accepted RJP, enclosure (3). The following punishment was imposed: Forfeiture of \$702.00 pay per month for one month, for total forfeiture of; [REDACTED] also received a punitive letter of reprimand, enclosure (4).

ENCLOSURE (2)

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF [REDACTED]
[REDACTED] 5582 DUKER

4. The circumstances giving rise to the imposition of nonjudicial punishment, as outlined in enclosure (1), are as follows: On 23 June 2003, while on patrol in Al Kut, Iraq, [REDACTED] Marines captured four Iraqi men looting an ammunition supply point. Three of the men had been detained for the same offense at the same location earlier that day. [REDACTED] ordered the men delivered to the [REDACTED] compound. Once there, he directed the Marines to strip the men naked and send them out onto the streets, in order to "teach them a lesson". The Marines stripped the men down to their underwear and shoes, and then sent them out of the compound as ordered. On 28 June 2003, also in Al Kut, [REDACTED] was running a vehicle checkpoint. A semi truck approached, stopped to slow down, flashed its lights and beeped its horn as it attempted to "run" the checkpoint. The Marines, fearful of being run over, fired in self-defense, disabling the vehicle. The two Iraqi male occupants were injured. [REDACTED] triaged the injured Iraqis and transported them to a local hospital for further treatment. The next day, the men returned, seeking to recover their personal effects from the vehicle. [REDACTED] chased the men off, and ordered his Marines to destroy the contents of the truck by burning all of it.

5. A record of the NJP hearing conducted in accordance with paragraph 4, part V of reference (b) is contained in enclosure (6). The accused was present at the hearing and was accorded all rights, including the right to consult with a lawyer, enclosure (3). [REDACTED] accepted nonjudicial punishment and did not demand a trial by court-martial. Nonjudicial punishment was imposed in accordance with section 810 of reference (c) and Article 15 of reference (d). All requirements of paragraph 4, part V, of reference (b) have been satisfied.

6. [REDACTED] has been accorded the opportunity to read the report of nonjudicial punishment in this case and did not desire to exercise the right to appeal, enclosure (7). On 1 August 2003, [REDACTED] indicated that he did not desire to appeal the issuance of the punitive letter of reprimand, enclosure (8).

7. [REDACTED] treatment of two different groups of Iraqi detainees demonstrates a high level of frustration and a lack of respect for their welfare. His failure to appreciate the fragility of our relationship with the Iraqi people, and the negative impact his unlawful orders had on his junior Marines, cause me serious doubts about his suitability for further service. As the end of the non-judicial punishment proceedings, I informed him that I would recommend that he be required to show cause for retention in the Marine Corps. In enclosure (7), he indicated that he would tender his resignation in lieu of administrative separation proceedings. His unqualified resignation is attached as enclosure (8). I concur with the Commanding Officer, [REDACTED] that the characterization of service should be under honorable conditions.

John F. Kelly
J. F. KELLY

Copy to:
SJA, Marine Forces Reserve
CD, [REDACTED]
[REDACTED]
File
FOR DESTRUCTION - 2008

ENCLOSURE (2)

(b)(7)(C)

From: (b)(7)(C)
Sent: Wednesday, December 31, 2003 1:32 PM
To: (b)(7)(C); cmf.usmc.mil
Cc: (b)(7)(C)
Subject: Re: congmt
Importance: High

In response to (b)(7)(C) letter to Rep. Kennedy, I will allow the results of the incidents' investigation and record of the NJP proceedings speak for themselves.

However, in his summary the (b)(7)(C) states, "...I was told that I must resign my commission in lieu of a Board of Inquiry without a guarantee of my type of discharge, ...". I was witness to the proceedings of the NJP and the statements of the convening General Officer. At no time was (b)(7)(C) told, or ordered, that he must resign. (b)(7)(C) was, in fact, counseled that resigning his commission might avoid, given the evidence contained in the JAG Manual investigation of the incidents, an uneasy outcome of a Board of Inquiry.

Subsequent to the NJP, I personally counseled (b)(7)(C) and also recommended that he resign his commission as a means of avoiding any further humiliation, besmirching of his name, and the possibility of a criminal outcome in any further proceedings. At that time (b)(7)(C) agreed with this reasoning and verbally noted that he would accept the outcome of the NJP and resign his commission. At that point, I ordered that arrangements be made to return (b)(7)(C) to the United States.

Respectfully,
Battalion Commander (b)(7)(C) USMC-R

ENCLOSURE (3)

01/05/2004

DOD JUNE

1808



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO
3000
Regt/Adj

DEC 31 2003

THIRD ENDORSEMENT on CMC telecopier memorandum 5730 OLAC-5d
of 30 DEC 03

From: Commanding Officer
To: Commanding Officer, (b)(7)(C)

Subj: CONGRESSIONAL/SPECIAL INTEREST CORRESPONDENCE, RE:
(b)(7)(C) (b)(6) - SSN /0602 USMCR

Encl: (1) Copy of Senator Kennedy's ltr of 11 Dec 03 w/ encls

1. Forwarded for appropriate action. A reply is due back to this command no later than 6 January 2004.
2. Comment on enclosure (1) as deemed appropriate. In particular, please address the following items:
 - a. Statement in enclosure (1) that allege (b)(7)(C) received NJP while in Iraq; he was fined and told he must resign his commission in lieu of a Board of Inquiry without a guarantee of type of discharge. He states the punishment was disproportionate and desires that he retain his commission.
 - b. Please advise address all issues and allegations under your cognizance and provide any other information which would be helpful in responding to enclosure (1).
3. Respond back via fax or scanned email file only.
4. No date extensions will be granted.
5. Point of contact at (b)(7)(C) is (b)(7)(C) at (b)(7)(C).

(b)(7)(C)

By direction



UNITED STATES MARINE CORPS
4TH MARINE DIVISION, FMF, USMC
6400 DAUPHIN STREET
NEW ORLEANS, LOUISIANA 70146-8400

IN REPLY REFER TO:
5730
G-1

SECOND ENDORSEMENT on CMC telecopier memorandum 5730 OLAC-5D of
30 Dec 03

From: Commanding General

To: Commanding Officer, (b)(7)(C)

Subj: CONGRESSIONAL/SPECIAL INTEREST CORRESPONDENCE, RE:
(b)(7)(C) (b)(6) - SSN /0602 USMCR

1. Forwarded for Commanding Officer's and/or Inspector-Instructor's immediate action.
2. Due back to this command no later than Tuesday, 6 January 2004.
3. Respond back via fax or scanned email file only.
4. No date extensions will be granted.

(b)(7)(C)

Adjutant

DOD JUNE

1810



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4405 EASTPINE STREET
NEW ORLEANS, LOUISIANA 70146-6400

IN REPLY TO:
5730
MPR
31 DEC 2003

FIRST ENDORSEMENT on CMC telecopier memorandum 5730 OLAC-5D of
30 Dec 03

From: Commander, Marine Forces Reserve
To: Commanding Officer, (b)(7)(C)
(b)(7)(C) 4th Marine Division
Via: (1) Commanding General, 4th Marine Division
(2) Commanding Officer, (b)(7)(C) 4th Marine Division
(3) Commanding Officer, (b)(7)(C) 4th
Marine Division

Subj: CONGRESSIONAL CORRESPONDENCE, RE: (b)(7)(C)
(b)(7)(C) (b)(7)(C) SSN 70602 USMCR (INACTIVE)

1. Forwarded for immediate action.
2. Due back to this command no later than Wednesday, 7 January 2004.
3. Respond back via hard copy only.

(b)(7)(C)

By direction

OFFICE OF LEGISLATIVE AFFAIRS (OLAC), HQMC
TELEPHONE (DSN prefix 22):

PHONE report or due date extension: 45680, 45772, 48454
TELECOPIER (24 hours daily): 44172, 44768
TELECOPIER VERIFICATION #'s: 41738, 45663
E-MAIL ADDRESS: [REDACTED]@HQMC.USMC.MIL

5730
OLAC-SD
30 DEC 2003

TELECOPIER MEMORANDUM

From: CMC (OLAC), HQMC, Washington, DC
To: COMSARFORCES, New Orleans, LA

Subj: CONGRESSIONAL CORRESPONDENCE, RE: (b)(7)(C)
[REDACTED] 70602 USMCR (INACTIVE)

Encl: (1) Copy of Cong. Kennedy's ltr of 11 Dec 03 w/encls

1. Information to respond to enclosure (1) is requested. Please
acknowledge receipt of this fax to (b)(6) - DoD PERSONNEL
at (703)614-1738 or E-mail
[REDACTED]@hqmc.usmc.mil [REDACTED]@hqmc.usmc.mil.

2. The final Marine Corps reply to enclosure (1) will be signed by
Head, OLAC/Legislative Assistant to the Commandant/Commandant of the
Marine Corps.

3. Time your report to arrive at OLAC by 8 Jan 04 [REDACTED]
EXTENSIONS WILL NOT NORMALLY BE GRANTED.

4. Comment on enclosure (1) as deemed appropriate. In particular,
please address the following items:

a. Statements in enclosure (1) that allege (b)(7)(C)
received MJP while in Iraq; he was fined and told he must resign his
commission in lieu of a Board of Inquiry without a guarantee of type of
discharge. He states the punishment was disproportionate and desires
that he retain his commission.

c. Please address all issues and allegations under your cogni-
zance and provide any other information which would be helpful in
responding to enclosure (1).

(b)(7)(C)

Congressional Liaison Representative

MARK R. KENNEDY
U.S. DISTRICT COURT

Email address: mark.kennedy@usdc.mn.us
Web address: www.house.gov/markkennedy

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON
TRANSPORTATION
AND INFRASTRUCTURE
FINANCIAL SERVICES

Congressman Mark Kennedy
Minnesota 6th District Office
22 Wilson Avenue N.E. Suite 104
P.O. Box 6010
St. Cloud, MN 56304

Phone: 320-259-0099
Fax: 320-259-0786

DATE: December 11, 2003

TO: U.S. Marine Corps.

FAX: 202-685-6077

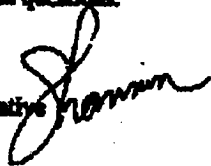
RE: Congressional inquiry on behalf of (b)(7)(C)

FROM: Shannon Visser, District Representative

Pages: 3 (including cover)

MESSAGE: Thank you for review (b)(7)(C) request. Please feel free to contact me if you have any additional questions.

Sincerely,
Shannon Visser
District Representative



11 DEC 2003

1435 LEONARD STREET, SUITE 200
WASHINGTON, DC 20018
PHONE: (202) 225-2200

TYPE PRINTING BY NATION
JUNE 2003
REPRODUCTION BY NATION

21 VILLAGE AVENUE, N.E.
ST. CLOUD, MN 56304
PHONE: (320) 259-0786

DOD JUNE

1813

Privacy Release Form

Pursuant to the Privacy Act of 1974, I hereby authorize United States Representative Mark R. Kennedy to make an inquiry on my behalf to the United States Marine Corps. I authorize the release to him of all pertinent information about me necessary to respond to his inquiry. By signing this release, I hereby acknowledge that my request is not the subject of litigation.

(b)(7)(C)

(Print Name)

(Signature)

(b)(6) - HOME ADDRESS/PHONE

(Street Address)

(City/Zip Code)

(b)(6) - HOME ADDRESS/PHONE

(Phone Number)

(b)(6) - DOB

(Birthdate)

(b)(6) - SSN

(Social Security or Claim #)

13 Nov 2003

(Today's Date)

Please give a brief description of your problem
(Attach additional pages or support documents as necessary)

Please see attachment

Return or Send Form To:
Congressman Mark R. Kennedy
22 Wilson Ave. NE, Suite #104
P.O. Box 6010
St. Cloud, MN 56304
Fax: (320) 259-0786 Phone (320) 259-0099

NOV 21 2003

13 November 03

From: (b)(7)(C) USMC
To: Representative Mark Kennedy (R-MN64)

Subj: Urgent Non-Judicial Punishment of (b)(7)(C) while deployed in Iraq during Operation Iraqi Freedom

Dear Sir:

I am a (b)(7)(C) graduate of the United States Naval Academy and served almost six years of active duty in the United States Marine Corps. I was discharged honorably as a (b)(7)(C) in February of (b)(7)(C) and pursued a civilian career. As the US government began to make preparations for freeing Iraq from the Saddam Hussein regime, I joined my local USMC Reserve Unit (b)(7)(C) in hopes of deploying with them to serve my country. I was assigned as Platoon Commander (b)(7)(C) Platoon of the (b)(7)(C) Company under (b)(7)(C) (b)(7)(C)

While deployed to Iraq, I was accused of Conduct Unbecoming of an Officer and Willful Destruction of Property. Concerning the first incident, I captured four Iraqis trying to steal ammunition from my Company's ammunition supply point. My troops and I captured them four separate times in less than an eight-hour period. We didn't possess adequate prisoners of war facilities and were instructed to turn all prisoners over to the Iraqi police, who only detained prisoners for ten or fifteen minutes before releasing them. After the fourth time the men were captured, I confiscated their clothing and made them walk home in their T-shirts and shorts, to impress upon them without causing any physical harm to the prisoners—that they shouldn't return to the same dump to try and steal ammunition. They didn't return. When I reported my action to my Company Commander, I was told that I should have taken the prisoners into the desert, stripped them, and told them we were Army Military Police.

The second incident involved my section and I destroying a small amount of captured clothing from a destroyed vehicle at a checkpoint. The clothing was dirty, possibly lice-ridden, and posed no intelligence or other value to the Government of the United States and had some value to the enemy.

I was never formally charged with a violation of the Uniform Code of Military Justice, and to this day do not know who charged me. I also received very confusing legal advice from two lawyers, one of whom suggested I take the Non-Judicial Punishment. When I received Non-Judicial Punishment, the paperwork stating that I was guilty with my specific punishment was already complete, as if the verdict was already passed.

In summary, I was fined, told that I must resign my commission in lieu of a Board of Inquiry without a guarantee of my type of discharge, and immediately shipped out of country. I believe that both of my decisions were justified and good moves in the long run, and I think that the standard I was judged by was too harsh. I do not pose a danger to others or myself, since the courses of action I followed were harmless under very trying circumstances. I want to continue to serve my country and retain my commission.

Respectfully,

(b)(7)(C)

UNITED STATES MARINE CORPS

TOTAL P.04

DOD JUNE

1815

**THE JAG MANUAL REPORT
OF COMMAND INVESTIGATION
ATTACHED HEREIN TO THIS
BOARD OF INVESTIGATION IS
DUPLICATIVE OF THE DOCUMENT
PROCESSED AS
DOCUMENT USMC MFR (02).**

**A DUPLICATE COPY IS
NOT PROVIDED.**

mlc 3461.1

medical annex of OPLANs, OPORDs and contingency plans includes procedures for treatment of EPW, CI, RP, and ODs. Medical support will specifically include:

(a) First aid and all sanitary aspects of food service including provisions for potable water, pest management, and entomological support.

(b) Preventive medicine.

(c) Professional medical services and medical supply.

(d) Reviewing, recommending, and coordinating the use and assignment of medically trained EPW, CI, RP and OD personnel and medical material.

(e) Establishing policy for medical repatriation of EPW, CI and RP and monitoring the actions of the Mixed Medical Commission.

h. U. S. Army Criminal Investigation Command (USACIDC). USACIDC will provide criminal investigative support to EPW, CI and RP Camp Commanders per AR 195-2.

a. U.S. policy, relative to the treatment of EPW, CI and RP in the custody of the U.S. Armed Forces, is as follows:

(2) All persons taken into custody by U.S. forces will be provided with the protections of the GPW until some other legal status is determined by competent authority.

(3) The punishment of EPW, CI and RP known to have, or suspected of having, committed serious offenses will be administered IAW due process of law and under legally constituted authority per the GPW, GC, the Uniform Code of Military Justice and the Manual for Courts Martial.

(4) The inhumane treatment of EPW, CI, RP is prohibited and is not justified by the stress of combat or with deep provocation.

Other prohibited acts include: murder, mutilation, rape, sexual abuse, collective punishment, execution without trial by proper authority, and all

without regard to race, nationality, religion, political opinion, sex, or other criteria.

mandate, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishment, execution without trial by proper authority, and all

violence to include rape, forced prostitution, assault and theft, bodily injury, and

They will not be subjected to medical or scientific experiments. This list is not exclusive. EPW/RP are to be protected from all threats or acts of violence.

d. Photographing, filming, and video taping of individual EPW, CI and RP for other than internal Internment Facility administration or intelligence/counterintelligence purposes is strictly prohibited. No group, wide area or aerial photographs of EPW, CI and RP or facilities will be taken unless approved by the senior Military Police officer in the Internment Facility commander's chain of command.

e. A neutral state or an international humanitarian organization, such as the ICRC, may be designated by the U.S. Government as a Protecting Power (PP) to monitor whether protected persons are receiving humane treatment as required by the Geneva Conventions. The text of the Geneva Convention, its annexes, and any special agreements, will be posted in each camp in the language of the EPW, CI and RP.

f. Medical Personnel. Retained medical personnel shall receive as a minimum the benefits and protection given to EPW and shall also be granted all facilities necessary to provide for the medical care of EPW. They shall continue to exercise their medical functions for the benefit of EPW, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the United States Armed Forces. They shall be provided with necessary transport and allowed to periodically visit EPW situated in working detachments or in hospitals outside the

EPW camp. Although subject to the internal discipline of the camp in which they are retained such personnel may not be compelled to carry out any work other than that concerned with their medical duties. The senior medical officer shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel.

g. Religion.

(1) EPW, and RP will enjoy latitude in the exercise of their religious practices, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate space will be provided where religious services may be held.

(2) Military chaplains who fall into the hands of the U.S. and who remain or are retained to assist EPW, and RP, will be allowed to minister to EPW, RP, of the same religion. Chaplains will be allocated among various camps and labor detachments containing EPW, RP, belonging to the same forces, speaking the same language, or practicing the same religion. They will enjoy the necessary facilities, including the means of transport provided in the Geneva Convention, for visiting the EPW, RP, outside their camp. They will be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Chaplains shall not be compelled to carry out any work other than their religious duties.

(3) Enemy Prisoners of War, who are ministers of religion, without having officiated as chaplains to their own forces, will be at liberty, whatever their denomination, to minister freely to the members of their faith in U.S. custody. For this purpose, they will receive the same treatment as the chaplains retained by the United States. They are not to be obligated to do any additional work.

(4) If EPW, RP, do not have the assistance of a chaplain or a minister of their faith. A minister belonging to the prisoner's denomination, or in a minister's absence, a qualified layman, will be appointed, at the request of the prisoners, to fill this office. This appointment, subject to approval of the camp commander, will take place with agreement from the religious community of prisoners concerned and, wherever necessary, with approval of the local religious authorities of the same faith. The appointed person will comply with all regulations established by the United States.

1-6. Tribunals

a. In accordance with Article 5, GPW, if any doubt arises as to whether a person, having committed a belligerent act and been taken into custody by the US Armed Forces, belongs to any of the categories enumerated in Article 4, GPW, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

b. A competent tribunal shall determine the status of any person not appearing to be entitled to prisoner of war status who has committed a belligerent act or has engaged in hostile activities in aid of enemy armed forces, and who asserts that he or she is entitled to treatment as a prisoner of war, or concerning whom any doubt of a like nature exists.

c. A competent tribunal shall be composed of three commissioned officers, one of whom must be of a field grade. The senior officer shall serve as President of the Tribunal. Another non-voting officer, preferably an officer in the Judge Advocate General Corps, shall serve as the recorder.

d. The convening authority shall be a commander exercising general courts-martial convening authority.

a. Procedures.

(1) Members of the Tribunal and the recorder shall be sworn. The recorder shall be sworn first by the President of the Tribunal. The recorder will then administer the oath to all voting members of the Tribunal to include the President.

(2) A written record shall be made of proceedings.

(3) Proceedings shall be open except for deliberation and voting by the members and testimony or other matters which would compromise security if held in the open.

CONVENTION (IV) RELATIVE TO THE PROTECTION
OF CIVILIAN PERSONS IN TIME OF WAR

Signed at Geneva, 12 August 1949

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Correspondence Card

-----*****-----

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21 April to 12 August 1949, for the purpose of establishing a Convention for the Protection of Civilians in Time of War, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse

distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power in which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Art. 5 Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

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1st Marine Division ROE Training (1003V)

1. Introduction

ROE is a combination of the Law of War and other conditions based on strategic mission accomplishment considerations.

2. ROE will not make every decision easy, Not all black and white.
- Apply Core Values; Do what is right; Do what America expects of its Marines, Sailors, and Soldiers.

3. No better friend, No worse enemy

Stick: CG's intent is to use decisive force to send a shock wave through the enemy, shattering their will to fight.

Carrot: Treating noncombatants (including those who surrender) with humanity will contribute to breaking the enemy's will to fight.

Remember: No one wants to fight U.S. Marines because they'll lose. So, give them every opportunity to give up.

4. Law of War - Marines Rules

- Fight only enemy combatants.
- Do not harm enemies who surrender - disarm, turn over to superiors (SS's: secure, search, silence, segregate, safeguard, speed to the rear/safe position).
- Do not kill or torture EPWs.
- Collect and care for ALL wounded - friendly and enemy.
- Do not attack medical personnel, facilities or equipment.
- Destroy no more than mission requires.
- Treat all civilians humanely.
- Respect private property and possessions - no stealing.
- Prevent all violations of the Law of Armed Conflict that you can and report all violations to your superiors.

ACT IN ACCORDANCE WITH OUR CORE VALUES, CONSISTENT
AS THEY ARE WITH THE BEST INTERESTS OF OUR NATION

If you cannot be proud of it, don't do it.

5. Hostile forces: On order, Iraqi military and paramilitary forces are declared hostile and may be attacked and destroyed

You do not need wait for a hostile act or demonstration of hostile intent to engage IRAQI military/paramilitary forces.

6. Positive Identification (PID) is required prior to engagement. PID is a reasonable certainty that the proposed target is a legitimate military target. If no PID, contact your next higher commander for decision.

7. Self Defense

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* COMMANDERS HAVE THE INHERENT AUTHORITY AND OBLIGATION TO USE ALL NECESSARY MEANS AVAILABLE AND TO TAKE ALL APPROPRIATE ACTION IN SELF-DEFENSE OF THEIR UNITS AND OTHER U.S. AND COALITION FORCES.

8. Proportional Use of Force

IN ORDER TO ACCOMPLISH THE MISSION, USE OF FORCE WILL BE PROPORTIONAL, THAT IS, REASONABLE IN INTENSITY, DURATION AND MAGNITUDE

9. Do not engage anyone who has surrendered or is out of battle due to sickness or wounds.

10. MILITARY OPERATIONS AGAINST IRAQ WILL BE CONDUCTED, INSOFAR AS POSSIBLE, TO ENSURE THAT INCIDENTAL INJURY TO CIVILIANS AND COLLATERAL DAMAGE TO CIVILIAN OBJECTS IS MINIMIZED.

11. PROTECTED STRUCTURES WILL NOT BE ATTACKED UNLESS THEY ARE BEING USED FOR MILITARY PURPOSES.

- CIVILIAN POPULATION CENTERS, MOSQUES AND OTHER RELIGIOUS PLACES
- HOSPITALS AND FACILITIES DISPLAYING THE RED CRESCENT OR RED CROSS
- CULTURAL AND HISTORIC BUILDINGS
- NONMILITARY STRUCTURES

12. Do not target:

- Infrastructure (public works, communication facilities, dams),
- Lines of Communication (roads, highways, bridges, railways)
- Economic objects (commercial storage facilities, pipelines)
- UNLESS necessary for self-defense or if ordered by your commander.
- If you must fire on these objects to engage a hostile force, disable and disrupt but avoid destruction of these objects, if possible.

13. "Just because" clause.

("Just because" the ROE says you CAN do something does not mean that you SHOULD do it.)

IN DETERMINING THE LEVEL OF FORCE REQUIRED FOR MISSION ACCOMPLISHMENT A COMMANDER MUST CONSIDER:

-THE ASSIGNED MISSION; THE CURRENT SITUATION; HIGHER COMMANDER'S INTENT; AND ALL OTHER AVAILABLE GUIDANCE

14. The use of force, including deadly force, is authorized to protect the following:

- ALL U.S. CITIZENS
- PRISONERS OF WAR AND DETAINED PERSONNEL

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- COALITION FORCES, INCLUDING OPPOSITION GROUPS SUPPORTED BY U.S. FORCES, AND THEIR ASSOCIATED MISSION ESSENTIAL EQUIPMENT AND SUPPLIES

- NGOs/IOs PROVIDING HUMANITARIAN RELIEF IN IRAQ, SAUDI ARABIA, JORDAN, KUWAIT, SYRIA, AND TURKEY AND THEIR ASSOCIATED MISSION-ESSENTIAL EQUIPMENT AND SUPPLIES.

COMMANDER, USCENCOM MAY DESIGNATE ADDITIONAL PERSONS AND MILITARY FORCES FOR PROTECTION.

15. WITHIN IRAQ NECESSARY FORCE, INCLUDING DEADLY FORCE, MAY BE USED AGAINST INDIVIDUALS OR GROUPS OF INDIVIDUALS WHO COMMIT, OR ARE ABOUT TO COMMIT, AN ACT WHICH IS LIKELY TO CAUSE DEATH OR SERIOUS BODILY HARM TO ANOTHER.

*NECESSARY FORCE, INCLUDING DEADLY FORCE IS ALSO AUTHORIZED TO PROTECT PROPERTY DESIGNATED BY COMMANDER, USCENCOM AS VITAL TO THE EXECUTION OF THE MISSION. DESIGNATED PROPERTY MAY INCLUDE PUBLIC UTILITIES, MEDICAL FACILITIES, AND OTHER MISSION ESSENTIAL STRUCTURES.

16. Treat all civilians and their property with respect and dignity. Do not seize civilian property, including vehicles, unless you have the permission of a battalion level commander and you give a receipt to the property's owner.

17. Riot Control Agents- RCA

NON-LETHAL RCA MAY BE USED ONLY IN DEFENSIVE MODES TO SAVE LIVES:

- TO PROTECT U.S./DESIGNATED PERSONNEL AND FACILITIES FROM CIVIL DISTURBANCE, - DURING BR OPERATIONS, - TO CONTROL RIOTING KPWs, -DURING MARITIME OPERATIONS INVOLVING CIVILIANS, WHERE CIVILIANS ARE USED TO MASK AND/OR SCREEN AN ATTACK.

18. CIVILIANS ENCOUNTERED IN IRAQ WHO ARE BELIEVED TO POSSESS INFORMATION IMPORTANT TO, OR ARE INTERFERING WITH, MISSION ACCOMPLISHMENT MAY BE TEMPORARILY DETAINED AND/OR TRANSPORTED TO REAR AREAS OR FORWARD STAGING BASES WITHIN IRAQ.

19. Looting and the taking of war trophies are prohibited.

20. REMEMBER

- Attack Iraqi forces and military targets.
- Spare civilians and civilian property, if possible.
- Conduct yourself with dignity and honor.
- Comply with the Law of War. Prevent violations. If you see a violation, report it.

21. ROE for combat operations: ROE take effect on order and will remain in effect until your commander orders you to transition to post-hostilities ROE.

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movement. Are U.S. forces authorized to use non-lethal RCAs to disperse the civilians?

- A. Yes, as just discussed, RCAs may be used when civilians are used to mask or screen attacks.
- B. No. Ah, I wasn't paying attention when the instructor stated, "RCAs may be used when civilians are used to mask or screen attacks."
- C. A and B.

39. PID

• At night a couple of LAVs observe a dark colored SUV traveling down a road across their front, followed closely by what appears to be a military truck. The truck is not an American military vehicle and is carrying a number of people in the back. From your LAV you cannot make out any markings on either vehicle, but G-2 has reported an Iraqi unit to the front. You are the LAV commander, do you engage the vehicles at this time?

- A. No, you do not have positive target identification, that is, a reasonable probability that the vehicles to your front are Iraqi forces.
- B. No, you do not have positive target identification, that is, a reasonable certainty that the vehicles to your front are Iraqi forces.
- C. Yes, based upon your observations and intelligence reports, you have enough information to "light 'em up."

40. DEADLY FORCE TO PROTECT OTHERS

- You are conducting MOUT. While scouting ahead, from the 4th story of a building you see an individual who is not wearing a uniform atop another building approximately 300 meters away. This individual begins shooting into a group of civilians below his building. The shooter is not firing at you and is no immediate threat to Marine forces who have yet to approach your location. Can you shoot the shooter?
- A. You should engage the shooter because the ROE allows you to use deadly force against civilians or others who commit acts or are about to commit acts that are likely to cause death or serious bodily injury.
- B. You cannot shoot the shooter because he poses no immediate threat to you or U.S./Coalition forces. You report the incident and ask for guidance.
- C. You should engage the shooter based upon the concept of "collective" self-defense. The ROE allows you to defend Iraqi civilians to the same extent as U.S./Coalition forces and designated persons.

42. PROTECTION OF PROPERTY OF OTHERS

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Training Scenarios

12. Authorized Targets/Hostile Forces

You are the point man of a squad and see an armored column moving down the road and parallel to your route of march. They do not see you. You have anti-tank weapons and air on station. What do you do?

- A. Ignore it. It obviously didn't see you.
- B. Fire immediately before it gets away.
- C. Report it so the next unit can engage.
- D. Be sure of the target, call up the anti-tank gunners and the FO/PAC to get the right weapons on target, and engage

16. Authorized Targets

* You are riding in one of those nice new 7 ton vehicles and are entering Al Kut. Iraqi forces shoot at you from within the local power plant. You want to shoot back with all the weapons you have to include a 50 cal and AT-4s that the troops on board have. You are the senior man. You know this will mess up the plant. What are your orders?

- A. Open Fire. You are defending yourself from the Iraqis firing at you from inside the power plant; the power plant is just in the way.
- B. Power plants are economic objects that require CENTCOM permission to strike.
- C. The MEF CG has to approve.
- D. Fire the 50 cal but not the AT-4s as that would cause too much damage.

17. Detention of Civilians

* Your company enters a WMD research facility. You are a squad leader. Half way through the securing of the plant, one of your LCpls brings you a senior scientist with a really big head and tennis shoes. What do you do with this dirtbag?

- A. Leave him alone. Counsel your LCpl. Never touch civilians unless they are trying to hurt or kill someone.
- B. You may temporarily detain the scientist to get his name and address, but you must release him within hours.
- C. Working in a WMD facility demonstrates hostile intent. You may shoot him as a hostile.
- D. You detain this scientist and seek guidance on where to transport him for purposes of interrogation.

20. Defending Iraqi Citizens

You are an MP in BASRAH and your job is maintaining order. Some members of the Sunni minority are seeking payback against the former regime. You see some Sunnis about to hang a Bas'ith party official. Do you intervene?

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- A. No, you are not a local policeman. You must leave local matters to local authorities.
- B. Yes, but you can only intervene using non-lethal force.
- C. Yes, you can and should intervene to save civilians lives, so long as the situation is not so volatile that it would put you or your Marines at great risk.
- D. No, put your life on the line for this guy? These guys were declared hostile the other day and you could shoot them.

22. PID

- Incoming mortar rounds land near you. Counter mortar radar locates the mortars beyond the crest of a hill. You cannot see them. Can you direct your mortar section to return fire?
 - A. No, you don't know if there are civilians near there.
 - B. No, it might be Al Qaida, and they are protected by CENTCOM.
 - C. Yes, you could die if you don't.
 - D. Yes, but you have to get eyes on the target first. Counter mortar and counter battery radar are insufficient to obtain positive target identification (PID) and return fire.

23. HOSTILE INTENT / HOSTILE ACT

- You're manning a machine gun on a convoy moving through a crowded street. A civilian vehicle is passing. Suddenly, some boro with an AK47 leans out the passenger window and points the rifle at your convoy. What act or actions should you take?
 - A. Fire a warning shot in the air, but don't shoot at the individual pointing the weapon because you could hit innocent civilians.
 - B. Fire well aimed rounds at the individual in an attempt to wound him, since he has not actually fired at you.
 - C. Shoot the individual pointing the AK-47 using well aimed rounds - shoot to kill.

24. FORCE TO PROTECT OTHER COALITION FORCES

- You observe hostile forces firing from behind some rocks on a Canadian defensive position 50 meters away. Do you engage? If so, why?
 - A. You should pass this information up the the chain of command since it involves a Coalition partner.
 - B. You must engage the hostile forces based upon "collective" self-defense - you must defend Coalition forces just as if they were U.S. Forces.
 - C. You may fire at the hostile forces in self-defense, since the Canadian forces are only 50 meters from your position.

26. IPWs

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- While moving forward in a vehicle your squad encounters an armed force wearing Iraqi uniforms. The Iraqi soldiers walk in your direction with their hands up. You have been instructed to keep moving and not get "bogged down." What do you do with the soldiers who are obviously trying to surrender, if anything?
- A. You immediately report this contact and take custody and control of the Iraqi soldiers as enemy prisoners of war.
- B. You comply with your commander's orders to not get bogged down. You push forward by driving around the Iraqi force without making direct contact.
- C. You stop briefly to assess the condition of the Iraqi soldiers, then push forward. If available, you provide water and food, and tell them to wait for additional forces that will be following.
- D. Shoot them-you were told not to get bogged down.

27. IPWs

- You are an EMT assigned to a Marine rifle company and you come across an Iraqi IPW with a sucking chest wound. A buddy from your unit also has gunshot wound to the hand, that while painful, is not critical. Your buddy asks you to bandage his hand first and not waste the bandages on the Iraqi. Who do you do?
- A. You tell the Iraqi that you're no doctor, but you know he has a sucking chest wound because all chest wounds suck.
- B. You treat the Iraqi first because his wounds are potentially fatal, even if that means using the last sterile bandage.
- C. Naturally, treat your buddy's hand first. You treat the Iraqi if you have any bandages left over.

30. Protected Places

- From your secured, covered position, as Recon team leader you spot a tank in a small village. The tank is parked near a mosque. It does not appear to be an immediate threat to your team or other friendly forces. Air is available, and the tank is also within range of our artillery. Do you immediately engage? If so, with what type of weapon system.
- A. Yes, you immediately engage. However, since you recognize the mosque as a protected structure, you call in an airstrike using a PGW to minimize collateral damage to the mosque.
- B. No, you report your observations and wait for guidance from above because strikes near mosques are a big deal, especially where there is no immediate threat to you or friendly forces.
- C. You immediately engage by all means available, including artillery and air.

33. Monocombatants?

- Yesterday, a 6-year old Iraqi boy approached U.S. soldiers with a small package in his outstretched arms. As the soldiers unwittingly accepted the package from him, the grenade it contained exploded,

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killing two soldiers and the child. You are in a parked M561 when you see a small girl walking toward the vehicle. It appears that she is carrying a small box. She continues to move toward you, intent on giving or showing you the box. What do you do?

- A. Based upon what happened the day before, you have a reasonable belief that you are about to be killed and you should shoot to kill.
- B. Despite what happened yesterday, you do not have enough facts to indicate that this girl intends to kill you. Try to use non-deadly measures to prevent the girl from continuing to walk towards you and the vehicle.
- C. If the girl continues to walk toward the vehicle, even though you have tried to get her to stop, you should shoot a warning shot over the girl's head, and if that doesn't work shoot her in the leg.
- D. Go to next scenario as this is too hard.

34. Noncombatants?

- You and your squad are attempting to conceal your approach on foot toward a building you have been ordered to clear. As you stoop behind a wall to avoid being seen by the Iraqis defending the building, a young boy approaching from the other direction and sees one of your Marines. The boy begins shouting and pointing toward your position. The Iraqi defender sees this and fires at your Marines. The boy continues pointing in your direction in an attempt to show the Iraqi soldiers where you are concealed. What should you do?
- A. You can fire at the Iraqi soldiers, but you cannot shoot the boy since he is an unarmed civilian.
- B. You should wound the boy because he deliberately gave away your position, but deadly force is not authorized.
- C. You can shoot the boy because he is taken sides with the Iraqi forces and is now a combatant - a lawful target.

36. RCA

- You are part of the security force for a team performing Sensitive Site Exploitation (SSE) at a suspected chem/bio facility. Upon entering the main building, you see several people scatter into different rooms. You want to use RCAs to isolate the individuals. Can you?
- A. Yes, RCAs may be used to protect U.S. forces and designated facilities.
- B. No. This use does not fall clearly into one of the exceptions to the general prohibition against using RCAs as a means and method of warfare.
- C. Yes, you're about to prove that they've got chem/bio weapons. Let's show 'em what we've got.

37. RCA

- While advancing in an urban environment, U.S. forces are counter-attacked by enemy infantry using civilians as shields. The enemy maneuvers behind the crowds of civilians and uses them to mask their

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- As a squad leader you see young looters take goods from a privately owned store. The owner is present and distressed, but the looters are not confrontational and simply run around the plump store owner when he tries to chase them away. What actions, if any, do you take?
- A. You should take no action; continue on your patrol.
- B. You should intervene by moving your squad to protect the store by using less than lethal force, if necessary. If the looters persist, you are authorized to protect private property by deadly force.
- C. You may assist the store owner and restore order, but you may not use deadly force to protect private property.

43. Hostile Monocombatants

- There are eight of you in a two-vehicle convoy approaching a traffic circle near the market. About fifteen boys, ages 12-18, press toward your vehicle in what appears to be an attempt to get you to stop. They appear unarmed. There have been reports of young gangs stealing from military convoys. You have in your vehicle the following: tent pegs, rope, pepper spray, your personal weapon (M16A2, 9mm), grenades and a M240 machine gun with three boxes of ammo. What do you do?
- A. You draw your weapons to let this group know you mean business, and if they continue forward you can use pepper spray and fire warning shots.
- B. You attempt to keep the vehicles moving by gunning the engines, lurching forward, hitting your horn, shouting, and evading this group by forcing your way through traffic.
- C. Fire everything, open up.

TRAINING SCENARIO LITE SOLUTIONS/DISCUSSION

12. Authorized Targets/Hostile Forces. Correct answer: D. Iraqi forces are declared hostile and may be engaged and destroyed (depending on your mission you may have tactical reasons for not engaging). If you have positive target identification - a reasonable certainty that the column is Iraqi, you may engage. However, be sure that those are not friendly. UK armor and self-propelled artillery may look like IZ tanks.

16. Authorized Targets. Correct answer: A. The power plant is infrastructure or an economic object that ordinarily requires CENTCOM approval before engaging. Not in this case. Since the Iraqis are shooting at you from the power plant you can shoot back in self-defense. The power plant is not the actual target, only the forces and/or weapons systems located there. In all cases the use of force to authorized missions will be necessary and proportional, that is, reasonable in intensity, duration and magnitude. We must also attempt to mitigate damage to civilians and civilian structures, and under these ROE, particularly infrastructure.

17. Detention of Civilians. Correct answer: D. Civilians encountered in Iraq who are believed to possess information important to, or who are

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interfering with, mission accomplishment may be temporarily detained, and/or transported to rear areas or forward staging bases within Iraq.

20. **Defending Iraqi Citizens.** Correct answer: C. Within Iraq, necessary force, including deadly force, may be used against individuals or groups of individuals who commit, or are about to commit, an act which is likely to cause death or serious bodily harm to another. Here, you may intervene on behalf of the Iraqi about to be executed, and use deadly force if necessary. Your ability to intervene in this case will depend your mission and your assessment of the situation. D is incorrect - only Iraqi military/paramilitary forces are declared hostile and may be engaged/destroyed, not civilians. Recall the situation in Haiti where the ROE prohibited U.S. forces from intervening and the CNN factor.

22. **Self Defense/PID.** Correct answer: C. You have the right/obligation to shoot back in self defense, and the possible presence of civilians does not eliminate that right. The presence of civilians only imposes the requirement that you minimize incidental injury to the extent you can. A and B are therefore incorrect. D is incorrect because you are not required to have eyes on target in order to acquire PID and return fire. You do not have to have eyes on to shoot a mission, as long as you can ID the target. Remember, the requirement for PID is not only to ensure you are striking legitimate Iraqi military targets, it's also to ensure you are not committing fratricide. Make certain that in returning fire you are not engaging friendly forces. Note that the sensitive target analysis is not required here because you are acting in self defense.

23. **HOSTILE INTENT / HOSTILE ACT.** Correct Answer: C: You have the right AND OBLIGATION to defend yourself and your fellow Marines. The pointing of the AK-47 demonstrates a hostile intent, and triggers the right of self-defense. A is incorrect since warning shots are not authorized when you are acting in immediate self-defense (Warning shots are permitted in some types of NEO operations). Furthermore, the possibility of hitting innocent civilians does not prevent you from defending yourself. B is incorrect because you need not wait until someone has actually fired at you to protect yourself. B is also incorrect because you shoot to kill, not wound. The use of force should be proportionate, and should limit incidental injury to civilians on the street. In this case, small arms (9mm or M-16) should be used, if quickly available, rather than automatic or crew served weapons which could cause mass casualties. If all you had was a M 2 50 Cal you could certainly use it rather than die, which is not permitted.

24. **FORCE TO PROTECT OTHER COALITION FORCES.** Correct answer: B. The right of self defense is "collective." You must defend Coalition Forces as if they were Marines, assuming of course that Canada had joined the coalition.

26. **EPW.** Either A, B, or C could be the proper course of action based upon size of the force you encounter and the tactical situation on the ground. Understand that once you take custody of the Iraqi soldiers and they become EPWs, they have rights and protections under the Geneva Conventions, to include water, food, shelter and medical care, and monthly payment in Swiss francs. If the Iraqi force is of manageable

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size, the best approach is probably to take the Iraqi soldiers as EPWs and arrange for their movement to a temporary holding facility. Where the circumstances require you to push forward, you report this situation up the chain and provide their location. If the Iraqis appear in dire need, you should first provide whatever water and food you can spare. If you disarm them, they should be considered to be EPWs. D would be murder and a serious breach of the law of war.

27. EPW. Correct answer: B. Under the Geneva Convention (GSW), triage must be administered according to the severity of the wound and no distinction is allowed based on whether the wounded individual is a friend or foe. In this case the EPW clearly has the critical wound and should be administered immediate medical attention while the Marine should be looked after next.

30. PROTECTED PLACES. Correct answer: B. Cultural and historic buildings, nonmilitary structures, civilian population centers, mosques and other religious places, hospitals, and facilities displaying the Red Crescent or Red Cross are considered "Protected Places" and will not be attacked except when they are being used for military purposes. In this case, the Iraqis are using the mosque for a military purpose, namely, to "shield" the tank from attack. However, the use of force may not be necessary at this time. The better approach is to radio higher and have them decide whether to strike the tank, or wait until the tank moves and then engage. The equation changes if the tank becomes a immediate threat to you or other friendly forces. In that case the tank will likely be engaged with a PGM to minimize collateral damage to the mosque. Were it a terrorist cell operating near a mosque rather than a tank, you would need to do a sensitive target analysis which could result in the requirement to seek SECDEF approval to target.

33. NONCOMBATANTS? Best answer: B. You must not harm civilians unless necessary to defend yourself, others, or to protect designated property. Where possible, use measures short of deadly force to defend yourself. In this case, before shooting you should first attempt to determine the girl's true intentions by shouting for her to stop (the Arabic word for stop is "KIFF," pronounced COUGH. You are not required to fire warning shots and in most cases this is a bad choice; however, it might be appropriate in this case as long as you still have the deadly force option. If none of these measures causes the girl to stop, or if at some point the girl moves suddenly to toss the box toward you, then you are authorized to shoot. A is incorrect because it is not reasonable to assume someone is trying to kill you simply because they are walking towards your vehicle with an object in their hand. C is incorrect because if it is necessary to shoot, you shoot to kill, not wound. Would a warning shot be appropriate? Are warning shots authorized? Recall the NEO ROEs that permit.

34. NONCOMBATANTS? Correct answer: C. Civilians are protected persons and must not be harmed unless necessary to defend yourself, others, or to protect designated property. However, this boy has become a combatant by directing enemy fire on you and your squad. He has made himself a legitimate target and you may fire at him just as you would an enemy soldier. It is not unlikely that you will encounter child soldiers and children who demonstrate hostile intent or commit hostile acts. You should prepare yourself for that reality.

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36. Correct answer: B. The ROE on RCA states, "Non-lethal riot control agents (RCA) may be used in defensive modes to save lives, including to protect U.S./designated personnel and facilities from civil disturbance, during personnel recovery (PR) operations, to control rioting prisoners of war (PW), during maritime operations involving civilians, and where civilians are used to mask/screen an attack." In this case, the RCA is arguably being employed to protect the security forces, the SSE team, and the potential MND facility, but this is not a civil disturbance.

37. RCA. Correct answer: A. The ROE on RCA states, "Non-lethal riot control agents (RCA) may be used where civilians are used to mask/screen an attack." This would clearly be considered use in a defensive mode to save lives.

38. PID. Correct Answer: B. You must have positive identification (PID) of targets required prior to engagement. PID is defined as a reasonable certainty that the object of attack is a legitimate military target. The standard is not "reasonable probability;" A is therefore incorrect. REMEMBER - Our Coalition partners have vehicles of a different size and shape than ours.

40. DEADLY FORCE TO PROTECT OTHERS. Correct answer: A. The ROE provides that within Iraq, necessary force, including deadly force, may be used against individuals or groups of individuals who commit, or are about to commit, an act which is likely to cause death or serious bodily harm to another. In this case the shooter poses a risk both of serious bodily harm and death to the civilians below. While less than lethal force should be used whenever possible, your only realistic option here is to shoot the shooter. "Collective" self-defense only applies to Coalition forces accompanying U.S. forces. C is therefore incorrect.

42. PROTECTION OF PROPERTY OF OTHERS. Correct answer: C. The use of deadly force to protect Iraqi civilians is not authorized except where there is a threat of death or serious bodily harm. There appears to be no such threat to the store owner. The squad leader may take less than lethal actions to restore order if it does not interfere with his mission or orders. Assuming no interference with your mission and no significant danger to your Marines, the right thing to do would be to help restore order.

43. Hostile Noncombatants. Correct answer: B. To the extent you can, you should avoid stopping and contact with this group, without resorting to force. The tactics described in B (gunning engines, lurching, and hitting the horn) are some ways to avoid this group. Drive on the sidewalk if this does not unduly threaten bystanders. A is partially correct. Against unarmed mobs, use the minimum force necessary to repel the threat. Deadly force is not authorized unless the lives of members of the convoy are threatened. Here, pre-designated individuals in the vehicles should draw their weapons to deter the gang and prepare for deadly force, if necessary, while others should prepare to use less than lethal force. A long stick, or swinging a tent stake or knotted end on about 8 feet of rope is a good deterrent. Although pepper spray is considered an RCA, it is permitted here to protect U.S. personnel from a civil disturbance.

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UNITED STATES MARINE CORPS

1ST MARINE DIVISION (MCD)
ENCLOSURE
FM 10 16420-0010

IN REPLY REFER TO
5800

SAG

AUG - 3 2003

From: Executive Officer, (b)(7)(C)
To: Commanding Officer, (b)(7)(C)
Subj: PRELIMINARY INQUIRY INTO STATEMENTS MADE BY (b)(7)(C)
(b)(7)(C) TO (b)(7)(C) IN AL KUT, IRAQ ON OR
ABOUT 30 JUNE 03.
Ref: (H) JAGMAN section 0204
Encl: (1) Copy of (b)(7)(C) JAG Investigation statement.
(2) Quote from (b)(7)(C) Division Office Hours.

