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PAULA ZAHN NOW

Who is to blame for Abu Ghraib? Interview with men who were there.

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PAULA ZAHN, HOST: Who is really to blame for Abu Ghraib? Military police? Military intelligence? Two men who were there, 2 different stories.
(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: It was told to us that military intelligence is in charge of this compound.

UNIDENTIFIED MALE: That's probably their only line of defense, to blame everything on military intelligence.

(END VIDEO CLIP)

ZAHN: Tonight, a CNN exclusive: Eyewitness to Abu Ghraib.

Good evening. Welcome. Glad to have you with us tonight. The truth of what happened at Abu Ghraib almost taken for granted now. It is the abuse we've all seen in those horrid pictures.

The truth of how it happened, well, that is only still becoming clear, thanks in part to the reports out there and independent investigators. They point to failure in leadership far up the chain of command. But the circle of blame on the ground.

When the pictures first appeared, the story focused on one detachment, the military police assigned to the prison. Now we know that more than two dozen military intelligence personnel may have been involved.

(BEGIN VIDEOTAPE)

ZAHN (voice-over): Under Saddam, the Abu Ghraib Prison was a place where people were tortured. After Saddam's defeat, it became the U.S. Army's own house of horrors. All too familiar pictures like the American flag in Iraq.

So far, 7 guards from the military police have been charged with mistreating detainees. But defense attorneys say military intelligence agents, not the military police, created the atmosphere of abuse.

Nevertheless, testimony has shown the actions depicted in the worst photos had little to do with intelligence. Lynndie England holding a leash, told an investigator this was no more than an effort to persuade a prisoner to move to another cell. The 3 men, hand-cuffed together in a naked tangle, were suspected in the rape of a 15-year-old prisoner. The human pyramid was thought to have incited a riot in another part of the prison compound.

ZAHN: And where is Mr. Graner in this picture?

DAVIS: Graner has his hand up against the wall in the back of that picture. He has gloves on.

ZAHN: Did he seem to be disturbed by what he was being told to do?

DAVIS: He just seems like he was doing what they were telling him to do. He -- it was hard to tell if he had a lot going on that night. I had only been in country 2 1/2, 3 weeks. So, I felt like I had missed something trying to pay attention to what's going on. I'm looking for blatant abuse, someone punching someone, them, something that maybe that would cross the limit with me. Because I wasn't sure where the line especially since military intelligence said they were interrogating. I don't know anything about interrogation, what roughing someone up is in their books.

ZAHN: Did it strike you that what they were doing was wrong?

DAVIS: Oh, yes.

ZAHN: Did you challenge either Mr. Cruz or Mr. Krol?

DAVIS: Earlier in the -- what they were doing, they walked up to me when I came on the Tier, Cruz did we crossed the line? Kind of sarcastically. I said, I don't know. You are military intelligence.

He said, well, you are the MP.

I said, well, I'd have to say yes. In a question form thinking, what have I walked into. What am I seeing?

He said, that's right, we're military intelligence, we know what we're doing.

ZAHN: So, the signal that sent to you was what? Don't say anything else to me?

DAVIS: Correct.

Plus not wearing rank or knowing who they were, there's no telling who they were, what rank they were.

ZAHN: So, what was the next step you took after witnessing what you allege was acts of degrading behavior by part of the guards towards these detainees.

DAVIS: The following day we -- I ran my missions because we were -- my teams were in charge of routing. Which was off site, outside of the compound. We would run into Baghdad and take detainees to court.

Well, coming back from the missions, my lieutenant was out back of our living facility. And I said, sir, you. And we started to talk.

And I said, military intelligence is doing some weird things to naked detainees over at the hard site.

He said what?

I said they are interrogating naked detainees and it's pretty weird.

And he said, that's military intelligence. They are in charge. Stay out of their way.

ZAHN: And who was this you spoke to?

DAVIS: My lieutenant, which is my platoon leader, Lieutenant Raider (ph).

ZAHN: I actually have a quote from your platoon leader when asked about some of your allegations. quote, I don't recall my specific conversation with Davis, but no one reported to me any incidents of a

DAVIS: mm-hmm.

ZAHN: Are you saying he's lying?

DAVIS: I can't say he's lying, because if he doesn't recall a conversation, how does he recall what exactly? And if I'm saying they are doing some pretty weird things with naked detainees, how do you call it abuse? That's proper interrogation techniques. You don't know if it's abuse. And who knows if he knew that or

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Yet a Pentagon investigation has found military intelligence personnel, M.I. in shorthand, set the tone the abuse. Often joining in the interrogations.

MAJ. GEN. GEORGE FAY, U.S. ARMY: There were a few pictures that had military intelligence sold them, and we do find instances where some military intelligence soldiers participated in the actual ab

ZAHN: Intelligence agents, none of them charged, could be seen in this picture of the rape suspects on the floor. One was Roman Krol, a young reservist from Massachusetts. We'll talk with him in this hour only an onlooker. Not so, says Sergeant Kenneth Davis, a guard. He tells us, M.I. orchestrated the at

Abu Ghraib has become both a horror story and a mystery. How much more is yet to be told?

(END VIDEOTAPE)

ZAHN: And joining us now, former Army Reservist Kenneth Davis who says he saw naked detainees at Abu Ghraib, and says military intelligence agents led and directed the abuse. Welcome.

KENNETH DAVIS, FRM. ARMY RESERVIST: Thank you, Paula.

ZAHN: Based on your experience at Abu Ghraib, how clear was the chain of command?

DAVIS: It was very unclear. It was very confusing. As MPs, we're used to being in charge, but when military intelligence is in charge of you, it makes a confusing site.

ZAHN: How did it work on any given night? How were orders made?

DAVIS: I'm not sure how the orders were made, but I — what I know is every time we'd question someone who was in charge, it was explicit. It was told to us, military intelligence is in charge of this compound.

ZAHN: Who would you ask that of?

DAVIS: Either our lieutenants or our captain, anybody that would number the chain of command, even sergeants would know. That's who is in charge of this place, because they make it very evident.

ZAHN: When is the first time you saw something that you thought was morally reprehensible and not the Geneva Conventions? DAVIS: Being unaware of what the Geneva Conventions actually say, because I had been trained on the Geneva Convention, it would have been October 25, the night I walked up on the

ZAHN: Describe to us what you saw?

DAVIS: As I walk over to the tier, I saw what I thought was two M.I., military intelligence officers, agents on the tier interrogating two naked detainees.

ZAHN: We're looking at that picture now.

What do you allege is happening now?

DAVIS: This is well after they had already done other things. Now three detainees are handcuffed together in the middle of the floor screaming, because the M.I. would be positioning them in different positions. And then

ZAHN: Where are you standing?

DAVIS: I am number 2 in that picture.

ZAHN: And number 1 you allege is whom?

DAVIS: Is Krol, Specialist Krol. And then number 3 is Specialist Cruz, who are military intelligence.

ZAHN: And do you allege that they were directing this kind of treatment of the detainees, or just observing?

DAVIS: They were definitely directing, because when they brought in the third detainee, he still had on a jumpsuit and they instructed him to take it off through the interpreter. He refused. They instructed him to take it off again. And they look at Graner, he said Graner, he's refusing to take off his clothes, make him

ZAHN: So, you are saying both of these military intelligence officials at the same time told Soldier Graner

DAVIS: Yes.

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ZAHN: Mr. Krol vehemently denies he participated in the abuse. He says he witnessed it. He was an dld not direct the abuse.

DAVIS: It's all on video. It's all in pictures. And he's in a lot more pictures than I or even Rivera, who is military intelligence analysts, was in as well.

ZAHN: As a man of deep faith who carried pocket Bibles with him around in Iraq, occasionally sharing children in Iraq, how haunted are you by what you witnessed at Abu Ghraib?

DAVIS: It hurts. That's not what I went over there for. I didn't go over there to see abuses. I went over people. Help an Iraqi people that were now free.

But when you see this going on. And then you see a prison riot where detainees are shot inside their them die and one of them is dropped at your feet, it changes you. You are wondering why am I even what America brought me here for.

I really don't believe that a lot of soldiers went over there with the intention to hurt anybody. My biggest to let me shoot an Iraqi. Don't let me shoot anybody's son or anybody's daughter or anybody. I just want there and help these people.

And then you see this and you get confused thinking, why am I really here? And so that's what I live with.

ZAHN: How troubled are you by the fact that you weren't able to stop it?

DAVIS: Very troubled.

ZAHN: As you look back and place yourself in that prison on various occasions, do you think there was could have done that would have stopped the madness?

DAVIS: Knowing what I know now, yes. I could have apprehended them all on the spot.

ZAHN: And you would have had the power to do that.

DAVIS: With what I know now, I would have.

ZAHN: Ken Davis, thank you very much for joining us tonight. Appreciate your sharing your painful story with us.

DAVIS: Thank you.

(END VIDEOTAPE)

ZAHN: And the allegations you just heard leveled against former military intelligence Specialist Roman Krol and carry severe penalties. When we come back, I will ask Roman Krol about those allegations in an interview.

(COMMERCIAL BREAK)

ZAHN: We are talking tonight about the abuse at Abu Ghraib prison in Iraq. And for the first time on television about to hear from a member of military intelligence who was there. Roman Krol was an interrogator at the prison. He joins us now in this exclusive interview. Welcome. Thanks so much for joining us.

ROMAN KROL, FORMER ABU GHRAIB INTERROGATOR: Thank you for having me, Paula.

ZAHN: Our pleasure. So you were assigned to the prison for six weeks, and there are two brand new week who describe the abuse that went on as freelance at the prison, much like the atmosphere of "The Thin Red Line" that a fair characterization based on what you saw?

KROL: I would have to say yes. Major General Fay's report is very accurate. I would -- I'm very impressed actually. Especially the part about the atmosphere in Abu Ghraib. It was very well defined.

ZAHN: Describe that atmosphere to us tonight.

KROL: Well, lack of personnel, for one. The MPs, their job is to escort a prisoner to the cell and from interrogation. Handcuff the prisoners and guard them. And because of the lack of MPs, MI personnel that.

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ZAHN: Were you forced to do that?

KROL: I was forced to walking prisoners to the interrogation booth and back.

ZAHN: So you were put into a position where you were physically handcuffing detainees?

KROL: Yes, I was.

ZAHN: Is that something you were trained to do?

KROL: No, I wasn't.

ZAHN: We're going to go through a series of pictures now so the audience can better understand mo witnessed. Up on the screen now, you'll see a picture of Lynndie England with a detainee on a leash.

KROL: Yes.

ZAHN: Describe to us your reaction when you say you stumbled on to this scene.

KROL: One word, indifference.

ZAHN: Indifference?

KROL: Yes.

ZAHN: Were you shocked?

KROL: No.

ZAHN: Why indifference?

KROL: It might sound strange, but during the wartime, I was not shocked. If this happened at peaceti country maybe, and I haven't seen a lot of war, it would probably shock me. But back then, I didn't feel

ZAHN: So you weren't troubled on any level?

KROL: No. I wasn't.

ZAHN: You didn't think anything was wrong with this treatment of detainees?

KROL: Well, I thought something was wrong, but it wasn't my business. It was not my soldier. It was I That's what I did. I just walked by.

ZAHN: When you look back on that now and reflect on how you felt at the time, as a human being, are disappointed in yourself?

KROL: You can say that. But now it's all different. Now I'm back in the States. There's no war going on different.

ZAHN: And as you look at that picture tonight, what are you thinking?

KROL: It's wrong, but it happened.

ZAHN: Let's fast forward to another picture. This picture taken in October, not long after you were assigned Ghraib prison. Describe to us what we're looking at here.

KROL: We have three detainees on the floor. They are stripped of their clothes. They are handcuffed here. I'm not sure who this is, and I'm not sure who the guy in the green uniform is.

ZAHN: We're going to look at this scene now from another angle...

KROL: OK.

ZAHN: ... where we have you clearly identified by a number.

KROL: Yes, yes, this is me right there.

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ZAHN: Number 2. And Mr. Cruz is number 3.

KROL: I don't see number 3...

ZAHN: This is Charles Graner over here, number 1.

KROL: I believe so. OK.

ZAHN: Do you think that the treatment of those detainees that night was appropriate?

KROL: No, no, I do not think so. It was definitely inappropriate. It was definitely humiliation. It was just

ZAHN: But that night you didn't think that way.

KROL: The reason why, I asked the MPs why are they -- people being treated that way. They said the boy. My feelings were a little different. Basically, the reason...

ZAHN: So because of how venal that alleged crime was, you thought these detainees deserved it?

KROL: I didn't think they deserved it. I didn't think they didn't deserve it. I was also indifferent back then. The reason why I ended up there, because I went to talk to one of my prisoners that were assigned to me second floor, and I took my interpreter, which is -- I don't believe he's pictured here, and Analyst Cruz be this guy right there, but I'm not sure.

ZAHN: That's correct.

KROL: That's correct? ZAHN: OK. So once again, you are right here...

KROL: I'm right here.

ZAHN: ... and Mr. Cruz is there...

KROL: And I'm not sure if this is Cruz, but...

ZAHN: ... and this is Ken Davis, a military police officer. The two of you on the right are with military in

KROL: That's correct. And myself and Cruz went to talk to one of the prisoners that was assigned to me second floor. The same block that you are looking at right now. And we talked to them, and we looked at pretty much this, which you can see on this picture. I'm not going to go into details and describe what happened there, even though I was there for about an hour, for a good hour.

ZAHN: We have also spoken with Ken Davis, who was this military police officer on duty that night.

KROL: OK.

ZAHN: And he describes the scene quite differently.

KROL: OK.

ZAHN: He says that you and Mr. Cruz directed the treatment of the detainees, and you two were the ones who handcuffed the detainees.

KROL: Not -- did not happen, because neither myself or Cruz are in position to order anything like the handcuffing of detainees while the military intelligence -- military police present, excuse me.

ZAHN: So what you are saying, going back to what you said earlier is the only time you claim to have handcuffed detainees when you were alone.

KROL: Because of the lack of the MPs.

ZAHN: What about his accusation that you two directed Charles Graner to get tough on these detainees and refused to take their clothes off.

KROL: When I arrived there, they were naked. So I don't see how that accusation can be considered

ZAHN: Why would he say that? Why would he make that up?

