

1 charges of rape against these men were later unfounded as evidenced  
2 by paragraph 13 of the stipulation of fact. They were men, they were  
3 in our custody. And a very basic tenet of our way of life, and by  
4 that I mean the American way of life is this: that all men, be they  
5 enemy or friend, criminal or saint, and regardless of the color of  
6 their skin, their beliefs, or their national identity are absolutely  
7 entitled to dignity and respect, all men. The accused chose to  
8 disregard this tenant, to take by force and savagery the personal  
9 pride and sense of self-worth that we all hold dear, the spark of  
10 dignity and self respect that makes us who we are. And that is the  
11 fundamental nature of these offenses and the first point we would ask  
12 you to consider.

13           Next, Your Honor, I would ask you to consider the  
14 consequences of this misconduct. And these are the logical and  
15 probable consequences of the type of misconduct at issue here, which  
16 is the abuse of individuals in military custody.

17           In paragraph 25, the stipulation of fact reveals that the  
18 misconduct of the accused became known to many in the United States  
19 and the world. The first consequence, a consequence captured in that  
20 paragraph, is that the accused's misconduct contributed to tarnishing  
21 the reputation and image of the United States Armed Forces and the

1 United States in the eyes of many Americans as well as the  
2 individuals throughout the world.

3 That reputation and image will of course survive, but we  
4 must not forget that it was bought with a price, a heavy price. And  
5 we cannot get around the fact that the accused's conduct, despite his  
6 otherwise good acts at other times and his evident remorse now,  
7 worked to lessen that reputation, again a reputation paid for by the  
8 hard work, sacrifice, the obedience, and even blood of many of our  
9 brothers and sisters in arms.

10 But this consequence is not the only consequence that must  
11 be considered. We now know that many in the world are aware of these  
12 photos. The fact that the men abused are civilian detainees and not  
13 Prisoner's of War is essentially irrelevant, what is seen is men  
14 being held in custody by U.S. Army personnel. That is what the world  
15 sees. And so what may be some logical consequences of such behavior?  
16 There are three closely related but distinct consequences we would  
17 ask you to consider.

18 First, how might the enemy use an act like this to his  
19 advantage? Here we have a number of men, a number of soldiers,  
20 rather, acting in concert to humiliate and abuse Muslim men. The  
21 reasons for doing so are completely irrelevant to the individual who  
22 sees these photographs. Might existing enemies use such conduct as a

1 moral rallying point? Might not these photos cause others who might  
2 not otherwise be enemies of our nation to think differently about us  
3 as a people? Might not these actions on the part of the accused  
4 foster further distrust and sow even greater hate? How do we now  
5 convince others that we are a nation of laws, a nation of equality, a  
6 nation of honor and decency? The photographs you have, Your Honor,  
7 speak much louder and much more forcibly than our words. That is a  
8 consequence of the accused's acts.

9           Second, but a related consequence is this, how might this  
10 behavior influence enemies in the future to treat our service members  
11 when they are captive? This conflict in Iraq will not be the last  
12 for the nation's military. There will be future fights in other far  
13 away places and American soldiers, sailors, Marines, and Airmen will  
14 find themselves in captivity. Will the treatment inflicted on these  
15 men at Abu Ghraib come back to influence their captor's actions?  
16 There is simply no way to know for sure, but this is certainly a  
17 possible consequence of the accused's actions.

18           Third, the U.S. military is a fighting force unparalleled  
19 in the world. Ideally, this knowledge would cause an enemy to  
20 surrender to our forces whenever he finds himself arrayed against us.  
21 Will an enemy be as likely to surrender if he believes that he will  
22 be humiliated in this manner? No doubt some might prefer death over

1 such treatment and in fighting to prevent this might cause greater  
2 harm to himself and, more importantly, our forces than would  
3 otherwise be necessary. To put it bluntly, will he fight more  
4 fiercely and be more likely to wound or kill our soldiers because he  
5 fears not so much death as degradation? This, too, is a consequence,  
6 a consequence of the actions of the accused.

7           The fact that the accused may not have considered these  
8 consequences does not make the consequences any less severe, or the  
9 accused any less responsible. He must now pay for his crimes. This  
10 brings us to our final point, that under these circumstances,  
11 significant punishment is necessary.

12           For the sake of reasoning out this together, let us assume  
13 that the accused is the type of man that the testimony and evidence  
14 presented to you today suggests, that he has promise and potential.  
15 If so, let's hope together that he can learn from this experience and  
16 recover from the just and appropriate punishment, which you will  
17 shortly administer. But consider this, sir, that the accused had  
18 every benefit, apparently loving parents, supportive teachers and  
19 leaders, a good education, a distinct knowledge of the difference  
20 between right and wrong, and as his father said, his personal moral  
21 code, as well as the aid of all our core Army values, all the tools  
22 necessary to do the right thing that night, to make different

1 choices. But he did not, and now he must be held accountable. He  
2 must be held accountable because this is the essence of military  
3 discipline, that the needs of the Army supersede the wants and  
4 desires of the individual. That men, even men under stress, don't  
5 conduct themselves according to their own passing, personal desires,  
6 but rather that these men follow the lawful orders, laws, and  
7 regulations meant to govern the warriors of our nation. This is the  
8 essence and spirit of our force, and this is the very thing the  
9 accused violated.

10           And so, this is exactly why, in this situation, this good  
11 order and discipline where punishment is most necessary, and  
12 punishment most needed to restore that good order and discipline.  
13 This conduct cannot, must not be tolerated. It must be dealt with in  
14 such a way that other soldiers under other circumstances both  
15 difficult and stressful, and sir, there will be other soldiers under  
16 circumstances even more difficult and more stressful than those found  
17 here, that those soldiers understand clearly that following their own  
18 predilections, their own sense of justice, is inconsistent with who  
19 we are as an Army and will result in swift and certain punishment.  
20 There is a very fine, but distinct and important line between an Army  
21 in the service of the nation and a mob of armed individuals each  
22 seeking their own interests. We must hold, at all costs, to the

1 right side of that line. Thus under these circumstances, significant  
2 punishment is required, necessary, and just.

3 Sir, the government has presented to you three broad points  
4 for use in your deliberations. First, the deliberate and harmful  
5 conduct at issue, conduct that deliberate as it was debasing, conduct  
6 in concert with others in an attempt to dehumanize three fellow human  
7 beings. Second, we ask you to consider the probable consequences of  
8 this behavior, how this type of misconduct, abuse of individuals  
9 within our custody, might have long term and grave consequences.

10 Finally, we presented the need for punishment under these  
11 circumstances to maintain the essence of what and who we are, a  
12 disciplined, highly trained and deadly force exercised only by and  
13 for the will of the nation, and not a mob of individuals each seeking  
14 their own sense of personal justice or interests. We simply cannot  
15 allow any slide toward anarchy within our own ranks. This must be  
16 stopped, coolly, logically, dispassionately but severely stopped. It  
17 is reason, not emotion, that must guide justice now. Sir, for all of  
18 the aforementioned reasons stated above and for those otherwise  
19 evident to the court, the government requests that you now punish the  
20 accused with a bad conduct-discharge, reduction to E1, and  
21 confinement as you deem appropriate.

22 MJ: Defense?

1 CDC: Thank you, Your Honor, may it please the court, counsel.  
2 Your Honor, the story of Specialist Cruz is that of an American Hero,  
3 not a superhuman hero like we see in comic books, but a hero that is  
4 human, one who demonstrates heroic acts of bravery and sacrifice, as  
5 well as the capacity to make a mistake.

6 The story of Specialist Cruz began when he became the first  
7 generation American born into his family, not just any family, but  
8 that of a military family. And, not just as the son of a soldier,  
9 but that of a West Point graduate. The bar was set, and the bar was  
10 set high. How would he measure up to it?

11 As soon as he was old enough, Specialist Cruz chose  
12 activities in life which enabled him to help others. From the  
13 evidence we've submitted, you've read that while in high school he  
14 received life saving training from the Red Cross which he's used to  
15 become a lifeguard. On more than one occasion, he came to the aid of  
16 swimmers in distress and brought them to shore. He also joined the  
17 JROTC program rising to the rank of First Lieutenant and serving as a  
18 platoon leader.

19 After high school, his dedication to helping others  
20 continued. He majors in history and literature with a minor in  
21 American public education so that he can become a certified teacher.  
22 He completed his Associate's Degree cum laude. When not in school,

1 he is involved in after school programs for elementary school  
2 children.

3 While in college, he decided that he had more time and more  
4 to give, so he became a citizen soldier and joined the Reserves. He  
5 took time away from his studies and went to basic & AIT, earning top  
6 marks at AIT.

7 While in his senior year in college, the Army came to him  
8 and asked him if he'd be willing to serve in Iraq. Since Specialist  
9 Cruz was in his senior year, his unit wasn't going to require that he  
10 be activated. But, being the person that he is, Specialist Cruz  
11 volunteered and disenrolled from the classes he'd already begun.

12 Once he became activated, he was cross-leveled and he  
13 arrived in Iraq in 2003, April. For his exemplary service to his  
14 country from that date to November of 2003, his command nominated him  
15 and he has been awarded the Bronze Star, or he's been flagged and he  
16 would receive it if he weren't flagged. But not just for his actions  
17 on one day, but for 8 eight months. Specialist Cruz's command  
18 recognized that he was giving it his all day in and day out. This  
19 was an impact award, not just an end of tour award. His unit  
20 wouldn't leave for another 5 months. And this is all while he's 23  
21 years old and a specialist.



1           In September of '03, he was assigned to Abu Ghraib. On the  
2 night of the 20th, he and his teammates were preparing for  
3 interrogations when a mortar struck near their tent. Everyone hit  
4 the ground and several soldiers were injured, two fatally. And  
5 before Sergeant [REDACTED] could get up to go get his gear and the second  
6 mortar hit, Specialist Cruz was already bringing back another  
7 soldier, Sergeant [REDACTED] who'd been hit in the neck. He brought him  
8 back to Sergeant [REDACTED] and he told Sergeant [REDACTED], "I'm going back  
9 out." He goes back out and he starts attending to Sergeant [REDACTED]  
10 [REDACTED], someone who's very close to him. Sergeant [REDACTED]  
11 body, as you've read in the stipulations of expected testimony,  
12 Sergeant [REDACTED] body was ravaged, was missing an arm, you could  
13 barely tell who it was. Specialist Cruz began chest compressions and  
14 started encouraging his friend, his falling comrade, telling him to,  
15 "Hang in there. You can do this. You're going to make it. We're  
16 here for you." They then loaded up Sergeant [REDACTED] onto the EVAC  
17 chopper and began attending others. And once they were done doing  
18 that, they went back and went to the hospital, learned that Sergeant  
19 [REDACTED] had died, and they wanted to go say goodbye to him. And  
20 that's how much that soldier, that comrade, meant to Specialist Cruz.  
21 And they went all the way back to the morgue facility by taking  
22 chopper ride.

1           This experience of being wounded in combat and losing a  
2 friend that you personally attended is too much for anyone, much less  
3 a 23-year old. It didn't take Specialist Cruz long to realize that  
4 the stress of this experience was getting the best of him and testing  
5 his limits to cope. He needed help. The Army recognizes this  
6 onerous impact that such an experience can have on young soldiers and  
7 that's why they developed combat stress teams. Specialist Cruz went  
8 to his chain of command for help, but none was made available to him.

9           Specialist Cruz did the best that he could to deal with the  
10 nightmares and all the questions that he had, but didn't seem to have  
11 any answers. To make matters worse, as Lieutenant General Jones  
12 found in the excerpts that we've provided to you, while this was  
13 going on also at Abu Ghraib, he found out "the difficult  
14 circumstances for soldiers, including a poor quality of life and the  
15 constant threat of death or serious injury, contributed to soldiers'  
16 frustrations and increased their levels of stress."

17           In addition, General Fay reported that Lieutenant General  
18 Sanchez confirmed that there was a great pressure placed upon the  
19 intelligence system to produce actionable intelligence. General Fay  
20 also found that "Leaders failed to take steps to effectively manage  
21 pressure placed upon personnel." Specialist Cruz was laboring under  
22 this occupational pressure as he struggled with his personal demons.

1           General Fay also commented in his report that when he  
2 interviewed Colonel [REDACTED], Lieutenant Colonel [REDACTED] 7 months after  
3 the attack, that Lieutenant Colonel [REDACTED] became very emotional and  
4 said that he still thinks about the attacks daily about the suffering  
5 that Sergeant [REDACTED] received right before he died. General Fay  
6 found that there was a general feeling by both MI and MP personnel at  
7 Abu Ghraib that it was a forgotten outpost receiving little support  
8 from the Army. The frequency of these attacks and the perceived lack  
9 of aggressive action to prevent them were contributing factors to the  
10 overall poor morale that existed Abu Ghraib."

11           Regarding the incident, this is one night, a month  
12 Specialist Cruz was sitting in his cot, minding his own business,  
13 when Specialist [REDACTED] came and approached him and told him about the  
14 three detainees that supposedly raped a boy and what the MPs were  
15 doing with them. He went there out of curiosity. He wasn't on duty,  
16 and he walked to the hard site and his life then forever changed.

17           To be sure, Specialist Cruz takes responsibility for his  
18 actions and is remorseful, but let's recognize the limited nature of  
19 his involvement, at least compared to the other soldiers who were  
20 there--to the other soldiers that were there. This wasn't something  
21 that he initiated. He was in his cot. Someone came and got him.  
22 The abuse had started before he got there and it continued after he

1 left. This wasn't his idea, as the stipulation of fact says, this  
2 wasn't orchestrated by him. There was also an E6 present, Sergeant  
3 [REDACTED] another Sergeant [REDACTED] who was present. He didn't  
4 enjoy his actions. He was coming from a different place. He wasn't  
5 laughing. He wasn't posing for pictures. And even in the two  
6 pictures that you see, or at least the one picture that you see that  
7 he's in, he's standing back away from the other people. He was told  
8 the detainees raped a boy, and then he always questioned the degree  
9 of the group's actions. He told an MP that a detainee was bleeding  
10 around the wrist and then the next day he reported it.

11 So, on this night, we learn that our hero is human. He's  
12 fallible. Our 23-year old hero can succumb to peer pressure. At  
13 times while he participated, he was active. At other times, he tried  
14 to summon the strength to stop himself and the others. Even with his  
15 personal problems and the poor morale at Abu Ghraib, he was  
16 conflicted about what the MPs were doing that night.

17 Now, this moment did not define Specialist Cruz's  
18 character, Your Honor, but represented a departure from it. His  
19 actions over his entire life before and after this incident define  
20 his character as exemplary and one of the highest moral order. To be  
21 fair, if we want you to consider all the good choices he's made, you  
22 have to consider this choice as well, but I ask that you consider his

1 level of his involvement and the context in which it occurred. We  
2 know he doesn't have a pattern of mistakes. To the contrary, he has  
3 a pattern of making all the right choices, but he did not. So why  
4 didn't he?

5           Was he able to get something off his chest that night?  
6 Maybe. Did he realize that after making that choice it was not a  
7 healthy way to deal with his emotions from the attack? Most  
8 definitely. His actions since that night prove that he realized he  
9 was not comporting himself to the highest standards of his Army  
10 training and personal morals. But, what would have happened if  
11 someone from the combat stress team would have been made available to  
12 him? Would Specialist Cruz be here before you today?

13           We don't know. But what we do know today is that  
14 Specialist Cruz asked for help, and he should have received it. Not  
15 all soldiers are going to react well under combat stress. Sometimes  
16 good soldiers make mistakes under stress because they forget their  
17 training or are just unable to act on it. The Army, again,  
18 appreciates this fact by having combat stress teams. The combat  
19 stress team isn't there for the bad soldiers who are under stress.  
20 The combat stress team is there for the good soldiers who need help  
21 and can be helped so that they can return to their mission to which  
22 the Army assigned them. Maybe the combat stress team was too busy

1 helping other soldiers. Maybe they were understaffed. It doesn't  
2 matter. That's not Specialist Cruz's responsibility.

3 We know that Specialist Cruz is a good soldier. We know  
4 that he has a pattern of rising to the occasion under stress. Why  
5 did he give in to the peer pressure on the night in question? I  
6 submit to Your Honor, it's because the emotional pain he was feeling,  
7 the guilt, the anger, and the stress was accumulating, extraordinary,  
8 and completely predictable and normal.

9 We know that Specialist Cruz has a strong character because  
10 he rebounded from that night on his own. He knew it was a mistake,  
11 learned from it, and he's moved forward, fantastically. He didn't  
12 learn he was under investigation until 3 months later.

13 As I've stated, not all soldiers are going to react well or  
14 according to their training under stress, and their reaction is going  
15 to depend on what their experience has been up to that point. As the  
16 government pointed out, Specialist [REDACTED] didn't actively participate  
17 that night. He deserves credit for that. But, while Specialist Cruz  
18 was physically in the same position as Specialist Cruz--while  
19 Specialist [REDACTED] was physically in the same position as Specialist  
20 Cruz that night, he was not the same emotionally. He did not have  
21 the same experiences as Specialist Cruz up to this point of the war.

1           This reminds me of the movie Saving Private Ryan, Your  
2 Honor. In one scene of the movie, Captain Miller and his squad come  
3 across a German machine gun nest. CPT Miller gives the order to take  
4 the nest. In the fight, one American soldier dies, and one German  
5 soldier surrenders. The most junior soldiers who've lost their  
6 comrade want to kill the German soldier, except for one, and that's  
7 the translator, Opam. Opam intervenes on behalf of the German  
8 soldier, arguing that it would be a crime to kill the German. To the  
9 other soldier's dismay, CPT Miller reaches the dispassionate  
10 conclusion that killing the German soldier does not comport to their  
11 mission and orders him to be released. Later in the movie, Captain  
12 Miller and his squad once again encounter the German soldier in a  
13 fire fight and Captain Miller dies at the hands of this German  
14 soldier. Then, Opam catches that German soldier and some of his  
15 comrades off guard. Opam tells the German soldiers to drop their  
16 weapons. They do and now they're EPWs. Opam, filled with anger,  
17 guilt, and rage kills the one German that killed Captain Miller.

18           Now, Opam's role in these two scenes is there to challenge  
19 our moral decision making or how we would respond in the same  
20 situation. Unless we actually are Opam, including all of his life  
21 experiences and find ourselves in the exact same situation, we'll  
22 never know if we would act in the same way. But, what's most

1 important, is that we can all identify with Opam's struggle because  
2 of the context in which it occurs. His actions were legally wrong,  
3 killing the German soldier was murder, but no one looked at Opam as a  
4 cold-blooded murderer. The German soldier had the opportunity to  
5 kill Captain Miller largely because of Opam's earlier argument that  
6 killing him as an EPW was wrong. Indirectly, Opam may have had a  
7 hand in creating the situation in which CPT Miller was killed.  
8 Judging Opam's actions in this context is difficult. So when we  
9 examine Specialist Cruz's actions, we can't forget the context.