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a), into statements made by (b)(7)(C) (b)(7)(C) to (b)(7)(C).
2. Personnel contacted included:
(b)(7)(C) Commanding Officer, (b)(7)(C)
(b)(7)(C)
(b)(7)(C) Platoon Commander, (b)(7)(C),
(b)(7)(C)
3. Materials reviewed include, interviews with (b)(7)(C) and (b)(7)(C) statements from (b)(7)(C) JAG Manual Investigation of (b)(7)(C), and information recorded at (b)(7)(C) Division Office Hours. All material collected by this inquiry will be kept in the Battalion S-1 field desk.
4. On or about 30 June 2003 (b)(7)(C) was counseling (b)(7)(C) (b)(7)(C) on recent information he had received about possible mistreatment of Iraqi Detainees under (b)(7)(C) orders. (b)(7)(C) later made an official statement (enclosure 1) concerning this issue to (b)(7)(C) who was conducting an investigation into the allegations of detainee mistreatment. (b)(7)(C) eventually was the subject of Division Commander's Office Hours for his conduct involving these detainees. At the Office Hours, (b)(7)(C) pointed out that there were discrepancies in (b)(7)(C) official

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statement: (enclosure 2). In particular, (b)(7)(C) states that (b)(7)(C) implied he should have taken the detainees out into the desert if that was his intention, and that by bringing them into the (b)(7)(C) compound, he removed any plausible deniability of the event. (b)(7)(C) states that he sternly counseled (b)(7)(C) on the severity of his mistreatment of the detainees, and stated that he had no plausible deniability to the allegations as he had done it at the Company compound in front of numerous Marines. This statement was not to suggest that (b)(7)(C) should have taken the detainees into the desert, but rather he had used bad judgment, violated orders, and had done it in front of the entire company, so he should not try to deny or rationalize it.

5. It is recommended that no further investigation is warranted. (b)(7)(C) did use the words "plausible deniability" in his counseling of (b)(7)(C), but not as a recommendation of what he should have done. His intent was to point out that (b)(7)(C) had made a decision to violate Marine Corps' orders, and had chosen to do it in front of the entire Company. (b)(7)(C) statement may not have been the best way to relay the seriousness of (b)(7)(C) actions, but in no way was a recommendation or approval of his actions.

(b)(7)(C)

FIRST ENDORSEMENT

4 Aug 83

☐ Concur with recommendation

☒ Other: *Concur that no further investigation is warranted. BOLD will counsel (b)(7)(C) as soon as possible, and communication in providing counseling to subordinates*

(b)(7)(C)

(b)(7)(C)

1st Marine Division, FMF
Al Kut, Iraq

16 July 2003

From: Commanding Officer

To: (b)(7)(C)

Subj: STATEMENT REGARDING ACTIVITIES OF (b)(7)(C)

1. One of the assigned tasks of (b)(7)(C) is to provide security to an ASP, grid *NB 720 670*.
2. (b)(7)(C) was assigned to (b)(7)(C) as the Platoon commander beginning approximately October 2002, ending approximately 4 July 2003.

(b)(7)(C)

Enc (1)

**STATEMENT OF THE KNOWLEDGE REGARDING ACTIONS INVOLVING IRAQI
DETAINEES ON OR ABOUT 23 JUNE 2003.**

On or about 10 June 2003, (b)(7)(C) informed me, in a bragging manner, that he had ordered Iraqi detainees that had been brought to (b)(7)(C) to be stripped to their underwear and escorted out of the front gate. He said that these detainees had been apprehended at the ASP to the north, collocated with the range. I counseled him regarding his poor judgment and that they should've been brought to the police station. After this, I asked (b)(7)(C) if he had knowledge of the incident. He stated that he was there. I also asked him if he advised (b)(7)(C) that it was illegal and to not do it. (b)(7)(C) said that he did not. I asked (b)(7)(C) if he knew about it and he said that he heard (b)(7)(C) give the order to strip the Iraqi detainees to their underwear and to send them out of the front gate. He also stated that he then went into his room because he didn't want to be involved with the incident. I informed the battalion executive officer of my discovery of the incident on or about 2 July 2003. After making a few more inquiries, it came to my attention that (b)(7)(C) may have some information for me. I asked (b)(7)(C) what he knew of the incident. He stated that (b)(7)(C) ordered the Marines to take the Iraqi detainees' money and possessions. He then stated that (b)(7)(C) ordered the Marines to strip the Iraqi detainees to their underwear and to be released through the front gate. I then informed the battalion commanding officer with the information I had regarding the incident on or about 6 July 2003.

(b)(7)(C)

Encl (1)

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity:
(b)(7)(C) Unit:
Telephone number:

I have been advised that I may be suspected of the offense(s) of:
False Official Statement and that:

(b)(7)(C) I have the right to remain silent.
Any statements I do make may be used as evidence against me in trial by court-martial.
I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both.
I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

(b)(7)(C) I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:
I expressly desire to waive my right to remain silent.
I expressly desire to make a statement.
I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.
I expressly do not desire to have such a lawyer present with me during this interview.
This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

(Witness signature/date)

(b)(7)(C)

2 Aug 03

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

WARNING ADVISEMENT ABOUT STATEMENTS
REGARDING ORIGIN OF DISEASE OR INJURY

Naval Justice School Publication

02/01

Encl (1)

NJP Quote:

(b)(7)(C) stated that (b)(7)(C) statement contained in the investigation is inaccurate. Instead of "counseling" him after the incident, (b)(7)(C) stated that by bringing the Iraqis to the company position and stripping them down, he removed any "plausible deniability" about their treatment; (b)(7)(C) suggested that (b)(7)(C) should have taken them out into the desert if that was his intention or solution.

Encl (2)

Counseling of (b)(7)(C) by (b)(7)(C) C.O.

Date: 2 July 2003

(b)(7)(C) was counseled regarding his performance to date. He was counseled regarding his poor judgment and poor decision making. It was expressed that he used poor judgment on or about 10 June 2003, when explosions were going off at (b)(7)(C) ASP" and the Marines pulled back to a safe location. They were ordered to remain on guard in a safe location by (b)(7)(C). (b)(7)(C) arrived later and ordered the Marines to return to (b)(7)(C) pos, leaving the post abandoned. This poor decision resulted in the ASP not being guarded and equipment being stolen, to include an OE 254 comm antenna, tents and sleeping bags. He again used poor judgment on or about 22 June 2003, when leading some (b)(7)(C) Marines to a missile shoot with 2/25 Marines in An Nasariyah. He was informed prior to departing that it was requested of Division to allow us to fire more than the allotted 3 Tow missiles and 3 Javelin missiles. He was also informed that Division restated that only 3 missiles of each could be fired for practice. While at the range run by an OIC from 2/25, the OIC stated that he coordinated with Division to allow us to fire more missiles than what was originally allowed. He displayed poor judgment by not verifying with his chain of command if it was permissible to fire the extra missiles. He was also counseled for using poor judgment on or about 14 June 2003, when Iraqi civilians were apprehended for trespassing and attempting to steal ammunition from the ASP at the battalion range. The civilians were brought to (b)(7)(C) pos and he ordered them stripped to their under garments and released through the front gate. This is contrary to the CG's policy of treating the Iraqi's with humanity and appropriate respect. He was also counseled regarding his request on 2 July 2003, to shoot Iraqis fleeing the ASPs and he tried to justify this with the Phase III ROE. (b)(7)(C) was present during this request. (b)(7)(C) was counseled after each occasion, as soon as I found out about the incidents.

Following this counseling, (b)(7)(C) removed his pistol from his holster and safely cleared his weapon and placed it on the table. He stated that if I believed that his judgment is that poor that he doesn't need to be there. I told him that when he requested a transfer before, the battalion executive officer would not approve it. I also informed him that he was not fired or relieved and that I expect him to think before making decisions. I also expressed that this command, and I, cannot afford another poor decision on his part and that if one is made or it appears one will be made, action will be taken.

Statements regarding burning Iraqi possessions:

On or about 1 July 2003, I asked (b)(7)(C) if he knew what was burned in the fire at the scene where a tractor trailer was fired upon by his Marines. I asked if it was passports and other documents and he stated intensely, NO.

On 3 July 2003, I was informed that during the incident when the tractor trailer was fired upon, on or about 28 June 2003, (b)(7)(C) removed the Iraqi's personal articles, which included clothing items, and ordered them burned and stated, burn these, they don't deserve to get them back. It was reported that he also kicked out one or more of the vehicle's headlights.

Also on this date, (b)(7)(C) ignored the chain of command and went to the battalion COC in order to speak with the battalion executive officer. He did this without requesting or receiving permission from me, his company commander.

Training Ammunition Management Information System-- Redesigned (TAMIS-R)

Software User Manual, Rev. 4

TAMIS-R-SUM-008-01

April 2003

Prepared for:

HQDA ODCSOPS (DAMO-TRC)

400 Army Pentagon

Washington, DC 20310-0100

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Unclassified Missile and Rocket DODIC Cost Report for Fiscal Year 2004			
Prepared: 3/31/2004 4:18:39 PM			
DODIC	DODIC Description	Unit Price	Primary Dodic
H108	MLRS PRACTICE ROCKET	\$5,371.67	--
H185	RKT, MLRS, PRACTICE, SINGLE RD	\$4,093.33	--
H311	RKT MOTOR MK125-1	\$2,000.00	--
L592	TOW BLAST SIMULATOR	\$1.23	--
PA44	CHAPARRAL	\$34,511.00	--
PA45	SHILLELAGH	\$3,089.00	--
PA48	SHILLELAGH PRAC (INERT)	\$2,831.00	--
PA49	PATRIOT,GM,INTERCEPT,MIM-104	\$598,730.00	--
PA75	HAWK	\$181,197.00	--
PA79	HELLFIRE	\$39,771.00	--
P891	G MSL BGM-71A-1SUR ATT BGM-71A	\$6,950.00	--
P892	GUID MIS SLRF ATTK-ITOW	\$7,106.00	--
P893	GM SUR ATT BGM-71MTOW2A	\$10,242.00	--
P894	TOW HEAT	\$5,500.00	--
P895	TOW MISSILE	\$6,586.00	--
P896	TOW PRAC (INERT)	\$7,977.00	--
P897	TOW,W/MOIC & HEAT	\$5,500.00	--
P899	TOW W/MOIC & PRACT	\$8,094.00	--
PC07	HAWK	\$203,580.00	--
PC08	HAWK	\$181,197.00	--
PC22	CHAPARRAL, SUB DODIC	\$71,803.00	--
PC28	PATRIOT,GM,INTERCEPT,MIM-104C	\$686,911.00	--
PC29	PATRIOT,GM,INTERCEPT,MIM-104A	\$532,307.00	--
PC49	PATRIOT,GM,INTERCEPT,MIM-104B	\$433,000.00	--
PD62	GUIDED MISSILE, SURFACE ATTACK	\$9,240.00	--
PD68	HELLFIRE AGM-114C MIN-SMK	\$27,149.00	--
PE84	TOW W/CTD LUCH MTR	\$10,840.00	--
PE96	GM,BGM-71E-1B	\$9,240.00	--
PG11	NIKE	\$53,071.00	--
PG44	LANCE	\$175,100.00	--
PJ01	REDEYE	\$23,515.00	--

<http://live.tamis.org/Report/rptDodicCost.asp>

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PJ02	GM, INTER-ARIEL FIM 92A (BASIC)	\$51,685.00	--
PL22	DRAGON PRAC (INERT)	\$3,817.00	--
PL23	DRAGON HEAT	\$3,920.00	--
PL34	JAVELIN	\$144,532.00	--
PL41	GUID MISS WEAP RD PART/3 BCUS	\$39,500.00	--
PL53	JAVELIN, GUIDED MSL SURF ATTK	\$121,961.00	--
PL64	JAV GUIDED MISSILE/LAUNCHER	\$78,532.00	--
PL65	STINGER LAUNCH SIM	\$1,240.50	--
PL87	GM SUBSYSTEM SUBSYSTEM, INTERCE	\$50,311.00	--
PL89	GM SUBSYSTEM SUBSYSTEM, INTERCE	\$41,860.00	--
PL90	STINGER	\$45,322.00	--
PL91	GUIDED MISSILE STINGER	\$171,442.00	--
PL92	GUIDED MISSILE STINGER	\$172,421.00	--
PL93	STINGER	\$47,000.00	--
PL94	STINGER, MISSILE RD	\$38,505.00	--
PL95	STINGER, WPN RD PARTIAL	\$39,574.00	--
PL96	STINGER, MISSILE RD	\$36,263.00	--
PL97	STINGER, MISSILE RD	\$38,505.00	--
PM90	STINGER, WPN RD PARTIAL	\$35,368.00	--
PU67	TOW, HEAT W/MOHC	\$10,576.00	--
PU68	TOW, HEAT W/MOHC	\$10,576.00	--
PU72	GUIDED MISS, HELLFIRE K MODEL	\$49,241.00	--
PV01	MISSILE GUIDED, SURFACE ATTK	\$8,000.00	--
PV04	TOW PRACTICE	\$5,000.00	--
PV18	TOW/BGM-71F-2B	\$19,145.00	--
PV30	GUID MISS, 114-K (HELLFIRE II)	\$38,738.00	--
PV47	GM TOW SURF/ATK	\$11,725.00	--
SS11	ATGM (ARNG)	\$1,853.00	--
V524	WARHEAD SEC GUIDED MISSILE (\$40,000.00	--
V726	WARHEAD SEC GUIDED MISSILE P	\$10,500.00	--
V882	PERISHING	\$1,577,060.00	--
WF10	GUIDED MISSILE TOWII	\$10,242.00	--
YW33	RKT SMOKE SIG	\$59.79	--

DODIC PL64

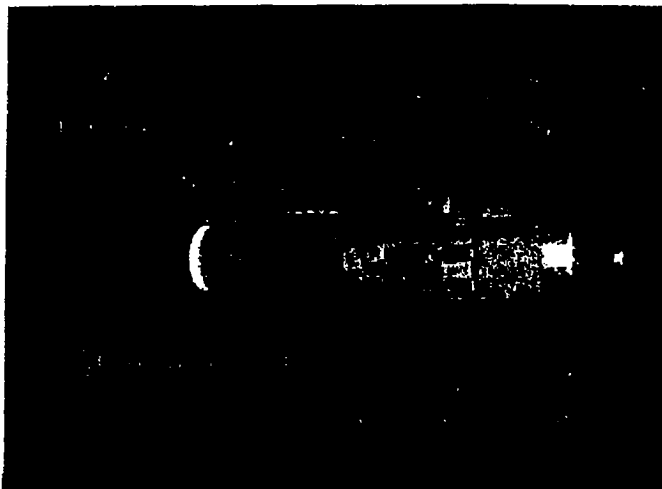
Guided Missile Surface Attack and Launcher

FGM-148C (Javelin)

Item Description

The Guided Missile, Surface Attack FGM-148C (Javelin) (DODIC PL64) is a shoulder-launched, man-portable, fire and forget weapon system designed to defeat armored targets, bunkers, and helicopters up to 2000 meters from the launch position. The Javelin can be launched while the gunner is standing, kneeling, or in the prone position in open areas or from within an enclosure.

Javelin can be directed to follow either of two flight profiles, as the gunner selects either the direct or top attack mode. The minimum range to engage a target is 150 meters for top attack and 65 meters for direct attack.



**Guided Missile, Surface Attack
FGM-148C (Javelin) (DODIC PL64)**

The Javelin system consists of a reusable Command Launch Unit (CLU) and an expendable missile round. To engage a target the gunner attaches the CLU to the missile round. The gunner looks through the optics of the CLU to acquire a target.

When the target is determined to be engageable, the seeker trigger is depressed which activates the infrared seeker. A Battery Cooling Unit (BCU) provides cooling gas and power to the seeker prior to launch. The gunner positions track gates around the target and locks on to the target. When the fire trigger is depressed, the launch motor launches the missile. When the missile is a safe distance from the gunner, the flight motor ignites providing acceleration. The seeker and guidance electronics unit guide the missile to the target. An electronic safe, arm and fire device first initiates the precursor, then the main warhead at the target. DODIC PL64 missiles have manufacturing improvements incorporated to reduce costs. Additionally design changes include seeker improvements, a reconfigured precursor, a guidance electronics unit reduced from 4 to 2 circuit boards, and a Common Electronic Safe Arm and Fuze device with less circuit cards. Javelin missiles are encased in a composite tube during storage. DODIC PL64 missiles are stored in plastic outer containers.

Safety Precautions

WARNING

If the firing unit returning the missile reports that they attempted to launch and it resulted in a hang-fire, notify OIC/NCOIC for further instructions. The Javelin missile is normally firmly held in launch tube assembly at all times. If missile is a hangfire, it may be loose in the launch tube. The launch tube should not be tilted from the horizontal and the missile must not be returned to storage. If personnel are not sure whether a missile resulted in a hangfire or misfire, it must be treated as a hangfire.

HANGFIRE

If the fire trigger has been pulled and the missile does not launch and a hangfire occurs, the hangfire indicator on the CLU display will be flashing.

MISFIRE

If the fire trigger has been pulled and the missile does not launch and a misfire occurs, the hangfire indicator will not light up and either the missile BIT indicator on the CLU display will be displayed or flashing or no indicators will be displayed.

WARNING

Ensure the container is depressurized before removing the weapon from the container. Assure vent valve moves freely.

WARNING

Do not handle the missile round roughly or drop it. Rough handling may damage the missile motor or missile components and cause a malfunction at launch or in flight.

The DODIC PL64 is classified as 1.2E munitions. The explosives contained within the missile are relatively insensitive; however, avoid rough handling or dropping. Handling of the encased Javelin missiles during inspection does not require specific grounding or electrical isolation.



Packaging

The packaging configuration for DODIC PL64 is given in the Packaging Configuration Table below.

Packaging Configuration Table

NSN	Model	Packaging	Inner Container	Outer Container
1427-01-475-8172	FGM-148C	Packaged 1 missile/foam/plastic container, 6 containers/wooden pallet	1/Foam	1/Plastic container

Visual Inspection

The following guidelines are provided for receipt of field-returned material. With the exception of factory-sealed boxes, container, or original packaging all field-returned material must be thoroughly inspected to ensure that the ammunition is safe for storage at the Ammunition Supply Point (ASP) and acceptable for reissue. An inspection criteria table for the outer container, inner container, and individual item are provided along with an inspection checklist. Inspect for all defects in each inspection criteria table before continuing to the next inspection criteria. Follow local ASP procedures for additional inspection, safety, and handling guidelines.

Outer Container

Visually inspect the outer container for possible damage that may compromise the integrity or safety of the ammunition inside. The outer container configuration is provided under the Packaging Configuration Table. The inspection criteria for the outer container are given in the Inspection Criteria Table for Outer Container below.

Inspection Criteria Table for Outer Container

Defect Description	Defect Category	Recommended Action	Notes
Lot number, serial number, NSN and/or DODIC missing or illegible	Major	Proceed to Inner Container inspection. During Individual Item inspection, attempt to determine missing information. Follow local ASP procedure for disposition if lot number/serial number cannot be determined. Correct markings as required.	(2)
Severe punctures, cracks, or breaks that would prevent the missile from being protected in storage or humidity indicator glass cracked or broken	Major	Follow local ASP procedures for disposition.	
30% humidity indicator is not blue	Minor	Follow local ASP procedures for disposition.	
Vent Valve missing, broken, or will not tighten with a clock-wise turn	Major	Proceed to Inner Container inspection.	(1)
Handles broken	Minor	Proceed to Inner Container inspection.	
Loose, broken or missing stacking lugs.	Major	Proceed to Inner Container inspection.	(1)
Either of the 2 security seals missing or security tabs broken	Minor	Proceed to Individual Item inspection if both security seals are missing. Replace missing seal if only one is present.	
Any of the 4 latches missing, broken, or loose	Major	Proceed to Inner Container inspection.	(1)
No defects	N/A	Follow local ASP procedures for securing the missile for storage.	

Notes:

- (1) Follow local operating procedures for securing a replacement container. If a replacement container is not available follow local ASP procedures for disposition.
- (2) At a minimum, the markings should include the DODIC, lot number, NSN, and serial number.



**Outer Container with Markings
(DODIC PL64)**

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Inner Container

WARNING

Ensure the container is depressurized before removing the weapon from the container. Assure the vent valve moves freely.

Note: Do not inspect inner container unless both security seals are missing and/or security tab broken from the plastic shipping container or the plastic container is damaged or indicates that the contents may have been damaged.

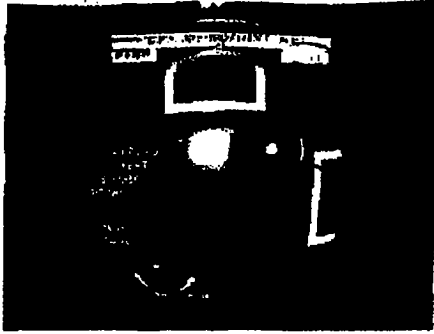
Visually inspect the inner container. Do not open factory-sealed and undamaged containers. Sealed and undamaged inner containers can be repacked for storage. The inner container configuration is provided under the Packaging Configuration Table. The inspection criteria for the inner container are given in the Inspection Criteria Table for Inner Container below.

Inspection Criteria Table for Inner Container

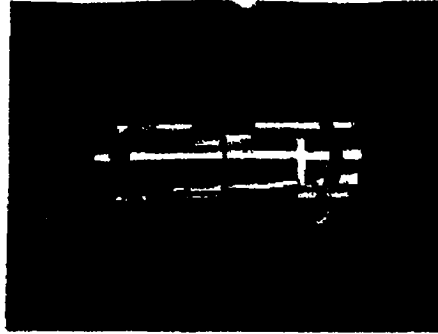
Defect Description	Defect Category	Recommended Action	Notes
Outer container removable forward end cap foam missing or has severe gouges or dents that prevent the missile from being protected during storage	Major	Replace forward end cap, if possible. Proceed to Individual Item inspection.	(1)
Desiccant bags missing or wet (one big bag per container)	Major	Follow local ASP procedure. Proceed to Individual Item inspection.	
Foam cushion broken or missing	Major	Proceed to Individual Item inspection. Replace foam cushion if available. If no replacement available follow local ASP procedure.	
Lanyard missing, damaged, or broken	Major	Proceed to Individual Item inspection. Replace lanyard if available. If no replacement available follow local ASP procedure.	(1)
Missile container end cap foam missing or broken	Major	Proceed to Individual Item inspection. Replace missile container end cap foam if available. If no replacement available follow local ASP procedure.	(1)
No defects	N/A	Proceed to Individual Item inspection.	

Note:

(1) Follow local operating procedures for securing a replacement container. If a replacement container is not available follow local ASP procedures for disposition.



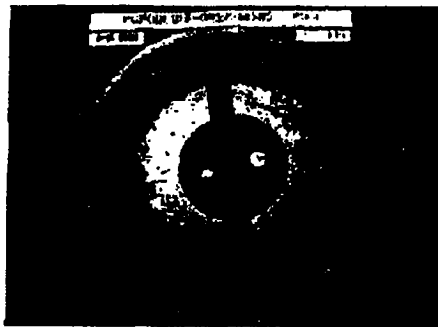
**Humidity Indicator
(DODIC PL64)**



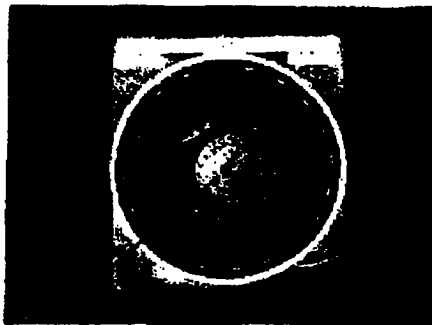
**Foam Cushion with Missile
(DODIC PL64)**



**Removable Forward End Cap
(DODIC PL64)**



**Opened Outer Container
With Missile (DODIC PL64)**



**Opened Outer Container
Without Missile (DODIC PL64)**

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Individual Item

WARNING

If the firing unit returning the missile reports that they attempted to launch and it resulted in a hang-fire, notify OIC/NCOIC for further instructions. The Javelin missile is normally firmly held in launch tube assembly at all times. If missile is a hangfire, it may be loose in the launch tube. The launch tube should not be tilted from the horizontal and the missile must not be returned to storage. If personnel are not sure whether a missile resulted in a hangfire or misfire, it must be treated as a hangfire.

HANGFIRE

If the fire trigger has been pulled and the missile does not launch and a hangfire occurs, the hangfire indicator on the CLU display will be flashing.

MISFIRE

If the fire trigger has been pulled and the missile does not launch and a misfire occurs, the hangfire indicator will not light up and either the missile BIT indicator on the CLU display will be displayed or flashing or no indicators will be displayed.

WARNING

Do not handle the missile round roughly or drop it. Rough handling may damage the missile motor or missile components and cause a malfunction at launch or in flight.

Visually inspect the individual item. The individual item packaging configuration is provided under the Packaging Configuration Table. The inspection criteria for the individual item are given in the Inspection Criteria Table for Individual Item below.

Inspection Criteria Table for Individual Item

Defect Description	Defect Category	Recommended Action	Notes
<u>Environmental seal</u> torn/damaged	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
Missile 30% humidity indicator lavender or pink	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Manual Release Button</u> will not depress or return properly	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Seeker dome</u> cracked	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Environmental O-ring</u> missing, damaged or unseated	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Forward end cap</u> will not properly seat, damaged or deformed.	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>BCU pylon connector</u> has dirty, corroded, bent or missing contacts	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>BCU latch</u> broken or missing which prevents BCU from attaching or being removed from missile tube	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Shoulder pad</u> missing or torn	Major	Follow local ASP procedure for disposition of missile.	
<u>Shoulder strap</u> missing, torn, or frayed	Minor	Replace if available. Proceed with missile inspection.	
Shoulder strap mount broken or missing, both forward and aft	Minor	Follow local ASP procedure for disposition of missile.	
<u>Aft end cap membrane</u> torn or missing	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Aft end cap</u> damaged, punctured, cracked, or bulging to the extent that the aft bearing ring is exposed	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Carry handle</u> missing or damaged to prevent carrying	Minor	Follow local ASP procedure for disposition of missile.	

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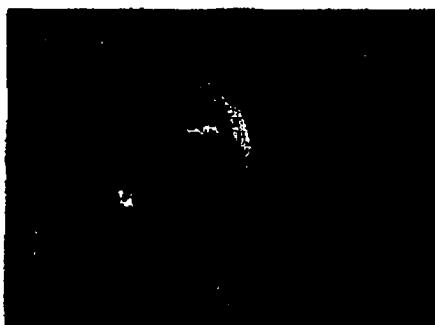
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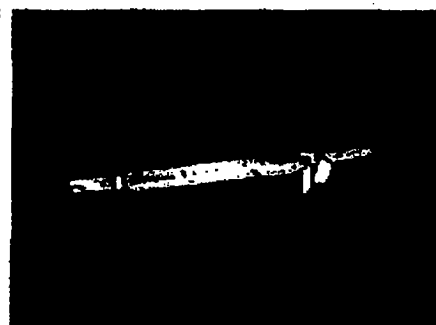
<u>BCU missing or damaged</u>	Major	Replace with serviceable BCU, if available. Follow local ASP procedure for disposition if replacement BCU is not available.	
<u>Black dot in BCU Status Indicator (indicates BCU expended)</u>	Major	Replace with serviceable BCU, if available. Follow local ASP procedure for disposition if replacement BCU is not available.	
<u>Guide pins bent to prevent proper mounting, bonding loose on launch tube</u>	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Latch release broken/missing to prevent locking of CLU</u>	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Umbilical cover cracked, punctured or gouged</u>	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Launch tube punctures, cracks, and gorges</u>	Critical	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
<u>Serial number and lot number on the missile do not match the missile container</u>	Major	Correct markings as required.	
No defects	N/A	Repack the ammunition. Follow local ASP procedures for securing the ammunition for storage.	

Notes:

(1) *Umbilical cover may be covered in duct tape. The duct tape holds a rigid cover in place. If the duct tape is not ripped or damaged, no further inspection of the rigid cover or umbilical cover is necessary.*



**Seeker Dome
(DODIC PL64)**



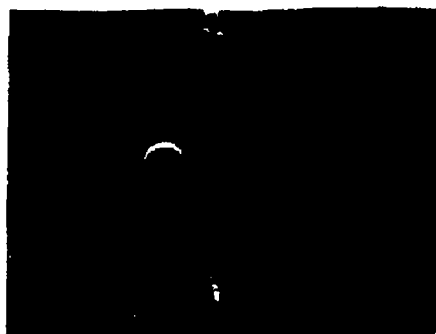
**BCU
(DODIC PL64)**

file://D:\Version4\Missiles\PL64\PL64.htm

3/31/2004

DOD JUNE

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**BCU Pylon
(DODIC PL64)**



**Aft Seal
(DODIC PL64)**

file:///D:/Version4/Missiles/PL64/PL64.htm

3/31/2004

DOD JUNE

1855

References

TM 09397B-12/1

Operator and Organizational Maintenance Manual for
Javelin Weapons System M98A1, of February 2000

TM 09397A-34/6

Direct Support and General Support Maintenance Manual
for JAVELIN Surface Attack Guided Missile and Launcher
FGM-148A and FGM-148B, of August 2000

SB 742-1427-92-002, Chg. 3

Ammunition Surveillance Procedure for Javelin, Surface
Attack Guided Missile and Launcher, of September 1998

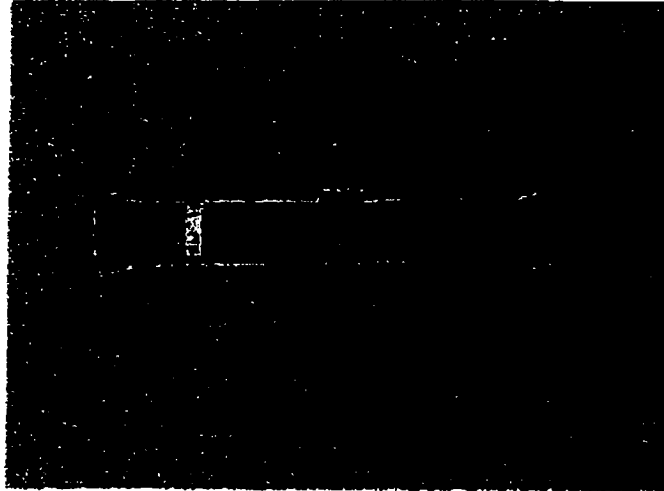
DODIC WF10

Guided Missile, Surface Attack

BGM-71D-5, (TOW-2)

Item Description

The Guided Missile, Surface Attack BGM-71D-5, Tube-launched Optically-tracked Wire-guided-2 (TOW-2), (DODIC WF10) is a heavy anti-armor assault weapon designed to defeat bunkers, tanks, boats, fortifications, low performance aircraft, and other materiel targets. The primary use of DODIC WF10 is for training. The TOW is a portable weapon system capable of operating from attack helicopter, ground vehicle, or ground mount. DODIC WF10 is a TOW-2 missile effective up to 3,750 meters from the launch position. Installation of the protective (ballistic) blanket on the aft of the launch tube is required prior to firing. The protective (ballistic) blanket is not required when fired from within the hull of the Light Armored Vehicle-Anti-Tank (LAV-AT) variant when all personnel are either within the protection hull of the vehicle or clear of the launch position by 75 meters when the firing is initiated. DODIC WF10 does not have a coated launch motor.



**Guided Missile, Surface Attack
BGM-71D-5 (TOW-2) (DODIC WF10)**

The TOW system consists of a guided missile and a launcher that interact to track the missile to the target. The TOW missile flight is initiated manually by the gunner after a target is acquired. The launching of the missile involves acceleration in two phases using two separate rocket motors. The launch motor initially ejects the missile from the launch tube. When the missile reaches a safe distance from the gunner, the flight motor burns, bringing the missile to maximum velocity. The missile coasts the remainder of flight. The launch system tracks the missile by optically monitoring the position of infrared radiators on the missile as it flies downrange. A wire link is maintained between the missile and the launcher during flight for transmission of guidance signals. The ground or vehicle launch systems include the Missile Guidance Set (MGS) that processes and sends electrical guidance and control signals to the missile through the wire link. DODIC WF10 has a 6-inch copper-lined shape-charge warhead that functions upon impacting the target. For significantly greater armor piercing effects, the TOW-2 warhead incorporates a probe that extends after launch to provide standoff detonation. An Improved Missile Ordinance Inhibitor Circuit (IMOIC) improves firing range safety. Following an eject only failure, the IMOIC prevents the flight motor from igniting, and prevents arming or detonation of the warhead when the missile impacts the ground. TOW-2 missiles are encased in a composite tube during storage.

Safety Precautions

WARNING

If the firing unit returning the missile reports that they attempted to launch and it resulted in a hangfire, notify the OIC/NCOIC for further instructions. Do not return hangfire missiles to storage. If personnel are not sure whether a missile resulted in a hangfire or misfire, it must be treated as a hangfire.

HANGFIRE

After depressing the trigger, a distinctive "pop", as well as the spinning of the gyro is initiated. If these pre-fire functions were heard and the missile fails to launch, the malfunction is a hangfire.

MISFIRE

If a missile fails to launch, and no "pop" or spinning of the gyro is heard, the pre-fire functions were not initiated; the malfunction is a misfire.

WARNING

If the missile electrical connector is stuck in the depressed position, the inspection must stop and follow local Ammunition Supply Point (ASP) procedures for disposition of the missile. Do not return missiles with depressed electrical connectors to storage.

WARNING

Do not handle the missile round roughly or drop it. Rough handling may damage the missile motor or missile components and cause a malfunction at launch or in flight.

The DODIC WF10 is classified as 1.1E munitions. The explosives contained within the missile are relatively insensitive; however, avoid rough handling or dropping. Handling of encased TOW missiles during inspection does not require specific grounding or electrical isolation.



Packaging

The packaging configuration for DODIC WF10 is given in the Packaging Configuration Table below.

Packaging Configuration Table

NSN	Model	Packaging	Inner Container	Outer Container
1410-01-469-8929	BGM-71D-5	Packaged 1 missile/wirebound wooden box, 12 boxes/wood pallet	None	1/Wooden Box

Visual Inspection

The following guidelines are provided for receipt of field-returned material. With the exception of factory-sealed boxes, container, or original packaging all field-returned material must be thoroughly inspected to ensure that the ammunition is safe for storage at the Ammunition Supply Point (ASP) and acceptable for reissue. An inspection criteria table for the outer container, inner container, and individual item are provided along with an inspection checklist. Inspect for all defects in each inspection criteria table before continuing to the next inspection criteria. Follow local ASP procedures for additional inspection, safety, and handling guidelines.

Outer Container

Visually inspect the outer container for possible damage that may compromise the integrity or safety of the ammunition inside. The outer container configuration is provided under the Packaging Configuration Table. The inspection criteria for the outer container are given in the Inspection Criteria Table for Outer Container below.

Inspection Criteria Table for Outer Container

Defect Description	Defect Category	Recommended Action	Notes
Lot or serial number missing or illegible	Major	Proceed to Individual Item inspection and attempt to determine missing information. Follow local ASP procedure for disposition if lot/serial number cannot be determined. Correct markings as required.	(1)
Other markings missing, illegible, or incorrect	Minor	Proceed to Individual Item inspection and attempt to determine missing information. Correct markings as required.	(1)
Severe punctures, missing glass in humidity indicator window, warping or other defects that would prevent the missile from being protected in storage	Major	Proceed to Individual Item inspection to determine if missile is damaged. If prior to returning to storage.	(2)
Shallow punctures, splintered wood, water damage, dry rot, other cosmetic damage	Minor	Proceed to Individual Item inspection.	(2)
Damaged/missing hardware (sallec closures, seals, hinges, hasps, etc.) used to secure the outer container	Minor	Proceed to Individual Item inspection.	
Humidity indicator is pink	Major	Follow local ASP procedure for disposition.	
Banding is missing	N/A	If at least 1 band is intact, follow local ASP procedures for securing the missile for storage. If both bands are missing, proceed to Individual Item inspection.	
No defects	N/A	Follow local ASP procedures for securing the missile for storage.	

Notes:

- (1) At a minimum, the markings should include the DODIC, lot number, NSN, and serial number.
 (2) Follow local ASP procedures for securing and storing inner containers without the original outer container if outer container is unserviceable and cannot be replaced.



**Outer Container with Markings
(DODIC WF10)**



**Humidity Indicator
Window (DODIC WF10)**



**Opened Outer Container
(DODIC WF10)**

Inner Container

The Guided Missile, Surface Attack BGM-71D-5 TOW-2 is not packed in an inner container. There are no inspection criteria for inner container for DODIC WF10.

Individual Item

Encased Missile

WARNING

If the firing unit returning the missile reports that they attempted to launch and it resulted in a hangfire, notify the OIC/NCOIC for further instructions. Do not return hangfire missiles to storage. If personnel are not sure whether a missile resulted in a hangfire or misfire, it must be treated as a hangfire.

HANGFIRE

After depressing the trigger, a distinctive "pop", as well as the spinning of the gyro is initiated. If these pre-fire functions were heard and the missile fails to launch, the malfunction is a hangfire.

MISFIRE

If a missile fails to launch, and no "pop" or spinning of the gyro is heard, the pre-fire functions were not initiated; the malfunction is a misfire.

WARNING

If the missile electrical connector is stuck in the depressed position, the inspection must stop and follow local Ammunition Supply Point (ASP) procedures for disposition of the missile. Do not return missiles with depressed electrical connectors to storage.

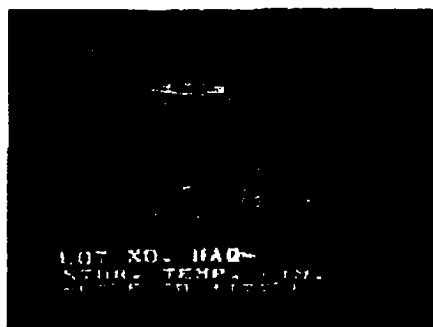
Note: Do not inspect missile unless both pieces of band are missing from the wooden shipping container.

Visually inspect the individual item. The individual item packaging configuration is provided under the Packaging Configuration Table. The inspection criteria for the encased missile are given in the Inspection Criteria Table for Encased Missile below.

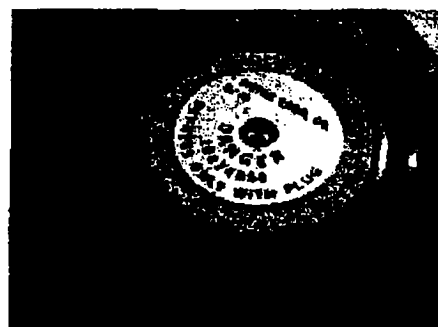
If wooden shipping container is missing both bands, inspect the encased missile. First inspect the composite tube and the dust cap. If the dust cap is missing, also inspect the electrical connector. In safe storage configuration the electrical connector is not depressed and no pins are exposed.

Inspection Criteria Table for Encased Missile

Defect Description	Defect Category	Recommended Action	Notes
Wires are exposed on the outside of the tube	Critical	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
Electrical connector dust cap is missing	Minor	Replace, if available. Proceed with Forward End inspection.	
Electrical connector is stuck in the depressed position	Critical	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
Any external surface (holes, dents, and cracks)	Critical	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
Small loose parts are heard rattling inside the composite tube	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition of missile.	
No defects	N/A	Proceed with Forward End inspection.	



**Electrical Connector Dust Cap
(DODIC WF10)**



**Electrical Connector
Normal Position (DODIC WF10)**



**Depressed Electrical
Connector with Exposed Pins
(DODIC WF10)**

Forward End

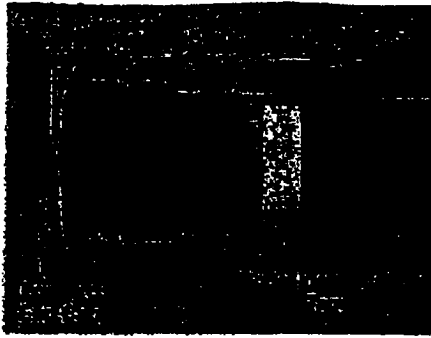
Inspect the identification markings and the forward end cap of the missile. Inspect the stud guide to ensure the studs are in line with the saddle. The inspection criteria for the forward end container are given in the Inspection Criteria Table for Forward End below.

Inspection Criteria for Forward End

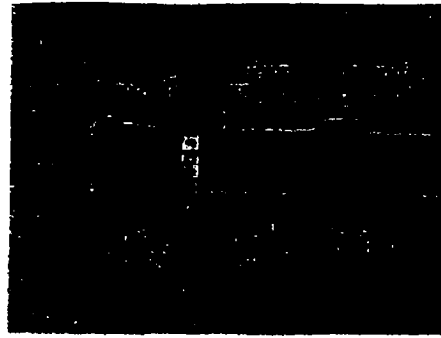
Defect Description	Defect Category	Recommended Action	Notes
<u>Identification decal</u> markings missing, illegible, or incorrect	Minor	Attempt to determine missing information. Correct markings as required.	(1)
Section of the <u>forward end cap</u> is bent over the quick release coupling to the extent the coupling cannot be released	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition.	
<u>Stud guide</u> is rotated so the <u>studs</u> are 90 degrees out of line with the <u>saddle</u>	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition.	
No defects	N/A	Proceed to Aft End inspection.	

Notes:

(1) The markings should include the lot number (lot number is located in the middle of the missile beneath the saddle), serial number, NSN, and model.



**Forward Coupling, Cap, and
Stud Guide (DODIC WF10)**



**Stud and Saddle
Alignment (DODIC WF10)**

Aft End

Inspect the seal and nozzle at the aft end of the missile. The inspection criteria for the aft end are given in the Inspection Criteria Table for Aft End below.



Aft End of Encased Missile (DODIC WF10)

Inspection Criteria Table for Aft End

Defect Description	Defect Category	Recommended Action	Notes
Model number on seal is missing, illegible, or incorrect	Minor	Correct markings as required by stenciling in "71D-5."	(1), (2)
Aft nozzle is missing or bent over severely	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition.	
Seal is damaged	Major	Place defective ammunition in a holding area. Follow local ASP procedure for disposition.	
Aft seal is bulging	Major	Proceed to Aft Seal inspection.	
No defects	N/A	Repack the ammunition. Follow local ASP procedures for securing the ammunition for storage.	(2)

Notes:

- (1) Mask the humidity indicator window before making the proper markings. Prior to returning the missile to the wooden shipping container, remove the masking from the humidity indicator window.
- (2) Prior to repackaging and returning to storage, ensure that the DODIC, lot number, serial number, and NSN on the inner containers match the markings on the outer container.

Aft Seal

If the aft seal is bulging, place the missile horizontally. Take a 12-inch piece of unbent banding and place it in opposite slits across the aft nozzle-handling ring. Measure from the bottom of the banding to the seal.

- If the distance is greater than 11/16-inch repack the missile and return it to original condition code.
- For distances less than 11/16-inch, the seal is bulging at a critical level and the missile is unserviceable. Prior to shipping or storage, loosen the three screws of the holdback pin 3-5 turns and listen for pressure release. If pressure is not released by loosening the screws, use an exacto

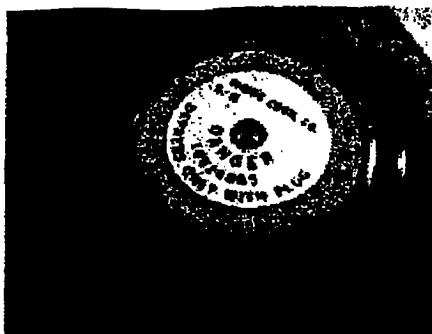
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3/31/2004

DOD JUNE

1866

knife or its equivalent to pierce the holdback pin cover material until pressure is released. Tighten the three holdback pin screws. Follow local ASP procedures for disposition.



**Electrical Connector
Normal Position (DODIC WF10)**

References

- | | |
|--|--|
| NWSC/CR/RDTR-96, Revision "P" | Packaging Digest for Marine Corps Class V (W) Material, of February 1998 |
| SB 742-1410-92-005 | Guided Missile Surface Attack BGM Series and Guided Missile Practice BTM Series, of February 1991 |
| NAVSEA SW020-AC-SAF-010, Fourth Revision | Transportation and Storage for Ammunition, Explosives, and Related Hazardous Material, of April 2000 |
| TWO24-AA-ORD-010 | Ammunition, Unserviceable, Suspend and Limited Use, of April 2000 |

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

Servicemembers' Group Life Insurance Election and Certificate	
Use this form to: (check all that apply) <input checked="" type="checkbox"/> Name, change or update your beneficiary <input type="checkbox"/> Reduce the amount of your insurance coverage <input type="checkbox"/> Decline insurance coverage	
Important: This form is for use by Active Duty and Reserve members. This form does not apply to and cannot be used for any other Government Life Insurance.	



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3350 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1900
HMSR-1
1 Dec 01

(b)(6) - SSN

MEMORANDUM FOR SECRETARY OF THE NAVY

Subj: RETIREMENTS, ADVANCEMENTS, RESIGNATIONS, AND DISCHARGES

Ref: (a) Title 10, United States Code

(b) DoD Instruction 1200.15

(c) SecNavInst 1000.7D

(d) SecNavInst 1920.6B

(e) SecNavInst 1850.4D

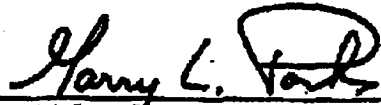
- Encl: (1) Voluntary Retirements, Time-in-Grade Waivers, Modification to Retirement Dates, and Withdrawal of Retirement Requests
(2) Officers Pending Resignation with Honorable Discharge Certificates
(3) Resignation of Reserve Commissions, Involuntary Separation from the Marine Corps Reserve, Interservice Transfer Requests, with Honorable Discharge Certificates, and Marines Requesting Retirement Awaiting Pay at Age 60

1. Per the references, this memorandum with supporting enclosures is submitted for approval. The honorable discharge certificates at enclosures (2) and (3) also require signature.

(b)(7)(C)

Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps

APPROVED:


GARRY L. PUGH
Deputy Commandant for
Manpower and Reserve Affairs

(b)(6) - SSN

RESIGNATION OF REGULAR COMMISSIONS AND APPOINTMENT IN THE
MARINE CORPS RESERVE

1. The officers listed below have requested resignation of their Regular commissions by reason of expiration of statutory service obligation, expiration of obligated service or change of career intentions, and unless otherwise indicated have requested or are obligated for an appointment in the Marine Corps Reserve. All qualify for separation and are eligible for Reserve commissions unless otherwise indicated. Their honorable discharge certificates are attached.

<u>RANK</u>	<u>NAME</u>	<u>SSN/MOS</u>	<u>RES/COM</u>
		0402	Yes/Not obligated
		7523	Yes/Not obligated
		7565	Yes/Not obligated
		0302	Yes/Obligated
		7525	Yes/Not obligated
		0602	Yes/Obligated
		1302	Yes/Obligated
		4302	Yes/Not obligated
		3002	Yes/Obligated
		7562	Yes/Not obligated

2. The officers listed below have requested to withdraw their resignation requests. Their requests were previously approved.