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KROL: I have no idea who Davis is, actually, even looking at this picture, I couldn't identify him. Maybe myself or Cruz for another person. I don't know. Maybe he's trying to help a friend. I have no idea why (UNINTELLIGIBLE) testified, I believe in his testimony, he did say that he arrived and the detainees were naked, handcuffed, on the floor, and the same thing happened.

ZAHN: Roman, if you wouldn't mind standing by, we want to hear much more of what you have to say. We're going to take a short break and continue our conversation on the other side. We'll be right back.

(COMMERCIAL BREAK)

ZAHN: Welcome back. Thanks so much for staying with us. We continue an exclusive conversation inside Iraq's Abu Ghraib prison. My guest is Roman Krol who was an interrogator at the prison. Welcome back.

Before we went to the break we talked about what some of your early exposure was to Abu Ghraib. You were in England with a detainee on a leash. You said you were quite indifferent about it that night. Why?

KROL: Yes.

ZAHN: But what about the picture of the three detainees who are naked on the floor and you are sort of above them with sort of no expression on your face.

KROL: Yes, as you can see, I do have no expression on my face. It's -- I have very accurately described just plain indifference. I found out what those people did, and I was just indifferent. Just completely in.

ZAHN: So you -- in your heart, you made no attempt to stop the treatment of these prisoners?

KROL: No.

ZAHN: What about your understanding of the Geneva Conventions at that time, which bars not just torture but inhumane or degrading treatment?

KROL: Military intelligence have their rules of engagement for interrogations. And every interrogation is within those boundaries. I never went out of boundaries during interrogation. Now what happened here was directed by MPs. I would assume that.

ZAHN: And, of course, the accusation by Ken Davis is that you and your colleague, Mr. Cruz were doing these activities here.

KROL: He's wrong, of course.

ZAHN: Why is it do you think then in the conclusion of both of these reports that came out this week that they come down pretty hard on military intelligence officers, and you've got attorneys out there representing soldiers who have been charged so far basically pointing at you guys.

KROL: That's probably their only line of defense, to blame everything on military intelligence. They have no defense to base it on. What else can they say?

ZAHN: But was it really clear who was in charge on most nights when you did your job?

KROL: It's very clear who was in charge when. For example, military intelligence is in charge of prisoners being interrogated...

ZAHN: Now these prisoners weren't being interrogated.

KROL: These prisoners are not intelligence value, these prisoners are not being interrogated, and no one talked to them. That's me, myself, Cruz, and Rivera, I don't believe Rivera talked to them at all. I did not talk to them so that's not interrogation. We did not...

ZAHN: But why were you there?

KROL: Well...

ZAHN: Did you need to be there?

KROL: I explained why I went there, to talk to one of my prisoners, and I just -- I stood there like a microphone. I admit that. Rivera said the same thing, I believe. I'd like to say the same thing about Cruz, probably, I



other reasons to do it.

ZAHN: I'm interested in hearing you say that you thought there were clear lines of delineation between police were supposed to do and military intelligence officers because one of the criticisms of the Pentagon in these reports is the fact that they didn't think the Pentagon gave you clear enough guidelines for and sometimes that the chain of command within the prison was confused.

KROL: The Geneva Conventions for the interrogation was pretty clear. No physical abuse of prisoner say to a prisoner he's going to be tortured or basically general dislike and everybody stayed in those sure.

ZAHN: So you deny ever physically abusing a prisoner?

KROL: Of course.

ZAHN: Did you see any of your colleagues?

KROL: Military intelligence, no.

ZAHN: Hurt a prisoner?

KROL: Hurt a prisoner? No.

ZAHN: So why are there so many accusations flying out there that it was your guys' fault that it turned they were taking orders? Attorneys for some of these seven soldiers are saying quite pointedly...

KROL: I understand -- people that are -- for example, Graner, I believe he's a sergeant and myself are specialists. He is a higher rank than us. We physically cannot give him orders. Legally we cannot give do anything. OK, just, in our position, we cannot give order to anybody to do anything.

ZAHN: How many nightmares have you had about what you witnessed at Abu Ghraib and what you were accused of?

KROL: None.

ZAHN: You are at peace?

KROL: Yes.

ZAHN: With what you saw on one hand but troubled that you didn't react in a more aggressive way or

KROL: Yes, that's correct. That's exactly what I feel.

ZAHN: Is it hard for you?

KROL: I'm trying to forget what I saw back in Iraq. I think I can manage it.

ZAHN: Are you worried you're going to be charged?

KROL: Of course, I'm worried about I'm going to get charged.

ZAHN: Do you think you will be?

KROL: I think so, yes.

ZAHN: You think you will be charged?

KROL: I probably will be charged on not reporting information.

ZAHN: And how will you confront that charge? How do you plan to fight that charge?

KROL: I can't.

ZAHN: You can't? What do you mean?

KROL: Well, I was a witness of what you saw in the picture and there's nothing I can do about it, and

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ZAHN: So you are prepared to spend time in prison for what you describe as your indifference?

KROL: If the penalty for not reporting information that I saw is prison, then, yes.

ZAHN: And do you understand the outrage in the world about the kind of abuse that took place at Abu Ghraib? Of course, I understand the outrage. What else can I say? I am just happy that I wasn't directing the participants in it. Basically, by not reporting it, I know I also did the wrong thing, but people that were pictures are my buddies also. Some of the MPs were my friends, they were my buddies. And also by information, I guess, you can say by reporting the information I understand that would probably get in trouble, that they are in right now. And one of their own people went public with the photos, of course know.

ZAHN: And now you are fully expecting to face a prison sentence, basically, because you were trying to say, your colleagues under very difficult conditions.

KROL: That's not the main reason why I didn't report the information, but that was part of the reason. Same team, even though there were military police and military intelligence, but we work together. And that they did were very disgusting. That was one of the reasons why I did not report the information.

ZAHN: Roman Krol, thank you for spending time with us this evening and telling us what you saw at Abu Ghraib.

KROL: Thank you.

ZAHN: Good luck to you.

When we come back, the perspective on the events at Abu Ghraib from a reporter who has been on the ground from day one.

(COMMERCIAL BREAK)

ZAHN: It will take some time to get a complete and accurate picture of what happened at Abu Ghraib. What we heard tonight was chilling. I was struck by the tragedy of two young men confronting a situation even though they were neither emotionally nor professionally prepared for. Small wonder, then, that so many investigators are having trouble getting to the truth.

With that in mind, we turn to a journalist who has written extensively on the abuse at Abu Ghraib. In the "Los Angeles Times" national security correspondent, Greg Miller. He is the co-author of a new book called "Interrogators: Inside the Secret War Against al Qaeda."

Welcome, Greg. You have just heard these two men tell their story. Where does the truth lie?

GREG MILLER, L.A. TIMES: Paula, to me this shows you just how tangled this story is still, and it takes some time. I mean, these two accounts from these two soldiers that you interviewed tonight, as gripping as they are, they are somewhat contradicted by the Fay report. Davis says because the Fay report says — concludes that description of this incident that MI was not controlling or directing this behavior, and Krol's because it concludes that two military intelligence troops took part in the abuses last night, and other sources indicate it was one of them.

ZAHN: Specialist Krol, as you heard, adamantly denied he had anything to do with neither directing or participating. We have a statement for the lawyer for Specialist Armin Cruz, quote: "we adamantly deny that Specialist Krol orchestrated anything." Your response.

MILLER: There — the third military intelligence soldier who was there last night is Specialist Rivera, and he has a different version of events. He has described Krol having taken part in the abuses by climbing up on the balconies in the tier and throwing footballs at the detainees, and Cruz of dumping water on the detainees. So there are contradictions all around here.

ZAHN: The two gentlemen also contradicted each other's accounts of the chain of command. Mr. Krol is now suggesting that it was a very confused situation. The last guest, Roman, saying that that wasn't true, that military police knew what they were supposed to do. They were in charge of the prison. The MI guys were in charge of the interrogations. You see a lot of gray area there, don't you?

MILLER: There's a lot of gray area there. It certainly doesn't look like anybody was totally in charge. I mean, one of the striking things to me, having written a book about a prison in Afghanistan, is just that it's much greater here. In Afghanistan, the largest prisons held 500, 600 prisoners at most, and at Abu Ghraib many as 8,000. It was just a much more chaotic and large and sort of amok facility than anything I had ever been prepared for.

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ZAHN: I know this is early on, and everybody's accounts of what they believe went on in this very case where should most of the blame be pointing right now?

MILLER: That's a tough question. I think that the Fay report makes it clear that this is no longer a case that can be described as confined to a few bad apples taking advantage of their freedom on the night shift. It also says that there was no indication in many of these instances that this was being ordered or directed. I mean, I think that what has to happen now is just -- the Pentagon and other agencies need to really sit down to reach some -- arrive at some new policies that achieve some clarity that eliminates the possibility of a confusing environment in the future.

ZAHN: Just a final thought, a very personal reflection on the tragedy that both of these men confronted -- the account you buy into.

MILLER: Well, it's, you know, one of the things that I try to keep in mind as we write these stories is, for many readers and many of your viewers think about this as well. What would we have done in those cases that are hard to know. We saw Krol tonight talking about feeling indifferent toward this. He told me much the same in an interview recently several months ago, where he talked about he didn't report it because he simply didn't

And that's hard to understand. But when you talk to people who have worked in these prisons, you understand that these are debilitating places to be, especially over a long period of time.

ZAHN: I think both of the gentlemen made that clear this evening. Greg Miller, thank you for your addition. We appreciate your time tonight.

MILLER: Thank you, Paula.

ZAHN: Just ahead, we move on to politics, as New York braces for the GOP's big show, and the Democrats are coming with it. That story when we come back.

(COMMERCIAL BREAK)

ZAHN: Well, if you are counting, we are 68 days from the election. In a CNN/"USA Today"/Gallup poll shows President Bush and John Kerry still locked in a statistical dead heat. We are also, of course, far from the Republican convention here in New York, which was the subject of another poll. This one from the University of New York. Well, the survey found President Bush has an approval rating of only 25 percent among New Yorkers. Those same New Yorkers apparently think more highly of themselves. 77 percent of them expect New York to be good hosts for the convention. Still, not everyone is planning such a warm welcome. Maria Hinojosa is

(BEGIN VIDEOTAPE)

MARIA HINOJOSA, CNN CORRESPONDENT (voice-over): In New York City, not all protests look alike. A group of women shoot this video as they sneak into Grand Central Station to send a very public message.

UNIDENTIFIED FEMALE: It seems like people were so overjoyed and relieved to see those words go up.

HINOJOSA: An anti-Bush punching bag standing on a street corner. Self-described anarchists holding meetings. A little flower store turned political rallying spot.

(on camera): What are you hearing from New Yorkers? Are you hearing New Yorkers saying, "I want that protest" or are you hearing New Yorkers saying, "I'm getting away."

UNIDENTIFIED MALE: No. The majority of them are going to be there, I think.

HINOJOSA: In a city where Democrats outnumber Republicans, 5 to 1, protesters want to send a message like these, pro-choice, gay-friendly, anti-war, have nothing in common with Republicans. But inside the city, the Republicans aren't buying into the caricature being painted outside. They are taking advantage of the image of New York, where many top Republicans are Democratic converts and where party labels don't

RUDOLPH GIULIANI, FMR. NEW YORK MAYOR: I believe one of the things we can accomplish is to demonstrate how broad the Republican party really is.

HINOJOSA: Former Republican Mayor Rudy Giuliani is one of the convention's top speakers. Once a conservative, he has a history of taking more moderate stances on conservative issues.

GIULIANI: There are a substantial number of Republicans who you would describe as moderate Rep

that's probably the best way to describe them but who have some very, very strong conservative view economy, on national defense. But on social views we tend to be moderates.

HINOJOSA: The "we" Giuliani is talking about includes Michael Bloomberg, another Democrat who became a Republican and then became mayor of New York. And there's the state's moderate Republican Governor Pataki. Both will be convention speakers.

GOV. GEORGE PATAKI (R), NEW YORK: I've got elected three times in the state of New York because I'm an independent and enough Democrats believe that these principles and policies work for them, too.

HINOJOSA: Going after so-called swing voters means showing that Republican delegates inside the convention can address some of the issues the protesters are raising outside.

GEORGE ARZI, POLITICAL CONSULTANT: It might be a way in which to leverage opposition and to get people, the protesters out there. Because I don't know what these people out there are protesting about, but these moderates we have inside.

HINOJOSA: But demonstrators want to send a message of their own that no matter how moderate a Republican is, it's not enough.

BILL DOBBS, UNITED FOR PEACE AND JUSTICE: The Republicans have brought us four years of civil liberties, immigrant round-ups and now many of us are going to be marching under the banner, it's all about the Bush agenda.

HINOJOSA: So as the opposition welcomes protesters to town, the Republicans are rolling out a more moderate image.

ARZI: If you look at the images outside, with all the protesters and you look at the images inside with the Karl Rove types will try to tell you, you see, we are much more moderate than people are trying to tell you.

(END VIDEOTAPE) ZAHN: And that was Maria Hinojosa reporting for us this evening. And just one week after President Bush accepts his party's nomination for the second time. You can see live prime-time coverage of the Republican National Convention in New York starting Monday night right here on CNN.

Coming up next, a tale of two JFKs. The surprising connections you may not know.

(COMMERCIAL BREAK)

ZAHN: John Fitzgerald Kennedy, John Forbes Kerry. They share the same initials. They're from the same state. Both served in the Navy during wartime and they both wanted to be president.

Well, after Kennedy achieved his goal, he made quite an impression on Kerry, even in person 42 years later.

(BEGIN VIDEOTAPE)

ZAHN (voice-over): On an August day in 1962, President John Fitzgerald Kennedy is sailing off New York. One of his passengers is 18-year-old John Forbes Kerry. It is the summer before Kerry starts at Yale. Janet Auchincloss, Jackie Kennedy's half-sister. Auchincloss invited Kerry to Hammersmith Farm where she married Kennedy nine years before.

The politically active Kerry idolizes Kennedy. They chat. They board the 60-foot Manitou for a cruise in the harbor. (UNINTELLIGIBLE). A few weeks later, Kerry is invited back, this time to watch an America's Cup race. President Kennedy is there and again they have a private conversation.