10 And although in that situation, the situation after  
11 attacking the German machine gun nest and then...well, what I wanted  
12 to distinguish, Your Honor, is the fact that even though this  
13 incident in October happened one month after, for Specialist Cruz,  
14 like it was for Colonel [REDACTED] it might as well had been yesterday  
15 that it happened, especially when you don't get treatment. And  
16 granted, the scenes from the movie depict a morally complex situation  
17 that most of us will never face. But in real life, soldiers must  
18 make hard decisions under stress. Like I said, we know that Colonel  
19 [REDACTED] cried 7 months after the attack. He was reliving the attack  
20 every day. And in fact, Specialist Cruz was only 23 years old one  
21 month out from the attack when the incident occurred. When he walked  
22 into the hard site that night and saw the adrenaline of the other



1 soldiers going, the mortar attack might as well have just happened,  
2 and it didn't matter that those three Iraqis weren't the exact ones  
3 who did the mortar attack, and Specialist Cruz was honest, the lines  
4 were blurred.

5           Also regarding the context, Your Honor, I'd like for you to  
6 consider in the Fay report in one of the excerpts that I've provided,  
7 I'd like for you to consider all the excerpts for the purposes of  
8 this argument. There is an expert that says using nudity as an  
9 interrogation technique had already been started before Abu Ghraib.  
10 And that, in the last line there it says, "The use of clothing is an  
11 incentive or nudity is significant in that it likely contributed to  
12 an escalating dehumanization of the detainees and set the stage for  
13 additional and more severe abuses to occur."

14           MJ: Of course, Mr. [REDACTED] the context though, is the use of  
15 nudity as an interrogation technique.

16           CDC: Well, Yes, Your Honor.

17           MJ: And there's no issue in this case that these prisoners,  
18 these detainees were being interrogated, correct?

19           CDC: Correct, Your Honor.

20           MJ: Okay, just make sure there's no confusion of those two  
21 cases.

1 CDC: Oh, absolutely, Your Honor, but I still, overall, I believe  
2 that even though just taking clothes off in general when other  
3 leadership, when the leadership wasn't around, I think overall it  
4 does affect the context of it. There's no excuses, but once you  
5 start taking clothes off, I believe that that's what the report is  
6 stating, that you're going to have to have even tighter, greater  
7 supervision, and that wasn't there.

8 But you're right, Your Honor, regardless, Specialist Cruz  
9 made his mistake, learned from it, and moved on, fantastically, and  
10 even while working in different MOS's. Remember, this is a soldier  
11 who is facing court-martial and has the potential to poison morale by  
12 besmirching the Army if he chose to. But not Specialist Cruz, in his  
13 heart of hearts, he's a soldier and a true believer. And even after  
14 his clearance was pulled and he had to work in the likes of the  
15 Internet café, he soldiers on, continuing to support the mission with  
16 the best attitude and a superior dedication even to include coming up  
17 with new ideas for the command.

18 He has continued to be there for others, as well, even  
19 after this incident. For example, as in the evidence that we've  
20 provided to you in the soldier packet, he came up for R&R leave  
21 before another soldier, a soldier who was married and had kids. He  
22 gave up his spot to that soldier so he could be with his family on

1 Christmas. He also became a battle buddy for a soldier in despair, a  
2 soldier that now credits him with saving his life.

3 In addition, Specialist Cruz did not get to go home, Your  
4 Honor, until January of 2004, and that's when CID approached him. He  
5 came to me, and together we went down to CID. We told the agent that  
6 he was willing to cooperate. From that point, we just wanted to talk  
7 to someone who had some negotiating authority. Over the next 6 months  
8 from January, we were proactive and in constant communication with  
9 his command. It wasn't until over 6 months later that the government  
10 contacted us, and that was in July of 2004. And within 2 months of  
11 that contact with the government, then we're here today. I just  
12 point that out to Your Honor to simply state that his unit left in  
13 March, and he's been here since that time, and we'd just ask that you  
14 consider that, as well as initiative and willingness to work with the  
15 government back in January.

16 While we've stipulated that his actions may have tarnished  
17 the Army's image, I think if you consider the total soldier, the  
18 context of his actions, and the level of his involvement, the Army  
19 has still gotten a great return on its investment in Specialist Cruz.  
20 He hasn't been in the press pointing the finger at the Army and  
21 blaming others. He's accepted responsibility. And, his plea has  
22 saved the government a vast amount of resources. He's agreed to

1 cooperate with the government. He's waived his Article 32 rights and  
2 hasn't fought the government tooth and nail at Article 32s etceteras  
3 and asking for hundreds of witnesses.

4 No doubt, Specialist Cruz's actions affected the three  
5 detainees, and he accepts responsibility for that. But he's also  
6 helped the government mission of helping millions of Iraqis over the  
7 past 16 months. And again, Your Honor, to be fair, if the government  
8 is going to--it is fair if the government says that he has affected  
9 these three Iraqis and he's accepted responsibility for that. But  
10 the government is also taking credit for the liberation of Iraq and  
11 liberating Iraqis, and that was a mission, that taking credit for  
12 that, and Specialist Cruz also deserves that credit because he's been  
13 part of that mission, and so he's also helped the Iraqis that the  
14 government has said that they've helped. And he's done it at such a  
15 level that he's earned the Bronze Star. So I only think that it's  
16 fair that we include everyone.

17 In spite of all this, he's continued to help with the  
18 mission. He isn't just punching the clock since this has come down.  
19 For the past 8 months, knowing he was under investigation, he could  
20 have easily thought that the Army was just going to kick him out  
21 anyway and put him in jail. Like I said, his unit left in March, and  
22 he's still soldiering on. The Army is still getting added value from

1 Specialist Cruz. He's not on the sidelines. He hasn't alienated  
2 himself from the Army. That's because he's a genuine hero who  
3 recognizes that he deserves punishment, but who loves the Army and  
4 believe in its mission, and wants to continue to soldier on. Not  
5 only does his soldering show that he still trusts the Army, it shows  
6 that the Army can still trust him.

7 As quoted from US v Wheeler, Your Honor, "A punitive  
8 discharge so characterizes an individual that his whole future is  
9 utterly destroyed. He is marked far beyond the civilian felon,  
10 hampered as he may be by the sneering term 'ex-con.' For,  
11 justifiably or not, the punitive discharge so dishonors and disgraces  
12 an accused that he finds employment virtually impossible; is  
13 subjected to many legal deprivations; and is regarded with horror by  
14 his fellow citizens. Truly, it has come to be the modern equivalent  
15 of the ancient practice of branding felons, and the strain it leaves  
16 is as ineradicable."

17 All in all, I believe that Specialist Cruz has cleared that  
18 high bar that was set for him. He's done it by leaps and bounds. I  
19 don't believe there are parents out there who wouldn't be proud to  
20 call him son, a sibling proud to call him a brother, a soldier to  
21 call him a comrade, and a commander who wouldn't earnestly seek him  
22 out.

1 Specialist Cruz leaves it all on the battlefield. He leans  
2 forward in the foxhole. And when your back is against the wall,  
3 Specialist Cruz has got your backside. He is a man of honor and a  
4 soldier of uncommon mettle.

5 SPC Cruz's story will never end, but his life will. And, I  
6 believe I can safely say that when it does, Your Honor, he will be  
7 there helping others.

8 Your Honor, all in all, as far as a recommendation on  
9 sentence, I think that Specialist Cruz does not deserve a bad-conduct  
10 discharge. His rehabilitative potential, his command, you've heard  
11 the witnesses say that he has soldiered on and continued to  
12 contribute to the Army. He's done that. He's proven that. It's not  
13 just after the charges came down. He was that way beforehand. This  
14 is a one-time incident. It doesn't warrant a discharge, and I  
15 believe that if you believe that confinement is warranted, that it be  
16 minimal confinement. Thank you, Your Honor.

17 MJ: Court is closed.

18 [Court closed at 1320, 11 September 2004, and reopened at 1352,  
19 September 2004.]

20 MJ: Court is called to order. All parties are again present  
21 that were present when the court closed.

1           Defense counsel, have you advised the accused orally and in  
2 writing of his post-trial and appellate rights?  
3           CDC: Yes, Your Honor.  
4           MJ: That's reduced to Appellate Exhibit IV.  
5           Specialist Cruz, I have before me what's marked Appellate  
6 Exhibit IV, your post-trial and appellate rights form. Is that your  
7 signature on this form?  
8           ACC: Yes, sir.  
9           MJ: And Mr. ██████ that's your signature below his?  
10          CDC: Yes, Your Honor.  
11          MJ: Specialist Cruz, did your defense counsel explain these  
12 post-trial and appellate rights to you?  
13          ACC: He did, sir.  
14          MJ: Do you have any questions about your post-trial and  
15 appellate rights?  
16          ACC: No, I don't, sir.  
17          MJ: Which counsel will be responsible for the post-trial  
18 actions in this case and upon whom is the Staff Judge Advocate's  
19 post-trial recommendation to be served?  
20          CDC: That would be me, sir.  
21          MJ: Mr. ██████ they have your civilian address?  
22          CDC: Yes, Your Honor.

1 MJ: And that's your understanding, also, Specialist Cruz?  
2 ACC: It is.  
3 MJ: Accused and counsel, please rise. [The accused and his  
4 counsel stood.]

5 Specialist Armin J. Cruz, this court sentences you:  
6 **To be reduced to the grade of Private E1;**  
7 **To be confined for 8 months; and**  
8 **To be discharged with a bad-conduct discharge.**

9 Please be seated. [The accused and his counsel resumed  
10 their seats.]

11 May I see Appellate Exhibit III, please? [Court reporter  
12 hands document to MJ.]

13 The way I read the quantum portion of the Appellate Exhibit  
14 III is the convening authority is free to approve the adjudged  
15 sentence. Is that the understanding of both parties?

16 TC: Yes, sir.

17 CDC: Yes, Your Honor.

18 MJ: And Specialist Cruz, is that your understanding, also?

19 ACC: It is, sir.

20 MJ: Any other matters to take up before this court adjourns?

21 TC: No, Your Honor.

22 CDC: No, Your Honor.




1 MJ: This court is adjourned.  
2 [The court-martial adjourned at 1354, 11 September 2004.]  
3 [END OF PAGE.]

**AUTHENTICATION OF RECORD OF TRIAL**

**IN THE CASE OF**

CRUZ, Armin J., Specialist  
Headquarters and Headquarters Services Company, 502d MI Battalion  
504th Military Intelligence Brigade, APO AE 09342


I received the completed record of trial for review and authentication on  
10/15 20 04.

  
COL, JA  
Military Judge

15 Oct 20 04

**ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION**

I received the record of trial for review in the foregoing case on  
\_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
  
Civilian Defense Counsel

\_\_\_\_\_  
20 \_\_\_\_\_

The record of trial was served on defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_. After  
verifying receipt with defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_ and conferring with the  
military judge on review by defense counsel on \_\_\_\_\_ 20 \_\_\_\_\_, the record was  
forwarded for authentication without completion of the defense counsel's review.

\_\_\_\_\_  
CPT, JA  
Chief, Military Justice

ACTION

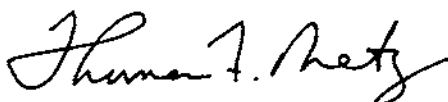
DEPARTMENT OF THE ARMY

Headquarters, III Corps

Victory Base, Iraq

APO AE 09342-1400

In the case of Specialist Armin J. Cruz , Headquarters and Headquarters Service Company, 502d Military Intelligence Battalion, 504th Military Intelligence Brigade, III Corps, Victory Base, Iraq, the sentence is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed.



THOMAS F. METZ

Lieutenant General, USA  
Commanding

JAN 18 2005

003098

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

003099

UNITED STATES

v.

Cruz, Armin J.  
SPC, U.S. Army,  
Headquarters and Headquarters  
Service Company,  
502<sup>nd</sup> Military Intelligence Battalion,  
504<sup>th</sup> Military Intelligence Brigade,  
III Corps,  
Victory Base, Iraq, APO AE 09342

STIPULATION OF FACT

4 September 2004

**I. NATURE AND USES OF THE STIPULATION:**

1. It is agreed between Specialist Armin J. Cruz ("the accused"), the Civilian Defense Counsel and Trial Counsel, that the following facts are true, susceptible to proof, and admissible in evidence. These facts may be considered by the military judge in determining the providence of the accused's plea of guilty; to establish the elements of all charges and specifications; and they may be considered by the sentencing authority in determining an appropriate sentence. For these purposes, the accused expressly waives any objection that he may have to the admission of these facts, and any referenced attachments, into evidence at trial under any evidentiary rule, applicable case law, or Rule for Courts-Martial that might otherwise make them inadmissible.

**II. THE ACCUSED:**

2. The accused is 24 years old and was 23 years old on the date of the charged offenses. The accused is a high school graduate and is in his 4<sup>th</sup> year of college. The accused has a GT score of 116. He entered military service on 28 September 2000, attended basic training at Fort Leonard Wood, Missouri, and completed basic training in April 2001. He entered active duty in May 2002 to complete his MOS training and was released from active duty on 31 October 2002. The accused was activated for his current period of service in support of Operation Iraqi Freedom on 17 March 2003. The accused has a total of approximately 3 years and 11 months of service in the United States Army Reserve. As a civilian, the accused attends the University of Texas at Dallas where he has a double major in History and Literature and a minor in education. The accused received Geneva Convention and UCMJ training during basic training.

3. At the time of the charged offenses, the accused was on active duty in the United States Army. He was originally assigned to 325<sup>th</sup> Military Intelligence Battalion and arrived in Iraq on 1 April 2003. The accused is now assigned to Headquarters and Headquarters Service Company, 502<sup>nd</sup> Military Intelligence Battalion. At all times relevant to the charged offenses, the accused was on active duty. This court has proper jurisdiction over the accused and the charged offenses.

003100

PROSECUTION EXHIBIT 1 ~~END~~

OFFERED R. 13 ADMITTED R. 16

### III. THE MISCONDUCT

4. The Baghdad Central Confinement Facility (BCCF) is located in Abu Ghraib, a city located approximately 12 miles west of Baghdad, Iraq. Within the BCCF there are several compounds used to hold a large number of detainees. One of the compounds is actually a series of buildings built to contain individual cells. This compound is known as the "hard site" and consists of a number of halls, or tiers. Detainees in tier 1 were divided into two sub-tiers, tier 1A and tier 1B. During the relevant time, tier 1A was used for MI holds, those individuals who were believed to possess information of tactical, strategic, or operational value. Tier 1B was used to house certain sub-categories of civilian detainees including women and juveniles. Tier 1B also housed detainees who had caused disciplinary problems.

5. On the night of 25 October 2003, the accused was awakened by SPC [REDACTED] an MI soldier known to the accused and assigned to the accused's unit. SPC [REDACTED] told the accused that the MP had some suspected rapists in the hard site and asked the accused if he wanted to see how the MP dealt with the alleged rapists. The accused agreed to accompany SPC [REDACTED] to the hard site. The accused, SPC [REDACTED], and SPC [REDACTED] all of the 325<sup>th</sup> Military Intelligence Battalion arrived at the hard site and walked to tier 1B. At tier 1B, the accused found a number of MP personnel present including SSG [REDACTED] the night shift NCOIC of the hard site, CPL [REDACTED] the night shift NCOIC of tier 1A, SPC [REDACTED] the NCOIC of tier 1B, and SPC [REDACTED] a soldier assigned to work in the hard site on the night shift. Also present were Mr. [REDACTED] an employee of the Titan Corporation, Baghdad International Airport (BIAP), Baghdad, Iraq as well as various Iraqi Corrections Officers and other members of the 372d MP Company. These other members of the 372d MP Company, SPC [REDACTED] and the Iraqi Corrections Officers did not participate in the abuse of detainees that was to follow.

6. Upon arrival, the accused was notified by SPC [REDACTED] that the MP were "taking a break." It appeared to the accused as if the MP had previously been conducting some sort of activity with three detainees. The detainees were in a cell together, and all three were naked. The detainees appeared to be afraid and deeply distressed. The three detainees in the cell and that were later abused were [REDACTED] ISN [REDACTED] Mr. [REDACTED] ISN [REDACTED] and Mr. [REDACTED] ISN [REDACTED]

7. SPC [REDACTED] then opened the cell and pulled the detainees into the hallway. SSG [REDACTED] and CPL [REDACTED] were initially standing by and observing. SPO [REDACTED] was present and was holding a camera. SPC [REDACTED] was also present. SSG [REDACTED], and SPO [REDACTED], began yelling at the detainees and forcing them to lay on the floor. SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED] then began to force the detainees to crawl along the floor dragging their genitals on the floor itself. The accused joined in this effort, yelling at the detainees and using his foot to keep the detainees from rising too high off the floor. The detainees, principally at

CPL [REDACTED] instruction, were also forced to roll on the ground and perform a variety of physical exercises while they were naked.

8. At some point prior to this activity, the accused was told that the detainees had allegedly raped a 15-year-old boy, also detained in the facility. Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] had denied doing so, confessed to the act, recanted, then apparently "confessed" again. At some point, the accused asked SSG [REDACTED] if the abusive behavior the detainees were being subjected to was permissible. SSG [REDACTED] told the accused something to the effect of "what you don't understand is that we don't get the chance to do this stuff in the civilian world." CPL [REDACTED] then added that he "loved this shit." When pressed, both SSG [REDACTED] and CPL [REDACTED] stated that they were "within their rights" to abuse detainees. The accused observed that one of the detainees was bleeding from his wrist were he was still handcuffed or possibly the knee. The accused commented on this bleeding to the MP and asked if the abuse should stop. CPL [REDACTED] urged the accused and others to continue with the abuse, and the accused and other individuals participating in fact did continue.

9. Notwithstanding SSG [REDACTED] and CPL [REDACTED] assertions that the abusive behavior was "within their rights," the accused knew based on his training, experience, and education that such behavior was illegal, immoral, and without legal justification or excuse. Nevertheless, the accused assisted the MP in abusing the detainees.

10. SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], SPC [REDACTED] and the accused continued to abuse the detainees. The accused was present for one hour, but did not participate in the abuse of the detainees for the full hour. SPC [REDACTED] stood by encouraging the other MP and holding a camera although the accused is not certain that pictures were taken with the camera. [REDACTED] translated for the MP and assisted in yelling at the detainees. SPC [REDACTED] did not take part in the abuse. During this period of abuse, the group of MP (SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]), SPC [REDACTED], and [REDACTED] entered into a silent agreement to abuse the detainees. Ultimately the detainees were handcuffed with their naked bodies pressed tightly together in such a fashion as to suggest that the men were sodomizing one another. While in this position, both CPL [REDACTED] and the accused used their feet to press the detainees closer together. At no time during the abuse did the detainees resist in any way or appear to be a threat. To the contrary, the detainees were in a state of terror, pain, and hopelessness throughout the abuse.