<u>RANK</u>	<u>NAME</u>	<u>SSN/MOS</u>
		7509
		7523
		7523
		0202

3. The officer listed below has been approved for discharge as a conscientious objector.

<u>RANK</u>	<u>NAME</u>	<u>SSN/MOS</u>
	(b)(7)(C)	0402

Enclosure (2)



UNITED STATES MARINE CORPS
APPOINTMENT ACCEPTANCE AND RECORD

NAVMC 703A (REV. 1-81)
(REV. 4-87 EDITION WILL BE USED)

S

92 12 18 SAT NAC COMPL BY ⁽¹⁴⁰⁰⁾ 013

22-May-96 NAVB196

(b)(6) - OMPF PERSONAL DATA

ORIGINAL (OMPF)

RETURN DIRECTLY TO CMC (MROA)

NAVSB-10

DOD JUNE

1875

**OATH OF OFFICE
UNITED STATES NAVAL ACADEMY**

Annapolis, Maryland

"I, **(b)(7)(C)**

having been appointed a midshipman in the United States Navy, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; So Help Me God."

(b)(7)(C)

(SIGN NAME IN FULL ON LINE ABOVE)

Midshipman, U.S. Navy.

U.S. Naval Academy, }
Annapolis, Maryland. } ss.

Sworn and subscribed to before me this

2ND

day of

JULY

(b)(7)(C)

(b)(7)(C)

HOWAUSA-GRE 1831/28 (03-84)

DOD JUNE

1876

PART I - IDENTIFICATION DATA

(b)(6) - OMPF PERSONAL DATA

Copy to:
(Add Para only)

NAVY - Commander, Naval Military Personnel
Command (NMMC II)

MARINE CORPS - Commandant of the Marine Corps (MCMC)

(b)(6) - OMPF PERSONAL DATA

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D. C. 20380

1326
MROA
8 MAY 1996

From: Commandant of the Marine Corps
To: [REDACTED] / 7580 USMC
[REDACTED]
Via: Commanding Officer, Marine Barracks, 8th & I
Subj: ASSIGNMENT TO ACTIVE DUTY
Ref: (a) MCO P1050.3F
(b) JFTR par U7000.B
(c) MCO P1080.40 (MCTPS PRIM)
Encl: (1) Guidance for Newly Commissioned Marine Officers Reporting
to the Basic School

1. Upon acceptance of your appointment as a second lieutenant, you are assigned to active duty and are directed to report no later than 2400 on [REDACTED] to the Commanding General, Marine Corps Combat Development Command, Quantico, VA (MCC J61) for further assignment to The Basic School (TBS) for duty under instruction in Basic Course [REDACTED] convening [REDACTED] for a period in excess of 26 weeks.
2. In establishing your report date as listed above, you have been authorized 1 day travel via privately owned vehicle and 29 days delay to be charged as annual leave. You are not authorized proceed time. You are not authorized any type of temporary additional duty (TAD) at your present unit. Upon appointment, you will immediately commence leave and/or travel. You may travel via commercial transportation and submit a claim for reimbursement upon reporting to your duty station. Travel time will be adjusted accordingly when you submit your travel claim. You are entitled to reimbursement for the distance traveled under these orders not to exceed the distance from your present unit or from your home of record (listed above as HOR) if you have not been previously reimbursed. Reference (b) applies. If your HOR is not correct, notify the Commandant of the Marine Corps (MROA) prior to the commencement of your travel. Travel by privately owned conveyance will be computed at the rate of 350 miles per day.
3. Upon arrival at TBS, the Commanding Officer is directed to join you on the unit diary by an "INIT JOIN" entry as prescribed in reference (c).

Subj: ASSIGNMENT TO ACTIVE DUTY

4. Submit your orders with all endorsements to the disbursing officer within three working days after completion of travel to settle travel expenses.
5. Information and assistance regarding financial, medical and other personal matters may be obtained by calling the regional Family Service Center. From locations east of the Mississippi River (except Wisconsin), dial toll free 1-800-336-4663. From locations west of the Mississippi River (plus Wisconsin), dial toll free 1-800-854-2131. If you are married and/or have dependent children, you will be required to provide the personnel office supporting documents in order to obtain identification cards, medical/dental benefits, basic allowance for quarters, and dependent travel. Ensure that you have in your possession original documents or certified/notarized copies. For identification cards, you will need birth registrations (sealed by the state/county), marriage certificates, the height, weight, color of hair, color of eyes and the social security number of all dependents.
6. Before making any rental or lease agreement or purchasing a house, you will report to the local military housing office at your new duty station.
7. The enclosure provides valuable information concerning uniforms, your assignment to TBS, motor vehicle regulations, and government quarters aboard MCCDC Quantico.
8. TravChar: 176 1105.2750, BCN 41690, AAA 000027, CC 365 92 3978 off tvl advance 74122 off tvl (MALT), 74124 off tvl (per diem), 74150 depns tvl, 74152 trans HHG, 74157 DLA if entl.

C. C. KRULAK

Copy to:
CMC (MMFR-3; MRO)
CO, TBS; CO, OCS

FIRST ENDORSEMENT

1. Received these orders at _____ at _____ on _____.
(place) (time) (date)

(signature)

C

AT HISTORY - EXPEDITIONS - AWARDS RECORD (1870)

COMBAT HISTORY AND EXPEDITIONS.

DATE OF ENTRY	DETAILS	DATES		SIGNATURE
		FROM (ON)	TO	

(b)(6) - OMPF PERSONAL DATA

DA FORM 110 (2) (Rev. 3-71) (Previous editions will be used) GPO 1970-50-250-5000 (4th PD OF 120)

411207 OCT 1971 9-540-002-40121

DOD JUNE

1881

F.R.O.D.L.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

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F.R.O.D.I.S. ACCEPTED

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DOD JUNE

1886

F.R.O.D.I.S. ACCEPTED

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F.R.O.D.I.S. ACCEPTED

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DOD JUNE

1892

F.R.O.D.I.S. ACCEPTED

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(b)(6) - OMPF PERSONAL DATA

DOD JUNE

1894

USMC FITNESS REPORT (1610)
NAVSIC 1610AA (Rev. 1-69) (EP)
PREVIOUS EDITIONS WILL NOT BE USED
GPO 9-699-1-6-698-0000

DO NOT STAPLE
THIS FORM

COMMANDANT'S GUIDANCE

The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, supersession, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer owes a role in the scrupulous maintenance of this evaluation system, critically important to both the individual and the Marine Corps. Inadequate markings only serve to obscure the actual value of each report. Reviewing Officers will not concur with inflated reports.

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

rel Name

c. M

d. SSN

2. Occ
a. OCL

1 and Period Covered:
b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG TRICAP (Rev. 1-80) (U)
SIC: 9108-LF-000-0700

PAGE 2 OF 5

DOD JUNE

1896

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 101320 (Rev. 1-89) (EP)
MTC 0120-LF-000-0000

PAGE 3 OF 8

DOD JUNE

1897

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Oc
a. CC
b. in and Period Covered:

(b)(6) - OMPF PERSONAL DATA

NAVJAG 2002100 (Rev. 1-00) (EF)
GPN 0100-LF-000-0000

PAGE 4 OF 5

DOD JUNE

1898

1. Marine Reported On:
a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

(b)(6) - OMPF PERSONAL DATA

FORM 100-100-100-100 (Rev. 1-77)
GPO: 1968-17-400-1000

PAGE 5 OF 5

USMC FITNESS REPORT (1610)
NAVMC 10030A (Rev. 1-89) (EP)
PREVIOUS EDITIONS WILL NOT BE USED
GPO: 8155-LF-555-5555

DO NOT STAPLE
THIS FORM

COMMANDANT'S GUIDANCE

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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVSIG 100000 (Rev. 1-69) (OP)
S/N: 0100-1P-000-0700

PAGE 2 OF 5

DOD JUNE

1901

1. Marine Reported On:
a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered:
e. OCC

f. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 18200C (Rev. 1-69) (RP)
SPC: 9100-LF-000-0000

PAGE 3 OF 5

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 10000 (Rev. 1-90) (P)
RM: 0000-1.F.000-0000

PAGE 4 OF 5

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 110000 (July, 1-49) (LP)
2N: 0100-LP-000-1000

PAGE 5 OF 8

DOD JUNE

1904

USMC FITNESS REPORT (1616)
NAVMC 1605A (Rev. 1-69) (EF)
PREVIOUS EDITIONS WILL NOT BE USED
GPO: 9169-LF-688-0000

DO NOT STAPLE
THIS FORM

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(b)(6) - OMPF PERSONAL DATA

USMC FITNESS REPORT (1610)
NAVSIC 1650A (Rev. 1-69) (OP)
PREVIOUS EDITIONS WILL NOT BE USED
SH: 6169-LP-000-0000

DO NOT STAPLE
THIS FORM

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ADMINISTRATIVE INFORMATION

1. Marine Reported On: a. Last Name b. First Name c. MI d. SSN e. Grade f. DOB g. RMOS & BILMOS

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 1923PC (Rev. 5-88) (OP)
SN: 9100-LF-400-0000

PAGE 3 OF 5

DOD JUNE

1909

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

FORM 100-100 (Rev. 1-60) (M)
GPO: 1960-47-000-0000

PAGE 4 OF 8

DOD JUNE

1910

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 195302 (Rev. 1-89) (57)
SIC: 0100-LF-000-1000

PAGE 8 OF 8

DOD JUNE

1911

COMMANDANT'S GUIDANCE

DO NOT STAPLE
THIS FORM

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A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

e. Grade

f. DOR

g. PNCST BLNDR

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 106368 (Rev. 8-99) (VNI 2.1)

PAGE 2 OF 5

DOD JUNE

1913

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

REVIEW 10000 (100-0-00) (100-2-1)

PAGE 4 OF 5

DOD JUNE

1915

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 104352 (Rev. 9-99) (WN 2.2)

PAGE 9 OF 9

DOD JUNE

1916

COMMANDANT'S GUIDANCE

DO NOT STAPLE
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A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

e. Grade

f. DOR

g. FICOS h. RE. NO.

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 106385 (Rev. 9-89) (WN 2.2)

PAGE 2 OF 5

DOD JUNE

1918

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 10033C (Rev. 8-88) (WH 2.2)

PAGE 3 OF 6

DOD JUNE

1919

1. Marine Reported On:

a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 100352 (Rev. 9-68) (NN 2.2)

PAGE 1 OF 5

DOD JUNE

1921

COMMANDANT'S GUIDANCE

DO NOT STAPLE
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A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

e. Grade

f. DOR

g. PIOS h. IN MOS

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVJMC 100302 (Rev. 8-88) (WH 2.2)

PAGE 3 OF 8

DOD JUNE

1923

(b)(6) - OMPF PERSONAL DATA

COMMANDANT'S GUIDANCE

DO NOT STAPLE
THIS FORM

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A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PIOS	h. BILMOS
a. Last Name							

(b)(6) - OMPF PERSONAL DATA

1. Name Reported On:

2. Occasion and Period Covered:

(b)(6) - OMPF PERSONAL DATA

NAVRM 16352 (Rev. 1-99) (NN 1.3)

PAGE 6 OF 8

DOD JUNE

1926

COMMANDANT'S GUIDANCE

DO NOT STAPLE
THIS FORM

The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflatory markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.

A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name b. First Name c. MI d. SSN e. Grade f. DOR g. PMOS h. BILMOS

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

First Name

c. MI

d. SSN

2. /

3. Division and Period Covered:

a. (

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. C b. From To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. C

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

First Name

c. NO

d. SSN

2. Commission and Period Covered:
e. OC

h. From

To

(b)(6) - OMPF PERSONAL DATA

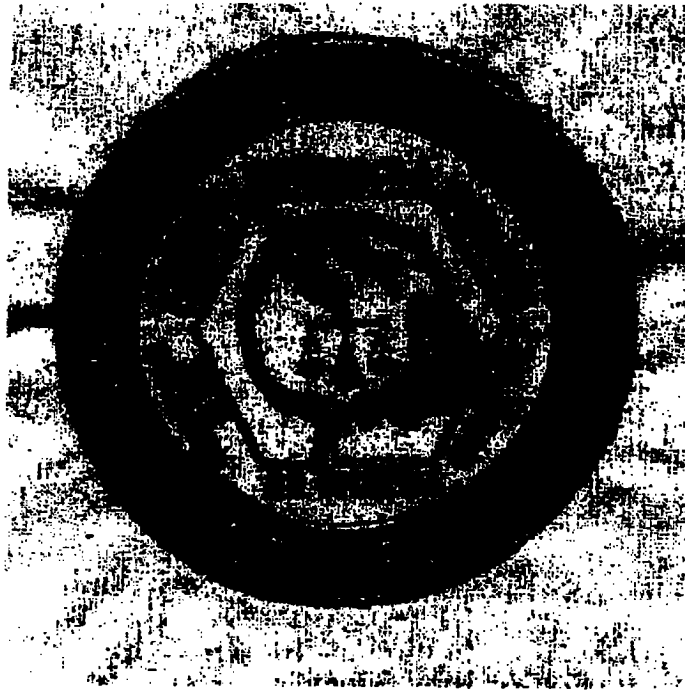
DOD JUNE

1931

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT A

OUTLINE OF CAAT OPERATIONS

1. Coordinated Call For Fire Classes, extra field time, and weapons and tactics classes with the instructors at 29 Palms and my SNCOs. Set up times for my NCOs to use the Call for Fire Simulators the CAX instructors used, and ran classes from it.

A. My platoon was constantly training PT or holding classes.

B. Talked to [REDACTED] several times to learn CAAT tactics from him.

C. Spent several hours doing CFF with myself and the Company Fox.

D. Had [REDACTED] give the platoon extra MOUNT Classes and practice at night.

E. Made the NCOs and CAAT Section Leaders give classes on first aid, CAAT tactics, urban warfare, navigating in a vehicle at night, RTO procedures (my radio operator made a cheat sheet for everyone), and we built hanging racks for gear on my vehicles (my Marines did that).

F. DC had (b)(7)(A) [REDACTED] and [REDACTED] put together a platoon box with valid SOPs and manuals; to include, Machine Guns and Machine Gunnery (DC), MOUT and Urban Warfare (DC), Infantry Tactics (DC), a couple copies of the CAAT SOP (DC), a laminated CYZ-10 manual (DC), info on field expedient antennas (DC), along with other manuals on MG maintenance, etc from my Sergeants.

2. While in Kuwait, DC had his Sergeants create a twenty by ten foot terrain model of Al Kut to brief my Marines. Conducted a overall description of the area, along with showing where the current units and trouble areas. [REDACTED] used the model afterwards.

3. 4-29 DC was [REDACTED] XO (Security Officer) for the stick one convoy—45 vehicles—moving from Kuwait to Al Kut. As such, DC wrote about half of the convoy order to move to Al Kut.

4. Was in charge of security for stick one.

A. With [REDACTED] planned navigation.

B. With [REDACTED] developed tactics for point, center, and middle security.

C. Briefed tactics to security personnel.

D. Briefed 200+ Marines of the convoy of the security and maneuver aspect of it.

5. 4/30-5/1 [REDACTED] navigated the convoy up to Al Kut—two day drive; to include, correcting the point security's big navigation error (they took the wrong road) and setting up security for the convoy at night while at Camp Viper.

6. While at Blair Airfield, ran informal decision making classes with NCOs, to keep their minds focused—did this one man at a time.

7. 5/4 Evening. Took part in first patrol with 2/8 and several Weps SNCOs. Did a hasty raid of a building with possible Iraqi criminals.

8. Camp Rebel/Tiger. Went with 2/8 on three more patrols (two vehicle/one on foot) as an observer to learn the territory.

9. When Weps took over Camp Rebel suggested and or implemented the following defensive improvements:

- A. Machine Guns on the roof covering the local neighborhood and dead space.
- B. Suggested pushing the perimeter out 30 m (out of grenade range) and burning/concertina wiring it off. [redacted] and [redacted] implemented those D arrangements.
- C. Ensured no Marines slept on vehicles in CAAT, since DC learned from 2/8 that they lost some men that way.

10.5/5 Took part in first two vehicle patrol for CAAT, more of a leader's recon. [redacted] navigated first one, DC navigated second.

11. 5/6-7 Five patrols a day, except on the 7th with only one [redacted] walked on one or two [redacted] remembered we enforced the curfew on one night—and rode in three others.)

A. [redacted] walked to observe the NCOs and rode to critique the navigation, leadership, and tactics of my NCOs.

C. The 2/8 Platoon Commanders did the same thing: they went along to lead by example and spot check. DC didn't say anything on patrol—just let the Cpl (s) do their job (Dunn sometimes took over aspects of the patrols he was on, which was irritating.)

D. During one of the patrols, [redacted] was the Patrol Leader, DC coordinated with local Iraqis concerning some injured children. They had burns on their hands and face. DC directed them towards the hospital.

12. 5/7 CAAT begins guarding the ASP. Talk with [redacted] about how to best coordinate the several missions we are doing — ASP duty and patrols. He sets up a rotating patrol schedule.

13. 5/9-11 Bomb threat to the local TV/HF radio station. [redacted] put together, brief, and lead a two squads of 81s/Javs and 1 CAAT Team (squad) to guard the station. When we got there [redacted] did:

- A. Coordinated with the two Iraqi men who ran the place.
- B. Coordinated with several Iraqi informers.
- C. Set up a defensive plan to partially block the main road in front of the pos in the day, and completely block it at night.
- D. Led two punitive foot patrols to seize several Iraqi youths who were hurling mortar/RPG parts at one of our guard post.
- E. Decided how to defend the position, to include a defense in depth.
- F. Was going to call for fire with flares one night when a lot of shooting was

occurring, but we were out of range by one click for the flares.

G. The top post of the building (three stories up) received fire from an Iraqi male, which we were going to return fire. [redacted] decided not to fire, since an American patrol (under [redacted]) moved into the area.

H. Ensured that the 50-100 kids and adults that crowded around to gawk at us were kept at a good distance away.

DC. Used Iraqi security guards to coordinate with the locals.

14. 5/12 Captured one Iraqi male—[redacted] led a react of one squad of 81s and a CAAT Team—at the first big explosion of the east ASP. [redacted] (thinks) in [redacted] team has his rifle butt hit by shrapnel. We brought the man to the Iraqi police dept. DC assisted [redacted] and an intel Marine as they interrogated the man for half an hour. The intel guy decided he wasn't a terrorist after interrogating for half an hour: [redacted] think the man demoed the bunker to try and get at the brass.

15. 5/12 With [redacted] squad foot patrol as an observer.

16. 5/13 Begin propane distribution. It continues throughout the month. The logbook said that we rapped it up on the 15th, but we did it off and on for at least two or three weeks. For a while we were handling two or three propane sites a day.

A. CAAT handled about three or four propane ops by ourselves; [redacted] was on two of them. Took [redacted] canalization setup one step further, by tightening the amount of control on the facility (aid a lot more concertina) We didn't have a problem.

B. [redacted] assisted [redacted] coordinate with the local Iraqi engineers on two or three different occasions to get the ops going.

C. [redacted] led a one vehicle QRF to assist [redacted] when shots were fired at his propane facility late in May. Provided vehicle cover as [redacted] captured two men who were having a gunfight with AK-47s. DC coordinated with Iraqi police when they arrived and a local who spoke English.

D. Assisted by providing water, supplies, etc to three or four other propane operations, sometimes in tow with [redacted]. Often listened to groups of Iraqi complaints.

17. Mid May. Lead the Support and Security element of Line Company (+) sized raid on the clothing factory on the west side of town to seize arms. Coord with the Line Company providing info on what he needed us to do.

A. Worked with [redacted] to develop a good plan to cordon off the area... he designed it, while DC tweaked it a little.

B. Gave a full five-paragraph order to the two CAAT Teams who were going [redacted]

C. Did a leaders recon (drive-by) with the Sgts and a couple Corporals who were going on the raid.

D. Convoyed the guys to the Line Co CP the previous day, so we could be ready.

- E. CAAT Navigated the entire Co (+) to their positions.
- F. Cordoned off the area.
- G. Observed as militant Shiites paraded by us with Green, Red, and White flags.
- H. Quelled a potential riot of workers wanting to get into the factory.
- DC. Told [REDACTED] off (he was observing, yet again) when he didn't want to give me a radio.
- I. Convoyed everyone out.

18. About 5/15. Spec Forces request assistance, since they are going to disband the FIF (Free Iraqi Forces) at their base (the future Tiger). [REDACTED] led a reinforced CAAT team as a react to provide muscle with our guns. [REDACTED] is my SNCO. We stay awake throughout the night keeping an eye on FIF, but all is quiet.

19. 5/16 [REDACTED] leads a CAAT team down to Al-Surwayrah. [REDACTED] briefed him and observed while he briefed his Marines. He did an excellent job on the patrol!

20. Talk to [REDACTED] several times about briefing the 2 on possibilities for long-range patrols. No joy

21. Still doing the occasional (say two) sit-in with the vehicle patrols in the day or at night, but starting to back off as the Sgts are getting good at it. [REDACTED] starts to do the same.

22. 5/17 Move to Tiger. The drama begins.

23. 5/19 Told by [REDACTED] can't leave the compound, carry a rifle, or go on any patrols. Big explosions just north of us; initially thought it was a mortar squad walking rounds in on us: [REDACTED] moved to the northwest corner of the camp to try and see where the fire was coming from. Afterwards requested that we sandbag the windows and black out the CP at night: denied.

24. 19th-23rd [REDACTED] guys start to patrol new sectors (in J sector).

25. 5/25 Walked with [REDACTED] (81s) as an observer/extra gun. He and DC talk to a couple doctors at the hospital who complain of threats from police officers and worries of prescription drug abuse amongst the young in town. DC informed [REDACTED] of the intelligence.

A. [REDACTED] reported catching lots of people in the ASP.

26. 5/26. Led CAAT portion of a QRF that investigated rounds fired across the street. [REDACTED] team was with me. Several members of the teams cleared a building that supposedly was being rifled by the criminals. Talked to the locals, as best as we could, concerning the incident.

27. 5/27 Drive with [REDACTED] (CAAT 3) to support [REDACTED] sweep of the marketplace. A arrests a man for selling weapons. Crowd extremely restless. [REDACTED] isn't a very good patrol leader (most of my other Sgts were: [REDACTED] were good, while [REDACTED] were OK), so DC had him bail some guys out to keep an eye on the crowd and help Amorello's guys. DC dismounted also, to observe and assist.

28. Trying to ride on two vehicle patrols a week and walk on one; to both observe and coordinate with local Iraqis.

29. Throughout late May and June [REDACTED] gave a weekly Al Kut, War, Intell update. [REDACTED] talked to the guys in CAAT Teams. [REDACTED] would go to the guys in HET teams and pick their brains. After that he would answer questions and give them simple, direct answers.

A. Also, from about 5/19-5/29, [REDACTED] talked to [REDACTED] for about a day to pick his brains on grunt stuff. This was done for two reasons:

1. To learn
2. To develop a decent relationship with him. It slowly started to work.

30. 5/29 Big explosions ASP... CAAT pulls back.

31. 5/30 Weps about to move back to Blair Field to Egres. First Sergeant gives order to blow off all ammo but combat load (210 per man) and most of the 50 cal and M19 rounds. [REDACTED] called [REDACTED] at the BN CP. The order is mistaken; we don't do a dump. [REDACTED] seemed very pissed (at [REDACTED] probably saved the company a lot of embarrassment and expense by not dumping the ammo).

32. Late May. [REDACTED] and a couple other guys set up the War Room, after [REDACTED] directs it. It is a series of laminated maps, covering the entire Wasit Province. [REDACTED] and [REDACTED] picked various places to begin long-range patrols to (LRRPs). They include:

- A. Iraqi ammo dumps.
- B. Towns.
- C. Major and Secondary road intersections that we hadn't traveled to.
- D. Areas that looked like good spots for ambushes along MSRs.

All patrols for CAAT or outlined on it with a grease pencil with the pertinent info.

33. 6/1 [REDACTED] led first long range patrol with [REDACTED] CAAT. We got within five miles of Baghdad. Noted the agricultural, trade, and possible ambush points along the road (there were a lot).

34. 6/2 Locals start blowing whistles when we drive by

35. June [redacted] starts putting LRRPs on the schedule for CAAT, along with ASP duty, and escorting anyone who needs it (patrols). CAAT also starts providing a stand-by team to help the Company on QRF for our region. [redacted] discuss how to deploy them; he incorporates it into our schedule.

36. 6/2-6/5 Observed one vehicular patrol. CAAT is getting good!

37. 6/6 [redacted] led a combined CAAT Team and 81s/Jaws Section down to Al-Hayy for weapons turn in. [redacted] was told to do it by [redacted] planned it, gave the Marines the order, led it, we went down there.

- A. [redacted] coordinated with the Iraqi cops for 2 hours down there.
- B. Briefed [redacted] on Al Hayy
- C. DC gave the 81s SSgt a rough idea of the Defense needed, who took it from there.
- D. We didn't collect a single weapon.

38. About 6/7-6/10. [redacted] led a QRF to find a "sniper" in the area by the Tarawa House (BN HQ at that time). [redacted] coordinated with STA in that area; it was a false alarm.

39. 6/10 Gigantic Explosion at ASP East. [redacted] pulled the men back to Tiger, since the position at the ASP was untenable.

40. 6/12 [redacted] looked for possible sniper across the river from Blair field.

41. 6/12-15 CAAT 2 [redacted] attached to Lima for a raid and recon to Babylon; they do an excellent job!!

42. 6/14-15 Stand-down since [redacted] pistol is stolen. [redacted] was going to lead a large op that day—a LRRP to the Iranian border)

43. 6/16 Lead a LRRP to Iranian border (CAAT 1 [redacted] with a bunch of Civil Affairs guys, to include a LtCol.

- A. Tour the only checkpoint still operating on the border. Get a list from the SSgt running the place of what they need.
- B. Drive through Badrah (border town). Coord with the police there. Get another list.
- C. Provide security for the LtCol as he goes through town.
- D. Tour a hospital—see that a lot of their drugs come from Iran.
- E. Speak German with a one of the Iraqis up there.
- F. Speak with a crowd of Iraqis, and write down their requests for power, work, etc.
- G. Briefed [redacted] on all of this stuff when [redacted] get back. (Told brief is too

long)

44. 6/18 CAAT begins to provide detachments [redacted] to the line companies that are starting to patrol Al-Hayy. Brief CAAT 3 [redacted] on what is expected of him as an attachment.

45. Mid-June. [redacted] counsels all SNCOs and Sgts in my Platoon. It takes about two weeks: DC often drive out to where they are at and counsel them in the field. He focused on what they are doing well, a couple things to work on, and what they think of their men and if they have any ideas for tactics, logistics, etc. Some of the men aren't used to being counseled by an officer (ie [redacted])

46. 6/20-21. [redacted] part of my platoon then returned to 81s as the Platoon Commander after complaining to [redacted]

47 May and June. [redacted] checked the lines every night, at different times, walking out with the Sergeant of the Guard. I think I was the only Officer or SNCO who does this, since [redacted] thanked me for doing it and I never saw anyone else do it.

48 6/23. Working on CMR with [redacted] and the same three (the last time there were four) men were captured four times in an eight hour period in the Weapons' Company ASP. [redacted] felt concerned for the safety of the Weapons' Company Marines guarding the cache, along with the integrity of the Weapons stock of ammo. The Iraqis refused to leave, and the police would only release the men after a couple of minutes; consequently, on the fourth time, I picked the most humane manner to force the men to return to their homes and to deter them from future forays into the ASP—by stripping them of their outer clothing like Marines did to POWs in World War II and Korea.

49 6/24. [redacted] led a QRF to search several buildings in a bad part of town where HET said shooting occurred.

- A. Led platoon sized element (CAAT and 81s)
- B. Cordoned and searched two separate apartment buildings.
- C. [redacted] coordinated the Assault (Search), Support and Security Elements while moving through tight urban terrain.
- D. [redacted] had some morphine stolen, tried to pursue thieves, but lost them.
- E. Crowd of Iraqis got agitated, fired a warning shot to disburse.

50 About 6/25-26 Missile Shoot in Nasariyah.

- A. [redacted] go as an observer, since [redacted] never saw TOWs or Javelins fired before.
- B. [redacted] watch [redacted] brief his guys before leaving for Nasariyah, then give a quick thumbnail of the op.
- C. [redacted] and [redacted] Coord with 2/25 Weps in Nasariyah.
- D. 2/25 fires around 10 Tows and 4 Javs: we do 4 and 4 (one of the Javs was a

dad).

E. As per [redacted] statement, the range OIC from 2/25 coordinated the extra firing with division.

E. The movement to Nasariyah, to and from the range, and back from Nasariyah (during a riot) was nicely done.

51 6/27 Walked with [redacted] patrol as an observer. Vehicle tries to speed through patrol—we stop it and search.

52 Platoon started to go to [redacted] in late June (6/25 first?) to escort fuel trucks.

A. [redacted] observed a brief on the night of the 24th with [redacted] to their NCOs, to make sure everything looked good. It did!

53. Late June. [redacted] decided to have the CAAT Team Sergeants start a log of explosions at the ASP

54. 6/28 [redacted], and a couple intel guys went to a small village out of town to talk to some sources. We shared a meal with the sources (about forty people), talked, listened, and learned about the local situation and customs.

55 6/28-29 Vehicle incident. It is the BN's first checkpoint: DC go to observe/lead [redacted] is the patrol leader).

56 7/1 [redacted] go to Al Hayy with [redacted] to check on CAAT 1. They are doing well—[redacted] has good things to say about them.

A. [redacted] talked to [redacted] about concerns with ASP

57. 7/1 Lots of shooting that night. [redacted] grab the CAAT and 81s QRF and we are ready to go out and get them. The QRF is stood down, since [redacted] doesn't think that anybody is shooting at us; yet, there was a ton of shooting in our general direction. [redacted] stands down the 81s, but doesn't tell me anything).

A. [redacted] began having some vehicles standing by in case the foot patrols ran into trouble in late June. A Sgt monitored the radios.

B. [redacted] that night about concerns with the large numbers of explosions at the ASP

57. 7/2 See [redacted] about the ASP East.

58 7/2 Standby to lead the QRF in case of problems.

59. 7/3 Relieved—worst day of my life.

60. 7/3-19 Work in the 2 shop with [REDACTED]

- A. Wrote intell reports
- B. Attended the intel meeting
- C. Met with local Shiite party members
- D. Met several times with local Iraqi chiefs to discuss issues.
- E. Tried to make sense out of a flood of intel from higher, so it can be used by the line units.
- F. Coord with Spec War, Sig Int, Mps, Line Cos, and local Iraqis for ops.

61. 7/17-8/3 Work with [REDACTED] as FPS XO

- A. Train about 185 men in first class.
- B. Train about 150 men in second class
- C. Coord with Iraqi NCOs and SNCOs who teach the class
- D. Buy supplies from local (Iraqi) vendors
- E. Coord with interpreters.
- F. Began learning Arabic from John the Interpreter.
- G. PTed with John the interpreter.
- H. Ate meals with Iraqis.
- DC. Demonstrated the obstacle course.
- J. Checked the ASFs at night, with [REDACTED] to make sure the troops were doing

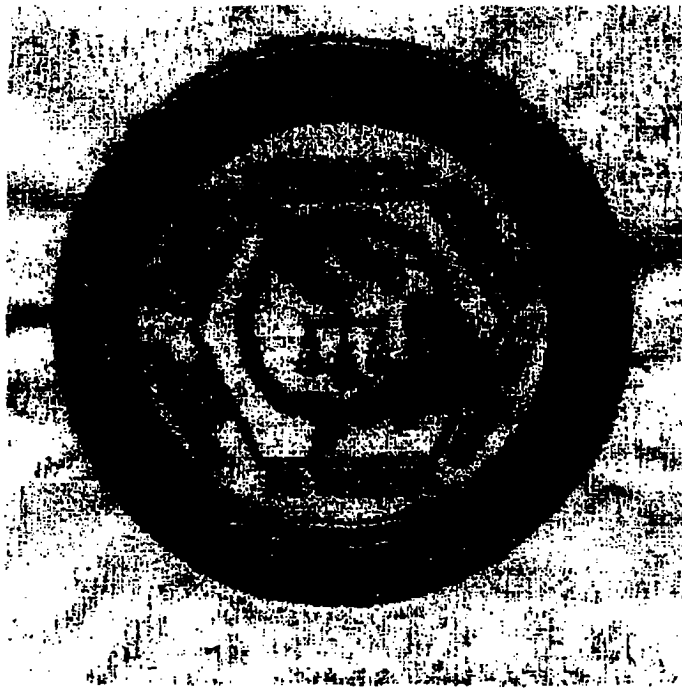
OK

K. Was out at night checking the men when Uday and Qusay were killed.
Everyone in town started shooting and blowing stuff up. Our vehicles almost got hit a few times.

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

B



UNITED STATES MARINE CORPS

1st Marine Division (Rein)
Camp Babylon, Iraq
UIC 36702
FPO AP 96426-9702

IN REPLY REFER TO:
5800
17/jal
26 Jul 03

THIRD ENDORSEMENT on (b)(7)(C) ltr 5800 MPT dtd 22 Jul 03

From: Commanding General, 1st Marine Division (Rein)
To: Commanding Officer, (b)(7)(C)

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE
TREATMENT OF IRAQI DETAINEES BY (b)(7)(C)
(b)(6) - SSN 70602 USMCR ON OR ABOUT 14 JUNE 2003 AND
29 JUNE 2003 AT AL KUT, IRAQ

Encl: (24) (b)(7)(C) ltr DWC:dwc of 16 Jun 2003

1. Readdressed and returned for action consistent with the investigating officer's recommendations, as modified and endorsed by the Commanding Officer. The subject line has been modified to accurately reflect the location of the incidents.
2. Enclosure (24) contains comments on a previous investigation into allegations of detainee mistreatment and the wrongful disposition of detainee property. Those comments addressed the recommendations contained in (b)(7)(C) 7 June 2003 investigation. Recommendations #1 and #2 specifically called for the battalion's assigned Army Military Policemen to train the Marines on the proper handling procedures for enemy prisoners of war, detainees, and civilian internees, and to incorporate those procedures into the battalion's Standing Operating Procedures (SOPs). (b)(7)(C) fourth recommendation stated that the battalion should "develop SOPs for handling confiscated monies and weapons, with emphasis on providing receipts, chain of custody, record of confiscation and disposition of property received". Enclosure (24) indicates that recommendations #1 and #2 were completed by 16 June 2003, and that the recommendations regarding property disposition were developed and pending formalization into the battalion's SOP. Presumably that information was disseminated to (b)(7)(C) Marines prior to the 29 June incident.

Subj: **COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE
TREATMENT OF IRAQI DETAINEES BY (b)(7)(C)**
**/0602 USMCR ON OR ABOUT 14 JUNE 2003 AND
29 JUNE 2003 AT AL KUT, IRAQ**

3. In light of the corrective actions cited in enclosure (24), the conduct described in (b)(7)(C) investigation is reprehensible and contradicts the 1st Marine Division's efforts to win the hearts and minds of the Iraqi people. (b)(7)(C) actions affected more than just the Iraqi men he detained and humiliated, his actions negatively influenced the Marines under his supervision and may have caused unnecessary friction in the Al Kut community. Those who witnessed and participated in the detention, search, and burning of the Iraqis' belongings, under (b)(7)(C) orders, were given a terrible example of detainee handling procedures. Strong remedial measures must be implemented to ensure that the Marines understand the proper way to treat detained persons.

4. I concur with the findings, opinions, and recommendations of the investigating officer as modified and endorsed. The investigation is returned, so that you may pursue the administrative or judicial actions that you deem appropriate.

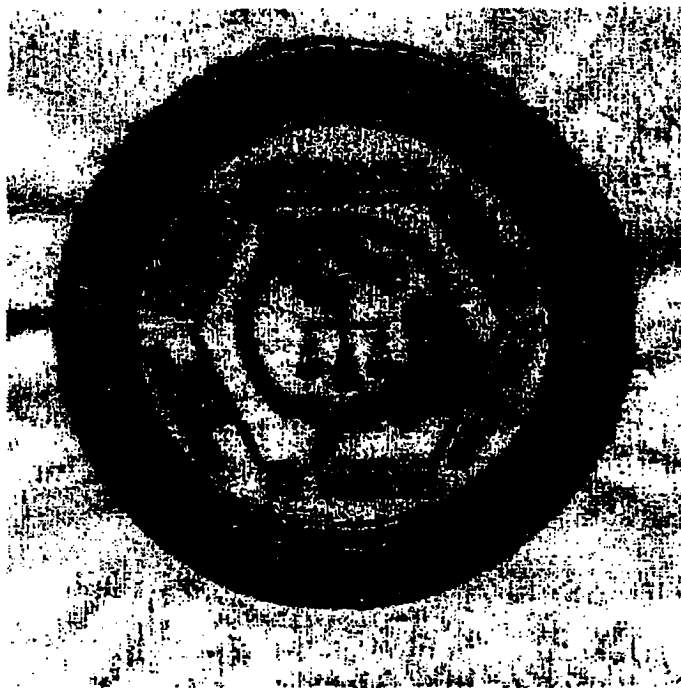
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SJA

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

C



UNITED STATES MARINE CORPS

(b)(7)(C)

1st Marine Division, FMF
Al Kut, Iraq

5800
SJA
23 JUL 03

SECOND ENDORSEMENT ON (b)(7)(C) LTR 5800 MPT OF 22 JULY 2003

From: Commanding Officer, (b)(7)(C)
To: Commanding General, 1st Marine Division

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INNAPPROPRIATE TREATMENT OF
IRAQI DETAINEES BY (b)(7)(C) (b)(6) SSN 0602 USMCR ON OR
ABOUT 14 JUNE AND 29 JUNE 2003

1. Forwarded with the following opinions and recommendations.
2. After reviewing the original correspondence and the SJA endorsement, I concur with the investigation. I also concur with the SJA opinion that recommendation (4) of the original correspondence has already been completed.
3. In the matter of the money referenced in Findings of Fact Nos. 11-13 and Paragraph (3) of the SJA endorsement, it is my opinion that an inquiry or investigation is not necessary. The amount of currency taken from the detainees is immaterial and (b)(7)(C) should be charged with violations of Article 92 of the UCMJ (2000 Ed.) for willful disobedience of references (1) and (2).
4. I concur with recommendations (1), (2) and (5) of the Investigation.
5. I concur with the SJA's recommendation in Paragraph (8) of the First Endorsement.
6. As for forum for handling these violations, I recommend:
 - a. (b)(7)(C) be charged as indicated above at Division Office Hours, followed by administrative separation proceedings per SECNAVINST 1920.6B; and
 - b. (b)(7)(C) be charged as indicated above at Battalion Office Hours.

(b)(7)(C)

DOD JUNE

1946

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT

D



UNITED STATES MARINE CORPS

(b)(7)(C)

1st Marine Division, FMF
Al Kut, Iraq

5800
SJA
22 JUL 03

FIRST ENDORSEMENT ON (b)(7)(C) LTR 5800 MPT OF 22 JULY 2003

From: Staff Judge Advocate, (b)(7)(C)
To: Commanding Officer, (b)(7)(C)

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INNAPPROPRIATE TREATMENT OF
IRAQI DETAINEES BY (b)(7)(C) /0602 USMCR ON OR
ABOUT 14 JUNE AND 29 JUNE 2003

1. Forwarded with the following recommendations.

2. After reviewing the original correspondence, I concur with the investigation. However, I disagree with recommendation (4). This recommendation has already been accomplished during Division mandated ROE refresher training. All Soldiers, Sailors and Marines of (b)(7)(C) were instructed in prisoner/detainee handling procedures, as well as instruction that company level authorization is required to confiscate anything, and a receipt must be provided to the owner. The undersigned officer personally conducted this training with all units between 2 July 2003 and 5 July 2003.

*Discour took place
23 June*

3. Further investigation may be required into the money referenced in findings of fact Nos. 11 - 13. Those findings of fact indicate that (b)(7)(C) ordered (b)(7)(C) to confiscate an unknown amount of money. The findings of fact further indicate that at least some of this unknown quantity of money was turned over to (b)(7)(C). The investigating officer has not resolved the issue of how much money was confiscated and what happened to the money. As there is no evidence the Marines of (b)(7)(C) obtained any personal information on the Iraqi males, it is quite likely that the order was given by (b)(7)(C) to permanently deprive these men of the money. If so, (b)(7)(C) is not only a violation of references (1) and (2), but also a violation of Article 128 of the UCMJ (2000 Ed.). Further investigation into the matter of the money may be necessary to resolve whether (b)(7)(C) should be charged with violation of Article 128. The investigation does not have enough information to even determine if the amount of money was significant enough to warrant the effort of further investigation.

4. Regarding the incident involving the release of detainees referenced in Finding of Fact No. 7, I recommend an additional finding of fact reflecting the approximate point of release, 5-3 miles south of the ASP, is in a very remote area of desert. This fact is based upon a map study of reference (3) and is also common knowledge to almost all Marines in (b)(7)(C) including the undersigned, who have been to the ASP.

5. The investigating officer did not indicate how reference (1) was violated. However, examination of Paragraph 1-5 of reference (1) reveals that all detainees will be given humanitarian care from "... the moment they fall into the hands of U.S. Forces until final release or repatriation." Furthermore, the aforementioned reference clearly states that inhumane treatment "is prohibited and is not justified by the stress of combat or deep provocation." Under reference (1) inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice." Paragraph 1-5 of reference (1) further provides that collective punishments and cruel and degrading treatment are prohibited. Finally, Paragraph 1-5 of

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE TREATMENT OF
IRAQI DETAINEES BY [REDACTED] 0602 USMCR ON OR
ABOUT 14 JUNE AND 29 JUNE 2003

reference (1) states, "All persons will be respected as human beings. They will be protected against all acts of . . . insults, public curiosity, . . . and reprisals of any kind."

6. The two incidents of 14 and 29 June 2003 are significant due to the language of reference (1) and (2). Both the Marine Corps order and the Geneva Convention highlight the prohibition against humiliating treatment of detainees. Another finding of fact that probably should be added to the investigation is the fact that culturally, the Iraqis are far more sensitive to being stripped down than Americans. Therefore, being forcibly stripped in public may psychologically be more humiliating to an Iraqi than an American.

7. The incident of 14 June 2003 is significant, because the detainees were abandoned without transportation in the middle of the desert outside of Kut, clearly endangering their safety and welfare.

8. The investigating officer recommended two charges of violation of Article 92 (violation of a lawful general order or regulation) for violating reference (1) during both the 14 June 2003 and 29 June incidents. I recommend two additional charges of violation of Article 133 (conduct unbecoming) and two charges of Article 92 (dereliction of duty), one for each incident.

9. The investigating officer failed to recommend a forum for handling the above violations of the UCMJ. From my experience, I believe that non-punitive administrative action or counseling is insufficient for these offenses. A more palatable forum is NJP followed by administrative separation processing through a Board of Inquiry. Also, as defined in reference (1) this matter is severe. Furthermore, the alleged conduct is a pattern of abuse of detainees in direct contravention to the Division Commanders policy of "No Better Friend, no worse enemy" as well as the law of war. SNO's conduct of publicly humiliating these Iraqis clearly jeopardized the Battalion's mission and the Battalion's standing with the public in Kut. Although there is no evidence of fallout from SNO's actions, these acts could have been a "tipping point" resulting in hostility against coalition forces. Furthermore, discomfort with being ordered to perform these actions and an inability to countermand the order of a superior commissioned officer are running themes in the statements of the sergeants and below. Therefore, Article 32 investigation followed by a general court-martial is also a palatable forum for this matter. An Article 32 investigation could provide the Commander with another neutral opinion to analyze the possible forums for this matter.

10. In any event, I recommend NJP for the charges referenced in Paragraph (8), above, followed administrative separation processing under SECNAVINST 1920.6B for:

- a. Substandard performance of duty as evidenced by failure to demonstrate acceptable qualities of leadership required of the members grade;
- b. Substandard performance of duty as evidenced by failure to properly discharge duties expected of officers of the members grade and experience;
- c. Misconduct or professional dereliction which is unbecoming an officer as evidenced by commission of a serious offense, to wit: Articles 92 and 133 of the UCMJ (2000 Ed.).

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT E



UNITED STATES MARINE CORPS
(b)(7)(C)
1ST MARINE DIVISION, 1ST MAF, USMC
VIC 42410
FTO AD 36426-2410

IN REPLY REFER TO
5800
(b)(7)(C)
22 Jul 2003

From: (b)(7)(C) CMC SSN 9 USMC
To: Commanding Officer, (b)(7)(C)

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE TREATMENT OF IRAQI
DETAINEEs BY (b)(7)(C) (b)(3) SSN 70602 USMCR ON OR
ABOUT 14 JUNE 2003 AND 29 JUNE 2003

Encl: (1) Convening Order
(2) Statement of (b)(7)(C) USMCR
(3) Statement of (b)(7)(C) USMCR
(4) Statement of (b)(7)(C) USMCR
(5) Statement of (b)(7)(C) USMCR
(6) Statement of (b)(7)(C) USMCR
(7) Statement of (b)(7)(C) USMCR
(8) Statement of (b)(7)(C) USNR
(9) Statement of (b)(7)(C) USMCR
(10) Statement of (b)(7)(C) USMCR
(11) Statement of (b)(7)(C) USMCR
(12) Statement of (b)(7)(C) USMCR
(13) Statement of (b)(7)(C) USMCR
(14) Statement of (b)(7)(C) USMCR
(15) Statement of (b)(7)(C) USMCR
(16) Statement of (b)(7)(C) USMCR
(17) Statement of (b)(7)(C) USMCR
(18) Statement of (b)(7)(C) USMCR
(19) Statement of (b)(7)(C) USMCR
(20) Statement of (b)(7)(C) USMCR
(21) Statement of (b)(7)(C) USMCR
(22) Statement of (b)(7)(C) USMCR
(23) Statement of (b)(7)(C) USNR

Ref: (1) MCO 3461.1
(2) Convention (IV) Relative to the Protection of Civilian Persons in
Time of War
(3) Map Series K643 Sheet #5155

Preliminary Statement

1. This investigation concerns the possible inappropriate treatment of Iraqi detainees at the orders of (b)(7)(C). All reasonable and available information has been gathered and placed in this report. All directives of the convening authority have been met. During the investigation I consulted with (b)(7)(C) as the Staff Judge Advocate. Requests for extensions were made verbally to (b)(7)(C) and were granted. No statement was made by (b)(7)(C) as he chose not to waive his right to remain silent. All personal information was obtained from military records and/or in compliance with the privacy act.