"Thank you for a very unforgettable and exciting time," Kerry later would write the president. "I am, to this day, an ardent Kennedy supporter." Indeed he was like so many young Catholic men from Massachusetts. Kerry's political speech in a prep school debate was in support of Kennedy's 1960 presidential run. Kerry voted for Kennedy's first Senate campaign in '62. And when the president campaigned for Democrats in Connecticut, Kerry was in the crowd, a crowd peppered with disruptive hecklers.

JOHN F. KENNEDY, FMR. PRESIDENT OF THE UNITED STATES: But they will learn as this country grows that the Democratic party is best for them as it is for the country.

ZAHN: Kerry, in this October 1962 letter, apologizing for the, quote, "deplorable behavior of some of the undergraduates here at Yale." The young Kerry added, "it is possible that you personally were not involved in what happened here, but the insult was made and there is no one here who is not now conscious of it."

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A year later, President Kennedy was dead.

LOUIS DINATALE, UNIVERSITY OF MASSACHUSETTS: Kennedy's shadow on Massachusetts has been big for 30 or 40 years. ZAHN: Political science professor Lou Dinatale describes Kennedy as the Democratic party.

DINATALE: Celebrity, good looks, coat over the shoulder, loosened tie around the neck. You know, it's for Democrats and it's also a standard because it was unfulfilled.

ZAHN: After the late president's brother Bobby also fell to an assassin, Ted Kennedy became the state's family mystique and eventually Kerry's mentor. The senator backed his first and unsuccessful run in 1972. The two men have stood side by side for two decades in the Senate, and this year, Kennedy played a key role in Kerry's presidency.

SEN. TED KENNEDY (D), MASSACHUSETTS: Let's give him a great Waterloo reception!

ZAHN: Kerry seems to be tapping into that JFK playbook, sometimes literally following his footsteps, same West Virginia diner Kennedy visited 44 years ago.

KERRY: Well, we're going to get to work on it.

ZAHN: Kennedy had PT 109, the small boat he commanded in the Pacific during World War II, swimming to safety after being rammed by an enemy warship. Kerry has PCF 94, the Swift boat he commanded during the Vietnam War, saving a man and winning five medals in combat. Each a decorated veteran when he ran for president, would make America safer than the Republican incumbent, whether against the communists or the terrorists.

DINATALE: The campaign actually is evolving precisely the way the 1960 campaign evolved, which is using his war record is finding himself -- is fighting the fight in the middle of the political spectrum, and as a squeaker of an election just like Kennedy was in '60.

ZAHN: Many Democratic presidential candidates before Kerry have tried to capture the magic of JFK. Whether through personal or political inadequacy, most of those efforts have fallen short except the one by a year-old at this White House handshake.

For John F. Kerry the Kennedy era was a sort of golden age and he hopes that the imagery and the legacy will be for him this year.

(END VIDEOTAPE)

ZAHN: For more on the imprint that John Kennedy left on John Kerry, I am joined from Washington by biographer Laurence Leamer. His most recent book is, "Sons Of Camelot, The Fate Of An American Dynasty." It's good to see you.

So the similarities in the two JFKs are certainly hard to ignore. But there are some very distinct differences there? LAURENCE LEAMER, KENNEDY FAMILY BIOGRAPHER: Yes, there certainly are. The idea that in some ways it's very similar in that they are both authentic heroes, although there have been aspersions cast on them, JFK during his lifetime as well. They both saved one of their sailors. They both deserve the credit but the motivation is very different.

John F. Kennedy was a kind of reluctant hero. When his boat was cut in half by a Japanese destroyer, he saved his men. He wasn't too comfortable with being called a hero. John Kerry, he's more like JFK's older brother. He was the anointed, the golden one in the Kennedy family. He was brought up to be president of the United States. He was opposed to World War II, but he entered because he thought, "I've got to be a hero. So he was a self-conscious hero and he sought the hero's medals and the glory and in the summer of 1944, he volunteered for a very risky mission and he was killed. And that's a more similar case.

ZAHN: Laurence, when you see pictures of John Kerry with Ted Kennedy, for example, you are left with the impression that they are close. But it hasn't always been that way, has it?

LEAMER: No, I mean Ted Kennedy is an 800-pound gorilla in Massachusetts. He doesn't like anybody, and in the -- during the early years, I mean, he was not too comfortable on Kerry and Senator Kerry. He didn't get him too close to Kennedy. Kerry wasn't going to have medical issues, wasn't going to get in the same way. Now, Senator Ted Kennedy sees the election of Kerry as being a triumph. If he can't be in the White House, this is as close to him being in the White House as he can get.

ZAHN: How much do you think John Kerry has studied the life of John F. Kennedy?

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RECORD OF PROCEEDINGS OF COURT-MARTIAL

002933

RECORD OF TRIAL

OF

CRUZ, Armin J.

(Name: Last, First, Middle Initial)

SPC

(Rank)

HHS, 502d MI Bn

504th MI Bde

(Unit/Command Name)

U.S. Army

(Branch of Service)

Victory Base, Iraq

(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

Convened by: Commander

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

Tried at

Baghdad, Iraq

(Place or Places of Trial)

on

11 September 2004

(Date or Dates of Trial)

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TESTIMONY

NAME OF WITNESS	DIRECT/ REDIRECT	CROSS/ RECROSS	COURT
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PROSECUTION:

None.

DEFENSE:

SFC [REDACTED]	69		
CPT [REDACTED]	76		
SFC [REDACTED]	83		
1SG [REDACTED]	88		
SSG [REDACTED]	92		
SSG [REDACTED]	93		
Accused (unsworn)	106		

COURT:

None.

EXHIBITS ADMITTED IN EVIDENCE

NUMBER OR LETTER	DESCRIPTION	PAGE WHERE OFFERED	ADMITTED
1	Stipulation of fact	13	16
2	ERB	62	63
A	Certificate of appreciation	63	64
B	Excerpts from AR 15-6 investigation	63	64
C	Good soldier book	63	64
D	Family video	64	66
E	Stipulation of expected testimony [REDACTED]	103	105
F	Stipulation of expected testimony [REDACTED]	103	105
G	Stipulation of expected testimony [REDACTED]	103	105

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APPELLATE EXHIBITS

<u>I</u>	<u>Request for military judge alone</u>	<u>8</u>
<u>II</u>	<u>Offer to plead guilty</u>	<u>46</u>
<u>III</u>	<u>Quantum</u>	<u>46</u>
<u>IV</u>	<u>Post-trial and appellate rights</u>	<u>151</u>

1 PROCEEDINGS OF A SPECIAL COURT-MARTIAL

2

3 The military judge called the Article 39(a) session to order at

4 0923, 11 September 2004, pursuant to the following orders:

5

6 Court-Martial Convening Order Number 2, Headquarters,

7 III Corps, Victory Base, Iraq, dated 14 January 2004, as amended by

8 Court-Martial Convening Order Number 6, dated 24 July 2004.

9 [END OF PAGE]

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

COURT-MARTIAL CONVENING ORDER
NUMBER 6

24 July 2004

The following personnel are detailed as members of the special court-martial convened by Court-Martial Convening Order Number 2, this headquarters, dated 14 January 2004:

COL [REDACTED] HHC, 3d Sig Bde
LTC [REDACTED], SC, HHC, 57th Sig Bn
COL [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps

VICE

COL [REDACTED], HHC, III Corps
COL [REDACTED] HHC, III Corps
LTC [REDACTED] HHC, III Corps
MAJ [REDACTED], AR, HHC, III Corps
MAJ [REDACTED] HHC, III Corps

Relieved permanently.

BY COMMAND OF LIEUTENANT GENERAL METZ:

[REDACTED]

Chief, Criminal Law Division

DISTRIBUTION:

Each individual indicated (1)
Cdr, III Corps (SJA) (1)
Record Set (1)
Reference Set (1)

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

COURT-MARTIAL CONVENING ORDER
NUMBER 2

14 January 2004

A special court-martial is convened with the following members:

COL [REDACTED], 504th MI Bde
COL [REDACTED], HHC, III Corps
COL [REDACTED], HHC, III Corps
COL [REDACTED], HHC, III Corps
COL [REDACTED], HHC, III Corps
LTC [REDACTED], TC, HHC, III Corps
LTC [REDACTED], HHC, III Corps
LTC [REDACTED], HHC Corps
MAJ [REDACTED], AR, HHC, III Corps
MAJ [REDACTED], HHC, III Corps

In the event an accused requests that the membership of the court-martial include enlisted persons, the following members are detailed to the special court-martial convened by this order:

MEMBERS

CSM [REDACTED], HHC, III Corps
CSM [REDACTED], 504th MI Bde
SGM [REDACTED], HHC, III Corps
MSG [REDACTED], HHC, 89th MP Bde
MSG [REDACTED], HHC, 3d Sig Bde

VICE

COL [REDACTED], HHC, III Corps
COL [REDACTED], HHC, III Corps
LTC [REDACTED], HHC, III Corps
LTC [REDACTED], HHC Corps
MAJ [REDACTED], HHC, III Corps

Relieved only for trials in which an accused requests that the membership of the court-martial include enlisted persons.

BY COMMAND OF LIEUTENANT GENERAL METZ:

DISTRIBUTION:

Each individual indicated (1)
Cdr, III Corps (SJA) (1)

[REDACTED]
[REDACTED]
MAJ, JA
Chief, Criminal Law Division

002939

1 MJ: Court is called to order.

2 TC: This court-martial is convened by Court-Martial Convening
3 Order Number 2, Headquarters, III Corps, dated 14 January 2004, as
4 amended by Court-Martial Convening Order Number 6, same headquarters,
5 dated 24 July 2004, copies of which have been furnished the military
6 judge, counsel and the accused and which will be inserted at this
7 point in the record. The charges have been properly referred to this
8 court for trial and were served on the accused on 5 September 2004.

9 The prosecution is ready to proceed in the case of United
10 States versus Specialist Armin J. Cruz.

11 The accused and the following persons detailed to this
12 court are present:

13 COLONEL [REDACTED], MILITARY JUDGE;

14 MAJOR [REDACTED], TRIAL COUNSEL;

15 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;

16 MR. [REDACTED], CIVILIAN, DEFENSE COUNSEL; and

17 CAPTAIN [REDACTED] ASSISTANT DEFENSE COUNSEL.

18 The members are absent.

19 Sergeant First Class [REDACTED] has been detailed
20 reporter for this court and has been previously sworn.

21 All members of the prosecution have been detailed to this
22 court-martial by Captain [REDACTED] Chief of Justice, III

1 Corps. All members of the prosecution are qualified and certified
2 under Article 27(b) and sworn under Article 42(a), Uniform Code of
3 Military Justice. No member of the prosecution has acted in any
4 manner which might tend to disqualify us in this court-martial.

5 MJ: Specialist Cruz, you have the right to be represented by
6 Captain [REDACTED] your detailed military defense counsel. He is
7 provided to you at no expense to you. Do you understand that?

8 ACC: I understand that, sir.

9 MJ: You also have the right to request a different military
10 lawyer to represent you. If the person you request is reasonably
11 available, he or she would be appointed to represent you free of
12 charge. Now, if your request for this other military lawyer were
13 granted, however, you would not have the right to keep the services
14 of your detailed defense counsel because you are entitled only to one
15 military lawyer. Now, you may ask Captain [REDACTED] superiors to let
16 him stay on the case, but your request would not have to be granted.
17 Do you understand that?

18 ACC: Yes, sir.

19 MJ: In addition, you have the right to be represented by a
20 civilian lawyer. A civilian lawyer would have to be provided by you
21 at no expense to the government. If you're represented by a civilian
22 lawyer, you can keep your military lawyer on the case to assist your

1 civilian lawyer. Or, you could excuse your military lawyer and be
2 represented only by your civilian lawyer. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Specialist Cruz, do you understand your rights to counsel?

5 ACC: I understand, sir.

6 MJ: By whom do you wish to be represented?

7 ACC: I wish to be represented by Mr. [REDACTED].

8 MJ: And Captain [REDACTED], also?

9 ACC: Both, yes, sir.

10 MJ: Those two and nobody else?

11 ACC: Yes, sir.

12 MJ: Captain [REDACTED], put your detailing and qualifications on
13 the record.

14 DC: I have been detailed to this court-martial by Lieutenant
15 Colonel [REDACTED]. I'm qualified and certified under Article 27(b)
16 and sworn under Article 42 Alpha, Uniform Code of Military Justice.
17 I have not acted in any manner which might tend to disqualify me in
18 this court-martial.

19 MJ: Mr. [REDACTED] put your qualifications on the record, please.

20 CDC: Yes, Your Honor. I'm an attorney licensed to practice law
21 in the state of Texas. I'm a member in good standing of the state

1 bar. I have not acted in any manner which might tend to disqualify
2 me in this court-martial.

3 [The civilian defense counsel was sworn by the military judge.]

4 MJ: I've been properly certified, sworn, and detailed to this
5 court-martial. Counsel for both sides appear to have the requisite
6 qualifications and all personnel required to be sworn have been
7 sworn.

8 Trial counsel will announce the general nature of the
9 charges.

10 TC: Yes, sir. The general nature of the charges in this case
11 is one specification of conspiracy to maltreat a subordinate and one
12 specification of maltreatment of a subordinate.

13 The charges were preferred by Captain [REDACTED]
14 and forwarded with recommendations as to disposition by Major [REDACTED]
15 [REDACTED] and Colonel [REDACTED]. The Article 32 investigation was
16 waived.

17 Your Honor, are you aware of any matter which might be a
18 ground for challenge against you?

19 MJ: As I think both sides are aware of, I am the military judge
20 in the companion cases involving, at least according to the
21 Specification, Corporal [REDACTED], Sergeant [REDACTED], and Specialist
22 [REDACTED]. I have no involvement up to this point with Specialist [REDACTED]

1 and in neither of the other three cases have we done anything in the
2 case except motions. There has been no entering of findings. The
3 trials are pending. And I have tried and accepted a guilty plea in a
4 co-accused's case by the name of Specialist [REDACTED]. I believe
5 both sides are aware of that. I made no findings in that case or
6 credibility determinations. I did enter findings of guilty pursuant
7 to his plea and sentenced him.