11. Prior to handcuffing the detainees together, the accused, along with SSG [REDACTED], CPL [REDACTED], and SPC [REDACTED], yelled loudly at the detainees and with their voices and with various hand signals, compelled the detainees to crawl along the floor and perform various exercises. The accused did this himself and also in conjunction with the other individuals. Additionally, SPC [REDACTED] poured cold water on the naked detainees anytime the detainees would try to close their eyes. Because it was November and night, the cold water greatly chilled the detainees. SPC [REDACTED] also threw a nerf football at the detainees, striking them while they were handcuffed on the floor. The accused threw the same ball as well at the detainees, but did not actually contact any of the detainees with the ball. At one point SPC [REDACTED] grabbed one detainee by the throat and slapped

the detainee several times while asking the detainee "why he raped that kid." SPC [REDACTED] also screamed and laughed at the detainees pointing out that the detainees had "small dicks" and that she was not sexually interested in "anything these guys had." This abuse was carried out in the open in tier 1B. In addition to the MI and MP soldiers present, Iraqi Corrections Officers and other detainees witnessed the humiliation of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

12. During the abuse of the detainees, CPL [REDACTED] and SPC [REDACTED] laughed at various times and seemed to be enjoying themselves throughout the abuse. From the actions, words, and demeanor of the individuals involved in the abuse, it was clear that the primary purpose of the abuse was simply to provide entertainment for those conducting the abuse, at least with regard to SSG [REDACTED], CP [REDACTED], SPC [REDACTED], and SPC [REDACTED]. The accused, however, showed no signs of personal enjoyment while conducting the abuse but remained very serious during the incident. There was no indication whatsoever that the detainees were to be questioned for intelligence value or that the abuse had been directed by any military or civilian personnel other than SSG [REDACTED], CPL [REDACTED], SPC [REDACTED], and SPC [REDACTED]. There were no civilian contract employees or other civilian government employees present encouraging or directing this conduct, nor was there any officers or NCOs senior to SSG [REDACTED]. After the abuse ended, Iraqi Corrections Officers returned the detainees' clothes.

13. Of the three detainees involved, two were alleged to have raped another detainee, a boy aged 15. The boy was examined soon after the alleged rape and although showed signs of nervousness and fear, did not have any physical trauma that would normally be associated with multiple, forcible, anal sodomy. Further investigation revealed that the allegations of rape were unfounded. At the time of the abuse by the accused and his co-conspirators, the men were being detained for crimes against fellow Iraqis.

14. During the time period of the abuse on 25 October 2003, the accused did not know whether or not the detainees had in fact raped anyone. Prior to the end of the abuse on or about 25 October, SPC [REDACTED], a friend of the accused, left the scene of abuse. SPC [REDACTED] did not participate in the abuse. SPC [REDACTED] later testified during the Article 32 hearing of SPC [REDACTED] that the accused made the statement to him to the effect of "Izzy, you're not going to tell anyone are you?" SPC [REDACTED] testified during the hearing that this statement was made as SPC [REDACTED] prepared to leave tier 1B the night of the abuse. SPC [REDACTED] left the hard site on the night of 25 October 2003 prior to the end of the abuse and before the accused left the hard site.

#### IV. PROTECTIONS OF CIVILIAN DETAINEES

15. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], while not enemy prisoners of war, were civilian internees entitled to the protections of Geneva Convention Relative to the Protection of Civilians in Time of War (GC IV). GC IV, Article 5 requires that



civilian internees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] be treated with humanity. GC IV, Article 100, requires that the disciplinary regime in places of interment shall be consistent with humanitarian principles and that under no circumstances should a disciplinary regime include regulation imposing on internees any physical exertion involving physical or moral victimization. Further, Article 100 prohibits punishment drills.

16. Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and other Detainees also proscribes treatment for detainees such as Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. Paragraph 1-5(b) prohibits inhuman treatment including corporal punishment and all cruel and degrading treatment. Paragraph 1-5(c) prohibits all acts of violence to include reprisals and those acts subjecting detainees to public curiosity.

17. Army Regulation 34-52, Intel Interrogation, states that the Geneva Conventions and U.S. policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation. This prohibition applies to all detainees and included, on 25 October 2003, Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

**V. CHARGE 1, THE SPECIFICATION - CONSPIRACY TO MALTREATMENT**  
**(In Violation of Article 81, UCMJ).**

18. On or about 25 October 2003, at the BCCF, the accused entered into an unspoken agreement with CPL [REDACTED], SSG [REDACTED], SPC [REDACTED], SPC [REDACTED], Mr. [REDACTED] and others to maltreat subordinate, an offense under the Uniform Code of Military Justice. While this agreement continued to exist and while the accused remained party to the agreement, CPL [REDACTED] performed one of the overt acts alleged, that is, CPL [REDACTED] forced three detainees to conduct various physical exercises while the detainees were naked. The overt acts included forcing the detainees to roll on the floor while naked. While the agreement continued to exist and while the accused remained party to the agreement, SPC [REDACTED] also performed overt acts by throwing a nerf football and pouring water on the detainees during the time of the abuse.

19. The detainees who were abused by the accused and his co-conspirators were subject to the orders of CPL [REDACTED], SPC [REDACTED], SSG [REDACTED], SPC [REDACTED], and the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

20. On or about 25 October 2003, at the BCCF, the accused maltreated these individuals by forcing the detainees to conduct various physical exercises while the detainees were naked and by handcuffing the detainees together on the floor while the detainees were naked. Forcing the detainees to perform these exercises and handcuffing the detainees together on the floor was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain

and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

21. During the night of 25 October in which the detainees were abused in tier 1B, the accused never withdrew from the conspiracy. Specifically, the accused did not take an affirmative act wholly inconsistent with his adherence to the unlawful agreement that would show that he had severed all connection with the conspiracy.

**VI. CHARGE II, THE SPECIFICATION – MALTREATMENT OF A DETAINEE**  
**(In violation of Article 93, UCMJ)**

22. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], as detainees of the BCCF were subject to the orders of the accused. The detainees were required to follow the lawful orders of the accused with regard to their movements and behavior within the BCCF.

23. On or about 25 October 2003, at the BCCF, Abu Ghraib, Iraq the accused maltreated three detainees, [REDACTED] and [REDACTED] by forcing these men, while the men were naked, 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. Forcing the detainees to crawl in this manner and handcuffing the detainees to each other was harmful, abusive, rough and unjustifiable treatment. Under the circumstance this conduct resulted in physical pain and mental suffering and was unwarranted, unjustified, and unnecessary for any lawful purpose.

**VII. ADDITIONAL INFORMATION IN AGGRAVATION:**

24. The accused has since learned that the humiliating and sadistic acts of maltreatment and dehumanization described herein are unacceptable in any culture, but especially so in the Arab world. Homosexual acts are against Islamic law and Arab men consider it humiliating to be naked in front of others. Placing the detainees together in a manner to simulate acts of homosexuality seriously violated the tenets of Islamic law and degraded the detainees.

25. Over the past few months, both Middle Eastern and Western media outlets have broadcast some of the attached photographs. The accused's and his co-conspirators' acts on the night of 25 October, as reflected in these photographs, contributed to tarnishing the reputation and image of the United States Armed Forces and the United States in the eyes of many Americans as well as many individuals throughout the world.

**VIII. EXTENUATION AND MITIGATION:**

26. On the evening of 20 September 2003, at approximately 2145 hours, Abu Ghraib was the target of a mortar attack. As the accused and his fellow soldiers prepared to begin interrogations that evening, a mortar impacted in very near proximity to the

Interrogation Control Element tent where the accused was located. After initially seeking cover on the floor of the tent the accused and his fellow soldiers scrambled to acquire their personal protective equipment from their indoor sleeping area. The soldiers had been told that a "Risk Assessment" had been completed and that it was safe to work outside. The accused and SSG [REDACTED] were out the door of the tent approximately 5-10 yards. SSG [REDACTED] entered the tent's doorway when suddenly a second mortar hit within 5-10 yards of SSG [REDACTED] SSG [REDACTED] and the accused. Everyone hit the ground. SSG [REDACTED] yelled, "I'm hit, I'm hit". The accused almost immediately returned to SSG [REDACTED]'s side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which SSG [REDACTED] began to triage immediately. The accused turned to go back to the impact site to continue to assist the wounded. The accused worked on a fellow analyst by the name of SGT [REDACTED] for a long time attempting to provide aid. SGT [REDACTED] was one of two soldiers who was in the immediate impact zone of the second mortar. As SSG [REDACTED] handed SSG [REDACTED] off to the medics on the scene he came upon the accused still in attendance of SGT [REDACTED]. SSG [REDACTED] began to assist the accused and the medics in revival and stabilization efforts of SGT [REDACTED]. The accused performed chest compressions on SGT [REDACTED] and verbally comforted and encouraged him unfalteringly saying "you are going to make it, you can do this, and we are here for you". The accused and SSG [REDACTED] personally loaded SGT [REDACTED]'s ravaged body into the medical evacuation chopper and spent the next several hours performing evacuation operations of the other dead and wounded. The accused insisted that SSG [REDACTED] and he follow SGT [REDACTED] to the hospital to continue to see that SGT [REDACTED]'s medical needs were being met. The accused and SSG [REDACTED] did check on SGT [REDACTED] condition after first ensuring that other soldiers had been attended to. The accused learned from the hospital staff that SGT [REDACTED] was pronounced DOA. The accused and SSG [REDACTED] determined where he had been taken and secured another chopper ride to the morgue facility where they viewed SGT [REDACTED] in his interim resting place. The accused and SSG [REDACTED] said good-bye to their fallen comrade and together began their grieving process with a hand on SGT [REDACTED]'s body bag as they said goodbye to him. The accused was wounded during this mortar attack and was subsequently awarded the Purple Heart. The accused, based on this incident as well his overall duty performance was recommended for the Bronze Star award for meritorious service. That award was approved but because the soldier was flagged pending his investigation, the award was withheld from presentation.

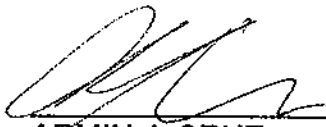
27. The accused has agreed to cooperate with the government in the investigation of misconduct within the BCCF. Additionally, the accused has cooperated with the government by waiving his Article 32 hearing, entering an Offer to Plead Guilty, and agreeing to a trial date convenient to the government. This cooperation has saved the government considerable time, expense, and effort in resolving the accused's case.

**IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE**

28. The government and the defense agree that this stipulation of fact plus attached enclosures are admissible at trial and may be considered by the military judge in determining the providence of the accused's pleas and in determining an appropriate sentence. The attached enclosures include five photographs labeled 004, 005, 006, 007, and 008. The accused appears in photographs 004 and 005 as the only soldier in black PT shorts.



Civilian Defense Counsel



ARMIN J. CRUZ  
SPC, USA  
Accused



MAJ, JA  
Trial Counsel

BRIEF DATE	NAME
20040719	CRUZ, ARMIN JOHN

PROSECUTION EXHIBIT 2 FILED OFFERED R. 6A ADMITTED R. 6

DEFENSE EXHIBITS ADMITTED INTO EVIDENCE

003109



Combined Joint Task Force 7  
Joint Interrogation and Debriefing Center  
*Abu Ghurayb*  
*Baghdad, IRAQ*



# Certificate of Appreciation

is presented to:

SPC Armin Cruz

October 2003 – February 2004

Your support of the Joint Interrogation and Debriefing Center in Baghdad, Iraq. You made an immediate impact on operations by providing actionable analytical support during interrogations of several top Iraqi prisoners. Your dedication to duty reflects great credit upon yourself, your unit, and the United States Army.

SGT, USA

Fusion Analysis Cell NCOIC

CW2, MI

Fusion Analysis Cell SA

CPT, MI

Fusion Analysis Cell OIC

**Excerpts from the AR 15-6 Investigation of the**  
**Abu Ghraib Prison and 205<sup>th</sup> Military Intelligence Brigade**  
**By LTG Anthony R. Jones and MG George R. Fay**

From the AR 15-6 Investigation of LTG Jones, 7. a. (3) at Page 12:

- "At Abu Ghraib, the lack of an MI commander and chain of command precluded the coordination needed for effective operations. At the same time, LTC [REDACTED] failed to execute his responsibilities as Chief, JIDC."

From the AR 15-6 Investigation of LTG Jones, 8. a. at Page 15:

- "This report, so far, has discussed the OPLAN background, operational environment, and policy, doctrine and structural decisions that created conditions which allowed abuses at Abu Ghraib to occur."

From the AR 15-6 Investigation of LTG Jones, 8. e. (2) at Page 16:

- "CJTF-7 leaders and staff actions, however, contributed indirectly to the questionable activities regarding alleged detainee abuse at Abu Ghraib."

From the AR 15-6 Investigation of LTG Jones, 8. f. (1) at Page 17:

- "The leaders from the 205<sup>th</sup> MI and 800<sup>th</sup> MP Brigades located at Abu Ghraib or with supervision over Abu Ghraib, failed to supervise subordinates or provide direct oversight of this important mission. The lack of command presence, particularly at night, was clear."

From the AR 15-6 Investigation of MG Fay, at Page 17:

- "In the critical early stages of the JIDC, as it was being formed, Abu Ghraib needed a LTC to take total control. The need was for a leader to get the JIDC organized, to set standards, enforce discipline, create checks and balances, establish quality controls, communicate a zero tolerance for abuse of detainees, and enforce that policy by quickly and efficiently punishing offenders so that the rest of the organization clearly understood the message. Well-disciplined units that have active, involved leaders both at the NCO and Officer level are less likely to commit abuses or other such infractions. If such instances do occur, they are seldom repeated because those leaders act aggressively to deal with the violators and reemphasize the standards."

From the AR 15-6 Investigation of LTG Jones, 8. g. at Page 18:

- "Other Contributing Factors. No single, or simple, cause explains why some of the Abu Ghraib abuses happened. In addition to the leadership failings discussed above, other contributing factors include: (1) Safety and security conditions at Abu Ghraib. Resources that might otherwise have been put towards detention operations instead had to be dedicated to force protection. In addition, the difficult circumstances for Soldiers, including a poor quality of life and the constant threat of death or serious injury, contributed to Soldiers' frustrations and increased their levels of stress. Facilities at Abu Ghraib were poor. Working and living conditions created a poor climate to conduct interrogation and detention operations to standard."

From the AR 15-6 Investigation of MG Fay, paragraph (4) at Page 8:

- "Looking beyond personal responsibility, leader responsibility and command responsibility, systemic problems and issues also contributed to the volatile environment in which the abuse occurred. These systemic problems included: inadequate interrogation doctrine and training, an acute shortage of MP and MI Soldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq

003111 DEFENSE EXHIBIT B FID

OFFERED R 63 ADMITTED R. 64



Campaign, and intense pressure ~~fe~~ by the personnel on the ground to produce actionable intelligence from detainees."

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Page 42:

- "LTG Sanchez did not believe significant pressure was coming from outside of CJTF-7, but does confirm that there was great pressure placed upon the intelligence system to produce actionable intelligence (Reference Annex B, Appendix 1, SANCHEZ)."

From the AR 15-6 Investigation of MG Fay, paragraph (5) at Page 111:

- "Finding: Leaders failed to take steps to effectively manage pressure placed upon JIDC personnel."

From the AR 15-6 Investigation of MG Fay, paragraph (3) at Pages 10 and 88:

- "The use of nudity as an interrogation technique or incentive to maintain the cooperation of detainees was not a technique developed at Abu Ghraib, but rather a technique which was imported and can be traced through Afghanistan and GTMO. As interrogation operations in Iraq began to take form, it was often the same personnel who had operated and deployed in other theaters and in support of GWOT, who were called upon to establish and conduct interrogation operations in Abu Ghraib. The lines of authority and the prior legal opinions blurred. They simply carried forward the use of nudity into the Iraqi theater of operations. The use of clothing as an incentive (nudity) is significant in that it likely contributed to an escalating 'de-humanization' of the detainees and set the stage for additional and more severe abuses to occur."

From the AR 15-6 Investigation of MG Fay, paragraph (11) at Page 45:

- "LTC [REDACTED] and ten other soldiers were wounded in the mortar attack that occurred on 20 September 2003. Two soldiers died in that attack. LTC [REDACTED] was extremely traumatized by that attack, especially by the two deaths and the agony suffered by one of those soldiers before his death. He was still very emotional about that attack when interviewed for this investigation on 27 May 2004. He said he thinks about the attack and the deaths daily. That attack also had an impact on a number of other Soldiers at Abu Ghraib as did the very frequent mortar attacks that occurred at Abu Ghraib during this entire period. The Soldiers' and civilians' morale at Abu Ghraib suffered as the attacks continued. Additionally, there was a general feeling by both MI and MP personnel that Abu Ghraib was the forgotten outpost receiving little support from the Army. (Reference Annex F, Appendix 3, Mortar Attacks). The frequency of these attacks and the perceived lack of aggressive action to prevent them were contributing factors to the overall poor morale that existed at Abu Ghraib."

003112

REMOVED BATES PAGES 3113 - 3179  
(RECORD OF TRIAL – SPC ARMIN J. CRUZ)

(67 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE  
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF  
OF SPC CRUZ AND OTHER RECORDS CONTAINING PRIVATE  
INFORMATION, WHICH WERE DETERMINED TO BE  
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST AND  
DUPLICATES OF NONRESPONSIVE DOCUMENTS FOUND AT  
BATES 2819 - 2893

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.  
SPC, U.S. Army,  
SVC Co., 502nd MI BN, 504th MI BDE  
APO AE 09342

STIPULATION OF EXPECTED  
TESTIMONY

ISG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if ISG [REDACTED] were present and testifying under oath, he would testify as follows:


1. I am SPC Cruz [REDACTED]. I have known and worked with SPC Cruz for over 3 months on a daily basis. As his first sergeant, I assign duties and details to him and monitor his well-being and appointments.
2. I have observed SPC Cruz' duty performance, and he has never failed to show for duty on time, and has always been at the right place and time for all training and details. He has worked hard for me and performed up to all of my expectations as a soldier and has never performed poorly.
3. SPC Cruz' attitude has been good. Although he is understandably very concerned about his case, and has a reason to lose focus on his job, he has kept his focus, has not adopted a poor attitude, and has shown no signs of "copping an attitude" or unwillingness to work.
4. SPC Cruz interacts with the other soldiers from the company very well. I made it a point to integrate him into the company and welcome him. He has not had any altercations or problems with anyone in the company or battalion.
5. I have not had to perform or recommend any corrective training for SPC Cruz. He has not failed to attend mandatory training, show up for work, or perform details during his assignment to my company. I have not had to recommend anything in regards to work for SPC Cruz. He has been assigned a job to run the MWR area in our barracks and he has taken the initiative to set standards and ensure they are adhered to.
6. Considering SPC Cruz' performance since being assigned to my company, I believe SPC Cruz has been humbled by the allegations and has already learned what is right and what is wrong. I believe that he can be rehabilitated. Furthermore, I believe that he was impressionable and overwhelmed by the circumstances surrounding the prison and made a mistake in judgment by participating in detainee maltreatment. I do not condone what has happened at the prison, however, I realize how powerful peer pressure can be and someone as young and inexperienced as SPC Cruz can easily make a mistake in judgment. To be involved in armed combat, see what happens to soldiers when wounded or injured is a very emotional experience and can overwhelm most people. We as soldiers need to set emotions aside, do what is right, maintain the discipline that we have been taught and conduct ourselves professionally. SPC Cruz made errors in judgment and his actions are not to be dismissed lightly. Having said that, based on my interactions with SPC Cruz, I still believe that he can be rehabilitated.