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE TREATMENT OF IRAQI
DETAINEES BY [REDACTED] SSN [REDACTED] 0602 USMCR ON OR
ABOUT 14 JUNE 2003 AND 29 JUNE 2003

Findings of Fact

1. [REDACTED] (b)(7)(C) is assigned to Al Kut, Iraq. [encl (7)]
2. [REDACTED] (b)(7)(C) is assigned the task of guarding an ammunition supply point in Al Kut, Iraq vicinity grid NB 720170. [encl (2)]
3. During the period of 1 June 2003 to 30 June 2003 [REDACTED] (b)(7)(C) was assigned to [REDACTED] (b)(7)(C). [encl (2)]
4. [REDACTED] (b)(7)(C) and his squad were guarding the ammunition supply point vicinity grid NB 720170 on 23 June 2003 from 0730 until 1700. [encl (4, 11)]
5. [REDACTED] (b)(7)(C) detained three Iraqi men at approximately 1100 on 23 June 2003. [encl (4, 10, 12, 13,)]
6. [REDACTED] (b)(7)(C) turned three Iraqi detainees over to [REDACTED] (b)(7)(C) at the ammunition supply point. [encl (4, 6, 12, 13)]
7. [REDACTED] (b)(7)(C) ordered the release of 3 Iraqi detainees after having them driven approximately 2 or 3 miles from the ammunition supply point. [encl (6)]
8. At approximately 1400 on 23 June, 2003 [REDACTED] (b)(7)(C) detained 3 Iraqi men that he and his squad had detained earlier that same day and an additional Iraqi man. [encl (4, 10, 11, 12, 13, 14, 15)]
9. [REDACTED] (b)(7)(C) was ordered to bring the four Iraqi detainees to the Al Kut police station after being relieved at the ammunition supply point. [encl (4, 7, 11, 12, 13)]
10. [REDACTED] (b)(7)(C) brought 4 Iraqi detainees to the [REDACTED] (b)(7)(C) position. [encl (4, 9, 10, 11, 12, 13, 14)]
11. [REDACTED] (b)(7)(C) ordered [REDACTED] (b)(7)(C) to search for and confiscate any money on these 4 detainees. [encl (4, 8, 9, 10, 11, 13)]
12. An unknown amount of money was confiscated by [REDACTED] (b)(7)(C) and the Marines in his squad. [encl (4, 9, 10, 11, 12, 13)]
13. An unknown amount of money was turned over to [REDACTED] (b)(7)(C). [encl (10, 11, 13)]
14. An unknown amount of money was returned to at least one of the Iraqi detainees by [REDACTED] (b)(7)(C). [encl (4, 9, 12)]
15. [REDACTED] (b)(7)(C) was ordered to release the Iraqi detainees at [REDACTED] (b)(7)(C) front gate. [encl (4, 8, 13)]
16. [REDACTED] (b)(7)(C) ordered the 4 Iraqi detainees stripped before they were to be released. [encl (3, 4, 5, 8, 9, 10, 11, 13, 15)]
17. The 4 Iraqi detainees were stripped to their underwear and released on foot from the [REDACTED] (b)(7)(C) position. [encl (4, 6, 8, 9, 10, 11, 12, 13, 14, 15)]

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE TREATMENT OF IRAQI
DETAINEES BY (b)(7)(C) 0602 USMCR ON OR
ABOUT 14 JUNE 2003 AND 29 JUNE 2003

18. On 28 June 2003 (b)(7)(C) conducted a vehicle checkpoint on Highway 7. [encl (16)]
19. At approximately 2310 an Iraqi truck was shot at in an attempt to stop it as it entered the vehicle check point. [encl (16, 17, 18, 19, 20, 21, 22, 23)]
20. 2 Iraqi men were treated for wounds and detained after the truck stopped. [encl (16, 17, 18, 19, 20, 21, 22, 23)]
21. (b)(7)(C) and Army Military Police were notified. [encl (16, 17, 20, 22)]
22. An ambulance was called to evacuate the Iraqi detainees. [encl (16, 17, 18, 19, 20, 21, 22, 23)]
23. 500,000 dinar was found when the truck was searched and turned over to the MP's. [encl (16, 17, 23)]
24. (b)(7)(C) and the Marines at the vehicle checkpoint were ordered to provide security for the truck until relieved. [encl (16, 18)]
25. On the morning of 29 June 2003 (b)(7)(C) ordered the truck searched again and all personal affects confiscated. [encl (16, 17, 18)]
26. Papers found in the Iraqi truck were transported to (b)(7)(C) position. [encl (16, 17, 18, 20, 22)]
27. (b)(7)(C) ordered other personal items found in the Iraqi truck to be burned. [encl (16, 17, 18)]
28. Items found in the Iraqi truck were burned by Marines beside Highway 7. [encl (16, 17, 18, 20, 23)]

Opinions

1. (b)(7)(C) was in violation of Marine Corps Order 3461.1 and Part I, Article 3 of the Geneva Convention when he ordered that the detainees be stripped before being released on 23 June 2003. [FF (16, 17)]
2. (b)(7)(C) was in violation of Marine Corps Order 3461.1 when he ordered Marines to confiscate money from the detainees before their release on 23 June 2003. [FF (11, 13)]
3. (b)(7)(C) was in violation of Marine Corps Order 3461.1 when he ordered the burning of detainees personal items on 29 June 2003. [FF (27, 28)]
4. Several Staff Noncommissioned Officers and Noncommissioned Officers failed to question the orders of (b)(7)(C) either to strip the detainees on 23 June 2003 or to burn civilians property on 29 June 2003. [FF (17, 28)]

Subj: COMMAND INVESTIGATION OF INCIDENTS OF INAPPROPRIATE TREATMENT OF IRAQI
DETAINEES BY (b)(7)(C) SSN 0604 USMCR ON OR
ABOUT 14 JUNE 2003 AND 29 JUNE 2003

Recommendations

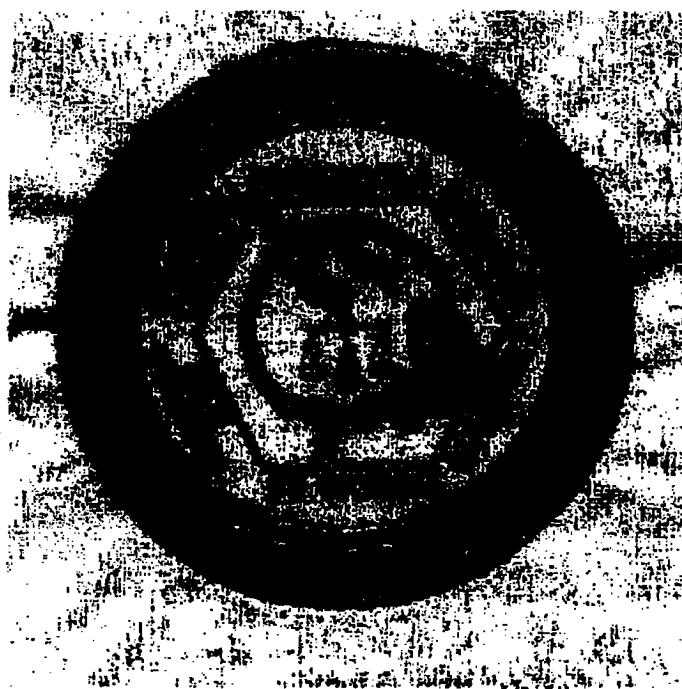
1. (b)(7)(C) should be charged for violating Marine Corps Order 3461.1 for his orders on 23 June 2003 to have Iraqi civilians stripped before their release from custody.
2. (b)(7)(C) should be charged for violation of Marine Corps Order 3461.1 for his orders on 29 June 2003 to burn civilians property.
3. (b)(7)(C) should be counseled on the rights of civilian detainees for his orders to confiscate money from Iraqi detainees on 23 June 2003.
4. Marines and sailors assigned to (b)(7)(C) should be instructed on the proper care and handling of civilian detainees while in Iraq.
5. Instruct the Marines and sailors of (b)(7)(C) (b)(7)(C) (b)(7)(C) of their obligation to tactfully question orders that appear to be unlawful under the Uniform Code of Military Justice.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT F

DOD JUNE

1955

Rights Adviseement Forms

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity: (b)(7)(C)
Unit: (b)(7)(C) Telephone number: _____

I have been advised that I may be suspected of the offense(s)
of: No charges pending at this time

and that:

☐ I have the right to remain silent.

Any statements I do make may be used as evidence against me in trial by court-martial.

I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.

I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.

I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:

I expressly desire to waive my right to remain silent.

I expressly desire to make a statement.

I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.

I expressly do not desire to have such a lawyer present with me during this interview.

This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

(b)(7)(C)

10 July 2003

(Witness's signature and date)

(b)(7)(C)

07/10/03

(Member's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

I was involved in the instances of detention of Iraqi citizens. One incident involved my squad along with one section of (b)(7)(C) led by (b)(7)(C). We detained (4) individuals on the road N/W of (b)(7)(C). They were witnessed digging around power cables and had a large length of power cable hidden in some bushes. We detained the suspects and waited in a concealed position for about 2 hours in the hopes that their accomplices returned.

A second incident involving detainees, occurred when I was Sergeant of the bush. (b)(7)(C) squad returned from the ASP (Fieldward) with about 4 detainees in the back of a high back. I assisted (b)(7)(C) in removing the individuals and searching them. We found several rolls of dinars, approx 30 bills. At that time the

(b)(7)(C) 07/10/03
(Signature and Date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

determination to release them was made. (b)(7)(C)

ordered that we confiscate their money. Myself and
(b)(7)(C) and several others when I can recall began
to move them toward the gate. (b)(7)(C) was standing
on the steps and ordered us to "Strip them, take their
clothes." (b)(7)(C) and I discussed this and stripped
them to the waist, I utilized one man's shirt to immobilize
his arms. I left his arm in the sleeves of his button down
shirt and pulled the rest down. One individual removed
his robe and was wearing sweat pants underneath. All
the men had pants or shorts and shoes except for
one individual who showed up barefoot. I believe I
witnessed (b)(7)(C) return the money to one individual
over the wire.

(b)(7)(C)

(Signature and Date)

07/10/03

Addendum: When the money was confiscated I handed the
rolls of bills that I found to (b)(7)(C)

when (b)(7)(C) gave the order to "Strip them, take their
clothes." (b)(7)(C) replied with "That's your call sir."

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

6

DOD JUNE

1959

Rights Advisement Forms

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity: (b)(7)(C)
Unit: (b)(7)(C) Telephone number: _____

I have been advised that I may be suspected of the offense(s) of: _____

and that:

I have the right to remain silent.
Any statements I do make may be used as evidence against me in trial by court-martial.
I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:

I expressly desire to waive my right to remain silent.
I expressly desire to make a statement.
I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.

I expressly do not desire to have such a lawyer present with me during this interview.

This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

(b)(7)(C) 5/1/2002 (b)(7)(C) 030709
(Witness's signature and date) (Member's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

On 23 JUNE AROUND 1730 HOURS APPROXIMATELY, I WALKED OUT ON THE
FRONT PORCH OF THE (b)(7)(C) AS (b)(7)(C) SQUAD WAS
RETURNING FROM THE MSP. I NOTICED 3 IRAQIS IN THE BACK OF THE
VEHICLE. AFTER THE SQUAD STOPPED UP, I COULD SEE THEY WERE CLOTTED
(b)(7)(C) ASKED (b)(7)(C) WHAT HE WAS DOING I HEARD
(b)(7)(C) SAY HE WAS TOLD TO TAKE THE DETAINEES TO THE POLICE
STATION. I HEARD (b)(7)(C) TELL HIM NO, THAT THERE WAS A (DIVISION,
BATTALION, MEF - NOT SURE WHICH) ORDER TO NO LONGER DELIVER PRISONERS
TO THE POLICE. HE TOLD (b)(7)(C) TO TAKE ALL THEIR POSSESSIONS,
EMPHASIZING MONEY, AND ~~SEND~~ THEIR ESCORT THEM OUT THE GATE.
(b)(7)(C) WAS OUTSIDE SEEING THE SCENARIO. HE
WALKED BACK IN & THEN RAN OUT. IT WAS THEN HE ADDED TO
REMOVE THE IRAQI'S CLOTHING.

THE MEN WERE STRIPPED TO THEIR UNDERWEAR & LED OUT
THE GATE. THAT'S WHEN I CAME INSIDE.

(b)(7)(C)

(Signature and Date)

030708

DOD JUNE

1961

Rights Advisement Forms

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity: (b)(7)(C)
Unit: (b)(7)(C) Telephone number: _____

I have been advised that I may be suspected of the offense(s)
of: No charges pending at this time

and that:

I have the right to remain silent.
Any statements I do make may be used as evidence against me in trial by court-martial.
I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
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I have the right to terminate this interview at any time.

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I expressly desire to waive my right to remain silent.
I expressly desire to make a statement.
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I expressly do not desire to have such a lawyer present with me during this interview.

This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

(b)(7)(C)

(Witness's signature and date)

(b)(7)(C)

(Member's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

I, (b)(7)(C) was at the "Fairground" ASP about 14, 2 weeks ago when our squad apprehended a group of 4 Iraqis in the process of stealing military-sized brass from the back side of our ASP. We searched and zip-tied them, and brought them back to the front of our position. After radioing back to (b)(7)(C) we were instructed to hold the detainees there until 17:00, or about 1 hour, when our relief would arrive. When the next squad relieved us, we loaded the detainees in with us, and drove them back to (b)(7)(C). The Iraqis' vehicle, we left at the ASP, but we gave the keys back to one of the detainees.

When we returned to (b)(7)(C), lots of people came out to see the prisoners. The original word received was that a few members of our squad would drive them to the

(b)(7)(C)

(Signature and Date)

July 9th 03

police station. Someone (I'm not sure who) canceled this & we knew they would be turned loose in a few hours, and we'd just catch them again. So it was decided to let them go from (b)(7)(C). At that point, (b)(7)(C) said to take their money, so we got their wallets, gave the money to (b)(7)(C) and returned the empty wallets. As we were bringing them to the front gate, (b)(7)(C) told us to take their clothes off. The idea was that since we had to let them go, we could at least embarrass them a little.

3
1

So after we (arched them to the (it gate, we took
their shirts and pants. We left them with shoes, underwear
and T-shirts. Then we turned them loose, and they walk
away. The Iraqis' clothes were left at the front gate.

It should be noted that we haven't caught anyone
at the ASP since

(b)(7)(C)

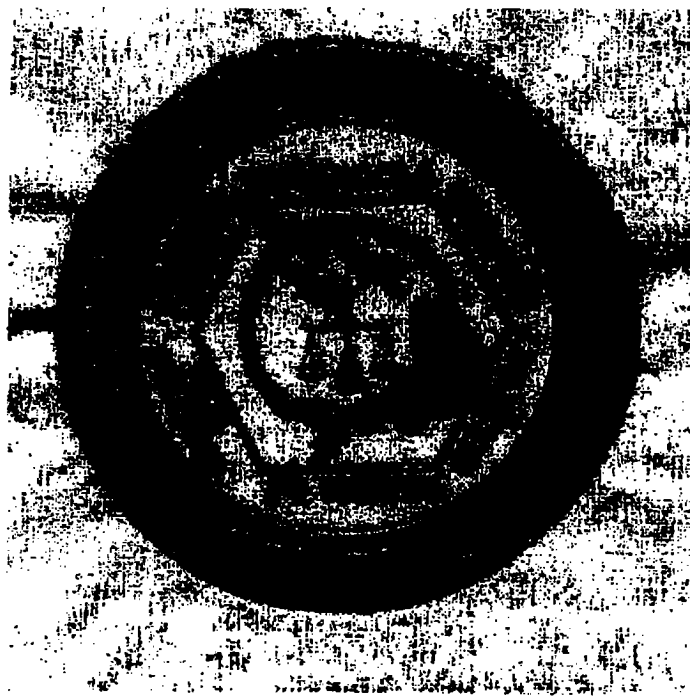
July 9th, 2003

(2)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT I

DOD JUNE

1965

Rights Advise ment Forms

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity: (b)(7)(C)
Unit: (b)(7)(C) Telephone number: _____

I have been advised that I may be suspected of the offense(s)
of: _____

and that:

- ☐ I have the right to remain silent.
- ☐ Any statements I do make may be used as evidence against me in trial by court-martial.
- ☐ I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
- ☐ I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- ☐ I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

☐ I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:

- ☐ I expressly desire to waive my right to remain silent.
- ☐ I expressly desire to make a statement.
- ☐ I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.

☐ I expressly do not desire to have such a lawyer present with me during this interview.

☐ This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

(b)(7)(C)

8 July 2003

(Witness's signature and date)

(b)(7)(C)

(Member's signature and date)

Statement of (b)(7)(C) Squad Patrol Leader
Re: ASP Detainees of June, 23, 2003

The morning of June, 23, 2003 (b)(7)(C) relieved (b)(7)(C) squad at Field Guard ASP at approx. 0700 hrs. As I can best recall at around 0900 one of my Marines spotted two Iraqis inside the ASP compound. I had three or four of my Marines including myself load into our highback hummer to investigate. We drove about 600 meters around the western Side of the perimeter, dismounted the hummer and walked to the top of the berm. There we saw two Iraqis inside the berm. We motioned for them to walk to us. When the two men came to us I explained to them that they were not allowed in the compound. I communicated with them by drawing a diagram in the sand and using another Marine to simulate hand cuffing and going to jail if we caught them again. They understood and walked North with some women and some cattle. At this time we drove to the North of the ASP and noticed Women and children with some donkeys and explained to them not to go into the compound. We then returned to our post at the south side of the compound. About two hours later my Marine on watch spotted some Iraqis on the compound berm. I assembled a react team to investigate and drove to the area where the Iraqis were spotted. We saw three Iraqis in an area just outside the berm of the compound, they were staging brass tank ammunition cartridges. Two of the men were the ones we had previously warned about going into the compound. I instructed my Marines to detain the Iraqis and place them in the back of the hummer. We flex cuffed the men's wrists and ankles. We then drove them back to our post where I saw that (b)(7)(C) and another Marine. I explained to (b)(7)(C) our situation with the detainees and he instructed us to place the detainees in the back of his hummer. The (b)(7)(C) Drove off with the detainees in route to what I assumed would be the Police Station. I then called (b)(7)(C) to notify them of the incident. At around 1400 my Marine on watch noticed a blue flat bed truck approaching our position. I watched the truck make a left turn off the main road and into the field about 700 meters away from us. The truck drove around to the west of our compound. I waited about twenty minutes or so and assembled another react team to go investigate. As we rounded the berm I noticed Four Iraqis picking up staged brass and loading it into the truck. When the men saw us they got back into the truck and were trying to flee. My Marines stopped the truck and motioned for the men to exit the truck. As I approached the men I noticed that three of them were the same men we had just detained a few hours before. I ordered my Marines to detain the men and place them in the back of our hummer. I had one of the detainees remain with myself and a few of my Marines while I sent the remaining detainees back to our post. I had this detainee pick up all the brass in the area and load it on the blue truck. After the detainee picked up all the brass we drove him and the blue truck back to our post. I had the detainee pull off all the brass in the truck and stage in an area where my Marines could keep an eye on it. I had my Marines put the detainees in the shade by the guard shack and gave all the detainees water. I radioed my situation in to (b)(7)(C) and was ordered by (b)(7)(C) to make sure the owner of the truck retained possession of his keys and to drive the detainees to the Police Station after I was relieved. After talking to (b)(7)(C) one of my Marines told me that one of the detainees flex cuffs were too tight. I personally inspected each one of the

DOD JUNE

1967

detainees cuffs and determined that all of them needed to be cut and that new ones needed to be placed on the detainees in a loose but secured manner. My Marines followed my instructions and even used (b)(7)(C) medical cutters to ensure the safety of the detainees. Our squad was relieved around 1700 hrs. by (b)(7)(C) Squad. My Marines carefully loaded the detainees into our hummer and drove back to (b)(7)(C). I drove to (b)(7)(C) first to drop off half of my Marines so they would have an opportunity to eat hot chow. As I was getting ready to pull out to bring the detainees to the Police Station when I was met by (b)(7)(C) and (b)(7)(C). The (b)(7)(C) Wasn't very happy with the detainees being inside our compound. He said that anytime we have detainees we were not to bring them back to (b)(7)(C). I informed him that we were going to bring them to the Police Station. At this time we were instructed by (b)(7)(C) not to bring the detainees to the Police Station but to release them at the gate. At this time I instructed my Marines to cut the flex cuffs off of the detainees and bring them to the gate. I said to (b)(7)(C) (b)(7)(C) and to (b)(7)(C) that the Iraqis were just going to walk out our gate and grab a taxi and that they would probably show up at the ASP again knowing that there would be no consequences to their actions. (b)(7)(C) told me to take their money so they would not be able to take a taxi. I confiscated about one thousand Dinars off of one Iraqi and then My Marines walked the detainees to the gate. As we were walking to the gate (b)(7)(C) ordered us to take the detainees cloths off in order to teach them a lesson. My Marines removed the detainees cloths leaving them in their underwear. I made sure that the detainee that owned the truck got his keys back and returned his money to him. The detainees walked through the gate and into the street. I then instructed my Marines to eat some chow.

(b)(7)(C)

STATEMENT OF THE KNOWLEDGE REGARDING ACTIONS INVOLVING IRAQI
DETAINEES ON OR ABOUT 23 JUNE 2003.

On or about 30 June 2003, (b)(7)(C) informed me, in a bragging manner, that he had ordered Iraqi detainees that had been brought to (b)(7)(C) to be stripped to their underwear and escorted out of the front gate. He said that these detainees had been apprehended at the ASP to the north, collocated with the range. I counseled him regarding his poor judgment and that they should've been brought to the police station. After this, I asked (b)(7)(C) if he had knowledge of the incident. He stated that he was there. I also asked him if he advised the (b)(7)(C) that it was illegal and to not do it. (b)(7)(C) said that he did not. I asked (b)(7)(C) if he knew about it and he said that he heard (b)(7)(C) give the order to strip the Iraqi detainees to their underwear and to send them out of the front gate. He also stated that he then went into his room because he didn't want to be involved with the incident. I informed the battalion executive officer of my discovery of the incident on or about 2 July 2003. After making a few more inquiries, it came to my attention that (b)(7)(C) may have some information for me. I asked (b)(7)(C) what he knew of the incident. He stated that (b)(7)(C) ordered the Marines to take the Iraqi detainees' money and possessions. He then stated that (b)(7)(C) ordered the Marines to strip the Iraqi detainees to their underwear and to be released through the front gate. I then informed the battalion commanding officer with the information I had regarding the incident on or about 6 July 2003.

(b)(7)(C)

(b)(7)(C)

1st Marine Division, FMF
Al Kut, Iraq

16 July 2003

From: Commanding Officer

To: (b)(7)(C)

Subj: STATEMENT REGARDING ACTIVITIES OF (b)(7)(C)

1. One of the assigned tasks of (b)(7)(C) is to provide security to an ASP, grid *NB 720 170*.
2. (b)(7)(C) was assigned to (b)(7)(C) as the Platoon commander beginning approximately October 2002, ending approximately 4 July 2003.

(b)(7)(C)

DOD JUNE

1970

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT K

DOD JUNE

1971

Rights Advise ment Forms

ARTICLE 31 RIGHTS

Name: (b)(7)(C) Rank/Rate: (b)(7)(C) Activity: (b)(7)(C)
Unit: (b)(7)(C) Telephone number: _____

I have been advised that I may be suspected of the offense(s)
of: no charges pending at this time

and that:

- ☐ I have the right to remain silent.
- ☐ Any statements I do make may be used as evidence against me in trial by court-martial.
- ☐ I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
- ☐ I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- ☐ I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

☐ I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:

- ☐ I expressly desire to waive my right to remain silent.
- ☐ I expressly desire to make a statement.
- ☐ I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.

☐ I expressly do not desire to have such a lawyer present with me during this interview.

☐ This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

(b)(7)(C) 15 July 2003
(witness's signature and date)

(b)(7)(C) 030713
and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

DURING A VEHICLE CHECKPOINT ONE NIGHT AT
APPROX 2230-2300 A TWO TRAILER TRUCK WAS HEADED
TOWARDS OUR CHECKPOINT. THE FIRST VEHICLE ON THE
CHECKPOINT WAS (b)(7)(C) VEHICLE WHICH
INCLUDED (b)(7)(C) AS THE TRUCK APPROACHED
THE CHECKPOINT, IT BLEW ITS HORN, AND FLASHED ITS
LIGHTS. I HEARD OVER THE ICOM, "HE'S RUNNING IT."
NOT SOON AFTER, I HEAR GUN SHOTS AND SAW
TRACER ROUNDS. BY THEN I WAS MOVING OFF
OF THE ROAD, AND OUT OF ANY POSSIBLE LINE
OF FIRE. AS SOON AS I GOT NEXT TO THE
HMMWV, I HEARD THE SO CAL BEGIN TO FIRE.
I WAS UNAWARE OF WHETHER OR NOT THE TRUCK
PASSENGERS WERE FIRING AT US SO I TOOK COVER.
WITHIN SECONDS, I HEARD (b)(7)(C) TELLING (b)(7)(C)
(b)(7)(C) THE GUNNER, TO "CEASE FIRE." I ALSO BEGAN
TO YELL CEASE FIRE AS WELL, BECAUSE HE COULD NOT
HEAR OVER THE SO CAL. I STEPPED FROM ^(Signature and Date) BEHIND THE
HMMWV TO ASSESS THE SITUATION, AND ^{ON SIDE} (b)(7)(C)
AND I APPROACHED THE VEHICLE AT THE READY.
I HEARD THE DRIVERS SIDE DOOR OPEN, AND TWO
IRAQI MEN LEFT THE VEHICLE AND LAYED DOWN
ON THE GROUND. (b)(7)(C) RAN OVER, AND ORDERED
SOMEONE TO FLEX CUFF THE IRAQI'S. (b)(7)(C)
GRABBED SOME ZIP TIES AND DID JUST THAT. I
WAS THEN TOLD TO GO OVER TO (b)(7)(C)
VEHICLE TO ASSIST WITH ANY VEHICLES THAT
MIGHT COME DOWN THE ROAD. WITHIN 30 MIN,
THE ARMY MP'S SHOWED UP AND WITHIN THE HOUR
AN AMBULANCE HAD TAKEN THE IRAQI'S TO THE
HOSPITAL.

DOD JUNE

1973

PRIOR TO THIS (b)(7)(C) HAD GIVEN MEDICAL
AID TO THE IRAQIS. I DO REMEMBER SEEING
THEM WITH BANDAGES, BUT FROM A DISTANCE.
WE SEARCHED A FEW MORE VEHICLES THAT NIGHT,
BUT STOPPED THAT NOT SOON AFTER 2400. ~~WE~~ I
REMEMBER RADIO TRANSMISSIONS BETWEEN (b)(7)(C)
AND (b)(7)(C) ON WHAT TO DO WITH THE TRUCK, AND
WE WERE TOLD TO GUARD IT. WE STOOD SO
WATCH THAT NIGHT, AND THE NEXT MORNING ABOUT
0600, WE WERE AGAIN TRYING TO FIND OUT WHAT
TO DO WITH THE TRUCK. WE WERE TOLD TO GUARD
IT UNTILL A MOTOR T CREW CAME TO TOW IT.
WE PULLED BACK TO AN OVERWATCH POSITION AT
A COMPOUND NOT FAR AWAY, BUT WITHIN 15-20 MIN
DECIDED IT WAS TO FAR AND PULLED TO A POSITION
AT 100 M DOWN A SIDE ROAD FROM THE VEHICLE.
THE IRAQIS SHOWED UP TO GET THEIR PERSONAL
EFFECTS; BUT WE WERE GIVEN THE ORDER TO SEND
THEM AWAY. ONCE MOTOR T SHOWED UP THEY REALIZED
IT COULD NOT BE TOWED, SO (b)(7)(C) GAVE
THE ORDER TO PLACE ALL PERSONAL ITEMS INTO
A BAG. I WENT INTO THE CAB AND PLACED
SOME CLOTHES, CASSET TAPES, AND OTHER ITEMS IN
A SACK, WHILE SOMEONE ELSE CLEANED OUT THE
GLOVE COMPARTMENT. I ALSO CLEANED OUT THE
STORAGE BINS ON SIDE OF THE TRILERS. I ASKED
WHAT TO DO WITH THE SEAT CUSHIONS IN THE
CAB, AND I WAS TOLD THEY MIGHT HAVE LICE AND
TO PUT THEM IN A PILE. THAT PILE WAS LIT ON
FIRE, AND SOME OF THE CONTENTS OF THE BAG
WERE DUMPED INTO THE FIRE, WE TOOK A STOVE
AND I BELIEVE SOME POPS AND PAPERWORK LEFT IN THE
BAG. WE LEFT THE SCENE AND WENT BACK TO (b)(7)(C)

DOD JUNE

1974

WE AT (b)(7)(C) I TOOK A NAP SINCE I HAD BEEN UP ALL
NIGHT AND WAS WOKEN UP SAYING WE HAD TO GO
BACK TO THE SCENE AND FOR INVESTIGATION, WE
BROUGHT THE PERSONAL EFFECTS WITH US. AT THE
SCENE THE ARMY MP'S WERE ~~WE~~ THERE AND
I THINK THEY TALKED TO (b)(7)(C) WE
WENT BACK TO (b)(7)(C) AND WERE INVESTIGATED BY
(b)(7)(C)

(b)(7)(C)

0307

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT _____

L

REPORT OF (b)(7)(C)
RE: (b)(7)(C) USMCR

Background:

(b)(7)(C)

Education:

(b)(7)(C)

Employment history:

(b)(7)(C)

Arab / American background:

I decided to travel to the United States when I was eighteen year old, and started my studies in the US in (b)(7)(C) learning first English then Engineering. At that time relations between the US and Iraq were relatively positive. I wanted to come to the US to study Engineering because America's Colleges and Universities are world renown and I wanted to have an American diploma that was a prestigious award in Iraq. While I was attending University, I met my future wife and we married soon after my graduation. After we married, I decided to stay and obtain a US Permanent Residence in (b)(7)(C) in (b)(7)(C) then the US citizenship, which I proudly achieved on (b)(7)(C) in (b)(7)(C). The US has been a great country to me as I was able to achieve so much academically, professionally and personally. Despite the fact that I have lived for many years in the US, I have maintained strong ties with my family in Iraq.

My professional career also allowed me to work and live abroad. I lived in Saudi Arabia for almost 5 years, (b)(7)(C) while working as a Project Engineer on (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

While I was working and living in Saudi Arabia, I was able to travel to Iraq to visit my family several times. I currently have 2 brothers and 1 sister all living in Baghdad. My father passed away in 1991 and my mother passed away in 1980. Based upon my upbringing in Iraq and my close family ties with the region, I feel that I have a solid and comprehensive understanding of the Middle Eastern and Iraqi culture.

Factual background re: (b)(7)(C) USMCR:

I am informed that (b)(7)(C) is a graduate of the United States Naval Academy and served on active duty for six years in the United States Marine Corps as a Communications Officer. After fulfilling his initial service obligations, (b)(7)(C) was Honorably Discharged in (b)(7)(C) and worked in the private sector.

As the United States began preparing for military action against Iraq, (b)(7)(C) voluntarily decided to join the Marine Corps Reserves. (b)(7)(C) joined (b)(7)(C) (b)(7)(C) 4th Marine Corps division, out of New Orleans, La. Upon joining (b)(7)(C) (b)(7)(C) was assigned as Platoon Commander, (b)(7)(C) of the (b)(7)(C) Company.

About a month after joining (b)(7)(C) the Battalion was deployed for combat operation in Al-Kut, Iraq. (b)(7)(C) was engaged in operations shortly after the fall of Baghdad, but maintained and continued combat operations in the vicinity of Al-Kut, Iraq. (b)(7)(C) and his platoon had numerous responsibilities ranging from conducting foot patrols, urban patrols, vehicle patrols, facility security and anti-insurgency operations, etc. One mission entailed providing security for two (2) ammunition supply dumps or Ammunition Supply Points (ASPs). Guarding deserted and abandoned Iraqi army facilities took on an important operational role, as a serious concern existed that the large supply of small arms and munitions did not fall into the hands of would be terrorists.

In late June 2003, (b)(7)(C) and his platoon had orders to provide security for two (2) ASPs, which did not have perimeter walls or fences. This made conducting security operations difficult as there was complete access into and out of the ASPs. Due to the power loss situation in most of Iraq, the A/C units that were used to regulate the heat in the ammo bunkers were not working. Artillery rounds and other ordinance were self-detonating within the ASP from the heat and extreme temperature fluctuations. Iraqi civilians were looting the ASP for ordinance to sell, setting off ammo in order to sell the shells and ordinance. In addition to trying to keep local citizenry from stealing materiel from the ASP, it was also the Marines' role to protect those same Iraqis' from going into the ASP and being injured or killed.

Only a small number of Marines were available in order to conduct their security mission. On one day in late June 2003, the Marines captured the same 3 Iraqi men in civilian clothing on four separate occasions within an 8- 10 hour duration, in two different ASPs. On the first two occasions that the Iraqis were captured stealing from an old Iraqi ASP, the Iraqis were brought to the Iraqi police, who simply released the men. On the third capture in the old Iraqi ASP, the detainees were taken from the location, driven to a different location and dropped off. On the fourth occasion that they were captured (this time with an additional accomplice), the same detainees were caught, this time while stealing ordinance from the Battalion ASP, the second ASP. This ASP was used to store coalition ordinance necessary for the combat efforts. On this fourth occasion, the four Iraqi detainees were brought back to the (b)(7)(C) command post (CP). Apparently, the Company had no place to permanently detain the Iraqis and the Iraqi police were no help as demonstrated previously. I should comment that leaving the Iraqis in the hands of the Iraqi police could have resulted in very serious harm coming to the Iraqis. The police under Saddam Hussein were extremely brutal; torture and executions were commonplace under Saddam Hussein's regime. (b)(7)(C) decided that if it they didn't have their cloths they would at least be forced to go home to get replacements. Also, I think the action served to teach the Iraqis a lesson not to steal from the Americans. So, the Iraqis were sent out of the CP in their underwear and the plan worked, they never returned to the ASP.

A week or so after the detainees were released a Battalion investigation was conducted on (b)(7)(C) for possible misconduct involving the detainees. The result of the investigation was that (b)(7)(C) was fired (relieved) of his command, then punished by the Commanding General for allegedly violating the Geneva Convention for taking the clothes from the Iraqis, deemed somehow to be degrading and humiliating. While waiting to be sent back to the United States, (b)(7)(C) was then assigned to assist in training 400 or so Iraqis FPS (Facility Police Service).

Case analysis:

Based upon my knowledge of middle eastern culture and in particular of the customs of the Iraq people, the action taken by (b)(7)(C) in disrobing the detainee would not be considered humiliating or degrading by Arab or Iraqi customs, as I will discuss in greater detail below. Based upon Arab and Iraqi culture I believe that the actions taken by (b)(7)(C) were highly effective and productive in serving as a safe deterrent to further illegal actions by the Iraqis.

Arab culture is influenced greatly by the Islamic religion, conduct of a Muslim is very strict and interaction with Middle Eastern Muslims can be confusing for westerners. Below are some examples of actions or conduct which are considered to be offensive, and would be more "humiliating" and "degrading" to Muslim and Arab men, than having their clothes removed:

- Muslim men are extremely protective of their daughters, wives, and other female family members. Avoid directly looking at, or speaking to women and teenage girls if at all possible.
- When approaching a group or family, always speak to the man present (even if he is young). If no man is present, speak to the oldest woman in the group.
- Avoid touching any woman, even in a friendly manner (i.e. shaking hands, a pat on the shoulder, etc.)
- The more covered a woman is, the more religious she is. It is offensive to ask an Iraqi woman to remove her veil, headscarf, or outer robe. If an inspection is necessary, it should be performed by another female, if at all possible.
- Shoes and feet are considered unclean. It is disrespectful to display the soles of one's feet or shoes.
- A Mosque is considered Holy Ground. Therefore, shoes must be removed before entering. A reverent attitude should be observed. One should respect the quietness, which is necessary for the Muslims to concentrate on their prayers.
- It is disrespectful for a woman to enter a Mosque without covering her hair.
- The Koran is the Muslim Holy book. It should never be placed or thrown on the ground.
- Avoid walking on the small rugs, on which Muslims pray.
- Muslims condemn the eating of pork, drinking alcohol, and gambling of any kind.
- Most Muslims consider dogs and cats unclean and do not have them as pets in their homes. If a canine is necessary for inspection some Muslims may find it offensive to have a dog so close to them, especially if they are carrying a Koran.
- Placing a Muslim / Iraqi under one's foot is highly disrespectful as the bottom of the foot / heel is considered unclean. To be shown the bottom of the foot is considered highly disrespectful.
- Shake hands with your right hand only. Never with the left, to do so would be disrespectful. If you are carrying something in the right hand, move the content to your left hand so you can extend the right hand.

Arab culture is steep in history, most notably the Middle East is the recognized birthplace of our civilization. Moreover, the Arab culture has a proud military heritage and the "warrior" is revered throughout the Middle East. The warrior reflects an image of strength and courage. Consequently, Arabs and in particular Iraqis hold those in positions of military authority with great respect. While, the coalition invasion of Iraq is an embarrassment to many Iraqis, they also respect the power and military skills of the coalition forces and the Americans in particular. Forcefulness and strength is both respected and honored. (b)(7)(C) actions in disrobing the detainees sent a strong and purposeful message to those Iraqis that their actions will not be tolerated. Dealing with them in a forceful manner, made them respect the authority of the Americans and of their military responsibilities.

It should also be pointed out that under Saddam Hussein, Iraqi was a secular nation, much less focused on Islam than its more devout neighbors; Saudi Arabia, Iran and Syria. The Arab culture does not share the same value of cooperation and generosity that westerns use in their daily interactions. The "give and take" of a western human relationship is not a common practice in Iraq. The Iraqi community is organized based upon a loose group of classes. Iraqis look to their male elders for direction; they look to their government leaders and their military commanders for direction over their lives. This system is further reinforced through the strict tenets of Islam, as religion is of course a dominating force in their actions and daily lives. Now that the coalition forces are clearly in control of the country they are looking to the coalitions forces for this direction. For instance, if they can get away with stealing ammunition without punishment, they will continue that practice.

The interaction between (b)(7)(C) and the Iraqi detainees would not be viewed as "normal" interaction by Iraqis. Iraqis understand that the coalition is in control and is taking charge. In fact, weakness or signs of weakness would be very disconcerting to the Iraqis as it would make them concerned that America does not have the strength to continue their occupation. Since Saddam Hussein was so successful in surviving over the many years that he ruled, it will remain a concern for the average Iraqi that he could reclaim power. Strength demonstrated by the Americans reflect their will to resist the actions by a very few Iraqis that are trying to impede the liberation and democratization of Iraq. Unfortunately, we see examples of the actions taken by this extreme minority frequently in our newspaper and on television.

(b)(7)(C) action of disrobing the Iraqis likely served as a better deterrent than handing them over to the local police forces. The police forces which existed under Saddam Hussein were cruel and brutal. Sometimes the torture was not always physical; the former regime police would physical rape and sodomize the daughters or wife of a "suspect" to force the suspect to be psychologically coerced into providing information. The infliction of pain was the norm for those who disobeyed the "law" as it existed under Saddam Hussein in Iraq. (b)(7)(C) actions were greatly humane compared to those standards, as no physical pain was inflicted. Getting caught and released without any repercussion only served to stiffen their resolve to continue their actions. They would gain respect from their peers for challenging American's authority - and succeeding without punishment. That would inspire others to continue the same course of conduct, it would be fair to say that the Americans were being

tested as a game, to see what would occur. Once the former regime control lost its grip on Iraq, lawlessness broke out since no one instilled order in the region. (b)(7)(C) action created order and direction. Short of long-term detainment or physical abuse I cannot envision any other course of appropriate action to stop the actions that those Iraqi men were taking.

Of course, Iraqi custom is very different than western customs. It is common and very acceptable to see a grown man in his pajamas, "bijama" in Arabic, out in the neighborhood market shopping and performing errands. I lived in the "Muthena District", an upper middle class residential area in Baghdad, and yet still saw grown males riding their bicycles, wearing these "bijama", to a market located several miles away. Being outside the house wearing boxer shorts in the summer is also acceptable. I recall seeing my neighbor (a 50+ years old man, father of 3 children) watering his front lawn and sidewalk with a water hose quite often in the hot afternoon hours in his boxers outside his house. This is a common site to see in Iraq during the hot summer days, particularly June through August. Many times I have seen males receiving guests into their homes wearing only boxer shorts. It is also common to see blue-collar laborers working on a building site in their underwear. Also farmers tending their farm land in their underwear (boxers or long john style). Blue-collar people and farmers often wear long robes (called "dishdasha") outside the house as their normal attire. It is common to see those people to shove the front of the dishdasha or 75% of the bottom part of this dishdasha in their boxer shorts, when walking around and about, so they would not trip over them. This would seem quite odd to our western culture, but is normal to the Iraqis.

The city of Al-Kut, which I have visited and driven thru many times, is considerably smaller and less modern than Baghdad. Their state of dress is even more relaxed than most Baghdad residences. The customs there can be compared to blue-collar people living in Baghdad. While sending a male outside in his underwear for a long distance journey to go home might be somewhat embarrassing to the individual, however it is defiantly not considered humiliating or degrading, by Iraqi standards. Again, I have to refer back to the fact that the Marines and (b)(7)(C) were trying to impose a disciplinary action, which did work and thus would even have a lesser impact on "harming" Iraqi customs. The Iraqis have been used to very strong and severe punishment measures for the past 30 years. The Iraqis, especially among the less educated, are not accustomed to freedom or people in authority respecting them, and will mistake that as weakness. Demonstrating authority and strength may not be "desired" by the individuals receiving it, but will create respect and order.

In attempting to think of what else could have been done which would serve as a greater deterrent. Those options would be have far too harsh, (b)(7)(C) and the Marines could have decided to inflict bodily harm to the detainees (which I am sure the detainees were shocked for not receiving), but he did not. (b)(7)(C) could have insulted the families of those detainees, but he did not. (b)(7)(C) could have forced the detainees to violate their religious duties by forcing them to eat pork or drink alcohol, but he did not because he respected their religion and culture. Instead, (b)(7)(C) demonstrated self-control, with authority, in his civil disciplinary action. I frankly, commend (b)(7)(C) for his patience with those 4 Iraqis giving them chance after chance, and then carried out the disciplinary

action. In my opinion his action possibly saved lives and those lives could have been; American, Iraqi, or possibly the lives of those 4 individuals.

I do understand that America wants to send a message as a "good neighbor" however, in my opinion before we can be a "good neighbor" we must first be a strong neighbor and demonstrate that we can create order and lawfulness in Iraq. I believe that this combination will in the long term be the most successful approach for democracy to take hold in my former homeland. As a former Iraqi citizen who has remained in contact with relatives and friends in Baghdad, we are overjoyed with America's commit to eradicate the tyranny of Saddam Hussein's reign. We are indebted to the indomitable spirit of men and women like (b)(7)(C) who willingly volunteered to give freedom to those in Iraq who for so long lived in the clutches of a dictator.

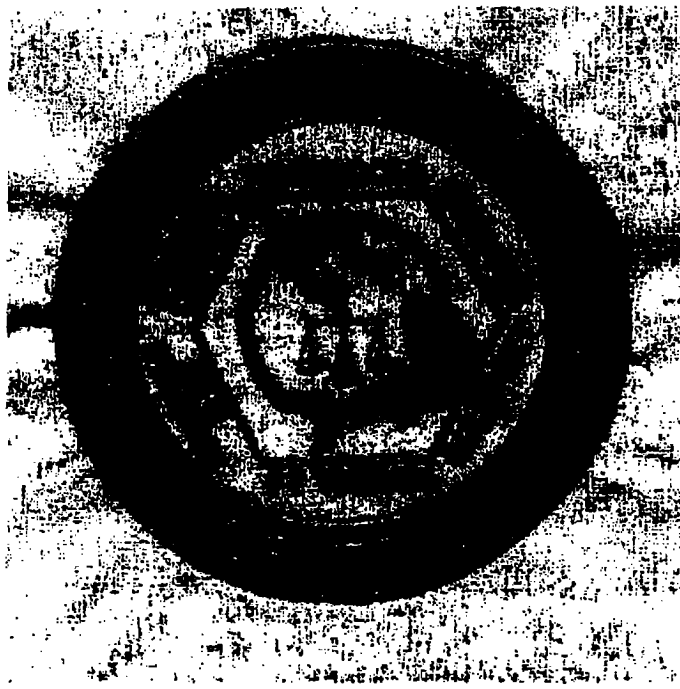
As a final comment, I would like to state that I have not received any financial or any "in kind" remuneration for my review of this case. As a proud American, I am disheartened to see the actions that have been taken against (b)(7)(C) and feel compelled to offer my opinions on the subject. Thank you for allowing me to comment on this case. If I can be of further assistance in this matter please do not hesitate to contact me at (b)(7)(C)@losch.net] or (b)(7)(C).

(b)(7)(C)

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Web posted Wednesday, November 5, 2003

Web posted **Wednesday, April 2, 2003**

3:46 a.m. CT

Editorial: 'Fog of war' clouds humanity

Incident reflects consequences

They call it the "fog of war." In reality, the fog quite often gives way to total chaos, with all-too-fallible human beings caught right in the middle of it all.

How else does one explain adequately an incident Monday in which U.S. soldiers fired on a vehicle that failed to stop at a checkpoint in Iraq? The incident killed seven Iraqi civilians - all of them women and children.

There can be no explanation that will silence the criticism that is coming from some Americans and from many in the Arab world. The U.S. Army is looking into the tragedy to determine what happened.

The prelude to this event is worth noting.

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One fact is that a suicide bomber drove a vehicle toward a gathering of soldiers over the weekend. The man dressed as a civilian asked the soldiers for directions then blew up his vehicle, and four Americans. The incident occurred in the same general area as the deaths of those seven women and children. Were our soldiers spooked by what Iraqi leaders promised in the aftermath of the suicide bomber - that more will follow?

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Another fact is that no war is clean, no matter how hard a combatant tries to make it that way. American and British forces have been striking Iraqi targets with a precision never before seen. None of it is fool-proof. How can it be, with mere human beings pulling the trigger?

Given the amount of ordnance being dropped and munitions being fired since the start of the war, it remains a minor miracle that more tragedies like the one that occurred Monday haven't occurred.

Let us not be coy here. The real culprit - the root of all the misery associated with war - remains the Iraqi regime, whether Saddam Hussein is at the controls today or not.

The Iraqis are sending civilians into harm's way. They are promising more suicide bombers. They are vowing to battle Americans and British with every weapon at their disposal, even if it includes women and children.

War is the most brutal endeavor that human beings undertake. Americans are seeing in real time the true meaning of the fog of war.

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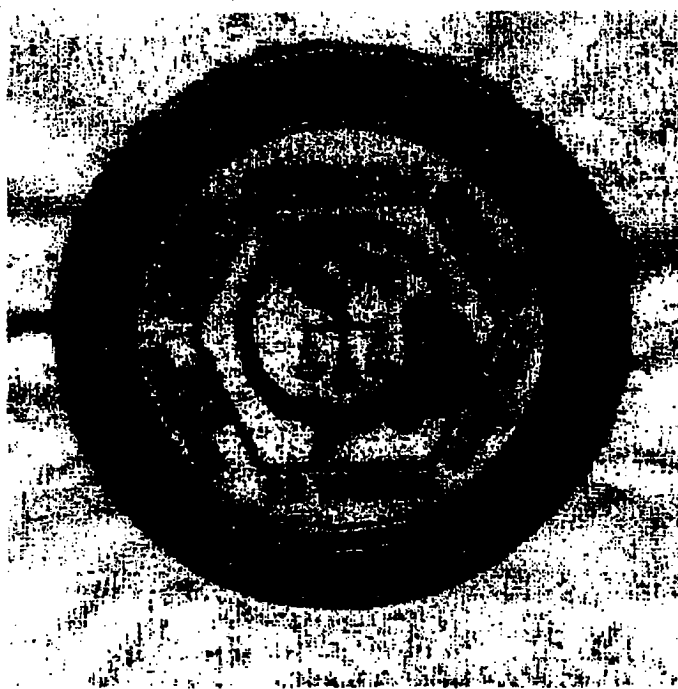
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Newsweek

War in Iraq

Column / War Stories

Martha Brant & T. Trent Gogax

✉ - E-mail the authors | A - Biography | M - More by the authors

Damien Donck for Newsweek

Wartime Stress

Poor morale and high suicide rates point to big problems for troops in Iraq

WEB EXCLUSIVE

By T. Trent Gogax

Newsweek

Updated: 4:41 p.m. ET March 30, 2004

March 30 - The gnashing of teeth you hear at the Pentagon is caused by deep concern over Army morale and suicide numbers that are upside down. The long-awaited Mental Health Advisory Team survey released a few days ago showed that unit morale is low - 72 percent called it bad - and that suicide among U.S. troops in Iraq is high - 35 percent higher than soldiers stationed elsewhere. And those numbers don't include suicides that happened once soldiers returned home. The report is alarming because it points to a military that's being stretched too thin. But the Army should also accept that its plan to treat battle stress isn't working.