8 I'm assuming both sides are aware of my involvement in the
9 companion cases?

10 TC: Yes, sir.

11 CDC: Yes, Your Honor.

12 MJ: Does either side desire to question me further or to
13 challenge me?

14 TC: No, Your Honor.

15 DC: No, sir.

16 MJ: Now, Major [REDACTED], you said the Article 32 in this case was
17 waived, but my charge sheet shows this has been referred to a
18 straight special--or to a BCD special?

19 TC: Yes, sir, that's correct.

20 MJ: Specialist Cruz, you have the right to be tried by a court
21 composed of at least three officer members. Also, if you requested,
22 you would be tried by a court consisting of at least one-third

1 enlisted members, but none of those enlisted members could come from
2 your company and no member of the court would be junior in rank to
3 you. Do you understand what I've said so far?

4 ACC: I understand, sir.

5 MJ: Now, if you're tried by court members, the members will
6 vote by secret, written ballot and two-thirds of the members must
7 agree before you could be found guilty of any offense. If you were
8 found guilty, then two-thirds must also agree in voting on a
9 sentence. Do you understand that?

10 ACC: I understand, sir.

11 MJ: You also have the right to request a trial by military
12 judge alone. And if approved, there will be no court members, and
13 the judge alone will decide whether you are guilty or not guilty, and
14 if found guilty, the judge alone will determine your sentence.

15 Do you understand the difference between trial before
16 members and trial before military judge alone?

17 ACC: Yes, sir.

18 MJ: Do you understand the choices that you have?

19 ACC: Yes, sir.

20 MJ: By what type of court do you wish to be tried?

21 ACC: I wish to be tried by judge alone, sir.

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1 MJ: I have before me what's been marked as Appellate Exhibit I,
2 a written request for trial by military judge alone. Specialist
3 Cruz, is that your signature on this document?

4 ACC: It is, sir.

5 MJ: At the time you signed this request, did you know that I
6 would be the military judge in your case?

7 ACC: I did, sir.

8 MJ: My name was written in there up at the top?

9 ACC: Yes, sir.

10 MJ: Now, is your request a voluntary one? By that, I mean, are
11 you making this request of your own free will?

12 ACC: I'm sorry, sir?

13 MJ: Is your request a voluntary one? By that, I mean, are you
14 making this request of your own free will?

15 ACC: I am making the request, sir.

16 MJ: If I approve your request for trial by me alone, you give
17 up your right to be tried by a court composed of members. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: Do you still wish to be tried by me alone?

21 ACC: Yes, sir.

1 MJ: Defense, I understand there is a pretrial agreement in this
2 case. Is that correct?

3 CDC: Yes, Your Honor.

4 MJ: Is the judge alone request part of the pretrial agreement?

5 DC: Yes, Your Honor.

6 MJ: Specialist Cruz, we'll talk more about your pretrial
7 agreement later in the case, but I want to go over this provision
8 with you now. Your pretrial agreement apparently states that you
9 agree to waive, that is, give up trial by members and select trial by
10 military judge alone. Is that correct?

11 ACC: Yes, sir.

12 MJ: Do you understand the difference between trial before
13 members and trial before military judge alone as I explained them to
14 you earlier?

15 ACC: I understand, sir.

16 MJ: Did you understand these differences between the various
17 types of trial at the time you signed your pretrial agreement?

18 ACC: Yes, sir.

19 MJ: Did you understand you were giving up trial with members
20 when you signed your pretrial agreement?

21 ACC: Did I understand the....

1 MJ: You were giving up trial with members when you signed your
2 pretrial agreement?

3 ACC: Yes, sir.

4 MJ: And was that waiver a free and voluntary act on your part?

5 ACC: It was, sir.

6 MJ: The request for trial by military judge alone is approved.
7 The court is assembled. The accused will now be arraigned.

8 TC: All parties to the trial have been furnished with a copy of
9 the charges. Does the accused want them read?

10 CDC: The accused waives the reading of the charges.

11 MJ: The reading of the charges may be omitted.

12 [THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]

13 [END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) CRUZ, ARMIN J.		2. SSN		3. GRADE OR RANK SPC	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION Headquarters and Headquarters Service Company, 502nd Military Intelligence Battalion, 504th Military Intelligence Brigade, APO AE 09342				6. CURRENT SERVICE	
				a. INITIAL DATE 28 SEP 2000	b. TERM 8 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$1,726.80	b. SEA/FOREIGN DUTY N/A	c. TOTAL \$1,726.80	None		N/A

ADDITIONAL

II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, did, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, conspire with Corporal [REDACTED], Staff Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED], and others, to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy the said Corporal [REDACTED] forced detainees to conduct various physical exercises while the detainees were naked and the said SPC [REDACTED] poured water on the detainees.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93

THE SPECIFICATION: In that Specialist Armin J. Cruz, U.S. Army, at or near Baghdad Central Confinement Facility, Abu Ghraib, Iraq, on or about 25 October 2003, did maltreat several detainees, persons subject to his orders, by forcing naked detainees to crawl on the floor in such a manner as to cause the detainees' genitals to touch the floor and by handcuffing the said detainees to one another.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHSC, 502nd MI Battalion
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 4 SEP 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of September, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

HHD, 504th Military Intelligence Battalion
Organization of Officer

Captain

Trial Counsel

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

Signature

12.

On 4 September 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[REDACTED]
Typed Name of Immediate Commander

HHSC, 502nd MI Battalion

Organization of Immediate Commander

Captain

Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1350 hours, 4 Sept, 2004 at HQ, 502nd MI BN
Designation of Command or

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

FOR THE ¹

[REDACTED]
Typed Name of Officer

Commanding

Official Capacity of Officer Signing

Major

Grade

[REDACTED]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Headquarters, III Corps

b. PLACE

Victory Base, Iraq
APO AE 09342

c. DATE (YYYYMMDD)

SEP 5 2004

Referred for trial to the special court-martial convened by Court-Martial Convening Order Number 2, dated 14 January 2004, as amended by Court-Martial Convening Order Number 6, dated 24 July 2004, subject to the following instructions: ²

Empowered to adjudge a bad-conduct discharge.

By COMMAND

Command or Order

of

LIEUTENANT GENERAL METZ:

[REDACTED]
Typed Name of Officer

Chief, Paralegal NCO

Official Capacity of Officer Signing

Sergeant Major/E-9

Grade

[REDACTED]
Signature

15.

On 05, SEP, I (caused to be) served a copy hereof on (each of) the above named accused.

[REDACTED]
Typed Name of Trial Counsel

Major

Grade or Rank of Trial Counsel

[REDACTED]
Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.

2 — See R.C.M. 601(e) concerning instructions. If none, so state.

1 TC: The charges are signed by Captain [REDACTED], a
2 person subject to the Code as accuser; are properly sworn to before a
3 commissioned officer of the armed forces authorized to administer
4 oaths; and are properly referred to this court for trial by
5 Lieutenant General Thomas F. Metz, the Convening Authority.

6 MJ: Accused and counsel, please rise. [The accused and his
7 counsel stood.]

8 Specialist Armin J. Cruz, I now ask you, how do you plead?
9 Before receiving your plea, however, I advise you that any motions to
10 dismiss or to grant other appropriate relief should be made at this
11 time. Your defense counsel will speak for you.

12 CDC: Your Honor, the defense has no motions.

13 MJ: Please enter a plea.

14 CDC: **To all charges and their specifications: Guilty.**

15 MJ: Specialist Cruz, your counsel has entered a plea of guilty
16 for you to both charges and their specifications. Your plea of
17 guilty will not be accepted unless you understand its meaning and
18 effect. I'm going to discuss your plea of guilty with you. If at
19 any time you have any questions, stop and ask them. Do you
20 understand that?

21 ACC: I understand.

1 MJ: A plea of guilty is equivalent to a conviction and is the
2 strongest form of proof known to the law. On your plea alone and
3 without receiving any evidence, this court can find you guilty of the
4 offenses to which you've pled guilty. Your plea will not be accepted
5 unless you realize that by your plea, you admit every act or omission
6 and element of the offenses to which you've pled guilty, and that
7 you're pleading guilty because you actually are, in fact, guilty. If
8 you do not believe that you are guilty, then you should not, for any
9 reason, plead guilty.

10 Do you understand what I've said so far?

11 ACC: Yes, sir.

12 MJ: Now by pleading guilty, you give up three important rights,
13 first, the right against self-incrimination; that is, the right to
14 say nothing at all.

15 Second, the right to a trial of the facts by this court;
16 that is, your right to have this court-martial decide whether or not
17 you're guilty based upon evidence the prosecution would present and
18 on any evidence you may introduce.

19 Third, the right to be confronted by and to cross-examine
20 any witness called against you.

21 Do you have any questions about any of these rights?

22 ACC: No, I do not, sir.

1 MJ: And that's what you have, okay. In this whole document,
2 the photos and the narrative constitute the stipulation of fact.
3 That's your understanding?

4 ACC: I understand that, sir.

5 MJ: Now, if I admit this stipulation into evidence, it will be
6 used in two ways. First, I will use it to determine if you are, in
7 fact, guilty of the offenses to which you've pled guilty. And
8 second, I will use it to determine an appropriate sentence for you.

9 Do you understand and agree to these uses of the
10 stipulation?

11 ACC: I understand and agree, sir.

12 MJ: Do both counsel also agree to these uses?

13 TC: Yes, sir.

14 DC: Yes, Your Honor.

15 MJ: Specialist Cruz, a stipulation of fact ordinarily cannot be
16 contradicted. If it should be contradicted after I have accepted
17 your plea, I will reopen this inquiry. You should, therefore, let me
18 know if there's anything whatsoever you disagree with or feel is
19 untrue. Do you understand that?

20 ACC: I understand, sir.

21 MJ: At this time, I want you to read your copy of the
22 stipulation silently to yourself as I read it to myself.

1 [The accused did as directed.]

2 MJ: Have you finished reading the stipulation of fact?

3 ACC: Yes, sir.

4 MJ: Is everything in the stipulation true?

5 ACC: Yes, sir.

6 MJ: Is there anything in the stipulation that you do not wish
7 to admit is true?

8 ACC: No, sir.

9 MJ: Do you agree, under oath, that the matters contained in the
10 stipulation are true and correct to the best of your knowledge and
11 belief?

12 ACC: Yes, sir.

13 MJ: Defense counsel, do you have any objection to Prosecution
14 Exhibit 1 for identification?

15 CDC: No, Your Honor.

16 MJ: Prosecution Exhibit 1 for identification is admitted into
17 evidence, subject to my acceptance of the accused's guilty plea.

18 Specialist Cruz, at this time, I'm going to explain to you
19 the elements of the offenses to which you have pled guilty. By
20 "elements," I mean those facts which the government would have to
21 prove beyond a reasonable doubt before you could be found guilty if
22 you had pled not guilty. When I state each element, ask yourself two

1 things, first, is the element true; and second, whether you wish to
2 admit that it's true. After I list the elements for you, be prepared
3 to talk to me about the facts regarding the offenses.

4 Do you have a copy of the charge sheet there?

5 ACC: Yes, sir.

6 MJ: I'm going to start with Charge II. In the Specification of
7 Charge II, you have pled guilty to maltreatment of subordinates, in
8 violation of Article 93 of the Uniform Code of Military Justice. As
9 alleged and pled, this offense has the following two elements:

10 One, that several detainees were subject to your orders.

11 And two, that at or near Baghdad Central Confinement
12 Facility, Abu Ghraib, Iraq, on or about 25 October 2003, you
13 maltreated the said several detainees by forcing them to crawl on the
14 floor in such a manner as to cause the detainees' genitals to touch
15 the floor and by handcuffing the said detainees to one another.

16 "Subject to the orders of" include persons under the direct
17 or immediate command of you. The maltreatment must be real, although
18 it does not have to be physical. "Maltreated" refers to treatment
19 that when viewed objectively under all the circumstances is abusive
20 or otherwise unwarranted, unjustified and unnecessary for any lawful
21 purpose and that results in physical or mental harm or suffering or

1 reasonably could have caused physical or mental harm or suffering.

2 Assault or improper punishment may constitute this offense.

3 Now, turn back to Charge I. In the Specification of Charge
4 I, you have pled guilty to conspiracy to maltreat subordinates, in
5 violation of Article 81 of the Uniform Code of Military Justice. As
6 alleged and pled, this offense has the following two elements:

7 First, that at or near Baghdad Central Correctional
8 Facility, Abu Ghraib, Iraq, on or about 25 October 2004 [sic], you
9 entered into an agreement with Corporal [REDACTED], Staff
10 Sergeant [REDACTED], Specialist [REDACTED], Specialist [REDACTED]
11 [REDACTED] and others to commit maltreatment of subordinates, an offense
12 under the Uniform Code of Military Justice.

13 And two, that while the agreement continued to exist and
14 while you remained a party to the agreement, Corporal [REDACTED] and
15 Specialist [REDACTED] performed the overt acts alleged, that is, Corporal
16 [REDACTED] forced detainees to conduct various physical exercises while
17 the detainees were naked, and Specialist [REDACTED] poured water on the
18 detainees for the purpose of bringing about the object of the
19 agreement.

20 Now, the elements of the offense to which you are charged
21 with conspiracy to commit, namely, maltreatment of subordinates, or
22 as I told you earlier for Charge I, proof that the offense of

1 maltreatment of subordinates actually occurred is not required.
2 However, to be guilty of conspiracy, the agreement must have included
3 every element of the offense of maltreatment of subordinates.

4 Now, the agreement of the conspiracy does not have to be in
5 any particular form or expressed in formal words. It is sufficient
6 if the minds of the parties reach a common understanding to
7 accomplish the object of the conspiracy, and this may be proved by
8 the conduct of the parties. The agreement does not have to express
9 the part in which the conspiracy is to be carried out or what part
10 each conspirator is to play. The overt act required for this offense
11 does not have to be a criminal act, but it must be a clear indication
12 that the conspiracy is being carried out. The overt act may be done
13 either at the time of or following the agreement. The overt act must
14 clearly be independent of the agreement itself, that is, it must be
15 more than merely the act of entering into the agreement or an act
16 necessary to reach the agreement.