DEFENSE EXHIBIT 2 00318

OFFERED R. 103 ADMITTED R. 105

7. SPC Cruz has done every duty as required, never been in trouble and always kept the NCO support channel informed on his schedule so we could assist him. I can attest that SPC Cruz has fulfilled all duties assigned to him and has not one time performed his duties poorly. Despite everything going on, he has continued to soldier on and I respect that a lot.

  
MAJ, JA  
Trial Counsel

  
ARMIN J. CRUZ  
SPC, U.S. ARMY  
Accused

  
Defense Counsel

003181

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.  
SPC, U.S. Army,  
SVC Co., 502<sup>nd</sup> MI BN, 504<sup>th</sup> MI BDE  
APO AE 09342

STIPULATION OF EXPECTED  
TESTIMONY

SSG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. SPC Armin Cruz was assigned to my section in the Joint Interrogation and Debriefing Center, Fusion Analysis Cell, in November 2003, and did an outstanding job throughout the period of his service with me. When initially assigned to me, he was placed in the Former Regime Elements Cell. A few weeks later, seeing his work ethic, dedication, and attention to detail, I reassigned him as my FRE NCOIC in charge of two other junior enlisted soldiers. Once he was transferred into my section, I had daily contact with him until his departure from the JIDC around Feb-Mar 2004. In addition, we have kept in touch via email since going our separate ways.
2. As the FRE NCOIC, SPC Cruz was responsible for the integration of newly assigned personnel into the FRE teams. He ensured the proficiency and accountability of intelligence collection efforts by intelligence analysts assigned to the FRE Tiger Team. SPC Cruz was also accountable for the timely dissemination of team products to the necessary parties as well as the day-to-day management of the FRE team.
3. Additionally, SPC Cruz was also responsible for all-source analysis and the integration of intelligence products in support of the ICE Tiger Teams and Fusion cell. He was tasked to identify intelligence gaps and provide input to direct collection efforts. SPC Cruz also provided assessments and recommended courses of action, participated to the greatest extent possible to ensure accurate analytical exchanges, and was also responsible for relaying all new information obtained to team members.
4. SPC Cruz maintained knowledge of assigned cases and prioritized detainees based on intelligence value. He also coordinated with the Senior Analyst for the creation of products to assist the team's interrogation efforts. SPC Cruz additionally provided all final intelligence available in order to assist the team assessment and DAB memorandums to support Transfer and Release nominee profiles.
5. While working in the Fusion Analysis Cell, SPC Cruz personally wrote 10 Analytical Assessments, which should normally be executed by senior, Corp or Division level, Analysts. His analytical assessments included, but were not limited to the following areas-- General Security Organization, Special Security Organization, Iraqi Intelligence Service, with special emphasis on the Ghafiqi Project, Mohammeds Army and the Former Regime Elements remnants within Iraq. These analytical assessments were distributed around Iraq, some of which went as high as the Secretary of Defense.

DEFENSE EXHIBIT

003182

OFFERED R. 103 ADMITTED R. 105

6. SPC Cruz' work ethic, motivation, dedication and attention to detail initially impressed me, and have continued to do so. From what I have observed, as his supervisor, I feel he is more than capable and competent. He has continuously created a much happier environment, greatly assisting everyone with those long days spent within the office. He has made a significant impact within the organization.

7. As his supervisor, between November 2003 and March 2004, I had opportunities every day to observe his duty performance. SPC Cruz was basically my right hand man. He served as not only the NCOIC of one of my teams, but pretty much as my second in charge, when I was out performing other duties. He never refused to pull extra duty whenever I needed someone to help. SPC Cruz was and is an outstanding analyst and soldier. He was one of my best soldiers, with his outstanding work ethic, attention to detail, and humorous ways he had about him. Overall, I couldn't have asked for a better troop.


8. SPC Cruz' attitude and work ethic were amazing. Although I had set hours for him to work, SPC Cruz often times came in early and stayed much later than his duty hours, to assist his teammates, and ensure everything was going as planned. Although morale was often times low in Iraq, SPC Cruz always tried to keep a positive attitude on life, and passed those vibes off to the rest of the office. It allowed for a more relaxed environment and assisted with the section's productivity.


9. SPC Cruz worked extremely well with other soldiers. As one of my section leaders, SPC Cruz did not rule with an iron fist. He listened to everyone's opinions on the situation, and then acted from there. He never left anyone out, and always made sure his entire section was involved in any decisions that were being made. He worked well with my other section leaders, and also assisted them with their duties, when assistance was necessary.


10. Although we became very good friends, SPC Cruz also recognized that I was his supervisor, and that he had to listen to what I had to say. As such, he didn't gripe or complain, or even ask why, he just sucked it up, and moved on. His level of professionalism while in the combat zone was uncanny. Never did he talk down to anyone offering him suggestions. To the contrary, he would take in those opinions, with that of the others in the section, and mold them into his final piece.

11. I strongly believe SPC Cruz is capable of rehabilitation. Under the conditions, and based on everything that he experienced, I strongly feel he will have no problems with his rehabilitation. SPC Cruz is an outstanding soldier and wonderful friend, and anyone who was close to him will tell you the same.

12. SPC Cruz is a soldier who has definitely separated himself from the rest. SPC Cruz was by far one of the best soldiers with whom I have ever had the privilege of working.

  
MAJ, JA  
Trial Counsel

  
ARMIN J. CRUZ  
SPC, U.S. ARMY  
Accused

  
Defense Counsel

003183

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.  
SPC, U.S. Army,  
SVC Co., 502<sup>nd</sup> MI BN, 504<sup>th</sup> MI BDE  
APO AE 09342

STIPULATION OF EXPECTED  
TESTIMONY

SSG [REDACTED]

11 September 2004

It is hereby agreed by and between the trial counsel and defense counsel, with the express consent of the accused, that if SSG [REDACTED] were present and testifying under oath, he would testify as follows:

1. Armin Cruz and I are members of the 321st MI Battalion based in Austin, Texas. I first met SPC Cruz during his initial visits to the unit after enlisting in the Army Reserves.
2. Right from the start SPC Cruz struck me as an educated, articulate young man. Over a drill or two I learned that he worked in a junior managerial position within the national private day-care industry. As a father who'd entrusted his child to the same organization, I gained even more respect for SPC Cruz. Parenting, just as surrogate parenting, is a task which requires discipline, compassion, and the ability to reason and be highly organized, structured and consistent in all aspects of the job. I too work in an industry where the male is only recently making inroads. I am a rehabilitative massage therapist. As an anthropologist by degree, I have studied human nature and found my way naturally to all that I've done in my career which involves people. We are both Red Cross certified Professional Rescuers as well. Specialist Armin Cruz is one of these special people.
3. SPC Cruz was my Analyst when we were first sent to Abu Ghraib. I am proud to have him as a friend, a "brother" and a team member. As an analyst he excels in his work. He constantly provided good data and enthusiastically immersed himself in the job, always making an extra effort. On one occasion he constructed a spread sheet specific to our teams' data making it easier to analyze as well as to report. As friends and team members we lived and worked together during our stay at Abu, even after our managerial staff began juggling team members from one Tiger Team to the next. Much to our dismay SSG Day and I lost SPC Cruz to another team and were unable to reacquire him in spite of our protestations that our team integrity had been compromised.
4. Analysts were in shorter order at Abu and were being heavily multi-tasked. A huge influx of civilian contractors ensued. The analysts endured a great burden at Abu, being shuttled from team to team, being required to hot swap shifts at the whim of the managers of the Interrogation Control Element. When the work day was done, as well as when it began, we would end or begin our day as "brothers" and hooch mates over a pot or two Starbucks coffee. It was something we shared with the entire unit as well as passers-by. This time always included marking down our calendar. "Another day behind us in this hell hole, another day closer to going home" was the oft unspoken mantra. We always shared all that our friends and family sent us. SPC Cruz is very generous and selfless person, never placing his needs before the needs of others.

DEFENSE EXHIBIT G FID

OFFERED R. 103 ADMITTED R. 105


003184

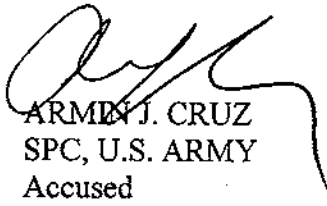
5. On the evening of 20 September 2003 at approximately 2145 hours our facility was once again the target of a mortar attack. We feared this moment because of the fact that we were cleared, as a result of an allegedly conducted Risk Assessment, to work outside at night in tents within the confines of the High Value yard at Abu Ghraib. The prison at that time had nearly unlimited indoor work space available in the form of empty cells and halls. Just prior to our arrival at Abu a mortar attack had killed on the order of 20 prisoners and injured many more. The proximity of our tents to the "cage" and the previous impact site struck fear in our minds. As we prepared to begin interrogations that evening, suddenly a mortar impacted in very near proximity to our Interrogation Control Element tent. After initially seeking cover on the floor of the tent we scrambled to acquire our personal protective equipment from our indoor sleeping area. I left the tent immediately behind my teammates Specialist Armin Cruz and Staff Sergeant [REDACTED]. Cruz and [REDACTED] were out the door of the tent approximately 5-10 yards as I breached the tent's doorway when suddenly a second mortar hit within 5-10 yards of them. As I hit the ground I heard SSG [REDACTED] yell, "I'm hit, I'm hit". Specialist Cruz almost immediately returned to my side with SSG [REDACTED] in tow. SSG [REDACTED] had taken numerous shrapnel hits which I began to triage immediately. Specialist Cruz turned to go back to the impact site to continue to assist the wounded. He worked on a fellow analyst by the name of Sergeant [REDACTED] for a long time who was one of two soldiers who were in the immediate impact zone of this second mortar. As I handed SSG [REDACTED] off to the medics on the scene I came upon Specialist Cruz still in attendance of our fallen comrade. I began to assist Cruz and the medics in revival and stabilization efforts of our fallen comrade. Specialist Cruz performed chest compressions on our friend and verbally comforted and encouraged Sergeant [REDACTED] unfalteringly to hang in there, "you are going to make it, you can do this, and we are here for you". Our Red Cross training and military Combat Lifesaver training was being fully utilized. We personally loaded Sgt [REDACTED] ravaged body into the evac chopper and spent the next several hours performing evac operations of the other dead and wounded. Specialist Cruz insisted that we follow Sgt [REDACTED] to the hospital to continue to see that he was being cared for. We were able to do this once all of the casualties were transported to medical facilities and were being attended to. Sadly, we learned from the hospital staff that Sgt [REDACTED] was pronounced DOA. We determined where he had been taken and secured another chopper ride to the morgue facility where we viewed Sgt [REDACTED] in his interim resting place. We sadly said goodbye to our fallen comrade and together began our grieving process with a hand on [REDACTED] body bag as we said goodbye to him. Thereafter we were picked up by our rear element and interviewed regarding the occurrence.

6. SPC Cruz, our teammate and I went to SFC [REDACTED] who was our detachment's NCOIC, and collectively asked for help in the form of counseling and were essentially laughed off. I personally pursued speaking with the Chaplain for the 205th MI Brigade whom I know well and was referred to the Chaplain in charge at Abu, who gave me very little of her time and no help to speak of. Access to Combat Stress assistance was provided one time very shortly after the mortar attack in a group session and to my knowledge, leadership made no concerted effort to determine whether individuals or the group needed any further help. We all dealt with the event and the situation in different ways, but SPC Cruz and I discussed issues regularly among ourselves, even after SPC Cruz was assigned to different teams and work schedules.

7. Specialist Cruz has always demonstrated all of the qualities which I referred to throughout the foregoing character reference. He is a brave, selfless human being whom I shall forever hold in the highest regard. He is my brother and has my unwavering support and respect. We have survived having unthinkingly been thrust into harms way by a commander who has hopefully learned a lesson, unfortunately at the ultimate cost, and are better men for it.



  
MAJ, JA  
Trial Counsel

  
ARMIN J. CRUZ  
SPC, U.S. ARMY  
Accused

  
Defense Counsel

003186

APPELLATE EXHIBITS

003187

# Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States

v.

SPC Armin Cruz

## 1. ACCUSED

I have been informed that COL [REDACTED] is the military judge detailed to the court-martial to which the charges and specifications pending against me have been referred for trial. After consulting with my defense counsel, I hereby request that the court be composed of the military judge alone. I make this request with full knowledge of my right to be tried by a court-martial composed of (commissioned) <sup>1</sup> officers (and, if I so request, enlisted personnel). <sup>2</sup>

CRUZ, ARMIN

SPC

x [Signature]

10 September 2004

## 2. DEFENSE COUNSEL

Prior to the signing of the foregoing request, I fully advised the above accused of his/her right to trial before a court-martial composed of (commissioned) <sup>1</sup> officers (and of his/her right to have such court consist of at least one-third enlisted members not of his/her unit, upon his/her request). <sup>2</sup>

MAJ SK  
Civilian

10 September 2004

## 3. TRIAL COUNSEL

Argument is (not) requested.

MAJ

10 September 2004

## 4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (x one) ☒ approved ☐ disapproved <sup>3</sup>

COL

11 Sep 04

1. Delete when accused is a warrant officer or enlisted member.

2. Delete when accused is a commissioned officer or warrant officer.

3. When request is disapproved, the basis for the denial must be put on the record. (See MCM, 1984, RCM 903(c))  
DD Form 1722, OCT 84  
Replaces Edition of 1 Oct 69 which may be used until supply is exhausted

APPELLATE EXHIBIT I

RECOGNIZED R. 8

003188

UNITED STATES )

v. )

Offer to Plead Guilty )

Cruz, Armin J. )

SPC, U.S. Army, )

Headquarters and Headquarters )

Service Company, )

502nd Military Intelligence Battalion, )

504<sup>th</sup> Military Intelligence Brigade, )

III Corps, )

Victory Base, Iraq, APO AE 09342 )

4 September 2004

\*\*\*\*\*

1. I, SPC Armin J. Cruz, the Accused, have examined the Charges preferred against me and all statements and documents attached thereto. After consulting with my trial defense counsel and being fully advised that I have a legal and moral right to plead not guilty to the Charges and Specifications under which I may be tried, I offer to plead guilty as follows:

To all Specifications and Charges: Guilty

2. I offer to plead to the Charges as stated above, provided that the Convening Authority will take the action set forth in Appendix I. There are no other promises, conditions, or understandings regarding my proposed pleas of guilty that are not contained in this offer and the quantum at Appendix I.

3. As part of this offer, I also agree to the following:

a. I agree to enter into a written stipulation of fact correctly describing those offenses to which I am offering to plead guilty. I further agree that the Military Judge may use this stipulation during the guilty plea inquiry and in adjudging an appropriate sentence.

b. Upon receipt of a grant of testimonial immunity from the Convening Authority, I agree to cooperate fully with the Trial Counsel in the investigations and prosecutions of Specialist [REDACTED] Sergeant [REDACTED]; Staff Sergeant [REDACTED], II, Corporal [REDACTED] Jr.; Specialist [REDACTED]; Specialist [REDACTED], Private First Class [REDACTED] and any other soldier or civilian charged based on misconduct at the Baghdad Central Confinement Facility at Abu Ghraib. Specifically, the term "cooperate fully" as used herein shall mean: (a) the full disclosure to the Trial Counsel of all information known by me and relating to the treatment, maltreatment or alleged abuse of detainees at Baghdad Central Correctional Facility, Abu Ghraib, Iraq; (b) the identification of individuals in digital photographs on compact disc titled "CPU Exam" in the "Abu" Criminal Investigation Division file; (c) personally testifying at all such Article 32 investigations, courts-martial and evidentiary hearings relative to the investigation and prosecution of Sergeant [REDACTED] Corporal [REDACTED]

[REDACTED]; Specialis [REDACTED]; Specialis [REDACTED] and Private  
First Clas [REDACTED] any other soldier or civilian charged based on misconduct at the  
Baghdad Central Confinement Facility at Abu Ghraib.

c. I understand that I have a right to be tried by a court consisting of at least three officer members, or by a court consisting of at least one-third enlisted members. None of the members would come from my company. I further understand that I have a right to request trial by military judge alone, and if approved, there would be no court members and the judge alone would decide whether I am guilty or not guilty. I request trial by judge alone.

c. I agree that the Government will not be required to physically produce any witnesses from the United States to testify on my behalf pursuant to R.C.M. 1001(e). I understand that this does not constitute a waiver of my right to offer into evidence other forms of evidence under R.C.M. 1001(c), including, but not limited to, telephonic testimony, Stipulations of Expected Testimony, letters, photographs, awards and certificates.

4. I am satisfied with the advice of Mr [REDACTED]. He has advised me of the meaning and effect of my guilty plea, and I understand the meaning and effect thereof.

5. The government initiated the negotiations for this offer to plead guilty, however I have made the decision to plead guilty freely, voluntarily, and with the advice of counsel. No person has attempted to force or coerce me into making this offer to plead guilty.

6. If, before or during trial, any specification is amended, consolidated or dismissed with my consent for multiplicity or other reason, this agreement will remain in effect.


7. I understand that I may request to withdraw the plea of guilty at any time before my plea is accepted and that if I do so, this agreement is canceled. This agreement will also be canceled if:


a. I fail to plead guilty as agreed above;

b. The Stipulation of Fact is modified at any time without the consent of either myself or the Trial Counsel; or

c. The Military Judge either refuses to accept my plea of guilty or changes my plea of guilty during the trial.

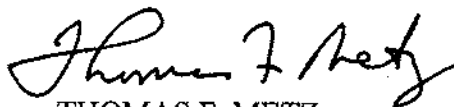
8. This writing, including Appendix I (Quantum), includes all terms and conditions of this Offer to Plead Guilty and contains all promises made to me or by me concerning my plea of guilty. There are no other terms or conditions that are not contained in this writing.

  
ARMIN J. CRUZ  
SPC, USA  
Accused

  
Civilian Defense Counsel

The offer to plead guilty dated 4 September 2004 is:

(accepted) ~~(not accepted)~~



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

003191

UNITED STATES

v.

APPENDIX I (QUANTUM)

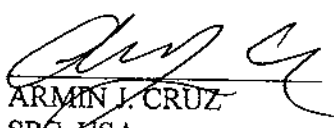
Cruz, Armin J.  
SPC, U.S. Army,  
Headquarters and Headquarters  
Service Company,  
502<sup>nd</sup> Military Intelligence Battalion,  
504<sup>th</sup> Military Intelligence Brigade,  
III Corps,  
Victory Base, Iraq, APO AE 09342

4 September 2004

\*\*\*\*\*

1. I, SPC Armin J. Cruz, offer to plead guilty to the Charges and Specifications, as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority agrees to refer my case to a special court-martial empowered to adjudge a bad conduct discharge.


2. Except as limited above, any other lawful punishments can be approved. The Convening Authority will apply any credit given by the military judge to the approved sentence.

  
ARMIN J. CRUZ  
SPC, USA  
Accused

  
Civilian Defense Counsel

The offer to plead guilty dated 4 September 2004 and Appendix I (Quantum) is:

(accepted) ~~(not accepted)~~

  
THOMAS F. METZ  
Lieutenant General, USA  
Commanding

003192

UNITED STATES OF AMERICA

v.