Officially, the Army prefers to brush aside the new survey results. Pentagon spinners complain that the media has made a mountain out of a molehill on the issue of suicides and morale. They say the suicide rate is still below that of the general U.S. population. But a candid Army manpower officer calls that argument specious. "We do

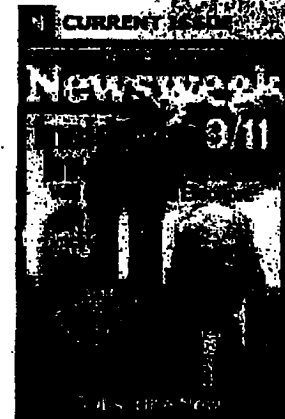
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screen people so you do expect that we'd be better on morale and behavior," he told me after the survey came out.

Why are these numbers so bad? The incidence of low morale and high suicides reflects in part a slippage in quality control. According to Army Col. (Ret.) Jim Martin, associate professor of Social Work and Social Research at Bryn Mawr College, only 85 percent of soldiers have their high school degree (or equivalent), compared with 95 percent as recently as the mid-1990s. In other words, the behavioral bar has been lowered in order to increase recruitment demands. And those demands may only intensify. For now, the Army reports that it doesn't have a retention crisis. But that's because of a mechanism called "stop-loss," which is basically a freeze on all retirements (or "silent draft," in the words of the manpower officer). Until stop-loss is lifted, we won't get an accurate look at the manpower picture.

E-MAIL NEWSWEEK

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Privacy

Future recruiting needs to better select who is fit to handle the rigors of war. Researchers recently discovered, for instance, that men who slide quickly into the Rapid Eye Movement stage of sleep are more predisposed to suffer Post-traumatic Stress Disorder. There are obvious socio-economic indicators for depression: Most suicides in Iraq

Involved a young, white enlisted (i.e., non officer) guy who had money or family problems. In other words, these guys were already having trouble before they headed off to Iraq. Things only got worse once they began laboring for 24-year-old platoon sergeants ill-equipped to notice suicidal tendencies and once they placed their trust in a general officer leadership that misled them on their deployment time. The heartbreak was devastating among Third Infantry Division soldiers who had camped in the Kuwaiti desert for nearly a year before charging into the heart of Iraq. They'd been told that the sooner they reached Baghdad, the sooner they'd be bound for home. Instead, their tours were extended nearly a year. After that, they looked like dead men walking.

SPECIAL FEATURE



• American and British troops killed in Iraq

PHOTO GALLERY



• Launch Flash presentation

The Pentagon did have a plan to handle psych injuries in Iraq: roving Combat Stress Control teams. It was a great idea. But the teams failed in part because there was no senior mental health leader in Iraq (even though that was one of the primary recommendations Army psychologists made after the first Gulf war). Without a general officer in charge of mental health in Iraq, the combat stress teams were overlooked. Some didn't even have proper radios. "These kinds of units are always last on the list of what's needed" when the war machine is lined up for battle, Dr. Jim Martin says.

WAR STORIES Current Column | Archives

• Rethinking Military R&R

Evidence suggests it may be wiser to consider a policy that doesn't give soldiers too much time to decompress before going back to battle

• Soldiers at War with Themselves

Iraq veterans and the people who treat them begin to talk about post-traumatic stress, coping and hoping

More importantly, soldiers didn't fully trust the stress teams. They weren't embedded with every unit, so soldiers didn't get a chance to bond with the psychologists. Trust needs to form before

one service member will trust another with his demons. This is something that the Marine Corps already figured out. Operation Iraqi Freedom saw the debut of the Corps' remedy for combat stress, a program called Operational Stress Control and Readiness, better known as OSCAR. Where the Army's mental health specialists roamed the battlefield to meet soldiers for the first time, OSCAR teams are as integral to larger units as combat engineers. That is, OSCAR teams are part of the unit back home in garrison. They get to know their brothers. Much as it would hate admitting it, the Army could learn a thing or two from their rivals in the Marine Corps.

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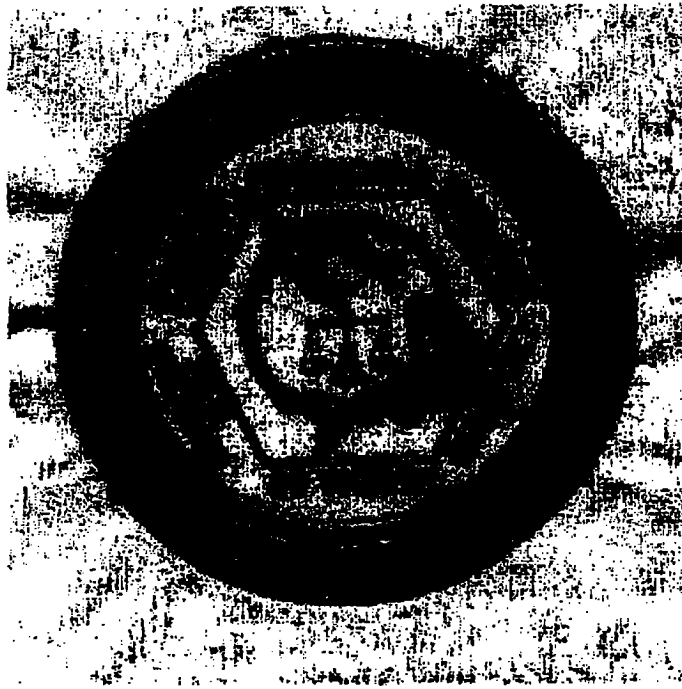
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1992

Round 2: The "Small Wars Manual" and Back to Iraq

Compiled by R. R. Keene

It's round 2.

At Camp Pendleton, Calif., approximately 25,000 leathernecks of the I Marine Expeditionary Force (I MEF), having recently returned from Operation Iraqi Freedom, are headed back to Iraq. Scheduled to have boots on the ground late this month or in March, the leathernecks are donning their combat utility uniforms, dusting off copies of "Small Wars Manual: United States Marine Corps 1940," and taking a uniquely different approach to counter the tactics of guerrilla insurgents operating in the Sunni Triangle.

Although U.S. soldiers ignominiously plucked Saddam Hussein from a "spider" hole on Dec. 13, 2003, "The mission in Iraq is far from over just because his one man has been captured," said one Marine officer to reporters.

The training at Pendleton and at the desert base known as the Marine Corps Air-Ground Task Force Training Command, Twentynine Palms, Calif., continued, and veteran observers with an eye for such things noticed a change.

Marine commanders say they have been closely monitoring the deaths of American fighting men and women in Iraq. Almost daily insurgent attacks on Army convoys have produced casualties caused by rocket-propelled grenades, mines and command-detonated bombs, and of late, attacks have downed U.S. helicopters.

"This is what people are dying from every day. This is everyday life over there," said Sergeant Robert Foreman to North County Times newspaper reporter Darrin Mortenson, who observed field training in December.

The Marines were learning how to counter ambushes of convoys. Not everything in the training went as planned. In one instance, a Marine suffered a well-earned butt chewing from a staff non-commissioned officer for leaving a machine gun behind. Had it been a real convoy, the Marine's error could have meant deadly disaster. However, as a whole, the training didn't go too badly.

Foreman told Mortenson: "Definitely there were mistakes," because the Marines being trained were not used to this



Sgt Edward I. Salatino searched Lance Corporal Matthew B. Wiemer during training at MCAAGTFC, Twentynine Palms, Calif. Marines are preparing to return to Iraq and have a different modus operandi in dealing with Iraqi citizens, which will be firm, but also geared to winning hearts and minds.

type of combat. Most were cooks, logisticians, supply and administrative types. But in Iraq, said Foreman, everyone is a foot soldier.

On the positive side: "They made a decision, didn't hesitate, and they executed," Foreman said. "That's what we're

trying to get them to do: make a decision. Now we're going to try to get them to make the right decision."

Further up the chain, senior Marines are making important tactical decisions that Marines will live or die by in Iraq, and they plan on moving what has

turned out to be a guerrilla war on to a higher plane and kicking it up a notch or two.

Lieutenant General Wallace C. Gregson Jr., commander of Marine Corps Forces, Pacific, has always been a quietly thoughtful man who also is an action Marine. One of the last of the Vietnam veterans still on active duty, he served in Vietnam from 1969 to 1970 with 1st Reconnaissance Battalion. Since then he's covered all bases, having been a company, battalion, regimental, Division and MEF commander. He was a military observer with the United Nations Truce Supervision Organization in Egypt. He also worked as assistant to the Director of Central Intelligence and as an operations officer in Somalia during Operation Restore Hope.

As commander of MARFORPAC since August 2003, LtGen Gregson, based at Camp H. M. Smith, Hawaii, is the senior Marine commander for the western United States and western Pacific.

He told reporters during a Dec. 10 visit to Camp Pendleton that the goal of the Marines will be to not only gun down insurgents but also improve life for the Iraqis so there is less hate in the streets and fewer young men attacking U.S. troops.

This includes building schools and creating jobs. "It is absolutely important that we [Marines] know how to do this," he said.

The history of the Corps backs this up. In addition to winning their nation's battles and wars, Marines have a history of nation-building during counterinsurgency campaigns that stretch from the Philippines, to the "Banana Wars" of Central America, to the Caribbean and successful civic actions during the Vietnam War.

Their bible has been the book "Small Wars Manual: United States Marine Corps 1940." It is, according to California State University history professor Ronald Schaffer, "an encyclopedic work containing 428 pages of text. It lays down precise instructions for feeding and supplying troops, gathering intelligence, running a military government, patrolling in jungles, attacking houses, bombing and strafing villages, conducting river opera-

LtGen Gregson listed several indicators of success by Marines operating in Iraq and explained that it is important for Marines to achieve success quickly. (Photo by SSgt Jason M. Webb)

tions, and a variety of other specific activities. Its primary theme[,] however[,] was how to protect the interests of the United States and the safety, security, interests, and property of American nationals in places threatened by revolution." It was written for Marines by combat Marines in uncommonly easy-to-understand and yet excellent prose. And Marines, from lieutenant generals down to fire team leaders, have dusted off their old copies or purchased reprints from bookstores such as the Marine Corps Association, which since December 2003, has sold those in stock and ordered more.

The manual stresses the winning of hearts and minds to break insurgency efforts. LtGen Gregson put it in context when he told reporters that helping restore Iraq "is the most important thing that the nation is doing." It must become a success, and it must be a success quickly.

He explained that there are several areas in which Marines will measure their progress: "The number of people with gunshot or stab wounds who show up at hospitals. Whether people start going to places they had been afraid to visit. Unemployment rates. Whether [Iraq's] court system functions. The number of attacks against U.S. forces and Iraqi police."

LtGen Gregson also noted, "In the immediate future, you can fix security with a lot of people and with all the instruments of security. But you have to work on the other things so that the ties that bind society together have time to continue to build."

"Leatherneck commanders are working from the same sheet of martial music and stress they want to move away from strong-arm tactics employed in the past. Marines do not want to level buildings used by suspected guerrilla forces or their families.

The Marines specifically don't want to jeopardize civilian lives by calling artillery or air strikes on suspected guerrilla positions. LtGen James T. Conway, Commanding General, I MEF, in a Dec. 6 11-published interview with *New York Times* correspondent Michael R. Gordon said, "I do not envision using that tactic."

LtGen Conway commanded I MEF



The goal of the Marines will be to not only gun down insurgents, but improve life for the Iraqis so there is less hate in the streets and fewer young men attacking U.S. troops.

**—LtGen Wallace C. Gregson Jr.
Commander of MARFORPAC**

during round 1. A veteran infantryman, he is familiar with Southwest Asia. In 1990 during the first Gulf War, he—as a lieutenant colonel—commanded 3d Battalion, Second Marine Regiment.

This time LtGen Conway's command will again be in the forefront, replacing the Army units that took on the monumental task of helping rebuild a nation and at the same time took the brunt of the initial attacks from an insurgent enemy they had little time to study.

"I'll simply say that I think until we can win the population over and they can give us those indigenous intelligence reports that we're prolonging the process,"

"We carry an embedded offensive capability in every convoy. To us you don't drive on through; you stop, you hunt them down and you nail them. We will try to go and restore a degree of civility. If they choose to fight, they are going to regret it ..."

—MajGen James N. Mattis, CG, 1stMarDiv

said LtGen Conway. He also wants Marine raids to be "laser precise," specifically targeting the enemy and carefully avoiding endangering or insulting Iraqi civilians.

The Corps is dedicating nine battalions of Marines to arrive in March. The force will include the standard combat package of a Marine air-ground task force: command, ground combat, aviation and combat service support elements. The Marines also will have a brigade from the Army's First Infantry Division.

The men and women in those units will be dealing directly with challenges in areas that include restive towns such as Falluja, west of Baghdad. Until now, American units operating in that region have come and gone so often that the soldiers had little time to understand their surroundings. In a society that emphasizes personal relations, it is hoped Marine units will have more stability and

thereby learn their tactical areas of responsibility.

Commanders are stressing that success ultimately will depend on winning the trust of the Iraqi population. LtGen Conway says the measure of progress will not be the number of American raids or enemy dead. It will be about information to prevent potential threats that is provided to the Marines by ordinary Iraqis whose trust the Marines will be courting.

Citing leatherneck successes during round 1, LtGen Conway pointed out in his *New York Times* interview: "The program we used in the south was a maturing Iraqi police, supported by an Army [Military Police] company in each of the cities, supported by a Marine quick reaction force," which he defined as a Marine infantry battalion. "That worked very well for us. That is the model we intend to use."

To reinforce this, leatherneck artillery

batteries are being retrained and outfitted for use as provisional infantry battalions.

"As we won't need a lot of artillery fires where we will be going, we are able to take advantage of the concept of 'every Marine a rifleman first,'" said LtGen Conway.

He also raised an intriguing prospect to U.S. Marines: "We intend to create an Iraqi Marine battalion, maybe a brigade." He went on to say it will be leatherneck-equipped, -trained and eventually able to destroy the insurgents.

The U.S. Marines are scheduled to undergo tactical cultural training, teaching them the importance of being sensitive to local customs and traditions. They have been told to remove their sunglasses and look Iraqis in the eye when they speak with them. They are also being advised to take active roles in the growth of civil institutions such as schools, businesses and local government.



Leathernecks of Marine Wing Support Squadron 374 prepared for a live-fire convoy exercise at MCAGTTC, Twentynine Palms. These Marines are among thousands who are attached to I MEF, which is getting ready for a second deployment to Iraq.



SGT JOSEPH R. ORNELLY, USMC

LtGen Conway (left), CG, I MEF, and MajGen Mattis, CG, 1stMarDiv, will once again lead Marines into action in Iraq, this time with less of a hammer approach and more of a carrot-and-stick approach.

With Arab interpreters at a premium, the Marines are creating their own who currently are attending intensive Arabic language training. All Marines are getting used to using a few phrases of Arabic because they will be using Iraqi rather than American names to identify their tactical areas of responsibility. Further, those TAORs will reasonably coincide with Iraqi administrative districts. There also will be a less visible footprint. The Marines will set up self-contained combat bases outside the Iraqi cities. This not only limits disruption to the local population but also makes the leathernecks less of a target.

And the Marines are always prepared to do what they do best: fight.

Re-enter Major General James N. Mattis, CG, First Marine Division. He is the same MajGen Mattis who a year ago led the 1stMarDiv up the Tigris River to Baghdad and who, in 2002, headed Task Force 58 with 9,000 Marines and sailors into Afghanistan as part of Operation Enduring Freedom.

He reminds many of the football coach Lou Holtz. But make no mistake: MajGen Mattis does not see his Marines as players on a gridiron. He's a warfighter, tough and experienced. Those who know him say he can, when needed, be ruthless and is not a man to trifle with. They say he sleeps, eats, drinks and thinks Marine Corps. It is his Division of Marines that will close with and kill *mano a mano*. He, too, understands the hearts-and-minds approach, but from a grunt's perspective. Prior to the 1stMarDiv's 2003 march through Iraq, he told his Marines, "It's important that we kill the right people."

His command leadership requires him to be where the LAV (light armored vehicle) rubber meets the Iraqi road. His Division will replace the Army's 82d Airborne Div in western Iraq.


"We carry an embedded offensive capability in every convoy. To us you don't

drive on through; you stop, you hunt them down and you nail them," said MajGen Mattis. "We will try to go and restore a degree of civility. If they choose to fight, they are going to regret it. ..."

The Marines will be in Iraq until the spring of 2005. It is interesting that not only has the Corps revealed where its Marines are going, but who will be going and when. According to LtGen Conway, commanders published a schedule of Marine deployments for the next three years. "This information is normally closely guarded," LtGen Conway stated in an open letter to Marines and their families printed in Camp Pendleton's *The Scout*. "But these are not normal times, and we want to return to a level of predictability to your [Marines and their families'] lives."

Tours of duty in Iraq for leathernecks are scheduled for seven months. Marine units of III MEF, based at Camp Lejeune, N.C., will be added to the Pendleton-based I MEF. The Commandant of the Marine Corps, General Michael W. Hagee, wants a maximum number of Marines on the deck in Iraq. In December, he authorized LtGen Conway to use 1st Bn, 5th Marines, and 3d Bn, 4th Marines forward deployed in Okinawa for further deployment to Iraq.

It has taken some creative maneuvering, but LtGen Conway said Marine reservists who have been recalled to active duty previously and released would not be remobilized.

While Marine war planners are being innovative and looking at all the possibilities, few believe they will go back into Iraq and come out without losing Marines. Yet, the Marines are cautiously optimistic. "One thing that we have to remember is that being a superpower does not mean we are superhuman," said Marine Major Peter J. "Pete" Mitchell, a U.S. Central Command spokesman, in Tampa, Fla. 

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RESPONDENT'S EXHIBIT P

DOD JUNE

1997

(b)(7)(C)

5 Apr 04

From: (b)(7)(C) MC, USNR

To: The Board of Inquiry ICO (b)(7)(C) USMCR

Subj: PARASITES AND DISEASE EXPOSURE

1. It is my understanding that the following occurred in late June 2003 in Iraq:

a. (b)(7)(C) along with several enlisted Marines conducted a hastily coordinated vehicle checkpoint at the major artery going in and out of Southern Al Kut. They searched 40-50 cars without incident. After dark a semi-trailer was approaching the checkpoint and did not appear to be slowing down. The Marines waved chem lights at the truck, which in turn honked its horn and accelerated. The Marines opened fire on the truck with rifles and the Humvee mounted .50 cal and disabled the truck without injuring any Marines. The driver and his sole passenger, however, were wounded, possibly from the small arms fire and from the crash. They were treated by the Corpamen and turned over to Army MPs who transported them to a hospital. All of these events were called into HQ and logged in accordingly.

b. (b)(7)(C) and his men were told to guard the truck, wait for Human Intelligence Team and for relief. That evening the men camped out by the truck with very little sleep. The next morning, a wrecker arrived and was unable to move the truck. (b)(7)(C) called this in and HQ told him to bring his unit in.

c. (b)(7)(C) men searched the truck and placed in plastic bags everything they could find of intelligence or monetary value. After a while they ran out of bags and one of the Corporals began to place dirty clothing and bedding they pulled out of the truck directly into the Humvees without bags. (b)(7)(C) fearing lice or fruit fly infestation, told the Corporal not to put those dirty items in the Humvee. He then told the Marines to burn the filthy bedding along the roadside, which they did.

d. (b)(7)(C) had recently had a Humvee become infested with fruit flies and felt that the clothing and bedding

was sufficiently filthy that it constituted a threat of lice infestation or other fruit/sand flies.

2. Iraq is currently experiencing many problems with parasitic insects, particularly lice, ticks, and sand flies (also commonly referred to as sand fleas). These parasites and other such exposures can cause various diseases among United States military personnel, including Epidemic Relapsing fever (*Borrelia recurrentis*), Epidemic Typhus (*Rickettsia prowazekii*), Trench fever (*Rickettsia quintana*), Black fever (*Leishmaniasis*), and Malaria. Currently, leishmaniasis, caused by sand flies, is a tremendous problem for United States military personnel. Two main types of leishmaniasis currently exist - cutaneous and visceral. Those military personnel who contract cutaneous leishmaniasis experience large sores that do not heal for several weeks. These sores initially appear as papules or bumps on the skin, but then form an open, flat, circular sore with raised edges. Visceral leishmaniasis is a much more serious infection of the liver, spleen and other internal organs. This form of the disease can be fatal if not treated. Troops infected with visceral leishmaniasis begin to exhibit symptoms several weeks up to six months after becoming infected. Visible symptoms include high fever, weight loss, and an enlarged spleen and liver. Other less visible symptoms include anemia, low white cell count and low platelet count. If contracted, both forms of this disease would effectively remove a soldier or Marine from the fight, so to speak, for anywhere for several weeks to several months. Additionally, not only would infection with leishmaniasis cause the individual to become ill, but also would effectively prevent that service member from donating blood to aid other service members who require blood transfusions.

3. These parasites, may frequently be found in clothing, particularly the forks in trousers, armpits, and most predominantly the seams of clothing. Furthermore, these parasites, especially lice, are found in other places, such as bedding. Once infested these parasites will continue to lay eggs and reproduce.

4. Keeping these factors in mind, and considering the facts of this case, I am of the opinion that the burning of these articles of clothing and bedding constituted the most certain manner of eliminating the threats of these parasites under the conditions they were in. There was per report to me sufficient evidence to suggest to those there that a risk was certainly

present. Not only did this action destroy the potential of parasites themselves but also the eggs they produce. To burn this clothing and bedding further prevented subsequent troops and or civilians who may have come after from potentially having been exposed as well. Certainly other methods of washing the materials in near boiling soapy water would also have worked, but again these conditions were not available. To transport these materials to an area capable of this without proper containment would have subjected the service members to possible exposure.

5. If you have any further questions, please feel free to contact me at (b)(7)(C). Thank you for your time.

Very Respectfully,

(b)(7)(C)

(b)(7)(C)

M.D.

CURRICULUM VITAE

09/25/2003

PERSONAL DATA

(b)(7)(C)

EDUCATION

Undergraduate: Bachelor of Science-Biology/ (b)(7)(C)
(b)(7)(C) Graduated-May 1994
Medical School: Doctor of Medicine/ (b)(7)(C)
(b)(7)(C) Graduated-June 1998
Military Training Courses: ATLS(Instructor), ACLS (Instructor), PALS (IC), BLS, C-4,
Clinic Management, DCO School, ALSO (P), NRP (P)/1994-
2003 - EMT/1989

PROFESSIONAL TRAINING AND EXPERIENCE

PGY-1: Family Medicine/ (b)(7)(C) Graduated-July 1999
Residency: Family Medicine/ (b)(7)(C) Graduated-July 2001
Staff Positions: Director of Clinical Services/ (b)(7)(C)
(b)(7)(C) / 2001-present
Staff Emergency Physician/ (b)(7)(C) 2001-
present

PRIOR MILITARY SERVICE

Type of Service: United States Army
Rank: E-4 Specialist
Description of Service: Combat Medic
Dates of Service: (b)(7)(C)

WORK HISTORY/MILITARY ASSIGNMENT HISTORY

Duty Title: Family Medicine Staff and Director of Clinical Services
Duty Location: (b)(7)(C)
Dates of Assignment: July 2001 to present

LICENSURE AND SPECIALTY CERTIFICATION

Current Unrestricted State License: (b)(7)(C) Expiration-July 2004
Board Certification: Family Medicine - AAFP/ Exam Date-July 2001

HONORS AND RECOGNITION:

Undergraduate: Top 5 percent of my classes for my last 3 years of college - On Dean's and President's List for those years also.
Medical: Top 20th percentile on board examination - Very successful completion of USMLE Steps 1, 2, and 3.
Military: Graduated first in intern class, First Intern in my year-group to be selected to go straight through residency, Chief Resident, Graduated first in residency class, Two Navy Achievement Awards, Army Achievement Award, Army Good Conduct Award, National Defense Ribbon, Expert Pistol and Rifle Awards, Numerous Letters of Appreciation, Chairman of the Family Advocacy Committee for spousal and child abuse.

ACADEMIC APPOINTMENTS: Associate Faculty - (b)(7)(C) Family Medicine Program

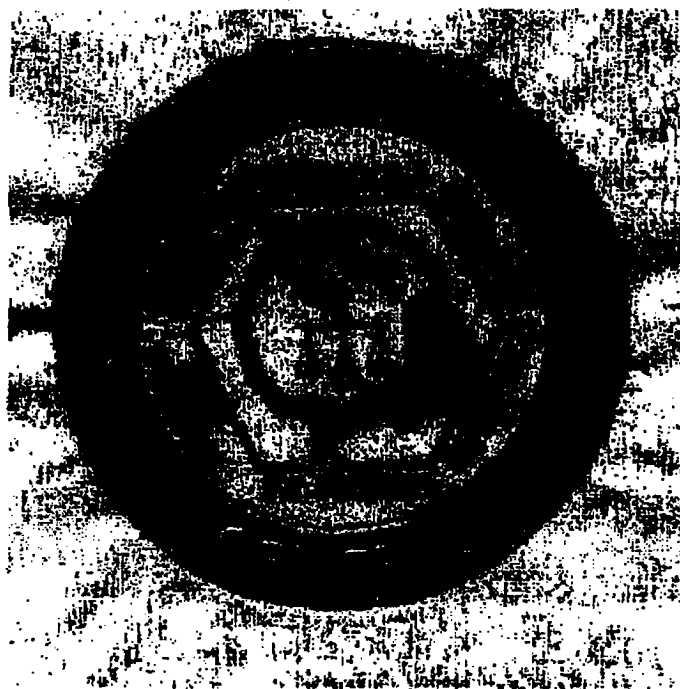
PROFESSIONAL SOCIETIES: American Academy of Family Physicians

PUBLICATIONS/RESEARCH: Solely authored, encoded and maintained a patient education website for (b)(7)(C) that was comprised of over 2,700 pages of patient education topics, decision flow charts, calculators, graphics, illustrations and internet links. Work on the Internet site took over 350 hours of off duty time during residency to complete. The site was electronically published on the web from 2001 to 2003. It is now only available on CDROM.

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STARS AND STRIPES.

Monday, April 5, 2004

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Troops being treated for leishmaniasis

By Lisa Burgess, Stars and Stripes
European edition, Saturday, March 20, 2004

ARLINGTON, Va. — About 500 soldiers who have served in Iraq have been diagnosed with a skin disease caused by sand flies in the largest outbreak of leishmaniasis faced by the U.S. military since World War II, according to Defense Department doctors.

The disease is caused by parasites transmitted via sand fly saliva, and comes in three forms: cutaneous, affecting the skin; mucosal, affecting the mouth, nose and throat; and visceral, affecting internal organs, which can be fatal if untreated.

All but two of the cases diagnosed so far have been the cutaneous form and all but three of those were contracted in Iraq, according to Dr. Alan Magill, a specialist in infectious diseases at Walter Reed Army Institute of Research in Maryland.

The remaining three cases of cutaneous "leish" were contracted by U.S. servicemembers deployed to Afghanistan, Magill said in a Thursday interview, as were the two cases of visceral leishmaniasis.

The last time the Pentagon doctors had to cope with a leishmaniasis outbreak was 1943, when about 1,000 U.S. soldiers stationed in what is now Iran came down with the cutaneous

Leishmaniasis prevention tips

There's only one way to prevent leishmaniasis: Keep sand flies from biting. Here are some tips:

Try to limit outdoor activity at dusk and during the evening, when sand flies are most active.

Wear protective clothing, with uniform sleeves turned down and buttoned, and pant legs properly bloused.

Apply insect repellent with N, N-diethylmetatoluamide (DEET) to exposed skin and under the edges of clothing, such as under the ends of sleeves and pant legs. Reapply according to directions (the more you sweat, the more you may need to reapply, but check the bottle first).

Keep uniforms properly treated with permethrin. Make sure to apply after every five washings.

Use permethrin-treated bed netting and screens on doors and windows. Fine-mesh netting (at least 18 holes to the linear inch) is required for an effective barrier against sand

version.

Significant numbers of U.S. troops also were deployed to countries where leishmaniasis is a risk during Operation Desert Storm.

But that conflict produced just 32 confirmed cases — probably because almost all the servicemembers were deployed in November 1990 and were sent home before peak sand fly season, which runs from late March to late September.

"We got lucky," Magill said.

When it came time for Operation Iraqi Freedom, however, DOD's core group of about a dozen "leish" specialists were certain that luck would not hold.

"We were sending thousands of troops to an area of known disease," Magill said, under conditions ripe for maximum sand fly exposure.

The troops were entering Iraq just as the sand flies were beginning to multiply. Insect control programs were limited to the sprays and salves soldiers could apply on the move. And the troops were living "in the rough," bedding down atop vehicles or directly on the ground.

"So it was absolutely no surprise" when hundreds of troops were affected, Magill said.

Experts from the 520th Theater Army Medical Laboratory began testing sand flies for leishmaniasis in Iraq in June.

"We found an enormous amount were infected," Magill said. "We knew right then and there we were going to see lots of cases."

But it wasn't until late August that the first case was confirmed, Magill said — in part because cutaneous leishmaniasis has a two- to eight-week incubation period; and also because samples from all suspect lesions have to be sent back to Walter Reed for evaluation.

By October, "we knew there were scores of cases" among Iraq-deployed troops, Magill said. "And late November was about the time

flies, which are about one-third the size of mosquitoes.

In the field, try to get your sleeping bag off the ground. If you can't do that, at least use a ground pad.

If sleeping under cover, sweep all loose dust and dirt from floors. The cleaner your quarters, the fewer the flies.

Do not wear flea collars designed for dogs and cats, even over boots, medical experts warn. The collars are designed to repel common house fleas and there is no evidence they work against sand flies. Meanwhile, the chemicals in the collars have not been tested for safety with humans, and can cause allergic reactions and sores that may become infected.

— Sources: U.S. Army, Centers for Disease Control

everything really ramped up."

Military experts believe the numbers will drop in the second Iraq rotation, Magill said.

"I'm pretty sure we'll see fewer cases this time around," he said. "Troops are moving around less," with less makeshift billeting, and commanders have had time to implement rodent-control programs that in turn help control the sand flies.

Magill and his colleagues have also worked hard to educate both medical personnel and troops, traveling both in Iraq and to bases in the United States to spread the word.

"There certainly has been an attempt to get the message out," Magill said. "Ninety percent of the battle is just getting people thinking about it."

Meanwhile, to handle the current influx of patients, DOD officials are opening a second treatment center at Brooke Army Medical Center in San Antonio that will be authorized by the Food and Drug Administration to administer Pentostam, the only drug used to treat the cutaneous version.

Brooke will open to servicemembers "within weeks" for leishmaniasis and will join Walter Reed as the only facilities in the United States with the FDA certifications to administer the investigational drug.

Cutaneous patients receive Pentostam intravenously for 10 to 20 days. But only the more serious cases require the often-uncomfortable regime, Magill said.

Mild cases can be treated with liquid nitrogen, which freezes the lesions and kills the parasites. Doctors can also carefully apply heat to stop the infestations, Magill said.

But the best news is that cutaneous leishmaniasis heals by itself in time, even without treatment, Magill said.

"I don't care how bad [the lesions] look," he said. "It may take a year more, but they will all heal."

About 200 of the diagnosed servicemembers have decided to let the lesions heal, despite the military's offer of medical treatment, he said.

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STARS AND STRIPES.

Monday, April 5, 2004

Small sand flies can pose large health problems

By Lisa Burgess, Stars and Stripes
European edition, Wednesday, November 19, 2003

ARLINGTON, Va. — They look like flecks of pepper and they love to come out at night to play. They live in the dirt and they bite like you're their last meal.

Sand flies.

Anyone who's been deployed to Southwest Asia and lived in "bare base" conditions there knows these little buggers all too well. When they munch, the fierce itching that results can drive you almost nuts before it finally goes away.

But when sand flies attack your skin, they can give you more than just the Mother of All Itches. Sand flies can also give you a disease called leishmaniasis, which is caused by microscopic parasites that are transmitted via sand fly saliva.

"LEASH-man-eye-asis," as it's pronounced, is pretty rare: Defense Department officials said they have seen only 52 confirmed cases in two years. But it's serious enough that servicemembers need to know about the disease and its prevention [see box at right].

"Leish," as medical experts call it for short, comes in two forms:

Prevention tips

There's only one way to prevent leishmaniasis: Keep sand flies from biting. Here are some tips:

¶ Try to limit outdoor activity at dusk and during the evening, when sand flies are most active.

¶ Wear protective clothing, with uniform sleeves turned down and buttoned, and pant legs properly bloused.

¶ Apply insect repellent with N, N-diethylmetatoluamide (DEET) to exposed skin and under the edges of clothing, such as under the ends of sleeves and pant legs. Reapply according to directions (the more you sweat, the more you may need to reapply, but check the bottle first).

¶ Keep uniforms properly treated with permethrin. Make sure to apply after every five washings.

¶ Use permethrin-treated bed netting and screens on doors and windows. Fine-mesh netting (at least 18 holes to the linear inch) is required for an effective barrier against sand

cutaneous ("affecting the skin") and visceral ("affecting internal organs").

The cutaneous form is more disgusting to look at, but less serious in the long run.

The first sign of pending trouble is when one or more of the tiny, hard bumps caused by the bite won't heal. Instead, after several weeks the bumps start looking red and infected. Then they form an open, flat, circular sore with raised edges. Sometimes the sore scabs over and sometimes it hurts, but not always.

If they aren't treated, the sores can last for years and leave permanent scars.

The good news is that while cutaneous leish is ugly, it is rarely fatal.

Visceral leish, on the other hand, is fatal if not treated.

Visceral leish infects the liver, spleen and other internal organs. But because the infection is internal, it doesn't come with any handy warning signs, like cutaneous sores.

To make things even tougher for doctors, it can take two to six months after someone is infected before its giveaway symptoms do begin: high fevers, weight loss and anemia. Other symptoms require medical tests to spot, such as an enlarged spleen and a low white blood cell count.

Both forms of leishmaniasis occur in tropical areas around the world, but it is most common in Iraq, Kuwait, Saudi Arabia, Afghanistan, Pakistan and other countries in Southwest Asia.

Iraq's sand flies are among the world's busiest carriers. In fact, of the 52 cases of cutaneous leishmaniasis detected in U.S. servicemembers over the past two years, 50 were diagnosed from members who spent time in Iraq, defense officials said.

There have been no cases of visceral leishmaniasis detected so far, defense officials said.

flies, which are about one-third the size of mosquitoes.

¶ In the field, try to get your sleeping bag off the ground. If you can't do that, at least use a ground pad.

¶ If sleeping under cover, sweep all loose dust and dirt from concrete, tile or linoleum floors. The cleaner your quarters, the fewer the flies.

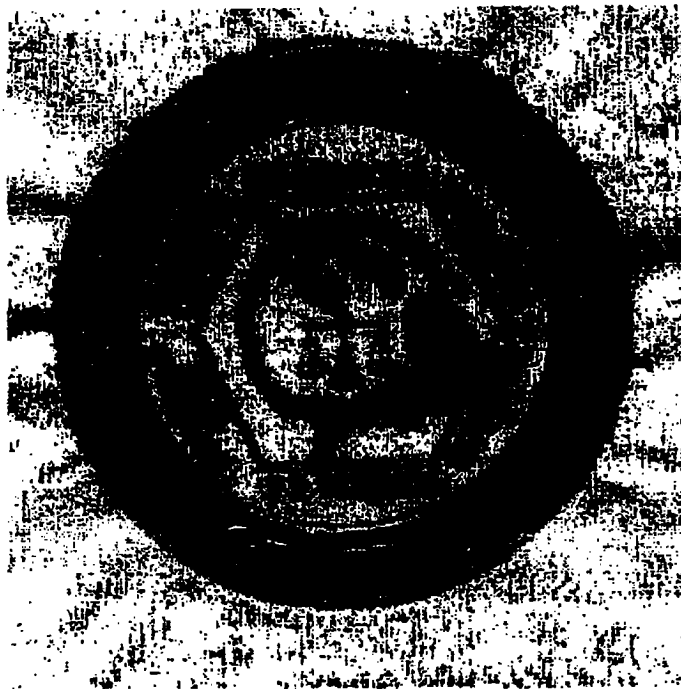
¶ Do not wear flea collars designed for dogs and cats, even over boots, medical experts warn. The collars are designed to repel common house fleas and there is no evidence they work against sand flies. Meanwhile, the chemicals in the collars have not been tested for safety with humans, and can cause allergic reactions and sores that may become infected.

Sources: U.S. Army, Centers for Disease Control

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STARS & STRIPES

Monday, April 5, 2004

Military blood bank needs new donors

 By Fred Zimmerman, Stars and Stripes
 Pacific edition, Monday, November 17, 2003

CAMP LESTER, Okinawa — The instant disqualification of potential blood donors returning from Iraq is putting a strain on Okinawa's blood supply.

The Armed Services Blood Bank Center here is saying it's in "dire need" of new blood donors.

Any servicemember who steps foot inside Iraq will be disqualified from giving blood anywhere from one to three years, Becky Leavitt, a blood-donor recruiter, said Friday.

Depending on where servicemember spent time, they can be banned because of the possibility of exposure to leishmaniasis or malaria, she said.

Leishmaniasis is a parasitic disease transmitted by the bite of sand flies and can either be in a skin or internal organ form, according to the Centers for Disease Control and Prevention Web site (www.cdc.gov).

The skin form is characterized by sores that develop anywhere from weeks to months after a person is bitten. If untreated, the sores can last years.

The disease's internal organ form shows symptoms such as fever, weight loss, enlargement of the spleen and liver, and anemia. Symptoms can take months or years to develop after a person is infected. If untreated, it's typically fatal.

Leavitt said anyone whose foot even touches the sand in Iraq is



Fred Zimmerman / S&S

Air Force 1st Lt. Jerome Vinkman, the assistant director of the Armed Services Blood Bank Center, displays the center's stock of units of blood. As of Friday, the center had 102 units on hand. They're supposed to always stock at least 150.

difficult to find donors, said Air Force 1st Lt. Jerome Vinluan, the blood bank's assistant director. Severe acute respiratory syndrome remains an issue, and the effects of mad cow disease are still being felt.

Vinluan said anyone stationed in Europe between 1980 and 1996 are barred from donating indefinitely because of mad cow disease. That restriction alone kept 25 percent of donors from ever giving again. Those who visited a country on the SARS list, or even went through an airport there, can't donate blood for 28 days.

"The [Food and Drug Administration] makes it more challenging when they put a new country on the list," Vinluan said.

For information about qualifications and blood drives, go to www.oki.med.navy.mil, click on information for patients and community, then blood donor program.

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**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT

T

Sand Flies Active—and Dangerous—in Iraq

News & Media - News Release

Service members in Iraq who fail to follow preventive measures risk the bite of the tiny but fearsome sand fly. It's peak season for these pests through the end of November, and their bite can carry a disease called leishmaniasis.

There are two kinds of leishmaniasis—cutaneous and visceral.

People who get the cutaneous form have one or more sores on their skin that do not heal after several weeks. The sores form on the skin several weeks or more after an infected sand fly bites. The sores initially appear as papules or bumps on the skin, but then form an open, flat, circular sore with raised edges. Sometimes they have a scab, and sometimes they hurt. Untreated, the skin sores can last for years and leave permanent scars, but are rarely life threatening.

Visceral leishmaniasis, on the other hand, is a much more serious infection of the liver, spleen and other internal organs that can be fatal if not treated. People who get the visceral form of the disease become ill several weeks up to six months after becoming infected. They will usually have high fever, weight loss, and an enlarged spleen and liver. They also have other symptoms that show up in blood tests (such as anemia, low white cell count and low platelet count).

Leishmaniasis occurs in tropical areas around the world. It is very common in Iraq, Kuwait, Saudi Arabia, Afghanistan, Pakistan and other countries in Southwest Asia.

To date, 52 cases of cutaneous leishmaniasis have been reported in DOD over the last two years. All of the patients were infected in Southwest Asia; all but two spent at least some time in Iraq. There have been no cases of visceral leishmaniasis detected so far.

Prevention is the best defense against contracting leishmaniasis. There is no vaccine and no medication that protects against leishmaniasis. Preventive measures include taking steps to avoid or prevent sand flies from biting. These include:

- Limiting outdoor activity at dusk and during the evening, when sand flies are most active.
- Wearing protective clothing and insect repellent.
- Treating uniforms with permethrin.
- Using permethrin-treated bed netting.

Detailed information about prevention is available from the U.S. Army Center for Health Promotion and Preventive Medicine.

While it's rare, leishmaniasis can be transmitted through blood transfusion. Although there have been no cases of leishmaniasis transmitted through blood transfusion in the United States, all personnel deployed to Iraq will be deferred from donating blood for one year after departure from Iraq. The deferral, put in place by the Armed Services Blood Program Office, is a prudent precautionary measure to ensure the safety of the U.S. blood supply.

People who have been diagnosed with either cutaneous or visceral leishmaniasis are permanently deferred from donating blood. But in most cases, it takes two to six months for symptoms of the disease to show up. Service members returning from Iraq may have been bitten by the sand fly that causes the disease and may have the parasite in the blood stream, but they may not know it. There is no FDA-approved test to screen blood for the parasite. For these reasons, because service members are living in austere conditions in Iraq, and because environmental surveillance data indicates a particularly robust population of sand flies exists in Iraq, the precautionary deferral was implemented.

More information on the Armed Services Blood Program's deferral is available from the Department of Defense. ●

For immediate release, Oct. 27, 2003.

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External Links Disclaimer

<http://www.armymedicine.army.mil/news/releases/20031031LeishmaniasisWeb.cfm>

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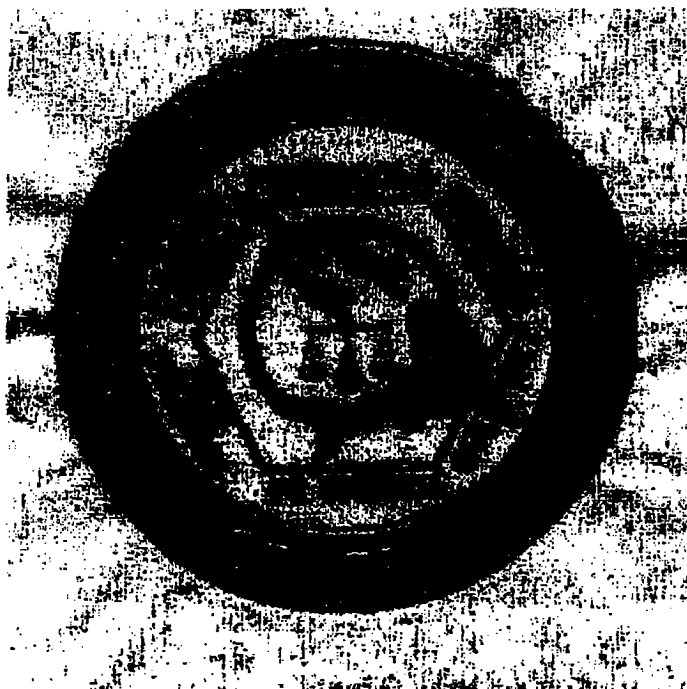
DOD JUNE

2016

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT U



HEALTH AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D C 20301-1200

SEP 1 9 2003

MEMORANDUM FOR SECRETARIES OF MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Medical Advisory - Leishmaniasis

Recent reports from Iraq have raised concerns regarding the potential impact of leishmaniasis on deployed personnel. Please give this advisory the widest possible distribution to installation and operational commanders and medical personnel.

Leishmaniasis is a preventable disease native to Iraq and other parts of Southwest Asia. Spread by sandflies (not person-to-person), the disease as found in Iraq presents itself in two forms. The skin form called cutaneous leishmaniasis (Baghdad Boil) causes mild to severe skin lesions that take months to heal and may be permanently disfiguring, though highly effective treatment is available. The internal form called visceral leishmaniasis (Kala-azar) causes fever, weakness, wasting, an enlarged spleen, and a lowered blood count. If untreated, visceral leishmaniasis is generally fatal.

Currently, the greatest threat is in Central Iraq and the area around Baghdad with recent extensions into Southern provinces such as Dhi-Qar and Al Basrah. Reports from some locations in Iraq indicate very heavy populations of sandflies, 2 to 3 % of which carry the disease. Some service members at locations where sandfly numbers are high are reporting upwards of 100 bites per person.

So far, seven service members from Iraq and two from Afghanistan have been diagnosed with cutaneous leishmaniasis (the milder form) and successfully treated. Because the incubation period (the time for getting a sandfly bite to the development of disease) can be many months, it is also possible that deployed personnel may redeploy without knowing they are infected.

Given the potential severity of this disease, it is imperative that steps be taken to reemphasize procedures to reduce the risk of exposure and increase the awareness of possible infection with this disease. Personnel preparing for deployment should receive briefings on the disease and be provided with appropriate personal protective equipment including the use of DEET (chemical name, N, N-diethyl-meta-toluamide) and Permethrin treated uniforms, bed nets, and the proper wear of the uniform to prevent sandfly bites. During deployment, command attention should be given to enforcing

procedures that reduce exposure to sandflies and enhance awareness of the disease. Ongoing preventive medicine briefs to commanders and deployed personnel (re: the evolving threat and appropriate medical and environmental countermeasures) are essential. Joint Staff recently has issued guidance regarding this issue to deployed forces.

Upon redeployment, personnel should receive information on how to access health care if they develop skin lesions or become ill. This is particularly important for members of redeploying Reserve Components who may be leaving the military medical system after they return. Health care personnel should increase their level of suspicion for this disease among redeploying personnel from Afghanistan, Iraq and other areas where leishmaniasis is endemic and sandflies are prevalent. Referrals of established or suspected cases to Walter Reed Army Medical Center, the only treatment center in the military health care system for this condition, are highly recommended.

The Deployment Health Clinical Center (DHCC), the Department of Defense Center of Excellence for deployment-related health concerns, is coordinating with Service infectious disease and preventive medicine specialists to develop educational materials for soldiers and clinical guidelines on leishmaniasis for health care personnel. Please contact the DHCC at 1-800-796-9699, <http://www.pdhealth.mil> for further information.

William Winklerwerder, Jr.