17 Specialist Cruz, do you understand the elements and
18 definitions as I've read them to you and as they apply to each
19 specification?

20 ACC: I understand, sir.

21 MJ: Do you understand your plea of guilty admits that these
22 elements accurately describe what you did?

1 ACC: I understand, yes, sir.

2 MJ: Do you have any questions about any of them?

3 ACC: Yes, sir, I don't know how to bring this up, it's the date,
4 sir?

5 MJ: The date?

6 ACC: You said 2004, and it's 2003.

7 MJ: Well, the charge sheet says 2003.

8 ACC: Oh, my apologies, sir.

9 MJ: No, it was my fault, it's my fault. I wrote down 2004, but
10 no, thank you. No, both of these events allegedly occurred on or
11 about 25 October 2003.

12 ACC: Yes, sir.

13 MJ: Do you have any other questions?

14 ACC: No, sir.

15 MJ: Do you believe and admit the elements and definitions taken
16 together correctly describe what you did?

17 ACC: I do, sir.

18 MJ: Specialist Cruz, at this time, I want you to talk about
19 what happened. First of all, how old are you?

20 ACC: I'm 24 now, sir.

21 MJ: And how long have you been in the Army?

22 ACC: In just a couple of weeks, it will be 4 years, sir.

1 MJ: 4 years. Are you a Reserve component soldier?
2 ACC: I am, sir.
3 MJ: Are you National Guard or Reserve?
4 ACC: Reserve, sir.
5 MJ: Reserve, okay. And were you activated for this deployment?
6 ACC: I was, sir.
7 MJ: And when were you activated, approximately?
8 ACC: March 17th, if memory serves, sir.
9 MJ: 2003?
10 ACC: Yes, sir.
11 MJ: And how long were you activated for?
12 ACC: There's some confusion as to that from the unit, sir. The
13 first set of orders we got were for 6 months, but it ended up being
14 for the one-year tour in Iraq, sir.
15 MJ: And then have you been extended beyond that pending this
16 proceeding?
17 ACC: Pardon me, sir?
18 MJ: Have you been extended beyond that pending this proceeding?
19 ACC: Yes, sir.
20 MJ: Defense, is there any issue that the accused is properly on
21 active duty for this trial?
22 CDC: He's properly on active duty, Your Honor.

1 MJ: Currently.

2 CDC: Yes, sir.

3 MJ: There's no issue as to----

4 CDC: There's no issue.

5 MJ: Now let's go back to 23 October of--excuse me, 25 October
6 of 2003, I'll get the dates right. Now, were you working at the
7 prison at Abu Ghraib at the time?

8 ACC: I was, sir.

9 MJ: What was your job?

10 ACC: I was an analyst, a member of a Tiger Team.

11 MJ: A Tiger Team, and your MOS is what?

12 ACC: 96 Bravo, intelligence analyst.

13 MJ: That would be in the rubric of the military intelligence
14 area?

15 ACC: Yes, sir.

16 MJ: And you were there in the course of your job, and again, I
17 don't want you to tell me anything that may be classified. What did
18 you do in the day to day, doing the job in your MOS, I know that
19 there's other things that soldiers do.

20 ACC: Roger, sir. During the time that I was at Abu Ghraib on a
21 Tiger Team before I moved to other sections, the job duties would
22 require finding intelligence gaps that an interrogator may find, and

1 then researching the information to prove or disprove whatever
2 information was extracted in interrogation.

3 MJ: So, somebody else--you weren't an interrogator then.

4 ACC: I was never--I'm not qualified. I didn't go to AIT, sir,
5 as an interrogator, but there were times that I was asked to
6 interrogate based on the security clearance level for the
7 interrogation.

8 MJ: Okay, so your day-to-day activities were to analyze the
9 intelligence other interrogators got, but occasionally because of
10 your clearance, you had to ask detainees or the individuals
11 questions.

12 ACC: Roger, because of the difference between an interrogator's
13 clearance and the analyst's clearance.

14 MJ: Okay, now on the 25th of October of 2003, from looking at
15 the stipulation of fact, this event began, at least your involvement
16 was, when Specialist [REDACTED] woke you up?

17 ACC: Roger, sir.

18 MJ: Now, in your own words, just kind of tell me what happened
19 that day.

20 ACC: I was on my cot. It was late. I was getting ready to rack
21 out, or I was already racked out. Specialist [REDACTED] came to the hooch
22 area that I was staying in.

1 MJ: Now who's Specialist [REDACTED]
2 ACC: He's an interrogator, 97 Echo, assigned to the unit I was
3 assigned to, sir.
4 MJ: Okay, he was an interrogator, but he was also in your
5 military intelligence unit for want of a better term.
6 ACC: Roger, sir.
7 MJ: Okay, go ahead.
8 ACC: And then said that he was--he told me that the MPs were
9 disciplining three detainees that were alleged to have raped a
10 teenager and if I wanted to go see what they were doing. And, I
11 said, "Yes," I walked down there. When I got there, it appeared that
12 they were taking a break. My assumption was that Specialist [REDACTED] was
13 there for the first part because he told me what they were doing, it
14 was--punishing for raping a young man. And then....
15 MJ: When you showed up, there was nothing going on.
16 ACC: It seemed like they were done, yes, sir, a break.
17 MJ: Now, when you said "showed up," where did this occur?
18 ACC: In the hard site, sir.
19 MJ: Now, there's two tiers there?
20 ACC: I always got them confused, sir.
21 MJ: Confused, okay.

1 ACC: I'm going to trust that this is right and it was 1B, but I
2 always had a hard time what that was.

3 MJ: And when you walked into this scene up to the point before
4 you did anything, who did you see there that you can remember?

5 ACC: I remember seeing a female, Army Specialist [REDACTED] a lady,
6 a female soldier who I didn't realize her name until later on in the
7 media and then seeing her picture as PFC [REDACTED] I might've known
8 her name that day, but I really didn't know her; Sergeant [REDACTED],
9 Corporal [REDACTED] Specialist [REDACTED], Specialist [REDACTED], Specialist
10 [REDACTED]. There was a civilian interpreter there, I can't really
11 pronounce his name correctly.

12 MJ: Was he an Iraqi civilian?

13 ACC: No, no, sir, he worked for, my belief is that he worked for
14 the Titan group. He worked with soldiers.

15 MJ: I mean, but was he American?

16 ACC: Yes, sir. Then there was a soldier there that was in green
17 BDUs. I couldn't tell you his name, sir. That's all that I can
18 remember, sir.

19 MJ: Now, did you see any detainees when you walked up?

20 ACC: Not initially. Soon after I got there, Specialist [REDACTED]
21 pulled them out.

22 MJ: Pulled them out from where?

1 ACC: Cells, sir.

2 MJ: Were they in three separate cells, or all were in one cell,
3 if you can remember?

4 ACC: If memory serves right, sir, I believe two were together
5 and one was brought later, and I don't know from where, sir.

6 MJ: And Specialist [REDACTED] brought them out. Now, you're in a
7 hallway between cells here?

8 ACC: Yes, sir.

9 MJ: And this is a multi-tiered operation, two tiers?

10 ACC: Yes, sir..

11 MJ: And the floor is concrete?

12 ACC: Yes, sir.

13 MJ: So Specialist [REDACTED], you said, brought the three guys out?

14 ACC: Roger, sir.

15 MJ: What were they wearing?

16 ACC: To be honest, I couldn't remember. The typical garb was
17 either, an orange jumpsuit, sometimes sheets.

18 MJ: The first time----

19 ACC: They were wearing something, yes, sir.

20 MJ: The first time you saw the three detainees, they were
21 wearing something.

22 ACC: I believe one of them was just in underwear.

1 MJ: Did they eventually become naked?

2 ACC: Yes, they did, sir.

3 MJ: How did that happen?

4 ACC: By orders of me and other people there, sir.

5 MJ: Now, you walk up to the scene, had you heard anything

6 before this about how the MPs sometimes treated the detainees?

7 ACC: I didn't know how they brought their disciplinary

8 procedures or anything, sir.

9 MJ: So you walked up, and then you said, you among others told

10 them to take off all their clothes?

11 ACC: Yes, sir.

12 MJ: Well, why did you do that?

13 ACC: There's no real good reason why that would happen, sir.

14 MJ: Do you have a real bad reason why it happened, though?

15 Were you just going along with what the other guys were doing?

16 ACC: Perhaps that's a part of it. I think a bigger part is I--I

17 think this is in there that....

18 MJ: Specialist Cruz, don't worry about whether it's in the

19 stipulation of fact or not, just tell me in your own words as best

20 you can remember, okay?

21 ACC: I was under the--I didn't really see when I was looking at

22 the three detainees that were rapists when I was looking at them,

1 sir. It was shortly after a mortar attack, and frankly, I saw three
2 guys that killed two soldiers and injured me, injured my bosses, and
3 that's not a reason.

4 MJ: No, it's an explanation though. You were saying, and the
5 mortar attack that occurred about a month earlier that's in the
6 stipulation of fact of where two soldiers died, including one who
7 apparently you knew?

8 ACC: He was my boss for a while, sir, he was my NCOIC.

9 MJ: And other people were injured. So when you came onto this
10 scene, you saw these three Iraqis, you associated them with the
11 Iraqis who, or similar to the Iraqis who had mortared your friends.
12 Is that what you're telling me?

13 ACC: Yes, sir.

14 MJ: That in your mind, you knew they weren't the same guys, or
15 they could be, but you didn't know.

16 ACC: They could've been, I mean, there's no proof. It wasn't a
17 logical thing.

18 MJ: But did you want then to take out on them what happened to
19 your friends?

20 ACC: I believe that's correct.

21 MJ: Now, when you walked in, you were clear that these people
22 were detainees?

1 ACC: Yes, sir, they were in the prison.

2 MJ: And in your role as, I guess, primarily as a soldier, are
3 they subject to your orders?

4 ACC: They are, sir.

5 MJ: The way the prison runs is that they have to obey what you
6 tell them to do?

7 ACC: Yes, sir.

8 MJ: Okay, so they come out and then you and others tell them to
9 take off their clothes. What happened next?

10 ACC: They were told to do various physical exercises such as the
11 low crawlings. When one of them arched their back up to get up, I
12 put my----

13 MJ: How did they--we're kind of out of sequence here. They
14 came out, you told them...Specialist Cruz, take your time. We've got
15 all the time in the world. They came out, you among others told them
16 to take off their clothes.

17 ACC: Yes, sir.

18 MJ: And then, what happened right after that?

19 ACC: They were handcuffed together, sir, near--I believe the
20 first time was standing up next to the actual bars of the cell.

21 MJ: Okay, now did you handcuff them to each other? Did you
22 help the other ones handcuff----

1 ACC: At this time--I did, yes, I'm not saying I did not, I did,
2 but not at this particular time.

3 MJ: Okay, it starts out, somebody else is handcuffing them
4 together, and they're standing up?

5 ACC: Right.

6 MJ: What happened next?

7 ACC: They were instructed to get on the ground, and that's when
8 I started with the handcuffing.

9 MJ: They got on the ground and then you started handcuffing.

10 ACC: Roger.

11 MJ: Now, were they any threat to you at this time?

12 ACC: No, they were not.

13 MJ: You had a, what, half dozen, at least, soldiers there, if
14 not more? And these guys, were these guys obeying everything you
15 guys told them to do?

16 ACC: They were.

17 MJ: When you told them to take off their clothes, they took off
18 their clothes?

19 ACC: Yes, sir.

20 MJ: When [REDACTED] pulled them out, one female specialist was able
21 to tell all three to come out?

22 ACC: Yes, sir.

1 MJ: So there was no risk of these guys.

2 ACC: They were not a threat to us.

3 MJ: Why did you handcuff them then? I mean, was this part of
4 your...I mean, did you do it to protect yourself or did you do it to
5 mess with the guys, for want of a better term?

6 ACC: I believe it would be the latter, to mess with them, sir.
7 And they clearly weren't any sort of threat to us. They couldn't
8 have inflicted any harm to any of us.

9 MJ: And do you think when you did that, that caused them
10 physical suffering?

11 ACC: Yes, sir.

12 MJ: And in this whole environment, having their clothes taken
13 off and putting them down----

14 ACC: It was humiliating.

15 MJ: What happened next?

16 ACC: At some point right thereafter, Specialist [REDACTED] went to the
17 second floor--before that, actually, there was a time when two of
18 them were handcuffed on the ground. They were both handcuffed on the
19 ground. There was a third detainee off closer to the main exit door.
20 Specialist [REDACTED] was asking that person, "Why did you rape this young
21 man?" And he expressed to him that he did not want him to lie, and
22 to tell him the truth.

1 MJ: Did he say it like you saying it to me, or was it perhaps a
2 lot more forceful?

3 ACC: It was yelling and screaming. He wasn't happy at the time.

4 MJ: Did any of these guys speak English, to your knowledge?

5 ACC: No, sir. The civilian, whose name I can't pronounce
6 correctly----

7 MJ: Was he kind of translating or....

8 ACC: Roger, sir.

9 MJ: Okay, go ahead.

10 ACC: At one point, the first overt act there I saw was
11 Specialist [REDACTED] go grab a detainee by...I don't remember if he was
12 wearing a jumpsuit or just grabbing him by the chest. I remember
13 grabbing this area.

14 MJ: The upper chest area?

15 ACC: Roger, and slapped him and said, "I know you're lying to
16 me. Tell me the truth."

17 MJ: Okay, what happened next?

18 ACC: I think he pulled them over to the two detainees and he
19 walked upstairs.

20 MJ: Okay, was this guy, was he naked, too, then at that point,
21 or had he put his clothes back on?

1 ACC: If he did have clothes on, and I don't think he did, sir.
2 He definitely was instructed to get them off by the time he got to
3 the other two detainees.

4 MJ: So when you say [REDACTED] may have grabbed his shirt, you're
5 just not sure whether he was undressed. Okay, so he goes back
6 and....

7 ACC: Second floor, someone was throwing a Nerf ball, initially.
8 I don't remember who it was. I know I saw Specialist [REDACTED] up there.
9 He took a Nerf ball, football, and threw it down on the detainees.