CRUZ, Armin J.  
SPC, U.S. Army,  
SVC Co., 502<sup>nd</sup> MI BN, 504<sup>th</sup> MI BDE  
APO AE 09342

POST TRIAL AND APPELLATE  
RIGHTS  
(BCD and Special Courts-Martial)

11 September 2004

I, SPC ARMIN J. CRUZ, the accused in the above entitled case certify that my trial defense counsel has advised me of the following post-trial and appellate rights in the event that I am convicted of a violation of the Uniform Code of Military Justice:

1. In exercising my post-trial rights, or in making any decision to waive them, I am entitled to the advice and assistance of military counsel provided free of charge or civilian counsel provided at no expense to the government.
2. After the record of trial is prepared, the convening authority will act on my case. The convening authority can approve the sentence adjudged (as limited by any pretrial agreement), or he can approve a lesser sentence, or disapprove the sentence entirely. The convening authority cannot increase the sentence. He can also disapprove some or all of the findings of guilty. The convening authority is not required to review the case for legal errors, but may take action to correct legal errors.
3. I have the right to submit any matters I wish the convening authority to consider in deciding what action to take in my case. Before the convening authority takes action, the staff judge advocate will submit a recommendation to him, if applicable. This recommendation is required when there is an adjudged bad-conduct discharge. This recommendation, if made, will be sent to me and/or my defense counsel before the convening authority takes action. If I have matters that I wish the convening authority to consider, or matters in response to the staff judge advocate's recommendation, such matters must be submitted within 10 days after I or my counsel receive a copy of the record of trial or I and/or my counsel receive the recommendation of the staff judge advocate, whichever occurs later. Upon my request, the convening authority may extend this period, for good cause, for not more than an additional 20 days.
4. If the convening authority approves a bad-conduct discharge, my case will be reviewed by the U.S. Army Court of Criminal Appeals (ACCA). I am entitled to be represented by counsel before such court. If I so request, military counsel will be appointed to represent me at no cost to me. If I so choose, I may also be represented by civilian counsel at no expense to the United States. I understand that paragraph six governs my appellate rights if there is not an adjudged or approved bad-conduct discharge.

003193



5. After the ACCA completes its review, I may request that my case be reviewed by the United States Court of Appeals for the Armed Forces (CAAF). If my case is reviewed by that Court, I may request review by the Supreme Court of the United States. I have the same rights to counsel before those courts as I have before the ACCA.

6. If no punitive discharge is adjudged or approved by the convening authority, my case will be examined by a military lawyer, normally at the local installation, for legal error. I have the right to submit allegations of legal error either to the convening authority under paragraph 3 above or directly to the military lawyer reviewing my court-martial, or both. My case will be sent to the general court-martial convening authority for final action on any recommendation by the lawyer for corrective action. If the military lawyer recommends corrective action and my case is sent to the general court-martial convening authority for action, I will be sent a copy of the convening authority's action and the recommendation of the military lawyer after action is taken by the general court-martial convening authority.

7. I also understand that within two (2) years after the sentence is approved, I may request The Judge Advocate General (TJAG) to take corrective action on the basis of newly discovered evidence, fraud on the court, lack of jurisdiction over me or of the offense, error prejudicial to my substantial rights, or the appropriateness of my sentence.

8. I may waive or withdraw review by the appellate courts at any time before completion of the review. I understand that if I waive or withdraw review:

(a) My decision is final and I cannot change my mind.

(b) My case will then be reviewed by a military lawyer for legal error (see paragraph six above). It may also be sent to the general court-martial convening authority for final action.

(c) Within 2 years after the sentence is approved, I may request The Judge Advocate General (TJAG) to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over me or the offense, error prejudicial to my substantial rights, or the appropriateness of the sentence.

9. I have read and had my post-trial rights explained to me by counsel and I acknowledge these rights and make the elections set forth below. (Please initial where appropriate.)


AC a. I understand my post-trial and appellate review rights.

AC b. I would like a copy of the record of trial served on Stephen P. Karns.

AC c. My defense counsel, [REDACTED], will submit R.C.M. 1105 matters in my case.

003194

AC d. If applicable, I want to be represented before the U.S. Army Court of Criminal Appeals by Appellate Defense Counsel appointed by The Judge Advocate General of the Army. I understand that I may contact my Appellate Defense Counsel by writing to Defense Appellate Division, U.S. Army Legal Services Agency (JALS-DA), 901 North Stuart Street, Arlington, Virginia 22203.

AC e. I have been informed that I have the right to retain civilian counsel at my own expense, whose name and address are provided herein: 

If I later retain civilian counsel, I must provide the name and address to: Clerk of the Court, U.S. Army Judiciary (JALS-CC), Nassif Building, 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203.

10. Pending action on my case, I can be contacted or a message may be left for me at the following address:


NAME: Armin J. Cruz

STREET: \_\_\_\_\_

CITY/ STATE / ZIP CODE: \_\_\_\_\_



AREA CODE/ TELEPHONE NUMBER \_\_\_\_\_

DATED: 11 Sep 04

  
ARMIN J. CRUZ  
SPC, U.S. ARMY  
Accused

I certify that I have advised the above named accused regarding the post trial and appellate rights as set forth above, that he has received a copy of this document, and that he has made elections concerning appellate counsel.

DATED: 11 Sep 04

  
  
Defense Counsel

003195

**REDACTED**  
**COPY**

003196

# COURT-MARTIAL RECORD

NAME NILES, GLENN A., JR. ILT

SSN [REDACTED]

ACTIONS CODED:

INITIAL                     

ACCA                     

FINAL                     

COMPANION(S):

ASSIGNED TO:

PANEL                     

~~EXAM. DIV.~~ ✓

ACCA CLERK of COURT

## RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

ADMINISTRATIVE CHECK VOL I OF II VOL(S)

Examiner

Clerk of Court's Office

ARMY

20040683

VERBATIM<sup>1</sup>  
**RECORD OF TRIAL<sup>2</sup>**  
(and accompanying papers)

OF

NILES, Glenn A., Jr.

(NAME: Last, First Middle Initial)

615th MilitaryPolice Company

(unit/Command Name)

(Social Security Number)

US Army

(Branch of Service)

First Lieutenant

(Rank)

APO AE 09114

(Station or Ship)

BY

GENERAL COURT-MARTIALCONVENED BY COMMANDING GENERAL

(Title of Convening Authority)

Headquarters, Seventh Army Training Comand

(Unit/Command of Convening Authority)

TRIED AT

Wuerzburg and Vilseck, Germany

(Place or Places of Trial)

ON

9 Jun and 1 Jul 04

(Date or Dates of Trial)

COMPANION CASES:

RECEIVED  
CLERK OF COURT  
2005 MAR -7 A 11:48  
US ARMY JUDICIARY

003198

<sup>1</sup> Insert "verbatim" or summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

<sup>2</sup> See inside back cover for instructions as to preparation and arrangement.

# CHRONOLOGY SHEET<sup>1</sup>

In the case of

First Lieutenant Glenn A. Niles, Jr.

(Rank and Name of Accused)

Date of alleged commission of earliest offense tried:

30-Jul

2003

(Enter Date)

Date record forwarded to The Judge Advocate General: <sup>2</sup>

22 Feb 2005

(Enter Date)

(signature and rank of Staff Judge Advocate or Legal Officer)

1 In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.

2 Or officer conducting review under Article 64(a)(MCM, 1984, RCM 1112).

3 In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.

4 Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under sentence or court-martial at time charges are preferred. Item 2 will be the zero date if item 1 is not applicable.

5 May not be applicable to trial by special court-martial.

6 Only this item may be deducted.

7 If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative.

8 When further action is required under Article 64 or service directives.

ACTION		DATE 2003	CUMULATIVE ELAPSED DAYS <sup>3</sup>
1. Accused placed under restraint by military authority <sup>4</sup>			
2. Charges preferred (date of affidavit)		30-Sep-03	
3. Article 32 investigation (date of report) <sup>5</sup>		19-May-04	232
4. Charges received by convening authority		2-Jun-04	246
5. Charges referred for trial		2-Jun-04	246
6. Sentence or acquittal		1-Jul-04	275
Less days:			
Accused sick, in hospital, or AWOL		0	
Delay at request of defense		164	
Total authorized deduction <sup>6</sup>		164	
7. Net elapsed days to sentence or acquittal			111
8. Record received by convening authority		30-Nov-04	263
Action <sup>7</sup>		10-Feb-05	335
9. Record received by officer conducting review under Article 64(a)			
Action <sup>8</sup>			

## REMARKS

Defense Delay: 14 days. (Defense delay from 18 Oct - 1 Nov 04 [REDACTED])  
 88 days (Defense delay from 1 Nov 03 - 28 Jan 04)  
 27 days (Defense delay from 30 Mar - 26 Apr 04 [REDACTED])  
 24 days (Defense delay from 17 Apr - 11 May 04 [REDACTED])  
 11 days (Defense delay from 3 May - 14 May 04 [REDACTED]) (AR 27-20 para 5-40b(2))

Number of days from initial investigation of most serious arraigned offense to the date of arraignment:  
 307 days. (7 Aug 03 - 9 Jun 04) (AR 27-10, Para 5-40b(1))

003199

IN THE UNITED STATES ARMY  
FIFTH JUDICIAL CIRCUIT

UNITED STATES

v.

GLENN A. NILES, JR.

First Lieutenant, U.S. Army  
615th Military Police Company  
APO, AE 09114

POST-TRIAL AND  
APPELLATE RIGHTS

30 June 2004

I, 1LT Glenn A. Niles, Jr, the accused in the above-entitled case, certify that my trial defense counsel has advised me of the following post-trial and appellate rights in the event that I am convicted of a violation of the Uniform Code of Military Justice:

1. In exercising my post-trial rights, or in making any decision to waive them, I am entitled to the advice and assistance of military counsel provided free of charge or civilian counsel provided by me at no expense to the Government.
2. After the record of trial is prepared, the convening authority will act on my case. The convening authority can approve the sentence adjudged (as limited by a pretrial agreement), or he can approve a lesser sentence, or disapprove the sentence entirely. The convening authority cannot increase the sentence. He can also disapprove some or all of the findings of guilty. The convening authority is not required to review the case for legal errors, but may take action to correct legal errors.
3. I have the right to submit any matters I wish the convening authority to consider in deciding what action to take in my case. Before the convening authority takes action, the staff judge advocate will submit a recommendation to him. This recommendation will be sent to me and/or my defense counsel. Any matters that I wish the convening authority to consider, or matters in response to the Staff Judge Advocate's recommendation must be submitted within 10 days after I or my counsel receive the recommendation of the staff judge advocate, whichever occurs later. Upon my request, the convening authority may extend this period, for good cause, for not more than an additional 20 days.
4. If a punitive discharge or confinement for a year or more are adjudged and the convening authority approves the discharge or confinement for a year or more, my case will be reviewed by the Army Court of Criminal Appeals (USACCA). I am entitled to be represented by counsel before such court. If I so request, military counsel will be appointed to represent me at no cost to me. If I so choose, I may also be represented by civilian counsel at no expense to the United States.
5. After the Court of Criminal Appeals completes its review, I may request that my case be reviewed by the Court of Appeals for the Armed Forces. If that Court reviews my

603200

AE IX  
20040683

case, I may request review by the Supreme Court of the United States. I would have the same rights to counsel before those courts as I have before the USACCA.

6. If the Court-Martial does not adjudge or the Convening Authority does not approve either a punitive discharge or confinement for a year or more, my case will be examined by the Office of the Judge Advocate General for any legal errors and to determine if the sentence is appropriate. The Judge Advocate General (TJAG) may take corrective action as appropriate. This mandatory review under Article 69(a), UCMJ, will constitute the final review of my case unless TJAG directs review by the Army Court of Criminal Appeals.

7. I may waive or withdraw review by the appellate courts (subparagraph 4, above) or the Office of The Judge Advocate General (subparagraph 5, above) at any time before such review is completed. I understand that if I waive or withdraw review:

a. My decision is final and I cannot change my mind.

b. My case will then be reviewed by a military lawyer for legal error. It will also be sent to the general court-martial convening authority for final action.

c. Within 2 years after the sentence is approved, I may request the Judge Advocate General to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over me or the charged offense, any error prejudicial to my substantial rights, or the appropriateness of the sentence.

8. I understand that IAW Article 57(a), U.C.M.J., any forfeiture and/or reduction that was part of my sentence will take effect 14 days from the earlier of either a) the date the sentence was imposed, or b) the date the Convening Authority approves the sentence. I understand that under Article 57(a), I can, through my attorney, request that the application of these adjudged punishments be deferred by the Convening Authority until the date the Convening Authority approves the sentence.

9. I understand that IAW Article 58b, U.C.M.J., if this court-martial sentenced me to either a) any confinement and a punitive discharge, or b) any confinement in excess of six months, I will automatically forfeit all my pay and allowances during my confinement. I understand that under Article 58b, I can, through my attorney, ask that the Convening Authority defer these automatic forfeitures until the convening authority takes action on my sentence. In addition, my attorney may request that the Convening authority waive this automatic forfeiture for a period not to exceed six months, but only if the following two conditions are met:

a. I have dependents; and

b. The Convening Authority directs that the pay and allowances I would otherwise get would be paid not to me, but to my dependents.

10. I understand that if my court-martial sentence included a punitive discharge, I can request an exception to policy to have my family's household goods shipped at Government expense. (Note: Family members residing in USAREUR under command sponsorship will have household good shipped at government expense without the need for an exception to policy.)



11. I understand that if my court-martial sentence included confinement, I can request that the Convening Authority defer (that is, postpone the start of) my confinement. I understand that it is my burden to show that my interests and those of the community in release outweigh the interests of the community in confining me.

12. I have read and had my post-trial rights explained to me by counsel and I acknowledge these rights and make the elections set forth below, as reflected by my initials where appropriate.

AM a. I understand my post-trial and appellate review rights.

AM b. I request that a copy of the authenticated record of trial be served on myself pursuant to RCM 1104(b); I also request that a separate authenticated copy of the record of trial be served on my military counsel (and civilian counsel, if appropriate) pursuant to RCM 1106(f)(3). I request that individual copies of the Staff Judge Advocate's post trial recommendation be served on by both myself and my defense counsel pursuant to RCM 1106(f).

AM c. My defense counsel, [REDACTED], will submit R.C.M. 1105 matters in my case.

AM d. I want to be represented before the Army Court of Criminal Appeals by Appellate Defense Counsel appointed by the Judge Advocate General of the Army. I understand that I may contact my Appellate Defense Counsel by writing to Defense Appellate Division, U.S. Army Legal Services Agency (JALS-DA), 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203-1837.

AM e. I have been informed that I have the right to retain civilian counsel at my expense. I do not have civilian counsel at this time. Should I later retain civilian counsel, I will furnish the above information to: Clerk of Court, U.S. Army Judiciary (JALS-CC), 901 North Stuart Street, Suite 1200, Arlington, Virginia 22203-1837.

f. If applicable, I (do) AM (do not) \_\_\_\_\_ want my attorney to ask the Convening Authority to defer the application of my adjudged forfeitures and/or reduction in Article 57(a) as described in paragraph 8 above.

g. If applicable, I (do) AM (do not) \_\_\_\_\_ want my attorney to ask the Convening Authority to defer or waive the automatic forfeitures in Article 58b as described in paragraph 9 above.

h. If applicable, I (do) AM (do not) \_\_\_\_\_ want my attorney to ask the Convening Authority for an exception to policy to ship my family's household goods at Government expense, as described in paragraph 10 above.

i. If applicable, I (do) AM (do not) \_\_\_\_\_ want my attorney to ask the Convening Authority to defer my confinement, as described in paragraph 11 above.

003202

13. I understand that if my sentence included either a Bad Conduct or Dishonorable Discharge but no confinement, I can immediately request to be placed on voluntary excess leave (VEL) until the Convening Authority takes action on my case. I understand that if my sentence included either a Bad Conduct or Dishonorable Discharge and any confinement, I can request to be placed on VEL at the completion of my confinement until the Convening Authority takes action on my case. If my request is granted and I am placed on VEL, I understand that:

a. My accrued leave will be used until exhausted, and then I will be in a VEL status;

b. While in a VEL status, I will not receive any pay or allowances, nor will I accrue leave;

c. While in a VEL status, I will not be entitled to travel on a space available basis; and

d. I will be completely processed for discharge from the Army and, if requested, will receive a separation physical prior to my departure on VEL. I understand that there is no entitlement to physical disability retired pay should I incur a physical disability while in a VEL.

14. I understand that if my sentence included a Bad Conduct or Dishonorable Discharge, when the Convening Authority takes action on my case, I will be placed on involuntary excess leave (IEL) until the completion of the post-trial and appellate process in my case. If I am placed on IEL, I understand that same restrictions as listed above for VEL apply.

15. Pending appellate action on my case, I can be contacted, or a message may be left for me, at the following address:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Area Code & Telephone: \_\_\_\_\_

E-mail Address (if any) \_\_\_\_\_

Permanent Address (if different from above)

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Area Code & Telephone: \_\_\_\_\_

If I cannot be reached at either address above, please contact the following individual(s), who are most likely to have means of contacting me:

Name: \_\_\_\_\_

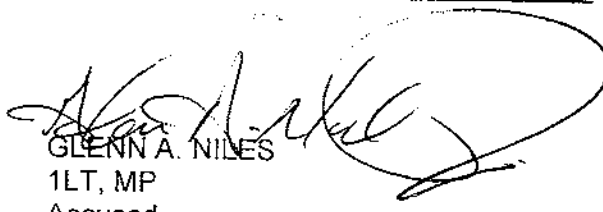
Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Area Code & Telephone: \_\_\_\_\_




Email Address (if any) \_\_\_\_\_

DATE:

  
GLENN A. NILES  
1LT, MP  
Accused

I certify that I have advised 1LT Glenn A. Niles, Jr., regarding his post-trial and appellate rights as set forth above, that he has received a copy of this document, and that he made elections concerning appellate counsel. IAW R.C.M. 1106(f)(3), I request a copy of the record of trial.

Date: 30 June 04

  
  
  
Defense Counsel

# COURT-MARTIAL DATA SHEET

1. OJAG NUMBER

2. NAME (Last, First, Middle Initial)  
NILES, Glenn A., Jr.

3. SOCIAL SECURITY NO.

4. RANK  
1LT

5. UNIT/COMMAND NAME  
615<sup>th</sup> MP Co, APO AE 09114

## INSTRUCTIONS

When an item is not applicable to the record of trial being reviewed, mark the proper block with a diagonal line similar to the ones which appear in the SPCMCA blocks for items 6a and b.

## KEY TO USE

**TC - Trial Counsel.** This column will be completed in all cases in which a finding of guilty is returned.

**SPCMCA - Special Court-Martial Convening Authority** who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his/her designated representative.

**GCM or JA - General Court-Martial Convening Authority or Judge Advocate.** This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to The Judge Advocate General of the branch of service concerned. If the record is reviewed under Article 64(a), UCMJ, this column will be completed by the judge advocate accomplishing the review

**OJAG - Appropriate appellate agency in the Office of The Judge Advocate General** of the branch of service concerned. This column will be disregarded if a record of trial was reviewed under Article 64, UCMJ, and in cases where there are no approved findings of guilty.