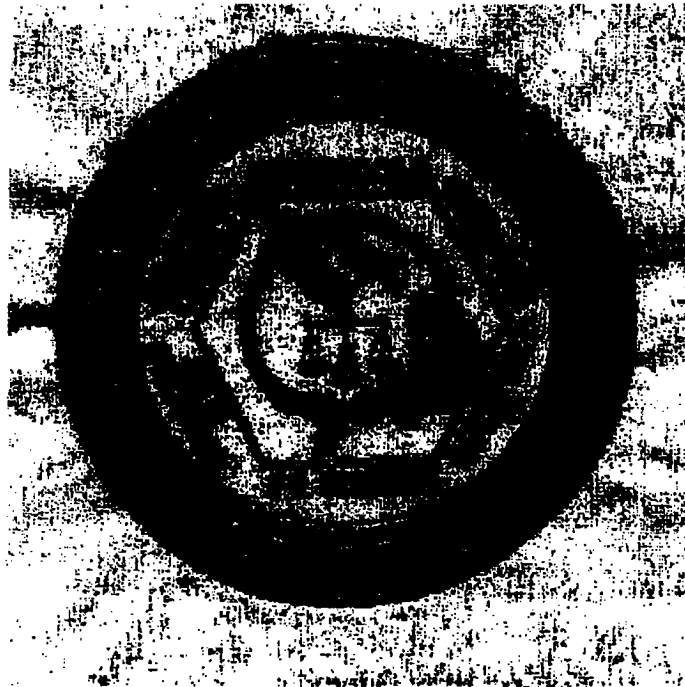
William Winklerwerder, Jr., MD

cc:
Under Secretary for Health, Veterans Affairs
Assistant Secretary of Defense, Reserve Affairs
Service Surgeons General

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO:**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

V

(b)(7)(C)

2 April 2004

Senior Member of the Board of Inquiry

Case of (b)(7)(C)

(b)(6) - SSN /0602 USMCR

Dear Sir:

I am a retired Marine Colonel having served the majority of my career in the Reserve component. However, while on active duty I served as a Forward Observer and Platoon Commander in Viet Nam; subsequently I served as a Company Commander and Battalion Commander. I am familiar with (b)(7)(C) having spent a significant amount of time speaking with him concerning the matter before the Board. I am also familiar with the incidents giving rise to disciplinary action taken against (b)(7)(C). The purpose of this letter is to provide to the Board my observations of the charges against (b)(7)(C) through the prism of an experienced commander and combat veteran.

It is my understanding that (b)(7)(C) served as a Platoon Commander conducting foot patrols, vehicle patrols, security and offense anti-insurgency operations in the vicinity of Al-Kut, Iraq as a Marine in (b)(7)(C). (b)(7)(C) arrived in Al-Kut shortly after the fall of Baghdad. One of the missions assigned to (b)(7)(C) was providing security for an ammunition supply point ("ASP") which formerly served as a division headquarters for the Iraqi Republican Guard. The facility was without perimeter walls or fences. Problems were encountered with Iraqi civilians looting the ASP for ordnance to sell or use for other purposes. The mission included protection of the ASP from looting and protection of would-be looters from being killed or injured by spontaneously detonating ammunition.

During this operation, (b)(7)(C) Marines captured three Iraqi men on four separate occasions during a single eight hour period sneaking into the ASP. On the first three occasions, the three men were turned over to the Iraqi police. The Iraqi police simply released the looters; the platoon had no facility to detain the Iraqis. On the fourth occasion, in order to prevent further incursions by the same personnel, (b)(7)(C) removed the clothes from the Iraqis and forced them to go home. Those Iraqis did not return to the ASP and were no longer a problem, either as looters or as potential victims of spontaneously detonated ordnance.

(b)(7)(C)

Senior Member of the Board of Inquiry
2 April 2004
Page 2

On another occasion, while Marines from (b)(7)(C) platoon were guarding a vehicle check-point, a large truck approached at a fast rate of speed, flashed its lights and refused to stop. The Marines opened fire and disabled the vehicle. The two Iraqis inside the vehicle were injured; the Marines administered first aid. (b)(7)(C) requested instructions from his battalion on several occasions regarding the handling of the personnel, vehicle and contents. After receiving no response for a number of hours, (b)(7)(C) was finally advised to take anything of value from the vehicle and return to headquarters. (b)(7)(C) searched the vehicle, found a large sum of Iraqi currency, bags of rice and other items. The cash was collected and given to Iraqi police; other items were taken to headquarters. Some of the remaining items consist of clothing which was contained in a very dirty bag. As bugs, flies and other parasites were a big health problem in Iraq, (b)(7)(C) burned these items.

It is my understanding that (b)(7)(C) has faced disciplinary charges for the actions taken in disrobing the Iraqi looters and destroying the clothes. No Iraqis were injured as a result of (b)(7)(C) actions, the looting ceased as a result of the actions he took and the destruction of potentially health hazardous material precluded that material from infecting other clothing and eliminated a storage problem. All of these actions were taken within the context of the combat environment where (b)(7)(C) had many other concerns to address regarding his area of responsibility and the Marines under his command.

If I were (b)(7)(C) company or battalion commander I would find that he exercised sound, effective judgment under the circumstances. He faced a problem of continuing looting from the same source, he addressed the problem with decisiveness and it resulted in resolution of the problem with physical harm to no one. In the second instance, he sought direction from higher headquarters, none was available. He once again acted decisively to eliminate a problem; once again, without injury to anyone.

In sum, it appears that (b)(7)(C) exercised decisive and appropriate judgment; he is the type of officer we should be retaining in the Marine Corps. If any of the Board members have any questions concerning my observation, please feel free to contact me.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

W

April 4, 2004

President
USMC Board of Inquiry

Reference: Charges against (b)(7)(C)

Dear Sir:

I have reviewed the information surrounding the charges against (b)(7)(C) as provided by his attorney. My first impression is that the BOI is directed at the wrong person! And instead, should be considering the fitness for duty of those who have referred the charges.

I seriously question the good judgment and knowledge of military history of the Commanding General who would compare the actions of (b)(7)(C) to those of Lt. Call in My Lai, Vietnam. It seems to me that the actions taken in dealing with the infiltrators at the ASP, after their fourth attempt to gain access to steel munitions, which were likely intended to be used to kill or maim Coalition Forces were quite measured and restrained under the circumstances. How sending those individuals home in their skivvies violates the Geneva Convention is a real stretch. Incredible!

The actions taken by (b)(7)(C) and his men at the roadside checkpoint were decisive and courageous in the face of a threat situation. The fact that only the vehicle was disabled without killing the occupants reflects great credit on (b)(7)(C) and his men for a cool headed response to a dangerous situation. To then intern attempt to punish him for burning some worthless infested clothing is incredible and defies logic. I just can't believe it! (b)(7)(C) should be commended not threatened with punishment.

These charges are frivolous and petty and beneath the dignity of the USMC. They can do more damage to troop morale than the actions of the left wing anti-war activist in the US and around the world. I have experienced the anti-war types, having served two tours in Vietnam and returning through San Francisco to be accosted by anti-war creeps. During my nearly 26 years of active service, one of my most gratifying experiences and honor was that of commanding the (b)(7)(C).

I hope and pray that reason and good judgment will prevail in your deliberations and that these charges against (b)(7)(C) will be dropped.

Sincerely,

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT X

(b)(7)(C)

April 05, 2004

VIA FACSIMILE & U.S. MAIL

(b)(7)(C)

Senior Member
Board of Inquiry

(b)(7)(C) USMCR

Re: Letter of support for (b)(7)(C) USMCR

Dear Sir or Madam:

I am writing this letter on behalf of (b)(7)(C) USMCR, in support of his effort to retain his commission.

I have known (b)(7)(C) since the eighties when I was President of the Parent's Committee of his Boy Scout Troop here in (b)(7)(C). I watched (b)(7)(C) over the years as he became an Eagle Scout, attended and graduated from (b)(7)(C) High School where he played on the Basketball Team and then left for Annapolis. Over the years I have kept up with (b)(7)(C) personally and through his parents who are friends of the family.

If ever there was an individual who would have made an excellent officer, it is (b)(7)(C). Beyond the fact that he has a father who is a Marine combat veteran from Vietnam and a brother who is a currently serving as a decorated member of the U.S. Navy, (b)(7)(C) has exhibited through all the years that I have known him the traits and attributes of a commissioned officer: dedication to duty, personal self discipline, and commitment to the organization's mission.

I should point out that I was a commissioned officer myself in the Regular Army serving three years during the early seventies with the (b)(7)(C) as an (b)(7)(C) Company rifle platoon leader and Executive Officer. (b)(7)(C) Platoon Leader, and Motor Officer and Executive Officer for (b)(7)(C) (b)(7)(C) (b)(7)(C)

I served almost five years on active duty and another twelve years in the United States Army Reserve with assignments in the (b)(7)(C) (b)(7)(C) the (b)(7)(C) and the (b)(7)(C) Battalion.

Senior Member, Board of Inquiry

April 5, 2002

Page 2

Coming from that military background I find it difficult to believe that the U.S. Marine Corps would want to force (b)(7)(C) out of service. If ever there was a man that deserved to serve, and that we as a nation would want to serve, it is (b)(7)(C).

I have been in the private practice of law since 1979 and attach my statement of qualifications in that regard.

I make it a point in my civilian life to defend the military policy and the armed forces of this country to my friends and professional acquaintances.

In case it is not a matter of common knowledge within the military, it can use all the friends that it can get in explaining its role, purpose and mission to a civilian population almost devoid of former service members.

In my law firm I am the only person with military experience (we have over fifty people working here)! I am aware of five attorneys or judges in the (b)(7)(C) area, which has over 250 members of the Bench and Bar, who have any military experience -- and one of those fought in World War II. I am on the Board of Governors of the (b)(7)(C) State Bar Association which has over 15,000 members. There are few occasions when I run in to a fellow service member.

I can't tell any of the people I regularly associate with in professional life the story of what happened to (b)(7)(C).

First, few would believe it.

Second, the few who would believe it would credit it as the "military mind" at work.

I know that the "military mind" is a figment of the imagination of people who never served. The "military mind" that I was associated with during my seventeen years of active and reserve duty was committed to the mission and yet took care of its people. Would that some of my civilian counterparts could do their jobs as well as the military does theirs.

It is that personal experience on active and reserve duty that makes what happened to (b)(7)(C) so difficult to fathom.

(b)(7)(C) doesn't deserve what was done to him.

This country can't afford to do to officers like (b)(7)(C) what was done to him.

I have every confidence that the United States Marine Corps will direct that (b)(7)(C) USMCR, be allowed to retain his commission.

APR-05-04 MON 10:25 AM

(b)(7)(C)

FAX NO.

(b)(7)(C)

P. 13/14

Senior Member, Board of Inquiry
April 5, 2002
Page 3

Sincerely,

(b)(7)(C)

Enclosure

DOD JUNE

2028

STATEMENT OF QUALIFICATIONS

(b)(7)(C)

Education:

J.D., (b)(7)(C) 1979
Judge Advocate General Course, U.S. Army, 1985 (correspondence)
U.S., Government, (b)(7)(C) 1970

Appointments:

State of (b)(7)(C) 1979 (Atty. Reg. No. (b)(7)(C))
U.S. District Court, District of (b)(7)(C) 1979
Ninth United States Circuit Court of Appeals, 1983
U.S. District Court, Western District of (b)(7)(C) 1997
Seventh United States Circuit Court of Appeals, 1997

Professional Employment:

1979 - present, (b)(7)(C)
(b)(7)(C)

Membership, Professional Organizations & Societies:

American Bar Association
(b)(7)(C) State Bar Association [Board of Governors, 1993-98; Chair, Outgoing Practice Section; Chair, Attorney Referral Service Committee; Member, Multidisciplinary Practice (MDP) Task Force]
Seventh District Bar Association [MSBA Delegate, 1992-1995]
(b)(7)(C) Bar Association [President, 1987-88]
Defense Research Institute (b)(7)(C) Delegate, State & Local Defense Organizations (SLDO), (b)(7)(C)
(b)(7)(C) Lawyers Association [President, 1992-93]
(b)(7)(C) Supreme Court Standing Committee on the Administration of No-Fault [Member, 1990-96];
Panel of Arbitrators, American Arbitration Association
Rec Arbitration Panel, Seventh District (b)(7)(C) State Bar Association (Panel Member, 1988-)
(b)(7)(C) (1997-)
Member, Governor's Commission on Judicial Appointment (1999-)

Professional References:

(b)(7)(C)

(b)(7)(C)

Publications

(b)(7)(C)

Presentations

(b)(7)(C)

APR-05-04 MON 10:24 AM

(b)(7)(C)

FAX NO.

(b)(7)(C)

P. 07/14

(b)(7)(C)

DOD JUNE

2031

(b)(7)(C)

(b)(7)(C)

APR-05-04 MON 10:24 AM

(b)(7)(C)

FAX NO.

(b)(7)(C)

P. 08/14

(b)(7)(C)

DOD JUNE

2033

APR-05-04 MON 10:25 AM

(b)(7)(C)

FAX NO. (b)(7)(C)

P. 10/14

(b)(7)(C)

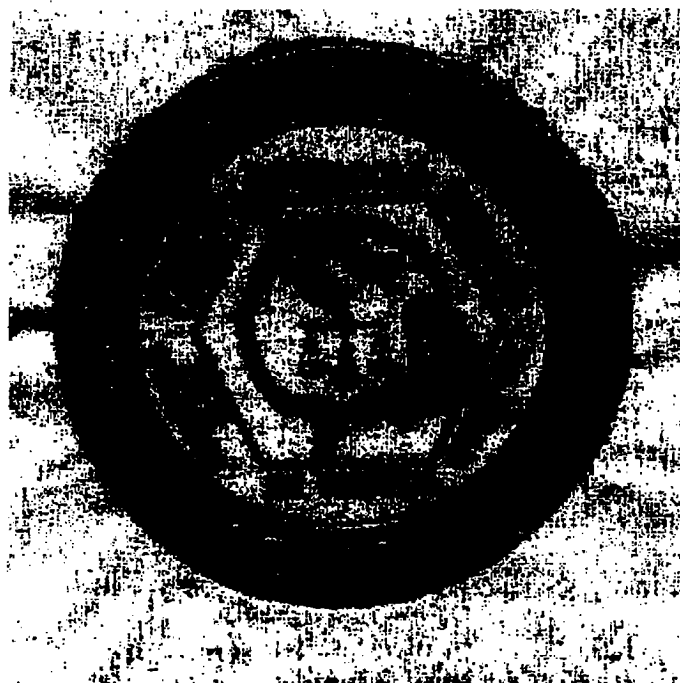
DOD JUNE

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**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN [REDACTED] 0602 USMCR



RESPONDENT'S EXHIBIT _____

Y

Senior Member of the Board of Inquiry

April 2, 2004

RE: Charges against (b)(7)(C) (b)(7)(C)

Dear Sir:

I have had the opportunity to consider the facts in respect of charges against (b)(7)(C) and after some intense reflection I am compelled to offer some perspective and observation.

I am a former Marine, having served in Vietnam during 1970 and 1971. Prior to deployment to South Vietnam, as was the case for all Marine Corp troops being stationed there, pre-deployment training was conducted. Part of this training was instruction as to the scope, breadth, and spirit of the Geneva Convention, as well as the treatment of prisoners thereunder. Specifically, we were informed that in Asia the genital area was considered "sacred". Therefore, as a matter of policy and procedure, if captured, concealing weapons and the like in this area was advisable since the North Vietnamese and Vietcong would or should shy away from this area. (Of course we later learned that it was common to mutilate the genitals of captured troops.) Similarly we were also instructed that upon taking prisoners, in addition to normal pat downs, prisoners should be stripped down to their underwear thereby. Thereafter, once the clothes had been searched they would generally be considered to be disposable with the prisoners being transported to an appropriate holding facility. It is my understanding and observation that this was frequently the order of the day.

In light of the above, I find it incomprehensible that the (b)(7)(C) conduct would be considered to be "degrading" and "humiliating" in violation of the Geneva Convention. In fact I would say it was the least restrictive, most reasonable course of action. His actions may very well have saved the lives of his Marines, which during my time in the Marine Corps was a quality that enlisted Marines sought most from their Officers.

Upon hearing a Board of Inquiry had been initiated and that (b)(7)(C) may be separated as a result of this I am simply astonished. I have to wonder if the individual who filed or initiated these charges is in fact abusing their discretion.

It has always been my understanding that the Geneva Convention attempts to remove brutality and harshness in the treatment of prisoners and attempts to ensure that they are treated as human beings. However, if the "underwear" rule being visited upon (b)(7)(C) were to be uniformly carried out, then the entire military induction process would become suspect.

Additionally, I must wonder whether this treatment of (b)(7)(C) is in the best interests of the Marine Corp or the United States. I joined the Marine Corp six weeks after my eighteenth birthday while the Vietnam war was still very, very active. Basically to get out of the house and to show others that "I was a man." I am pleased to say that what I got was of far greater value than I sought. The Marine Corp taught me honor, dignity and respect but more importantly taught me self-confidence, being able to do anything you set your mind to. This has stayed with me to this day. It is what Marines carry out into the civilian world. As I sit here at the age of 52, although I have a spare tire, need glasses, and am losing my hair, to this day I still wear a crisp, clean, neatly starched, pressed shirt.

1

When I graduated high school, I was in the bottom third of my graduating class. Upon leaving the Marine Corp I enrolled into college obtaining an electrical engineering degree four years later, followed by a degree in law. I am presently licensed to practice law in three states and the (b)(7)(C) and I currently hold the title of (b)(7)(C) a Senior Vice President level position at (b)(7)(C) a publicly traded company. Without the confidence and integrity that the Marine Corp instilled this would not have been a possibility. To this day I am proud of what I have accomplished, I am proud of the Marine Corp and proud of my country.

Witnessing what is being done to (b)(7)(C) carried to its logical conclusion can only have a demoralizing and debilitating effect upon the troops and bring disgrace to the Marine Corp. The General's comparison of (b)(7)(C) actions to Lieutenant Call in Vietnam is clear evidence that the charges are way out of line with the facts and with the mission that was charged.

Contrary to setting the record straight and imposing "good order and discipline" this attack against (b)(7)(C) should chill any able bodied reservist from volunteering to serve his country. As if the brutality of life in Iraq was not a strong enough deterrent to volunteering to go to Iraq. The fact that the slightest error and the smallest lapses in judgment, whether real or perceived can translate into a career death sentence, is only another reason to stay away from armed conflict. How does an Officer like (b)(7)(C) pick up the pieces of his life and move on to another productive career. Anyone seeing his resume will need to ask, why did you get out? Either he lies or tells the truth, what employer would want to hire a Marine that was "separated" fired from his position? What will he tell his children about why after serving for 10 years in the Marine Corps he was thrown out. Please be careful with this man's life, if you act upon the (misplaced) recommendations of the Government you have set a bar by which ALL Marine officers MUST now be judged, I think that bar would be close to a "perfect standard." A standard which is impossible to achieve in Garrison and in combat. If this is the standard, I would have to seriously think about recommending the Marine Corps to anyone who might ask me. This would not only have a negative effect on current troops planning to deploy, but if I were a young man again, would present me with a serious dilemma as to whether I should join the Corp.

Accordingly, in view of the above I respectfully urge that the BOI put the matter in perspective and handle this in the same professional manner that Marines are being asked to hold to when in combat - let the matter drop.

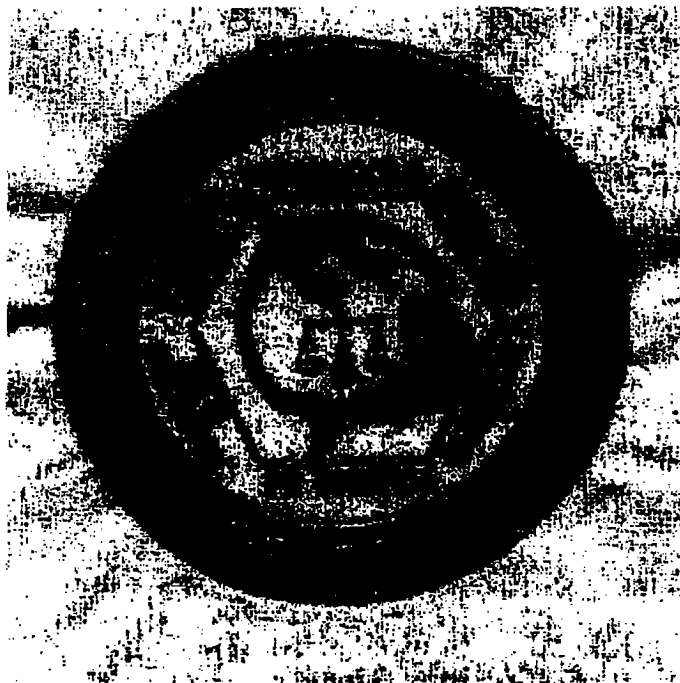
Respectfully Submitted,

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT Z

April 1, 2004

Senior Member
Board of Inquiry

Re: (b)(7)(C)

Dear Sir:

I am writing this letter to express my concerns regarding your inquiry into certain actions of (b)(7)(C) during his deployment in support of Operation Iraqi Freedom. My concerns and observations are based on my own 6 1/2 year tenure as an artillery officer in the U.S. Marine Corps (b)(7)(C) and my past years of experience as an FBI Special Agent. Perhaps more importantly, I have known (b)(7)(C) since he was a junior in high school and have knowledge of his background, character and personal qualifications.

(b)(7)(C) even as a teenager, demonstrated an extraordinary sense of purpose, and worked diligently to prepare himself for success in life. His work ethic was remarkable and his character beyond reproach. The son of a former Marine officer, (b)(7)(C) had values instilled in him that naturally steered him toward a military career. Because of his exemplary academic achievement and related abilities, he received an appointment to the U.S. Naval Academy from which he graduated in . Without hesitation, he requested a commission in the Marine Corps because of the high value the organization placed on discipline, leadership, self sacrifice and loyalty to it's own. (b)(7)(C) admired those hallmarks of the Corps, and embraced them whole heartedly.

I have been apprized of the allegations of misconduct lodged against (b)(7)(C). Admittedly, I was not there but as I understand them, (b)(7)(C) has been accused of taking the outer clothing of four Iraqi men who had made repeated attempts to enter an ammo supply position that his unit was responsible for guarding, and for burning infested clothing found in an Iraqi truck that was disabled and abandoned after it's driver attempted to run a roadblock manned by members of his platoon. If in fact these are the allegations, I believe this matter raises serious concerns about the expectations being place upon small unit leaders in combat.

I have spent the majority of my adult life engaged in combat against criminal elements bent on the destruction of our valued institutions. Though I would not presume to equate this endeavor to military combat, I believe that the principles involved are much the same, and the consequences of failure are precisely the same. If you allow your enemy to get the upper hand, he will kill you! If you are a leader, regardless of your level of responsibility, and you have not done everything within your power to protect your subordinates while accomplishing your mission, you have failed. It appears to me that this is precisely what (b)(7)(C) accomplished by directing the actions in

2040

DOD JUNE

(b)(7)(C)

Sincerely,

America.

Thank you for your thoughtful consideration of this matter, and for your service to

(b)(7)(C) has proudly and faithfully served his country in what has always been the finest fighting force in the world, and I firmly believe that the American people would be well served by (b)(7)(C) further service in the U.S. Marine Corps.

It seems ironic that, after (b)(7)(C) was relieved of his command because of his alleged mistreatment of Iraqis, he was assigned to a command responsible for training Iraqis. Does this not, in and of itself, cast doubt upon the propriety of the allegations?

I have never known (b)(7)(C) to conduct himself in anything less than an honorable manner, and I have heard nothing supporting the complaints lodged against him that has changed my mind. Rather, it appears to me that (b)(7)(C), while leading his Marines in a hostile environment, acted with restraint and due deliberation to achieve his assigned mission while protecting the health and well-being of his Marines. What more can be reasonably expected?

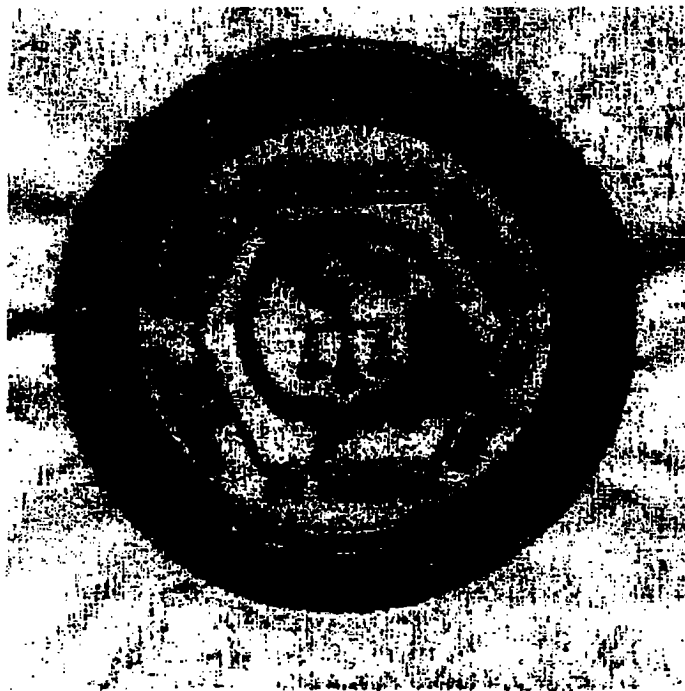
Combat, whether in the field or in the streets, is not about being inoffensive and dispassionate. It is about being prepared, focused and willing to use all means necessary to subdue the enemy while ensuring minimum loss of life and limb. If this means killing the enemy, so be it. If it means burning his clothes and sending him on his way, so be it. To constantly shift the bar, so that one day you are expected to kill the enemy and the next to be charged with "embarrassing" him, is unreasonable. Such inconsistency invariably breeds confusion, doubt and ultimately a lack of decisiveness—the absolute kiss of death in combat! This is not what the American people expect of their Marines and it should not, and must not, be what they get.

question, and they were accomplished without bodily injury. Is this not precisely what we expect of leaders?

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(7)(C) /0602 USMCR



RESPONDENT'S EXHIBIT aa

April 4, 2004

(b)(7)(C)

Re: Board of Inquiry of Marine (b)(7)(C)

Dear Attorney (b)(7)(C)

I have recently been apprised of the service of (b)(7)(C) as a member of the U.S. Marine Corps in Iraq and of the outrageous allegations against this young American hero and the inquiry that could result in ruining his life and discrediting his ten years of exemplary service to the United States of America. I am an American who has been blessed with a long and productive life that included four years of combat all over the Pacific in World War II and I am very upset by the implications of this inquiry.

My military experience started as a private in (b)(7)(C) at Camp Blanding and I fought on Attu in the Aleutian Islands, Kwajalein, Leyte/the Philippines and Okinawa as a commander of the U.S. Army's (b)(7)(C) unit. I completed my military service in (b)(7)(C) after spending a year in military hospitals, with the rank of Infantry Captain having received a battlefield promotion by General Archibald Arnold at Leyte in (b)(7)(C). During that time I was involved in many inquiries, three Court Martial Boards and other military proceedings. I was awarded a Silver Star for Gallantry In Action at Attu, a Bronze Star with V device for Valor at Leyte Island, a Bronze Star with Oak Leaf Cluster for ground combat and five purple hearts along with other unit and campaign medals.

It is apparent to me that the invasion of Iraq was not well planned and has certainly not been executed with enough troops and support to be decisive and that it is still a battlefield today. Placing American military personnel in harms way without adequate planning, overwhelming force and support and with ineffective command is unconscionable. Impugning the reputation of and destroying the life and future of (b)(7)(C) would be a travesty. It is obvious that a problem does exist in the chain of command of the (b)(7)(C) 4th Marine Corps Division of New Orleans, La. and that (b)(7)(C) is not that problem. There is no excuse for officers who do not demonstrate support for their troops and have the poor judgement to criticize battlefield initiative by comparing them to Lt. Call in Vietnam.

It will be a sad day for America and our brave men and women serving around the world to protect our freedoms if this inquiry further injures (b)(7)(C). I am personally acquainted with several current U.S. Senators and have been very active in the VFW and the American Legion so please let me know if I can bring the cavalry for (b)(7)(C). All Americans must support our troops and all Americans are responsible for ensuring their fair treatment while they serve our country. God Bless America!

Sincerely,

(b)(7)(C)

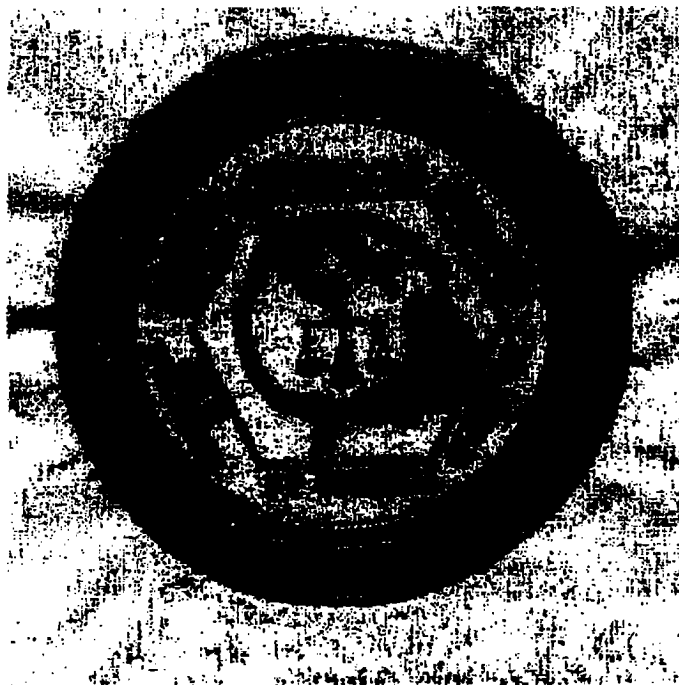
(b)(7)(C)

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT bb



UNITED STATES MARINE CORPS

(b)(7)(C)

WHEELY/MS/414
5800

(b)(7)(C)

24Mar04

From: (b)(7)(C) 4250/0002:650C
To: The Board of Inquiry (b)(7)(C)

SUBJ: LETTER OF RECOMMENDATION

1. I have been informed that (b)(7)(C) is currently under investigation stemming from allegations of destruction of property and conduct unbecoming an officer. Although not familiar with the details of these allegations, I would like to offer my opinions of this officer and recommendation for retention based upon my observations of (b)(7)(C) as a previous Reporting Senior.

2. From (b)(7)(C), (b)(7)(C) was the (b)(7)(C) while assigned to my (b)(7)(C) Marine Corps Base, Camp Butler, Okinawa, Japan. During this period, as his Reporting Senior, I had almost hourly observation and daily interaction with (b)(7)(C). In this capacity, (b)(7)(C) was responsible for over sixty (60) Marines, Host Nation employees and U.S. Contractors, coordination and negotiations with Host Nation government officials, and projects well in excess of \$150 Million dollars. Additionally, (b)(7)(C) responsibilities, plans and supervisory role indirectly extended to literally thousands of Marines and civilians.

3. I cannot express in written word my level of utter disbelief at these allegations. During the sixteen (16) months that (b)(7)(C) worked for me, I had only the highest respect for his professionalism and leadership. Below are direct quotes from the two (2) fitness reports that I wrote on (b)(7)(C) during this period. I feel they sum up my opinions best.

- Exceptional leadership traits
- Not afraid to make hard or unpopular decisions
- Able to make sound snap decisions without hesitation
- Has an innate heavy dose of common sense
- This is exactly the type of officer I want to be leading my Marines in combat
- Definitely want this one leading my Marines when the bullets start flying
- Moral courage and candid nature is extremely refreshing
- Marines have immense respect for his leadership and strive to meet his expectations
- Unlimited potential
- Performance already overshadows many Majors, more than ready for promotion

As a point of foundation for basis of my opinions, I am currently completing my three (3) year assignment as the Communications Officer for the (b)(7)(C) (b)(7)(C). I have serviced fifteen (15) years active service in the Marine Corps, thirteen (13) of which I have lead and/or commanded Marines and officers, and ten (10) of which have been in the Fleet Marine Force. Additionally, I have combat experience with leadership during the Gulf War, including personal award with Combat V for valor. Based upon my background and experience, I am more than comfortable with my judgment of (b)(7)(C) character and that my descriptions accurately reflect the officer.

4. There is no doubt in my mind that (b)(7)(C) was faced with situations while operating in Iraq which no one else other than he and his Marines could understand fully. I am also confident that (b)(7)(C) made appropriate decisions based upon sound judgment, and the safety of Marines in his charge and of those he was sent to protect. (b)(7)(C) is a hero in my eyes. I believe beyond a shadow of a doubt that (b)(7)(C)'s leadership has led to the saving of lives and freedom of the Iraqi people. Personally, and it is a travesty of justice that, at the moment we should be thanking (b)(7)(C) for his dedication and devotion, he is instead being treated as a criminal.

5. I have remained in contact with (b)(7)(C) since my change of station, with the specific intent to advise that given the opportunity to make him a leader of my Marines in the future, I would do so. I cannot recommend strongly enough that (b)(7)(C) be rewarded or even the most remote recognition that he was responsible for my survival action, and that he not only be retained, but also rewarded for his actions.

6. I am more than willing to provide further explanation or support upon request. I was last contacted at (b)(7)(C) while in Baghdad, Iraq. (b)(7)(C) is in Baghdad, Iraq. I can be reached via telephone and at (b)(7)(C).

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(7)(C) /0602 USMCR



RESPONDENT'S EXHIBIT CC

March 1, 2004

From: (b)(7)(C) USMCR
To: President, Board of Inquiry

Subj: CHARACTER STATEMENT; CASE OF (b)(7)(C)

1. I have known (b)(7)(C) since (b)(7)(C). We worked together at Marine Corps Base, Camp Smedley D. Butler, Okinawa, Japan for approximately eighteen months. Throughout that period, I personally observed (b)(7)(C) demonstrate maturity, professionalism, and judgment beyond his rank and experience.

2. (b)(7)(C) character was always grounded in respect for the rule of law, responsibility, accountability, and sound judgment. His qualifications as a Marine Officer are unimpeachable. I observed him resolve a multitude of complex, high profile, time-sensitive, island-wide projects and HQMC initiatives through innovation, teamwork, and conscientious tenacity. I personally worked with and through him on numerous occasions and projects, finding his candor and honesty an asset in every situation. (b)(7)(C) was a team player and his fellow Officers knew that we could always depend on his word. (b)(7)(C) played an active and pivotal role in the success of numerous key projects. At no time, did I recognize any flaws in his character; more often, he served as a superb role model for his fellow Officers through his words, work, and wisdom.

3. His rapport with his fellow Officers within and outside his command was enviable. His willingness to tackle difficult and challenges assignments, and accomplish the mission was notable. The effectiveness of our unit improved as a direct result of (b)(7)(C) noteworthy teamwork, commitment and performance.

4. It was my privilege to work with (b)(7)(C). During my eighteen plus years of service, I have met few Marine Officers with the grounded character of (b)(7)(C). I strongly recommend (b)(7)(C) for retention as an Officer of Marines; to do otherwise, would be a loss to our Corps and its Marines. If you have any questions or wish to discuss anything, please contact me at (b)(7)(C) or (b)(7)(C).

Sincerely,

(b)(7)(C)

18 Feb 2004

From: (b)(7)(C) United States Marine Corps
To: Board of Inquiry, c/o (b)(7)(C) United States Navy

1. I am writing this character reference letter for (b)(7)(C) (b)(7)(C) United States Marine Corps. (b)(7)(C) contacted me via e-mail regarding this Board of Inquiry and his fitness to stay in the Marine Corps Reserves.
2. (b)(7)(C) and I served together at (b)(7)(C) (b)(7)(C) III Marine Expeditionary Force, Okinawa, Japan (approximately (b)(7)(C)). I was his Company Commander and then (b)(7)(C) was Platoon Commander, (b)(7)(C) Platoon.
3. (b)(7)(C) provided the necessary leadership and trained his Marines to meet the goals consistent with his platoon, company and battalion's mission. (b)(7)(C) worked diligently despite an undermanned platoon; he prepared his Marines for deployments in support of the battalion and III Marine Expeditionary Force. He displayed an unwavering devotion to his Marines and always looked out for their welfare. In fact, (b)(7)(C) positive influential leadership contributed to my Company's low misconduct incidents, and overall the lowest misconduct incidents in the battalion.
4. (b)(7)(C) and I also deployed to (b)(7)(C) (b)(7)(C). As the Detachment Commander, I personally observed (b)(7)(C) in his performance of duties as a systems control watch officer. As a watch officer he was responsible for the installation, maintenance and uninterrupted operation of the communications network my detachment was tasked with providing. (b)(7)(C) successfully executed his duties and contributed to the overall success and mission accomplishment.
5. During a Company field exercise that occurred over a 5-day period, I observed once again (b)(7)(C) performance in support of my Company's training objectives. The field exercise consisted of live firing to include the grenade range, NBC training, land navigation, patrolling and force marches. (b)(7)(C) displayed his leadership abilities by adapting to a dynamic and ever-changing environment. He remained focused and provided guidance and direction to his Marines. Without a doubt his presence in the field contributed to a successful

(b)(7)(C)

P.3

training event that concluded without any safety mishaps and without any loss of gear and equipment.

6. I can only speak of his character and potential for further service based on our tour at (b)(7)(C) Battalion. (b)(7)(C) conducted himself in the utmost professional manner and performed his duties consistent with what is expected of a naval officer. At no time did I witness any incident or was made aware of that would cause me to doubt his abilities to lead as an officer. (b)(7)(C) lived our Corps values: honor, courage and commitment. In summary, I would serve with (b)(7)(C) again and recommend retention.

7. If you have any questions I can be reached at (b)(7)(C) (b)(7)(C) or e-mail (b)(7)(C) usmc.mil.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT cc

13 March 2004

From: (b)(7)(C)
Dental Corps, United States Navy
To: Board of Inquiry
Subj: STATEMENT ICO (b)(7)(C)

1. I have known (b)(7)(C) since February 1998. I met him while he was serving his assignment at (b)(7)(C) and I as (b)(7)(C) both at Camp Hansen, Okinawa, Japan. During this six-year period, we have had meaningful contacts in professional, social and personal environments. In the time that I have known him, I have never witnessed (b)(7)(C) conduct himself in any manner that placed his integrity into question. (b)(7)(C) is an excellent and dedicated Marine Corps officer who had always exhibited sound judgment and conducted himself professionally. I believe that he will continue to be an asset to the military service. I am writing this letter in support of (b)(7)(C) retention in the United States Marine Corps Reserves.

2. The following are my contact information:

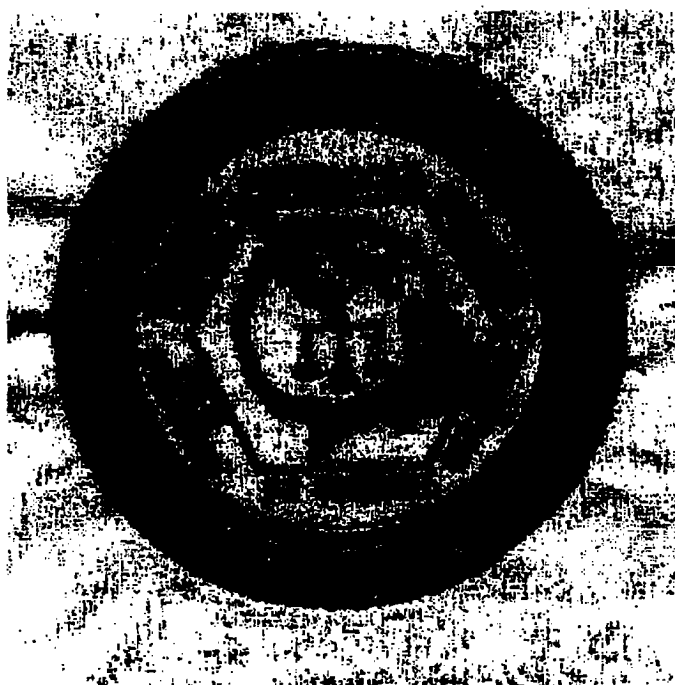
(b)(7)(C)

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT ff



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO:
5837

16 Mar 04

From: (b)(7)(C) (b)(6) - SSN /0602/0503 USMCR
To: Board of Inquiry

Subj: LETTER OF RECOMMENDATION, CASE OF (b)(7)(C)
(b)(7)(C)

1. I am writing to request that (b)(7)(C) be retained in the Marine Corps based on a history of good conduct.

2. I have known (b)(7)(C) for six years and I have worked with him in a variety of different situations. We first met as (b)(7)(C). Subsequently we worked together directly and indirectly over the course of three years in Okinawa. During my last year in Okinawa, I worked directly for (b)(7)(C) as (b)(7)(C) in the (b)(7)(C) of Marine Corps Base Butler.

3. As (b)(7)(C) subordinate, I learned to respect his decisions because decision-making process was measured and well thought out. For instance, as the head of the (b)(7)(C) (b)(7)(C), he always ensured that any team that went out on a project had a mix of skill sets. I believe in his ability to make sound judgments based on the facts presented to him. (b)(7)(C) always reviewed proposals and ideas with absolute thoroughness before making a decision. His measured, circumspect manner in making decisions ensured the success of our section (b)(7)(C).

(b)(7)(C)

4. As a peer, I've also seen (b)(7)(C) and I am convinced that I would try to emulate his decision-making process. He is, and always has been, an officer who engages in his career in the military at a level of which many are not willing or not capable. He makes an effort to understand his mission clearly and to recognize how his actions can drive the success or failure of the mission. More than that, however, he is incredibly intellectually engaged in the history of our profession of arms. This

produces an awareness of his own personal context and that of the Marines he is charged with leading that allows him to make decisions based on a very broad knowledge both experiential and historical.

5. Over the past 10 years as an enlisted Marine, as an officer and as a consultant to the Department of Defense, I have seen few officers of (b)(7)(C) caliber. I am certain that retaining him in the service does credit to the Marine Corps, the Naval Service and the profession of arms as a whole.

6. Please direct any additional questions to me at

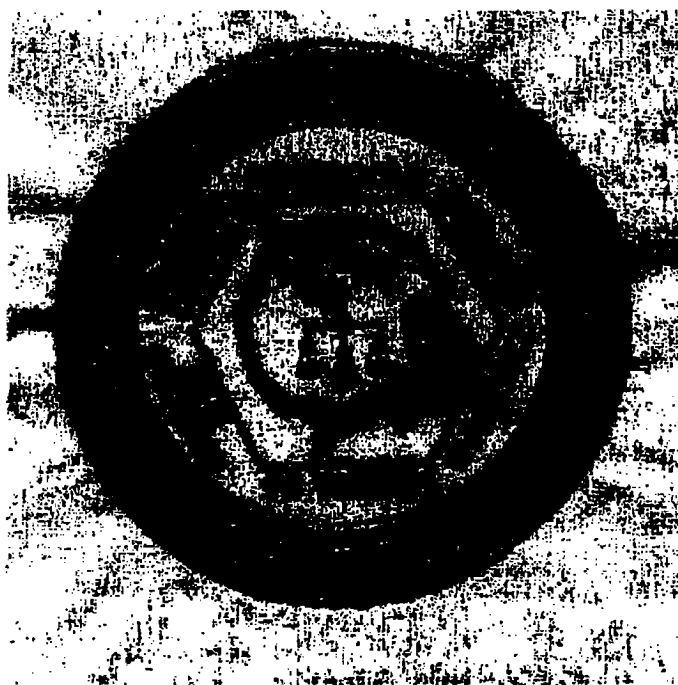
(b)(7)(C)

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT 99

From: (b)(7)(C) USMCR
To: President Of The Board

Subj: (b)(7)(C) USMCR

1. Sir, I was stationed on Okinawa, Japan assigned to (b)(7)(C) with (b)(7)(C) from (b)(7)(C). During this period (b)(7)(C) was well respected within the Battalion, among his peers and most importantly his Marines. As an Officer with unquestionable integrity and dedication to the Marine Corps.

2. I have had the pleasure to work with (b)(7)(C) while I was on active duty. And this Officer has always made sound judgment. I will serve with (b)(7)(C) again, without hesitation.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT hh



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO:
1000
4 Feb 04

From: (b)(7)(C) /0602 USMC
To: Board of Inquiry (Attn: (b)(7)(C) USN)
Subj: LETTER OF GOOD CONDUCT; CASE OF (b)(7)(C)

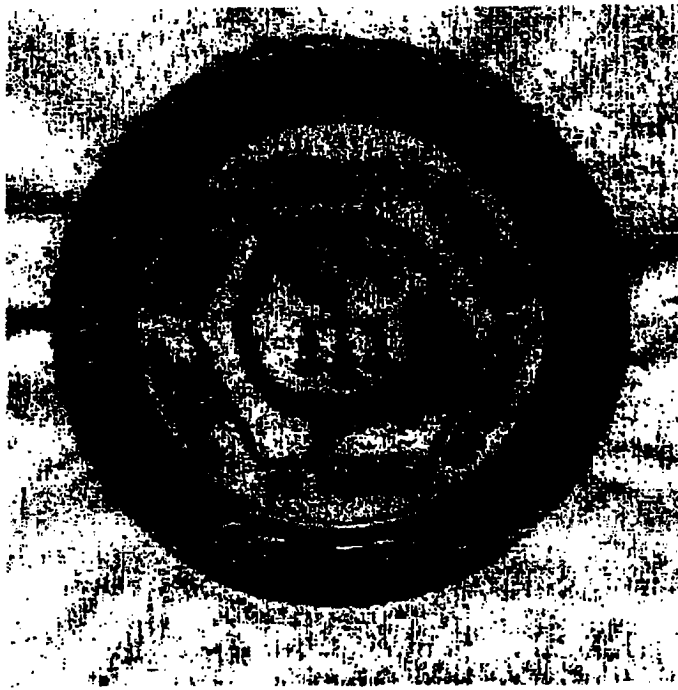
1. While I am not privy to the events that have led to the Board of Inquiry being convened, I can attest to the attributes that I witnessed during the time I served with (b)(7)(C).
2. As my sponsor to Okinawa, (b)(7)(C) was proactive in ensuring my family had a smooth transition to Okinawa. He selflessly provided food, information and transportation at all times, without question. The transition to a foreign country was made much easier due to his efforts and consideration, and my family and I will be forever grateful.
3. While working with (b)(7)(C) it was apparent that, as is the Marine Corps tradition, mission accomplishment and troop welfare were at the forefront of his mind. His genuine concern for the Marines that were in his charge was rivaled only by his desire to provide timely and efficient results for missions he was tasked with accomplishing. His ability to manage a multitude of concurrent projects while continually providing outstanding results was a testament to his competency as an officer of Marines. Never hesitant to speak his mind or stand up for his beliefs, he was always there for his Marines, looking out for their welfare and ensuring the command leadership was doing the same.
4. I believe that (b)(7)(C) is a valuable asset to the Marine Corps. His proven leadership and managerial skills will continue to support and enhance units with which he serves. He is definitely worthy of retention in the Marine Corps, and I would look forward to serving with him in the future.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

ii



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO:

To whom it may concern:

(b)(7)(C) was my OIC while stationed at (b)(7)(C) Okinawa Japan. I served in several capacities during my tour with (b)(7)(C); during this time I found at NO time did his actions cause me to think that he would be put in the position he is in now. I would recommend highly that he be allowed to continue his service. There are few Officers that I have had the pleasure of working with that took the time to listen and learn from the Marines that have been enlisted to aid them in their growth. (b)(7)(C) was one of the few and should continue to be ONE OF THE FEW.

It is my recommendation that (b)(7)(C) remain in the service of our Country. I would be willing to return to Combat with him at anytime.