10 MJ: And threw it down, and what did he do with it?

11 ACC: He just threw it down at the detainees, sir.

12 MJ: Just to hit them?

13 ACC: Roger.

14 MJ: What were the detainees doing at this time?

15 ACC: Nothing, they couldn't do anything, sir. They were
16 helpless, they were handcuffed.

17 MJ: They were handcuffed? Were the handcuffs behind their back
18 or in front, or were they handcuffed together?

19 ACC: They were handcuffed...all of the above, sir.

20 MJ: The Ziploc--cuffs----

21 ACC: Negative, metal----

22 MJ: The metal regular handcuffs.

1 ACC: Right, like the handcuffs used back home in the States, not
2 zip ties, just metal.

3 MJ: What happened next?

4 ACC: One of the senior ranking persons, Sergeant [REDACTED],
5 reorganized the handcuffs. That went on for a little bit. I cannot
6 tell you the logic to that one. Clearly there isn't, it was just a,
7 "I'm gonna handcuff them this way, and then I'm going to handcuff
8 them this way."

9 MJ: Okay.

10 ACC: And then, I went up to the second floor and I grabbed a
11 Nerf football.

12 MJ: Okay.

13 ACC: I threw it, but I also say that I didn't hit the detainees,
14 but it was in the direction.

15 MJ: You were trying to hit them?

16 ACC: Yes, sir.

17 MJ: I'm sorry?

18 ACC: [No verbal response.]

19 MJ: I saw you nod, it's just that the court reporter needs a
20 verbal.

21 What happened after that?

1 ACC: I went downstairs and leaned against the wall and I said,
2 at some point close to this, I noticed that one of the detainees
3 around the handcuffs was starting to bleed. And I looked at Corporal
4 [REDACTED] and I said to him, "Hey, guy, that guy's bleeding. I
5 mean, some of this stuff you're telling me...whatever. This can't be
6 okay. He's bleeding. We've got to loosen those cuffs. We've got to
7 take them off. We've got to put a stop to this now."

8 MJ: Okay.

9 ACC: That went back and forth for a few minutes. It wasn't like
10 just one time, "Hey, he's bleeding," or anything like that.
11 Eventually, he got up, he went over and took the cuffs off. And then
12 pretty shortly thereafter, Specialist [REDACTED] left and I left, and I
13 would assume Specialist [REDACTED] left soon thereafter. I don't know.

14 MJ: During the time you were there, you said you'd...let's kind
15 of back up a little bit. There was a point where you put a foot on
16 them?

17 ACC: Yes, sir.

18 MJ: When was that?

19 ACC: A detainee was low crawling and he tried to stand up, arch
20 up, and I just put my foot down on him.

21 MJ: He was low crawling on all fours?

22 ACC: Negative, like a low crawl.

1 MJ: Okay, like a low crawl, he was dragging himself on his
2 elbows and pulling along, and then he'd try to raise up and you put
3 your foot down, okay.

4 Now, did you tell them to crawl on the floor?

5 ACC: I'm sorry, sir?

6 MJ: Were you part of the group that told them to crawl on the
7 floor?

8 ACC: Yes, sir.

9 MJ: I'm sure that's before you put your foot on him.

10 ACC: Roger, sir.

11 MJ: And that was after the handcuffs had gone on, or before?

12 ACC: Before.

13 MJ: And how did that part of the incident come up?

14 ACC: At the time we just said, you know, "Low crawl."

15 MJ: And were they naked at the time?

16 ACC: In the beginning, no, but eventually, sir, they were.

17 MJ: Were they low crawling naked?

18 ACC: Yes, sir.

19 MJ: And you told them to low crawl?

20 ACC: Yes, sir.

21 MJ: And that was causing their genitals to drag along the
22 floor?

1 ACC: Yes, sir.

2 MJ: Now, when you walked in and you saw [REDACTED], [REDACTED],
3 [REDACTED] and [REDACTED], and there were some others involved in this, also?

4 ACC: Yes, sir.

5 MJ: And I suspect--how long did it take you to realize what was
6 happening here?

7 ACC: Pardon me?

8 MJ: You said you walked in, the detainees were in the cell
9 before [REDACTED] brought them out, right?

10 ACC: Right.

11 MJ: They brought them out, and [REDACTED] had said something to you
12 earlier, "Let's see what the MPs are going to be doing."

13 ACC: Roger.

14 MJ: And then, she brings them out, and then is that when the
15 abuse started when you were there?

16 ACC: Yes, sir.

17 MJ: So at that point, was [REDACTED], [REDACTED] and [REDACTED]
18 all involved in this?

19 ACC: [REDACTED], [REDACTED], [REDACTED], [REDACTED] yes, sir.

20 MJ: And there were some other people involved, who you don't
21 know their names?

22 ACC: Yes, sir, I'm sorry, I wish I did.

1 MJ: No, no, no, no. The way it's charged, it says those four
2 names and others.

3 ACC: Correct.

4 MJ: So at that point, you realized that they were going to be
5 abusing these detainees?

6 ACC: Yes, sir.

7 MJ: And then did you, by your actions, join in with them in
8 this abuse?

9 ACC: I did, sir.

10 MJ: Now, remember I talked to you about the conspiracy requires
11 an agreement, and that can be in a couple of ways. It could be, for
12 example in this case, you walk in saying, "Hey, I'll go along with
13 you guys, let's abuse the detainees," and that would be a verbal
14 agreement. Do you understand that?

15 ACC: Yes, sir.

16 MJ: Or by your actions, saying nothing at all, that could form
17 an agreement, also.

18 ACC: Yes, sir.

19 MJ: Do you believe your actions indicated your affirmative
20 agreement to go along with what they were about to do to maltreat the
21 detainees?

1 ACC: I think it was clear that it was a silent agreement that
2 was expressed through my actions.

3 MJ: And in your mind, that's what you were doing.

4 ACC: Yes, sir.

5 MJ: Now after you had, by your actions, joined in with this,
6 did [REDACTED] make the detainees do something with physical exercise?

7 ACC: Yes, sir.

8 MJ: What did he make them do?

9 ACC: Made them low crawl and a lot of PT, jumping jacks, roll
10 left or right.

11 MJ: And at the time, they were naked?

12 ACC: Both, and yes, there were times that they were naked, yes,
13 sir.

14 MJ: And [REDACTED], did he do anything with some water?

15 ACC: Yes, sir.

16 MJ: What did he do with water?

17 ACC: He poured water on the detainees, sir.

18 MJ: Why did he do that?

19 ACC: I have no idea, sir.

20 MJ: Let me back up. This was October, correct?

21 ACC: Yes, sir.

22 MJ: Even for Iraq, I suspect it was cool.

1 ACC: Yes, sir.

2 MJ: And was cold water being poured on them?

3 ACC: Yes, sir.

4 MJ: Do you believe that was part of the abusive behavior that
5 these guys were doing?

6 ACC: It was, sir.

7 MJ: And you understand the law of conspiracy, is that once you
8 join the agreement, you're responsible for all the acts?

9 ACC: I do, sir.

10 MJ: Now Specialist Cruz, I need to talk a little more about
11 your training and background. You indicated earlier you're an
12 intelligence analyst?

13 ACC: I am, sir.

14 MJ: In your military job.

15 ACC: Yes, sir.

16 MJ: And as such, have you received training in the Geneva
17 Convention?

18 ACC: I did receive Geneva Convention training at basic training.

19 MJ: And have you ever received any specialized training in
20 interrogation, proper interrogation techniques?

1 ACC: In interrogation techniques, the only thing I really
2 received, sir, was like on the job training, sir, but no like
3 schoolhouse training.

4 MJ: Now, at the time, were these guys, the MPs told you that
5 these guys were suspected of raping a 15-year old boy in another part
6 of the prison, correct?

7 ACC: At the time, it went from being a solid, "They did it," to
8 "We think, and suspect." But at first, it was, "These guys raped a
9 kid."

10 MJ: Were these guys, to your knowledge, have any type of
11 intelligence value?

12 ACC: No, sir.

13 MJ: I mean, were they in the facility to begin with because of
14 that, to your knowledge?

15 ACC: To my knowledge, they were never interrogated for any
16 intelligence value whatsoever, sir.

17 MJ: They were simply there for other type of criminal
18 misconduct.

19 ACC: Most likely if they were in the hard site, sir, it was
20 either there was some kind of criminal misconduct or they were a
21 disciplinary problem, which was held on that side.

22 MJ: Okay.

1 ACC: I mean, just from the talks in the interrogation control
2 room, you kind of have a feeling which guys are of intelligence
3 value, and I never heard anything about these guys having any kind of
4 intelligence value.

5 MJ: And in your position, you would have heard that, right?

6 ACC: I believe I would, sir.

7 MJ: I mean, is it usual if someone is going to be coming--an
8 intelligence detainee or a detainee for which there may be some
9 interrogation, I'm assuming there's some type of interrogation plan
10 developed?

11 ACC: Roger.

12 MJ: And they're identified. Are you involved in that part of
13 the plan?

14 ACC: Roger.

15 MJ: So it's not just, all of a sudden people show up and the
16 MPs start interrogating these guys.

17 ACC: MPs don't run interrogations, sir. I mean, they can help
18 with setting conditions, which is like, where are they going to live,
19 which camp, well, maybe in some cases the MI guys decide which camp.
20 But the interrogation process itself is supposed to be done by
21 interrogators.

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1 MJ: And the MP's role is simply, for want of a better term,
2 care and custody?

3 ACC: And security.

4 MJ: And security of these guys. So your job----

5 ACC: We're not responsible for feeding them, etceteras.

6 MJ: But the MPs aren't responsible for interrogating them.

7 ACC: They do not interrogate.

8 MJ: They do not interrogate. And at your level, you're at the
9 tactical level down there where the rubber meets the road, and the
10 MPs were not there to interrogate, they were simply to provide
11 security and other types of things.

12 ACC: I never once saw an MP do an interrogation.

13 MJ: Never saw them----

14 ACC: Now, I've seen them in the facilities and I've seen them
15 provide security and walk them to and from. But the interrogation
16 process itself is solely done by either civilian or military
17 interrogators.

18 MJ: Through----

19 ACC: MI or----

20 MJ: You're MI, okay. So then would it be fair to say that to
21 your knowledge, there was no direction from any level to tell the MPs
22 to interrogate these guys?

1 ACC: I can't imagine that happening, sir.

2 MJ: You just find that....

3 ACC: I can't imagine anyone telling an MP to go interrogate.

4 MJ: And then what they were doing to these guys, was it any way
5 or shape--do you believe that they were performing something of a
6 military authorized function of interrogating them, or did they just
7 want to take their chance to abuse detainees?

8 ACC: They wanted to take their chance, sir.

9 MJ: Did anyone make any remarks that would indicate to you that
10 that's what they were doing?

11 ACC: Yes, sir.

12 MJ: And what was that?

13 ACC: At one point, when I asked Sergeant [REDACTED], I mean I
14 asked throughout the night, "Are we within our norms here? I mean, I
15 know what my IROE is," that's interrogation rules of engagement.

16 MJ: And your IROE says you don't do this.

17 ACC: Right, sir. You can't touch them except for handcuffing
18 them, sir. "What's your SOP, and what's your ROE," and he said that
19 he was in the green and he was good. And then right after that in
20 the same conversation, Corporal [REDACTED] said that--well, Sergeant
21 [REDACTED] said that, "Well, the thing is, this kind of thing right
22 here doesn't happen back home." He works in a correctional facility

1 somewhere, I don't remember where, but he said he worked in the jail.
2 And then Corporal [REDACTED] said, you know, he loves this shit. Hey,
3 this is what he lives for.

4 MJ: What was he referring to when he said that?

5 ACC: What's happening to the detainees, sir.

6 MJ: Now, I know you're not an MP, but when you walked in and
7 you saw what was happening, did you know it was wrong?

8 ACC: Yes, sir.

9 MJ: Did you know your participation was wrong?

10 ACC: Yes, sir.

11 MJ: Even though you were upset about what happened to your
12 friend, do you think that gave you a legal reason to do this to these
13 detainees?

14 ACC: No reason, sir.

15 MJ: There's an explanation, but I'm just saying....

16 ACC: There's no way to justify that, sir.

17 MJ: And you knew it was wrong at the time, sir.

18 ACC: Yes, sir.

19 MJ: And today you know it's wrong.

20 ACC: I do, sir.

21 MJ: Does either side believe any further inquiry is required?

22 TC: No, Your Honor.

1 CDC: No, Your Honor.

2 MJ: Trial counsel, I would assume that the maximum permissible
3 punishment in this case is the jurisdictional limit of this court?

4 TC: Yes, sir.

5 MJ: Do you agree?

6 CDC: Yes, Your Honor.

7 MJ: Special Cruz, the maximum punishment authorized in this
8 case based solely on your guilty plea is confinement for one year,
9 reduction to the grade of Private E1; forfeiture of two-thirds pay
10 per month for 12 months, a bad-conduct discharge, and a fine may also
11 be adjudged. Do you understand that?

12 ACC: Yes, sir.

13 MJ: Do you also understand that based on your plea alone, this
14 court could sentence you to the maximum punishment of which I just
15 stated?

16 ACC: I do, sir.

17 MJ: There is a pretrial agreement?

18 TC: Yes, sir.

19 MJ: Mark the offer portion as Appellate Exhibit II, the quantum
20 as Appellate Exhibit III. Defense, have copies of both documents in
21 front of the accused.

1 Specialist Cruz, I have before me what's marked as
2 Appellate Exhibit II, which is the offer portion of your pretrial
3 agreement. You should have both this document and also Appellate
4 Exhibit III. Did you sign this pretrial agreement?

5 ACC: The offer to plead guilty, sir?

6 MJ: Yes.

7 ACC: Yes, I did.

8 MJ: Did you read it thoroughly before you signed it?

9 ACC: I read it, sir, yes, sir.

10 MJ: Do you understand the contents of your pretrial agreement?

11 ACC: I understand, sir.

12 MJ: Did anyone force you in any way to enter into this
13 agreement?

14 ACC: No, sir.

15 MJ: Does this agreement contain all the understandings or
16 agreements that you have in this case?

17 ACC: Yes, sir.

18 MJ: Has anyone made any promises to you that are not written
19 into this agreement in an attempt to get you to plead guilty?