**References - All references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts Martial, United States (MCM), 1984.**

## SECTION A - PRETRIAL AND TRIAL PROCEDURE

	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
6. a. If a general court-martial: Was the accused represented in the Article 32 investigation by civilian or military counsel of his/her own selection or by counsel qualified within the meaning of Article 27(b), UCMJ?	X				X			
b. If not: Did the accused waive his/her right to such representation?	N/A	N/A			N/A	N/A		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?	X				X			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?	X				X			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?	X				X			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805)?		X				X		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?	X				X			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?	N/A	N/A			N/A	N/A		
9. Were the reporter and interpreter, if any, sworn or previously sworn?	X				X			
10. a. Was the military judge properly certified (RCM 502(c))?	X				X			
b. Was the military judge properly detailed (RCM 503(b))?	X				X			
c. Was the military judge present during all open sessions of the court?	X				X			
11. a. Was the accused advised that:								
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?	X				X			

# COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
(2) He/she had the right to be represented at the trial by a civilian lawyer provided at no expense to the government, in which case detailed counsel would serve as associate counsel or be excused with the accused's consent?	X				X			
(3) If he/she did not exercise any of the rights listed above, he/she would be defended by detailed counsel certified under Article 27(b), UCMJ (RCM 502(d)(1))?	X				X			
b. (1) Was the accused represented by a civilian lawyer?		X				X		
(2) Did the accused request a specific military counsel?		X				X		
(3) (a) If so, was such request complied with?	N/A	N/A			N/A	N/A		
(b) If not, were reasons given why requested counsel was not reasonably available?	N/A	N/A			N/A	N/A		
12. a. Was the detailed defense counsel properly certified (RCM 502(d))?	X				X			
b. Was at least one qualified counsel for each party present during all open sessions of the court (RCM 502(d) and RCM 805(c))?	X				X			
13. a. If the special court-martial adjudged a BCD:								
(1) Was a military judge detailed to the court (RCM 503(b))?	N/A	N/A			N/A	N/A		
(2) If not, did the convening authority submit a statement indicating why a military judge could not be detailed and why trial had to be held at that time and place (Article 19, UCMJ)?	N/A	N/A			N/A	N/A		
(3) Was a verbatim transcript made (Article 19, UCMJ)?	N/A	N/A			N/A	N/A		
14. Did any person who acted as the accuser, investigating officer, military judge, court member, or a member of the defense in the same case, or as counsel for the accused at a pretrial investigation or other proceedings involving the same general matter, subsequently act as a member of the prosecution (RCM 502(d)(4))?		X				X		
15. If any member of the defense had acted as a member of the prosecution in the same case, was he/she excused (RCM 502(d)(4))?	N/A	N/A			N/A	N/A		
16. a. If any member of the defense had acted as the accuser, investigating officer, military judge, or member of the court, were his/her services expressly requested by the accused (RCM 502(d)(4))?	N/A	N/A			N/A	N/A		
b. If not, was he/she excused?	N/A	N/A			N/A	N/A		
17. a. If accused was an enlisted person, did he/she make a request that enlisted persons be included in membership of the court?	N/A	N/A			N/A	N/A		
b. If so, were at least one-third of the members who tried the case enlisted persons, or did the convening authority direct the trial without enlisted persons and provide a detailed written explanation which is appended to the record (RCM 503(a)(2))?	N/A	N/A			N/A	N/A		
c. Did any enlisted member of the court belong to the same unit as the accused?	N/A	N/A			N/A	N/A		
18. If a military judge was detailed to the court, was the accused informed of his/her right to request trial by military judge alone?	X				X			
19. Were the members of the court, military judge (if any) and the personnel of the prosecution and defense sworn or previously sworn?	X				X			
20. a. Was any person sitting as a member of the court, or military judge (if any), the accuser, a witness for the prosecution, the investigating officer, staff judge advocate, counsel, or convening authority, or upon rehearing or new trial was he/she a member of the former trial (RCM 902(b) and RCM 912(f))?		X				X		
b. If so, did the accused waive such disqualification (RCM 912(f)(4) and RCM 902(e))?	N/A	N/A			N/A	N/A		

# COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
21. a. Was each accused extended the right to challenge military judge (if any), and any member of the court for cause and to exercise one peremptory challenge?	X				X			
b. Was action by court upon challenges proper (RCM 902 and RCM 912)?	X				X			
c. Does the record show that a member excused as a result of a challenge withdrew from the court?	X				X			
22. a. Was the accused properly arraigned (RCM 904)?	X				X			
b. Do the following appear in the record: The charges and specifications, the name, rank and unit/command name of the person signing the charges, the affidavit, and the order of reference for the trial?	X				X			
c. Except in time of war, was the accused brought to trial (which includes an Article 39(a), UCMJ session) by general court-martial within five days (by special court-martial within three days) subsequent to service of charges upon him/her (RCM 602)?		X				X		
d. If so, did the accused object to trial?	N/A	N/A			N/A	N/A		
23. a. Were any charges or specifications affected by the statute of limitations (RCM 907(b))?		X				X		
b. If so, was accused advised of his/her right to assert the statute and was his/her response recorded (RCM 907(b))?	N/A	N/A			N/A	N/A		
24. Did the court take proper action with respect to motions raising defenses and objections (RCM 905-907)?	X				X			
25. a. Were pleas of accused regularly entered (RCM 910(a))?	X				X			
26. Does the record show that all witnesses were sworn?	X				X			
27. Did the military judge or president advise the court concerning the elements of each offense, each lesser included offense reasonably raised by the evidence, and the presumption of innocence, reasonable doubt, and burden of proof, pursuant to Article 51(c), UCMJ (RCM 920(e))?	X				X			
28. a. If trial was by military judge alone, did the military judge announce the findings (RCM 922)?	X				X			
b. If the trial was with members, did the president announce the findings (RCM 922)?	N/A	N/A			N/A	N/A		
c. If special findings were requested, were they made a part of the record?	N/A	N/A			N/A	N/A		
29. Were the findings in proper form (A10)?	X				X			
30. a. Was the evidence, if any, of previous convictions admissible and properly introduced in evidence (RCM 1001(b)(3))?	N/A	N/A			N/A	N/A		
b. Was the information from personnel records of the accused properly admitted (RCM 1001(b)(2))?	X				X			
c. Was the defense permitted to introduce evidence in extenuation and mitigation after the court announced findings of guilty (RCM 1001(c))?	X				X			
31. a. In a trial with members, did the president announce the sentence (RCM 1007)?	X				X			
b. If trial was by military judge alone, did the military judge announce the sentence (RCM 1007)?	N/A	N/A			N/A	N/A		

# COURT-MARTIAL DATA SHEET

<b>SECTION A - PRETRIAL AND TRIAL PROCEDURE</b> <b>(CONTINUED)</b>	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
32. Was the sentence in proper form (A11)?	X				X			
33. Is the record properly authenticated (RCM 1104)?	X				X			
34. a. Did all members who participated in proceedings in revision vote on original findings and sentence (RCM 1102(e)(1))?	N/A	N/A			N/A	N/A		
b. At proceedings in revision, were a military judge (if one was present at the trial), the accused, and counsel for the prosecution and defense present (RCM 1102(e)(1))?	N/A	N/A			N/A	N/A		
35. Was each accused furnished a copy of the record or substitute service made on defense counsel (RCM 1104(b))?	X				X			
36. Was clemency recommended by the court or military judge?		X				X		
<b>SECTION B - PROCEDURE AFTER TRIAL</b>	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
37. Was the court convened by proper authority (RCM 504(b))?					X			
38. Did the court have jurisdiction of person and offense (RCM 202 & 203)?					X			
39. Does each specification state an offense under the code (RCM 907(b))?					X			
40. Did the accused have the requisite mental capacity at the time of trial and the requisite mental responsibility at the time of the commission of each offense (RCM 909 and RCM 916(k))?					X			
41. Is the evidence sufficient to support the findings?					X			
42. Is the sentence within legal limits (RCM 1112(d))?					X			
43. Is the action of the convening authority properly entered in the record and signed (RCM 1107(f))?					X			
44. If appropriate, is a proper place of confinement designated (RCM 1107(f)(4)(c))?					N/A	N/A		
45. a. Was the staff judge advocate's post-trial recommendation served on the defense counsel for comment (RCM 1106(f))?					X			
b. If the addendum to the recommendation contained new matters, was it served on the defense counsel for comment (RCM 1105(f)(7))?					N/A	N/A		
c. Did the accused submit matters for the convening authority's consideration in a timely manner (RCM 1105)?					X			
d. If yes, was the convening authority's action subsequent to the submission of the matters?					X			
e. If no, did the accused waive in writing the right to submit matters and was the action taken subsequent to the written waiver or did the time periods provided in RCM 1105(c) expire before the convening authority's action?					N/A	N/A		
46. a. Does the record indicate that the accused was advised of his/her appellate rights (RCM 1010)?					X			
b. Do the allied papers contain a statement indicating the desires of the accused with respect to appellate representation in the event his/her case is referred to a court of military review?					X			
c. Did the accused waive or withdraw appellate review and is the waiver or withdrawal in proper form and attached to the record of trial (RCM 1110, A19 & 20)?						X		

003208

# COURT-MARTIAL DATA SHEET

SECTION C - COURT-MARTIAL ORDERS (CMO)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
47. Does the initial CMO bear the same date as the action of the convening authority who published it?					X			
48. Are all the orders convening the court which tried the case correctly cited in the CMO?					X			
49. Are the accused's name, rank, SSN, unit/command name and branch of service correctly shown in the CMO?					X			
50. Are all the charges and specifications (including amendments) upon which the accused was arraigned correctly shown in the CMO (RCM 1114)?					X			
51. Are the pleas, findings, and sentence correctly shown in the CMO (RCM 1114)?					X			
52. Does the CMO show the date the sentence was adjudged?					X			
53. Is the action of the convening authority correctly shown in the CMO?					X			
54. Is the CMO properly authenticated (RCM 1114)?					X			
55. REMARKS:								



# COURT-MARTIAL DATA SHEET

55. REMARKS (Continued):

## 56. TRIAL COUNSEL

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	22 Feb 05

## 57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

a. TYPED NAME (Last, First, Middle Initial )	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	22 Feb 05

## 58. STAFF JUDGE ADVOCATE OF GENERAL COURT-MARTIAL CONVENING AUTHORITY OR REVIEWING JUDGE ADVOCATE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
[REDACTED]	[REDACTED]	[REDACTED]	22 Feb 05

## 59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

a. ACTION:

## b. INDIVIDUAL COMPLETING DATA SHEET

(1) TYPED NAME (Last, First Middle Initial	(2) RANK	(3) SIGNATURE	(4) DATE SIGNED

DEPARTMENT OF THE ARMY  
Headquarters, Seventh Army Training Command  
APO Army Europe 09114

GENERAL COURT-MARTIAL ORDER  
NUMBER

9

10 February 2005

First Lieutenant Glenn A. Niles, Jr. [REDACTED] U.S. Army, 615<sup>th</sup> Military Police Company, APO AE 09114 (currently attached to Headquarters, Seventh Army Training Command due to the deployment of the 1st Infantry Division) was arraigned at Wuerzburg, Germany, on the following offenses at a general court-martial convened by the Commander, Seventh Army Training Command.

Charge I: Article 93: Plea: Not Guilty. Finding: Not Guilty.

Specification 1: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist. Plea: Not Guilty. Finding: Not Guilty.

Specification 2: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist. Plea: Not Guilty. Finding: Not Guilty.

Specification 3: At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder. Plea: Not Guilty. Finding: Not Guilty.

Charge II: Article 133: Plea: Guilty. Finding: Guilty.

Specification: At or near Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, while a platoon leader in the 615<sup>th</sup> Military Police Company, and in the presence of [REDACTED], [REDACTED], and [REDACTED], wrongfully and dishonorably grab [REDACTED] by the neck and strike him in the stomach with a closed fist, wrongfully and dishonorably strike [REDACTED] in the stomach with a closed fist, and while being detained by [REDACTED], wrongfully and dishonorably kick [REDACTED] in the shoulder, all to the disgrace of the Officer's Corps, and the Armed Forces. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 1 July 2004: To be reprimanded and to forfeit \$1,003.00 pay per month for 12 months.

003211

20040683

ACTION

The finding of guilty and the sentence is disapproved. The charge is dismissed. The adjudged forfeitures were deferred effective 4 August 2004 until date of convening authority action.

BY COMMAND OF BRIGADIER GENERAL HERTLING:

DISTRIBUTION:

Record Set (1)

Reference Set (1)

Accused (1)

MJ ( ) (1)

MJ ( ) (1)

TC ( ) (1)

ATC ( ) (1)

DC ( ) (1)

CDR, 615 MP Co, APO AE 09114 (1)

CDR, 1st ID, APO AE 09036 (1)

CDR, 7th ATC, APO AE 09114-8130 (1)

CDR, DET D, 38th PSB, APO AE 09173 (1)

CDR, DET A, 106th Fin Bn, ATTN: Debt Management

Unit 26210, APO AE 09036 (1)

Clerk of Court, (JALS-CCR), 901 N. Stuart Street, Suite 1200,  
Arlington, VA 22203-1837 (10)

CDR, (TAPC-MSP), 200 Stovall Street, Alexandria, VA 22332-0400(1)

Professor of Law, United States Military Academy, West Point,  
NY 10996 (2)

DEPARTMENT OF THE ARMY  
Headquarters, Seventh Army Training Command  
Office of the Staff Judge Advocate  
APO Army Europe 09036

AETV-BGJA

10 February 2005

MEMORANDUM FOR Record

SUBJECT: United States v. 1LT Glenn A. Niles, Jr.

On 10 February 2005, Brigadier General Hertling, GCMCA, Seventh Army Training Command, took action in the case of U.S. v. 1LT Glenn A. Niles, Jr. General Hertling considered all matters submitted by the accused and defense counsel pursuant to R.C.M. 1105/1106. In addition to these matters, with defense consent, the convening authority also considered an email sent to him by [REDACTED] on 9 February 2005 after the defense had submitted clemency matters.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

003213

20040683

**11D OSJA-Wuerzburg Law Center ( )**

**From:** ( ) 1LT 7ATC HQ ( )@us.army.mil  
**Sent:** Thursday, February 17, 2005 2:00 PM  
**To:** ( ) 11D OSJA-Wuerzburg Law Center ( )  
**Subject:** Request for Clemency: 1LT Niles

-----Original Message-----

**From:** ( ) (709 MP Bn Commanding)  
**Sent:** Wednesday, February 09, 2005 10:29 PM  
**To:** ( ) 7ATC HQ ( )@graf.eur.army.mil  
**Cc:** ( ) 7ATC HQ; ( ) CSM (709 MP Bn CSM) ( )@us.army.mil  
**Subject:** Request for Clemency: 1LT Niles

Sir-

I believe there is a clemency packet enroute to your office for one of my officers.  
I recommend you grant clemency for 1LT Niles.

1LT Niles was assigned as a PL in the 615th MP Co which was assigned to the 709th for OIF I. In July 2003, 1LT Niles assaulted 2 criminals who were being held at the Al Taji IP Station after they destroyed the renovations to the detention cell. I suspended him from his duties, conducted a commander's inquiry, and forwarded my findings to my brigade commander. The JAG grabbed a hold of it and it went forward to CJTF-7 where it was finally determined that the officer should be court-martialed. I believe this was based on the fact that the Abu Ghraib scandal had just broken in the press.

Regardless, 1LT Niles was court-martialed last summer and I testified on his behalf.  
I do not condone his actions but I do not believe that they were egregious enough to cause this officer to lose his commission.

I realize as the GCMCA you have the responsibility to act in the best interest of the Army and US government as well as consider the officer.

I wish I could tell you that 1LT Glenn Niles is the best MP PL I ever had, that is not the case. He is a good officer, I kept him in Baghdad and had him serve as a battle captain in my TOC throughout our deployment. He learned a lot, grew as an officer, and is a better person for the whole experience.

He has always taken responsibility for his actions - he never once failed to come forward and tell the truth. He understands the seriousness of the offense, accepted his punishment at court-martial, and continues to soldier on.

He is currently the XO of the 615th MP Co at Graf. He is still one of my officers since I have C2 over all the 18th MP Bde units while the brigade is in Iraq.

I trust him to lead Soldiers. I would place him command of one of my units. I know he has learned from his mistake.  
I appreciate you taking the time to read this.

I will be at Graf on Thursday 10 February at 1230 as I am escorting BG Johnson, MP Commandant. If it is convenient, I can stop by your office and see you in person concerning this matter. I can break away from escorting my Commandant at any time to see you.

I will call your aide while I am enroute to Graf to see if you want to see me.  
Thank you again, sir.

VR,  
( )

003214

2/17/2005

4 5 0 0 0 8 3





**DEPARTMENT OF THE ARMY**  
**HEADQUARTERS, SEVENTH ARMY TRAINING COMMAND**  
**OFFICE OF THE STAFF JUDGE ADVOCATE**  
UNIT #26222  
APO AE 09036

REPLY TO THE  
ATTENTION OF:

AETV-BGJA

FEB 10 2005

MEMORANDUM FOR Commander, Seventh Army Training Command, APO AE 09114

SUBJECT: Addendum to the Staff Judge Advocate Recommendation in the General Court-Martial of First Lieutenant Glenn A. Niles, Jr. 615<sup>th</sup> Military Police Company, APO AE 09114

1. The enclosed R.C.M. 1105/1106 request for clemency has been submitted by the accused's defense counsel for your review. In accordance with R.C.M. 1107, you must consider these matters prior to taking action on the case.
2. The accused, through counsel, requests that you disapprove the findings of the court-martial, dismiss the charges and specifications against him, and issue him a General Officer Memorandum of Reprimand. I disagree; no corrective action is required.
3. The following correction is noted to the Staff Judge Advocate's Post-Trial Recommendation (SJAR) dated 25 January 2005: para 6(a) should be changed from "None" to "Effective 4 August 2004, the convening authority deferred the adjudged forfeitures until such time as he takes action on the case." This correction is made after submission of 1105 matters, as it has come to my attention through the defense counsel.
4. In addition, defense counsel also notified the government that despite the approved deferment of adjudged forfeitures, finance has been taking money out of the accused's pay in order to satisfy the adjudged forfeitures. While not required by law, because of this error by finance, I recommend that you approve only so much of the adjudged forfeitures of \$1,003.00 per month for six months.
5. I recommend that you approve only so much of the adjudged findings and sentence as provides for a reprimand and forfeiture of \$1,003.00 per month for six months. The adjudged forfeitures were deferred effective 4 August 2004 until date of convening authority action.