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT

jj



UNITED STATES MARINE CORPS

(b)(7)(C)

INTEL REF: 5000

(b)(7)(C)

10 MAR 04

From:

(b)(7)(C)

To: Board of Inquiry

Via: (b)(7)(C)

Subj: STATEMENT OF CONFIDENCE ICO (b)(7)(C) D.S. USMCR

1. I had the honor of working with (b)(7)(C) July through November (b)(7)(C). During this time frame, I was a project manager in the (b)(7)(C) section for (b)(7)(C) (b)(7)(C) Marine Corps Base Camp Smedley D. Butler (Okinawa, Japan). My background, up until this point, was not geared towards carrying out the responsibilities as a project manager. Also, I had recently requested mast. This sort of cast a negative shadow on my reputation within the (b)(7)(C). I was almost certain that my new OIC (b)(7)(C) would already have pre-judged me and made my time working with him very difficult and possibly hurt my career.

(b)(7)(C) instead, welcomed me into his section with enthusiasm. (b)(7)(C) cut right to the chase and informed me that he did not want to even discuss the past events, which had taken place before I joined his section. He made me at ease by informing me that I would be treated fairly, all I had to do was my job. As my OIC, (b)(7)(C) consistently provided me with clear and concise direction. (b)(7)(C) ensured my success by keeping me informed, and providing me with the necessary corrective action when needed. I have never met a more approachable, sincere, or trust worthy officer in my past fifteen (15) years of Active duty service. I would be honored to serve with him in any combat theatre. It's my opinion that (b)(7)(C) is a truly professional Marine Commissioned Officer who possesses a genuine concern for the welfare and morale of his subordinates. (b)(7)(C) must be retained in the Marine Corps.

2. If there are any further questions, I can be contacted via e-mail at: (b)(7)(C) usmc.mil.

(b)(7)(C)

PAGE 02

(b)(7)(C)

03/11/2004 19:00

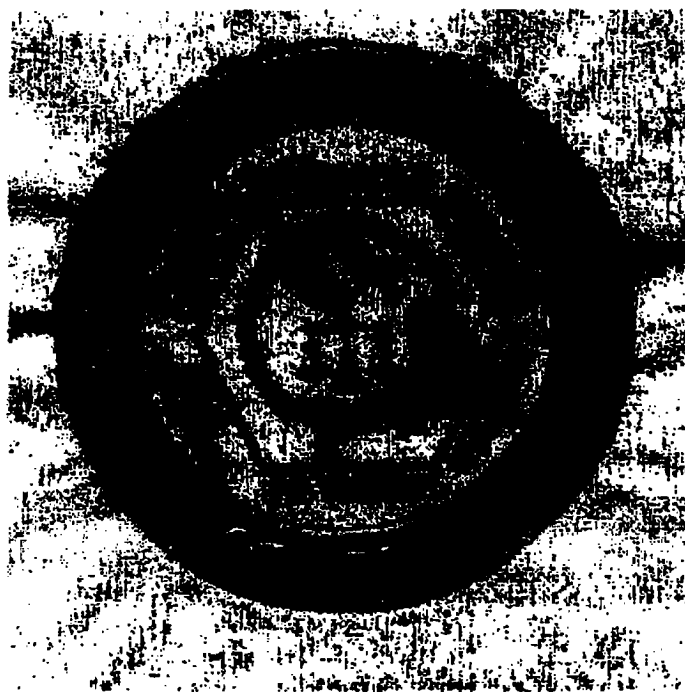
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**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT kk

Mar 23 04 04:53p



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO:

22 Mar 04

From: From: (b)(7)(C) (b)(6) SSN 70699 USMC
 To: Board of Inquiry

Subj: LETTER OF RECOMMENDATION, CASE OF (b)(7)(C)

1. I am writing to request that (b)(7)(C) be retained in the Marine Corps based on a history of good conduct.
2. I have known (b)(7)(C) for over three years and I have worked with him in a variety of different situations. We first met at Marine Corps Base Camp Smedley D. Butler on or around April of [redacted]. He was the Marine Corps Base (b)(7)(C) and I was his (b)(7)(C). We worked together directly over the course of two years in Okinawa. During this time we were directly responsible for the management of (b)(7)(C) (b)(7)(C) on the various Camps that are part of Camp Smedley D. Butler. In addition we were also the Marine Corps (b)(7)(C) (b)(7)(C) for the Japanese Facility Improvement Program that billet required us to negotiate with the Government of Japan (b)(7)(C) (b)(7)(C) and make binding decisions based on what materials the United States Government would provide in support of (b)(7)(C) (b)(7)(C) on (b)(7)(C) by the Government of Japan.
3. As the (b)(7)(C) (b)(7)(C) for MCB [redacted] he was also responsible for the proper planning and implementation of (b)(7)(C) (b)(7)(C) as may be directed by Headquarters Marine Corps. A good example of that would be the Marine Corps (b)(7)(C) (b)(7)(C) that are now fully functional on Okinawa. He was also directly responsible for the oversight and submission of the MCB (b)(7)(C) sections budget which required him to make numerous decisions based on the availability of funds and needs of the various Marine units aboard Camp Smedley D Butler.
4. As (b)(7)(C) (b)(7)(C) I learned to respect his judgement because his decision-making process was measured and always well thought out. For instance, as the head of the (b)(7)(C) he would ensure that any team that was involved in the (b)(7)(C) (b)(7)(C) had the technical expertise or experience in fielding questions and making recommendations. I believe in his ability to make sound judgments based on the facts presented to him. (b)(7)(C) always reviewed proposals and ideas with absolute thoroughness before making a decision. His measured, circumspect manner in making decisions ensured the success of (b)(7)(C) MCB Butler Camps (b)(7)(C) (b)(7)(C)
5. As a Senior Non Commissioned Officer and having worked with (b)(7)(C) (b)(7)(C) in a very stressful and faced pace environment, I am convinced that his decision-making process is well thought out and can be emulated by his subordinates and fellow officers alike. He is, and always has been, an officer who engages in his career in the military at a level of which many are not willing or not capable. He makes an effort to understand his mission clearly and to recognize how his actions can drive the success or failure of the mission. From the two years that I worked with (b)(7)(C) he has

Mar 23 04 04:53p

always been intellectually engaged in the history of our profession of arms. We have sat down on numerous occasions and talked about my experience during the first Gulf war, Somalia and various other deployments to foreign country's. This truly produces an awareness of his own personal context and that of the Marines he is leading. I believe that his interest in military history and others past experience allows him to make decisions based on a very broad knowledge both experiential and historical.

6. Over the past 25 years as an enlisted Marine, and advisor to numerous young officers there are very few that I have ran across that are of (b)(7)(C) caliber. I am certain that retaining him in the service does credit to the Marine Corps, the Naval Service and the profession of arms as a whole.

7. For any additional questions I can be contacted at

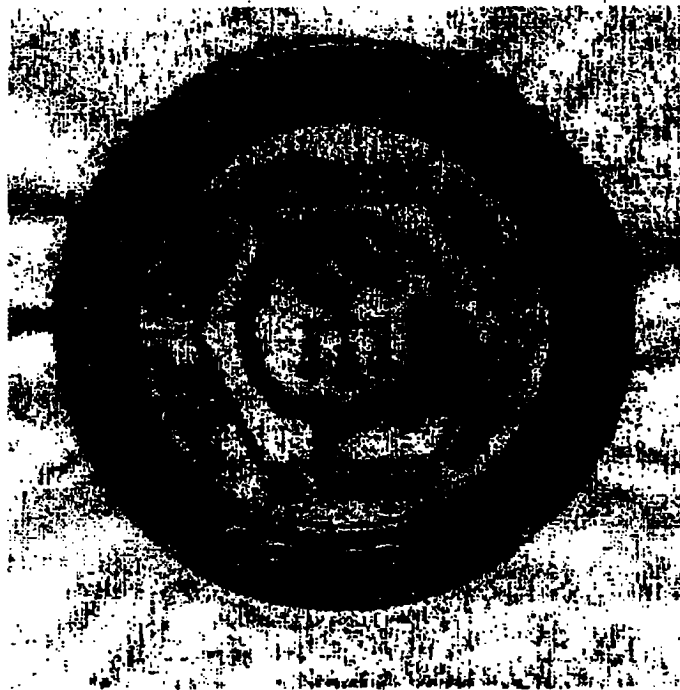
(b)(7)(C) .USMC.MIL or Tel# (b)(7)(C)

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN / 0602 USMCR



RESPONDENT'S EXHIBIT 11



UNITED STATES MARINE CORPS

(b)(7)(C)

DAILY INDEX TO
2000

(b)(7)(C)

20 Mar 01

From: (b)(7)(C)

To: Board Of Inquiry

Subj: LETTER OF RECOMMENDATION, CASE OF (b)(7)(C)

1. I recommend to the board in the strongest terms possible that (b)(7)(C) be retained as a Marine Corps (b)(7)(C) in the United States Marine Corps Reserve.
2. I have the privilege to be currently serving as a Civilian Marine on Okinawa and I am a United States Marine Master Sergeant (Ret). I have served both in peace and in war, with Active Duty and Reserve Units, Major command staff billets and front line billets for the past thirty-five years. My recommendation for retention is not offered lightly or as a personal favor to (b)(7)(C). My only concern is that which is in the best interest for our beloved United States Marine Corps and all of its Marines, even more so during this time of war. (b)(7)(C) should be retained. Of that, there is no question.
3. (b)(7)(C) then (b)(7)(C) reported aboard this command in April as the (b)(7)(C) for Marine Corps Base (b)(7)(C) Okinawa Japan and promoted to (b)(7)(C) the following year. From the first conversation I had with him on that day, I was extremely impressed with (b)(7)(C). He continually maintained a genuine command presence at all times, while often under extreme pressure to get things accomplished. (b)(7)(C) displayed an ability to work with and lead people of various backgrounds and professions while making it look almost effortless. He dealt effectively with Japanese Foreign National Workers, civilian contractors, vendors, Civil Servants and Marines up and down the pay scale as well as joint planning with the other services on Okinawa. It because of his leadership that the (b)(7)(C) was able (b)(7)(C)
4. (b)(7)(C) has a deep love for military history, which he used where applicable to guide him in his daily activities.

Whether tactical operations, garrison operations or in just communicating with people, he knew what worked and what didn't based on his knowledge and lessons learned by others he studied. Often times during conversations, I thought I was talking to someone who had spent 40 years in the Marine Corps.

5. I observed (b)(7)(C) judgment in dealing with complex technical, political; personnel issues daily. Every decision he made was right on target. It was his judgment with which I was most impressed. He continually displayed an uncanny analytical ability to make sound common sense decisions on any issue that came up during the day. He was able to judge what was important, and what was not, and deal with the issues or situations of each day accordingly.
6. Having spent hundred of hours working and talking with (b)(7)(C) (b)(7)(C) I am also aware of his intense loyalty to our Country, our Corps and our Marines both past and present. There were many situations through out his career as well as those to which I personally observed his loyalty being tested. Each time it was unwavering. I have observed the loyalty of many other Marines in similar situations crumble. It was this deep sense of loyalty and commitment, which compelled him to join the Marine Corps Reserve and serve in OIF. Even now while facing this board, he remains loyal to our country and our Corps wanting to stay a Marine. That fact alone bolsters my confidence in him.
7. I am aware of the charges against (b)(7)(C), yet knowing the (b)(7)(C) as I do, I am confident he did the right under the circumstances which occurred at those times and places for which the charges are levied.
8. Please feel to contact me at (b)(7)(C) or email @ (b)(7)(C) usmc.mil

(b)(7)(C)

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT mm

(b)(7)(C)

Marine Corps Bases Japan, (b)(7)(C)

(b)(7)(C)

Email: (b)(7)(C) usmc.mil

From: (b)(7)(C)

To: Board of Inquiry

Subj: LETTER OF RECOMMENDATION, CASE OF (b)(7)(C)

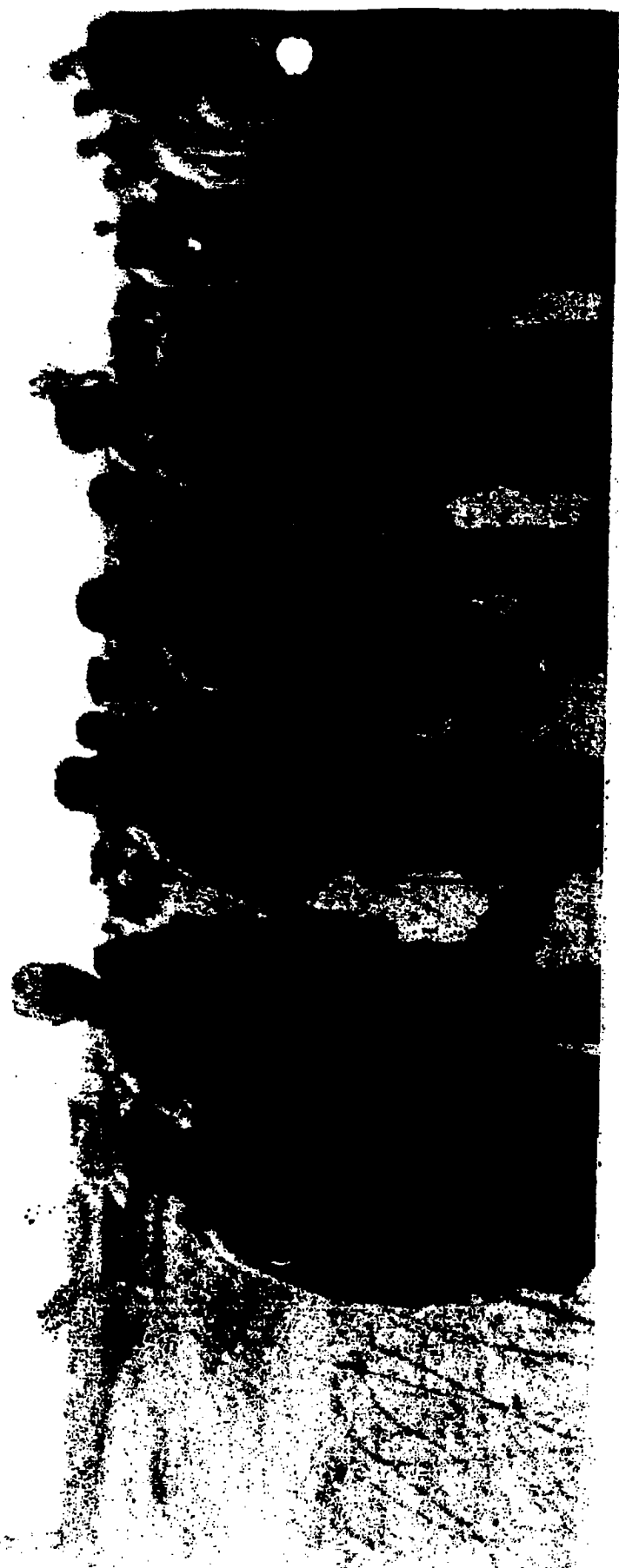
1. I am writing to request that (b)(7)(C) be retained in the Marine Corps based on a history of good conduct and sincere dedication.
2. I have known (b)(7)(C) since April of 1984 and during that time I have known him as both a supervisor and a friend. (b)(7)(C) and I worked closely together every day and through this relationship I found him to be one of the most truly dedicated Marines I had ever met. (b)(7)(C) extensive knowledge of military history, past campaigns and current doctrine was always evident through casual conversation as well as formal discussion. I believe it is this knowledge and love of the military that makes (b)(7)(C) a great Marine Officer.
3. (b)(7)(C) ability to interact with both superiors and subordinates has also been a factor in my opinion of him. Having worked as his subordinate I found his leadership style to work quite well. (b)(7)(C) ability to work closely with both civilians and Marines is not always evident in a Marine Officer, but (b)(7)(C) was able to work smoothly with everyone he came into contact with.
4. Although I have not heard the full explanation that brought about this board of inquiry I can not think of any situation that (b)(7)(C) would be involved in that would warrant punishment, let alone removal from the Corps that his life seems to be based around. I am confident that whatever transpired was in the best interest of the Marine Corps, but even more for the Marines that (b)(7)(C) had charge of. I have always believed that had I remained an enlisted Marine I would be proud to serve under (b)(7)(C) in any situation.
5. Over the past 16 years as an enlisted Marine and a Marine Civilian I have known many Marine Corps Officers. I am absolutely certain that retaining (b)(7)(C) in the Marine Corps is the right decision.

6. Please direct any additional questions to me at

(b)(7)(C) usmc.mil or (b)(7)(C)

(b)(7)(C)

(b)(7)(C)



DOD JUNE

2074



DOD JUNE

2075

(b)(7)(C)

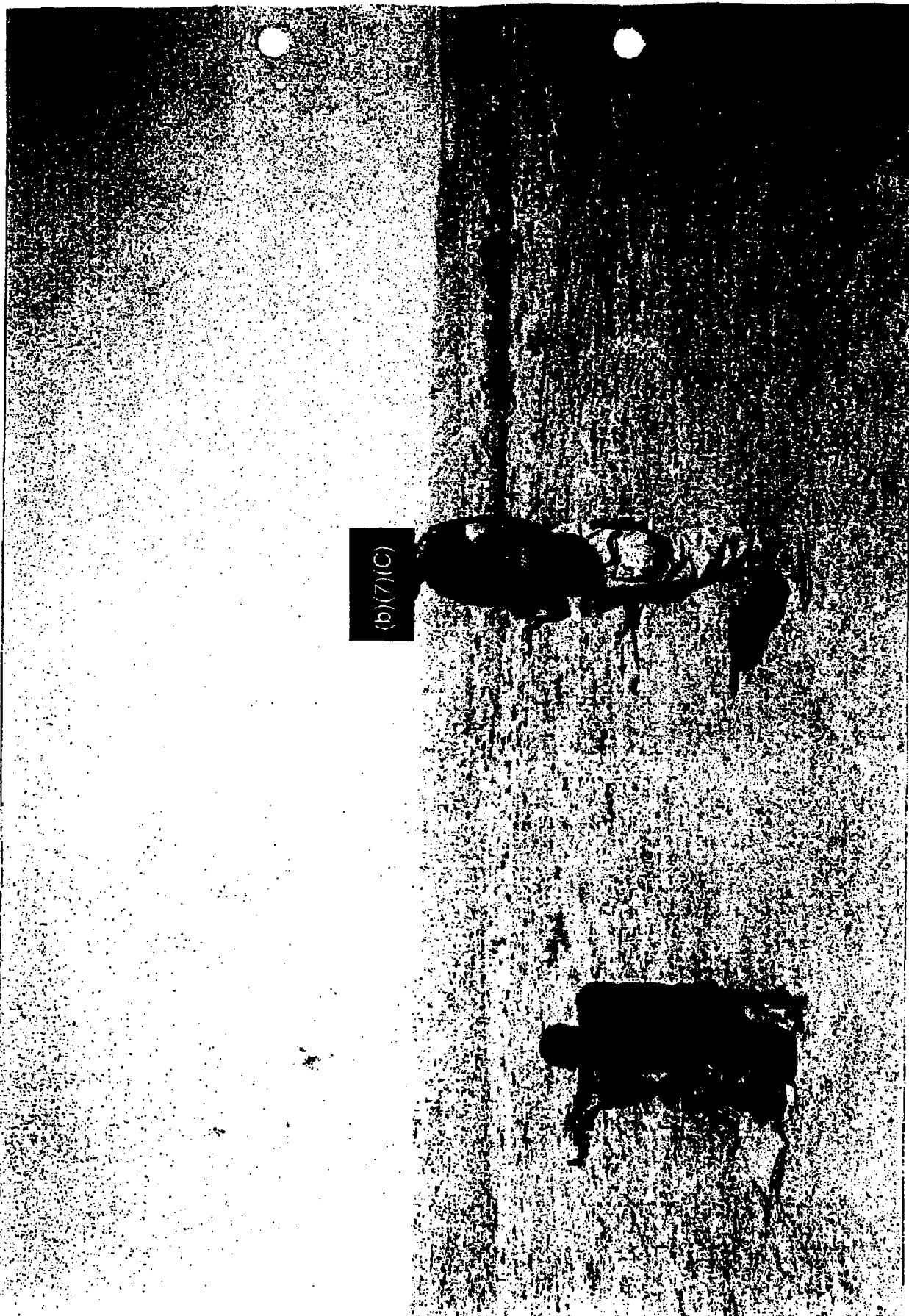
DOD JUNE

2076



DOD JUNE

2077



DOD JUNE

2078



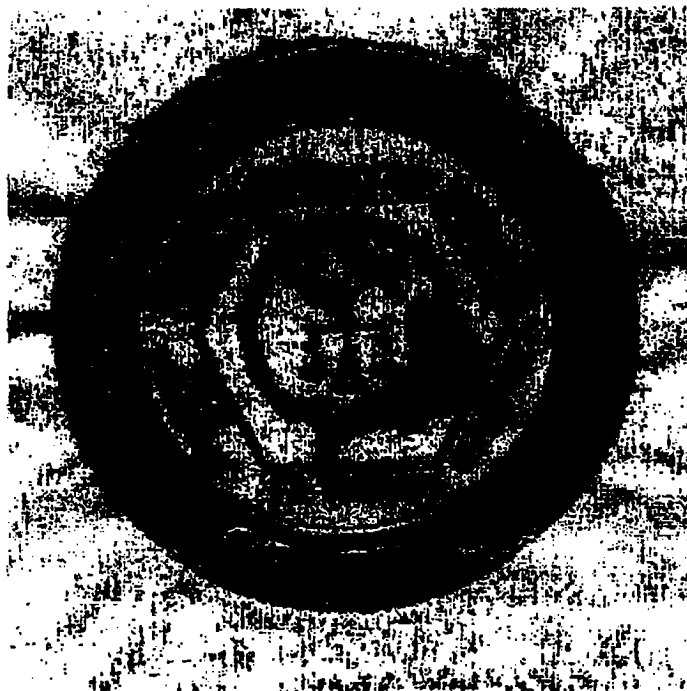
DOD JUNE

2079

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN 70602 USMCR



RESPONDENT'S EXHIBIT nn



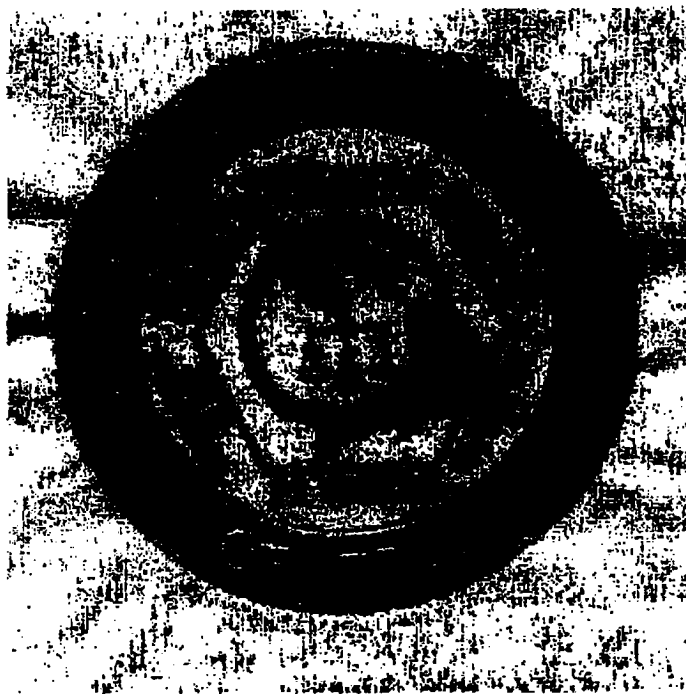
DOD JUNE

2081

**RESPONDENT'S EXHIBITS FOR
BOARD OF INQUIRY ICO**

(b)(7)(C)

(b)(6) - SSN /0602 USMCR



RESPONDENT'S EXHIBIT 00

(b)(6) - OMPF PERSONAL DATA

E.R.O.D.I.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

DOD JUNE

2085

F.R.O.D.I.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

STAPLE ADDITIONAL PAGES HERE

(b)(6) - OMPF PERSONAL DATA

DOD JUNE

2087

F.R.O.D.I.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

← STAPLE ADDITIONAL PAGES HERE

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

DOD JUNE

2091

F.R.O.D.I.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

← STAPLE ADDITIONAL PAGES HERE

(b)(6) - OMPF PERSONAL DATA

F.R.O.D.I.S. ACCEPTED

(b)(6) - OMPF PERSONAL DATA

(b)(6) - OMPF PERSONAL DATA

DOD JUNE

2095

USMC FITNESS REPORT (1610)
NAVSIC 1052A (Rev. 1-69) (BT)
PREVIOUS EDITIONS WILL NOT BE USED
SAC 9700-15-100-000

DO NOT STAPLE
THIS FORM

COMMANDANT'S GUIDANCE

The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, accident scheduling, commend, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the continuous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflated or deflated ratings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. C

a. OCC

ion and Period Covered:

b. From

To

(b)(6) - OMPF PERSONAL DATA

FORM 100-100 (Rev. 1-69) (M)
GPO: 1969-17-000-0708

PAGE 2 OF 5

DOD JUNE

2097

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 100326C (Rev. 1-91) (27)
SEC 8720-LF-003-0000

PAGE 3 OF 6

DOD JUNE

2098

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. C. Job and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

ENC 0100-LF-000-0000

PAGE 4 OF 8

DOD JUNE

2099

1. Name Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

FORM 100-100-100-100 (10/10)
GPO: 1969-100-100-100

PAGE 5 OF 5

DOD JUNE

2100

USMC FITNESS REPORT (1610)
MAY198 16058A (Rev. 1-85) (BT)
PREVIOUS EDITIONS WILL NOT BE USED
DA 0490-LP-000-0000

DO NOT STAPLE
THIS FORM

COMMANDANT'S GUIDANCE

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(b)(6) - OMPF PERSONAL DATA

DOD JUNE

2101

1. Machine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
e. OCC

f. From

To

(b)(6) - OMPF PERSONAL DATA

NAVPAC 162250 (Rev. 1-80) (OP)
EIS: 8160-LF-000-0700

PAGE 2 OF 5

DOD JUNE

2102

1. Name Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVSIG 44232C (Rev. 4-88) (IMP)
SIC: 0100-17-000-0000

PAGE 3 OF 5

DOD JUNE

2103

1. Machine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 10000 (Rev. 1-84) (M)
SEC: 010001, 0-000-0000

PAGE 4 OF 5

DOD JUNE

2104

1. Marine Reported On:
a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered:
a. Occ

b. From

To

(b)(6) - OMPF PERSONAL DATA

FORM 100-100-1000

PAGE 5 OF 5

DOD JUNE

2105

USMC FITNESS REPORT (1010)
NAVSIG 1433A (Rev. 1-69) (SF)
PREVIOUS EDITIONS WILL NOT BE USED
GAC 5100-LF-000-0000

COMMANDANT'S GUIDANCE

DO NOT STAPLE
THIS FORM

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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 10000 (Rev. 1-69) (OP)
DD FORM 100-100-1000

PAGE 5 OF 8

DOD JUNE

2107

USMC FITNESS REPORT (1610)
NAVMC 10000A (Rev. 1-88) (EP)
PREVIOUS EDITIONS WILL NOT BE USED
SN: 9183-LF-000-0000

DO NOT STAPLE
THIS FORM

COMMANDANT'S GUIDANCE

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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG 152002 (Rev. 1-99) (27)
040 0100-01-000-0100

PAGE 2 OF 6

DOD JUNE

2109

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVJAG FORM (Rev. 1-68) (27)
GPO: 1970-450-000

PAGE 3 OF 8

DOD JUNE

2110

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 201003 (Rev. 1-00) (MP)
REF: STS-41-000-0000

PAGE 4 OF 5

DOD JUNE

2111

1. Name Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

REVIEW YOUR COPY (1-80-100)
SEE G100-1P-000-1000

PAGE 3 OF 3

DOD JUNE

2112

COMMANDANT'S GUIDANCE

DO NOT STAPLE
THIS FORM

The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to cause the actual value of each report. Reviewing Officers will not concur with inflated reports.

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On;
a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered;
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 103388 (Rev. 8-99) (WN 2.2)

PAGE 2 OF 5

DOD JUNE

2114

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

7 MAY 1985 (REV. 1-80) (MM 22)

PAGE 4 OF 8

DOD JUNE

2116

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 10833E (Rev. 8-90) (NW 2.2)

PAGE 5 OF 5

DOD JUNE

2117

COMMANDANT'S GUIDANCE

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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 19833 (Rev. 9-88) (WN 2.2)

PAGE 2 OF 5

DOD JUNE

2119

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 100000 (Rev. 9-88) (WN 2.2)

PAGE 4 OF 5

DOD JUNE

2121

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. OCC

b. From

To

(b)(6) - OMPF PERSONAL DATA

NAVMC 10635E (Rev. 8-88) (VW 2.2)

PAGE 4 OF 8

DOD JUNE

2122

COMMANDANT'S GUIDANCE

DO NOT STAPLE
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A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

e. Grade

f. DOR

g. PMOS h. EILNOC

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVMC 10635X (Rev. 9-89) (WN 2.3)

PAGE 5 OF 5

DOD JUNE

2124

COMMANDANT'S GUIDANCE

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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. OCC b. From To

(b)(6) - OMPF PERSONAL DATA

NAVSIG 10838E (Rev. 9-58) (WN 22)

PAGE 5 OF 8

DOD JUNE

2126

COMMANDANT'S GUIDANCE

DO NOT STAPLE
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(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MR

d. SSN

2. Session and Period Covered:
a. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:
a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:
a. From
b. From
To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

b. First Name

c. M

d. SSN

2. Occasion and Period Covered:

a. r

b. From

To

(b)(6) - OMPF PERSONAL DATA

1. Marine Reported On:

a. Last Name

b. First Name

c. MI

d. SSN

2. Occasion and Period Covered:

a. F

b. From

To

(b)(6) - OMPF PERSONAL DATA



UNITED STATES MARINE CORPS

(b)(7)(C)

IN REPLY REFER TO
5800

(b)(7)(C)

AUG - 3 2003

From: Executive Officer, (b)(7)(C)
To: Commanding Officer, (b)(7)(C)
Subj: PRELIMINARY INQUIRY INTO STATEMENTS MADE BY (b)(7)(C)
(b)(7)(C) TO (b)(7)(C) IN AL KUT, IRAQ ON OR
ABOUT 30 JUNE 03.
Ref: (a) JAGMAN section 0204
Encl: (1) Copy of (b)(7)(C) JAG Investigation statement.
(2) Quote from (b)(7)(C) Division Office Hours.

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a), into statements made by (b)(7)(C) (b)(7)(C) to (b)(7)(C).
2. Personnel contacted included:
(b)(7)(C) Commanding Officer, (b)(7)(C)
(b)(7)(C)
(b)(7)(C) Platoon Commander, (b)(7)(C)
(b)(7)(C)
3. Materials reviewed include, interviews with (b)(7)(C) and (b)(7)(C) statements from (b)(7)(C) JAG Manual Investigation of (b)(7)(C) and information recorded at (b)(7)(C) Division Office Hours. All material collected by this inquiry will be kept in the Battalion S-1 field desk.
4. On or about 30 June 2003 (b)(7)(C) was counseling (b)(7)(C) (b)(7)(C) on recent information he had received about possible mistreatment of Iraqi Detainees under (b)(7)(C) orders. (b)(7)(C) later made an official statement (enclosure 1) concerning this issue to (b)(7)(C) who was conducting an investigation into the allegations of detainee mistreatment. (b)(7)(C) eventually was the subject of Division Commander's Office Hours for his conduct involving these detainees. At the Office Hours, (b)(7)(C) pointed out that there were discrepancies in (b)(7)(C) official



DOD JUNE

2132

~~FOR OFFICIAL USE ONLY~~1st Marine Division ROE Training (1003V)

1. Introduction

ROE is a combination of the Law of War and other conditions based on strategic mission accomplishment considerations.

2. ROE will not make every decision easy, Not all black and white.
- Apply Core Values; Do what is right; Do what America expects of its Marines, Sailors, and Soldiers.

3. No better friend, No worse enemy

Stick: CG's intent is to use decisive force to send a shock wave through the enemy, shattering their will to fight.

Carrot: Treating noncombatants (including those who surrender) with humanity will contribute to breaking the enemy's will to fight.

Remember: No one wants to fight U.S. Marines because they'll lose. So, give them every opportunity to give up.

4. Law of War - Marines Rules

- Fight only enemy combatants.
- Do not harm enemies who surrender - disarm, turn over to superiors (65's: secure, search, silence, segregate, safeguard, speed to the rear/safe position).
- Do not kill or torture EPWs.
- Collect and care for ALL wounded - friendly and enemy.
- Do not attack medical personnel, facilities or equipment.
- Destroy no more than mission requires.
- Treat all civilians humanely.
- Respect private property and possessions - no stealing.
- Prevent all violations of the Law of Armed Conflict that you can and report all violations to your superiors.

ACT IN ACCORDANCE WITH OUR CORE VALUES, CONSISTENT
AS THEY ARE WITH THE BEST INTERESTS OF OUR NATION

If you cannot be proud of it, don't do it.

5. Hostile Force: On order, Iraqi military and paramilitary forces are declared hostile and may be attacked and destroyed

You do not need wait for a hostile act or demonstration of hostile intent to engage IRAQI military/paramilitary forces.

6. Positive Identification (PID) is required prior to engagement. PID is a reasonable certainty that the proposed target is a legitimate military target. If no PID, contact your next higher commander for decision.

7. Self Defense

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- * COMMANDERS HAVE THE INHERENT AUTHORITY AND OBLIGATION TO USE ALL NECESSARY MEANS AVAILABLE AND TO TAKE ALL APPROPRIATE ACTION IN SELF-DEFENSE OF THEIR UNITS AND OTHER U.S. AND COALITION FORCES.

8. Proportional Use of Force

IN ORDER TO ACCOMPLISH THE MISSION, USE OF FORCE WILL BE PROPORTIONAL, THAT IS, REASONABLE IN INTENSITY, DURATION AND MAGNITUDE

9. Do not engage anyone who has surrendered or is out of battle due to sickness or wounds.

10. MILITARY OPERATIONS AGAINST IRAQ WILL BE CONDUCTED, INsofar AS POSSIBLE, TO ENSURE THAT INCIDENTAL INJURY TO CIVILIANS AND COLLATERAL DAMAGE TO CIVILIAN OBJECTS IS MINIMIZED.

11. PROTECTED STRUCTURES WILL NOT BE ATTACKED UNLESS THEY ARE BEING USED FOR MILITARY PURPOSES.

- CIVILIAN POPULATION CENTERS, MOSQUES AND OTHER RELIGIOUS PLACES
- HOSPITALS AND FACILITIES DISPLAYING THE RED CRESCENT OR RED CROSS
- CULTURAL AND HISTORIC BUILDINGS
- NONMILITARY STRUCTURES

12. Do not target:

- Infrastructure (public works, communication facilities, dams),
- Lines of Communication (roads, highways, bridges, railways)
- Economic objects (commercial storage facilities, pipelines)
- UNLESS necessary for self-defense or if ordered by your commander.
- If you must fire on these objects to engage a hostile force, disable and disrupt but avoid destruction of these objects, if possible.

13. "Just because" clause.

("Just because" the ROE says you CAN do something does not mean that you SHOULD do it.)

IN DETERMINING THE LEVEL OF FORCE REQUIRED FOR MISSION ACCOMPLISHMENT A COMMANDER MUST CONSIDER:

-THE ASSIGNED MISSION; THE CURRENT SITUATION; HIGHER COMMANDER'S INTENT; AND ALL OTHER AVAILABLE GUIDANCE

14. The use of force, including deadly force, is authorized to protect the following:.

- ALL U.S. CITIZENS
- PRISONERS OF WAR AND DETAINED PERSONNEL

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- COALITION FORCES, INCLUDING OPPOSITION GROUPS SUPPORTED BY U.S. FORCES, AND THEIR ASSOCIATED MISSION ESSENTIAL EQUIPMENT AND SUPPLIES

- NGOs/IOs PROVIDING HUMANITARIAN RELIEF IN IRAQ, SAUDI ARABIA, JORDAN, KUWAIT, SYRIA, AND TURKEY AND THEIR ASSOCIATED MISSION-ESSENTIAL EQUIPMENT AND SUPPLIES.

COMMANDER, USCENTCOM MAY DESIGNATE ADDITIONAL PERSONS AND MILITARY FORCES FOR PROTECTION.

15. WITHIN IRAQ NECESSARY FORCE, INCLUDING DEADLY FORCE, MAY BE USED AGAINST INDIVIDUALS OR GROUPS OF INDIVIDUALS WHO COMMIT, OR ARE ABOUT TO COMMIT, AN ACT WHICH IS LIKELY TO CAUSE DEATH OR SERIOUS BODILY HARM TO ANOTHER.

*NECESSARY FORCE, INCLUDING DEADLY FORCE IS ALSO AUTHORIZED TO PROTECT PROPERTY DESIGNATED BY COMMANDER, USCENTCOM AS VITAL TO THE EXECUTION OF THE MISSION. DESIGNATED PROPERTY MAY INCLUDE PUBLIC UTILITIES, MEDICAL FACILITIES, AND OTHER MISSION ESSENTIAL STRUCTURES.

16. Treat all civilians and their property with respect and dignity. Do not seize civilian property, including vehicles, unless you have the permission of a battalion level commander and you give a receipt to the property's owner.

17. Riot Control Agents- RCA

NON-LETHAL RCA MAY BE USED ONLY IN DEFENSIVE MODES TO SAVE LIVES:

- TO PROTECT U.S./DESIGNATED PERSONNEL AND FACILITIES FROM CIVIL DISTURBANCE, - DURING BR OPERATIONS, - TO CONTROL RIOTING EWs, -DURING MARITIME OPERATIONS INVOLVING CIVILIANS, WHERE CIVILIANS ARE USED TO MASK AND/OR SCREEN AN ATTACK.

18. CIVILIANS ENCOUNTERED IN IRAQ WHO ARE BELIEVED TO POSSESS INFORMATION IMPORTANT TO, OR ARE INTERFERING WITH, MISSION ACCOMPLISHMENT MAY BE TEMPORARILY DETAINED AND/OR TRANSPORTED TO REAR AREAS OR FORWARD STAGING BASES WITHIN IRAQ.

19. Looting and the taking of war trophies are prohibited.

20. REMEMBER

- Attack Iraqi forces and military targets.
- Spare civilians and civilian property, if possible.
- Conduct yourself with dignity and honor.
- Comply with the Law of War. Prevent violations. If you see a violation, report it.

21. ROE for combat operations: ROE take effect on order and will remain in effect until your commander orders you to transition to post-hostilities ROE.

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movement. Are U.S. forces authorized to use non-lethal RCAs to disperse the civilians?

- A. Yes, as just discussed, RCAs may be used when civilians are used to mask or screen attacks.
- B. No. Ah, I wasn't paying attention when the instructor stated, "RCAs may be used when civilians are used to mask or screen attacks."
- C. A and B.

38. DID

- At night a couple of LAVs observe a dark colored SUV traveling down a road across their front, followed closely by what appears to be a military truck. The truck is not an American military vehicle and is carrying a number of people in the back. From your LAV you cannot make out any markings on either vehicle, but G-2 has reported an Iraqi unit to the front. You are the LAV commander, do you engage the vehicles at this time?

- A. No, you do not have positive target identification, that is, a reasonable probability that the vehicles to your front are Iraqi forces.
- B. No, you do not have positive target identification, that is, a reasonable certainty that the vehicles to your front are Iraqi forces.
- C. Yes, based upon your observations and intelligence reports, you have enough information to "light 'em up."

40. DEADLY FORCE TO PROTECT OTHERS

- You are conducting MOUT. While scouting ahead, from the 4th story of a building you see an individual who is not wearing a uniform atop another building approximately 300 meters away. This individual begins shooting into a group of civilians below his building. The shooter is not firing at you and is no immediate threat to Marine forces who have yet to approach your location. Can you shoot the shooter?
- A. You should engage the shooter because the ROE allows you to use deadly force against civilians or others who commit acts or are about to commit acts that are likely to cause death or serious bodily injury.
- B. You cannot shoot the shooter because he poses no immediate threat to you as U.S./Coalition forces. You report the incident and ask for guidance.
- C. You should engage the shooter based upon the concept of "collective" self-defense. The ROE allows you to defend Iraqi civilians to the same extent as U.S./Coalition forces and designated persons.

42. PROTECTION OF PROPERTY OF OTHERS

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Training Scenarios

12. Authorized Targets/Hostile Forces

You are the point man of a squad and see an armored column moving down the road and parallel to your route of march. They do not see you. You have anti-tank weapons and air on station. What do you do?

- A. Ignore it. It obviously didn't see you.
- B. Fire immediately before it gets away.
- C. Report it so the next unit can engage.
- D. Be sure of the target, call up the anti-tank gunners and the FC/IC to get the right weapons on target, and engage

16. Authorized Targets

- * You are riding in one of those nice new 7 ton vehicles and are entering Al Kut. Iraqi forces shoot at you from within the local power plant. You want to shoot back with all the weapons you have to include a 50 cal and AT-4s that the troops on board have. You are the senior man. You know this will mess up the plant. What are your orders?

- A. Open Fire. You are defending yourself from the Iraqis firing at you from inside the power plant; the power plant is just in the way.
- B. Power plants are economic objects that require CENTCOM permission to strike.
- C. The MEW OC has to approve.
- D. Fire the 50 cal but not the AT-4s as that would cause too much damage.

17. Detention of Civilians

- * Your company enters a WMD research facility. You are a squad leader. Half way through the scanning of the plant, one of your LCpls brings you a senior scientist with a really big head and tennis shoes. What do you do with this dirtbag?

- A. Leave him alone. Counsel your LCpl. Never touch civilians unless they are trying to hurt or kill someone.
- B. You may temporarily detain the scientist to get his name and address, but you must release him within hours.
- C. Working in a WMD facility demonstrates hostile intent. You may shoot him as a hostile.
- D. You detain this scientist and seek guidance on where to transport him for purposes of interrogation.

20. Defending Iraqi Citizens

You are an MP in BASRAH and your job is maintaining order. Some members of the Sunni minority are seeking payback against the former regime. You see some Sunnis about to hang a Ba'ath party official. Do you intervene?

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- A. No, you are not a local policeman. You must leave local matters to local authorities.
- B. Yes, but you can only intervene using non-lethal force.
- C. Yes, you can and should intervene to save civilians lives, so long as the situation is not so volatile that it would put you or your Marines at great risk.
- D. No, put your life on the line for this guy? These guys were declared hostile the other day and you could shoot them.

22. FID

- Incoming mortar rounds land near you. Counter mortar radar locates the mortars beyond the crest of a hill. You cannot see them. Can you direct your mortar section to return fire?

- A. No, you don't know if there are civilians near there.
- B. No, it might be Al Qaida, and they are protected by CRESTOM.
- C. Yes, you could die if you don't.
- D. Yes, but you have to get eyes on the target first. Counter mortar and counter battery radar are insufficient to obtain positive target identification (FID) and return fire.

23. HOSTILE INTENT / HOSTILE ACT

- You're manning a machine gun on a convoy moving through a crowded street. A civilian vehicle is passing. Suddenly, some boys with an AK47 leans out the passenger window and points the rifle at your convoy. What sort of actions should you take?

- A. Fire a warning shot in the air, but don't shoot at the individual pointing the weapon because you could hit innocent civilians.
- B. Fire well aimed rounds at the individual in an attempt to wound him, since he has not actually fired at you.
- C. Shoot at individual pointing the AK-47 using well aimed rounds - shoot to kill.

24. FORCE TO PROTECT OTHER COALITION FORCES

- You observe hostile forces firing from behind some rocks on a Canadian defensive position 50 meters away. Do you engage? If so, why?

- A. You should pass this information up the the chain of command since it involves a Coalition partner.
- B. You must engage the hostile forces based upon "collective" self-defense - you must defend Coalition forces just as if they were U.S. Forces.
- C. You may fire at the hostile forces in self-defense, since the Canadian forces are only 50 meters from your position.

26. EPWs

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- While moving forward in a vehicle your squad encounters an armed force wearing Iraqi uniforms. The Iraqi soldiers walk in your direction with their hands up. You have been instructed to keep moving and not get "bogged down." What do you do with the soldiers who are obviously trying to surrender, if anything?
 - A. You immediately report this contact and take custody and control of the Iraqi soldiers as enemy prisoners of war.
 - B. You comply with your commander's orders to not get bogged down. You push forward by driving around the Iraqi force without making direct contact.
 - C. You stop briefly to assess the condition of the Iraqi soldiers, then push forward. If available, you provide water and food, and tell them to wait for additional forces that will be following.
 - D. Shoot them-you were told not to get bogged down.
27. EPWs
- You are an M3 assigned to a Marine rifle company and you come across an Iraqi EPW with a sucking chest wound. A buddy from your unit also has gunshot wound to the hand, that while painful, is not critical. Your buddy asks you to bandage his hand first and not waste the bandages on the Iraqi. Who do you do?
 - A. You tell the Iraqi that you're no doctor, but you know he has a sucking chest wound because all chest wounds suck.
 - B. You treat the Iraqi first because his wounds are potentially fatal, even if that means using the last sterile bandage.
 - C. Naturally, treat your buddy's hand first. You treat the Iraqi if you have any bandages left over.

30. Protected Places

- From your secured, covered position, as Recon team leader you spot a tank in a small village. The tank is parked near a mosque. It does not appear to be an immediate threat to your team or other friendly forces. Air is available, and the tank is also within range of our artillery. Do you immediately engage? If so, with what type of weapon system.
- A. Yes, you immediately engage. However, since you recognize the mosque as a protected structure, you call in an airstrike using a FGM to minimize collateral damage to the mosque.
- B. No, you report your observations and wait for guidance from above because strikes near mosques are a big deal, especially where there is no immediate threat to you or friendly forces.
- C. You immediately engage by all means available, including artillery and air.

33. Noncombatants?

- Yesterday, a 6-year old Iraqi boy approached U.S. soldiers with a small package in his outstretched arms. As the soldiers unwittingly accepted the package from him, the grenade it contained exploded,

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killing two soldiers and the child. You are in a parked M20V when you see a small girl walking toward the vehicle. It appears that she is carrying a small box. She continues to move toward you, intent on giving or showing you the box. What do you do?

- A. Based upon what happened the day before, you have a reasonable belief that you are about to be killed and you should shoot to kill.
- B. Despite what happened yesterday, you do not have enough facts to indicate that this girl intends to kill you. Try to use non-deadly measures to prevent the girl from continuing to walk towards you and the vehicle.
- C. If the girl continues to walk toward the vehicle, even though you have tried to get her to stop, you should shoot a warning shot over the girl's head, and if that doesn't work shoot her in the leg.
- D. Go to next scenario as this is too hard.

34. Noncombatants?

- You and your squad are attempting to conceal your approach on foot toward a building you have been ordered to clear. As you stoop behind a wall to avoid being seen by the Iraqis defending the building, a young boy approaching from the other direction and sees one of your Marines. The boy begins shouting and pointing toward your position. The Iraqi defender sees this and fires at your Marines. The boy continues pointing in your direction in an attempt to show the Iraqi soldiers where you are concealed. What should you do?
- A. You can fire at the Iraqi soldiers, but you cannot shoot the boy since he is an unarmed civilian.
- B. You should wound the boy because he deliberately gave away your position, but deadly force is not authorized.
- C. You can shoot the boy because he is taken sides with the Iraqi forces and is now a combatant - a lawful target.

36. RCA

- You are part of the security force for a team performing Sensitive Site Exploitation (SSE) at a suspected chem/bio facility. Upon entering the main building, you see several people scatter into different rooms. You want to use RCAs to isolate the individuals. Can you?
- A. Yes, RCAs may be used to protect U.S. forces and designated facilities.
- B. No. This use does not fall clearly into one of the exemptions to the general prohibition against using RCAs as a means and method of warfare.
- C. Yes, you're about to prove that they've got chem/bio weapons. Let's show 'em what we've got.