20 ACC: No, sir.

1 MJ: Counsel, are Appellate Exhibits II and III the full and
2 complete agreement in this case and are you satisfied there are no
3 other agreements?

4 TC: Yes, sir.

5 CDC: Yes, Your Honor.

6 MJ: Specialist Cruz, basically, a pretrial agreement means you
7 agree to plead guilty, and in return, the convening authority agrees
8 to take some favorable action in your case, usually in the form of
9 limiting a sentence that he will approve. Do you understand that?

10 ACC: Yes, sir.

11 MJ: The law requires that I discuss the agreement with you.
12 Let's go over Appellate Exhibit II together. The first paragraph
13 said you talked it over with your attorneys and you've decided to
14 plead guilty as you have done, pretty straight forward. Do you have
15 question about that provision?

16 ACC: No, sir.

17 MJ: Paragraph 2 says you agree to do as stated in the offer to
18 plead guilty, and in return, the convening authority will take the
19 actions set forth in Appendix I, which I've now labeled as Appellate
20 Exhibit III. In other words, you do what's in Appellate Exhibit II
21 and they do what's in--or he does what's in Appellate Exhibit III.
22 Is that your understanding?

1 ACC: Yes, Your Honor.

2 MJ: Now paragraph 3 has got a lot of parts to it. The first
3 one, 3 Alpha deals with the stipulation of fact. We've discussed
4 that, what it is and what it can be used for. Do you have any
5 question about the stipulation of fact?

6 ACC: No, sir.

7 MJ: Now 3 Bravo deals with your testimony in other cases, in
8 that the convening authority will give you testimonial immunity, and
9 after he does that, you have to cooperate fully with the trial
10 counsel in the investigation and prosecution of Specialist [REDACTED]
11 Sergeant [REDACTED], Staff Sergeant [REDACTED], Corporal [REDACTED], Specialist
12 [REDACTED], Specialist [REDACTED], PFC [REDACTED], and any other soldier or
13 civilian charged based on misconduct at the Baghdad Central
14 Confinement Correctional--excuse me, Confinement Facility at Abu
15 Ghraib. Now, what testimonial immunity means is that the convening
16 authority will sign a piece of paper saying that anything you say in
17 the course of this cooperation cannot be used against you. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: And Mr. [REDACTED] you've explained to him the difference
21 between testimonial and transactional immunity and he understands
22 what he's getting?

1 CDC: Yes, Your Honor.

2 MJ: And it talks about what "cooperate fully" means. It means
3 full disclosure to the trial counsel of all information known by you
4 relating to the treatment or maltreatment of any alleged abuses at
5 the Abu Ghraib facility; the identifications of anybody that you see
6 in digital photos on a compact disk entitled "CPU Exam," in the Abu
7 Criminal Investigation Division file. I'm assuming, Mr. [REDACTED], you
8 know what that refers to, the CPU Exam, do you know what that means?

9 CDC: No, Your Honor.

10 MJ: No, I'm saying, it says a compact disk titled this.

11 CDC: Oh, yes, sir, yes, sir.

12 MJ: I don't know what it means, but I'm assuming you guys know
13 what it means, some disk that CID has.

14 CDC: Yes, sir.

15 MJ: And then testify at any Article 32 investigation, courts-
16 martial and evidentiary hearings relative to the investigation and
17 prosecution of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or anybody
18 else. Do you understand that?

19 ACC: Yes, sir.

20 MJ: Basically, you get the testimonial grant of immunity, then
21 you fully cooperate. Do you understand that?

22 ACC: I understand, sir.

1 MJ: And although it's not written in here, defense, I would
2 assume that it's also necessarily by implication the accused is also
3 subject to be interviewed by the defense counsel for the various
4 people named here.

5 CDC: Yes, Your Honor.

6 MJ: Do you understand that?

7 ACC: Yes, sir.

8 MJ: Three Charlie talks about the judge alone request, we've
9 already discussed that. Do you have any questions about that
10 provision?

11 ACC: No, Your Honor.

12 MJ: Now, there's also a second three Charlie, which I'm
13 assuming is just a typo. And what this says, the government will not
14 be required to physically produce any witness from the United States
15 to testify on your behalf on sentencing. This simply means is that
16 under R.C.M. 1001, you can have witnesses come and testify on your
17 behalf on the sentencing proceeding. And what you're saying, you're
18 not going to require the government to produce them physically from
19 the United States. Do you understand that?

20 ACC: Yes, sir.

21 MJ: But it does not preclude you from presenting that evidence
22 to the court in all sorts of other ways. You can do it by letters,

1 stipulation of expected testimony, telephonic testimony or something
2 else. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Paragraph 4 says you've talked it over with Mr. [REDACTED]s and
5 you're satisfied with his advice. Have you talked it over with Mr.
6 [REDACTED]?

7 ACC: Thoroughly, sir.

8 MJ: And you're satisfied with his advice?

9 ACC: I am, sir.

10 MJ: Five says the government initiated these negotiations, but
11 you're pleading voluntarily and freely after advice of counsel. Is
12 all that true?

13 ACC: Yes, sir.

14 MJ: Paragraph 6 will not appear to apply to this case, since no
15 specification has been amended or consolidated. I assume that's
16 boilerplate, defense, just included--it doesn't apply, true?

17 CDC: Yes, sir.

18 MJ: Basically 6 is something lawyers put in every one of these
19 things, and nine times out of ten, it doesn't apply, and it doesn't
20 apply to your case. It's just in there.

21 Paragraph 7 has got some things that we'll talk about if
22 the agreement--what could cause the agreement to be canceled. If you

1 withdraw from your guilty plea at any time, the agreement is
2 canceled. Do you understand that?

3 ACC: Yes, sir.

4 MJ: Do you want to withdraw from your guilty plea?

5 ACC: No, sir.

6 MJ: If you change your mind, let me know, okay?

7 ACC: Yes, sir.

8 MJ: Secondly, is if you fail to plead guilty as above, or if
9 the stipulation of fact is modified without your consent or the trial
10 counsel. Now, neither one of those things has happened. If either
11 one of those things were to happen, I'll revisit this provision. Do
12 you understand that?

13 ACC: Yes, sir.

14 MJ: And lastly, in 7 Charlie, it says, if the military judge
15 refuses to accept your plea or changes your plea of guilty during the
16 trial. That means if at any point between now and when sentence is
17 announced, if you tell me anything that is inconsistent with the
18 guilty plea, I will have to reopen this inquiry. And if I can't
19 resolve the inconsistency, I will have to enter a plea of not guilty
20 on your behalf. The case returns to the point when I asked, "How do
21 you plead?" and then proceeds from there forward as a not guilty plea
22 case. Do you understand that?

1 ACC: Yes, sir.

2 MJ: So if that were to happen, you'd lose your pretrial
3 agreement and also the stipulation of fact is canceled. Do you
4 understand that?

5 ACC: Yes, sir.

6 MJ: Again, if that were to come up, we'll talk about it in more
7 detail. So far, that's not, but if it does, understand, that's from
8 now until the sentence is actually announced. Do you understand
9 that?

10 ACC: Yes, Your Honor.

11 MJ: And paragraph 8, it says that Appellate Exhibits II and III
12 are the full and complete agreements in the case and there's no other
13 agreements. Is that your understanding, also?

14 ACC: Yes, sir.

15 MJ: There isn't anything else other than what's in this piece
16 of paper, I'm holding Appellate Exhibit II and Appellate Exhibit III?
17 Is that correct?

18 ACC: They're the same thing, right, sir?

19 MJ: No.

20 ACC: Oh, yes, sir.

1 MJ: What you are holding in your hand is the same thing, but
2 you're looking at something else I'm not going to look at for a
3 while.

4 ACC: I understand, that's correct.

5 MJ: But that's the whole agreement.

6 ACC: Yes, sir.

7 MJ: Now, I'm not going to look at Appellate Exhibit III until
8 after I announce the sentence in your case. But I want you to look
9 at it now and read it silently to yourself and then tell me whether
10 that is what you and the convening authority agreed to.

11 CDC: Your Honor, can I approach the trial counsel?

12 MJ: Sure.

13 [CDC retrieved document from TC.]

14 ACC: [Accused read Appellate Exhibit III.] Yes, sir.

15 MJ: Is that what you agreed to?

16 ACC: That is, Your Honor.

17 MJ: Now, Specialist Cruz, you're going to get the benefit of
18 whichever is less, the sentence adjudged by this court or what the
19 convening authority agreed to in that document. If the sentence
20 adjudged by this court is greater than the one provided in the
21 pretrial agreement, the convening authority must reduce the sentence
22 to one no more severe than the one in your pretrial agreement. On

1 the other hand, if the sentence of this court is less than the one in
2 your agreement, the convening authority cannot increase the sentence
3 adjudged. Do you understand that?

4 ACC: Yes, Your Honor.

5 MJ: Now, have you had enough time to discuss this pretrial
6 agreement with your defense counsel? Have you had enough time to
7 talk this over with----

8 ACC: Yes, I have had enough time, yes, sir.

9 MJ: Are you satisfied with his advice concerning this pretrial
10 agreement?

11 ACC: Yes, sir.

12 MJ: Did you enter into the agreement of your own free will?

13 ACC: I did, sir.

14 MJ: Did anyone try to force you to make this pretrial
15 agreement?

16 ACC: No, sir.

17 MJ: Do you have any questions about your pretrial agreement?

18 ACC: No, sir.

19 MJ: Do you fully understand the terms of the pretrial agreement
20 and how they affect your case?

21 ACC: Yes, sir.

1 MJ: Are you pleading guilty not only because you hope to
2 receive a lighter sentence, but also because you are convinced that
3 you are, in fact, guilty?

4 ACC: I am, sir.

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

7 TC: Yes, sir.

8 CDC: Yes, Your Honor.

9 MJ: Now, Specialist Cruz, I just want to go over one other
10 thing that occurred to me. When you saw the--when you told me
11 earlier about you saw some bleeding on one of the detainee's wrists
12 from the....

13 ACC: The handcuffs, sir?

14 MJ: From the handcuffs. And you said something to the effect
15 is that, "Would you stop doing this?" or something.

16 ACC: I said, "We should loosen them."

17 MJ: You were referring just to the handcuffs?

18 ACC: Yes, sir.

19 MJ: Were you referring to the continuing abuse being done at
20 the time?

21 ACC: I left right after that, sir.

1 MJ: You left right after that. But up to that point, had you
2 said anything to anybody after you joined in with everybody else to
3 indicate you didn't want to participate?

4 ACC: No, sir, I never withdrew.

5 MJ: Until--you left after the handcuff....

6 ACC: Well, that's when I physically....

7 MJ: Physically left, okay.

8 Defense counsel, have you had enough time and opportunity
9 to discuss this case with your client?

10 CDC: Yes, Your Honor.

11 MJ: And Specialist Cruz, have you had enough time and
12 opportunity to discuss your case with your defense counsel?

13 ACC: Yes, sir.

14 MJ: And have you, in fact, consulted fully with your defense
15 counsel and received the full benefit of his advice?

16 ACC: Yes, sir.

17 MJ: Specialist Cruz, I'm going to ask you to speak up a little
18 bit.

19 ACC: I'm sorry, sir.

20 MJ: I think the court reporter may have a tough time hearing
21 you.

22 ACC: Yes, sir.

1 MJ: Are you satisfied that your defense counsel's advice is in
2 your best interest?
3 ACC: Yes, sir.
4 MJ: And are you satisfied with your defense counsel?
5 ACC: I am, sir.
6 MJ: Are you pleading guilty voluntarily and of your own free
7 will?
8 ACC: Yes, sir.
9 MJ: Has anyone made any threat or tried in any way to force you
10 to plead guilty?
11 ACC: No, sir.
12 MJ: Do you have any questions as to the meaning and effect of a
13 plea of guilty?
14 ACC: Do I have any questions?
15 MJ: Do you have any questions about the meaning and effect of a
16 plea of guilty?
17 ACC: No, sir.
18 MJ: Do you fully understand the meaning and effect of a plea of
19 guilty?
20 ACC: I understand, sir.
21 MJ: Do you understand that even though you believe you are
22 guilty, you have the legal and moral right to plead not guilty and to

1 place upon the government the burden of proving your guilt beyond a
2 reasonable doubt?

3 ACC: Yes, sir.

4 MJ: Take one last moment now and consult with your defense
5 counsel and tell me whether you still wish to plead guilty. [Accused
6 conferred with his counsel.]

7 Do you still wish to plead guilty?

8 ACC: I want to plead guilty, sir.

9 MJ: Specialist Cruz, I find your plea of guilty is made
10 voluntarily and with full knowledge of its meaning and effect. I
11 further find that you have knowingly, intelligently and consciously
12 waived your rights against self-incrimination, to a trial of the
13 facts by a court-martial and to be confronted by the witnesses
14 against you. Accordingly, your plea of guilty is provident and is
15 accepted. However, I advise you that you may request to withdraw
16 your guilty plea at any time before your sentence is announced and if
17 you have a good reason for your request, I will grant it. Do you
18 understand that?

19 ACC: Yes, sir.

20 MJ: Accused and counsel, please rise. [The accused and his
21 counsel stood.]

1 Specialist Armin J. Cruz, in accordance with your plea of
2 guilty, this court finds you:

3 **Of both Charges and their Specifications: Guilty.**

4 Please be seated.

5 Specialist Cruz, we're now entering the sentencing phase of
6 the trial where you have the right to present matters in extenuation
7 and mitigation, that is, matters about the offenses or yourself that
8 you want me to consider in deciding your sentence.

9 In addition to testimony of witnesses and the offering of
10 documentary evidence, you may yourself testify under oath as to these
11 matters or you may remain silent, in which case, I will not draw any
12 adverse inference from your silence.

13 On the other hand, if you desire, you may make an unsworn
14 statement. Because the statement is unsworn, you cannot be cross-
15 examined on it. However, the government may offer evidence to rebut
16 any statement of fact contained in an unsworn statement.

17 An unsworn statement may be made orally, in writing, or
18 both. It may be made by you, by your counsel on your behalf, or by
19 both.

20 Do you understand these rights?

21 ACC: I understand, sir.

1 MJ: Defense counsel, is the personal data on the front page of
2 the charge sheet correct?

3 CDC: Yes, Your Honor.

4 MJ: Has the accused been punished in any way prior to trial
5 that would be illegal punishment under Article 13?

6 CDC: No, Your Honor.

7 MJ: Has he been under any form of pretrial restraint, other
8 than the normal limitation on soldiers' movements in this theater?

9 CDC: No, Your Honor.

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

12 TC: Yes, sir. The government would move to admit the enlisted
13 record brief of the accused.

14 MJ: The ERB of the accused has been marked as Prosecution
15 Exhibit 2 for identification.

16 Defense counsel, have you had an opportunity to review this
17 document?

18 CDC: Yes, Your Honor.

19 MJ: There are some pen and ink corrections you've made?

20 CDC: I'm sorry, sir?

21 MJ: There's been some pen and ink corrections?

22 CDC: Yes, Your Honor.

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NAME CRUZ, ARMIN J. SPC

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ACCA _____

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

3 TC: No, Your Honor.

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

6 CDC: No, Your Honor.

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

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

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

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

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

16 TC: No, Your Honor.

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

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

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

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

2 MJ: These are digital colored copies.

3 CDC: Those can go up with the record.

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

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

6 11 September 2004.]

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

8 that were present when the court recessed.

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

10 Alpha through Charlie?

11 TC: No objection, Your Honor.

12 MJ: They are admitted.

13 Defense?

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

15 Defendant's Exhibit D for identification.

16 MJ: And that's a CD?

17 CDC: Yes, Your Honor.

18 MJ: A DVD?

19 CDC: Yes, Your Honor.

20 MJ: Do you want to play it?

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

4 MJ: Let's play it right now.

5 CDC: Okay.

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

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

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

13 MJ: And you have VCR capability?

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

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

17 CDC: Yes, Your Honor.

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

20 CDC: Yes, Your Honor.

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

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

3 TC: Yes, sir.

4 MJ: Any objection to Defense Exhibit Delta?

5 TC: No, Your Honor.

6 MJ: Defense Exhibit Delta is admitted.

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

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

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

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

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

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

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

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

22 MJ: Defense?

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

4 DIRECT EXAMINATION

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

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

7 A. [REDACTED]

8 Q. And your unit of assignment?

9 A. HHC, 504th MI Brigade.

10 Questions by the defense [Mr. Karns]:

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

14 A. Yes, sir.

15 Q. What's your current unit?

16 A. HHC, 504th MI Brigade.

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

18 A. I'm the [REDACTED]

19 Q. What's your MOS?

20 A. I'm a [REDACTED]

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

22 A. 17 1/2 years.

1 Q. Have you ever been deployed before?

2 A. Yes.

3 Q. How many times?

4 A. Six.

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

6 A. I'm active duty.

7 Q. And do you know Specialist Cruz?

8 A. Yes.

9 Q. How did you come to meet him?

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

11 that's how I met him.

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

13 time?

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

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

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

17 Q. How is that possible?

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

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

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

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

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

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

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

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

6 Q. What is your opinion of him now?

7 A. As I got----

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

10 MJ: Mr. ████████ you need to focus the question, please.

11 CDC: I'll narrow it down.

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

13 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Q. And he did that.

1 A. Yes.

2 Q. How does he treat his superiors?

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

13 Q. How was his military bearing?

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

17 Q. How was his overall attitude?

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

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

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

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

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

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

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

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

16 TC: No, Your Honor.

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

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

20 [END OF PAGE.]

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

3 DIRECT EXAMINATION

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

5 Q. State your full name.

6 A. [REDACTED].

7 Q. Your unit of assignment, please.

8 A. [REDACTED], 502d MI
9 Battalion.

10 Questions by the defense [Mr. Karns]:

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

12 A. 14 years.

13 Q. Is that active duty time?

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

15 Q. Prior enlistment.

16 A. Prior enlisted.

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

19 A. Yes.

20 Q. How many times?

21 A. Three.

22 Q. And do you know Specialist Cruz?

1 A. I do.

2 Q. How do you know him?

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

16 Q. What was your initial impression of him?

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

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

3 Q. What duties did you assign him?

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

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

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

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

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

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

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

16 A. No problems whatsoever.

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

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

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

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

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

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

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

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

3 Q. How does Specialist Cruz treat his superiors?

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

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

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

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

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

17 Q. His attitude?

18 A. Professional.

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

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

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

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

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

4 violation.

5 MJ: The objection is sustained.

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

7 case?

8 A. Correct, I am.

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

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

11 unit, sometimes unsupervised?

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

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

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

15 weapon.

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

17 TC: Objection, the same....

18 MJ: Sustained.

19 CDC: No further questions, Your Honor.

20 MJ: Trial counsel, any questions?

21 TC: No, Your Honor.

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

1 CDC: Your Honor, we'd like to call Sergeant First Class [REDACTED]
2 [REDACTED]
3 Sergeant First Class [REDACTED], U.S. Army, was called as a
4 witness for the defense, was sworn, and testified as follows:

5 DIRECT EXAMINATION

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

7 Q. Please state your full name.

8 A. [REDACTED].

9 Q. Unit of assignment?

10 A. HHS, 502d MI.

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

12 Q. What's your current MOS?

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

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

16 A. I've been in 19 years.

17 Q. And that's active duty time?

18 A. All active duty time.

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

20 A. This is my second deployment.

21 Q. Do you know Specialist Cruz?

22 A. Yes, I do, sir.

1 Q. How do you know him?

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

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

10 A. Roger, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Q. How would you describe his military bearing?

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

20 Q. How has his overall attitude been?

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

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

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

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

21 CDC: Thank you, sergeant. Nothing further.

22 MJ: Trial counsel, anything?

1 TC: No questions, sir.

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

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

5 MJ: Are they ready to go?

6 TC: Yes, sir, I believe so.

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

9 DIRECT EXAMINATION

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

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

12 A. [REDACTED]

13 Q. And your unit of assignment?

14 A. HHSC, 502d MI Battalion.

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

16 Q. [REDACTED], are you there?

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

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

19 A. Yes, sir.

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

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

1 Q. And you're otherwise, when you're present here in Iraq,
2 you're Specialist Cruz's [REDACTED]?
3 A. That is correct.
4 Q. How long have you been in the Army?
5 A. I've been in the Army approximately 18 years.
6 Q. And is that active duty time?
7 A. That is active duty time.
8 Q. How many times have you been deployed?
9 A. I have been deployed for [inaudible].
10 Q. Now, what were Specialist Cruz's duties in your unit?
11 A. [Inaudible]
12 Q. Did you have an opportunity to observe him perform his
13 duties or to see his work?
14 A. Yes, I did observe him on a regular basis.
15 Q. And what was your observation of his duties?
16 A. [Inaudible] ...I never had to go back and check and see
17 what he was... [inaudible] ...very responsible, and then any time
18 [inaudible].
19 Q. Did you ever see him take initiative?
20 A. [Inaudible]
21 Q. How was his attitude?
22 A. I never had problems with his attitude.

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

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

3 A. [Inaudible]

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

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

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

11 TC: No questions, Your Honor.

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

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

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

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

17 TC: Sir, I have no objection.

18 MJ: I have no objection.

19 [END OF PAGE.]

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

3 DIRECT EXAMINATION

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

5 Q. Please state your full name.

6 A. [Inaudible]

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

9 Could you state your unit of assignment, please?

10 A. [Inaudible.]

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

14 MJ: Is he on a cell phone?

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

17 A. Yes.

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

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

21 Q. I'm sorry?

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

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1 MJ: I don't think this is going to work, Mr. [REDACTED].
2 CDC: I agree.
3 MJ: Do you want to use the stipulation of expected testimony
4 for this witness?
5 CDC: Yes, Your Honor, if that's okay with Specialist Cruz.
6 MJ: He's just breaking up, or we could wait until he finds a
7 land line.
8 CDC: I don't think--it's a matter of a phone company coming out
9 for the land line, unless he went out and drove somewhere.
10 MJ: Why don't you excuse the witness?
11 [The witness was excused and the phone call terminated.]
12 You have one more telephonic?
13 CDC: Yes, sir.
14 MJ: Mr. [REDACTED], lead the witness a little bit more and we'll get
15 shorter and maybe "yes" or "no" answers.
16 CDC: No problem, Your Honor.
17 Staff Sergeant [REDACTED], U.S. Army, was called as a witness
18 for the defense, was sworn, and testified telephonically:

19 DIRECT EXAMINATION

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

21 Q. State your full name.

22 A. [REDACTED]

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

3 A. It's spelled [REDACTED]

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

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

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

8 CDC: Yes, Your Honor.

9 **Questions by the defense [Mr. [REDACTED]]:**

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

12 A. He came to Iraq [inaudible].

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

15 A. I first met Specialist Cruz in Dallas.

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

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

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

20 A. Yes, that's correct.

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

22 A. Yes, he was.

1 Q. And there were several soldiers injured in that attack,
2 correct?

3 A. Yeah, a couple dozen injuries [inaudible].

4 Q. And two soldiers were killed?

5 A. That's correct.

6 Q. And one of those soldiers was very close, not only a
7 section leader, but Specialist Cruz was very close to that soldier?

8 A. That is correct.

9 Q. And that was Sergeant [REDACTED]

10 A. Yes.

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

12 A. There were three of us, Chief [REDACTED] [inaudible] all in a
13 tent.

14 CDC: Could you hear that, Your Honor?

15 TC: Your Honor, I suggest on this witness, I believe he will
16 have a land line. We could take those 2 minutes and reconnect to a
17 landline.

18 MJ: Let Major [REDACTED] do this, Mr. [REDACTED].

19 TC: Sergeant, this is Major [REDACTED] again. Do you have a
20 landline, don't tell me the number yet, but do you have a land line
21 that we can call you back on?

22 WIT: [Inaudible.]

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

5 WIT: Yes, sir.

6 MJ: Repeat the last question, Mr. [REDACTED]

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

8 MJ: What happened when the mortar hit?

9 CDC: Thank you, sir.

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

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

13 A. Yes, sir.

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

15 A. Yes.

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

18 A. We were [inaudible].

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

22 A. That's correct.

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

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

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

6 A. I'm sorry, sir?

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

8 A. Yes, correct.

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

10 A. Yes.

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

13 A. Yes.

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

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

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

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

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

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

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

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

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

15 A. I believe that is correct.

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

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

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

1 A. Yes, exactly.

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

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

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

13 A. Correct, sir.

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

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

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

22 A. Yes, very close.

1 Q. I'm sorry?

2 A. Yes, they were.

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

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

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

14 A. Correct, as I understand it.

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

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

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

21 A. Sorry, sir?

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

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

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

11 A. I'm sorry, sir?

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

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

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

19 TC: Sir, the government has no questions.

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

21 MJ: I understand, Mr. [REDACTED] is you have stipulations of
22 expected testimony of all three of these witnesses?

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

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

3 Mr. [REDACTED] you wanted just to pick up the stipulation of
4 expected testimony?

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

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

8 CDC: Yes, Your Honor.

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

13 CDC: Yes, sir.

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

16 ACC: Yes, sir.

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

19 ACC: Yes, sir.

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

21 ACC: Yes, sir.

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

3 ACC: Yes, sir.

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

6 ACC: Yes, sir.

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

9 ACC: Yes, sir.

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

21 ACC: Yes, sir.

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

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

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

10 ACC: Yes, sir, I understand.

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

12 ACC: No, sir.

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

15 TC: We do, Your Honor.

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

17 TC: No, sir.

18 MJ: Defense Exhibits E through G are admitted.

19 Defense?

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

22 MJ: Proceed.

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

2 **UNSWORN STATEMENT**

3 **Questions by the defense [Mr. ██████]:**

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

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

17 Q. When did you join?

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

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

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

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

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

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

12 A. Yes, sir.

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

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

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

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

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

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

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

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

11 A. Roger.

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

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

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

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

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

3 Q. How long was the convoy ride up?

4 A. Three days.

5 Q. And so your first stop was Balad?

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

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

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

15 Q. And what did you do there?

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

19 Q. And when did you get there?

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

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

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

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

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

2 Q. The difference....

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

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

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

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

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

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

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

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

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

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

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

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

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

17 A. Pardon me?

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

20 A. At Ramadi?

21 Q. At BIAP.

22 A. At BIAP?

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1 Q. Where you radioed.

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

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

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

5 A. I went to Abu Ghraib after BIAP.

6 Q. And it was about mid-September?

7 A. Mid-September.

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

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

10 Q. You all were under constant mortar attacks?

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

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

4 Q. Now, testimony has already been presented regarding the one
5 mortar attack where you were injured. After that mortar attack, did
6 you do anything to ask for help?

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

15 Q. And did you ever get that help?

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

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

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

8 A. The next morning after a brief about, as I just said,
9 numbers of reports and how we're not producing, took a break and I
10 went straight down to the hard site, found the dayshift NCOIC,
11 Sergeant [REDACTED], and reported what happened the previous day.

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

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

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

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

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

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

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

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

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

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

15 A. I did.

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

20 A. Right.

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

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

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

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

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

17 A. This is correct.

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

19 A. Yes.

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

21 A. March 17th.

22 Q. 2004.

1 A. Right.

2 Q. And you've been extended.

3 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 CDC: No further questions.

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

14 CDC: Your Honor, the defense rests.

15 MJ: Government, do you have any rebuttal?

16 TC: No, sir.

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

18 TC: Thank you, sir.

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

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

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

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

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

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

1 reasonably tried to create space between themselves and the naked
2 body of the man now bound to him, the accused chose to press them
3 back together, again using his feet. With contempt and with disdain,
4 the accused chose to do all of this. He did not have to, but he did.

5 He chose, he decided, he made the conscious effort to
6 continue in this abuse along with all of his reveling co-
7 conspirators. And now, Your Honor, the accused is responsible, not
8 only for his own acts, but the acts of all of these men and women who
9 chose to torment rather than to safeguard, to demean rather than to
10 protect. And while his motivations may have been different than were
11 Sergeant [REDACTED] or Corporal [REDACTED] men who clearly took great
12 enjoyment out of the misery of the three detainees lying helpless and
13 hopeless on the hard concrete floor, the accused assisted these
14 military police, joined them in their ultimate purpose and in their
15 terrible work. And now he is responsible for all of their actions,
16 and they of his, all because of his choice.

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