37. RCA

- While advancing in an urban environment, U.S. forces are counter-attacked by enemy infantry using civilians as shields. The enemy maneuvers behind the crowds of civilians and uses them to mask their

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- As a squad leader you see young looters take goods from a privately owned store. The owner is present and distressed, but the looters are not confrontational and simply run around the plump store owner when he tries to chase them away. What actions, if any, do you take?
- A. You should take no action; continue on your patrol.
- B. You should intervene by moving your squad to protect the store by using less than lethal force, if necessary. If the looters persist, you are authorized to protect private property by deadly force.
- C. You may assist the store owner and restore order, but you may not use deadly force to protect private property.

43. Hostile Monocombatants

- There are eight of you in a two-vehicle convoy approaching a traffic circle near the market. About fifteen boys, ages 12-18, press toward your vehicle in what appears to be an attempt to get you to stop. They appear unarmed. There have been reports of young gangs stealing from military convoys. You have in your vehicle the following: tear gas, rope, pepper spray, your personal weapons (M16A2, 9mm), grenades and a M240 machine gun with three boxes of ammo. What do you do?
- A. You draw your weapons to let this group know you mean business, and if they continue forward you can use pepper spray and fire warning shots.
- B. You attempt to keep the vehicles moving by gunning the engines, inching forward, hitting your horns, shouting, and swading this group by forcing your way through traffic.
- C. Fire everything, open up.

TRAINING SCENARIO LITE SOLUTIONS/DISCUSSION

12. Authorized Targets/Hostile Forces. Correct answer: D. Iraqi forces are declared hostile and may be engaged and destroyed (depending on your mission you may have tactical reasons for not engaging). If you have positive target identification - a reasonable certainty that the column is Iraqi, you may engage. However, be sure that these are not friendly. UK armor and self-propelled artillery may look like IF tanks.

16. Authorized Targets. Correct answer: A. The power plant is infrastructure or an economic object that ordinarily requires CENTCOM approval before engaging. Not in this case. Since the Iraqis are shooting at you from the power plant you can shoot back in self-defense. The power plant is not the actual target, only the forces and/or weapons systems located there. In all cases the use of force to authorized missions will be necessary and proportional, that is, reasonable in intensity, duration and magnitude. We must also attempt to mitigate damage to civilians and civilian structures, and under these ROE, particularly infrastructure.

17. Detention of Civilians. Correct answer: D. Civilians encountered in Iraq who are believed to possess information important to, or who are

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interfering with, mission accomplishment may be temporarily detained, and/or transported to rear areas or forward staging bases within Iraq.

20. **Defending Iraqi Citizens.** Correct answer: C. Within Iraq, necessary force, including deadly force, may be used against individuals or groups of individuals who commit, or are about to commit, an act which is likely to cause death or serious bodily harm to another. Here, you may intervene on behalf of the Iraqi about to be executed, and use deadly force if necessary. Your ability to intervene in this case will depend your mission and your assessment of the situation. D is incorrect - only Iraqi military/paramilitary forces are declared hostile and may be engaged/destroyed, not civilians. Recall the situation in Haiti where the ROE prohibited U.S. forces from intervening and the CNN factor.

22. **Self Defense/PID.** Correct answer: C. You have the right/obligation to shoot back in self defense, and the possible presence of civilians does not eliminate that right. The presence of civilians only imposes the requirement that you minimize incidental injury to the extent you can. A and B are therefore incorrect. D is incorrect because you are not required to have eyes on target in order to acquire PID and return fire. You do not have to have eyes on to shoot a mission, as long as you can ID the target. Remember, the requirement for PID is not only to ensure you are striking legitimate Iraqi military targets, it's also to ensure you are not committing fratricide. Make certain that in returning fire you are not engaging friendly forces. Note that the sensitive target analysis is not required here because you are acting in self defense.

23. **HOSTILE INTENT / HOSTILE ACT.** Correct Answer: C. You have the right AND OBLIGATION to defend yourself and your fellow Marines. The pointing of the AK-47 demonstrates a hostile intent, and triggers the right of self-defense. A is incorrect since warning shots are not authorized when you are acting in immediate self-defense (Warning shots are permitted in some types of WEO operations). Furthermore, the possibility of hitting innocent civilians does not prevent you from defending yourself. B is incorrect because you need not wait until someone has actually fired at you to protect yourself. B is also incorrect because you shoot to kill, not wound. The use of force should be proportionate, and should limit incidental injury to civilians on the street. In this case, small arms (S&W or M-16) should be used, if quickly available, rather than automatic or crew served weapons which could cause mass casualties. If all you had was a M 2 50 Cal you could certainly use it rather than die, which is not permitted.

24. **FORCE TO PROTECT OTHER COALITION FORCES.** Correct answer: B. The right of self defense is "collective." You must defend Coalition Forces as if they were Marines, assuming of course that Canada had joined the coalition.

26. **MPW.** Either A, B, or C could be the proper course of action based upon size of the force you encounter and the tactical situation on the ground. Understand that once you take custody of the Iraqi soldiers and they become EPWs, they have rights and protections under the Geneva Conventions, to include water, food, shelter and medical care, and monthly payment in Swiss francs. If the Iraqi force is of manageable

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size, the best approach is probably to take the Iraqi soldiers as EPWs and arrange for their movement to a temporary holding facility. Where the circumstances require you to push forward, you report this situation up the chain and provide their location. If the Iraqis appear in dire need, you should first provide whatever water and food you can spare. If you disarm them, they should be considered to be EPWs. D would be murder and a serious breach of the law of war.

27. EPW. Correct answer: B. Under the Geneva Convention (GSW), triage must be administered according to the severity of the wound and no distinction is allowed based on whether the wounded individual is a friend or foe. In this case the EPW clearly has the critical wound and should be administered immediate medical attention while the Marine should be looked after next.

30. PROTECTED PLACES. Correct answer: B. Cultural and historic buildings, nonmilitary structures, civilian population centers, mosques and other religious places, hospitals, and facilities displaying the Red Crescent or Red Cross are considered "Protected Places" and will not be attacked except when they are being used for military purposes. In this case, the Iraqis are using the mosque for a military purpose, namely, to "shield" the tank from attack. However, the use of force may not be necessary at this time. The better approach is to radio higher and have them decide whether to strike the tank, or wait until the tank moves and then engage. The equation changes if the tank becomes a immediate threat to you or other friendly forces. In that case the tank will likely be engaged with a FGM to minimize collateral damage to the mosque. Were it a terrorist cell operating near a mosque rather than a tank, you would need to do a sensitive target analysis which could result in the requirement to seek SECDEF approval to target.

33. NONCOMBATANTS? Best answer: B. You must not harm civilians unless necessary to defend yourself, others, or to protect designated property. Where possible, use measures short of deadly force to defend yourself. In this case, before shooting you should first attempt to determine the girl's true intentions by shouting for her to stop (the Arabic word for stop is "KIFF," pronounced COUGH). You are not required to fire warning shots and in most cases this is a bad choice; however, it might be appropriate in this case as long as you still have the deadly force option. If none of these measures causes the girl to stop, or if at some point the girl moves suddenly to toss the box toward you, then you are authorized to shoot. A is incorrect because it is not reasonable to assume someone is trying to kill you simply because they are walking towards your vehicle with an object in their hand. C is incorrect because if it is necessary to shoot, you shoot to kill, not wound. Would a warning shot be appropriate? Are warning shots authorized? Recall the MEO ROEs that permit.

34. NONCOMBATANTS? Correct answer: C. Civilians are protected persons and must not be harmed unless necessary to defend yourself, others, or to protect designated property. However, this boy has become a combatant by directing enemy fire on you and your squad. He has made himself a legitimate target and you may fire at him just as you would an enemy soldier. It is not unlikely that you will encounter child soldiers and children who demonstrate hostile intent or commit hostile acts. You should prepare yourself for that reality.

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36. Correct answer: B. The ROE on RCA states, "Non-lethal riot control agents (RCA) may be used in defensive modes to save lives, including to protect U.S./designated personnel and facilities from civil disturbance, during personnel recovery (PR) operations, to control rioting prisoners of war (PW), during maritime operations involving civilians, and where civilians are used to mask/screen an attack." In this case, the RCA is arguably being employed to protect the security forces, the SSE team, and the potential WMD facility, but this is not a civil disturbance.

37. RCA. Correct answer: A. The ROE on RCA states, "Non-lethal riot control agents (RCA) may be used where civilians are used to mask/screen an attack." This would clearly be considered use in a defensive mode to save lives.

38. FID. Correct Answer: B. You must have positive identification (FID) of targets required prior to engagement. FID is defined as a reasonable certainty that the object of attack is a legitimate military target. The standard is not "reasonable probability;" A is therefore incorrect. REMEMBER - Our Coalition partners have vehicles of a different size and shape than ours.

40. DEADLY FORCE TO PROTECT OTHERS. Correct answer: A. The ROE provides that within Iraq, necessary force, including deadly force, may be used against individuals or groups of individuals who commit, or are about to commit, an act which is likely to cause death or serious bodily harm to another. In this case the shooter poses a risk both of serious bodily harm and death to the civilians below. While less than lethal force should be used whenever possible, your only realistic option here is to shoot the shooter. "Collective" self-defense only applies to Coalition forces accompanying U.S. forces. C is therefore incorrect.

42. PROTECTION OF PROPERTY OF OTHERS. Correct answer: C. The use of deadly force to protect Iraqi civilians is not authorized except where there is a threat of death or serious bodily harm. There appears to be no such threat to the store owner. The squad leader may take less than lethal actions to restore order if it does not interfere with his mission or orders. Assuming no interference with your mission and no significant danger to your Marines, the right thing to do would be to help restore order.

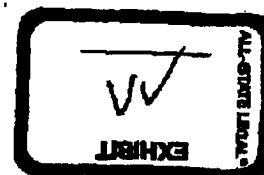
43. Hostile Noncombatants. Correct answer: B. To the extent you can, you should avoid stopping and contact with this group, without resorting to force. The tactics described in B (gunning engines, lurching, and hitting the horn) are some ways to avoid this group. Drive on the sidewalk if this does not unduly threaten bystanders. A is partially correct. Against unarmed mobs, use the minimum force necessary to repel the threat. Deadly force is not authorized unless the lives of members of the convoy are threatened. Bars, pre-designated individuals in the vehicles should draw their weapons to deter the gang and prepare for deadly force, if necessary, while others should prepare to use less than lethal force. A long stick, or swinging a tent stake or knotted end on about 8 feet of rope is a good deterrent. Although pepper spray is considered an RCA, it is permitted here to protect U.S. personnel from a civil disturbance.

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Third Battalion Twenty Third Marine Regiment



Combat SOP



DOD JUNE

2145

.. Guides (MINIMUM OF TWO MAN TEAMS) must be provided at the checkpoints to assist resupply vehicles, contact teams, ambulances, refuelers, and wreckers in rapidly locating the maneuver elements and to prevent them from interfering with the tactical situation.

**MURPHY'S LAWS OF COMBAT
PERSONAL DEFENSE VERSION**

1. *You are not a Superman, even with your vest and backup.*
2. *If it's stupid but works, it isn't stupid.*
3. *Don't look conspicuous - it draws fire. (This includes inappropriate clothing, sounds, and movements).*
4. *When in doubt, empty your magazine.*
5. *Never be a partner with anyone braver than you are.*
6. *Never forget that your weapon was made on an assembly line by the same type of people who made your car.*
7. *If your defense is going really well, you forgot about the other guy.*
8. *No plan survives the first contact intact.*
9. *All 15 round magazines will hold only 5 rounds in a fight.*
10. *Try to look unimportant because the bad guys may be low on ammo.*
11. *If you are forward of your position, your backup will shot you.*
12. *The enemy you are ignoring is the main attacker.*
13. *The important things are always simple.*
14. *The simple things are always hard.*
15. *The easy way is always mined.*
16. *If you are short of everything except the enemy, you are in combat.*
17. *When you have secured an area, don't forget to tell the enemy.*
18. *Incoming fire has the right of way.*
19. *Friendly fire - isn't.*
20. *If the enemy is in range, "SO ARE YOU!!!!!"*
21. *No one ever carries too much ammunition.*
22. *If you can see the enemy, he can see you.*
23. *You will fight as you train - training must be realistic.*
24. *Things that must be together to work, usually can't be found together.*
25. *Radio's and phones will fail as soon as you need help desperately.*
26. *Anything you do can get you shot - including doing nothing.*
27. *Tracers work both ways. (So do night sights, lasers and flashlights.)*
28. *The only thing more accurate than incoming enemy fire is incoming friendly fire.*
29. *Make it tough for the enemy to get in and you can't get out.*
30. *If you take more than your fair share of risks, you will have more than your fair share of risks*
31. *When both sides are convinced that they are about to lose, they are both right.*
32. *Professional's are predictable, but the world is full of amateurs.*
33. *Murphy was a civilian.*



UNITED STATES MARINE CORPS
MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70146-5400

IN REPLY REFER TO:
5800
SJA

FIRST ENDORSEMENT on (b)(7)(C) ltrs 1920/RHM of 15 Mar 04
and 17 Mar 04

From: Commander
To: (b)(7)(C) Naval Legal Service Office

1. Readdressed, returned, denied. Your requested witnesses are not located within the immediate geographical area and you have not demonstrated that your requested witnesses will add materially to the evidence presented to the Board of Inquiry.

(b)(7)(C)

WW

DOD JUNE

2147

**REQUIRES COMMANDER MARINE FORCES RESERVE, SIGNATURE
Return to SIA**

Subj: DEFENSE WITNESS REQUEST ICO UNITED STATES V. (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMC

Background

1. SNO is a drilling reservist with (b)(7)(C). On 1 August 2003 (b)(7)(C) received Non-Judicial Punishment (NJP) from Brigadier General J. F. Kelly, the Commanding General of 1st Marine Division while he was stationed in Iraq during Operation Iraqi Freedom I. Brigadier General Kelly found (b)(7)(C) guilty of violating Article 103, failing to secure public property taken from the enemy, for burning the personal belongings of Iraqis detained at a Marine checkpoint. Brigadier General Kelly also found (b)(7)(C) guilty of conduct unbecoming an officer and gentlemen for ordering his Marines to strip Iraqi detainees to their underwear and escorting them out of the (b)(7)(C) Command Post. Immediately after the NJP, (b)(7)(C) submitted an unqualified resignation for an honorable discharge. Every Marine commander in his chain of command, including the Deputy Commandant for Manpower and Reserve Affairs favorably endorsed the unqualified resignation. However, the Secretary of the Navy denied his request for an honorable discharge and directed that (b)(7)(C) show cause in front of a board of inquiry (BOI).

2. (b)(7)(C) has requested the government to produce 14 witnesses at his BOI. Under SECNAVINST 1920.6B, local witnesses within the immediate geographical area shall be invited to appear if they have material testimony. In this case the government counsel recommends that six of these witnesses be approved since they are located within a two to three hour drive to New Orleans. A seventh witness who has left the Marine Corps should also be approved depending on his work schedule. Since he is a civilian he cannot be ordered to appear. Specifically, the government counsel recommends approval of the following witnesses:

(b)(7)(C)

REQUIRES COMMANFORDES SIGNATURE—continued:

(b)(7)(C)

4. The government counsel recommends that the remaining seven witness be denied, because they are located outside of Louisiana. In addition, alternative means of testimony such as telephonic or written testimony is available to the defense. Specifically, the government counsel recommends denial of the following witnesses:

(b)(7)(C)

Recommendation. That you approve seven of the requested witnesses stated in para 2. a-g above, deny the rest, and sign the first endorsement.

CGR. Action.

(b)(7)(C) Concur.

Do Not Concur. See me.

*Make ~~an~~ effort to connect
witnesses by telephone.*

Page 2 of 2

DOD JUNE

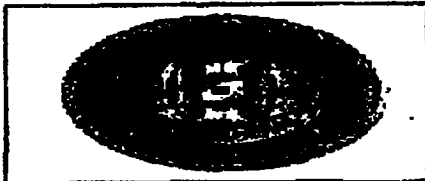
2149

Confirmation Report - Memory Send

Page : 001
Date & Time: Mar-17-04 17:15
Line 1 : 504 678 2797
Line 2 :
Machine ID :

Job number : 381
Date : Mar-17 17:13
To : (b)(7)(C)
Number of pages : 003
Start time : Mar-17 17:13
End time : Mar-17 17:15
Pages sent : 003
Status : OK
Job number : 381

*** SEND SUCCESSFUL ***



Department of the Navy
Office in Charge
Naval Legal Service Office Central
New Orleans Branch Office
2300 General Meyer Avenue
Bldg. 11
New Orleans, LA 70142-5100
Phone: 504-678-2520
DSN: 678-2520
Fax: 678-2797

To:

(b)(7)(C)

Fax No:

(b)(7)(C)

From:

(b)(7)(C)

SUBJ:

(b)(7)(C)

*This is another name to add to our list.
1. st. Thanks!*

vlg
(b)(7)(C)

No of Pages faxed including cover page

3

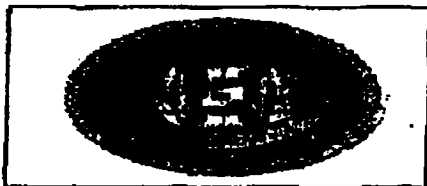
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Line 1 : 504 678 2797
Line 2 :
Machine ID :

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To : (b)(7)(C)
Number of pages : 003
Start time : Mar-17 17:05
End time : Mar-17 17:06
Pages sent : 003
Status : OK

Job number : 380

*** SEND SUCCESSFUL ***



Department of the Navy
Officer in Charge
Naval Legal Service Office Central
New Orleans Branch Office
2300 General Meyer Avenue
Bldg. 11
New Orleans, LA 70142-5100
Phone: 504-678-2520
DSN: 678-2520
Fax: 678-2797

To: (b)(7)(C)

Fax No: (b)(7)(C)

From: (b)(7)(C)

SUBJ: (b)(7)(C)

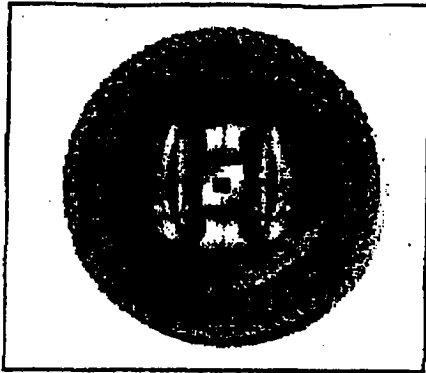
*This is another name to add to our who's
list. Thanks!*

(b)(7)(C)

No of Pages faxed including cover page 3

DOD JUNE

2151



Department of the Navy
Officer in Charge
Naval Legal Service Office Central
New Orleans Branch Office
2300 General Meyer Avenue
Bldg. 11
New Orleans, LA 70142-6100
Phone: 504-678-2520
DSN: 678-2520
Fax: 678-2797

To:

(b)(7)(C)

Fax No:

(b)(7)(C)

From:

(b)(7)(C)

SUBJ:

(b)(7)(C)

*This is another name to add to our witness
list. Thanks!*

V/R

(b)(7)(C)

No of Pages faxed including cover page

3

DOD JUNE

2152



DEPARTMENT OF THE NAVY

NAVAL LEGAL SERVICE OFFICE
NEW ORLEANS DETACHMENT
2309 GENERAL MEYER AVENUE
NEW ORLEANS, LOUISIANA 70142-8100

IN REPLY REFER TO:

1920

(b)(7)(C)

17 Mar 04

From: (b)(7)(C) JAGC, USNR, Counsel for
the Respondent

To: Commander, Marine Forces Reserve

Via: (1) Military Justice Officer, Office of the Staff
Judge Advocate, Marine Forces Reserve

Subj: SECOND WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

Ref: (a) SECNAVINST 1920.6B, Enclosure (8), ¶2(i)
(b) CFR's ltr 1920 dtd 15 March 2004

1. Pursuant to reference (a), the Respondent provides the
following information so that the Government may produce
these witnesses in Respondent's case-in-chief:

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

thus presumed to be "reasonably available" under
Enclosure (8) of SECNAVINST 1920.6B.

2. Enclosure (8) of SECNAVINST 1920.6B ensures that the Respondent shall receive a full, fair and impartial hearing. The production of the live testimony of these witnesses will help to ensure that such a hearing is obtained.
3. This is an addendum to a previously submitted list of some out-of-area and local witnesses contained in reference (b), which is subject to change. The Recorder will be notified of any changes as soon as possible.
4. Please advise of your action on this request and the reason(s) for any denial of the production of the forgoing witnesses.

Very Respectfully,

(b)(7)(C)

Copy To:

(b)(7)(C)

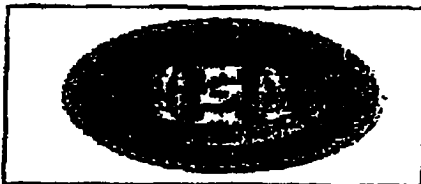
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Page : 001
Date & Time: Mar-15-04 17:12
Line 1 : 504 678 2797
Line 2 :
Machine ID :

Job number : 357
Date : Mar-15 17:08
To : (b)(7)(C)
Number of pages : 011
Start time : Mar-15 17:08
End time : Mar-15 17:12
Pages sent : 011
Status : OK

Job number : 357

*** SEND SUCCESSFUL ***



Department of the Navy
Officer in Charge
Naval Legal Service Office Central
New Orleans Branch Office
2300 General Meyer Avenue
Bldg. 11
New Orleans, LA 70142-5100
Phone: 504-678-2520
DSN: 678-2520
Fax: 678-2797

To: (b)(7)(C)

Fax No: (b)(7)(C)

From: (b)(7)(C)

SUBJ: Sir, in relation,
attached to respondent's written list to the
(b)(7)(C) 301,
are,
(b)(7)(C)

No of Pages faxed including cover page 11

DOD JUNE

2155



DEPARTMENT OF THE NAVY

NAVAL LEGAL SERVICE OFFICE
NEW ORLEANS DETACHMENT
2900 GENERAL MEYER AVENUE
NEW ORLEANS, LOUISIANA 70143-9100

IN REPLY REFER TO:

1920

(b)(7)(C)

15 Mar 04

From: (b)(7)(C) JAGC, USNR, Counsel for
the Respondent

To: Commander, Marine Forces Reserve

Via: (1) Military Justice Officer, Office of the Staff
Judge Advocate, Marine Forces Reserve

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602, USMCR

Ref: (a) SECNAVINST 1920.6B, Enclosure (8), 92(i)

1. Pursuant to reference (a), the Respondent provides the following information so that the Government may produce these witnesses in Respondent's case-in-chief:

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO

(b)(7)(C)

(b)(7)(C)

(b)(6) - SSN

/0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

(b)(7)(C)

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSV 0602, USMCR

(b)(7)(C)

2. Enclosure (8) of SECNAVINST 1920.6B ensures that the Respondent shall receive a full, fair and impartial hearing. The production of the live testimony of these witnesses will help to ensure that such a hearing is obtained.

3. This is a list of some out-of-area and local witnesses, which is subject to change. The Recorder will be notified of any changes as soon as possible.

Subj: FIRST WITNESS LIST FOR BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602, USMCR

4. Please advise of your action on this request and the reason(s) for any denial of the production of the forgoing witnesses.

Very Respectfully,

(b)(7)(C)

Copy To:

(b)(7)(C)

Confirmation Report - Memory Send

Page : 001
Date & Time: Apr-02-04 07:43
Line 1 : 504 670 2797
Line 2 :
Machine ID :

Job number : 505
Date : Apr-02 07:41
To : (b)(7)(C)
Number of pages : 005
Start time : Apr-02 07:41
End time : Apr-02 07:43
Pages sent : 005
Status : OK

Job number : 505

*** SEND SUCCESSFUL ***

To:

(b)(7)(C)

Fax No:

(b)(7)(C)

From:

(b)(7)(C)

SUBJ:

Witness Reconciliation

(b)(7)(C)

No of Pages faxed including cover page

5

To: (b)(7)(C)

Fax No: (b)(7)(C)

From: (b)(7)(C)

SUBJ: *witness reconciliation* - (b)(7)(C)

No of Pages faxed including cover page 5

DOD JUNE

2167

1920

1920

1 Apr 04

From: (b)(7)(C)
(b)(7)(C) JAGC, USNR, Counsel for the Respondent
(CFR)

To: Commander, Marine Forces Reserve

Via: (1) Military Justice Officer, Office of the Staff
Judge Advocate, Marine Forces Reserve

Subj: REQUEST FOR RECONSIDERATION REGARDING RESPONDENT'S
INITIAL REQUEST FOR WITNESSES AT THE BOARD OF INQUIRY
ICO (b)(7)(C) (b)(6) - SSN 0602,
USMCR

Ref: (a) SECNAVINST 1920.6B, Enclosure (8), ¶2(i)
(b) (b)(7)(C) ltrs 1920/ of 15 Mar 04 and 17
Mar 04
(c) COMMARFORRES' endorsement of reference (b)

1. Reference (c) denied the Respondent's requests in
reference (b) to have certain witnesses produced at his
Board of Inquiry. Counsel for the Respondent respectfully
requests that the denial of the actual production of the
following witnesses be reconsidered in light of the
following proffer:

(b)(7)(C)

Subj: REQUEST FOR RECONSIDERATION REGARDING RESPONDENT'S
INITIAL REQUEST FOR WITNESSES AT THE BOARD OF INQUIRY
ICO (b)(7)(C) (b)(6) - SSN 0602,
USMCR

(b)(7)(C)

Subj: REQUEST FOR RECONSIDERATION REGARDING RESPONDENT'S
INITIAL REQUEST FOR WITNESSES AT THE BOARD OF INQUIRY
ICO (b)(7)(C) (b)(6) - SSN 0602,
USMCR

(b)(7)(C)

Subj: REQUEST FOR RECONSIDERATION REGARDING RESPONDENT'S
INITIAL REQUEST FOR WITNESSES AT THE BOARD OF INQUIRY
ICO (b)(7)(C) (b)(6) - SSN 0602,
USMCA

2. Enclosure (b) of SECNAVINST 1920.6B ensures that the Respondent shall receive a full, fair and impartial hearing. The production of the live testimony of these witnesses will help to ensure that such a hearing is obtained. This Board of Inquiry is (b)(7)(C) only opportunity to ensure that all appropriate facts and evidence can be presented to determine whether he should remain a Marine Officer. His voluntarily entry into the SMCR and his service to the Country warrants the granting of this request so that a complete and impartial investigation into his fitness for continued duty as a Marine may occur. These witnesses are absolutely critical in the defense effort. The inability of the Board members to see these witnesses testify and to evaluate their testimony in person would greatly prejudice (b)(7)(C) defense at the BOI.

3. This is a list of some out-of-area and local witnesses, which is subject to change. The Recorder will be notified of any changes as soon as possible.

4. Please advise of your action on this request and the reason(s) for any denial of the production of the foregoing witnesses.

Very Respectfully,

(b)(7)(C)

Copy To:

(b)(7)(C)

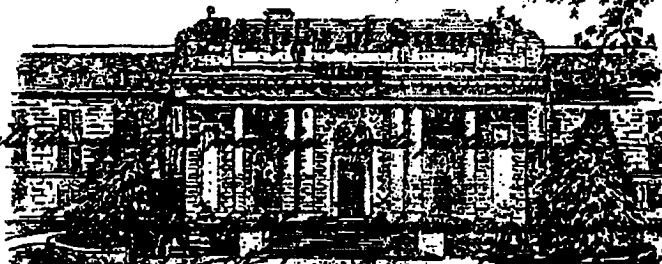
United States Naval Academy

Whereas Midshipman

(b)(7)(C)

has completed the prescribed course of study, the Superintendent on the recommendation of the Academic Board confers the degree of

with all the



by the Superintendent and the Academic Board and the United States Naval Academy is hereunto affixed in Annapolis, Maryland, this twenty-fourth day of May in the year of our Lord

(b)(7)(C)

(b)(7)(C)

Albany
Secretary of the Board



C. L. Larson
Midshipman
Superintendent



To all who shall see these presents, greeting:
Know ye that, reposing special trust and confidence in the patriotism, valor,
fidelity and ability of (b)(7)(C) (b)(6) - SSN *, I do,*
by and with the advice and consent of the Senate, appoint him *a*
SECOND LIEUTENANT *in the*

United States Marine Corps

to rank as such from the twenty-fourth day of May nineteen
hundred and (b)(7)(C) *. This officer will therefore carefully and diligently*
discharge the duties of the office to which appointed by doing and performing all
manner of things thereto belonging.

And I do strictly charge and require these officers and other personnel of
lower rank to render such obedience as is due an officer of this grade and position.
And this officer is to observe and follow such orders and directions, from time to time,
as may be given by the President of the United States of America, or other
superior officers acting in accordance with the laws of the United States of
America.

This commission is to continue in force during the pleasure of the President of
the United States of America under the provisions of those public laws relating to
officers of the Armed Forces of the United States of America and the
complement thereof in which this appointment is made.

Done at the City of Washington, this twenty-first day of May
in the year of our Lord one thousand nine hundred and (b)(7)(C) *, and of the*
Independence of the United States of America, the two hundred and (b)(7)(C) *.*

By the President

W. C. K. K. K.
Commandant of the Marine Corps



John H. Dalton
Secretary of the Navy

5010-108-1 (Rev. 10-2-60)

Department of Defense

United States Pacific Command

The Joint Service Achievement Medal

Awarded to:

(b)(7)(C)

(b)(7)(C) United States Marine Corps, distinguished himself by exceptionally meritorious achievement while serving as Officer in Charge (b)(7)(C)

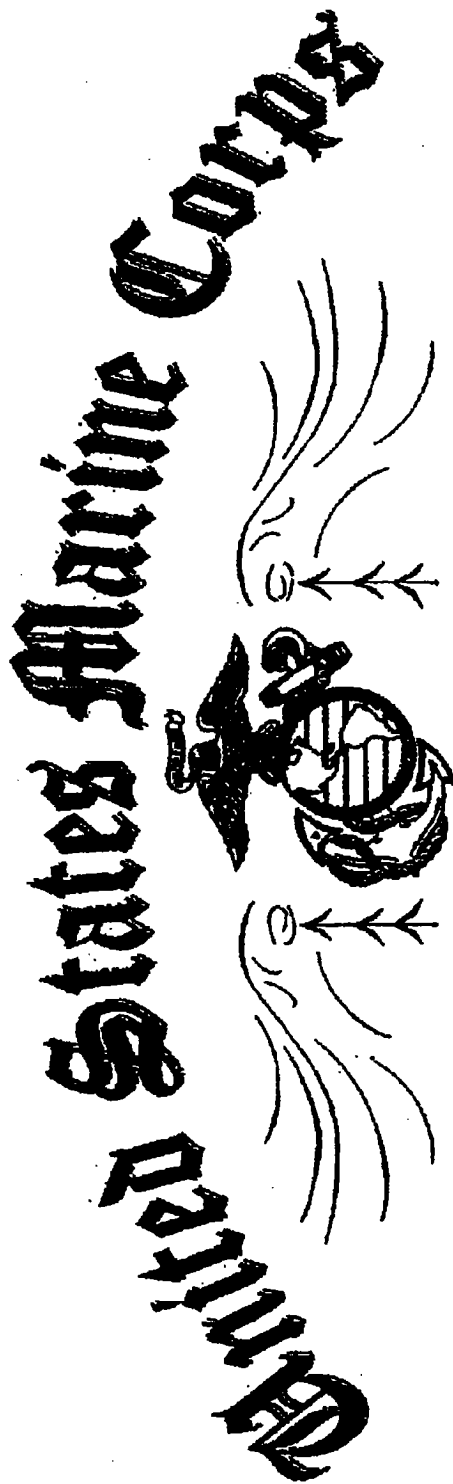
(b)(7)(C) from April 1999 to October 1999. During this period, he and his branch researched, developed, and coordinated successful field tests for the operation of (b)(7)(C)

(b)(7)(C)

(b)(7)(C) Through his distinctive accomplishments, (b)(7)(C) reflected great credit upon himself, the United States Marine Corps, and the Department of Defense.

Presented 20 October 1999

(b)(7)(C)





This is to certify that

(b)(7)(C)

has completed the course prescribed by the
Commandant of the Marine Corps for
Communication Information Systems Officer Course
given at
Command and Control Systems School

Marine Corps Combat Development Command, Quantico, Virginia
this 26 day of February 1967

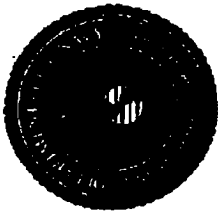

R.R. Blackman Jr.
Brigadier General, U.S. Marine Corps
President, Marine Corps University


M.B. Warlick
Colonel, U.S. Marine Corps
Director, Command and Control
Systems School

DOD JUNE

2176

United States Marine Corps



The Marine Corps Institute

takes pleasure in presenting this diploma certifying that

(b)(7)(C)

has met all the requirements and

has successfully completed the curriculum prescribed for

WARFIGHTING SKILLS DISTANCE EDUCATION PROGRAM

Therefore, in recognition and in validation our signatures

and the Marine Corps Seal are hereunto affixed

this 21ST *day of* DECEMBER, **(b)(7)(C)**

A. K. Tisdell
Director, Marine Corps Institute

Michael T. Gandy
President, Marine Corps University



This is to certify that

(b)(7)(C)

(b)(6) - SSN USMC

has completed the course prescribed by the
Commandant of the Marine Corps for
WARFIGHTING SKILLS NONRESIDENT PROGRAM
WARFIGHTING SKILLS PROGRAM/ COMBINED ARMS

given at

Marine Corps Institute, Washington, D.C.

this 18TH day of SEPTEMBER (b)(7)(C)

Eric H. Trause

CAPTAIN U.S. MARINE CORPS
REGISTRAR
MARINE CORPS INSTITUTE

COLONEL U.S. MARINE CORPS
DIRECTOR
MARINE CORPS INSTITUTE

United States Marine Corps



This is to certify that

(b)(7)(C)

(b)(6) - SSN

*has completed the course prescribed by the
Commandant of the Marine Corps for*

WARFIGHTING SKILLS PROGRAM MARINE CORPS LEADERSHIP

given at

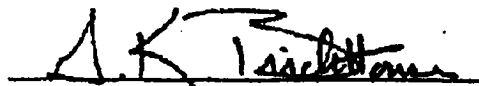
Marine Corps Institute,

Washington, D.C.

this 21ST *day of* DECEMBER, (b)(7)(C)


Captain U.S. Marine Corps

Registrar
Marine Corps Institute



Colonel U.S. Marine Corps
Director
Marine Corps Institute



This is to certify that

(b)(7)(C)

(b)(6) - SSN USMC

*has completed the course prescribed by the
Commandant of the Marine Corps for*

WARFIGHTING SKILLS NONRESIDENT PROGRAM

WARFIGHTING SKILLS PROGRAM/ SMALL UNIT TACTICAL PROBLEMS

given at

Marine Corps Institute, Washington, D.C.

this 18TH day of SEPTEMBER

(b)(7)(C)

Elli H. Trappe

CAPTAIN U.S. MARINE CORPS
REGISTRAR
MARINE CORPS INSTITUTE

[Signature]

COLONEL U.S. MARINE CORPS
DIRECTOR
MARINE CORPS INSTITUTE



This is to certify that

(b)(7)(C)

(b)(6) - SSN USMC

has completed the course prescribed by the
Commandant of the Marine Corps for
WARFIGHTING SKILLS NONRESIDENT PROGRAM
WARFIGHTING SKILL PROGRAM/COMBAT TECHNIQUES

given at

Marine Corps Institute, Washington, D.C.

this 18TH day of SEPTEMBER (b)(7)(C)

Eni N. Trause
CAPTAIN U.S. MARINE CORPS
REGISTRAR
MARINE CORPS INSTITUTE

[Signature]
COLONEL U.S. MARINE CORPS
DIRECTOR
MARINE CORPS INSTITUTE



This is to certify that

(b)(7)(C)

(b)(6) - SSN USMC

has completed the course prescribed by the

Commandant of the Marine Corps for

WARFIGHTING SKILLS NONRESIDENT PROGRAM

WARFIGHTING SKILLS PROGRAM/ INTRODUCTION TO WARFIGHTING

given at

Marine Corps Institute, Washington, D.C.

this 18TH day of SEPTEMBER, (b)(7)(C)

Eric H. Traver

CAPTAIN U.S. MARINE CORPS
REGISTRAR
MARINE CORPS INSTITUTE

COLONEL U.S. MARINE CORPS
DIRECTOR
MARINE CORPS INSTITUTE

2182



(b)(7)(C)

CAMP FOSTER

'ROCK POUNDER'

(b)(7)(C)

Date: (b)(7)(C)

(b)(7)(C)

SIPRNET Statement of Understanding

NAME (Last, First, M.I.): (b)(7)(C) Rank: (b)(7)(C) RTD: (b)(7)(C)
Duty Phone: (b)(7)(C) Unit & Section: Base (b)(7)(C) Section/Billet: (b)(7)(C)
Level of Clearance currently held: (b)(7)(C)

By signing this statement, I understand that I must abide by the listed rules and regulations regarding the SIPRNET and the security of my account and password.

1. I am accountable for safeguarding classified material and official use of the SIPRNET. Before disseminating classified material to any other person, users will first determine the prospective recipient has been authorized by competent authority, needs the information to perform his/her official duties, can properly protect/store the information, and has an appropriate security clearance.
2. Any individual who becomes aware of the loss, possible compromise or compromise of classified information or material will immediately notify his/her section head and the section SIPRNET Terminal Area Security Officer (TASO), and/or unit Security Manager. This includes knowledge that unauthorized personnel have "borrowed" another user's ID and password and have accessed the SIPRNET, or that material and/or terminals have been left unattended in areas not authorized for open storage.
3. All classified material, to include information accessed through the SIPRNET or produced on a SECRET computer will be safeguarded and marked in accordance with SECNAVINST 5510.36. All matters pertaining to classification, downgrading, destruction, declassification, marking, control and accountability, storage, dissemination, working papers, and transmission of classified information will be taken up with the section Secondary Control Point (SCP) Custodian, unit CMCC Custodian, Assistant Information Systems Security Manager (A-ISSM), or Security Manager.
4. All workstations connected to the SIPRNET will have SF 707 SECRET labels placed on the monitor, CPU, removable hard drive (if applicable), and printer, if one is attached. All secure fax machines will be attached to a STU-III phone and marked with a SF-707 SECRET label.
5. Unclassified workstations and fax machines are marked with SF 710 UNCLASSIFIED labels.
6. Office spaces that contain SIPRNET line jacks will be considered and marked as "Restricted Areas". Personnel working in that area must have the appropriate clearance to work alone in that area when SIPRNET terminals and lines are active. Personnel not authorized in the workspace will be challenged and not allowed freedom of movement in that area.
7. I will not share my password with ANY person. Personal account identification and password, although not SECRET by themselves, are classified as SECRET when used together. They grant access to SECRET information and therefore will also be treated as SECRET.
8. My SIPRNET password will be a minimum of 8 characters, will be a combination of alphabetic characters both upper and lower case, and will contain at least 1 number. I will not write down my SIPRNET password.
9. I will not accept any other person's password.
10. I will not log-in to my account and allow another person to use it.
11. I understand that I could lose my security classification if I compromise my SIPRNET account. The termination of a SIPRNET account is immediate upon transfer or by direction of the SIPRNET TASO, A-ISSM, or Security Manager.
12. Once a computer is attached to a SIPRNET line, it CANNOT be put back on the NIPRNET. See the SIPRNET TASO for the local standing operating procedures (SOP).

FM CMC WASHINGTON DC
201500Z APR 99
MARADMIN 163/99

QUOTE: EFFECTIVE IMMEDIATELY, INDIVIDUALS BEING GRANTED INITIAL TOP SECRET SECURITY CLEARANCE AND/OR INITIAL INDOCTRINATION INTO A SPECIAL ACCESS PROGRAM (SAP) OR TO SENSITIVE COMPARTMENTED INFORMATION (SCI), WILL ORALLY ATTEST TO UNDERSTANDING THEIR RESPONSIBILITY TO PROTECT CLASSIFIED NATIONAL SECURITY INFORMATION AS FOLLOWS:

PERSONAL ATTESTATION UPON THE GRANTING OF SECURITY ACCESS			
1. "I accept the responsibilities associated with being granted access to classified national security information. I am aware of my obligation to protect classified National Security Information through proper safeguarding and limiting access to individuals with the proper security clearance and/or access and official need to know. I further understand that, in being granted access to classified information and/or SCI/SAP, a special confidence and trust has been placed in me by the United States Government."			
2. (Last, First, Middle Initial)	3. (Grade/Rank/Svc)	4. (Social Security No.)	
(b)(7)(C)	(b)(7)(C)	(b)(6) - SSN	
5. (Signature)			
(b)(7)(C)			
6. "ATTESTATION COMPLETED ON:"			
(b)(7)(C)		(b)(7)(C)	
7. WITNESS: (Printed Name)		(Signature)	

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT
AN AGREEMENT BETWEEN (b)(7)(C) AND THE UNITED STATES
(Name of Individual - Printed or typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in Sections 1.1 and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of the information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and 952, Title 18, United States Code, the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

(Continue on reverse.)

NSN 7540-01-288-5449
Previous editions not usable.

312-102

STANDARD FORM 312 (REV. 1-91)
Prescribed by GSA/RSO
12 CFR 2003, E.O. 12356

DOD JUNE

2185

(b)(7)(C)

To: Security manager

om:

nt:

io:
Subject:

(b)(7)(C)

Thursday, June 17, 1999 7:40 AM

DOJ/C

/SMC MIL

ADJUDICATIVE MATTER ICG (b)(7)(C)

(b)(6) - SSN

AUDITR.TXT

ADMINISTRATIVE MESSAGE

ROUTINE

R 161332Z JUN 99 ZYB

FM DON CAF WASHINGTON DC

TO: (b)(7)(C)

UNCLAS FOUO //N05520//

MSGID/GENADMIN/DONCAF//

SUBJ/ADJUDICATIVE MATTER ICG (b)(7)(C) (b)(6) - SSN
/ ACTIVE DUTY OFFICER, UIC (b)(7)(C) //

RMKS/1. SUBJ AUTH (b)(7)(C) CLEARANCE EFFECTIVE 18 JUN 1999 BASED
ON DSS SINGLE SCOPE BACKGROUND INVESTIGATION COMPLETED 08 JUN 1999.

2. THIS MSG IS AN OFFICIAL REC OF CLNC AND MUST BE PERMANENTLY
MAINTAINED IN THE SUBJ'S SERVICE RECORD OR OFFICIAL PERSONNEL FILE
UNTIL SUPERSEDED.

3. MILITARY AND CIVILIAN EMPLOYEES WHO HAVE NOT PREVIOUSLY SIGNED
AN SF 312 MUST DO SO BEFORE INITIAL ACCESS TO CLASSIFIED INFO.

4. PLS INCLUDE SUBJ NAME AND SSN, YOUR UIC, POC, PHONE ON ALL
COMMS TO DON CAF. DON CAF PHONE: DSN 288-8880; COMM 202-433-8880.
WEB SITE: WWW.NAVYSECURITY.NAVY.MIL

BT
NNNN

File Copy

DOD JUNE

2186

Certificate of Achievement

(b)(7)(C)

(b)(6) - SSN

(b)(7)(C)

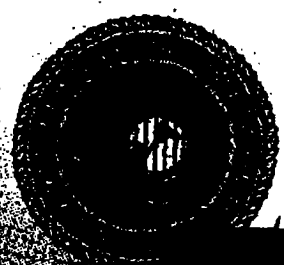
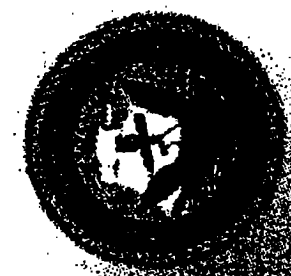
Completion of CMIS Data Entry - Custodian CBT

(b)(7)(C)

Date

(b)(7)(C)

Signed



Office of the
Director

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)



DOD JUNE

2188

CERTIFICATE of APPRECIATION

Operation Spruce-Up Month

WHEREAS, our Commonwealth of Virginia is blessed with bountiful and beautiful natural resources of great recreational, historic and cultural value; and

WHEREAS, over the past three years, thousands of Virginians have participated in Operation Spruce-Up, including members of the Boy Scouts, Girl Scouts, and Virginia Housewives, other service organizations, religious groups, businesses, school clubs, civic clubs, hunt clubs, fishing associations, bird-watching organizations and federal, state and local government agencies; and

WHEREAS, we should seek to motivate and facilitate stewardship of our natural resources among young Virginians, and provide families and communities an opportunity to work together on projects to include planting trees, shrubs and flowers, effecting light repairs and minor construction, painting, placing wood duck boxes in swampy areas and conserving our beautiful parks, beaches and natural areas; and

WHEREAS, Operation Spruce-Up provides statewide support for such diverse activities as enhancement of state lands, road-side clean-ups, community improvements, winter damage repair, spring plantings, garden restorations and stream bank stabilization through planting of appropriate vegetation; and

WHEREAS, by highlighting the hard work of these volunteers and providing technical support through state employees working on natural resources, Operation Spruce-Up will make Virginia an even better and cleaner place to live, work and raise a family;

NOW, THEREFORE, I, George Allen, Governor, do hereby proclaim April 1997 as OPERATION SPRUCE-UP MONTH in the COMMONWEALTH OF VIRGINIA, and I call this observance to the attention of all our grateful citizens.



presented to

(b)(7)(C)

Thank you for volunteering during
Operation Spruce-Up 1997.
Citizen stewardship such as yours
greatly enhances Virginia's natural resources.

A handwritten signature, likely of George Allen, Governor of Virginia.

A handwritten signature, likely of Betty Norton Dunlop, Secretary of Natural Resources.
Betty Norton Dunlop
Secretary of Natural Resources



George Allen
Governor

DOD JUNE



(b)(7)(C)

(b)(7)(C)

Has satisfactorily completed the requirements
and is hereby certified as an Eagle Scout by the

BOY SCOUTS OF AMERICA

(b)(7)(C)

DATE

Harold A. Hook

PRESIDENT

Robert R. Rangan

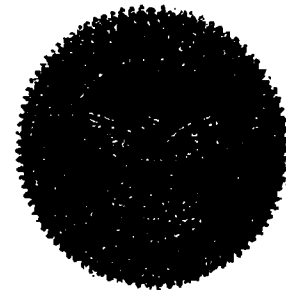
HONORARY PRESIDENT

Ben A. Lane

CHIEF SCOUT EXECUTIVE

(b)(7)(C)

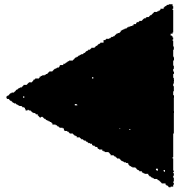
COUNCIL NUMBER



2190

No. 58-708

Order of the Arrow



Boy Scouts of America

This Certifies that

(b)(7)(C)

Is Awarded the Vigil Honor

In recognition of distinguished contributions to Scouting and the Order, through exceptional service, personal commitment, and unselfish interest in the welfare of others, beyond immediate responsibilities in the Order of the Arrow, as a member of (b)(7)(C)

(b)(7)(C)

interpreted as

(b)(7)(C)

The Indian name given is (b)(7)(C)
Recorded this 24th day of August, (b)(7)(C)

Edith M. Zager
For Vigil Honor