25 Encls

1. Clemency Petition/DC, dtd 8 Feb 05
2. Clemency Petition/ACC, dtd 27 Jan 05
3. OER thru 9 Jul 02

[REDACTED]  
[REDACTED]  
[REDACTED]  
Staff Judge Advocate

003216

20040683

AETV-BGJA

SUBJECT: Addendum to the Staff Judge Advocate Recommendation in the General Court-Martial of First Lieutenant Glenn A. Niles, Jr. , 615<sup>th</sup> Military Police Company,  
APO AE 09114

4. OER thru 9 Jul 03
5. Memo [REDACTED]
6. MFR, [REDACTED]
7. MFR, [REDACTED]
8. MFR, [REDACTED]
9. MFR, [REDACTED]
10. Memo [REDACTED]
11. Memo [REDACTED]
12. Memo [REDACTED]
13. Memo [REDACTED]
14. Memo [REDACTED]
15. Memo [REDACTED]
16. Memo [REDACTED]
17. MFR, [REDACTED]
18. MFR, [REDACTED]
19. Family Photos
20. Family Photos
21. Letter [REDACTED]
22. Diploma, Master of Arts -- Counseling, Webster Univ, dtd 18 Dec 99
23. "Welcome 615<sup>th</sup> MP Co" Bavarian-American Monthly, Apr 04
24. OER, through 30 Mar 04
25. Staff Judge Advocate Recommendation



8 February 2005

MEMORANDUM FOR Commander, 7th Army Training Command, APO, AE 09114

SUBJECT: Petition for Clemency UP Rules for Courts-Martial 1105 & 1106 — United States v. 1LT Glenn A. Niles, Jr.

1. These matters are submitted under Rules for Courts-Martial (RCM) 1105 and 1106 in regard to the general court-martial of 1LT Glenn A. Niles, Jr., 615th Military Police Company, Grafenwoehr, Germany. At trial, 1LT Niles pled guilty to one specification of Conduct Unbecoming an Officer and a Gentleman and was sentenced to be reprimanded and to forfeit \$1003 per month for 12 months.

2. 1LT Niles respectfully requests that you disapprove the findings of the court-martial under RCM 1107 (c)(2), dismiss the charges and specifications against him, and issue him a General Officer Memorandum of Reprimand (GOMOR) in their stead. Such a grant of clemency is appropriate for the following reasons:

a. Glenn Niles is an honorable man, an outstanding officer and a great American!! His misconduct on 30 July 2003 in Baghdad, Iraq is a complete anomaly – and it is extremely minor considering the circumstances. 1LT Niles has served his country honorably and with great distinction for more than four years. If a finding of guilty at a General Court Martial is approved in this case, the Army will soon lose an extraordinary asset in that 1LT Niles will have to be administratively separated from the service. With a conviction in his file, 1LT Niles' security clearance will be revoked and he will no longer be able to serve in the Army as an Officer. Such a result would be tragic for the Niles family, would amount to excessive punishment, and would needlessly damage the Army and the Military Police Corps.

b. 1LT Niles has never made any excuses for his conduct. From the moment that it happened, he has accepted full responsibility for his actions and has cooperated fully with government investigators and prosecutors. When a commander's inquiry was conducted, 1LT Niles waived his rights and prepared a sworn statement admitting to his misconduct in striking the three Iraqi prisoners at the Al Taji police station. He never lied or withheld information about his actions or encouraged his subordinates to cover for him. Likewise, at all stages of this case, 1LT Niles has acknowledged that his actions were wrong. He attempted to resign in lieu of GCM in October 2003, but his request was denied. At his Article 32 hearing, he candidly apologized to his NCOs and soldiers for letting them down – and at trial, the accused pled guilty to conduct unbecoming an officer and gentleman in violation of Article 133 of the UCMJ. These facts illustrate that he is an honorable man. As an accused in a court martial, 1LT Niles could have maintained his silence, asserted numerous defenses or forced the government to expend great resources to prove his guilt. However, because he is a man of the highest integrity, Glenn Niles chose none of these courses of action. Quite simply, he knows that he made a mistake and has done nothing other than step forward to accept responsibility.

003218

200502083

SUBJECT: Petition for Clemency UP Rules for Courts-Martial 1105 & 1106 — United States v. 1LT Glenn A. Niles, Jr.

c. For the ends of justice to be met, and for good order and discipline to be maintained, punishment in a given case must be fitting to the offense committed. Mitigation and extenuation must also be considered. Here, 1LT Niles' actions amounted to nothing more than simple assault. The "victims" were three Iraqi youths who had been detained for murdering a man and stealing his car.<sup>1</sup> They attempted to escape from detention by knocking a hole in the wall of the latrine at the Al Taji police station. 1LT Niles had been working non-stop for months in the extreme heat and sleep-deprived conditions of Baghdad's non-traditional combat environment. When he discovered that these three murder suspects had caused damage to the detention facility, 1LT Niles simply snapped. He momentarily lost control and struck the detainees. They were not injured; the entire incident lasted no more than five seconds. To receive a federal criminal conviction and administrative discharge from the service would be excessive punishment for this misconduct. A GOMOR is much more appropriate and just.

d. Indeed, a GOMOR or other administrative resolution has been the recommendation of 1LT Niles' leaders throughout this entire case. His company, battalion and brigade commanders at the time of the incident all supported lesser disposition than at a GCM. They all agreed that 1LT Niles' misconduct – and the extenuating circumstances present in Baghdad in July 2003 – simply did not warrant such a severe outcome. Likewise, the Article 32 Investigating Officer in this case, [REDACTED], recommended that 1LT Niles receive nothing more than a GOMOR in his restricted fiche. After reviewing all the facts and circumstances of this incident, LTC Vandersteen felt that it did not warrant disposition as a GCM.<sup>2</sup>

e. A lesser disposition is appropriate here primarily because of the caliber of 1LT Niles as an officer, a soldier, and as a person. Throughout all phases of his career in the military, he has distinguished himself and demonstrated incredible potential. Prior to deployment, Glenn served as a Platoon Leader within the 615th MP Company in Grafenwoehr. He greatly impressed both Company Commanders who rated him (See Encl 2-3). During this timeframe, 1LT Niles also greatly impressed [REDACTED], the 793rd Military Police Battalion XO who closely observed him during the unit's preparation for deployment to Iraq. [REDACTED], who at the time of trial was just leaving his position as the Provost Marshall for the Vilseck Military Community, actually delayed his PCS travel so that he could provide character testimony at Glenn's trial. He testified about his observations of 1LT Niles during his Platoon "Ex-Eval" prior to deployment for OIF. He found 1LT Niles to be a highly competent and resourceful officer, and a man with "a very high level of character" (ROT, pg. 132). [REDACTED] also stated that he would

<sup>1</sup> See Article 32 testimony of [REDACTED], Investigating Officer for Commander's Inquiry, page 16 of Article 32 summarized transcript, Record of Trial, Volume I.

<sup>2</sup> The Article 32 Investigating Officer's Report is included in Volume I of the ROT. Please pay special attention to [REDACTED] comments on Continuation Sheet 3 of his report dated 19 May 2004 (specifically, ¶ (6) of Item 21). He states a fundamental fact that is of critical importance in the case before you: "junior leaders make mistakes." He also cites two relevant instances where certain individuals (GEN Powell and BG Freakley) made mistakes early in their careers but were given second chances by their leadership because of their demonstrated potential for success.

003219

20040683

SUBJECT: Petition for Clemency UP Rules for Courts-Martial 1105 & 1106 — United States v. 1LT Glenn A. Niles, Jr.

be more than comfortable serving with 1LT Niles in combat, and that he would want Glenn as one of his company commanders under such circumstances.<sup>3</sup>

f. Similar testimony was received by the court from fellow officers and soldiers who served with 1LT Niles during OIF. Two of his peers — fellow platoon leaders with the 615th MP Company in Iraq — both attested to 1LT Niles' high quality as an officer. [REDACTED] rated Glenn as the best of the platoon leaders in the company and told of his complete confidence in Glenn's technical and tactical competence. He also relayed that 1LT Niles was the type of friend who would put his own needs aside to assist a comrade with even the most trivial matter.<sup>4</sup> Likewise, [REDACTED] — the officer who took over Glenn's platoon in Iraq after the incident — testified to the high state of readiness and discipline he found in the platoon when he arrived at Al Taji. He also told of 1LT Niles mentorship of his fellow platoon leaders who had less experience.<sup>5</sup>

g. Several of 1LT Niles' subordinates also testified at trial. To a man, each of them told of their great respect for their former platoon leader. [REDACTED] called 1LT Niles "a great leader" (ROT, pg. 101) and described his high level of professionalism and "genuine concern" (ROT, pg. 101) for his soldiers.<sup>6</sup> [REDACTED] described him as a hard, mission-focused leader.<sup>7</sup> [REDACTED], the platoon sergeant, described 1LT Niles as a "strong, high-standard leader ... very tactically proficient ... [whose] best trait is caring for soldiers" (ROT, pg. 120).<sup>8</sup> And, [REDACTED], one of the platoon's squad leaders submitted a written statement attesting to his similar opinion (Encl 4). Each of these men would gladly serve again under Glenn Niles' leadership.

h. The most notable testimony, however, came from 1LT Niles' battalion leadership in Iraq. His Battalion Commander, [REDACTED], observed Glenn's performance not only as a platoon leader, but also as a member of his battalion staff.<sup>9</sup> He very clearly summarized his opinion of Glenn by telling the court members that "Lieutenant Niles can work for me anytime, anywhere that I go ... he can certainly command a company in any unit that I'm responsible for" (ROT, pp. 173-74).<sup>10</sup> LTC [REDACTED] also wrote two letters of support for 1LT Niles at various stages of this

<sup>3</sup> Summary of [REDACTED] found at ROT, pp. 128-136.

<sup>4</sup> Summary of [REDACTED] found at ROT, pp. 137-148.

<sup>5</sup> Summary of [REDACTED] found at ROT, pp. 148-155.

<sup>6</sup> Summary of [REDACTED] found at ROT, pp. 93-112.

<sup>7</sup> Summary of [REDACTED] found at ROT, pp. 112-118.

<sup>8</sup> Summary of [REDACTED] found at ROT, pp. 118-128.

<sup>9</sup> After the incident at the Al Taji station, 1LT Niles was suspended from his position as Platoon Leader and moved to Battalion Headquarters where he joined the staff of the S-3 as a Night Battle Captain in the Battalion TOC in Baghdad.

<sup>10</sup> [REDACTED] is one of the most highly respected leaders of the MP Corps and brings great credibility to his assessment of 1LT Niles' potential for continued service and advancement. He has over 18 years of service as an MP officer and has held several key positions. He has commanded two companies, including command of an MP company during Operation Desert Storm, and commanded the 793rd MP Battalion throughout that unit's challenging and highly successful service during Operation Iraqi Freedom. He has also served as the Chief of Officer Training at the MP School at Fort Leonard Wood in addition to several varying staff jobs. His opinion of 1LT Niles' potential should be given great credence.

003220

proceeding which are attached (Encl 5-6). Similarly, Glenn's Company Commander, [REDACTED], wrote two letters in support of 1LT Niles' continued service which are also attached (Encl 7-8). Likewise, many other officers on the battalion staff observed Glenn's performance and submitted powerful letters on his behalf (Encl 9-14). Even the Battalion CSM recognizes that 1LT Niles "should be salvaged" (Encl 15).

i. 1LT Niles' true character is illustrated by the following incident: at the Article 32 hearing, 1LT Niles asked me to arrange for his former Platoon Sergeant and several other subordinates to be present in the courtroom when he made his statement so that he could address them as well as the Investigating Officer. Because of the incident, he had been quickly removed from his position of leadership and had not had the opportunity to speak with his former soldiers because of the pending hearing in which they could be called as witnesses. His first opportunity to speak to them came in the public forum of the Article 32 hearing as he tearfully and humbly thanked them for "showing him what duty honor and courage was all about."<sup>11</sup> This example shows what type of leader — and the quality of person — that Glenn Niles is.

j. At the court martial on 1 July 2004, Glenn continued to accept responsibility and step forward to accept his punishment. He demonstrated complete candor with the military judge who accepted his plea of guilty on the charge of conduct unbecoming an officer and a gentleman. After hearing all the evidence in mitigation and extenuation, the military panel of ten officers decided that 1LT Niles should be retained in the service and given a chance to soldier on. They could have sent him to jail for up to a year and/or dismissed him from the service. However, they appropriately chose to adjudge neither of these options, ordering instead that 1LT Niles forfeit some of his pay and that he be reprimanded for his actions.

k. After receiving his sentence, 1LT Niles has continued to live the seven Army values. When he was returned to his unit, he was assigned duties as the Company XO for the 615th MP Company. In this position, Glenn has continued to impress his superiors. Both his Battalion and Company Commanders submitted letters for your consideration which detail his outstanding service since his court martial (Encl 16-17).

l. Through is all, Glenn Niles has remained a committed family man with a wonderful and loving family (Encl 18-19). [REDACTED], rely on him for their support. 1LT Niles wants nothing more than to continue providing for his family by serving in our great Army. Please also consider the attached letter from [REDACTED] (Encl 20) in support of your decision to disapprove the findings in this case.

m. Finally, please consider three additional attachments. I have included a copy of 1LT Niles' diploma showing the awarding of his Masters Degree in Counseling (Encl 21), an article published in the Bavarian-American Monthly magazine detailing the

<sup>11</sup> The audio tapes of this hearing are in the possession of the Court Reporter at the Office of the Staff Judge Advocate, 1st Infantry Division, in Wurzburg, Germany.

SUBJECT: Petition for Clemency UP Rules for Courts-Martial 1105 & 1106 — United States v. 1LT Glenn A. Niles, Jr.

challenges and accomplishments of the 615th MP Company during OIF (Encl 22), and 1LT Niles' most recent OER which was closed out before his court martial (Encl 23). This evaluation details 1LT Niles' service on the 793rd MP Battalion staff.

3. For these reasons, 1LT Niles respectfully requests that you grant him clemency in the form of disapproving his finding of guilt, dismissing his charges and issuing him a GOMOR. This course of action meets the ends of justice and keeps a great officer in uniform! It is a win, win situation.

4. Please include a copy of this memorandum in all copies of the Record of Trial. This memorandum was served via personal service on the Office of the Staff Judge Advocate, 1st Infantry Division, Military Justice Section, Wurzburg, Germany. On behalf of 1LT Niles, thank you for considering these matters submitted in clemency.

23 Encl

1. Accused's Request for Clemency, dtd 8 Feb 05
2. OER, thru 09 Jul 02
3. OER, thru 09 Jul 03
4. Memo for Members, [REDACTED], dtd 28 Jun 04
5. MFR, [REDACTED], dtd 25 Jan 04
6. MFR, [REDACTED], dtd 30 Oct 03
7. MFR, [REDACTED], dtd 28 Jan 04
8. MFR, [REDACTED], dtd 14 Oct 03
9. Memo for Members, [REDACTED], dtd 25 Jun 04
10. Memo for Members, [REDACTED], dtd 29 Jun 04
11. Memo for Members, [REDACTED], dtd 28 Jun 04
12. Memo for Members, [REDACTED], dtd 28 Jun 04
13. Memo for Members, [REDACTED], dtd 28 Jun 04
14. Memo for Members, [REDACTED], dtd 21 Jun 04
15. Memo for Members, [REDACTED], dtd 24 Jun 04
16. MFR, [REDACTED], dtd 01 Nov 04
17. MFR, [REDACTED], dtd 15 Nov 04
- 18-19. [REDACTED], undtd
20. Letter, [REDACTED], dtd 8 Feb 05
21. Diploma, Master of Arts — Counseling, Webster Univ., dtd 18 Dec 99
22. "Welcome 615th MP CO," Bavarian-American Monthly, Apr 04
23. OER, thru 30 Mar 04

[REDACTED]  
[REDACTED]  
[REDACTED]  
Trial Defense Counsel

REMOVED BATES PAGES 3223 - 3251  
(RECORD OF TRIAL – 1LT GLENN A. NILES, JR.)

(29 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS WRITTEN TO THE  
CONVENING AUTHORITY BY FAMILY AND FRIENDS ON BEHALF  
OF 1LT NILES AND OTHER RECORDS CONTAINING PRIVATE  
INFORMATION, WHICH WERE DETERMINED TO BE  
NONRESPONSIVE TO PLAINTIFF'S FOIA REQUEST

**ARTICLE 32 INVESTIGATION**

003252

# OFFICER EVALUATION REPORT

For use of this form, see AR 623-105; the proponent agency is ODCSPER

SEE PRIVACY ACT STATEMENT  
ON DA FORM 87-9-1

## PART I - ADMINISTRATIVE DATA

a. NAME (Last, First, Middle Initial) <b>NILES, GLENN C.</b>		b. SSN	c. RANK <b>1LT</b>	d. DATE OF RANK Year <b>2002</b> Month <b>11</b> Day <b>10</b>		e. BRANCH <b>MP</b>	f. DESIG/UNIT <b>31A</b>
g. UNIT, ORG, STATION, ZIP CODE ON APO, MAJOR COMMAND <b>HHD, 709th Military Police Battalion, APO AE 09165</b>				h. REASON FOR SUBMISSION <b>03 Change of Rater</b>		i. RATED OFFICER COPY (Check one and date) <input checked="" type="checkbox"/> 1. Given to Officer <input type="checkbox"/> 2. Forwarded to Officer	
j. PERIOD COVERED			k. RATED MONTHS <b>8</b>	l. NONRATED CODES	m. LNO OF ENCL <b>X</b>	n. RATED OFFICER COPY (Check one and date)	o. PSB INITIAL <b>UH</b>
Year	Month	Day	Year	Month	Day		
2003	07	10	2004	03	30		

## PART II - AUTHENTICATION (Rated officer's signature and/or officer has seen completed OER Parts I-VII and the data is correct)

a. NAME OF RATER (Last, First, MI)	b. SSN	c. RANK	d. POSITION	e. DATE
			<b>Battalion S3</b>	
f. NAME OF INTERMEDIATE RATER (Last, First, MI)	g. SSN	h. RANK	i. POSITION	j. DATE
k. NAME OF SENIOR RATER (Last, First, MI)	l. SSN	m. RANK	n. POSITION	o. DATE
p. SENIOR RATER'S ORGANIZATION <b>HHD, 709th MP Battalion APO AE 09165</b>		q. BRANCH	r. SENIOR RATER TELEPHONE NUMBER	s. E-MAIL ADDRESS <b>@us.army.mil</b>
t. This is a selected report, do you wish to make comments?		u. SIGNATURE OF RATER		v. DATE
<input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No				

## PART III - DUTY DESCRIPTION

a. PRINCIPAL DUTY TITLE <b>Assistant S3 (Operations)</b>	b. POSITION NUMBER <b>31A/MP</b>
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES (REFER TO PART IV, DA FORM 87-9-1) <b>Assistant S3 (Operations) for a forward deployed TO&amp;E Military Police Battalion consisting of an HHD and five Battle Captain, responsible for dissemination of timely and accurate information to and from subordinate units; conducts TOC operations to include directing units during engagements. Also assigned as the Battalion LNO to the Iraqi Police, responsible for coordination of information and equipment for 14 Iraqi Police Stations in Baghdad. Responsible for coordination and set up of two weekly meetings with Military Police leadership and the Iraqi Police leadership.</b>	

## PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)

### CHARACTER

Disposition of the leader, combination of values, attributes, and skills affecting leader actions

a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)		Yes	No	Yes		No
1. HONOR: Adherence to the Army's publicly declared code of values		<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. RESPECT: Promotes dignity, consideration, fairness, & EO		<input checked="" type="checkbox"/>
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed		<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. SELFLESS SERVICE: Places Army priorities before self		<input checked="" type="checkbox"/>
3. COURAGE: Manifests physical and moral bravery		<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. DUTY: Fulfills professional, legal, and moral obligations		<input checked="" type="checkbox"/>
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier		<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>

b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.

b.1. ATTRIBUTES (Select 1)		b.2. SKILLS (Competence) (Select 2)		b.3. ACTIONS (LEADERSHIP) (Select 3)	
Fundamental qualities and characteristics		Skill development is part of self-development; prerequisite to action		Major activities leaders perform: influencing, operating, and improving	
1. MENTAL Possesses desire, will, initiative, and discipline	<input checked="" type="checkbox"/> NO	1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning	<input checked="" type="checkbox"/> NO	1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups	<input checked="" type="checkbox"/> NO
2. PHYSICAL Maintains appropriate level of physical fitness and military bearing	<input checked="" type="checkbox"/> NO	2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering	<input checked="" type="checkbox"/> NO	2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely	<input checked="" type="checkbox"/> NO
3. EMOTIONAL Displays self-control; calm under pressure	<input checked="" type="checkbox"/> NO	3. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	<input checked="" type="checkbox"/> NO	3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment	<input checked="" type="checkbox"/> NO
		<input checked="" type="checkbox"/> TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting			
				4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable	<input checked="" type="checkbox"/> NO
				5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources	<input checked="" type="checkbox"/> NO
				6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement	<input checked="" type="checkbox"/> NO
				7. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate	<input checked="" type="checkbox"/> NO
				8. LEARNING Seeks self-improvement and organizational growth; embracing, adapting and leading change	<input checked="" type="checkbox"/> NO
				9. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders	<input checked="" type="checkbox"/> NO

c. APFT: PASS

DATE: JAN 2003

HEIGHT: 71

WEIGHT: 237

YES

d. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTs AND WO1s.

WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 87-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?

YES

NO

☒

CU3253

DA FORM 87-9, OCT 97

REPLACES DA FORM 87-8, 1 SEP 79, WHICH IS OBSOLETE, 1 OCT 97

USAPA V2.01



## PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

☒ OUTSTANDING PERFORMANCE, MUST PROMOTE ☐ SATISFACTORY PERFORMANCE, PROMOTE ☐ UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE ☐ OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART IV, DA FORM 87-9 AND PART IV, 1, AND c DA FORM 87-9-1.

During this short rating period, LT Glenn Niles performed his duties as a Battle Captain and Iraqi Police LNO in an outstanding manner during Operation Iraqi Freedom in Baghdad, Iraq. Glenn approached the job with great enthusiasm and an eagerness seldom seen in an officer of his rank. He quickly grasped the duties of Battle Captain which resulted in smooth TOC operations under his watch. LT Niles was able to calmly direct combat operations making on the spot decisions without hesitation. He embraced the tough job as LNO to the Iraqi Police and did an outstanding job. He coordinated countless meetings between the Military Police and Iraqi Police leadership, which ensured critical communication, resulting in improved policing across West Baghdad. He was instrumental in outfitting and equipping hundreds of Iraqi Police officers and fourteen Iraqi Police stations, allowing the Iraqi Police to do their jobs in a more professional manner.

LT Niles has great potential and will continue to excel; promote him to Captain and send him to the next Captain's Career Course. Consider for Company Command.

c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES, FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

## PART VI - INTERMEDIATE RATER

## PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

☒ BEST QUALIFIED ☐ FULLY QUALIFIED ☐ DO NOT PROMOTE ☐ OTHER (Explain below)

I currently senior rate 10 officer(s) in this grade  
A completed DA Form 87-9-1 was received with this report and considered in my selection and review  
☒ YES ☐ NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

☐ ABOVE CENTER OF MASS  
(Less than 60% in top box; Center of Mass if 60% or more in top box)

☒ CENTER OF MASS

☐ BELOW CENTER OF MASS  
RETAIN

☐ BELOW CENTER OF MASS  
DO NOT RETAIN

c. COMMENT ON PERFORMANCE/POTENTIAL

1LT Niles is an outstanding leader who distinguished himself during combat operations in support of Operation Iraqi Freedom in Baghdad, Iraq. As a Battle Captain, 1LT Niles excelled in every aspect of a very demanding and stressful position. Glenn is a caring and compassionate warrior leader and an officer of incredible integrity and honor. Promote to Captain, send to the Captain's Career Course, and place him in command. 1LT Niles has excellent potential.

d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED, FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Company Commander, Battalion Assistant S3, Battalion S1.



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7<sup>th</sup> ARMY TRAINING COMMAND  
OFFICE OF THE STAFF JUDGE ADVOCATE  
UNIT #28130  
APO AE 09036

REPLY TO THE  
ATTENTION OF:

AETV-BGJA

JAN 25 2005

MEMORANDUM FOR Commander, 7th Army Training Command, APO AE 09114-8130

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of  
First Lieutenant Glenn A. Niles, Jr. 615<sup>th</sup> Military Police Company, APO AE  
09114

1. PURPOSE: To obtain your decision in the general court-martial case of First Lieutenant  
Glenn A. Niles, Jr., 615<sup>th</sup> Military Police Company, APO AE 09114

2. SUMMARY OF CHARGES, PLEAS AND FINDINGS:

<u>CHG</u>	<u>ART</u>	<u>SPEC</u>	<u>SUMMARY OF OFFENSES</u>	<u>PLEAS</u>	<u>FINDINGS</u>
I	93	1	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		2	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by striking him in the stomach with a closed fist.	NG	NG
		3	At or near the Al Taji Police Station, Baghdad, Iraq, on or about 30 July 2003, was cruel toward and did maltreat [REDACTED], a person subject to his orders, by kicking him in the shoulder.	NG	NG

003255

20040683

AETV-BGJA

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of  
First Lieutenant Glenn A. Niles, Jr., 615<sup>th</sup> Military Police Company, APO AE  
09114

II      133      The      At or near Al Taji Police Station, Baghdad,      G      G  
Iraq, on or about 30 July 2003, while a platoon  
leader in the 615<sup>th</sup> Military Police Company,  
and in the presence of [REDACTED], [REDACTED],  
[REDACTED], and [REDACTED], wrongfully and  
dishonorably grab [REDACTED] by the neck and  
strike him in the stomach with a closed fist,  
wrongfully and dishonorably strike [REDACTED] in  
the stomach with a closed fist, and while being  
detained by [REDACTED], wrongfully and  
dishonorably kick [REDACTED] in the shoulder, all to  
the disgrace of the Officer's Corps, and the  
Armed Forces.

3. SENTENCE: Sentence was adjudged on 1 July 2004: To be reprimanded and to forfeit \$1,003.00 per month for 12 months.

4. PRETRIAL AGREEMENT: The convening authority agreed to disapprove any confinement adjudged in excess of 45 days. Any other lawful punishment may be approved. You may approve the sentence as adjudged.

5. CLEMENCY RECOMMENDATIONS BY THE SENTENCING AUTHORITY: None.

6. APPROVED DEFERMENT/WAIVER ACTIONS:

a. Forfeitures: None.

b. Reduction in Rank: None.

c. Confinement: None.

7. BACKGROUND OF THE ACCUSED:

a. Time in Service: The accused has been in the U.S. Army for approximately 4 years and 1 month:

7 November 2000 – present, U.S. Army

b. Current Enlistment and Term: 10 May 2001, 3 years, plus an extension of 4 months.

AETV-BGJA

SUBJECT: Staff Judge Advocate's Post-Trial Recommendation in the General Court-Martial of  
First Lieutenant Glenn A. Niles, Jr. , 615<sup>th</sup> Military Police Company, APO AE  
09114

- c. ETS Date: October 2004.
- d. Basic Branch: 31A00/Military Policeman.
- e. Awards: National Defense Service Medal, Global War on Terrorism Expeditionary Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon. The accused is authorized to wear a combat patch on his right sleeve.
- f. Dependents: Married with three children.
- g. Civilian Education: Master of Arts Degree from Webster University, Saint Louis, Missouri and a Bachelor of Psychology Degree from College of Charleston, South Carolina.
- h. Prior Convictions/Article 15s: None.
- i. Restrictions on Liberty: The accused was required to physically check in at the company and subsequently call the company twice a week from 3 February until 1 July 2004. The defense counsel did not determine these to be an Article 13 issue nor restriction tantamount to confinement. (See ROT page 58)
- j. Pretrial Restraint: None.

8. POST-TRIAL MATTERS SUBMITTED BY THE ACCUSED: This recommendation and an authenticated copy of the record of trial will be served upon the accused and his defense counsel. Any matters submitted by or on behalf of the accused pursuant to R.C.M. 1105 or 1106(f) will be provided to you. In accordance with R.C.M. 1107, you must consider all written defense submissions prior to taking action in this case.

9. RECOMMENDATION: I recommend that you approve the sentence as adjudged.

3 Encls

- 1. Report of Result of Trial
- 2. Record of Trial
- 3. Proposed Action

  
  
Staff Judge Advocate

# **INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

1a. FROM: (Name of Investigating Officer - Last, First, MI)  [REDACTED]		b. GRADE  [REDACTED]	c. ORGANIZATION GTA Operations and Plans 100th ASG, APO AE 09114	d. DATE OF REPORT 19 MAY 2004
2a. TO: (Name of Officer who directed the Investigation - Last, First, MI)  [REDACTED]		b. TITLE  [REDACTED]	c. ORGANIZATION  HQ, 100 <sup>th</sup> ASG, APO AE 09114	
3a. NAME OF ACCUSED (Last, First, MI) NILES, Glenn A. Jr.	b. GRADE 1LT	c. SSN  	d. ORGANIZATION 615 MP CO APO AE 09114	e. DATE OF CHARGES 30 SEP 2003
(Check appropriate answer)				
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES NO X
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				X
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				X
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]		b. GRADE [REDACTED]	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)	b. GRADE
c. ORGANIZATION (If appropriate) US Army Trial Defense Service		c. ORGANIZATION (If appropriate)		
d. ADDRESS (If appropriate) Region IX, Trial Defense Service Vilseck Branch Office, APO AE 09112		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in item 21.)				
a. PLACE		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				
a. THE CHARGE(S) UNDER INVESTIGATION				YES NO X
b. THE IDENTITY OF THE ACCUSER				X
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				X
d. THE PURPOSE OF THE INVESTIGATION				X
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				X
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECT TO PRESENT				X
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				X
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				X
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				X
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				X
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				X
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL NA				

NOTE: If additional space is required for any item, enter the additional material in item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

## 12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)

NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	[REDACTED]	709 <sup>th</sup> MP Battalion	X	
[REDACTED]	[REDACTED]	Tripler Army Medical Center	X	
[REDACTED]	[REDACTED]	92 <sup>nd</sup> MP Company	X	
[REDACTED]	[REDACTED]	615 <sup>th</sup> MP Company	X	
[REDACTED]	[REDACTED]	615 <sup>th</sup> MP Company	X	
[REDACTED]	[REDACTED]	615 <sup>th</sup> MP Company	X	
[REDACTED]	[REDACTED]	Grafenwoehr, Germany	X	

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

X

13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		
Charge Sheet dated 30 SEP 2003		X	
Commander's Inquiry Results by CPT Searl dated 7 AUG 2003 with Enclosures 1-9		X	
1LT Niles ORB as of 20030828		X	
1LT Niles OER dated 10 JUL 2002		X	
1LT Niles OER dated 9 JUL 2003		X	

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED

X

14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)

X

15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)

X

16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL

X

17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM

X

18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED

X

19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)

X

20. I RECOMMEND:

X

a. TRIAL BY ☐ SUMMARY☐ SPECIAL☐ GENERAL COURT-MARTIALb. ☒ OTHER (Specify in Item 21 below)

21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

a. SUMMARY OF FACTS/DISCUSSION OF EVIDENCE

(1) The facts of the case are not in dispute with respect to the striking of prisoners - not in self-defense - by 1LT Niles, and the evidence presented was sufficient to support the charge. All witnesses present at the alleged incident agree that 1LT Niles wrongfully struck three prisoners that were in custody at Al Taji Police Station in Baghdad. This fact is supported by the sworn statements of the soldiers present at the incident, their sworn testimony at the hearing, and the sworn statement of 1LT Niles.

(2) The testimony of all individuals questioned at the hearing, with the exception of [REDACTED] ([REDACTED]), testified that 1LT Niles was wrong to strike the prisoners.

22a. TYPED NAME OF INVESTIGATING OFFICER

b. GRADE

c. ORGANIZATION

GTA, Operations and Plans

100th ASG, APO AE 09114

003259

d. SIGNATURE OF INVESTIGATING OFFICER

e. DATE

18 MAY 2004

<u>DESCRIPTION OF ITEM</u>	<u>LOCATION OF ORIGINAL (If not attached)</u>	<u>YES</u>	<u>NO</u>
LOR from [REDACTED] dated 25 JAN 2004			
LOR from [REDACTED] dated 28 JAN 2004			
CVE of [REDACTED]			

Item 21, continued:

(3) The evidence presented by [REDACTED], [REDACTED] ([REDACTED]), and [REDACTED], suggests that 1LT Niles was shocked by his own actions. 1LT Niles was described by his platoon members as a man seldom at a loss for words. Immediately following the incident, 1LT Niles was incapable of speaking or responding to the angry actions of [REDACTED] who had pulled him away from the prisoners. 1LT Niles has repeatedly accepted responsibility and shown remorse following the incident according to the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

(4) Witnesses testifying at the hearing stated that 1LT Niles should not be punished by court martial. [REDACTED] (Inquiry Officer), was not asked for a recommendation for disposition of the charges, but stated that 1LT Niles should not command soldiers in the future as a result of his actions.

(5) 1LT Niles' Company Commander and Battalion Commander in Iraq presented Letters of Recommendation for 1LT Niles, and also testified in the hearing that they would gladly serve with him again. [REDACTED], [REDACTED], and [REDACTED] all testified that he was a good platoon leader and would serve with him again. There was no testimony to contradict the fact that 1LT Niles' chain of command and his soldiers thought him to be a good leader and passionate about the welfare of his soldiers.

(6) There was no conflicting evidence presented at the hearing with respect to the two charges 1LT Niles is charged with.

(7) The three prisoners that 1LT Niles allegedly struck were not available for the hearing, and they will likely not be available for any court-martial proceedings.

(8) All witnesses that served with 1LT Niles testified that all soldiers in the platoon were under enormous stress because of environmental conditions and ever present danger.

(9) All witnesses, with the possible exception of [REDACTED], were credible witnesses. [REDACTED] could not form a reasonable judgment with respect to the charge of maltreatment as to whether 1LT Niles was wrong to strike the prisoners. He testified that he was about 25% complete with his study and analysis of 1LT Niles' case.

b. COMPARING EVIDENCE TO CHARGES/RECOMMENDATION OF CHANGES TO CHARGES

(1) There are reasonable grounds and sufficient proof to support violations of Article 93, Cruelty and Maltreatment, and the three specifications of striking prisoners listed in the charge sheet.

003260

Item 21, continued:

(2) There are reasonable grounds and sufficient proof to support a violation of Article 133, Conduct Unbecoming an Officer and Gentleman.

(3) I do not recommend a change to the charges. Article 93 should not be changed to Assault and Battery because the prisoners were subject to his orders at the time of the incident.

c. DEFENSE-REQUESTED OBJECTIONS None.

d. RECOMMENDATION FOR DISPOSITION OF CHARGES

(1) I recommend that 1LT Niles not be charged by Court-Martial. I further recommend a General Officer Memorandum of Reprimand, but placed in the restrictive fiche of his OMPF.

(2) There was never any question as to whether or not 1LT Niles committed misconduct. 1LT Niles admitted misconduct in his statement, has never denied wrongdoing, and the incident was witnessed by three soldiers under his supervision. It is all supported by sufficient evidence. 1LT Niles should be punished as a result. The question for the hearing officer and the appointing authority is how to dispose of this case when considering matters of extenuation, mitigation, deterrent effect; and also, the best interests of 1LT Niles, his unit, and the United States Army. I did not take into account the reports related to the Abu Ghraib prison scandal. These are two separate events, under different circumstances.

(3) Matters of extenuation. Testimony indicated that all soldiers in 1LT Niles' unit suffered similar environmental and danger related hardships throughout their tour of duty. Few received more than a few hours of sleep each night. 1LT Niles snapped; other soldiers did not. Leaders, nonetheless, also have greater burdens with respect to their responsibility for mission accomplishment and caring for soldiers. By all accounts, 1LT Niles was a passionate leader who cared about both his mission and his soldiers. This was the testimony of 1LT Niles' chain of command and his soldiers. The pressures of mission accomplishment included the administration of Iraq police stations for which 1LT Niles had no experience (MPs receive provost marshal training as captains), and the training of Iraqi police. There are many accounts throughout American history where leaders made mistakes under the pressure of their commands. Gen Sherman had a breakdown prior to Vicksburg; LTG Patton slapped a soldier. The enormous burdens of our leaders in combat cannot be judged by the same standards of a peacetime army.

(4) Matters of mitigation. Up to the point where 1LT Niles struck three prisoners, and since that event, 1LT Niles has been an exemplary lieutenant. His commander described in testimony that although he made many of the usual developmental mistakes that his peers made, he was nonetheless a good officer. 1LT Niles received recommendations for future service from his company commander and battalion commander. Both would gladly serve with 1LT Niles in the future. The soldiers under 1LT Niles who testified at the hearing all were impressed by his high standards and would serve with him again, also. In particular, [REDACTED] was passionate describing his service with 1LT Niles: "I would take Lieutenant Niles with me again, down range again." His OERs indicate that 1LT Niles has unlimited potential as an officer.

(cont.)

003261



Item 21, continued:

(5) Deterrent Effect. This issue was raised by counsel during the hearing, and the witnesses indicated that striking a prisoner was the end of a career; therefore, this in itself would seem to deter maltreatment of prisoners alone. The evidence indicates that 1LT Niles did not enter the police station with the intent of striking prisoners. The event seemed to surprise everyone involved, including 1LT Niles himself. There was no intent to harm; it was a sudden and unplanned action. The fact that 1LT Niles was removed from his position, subjected to humiliation and shame is a deterrent and reminder to other MPs not to place themselves in that sort of position. This does not require court-martial to achieve deterrent effects.

(6) The interests of 1LT Niles, his soldiers, and the United States Army. According to testimony presented at the hearing, 1LT Niles is a good officer, a good husband and father, and a good man. He already earned a masters degree in counseling prior to receiving his commission, and in particular, he was interested in helping troubled youths. According to his wife who testified at the hearing, 1LT Niles always wanted to be a soldier and a police officer; as an MP he could "have his cake and eat it too." He made one mistake. All of his efforts previous to the striking of prisoners are greatly diminished by his actions. But his chain of command believes in him, his soldiers believe in him, and they think he can overcome this event. He should be given the chance to redeem himself while in uniform, and use this event as an example to other leaders for the future. Throughout my career, I've seen junior leaders make mistakes. But they were given the chance to overcome them, based on their potential to the Army. Gen Powell relates how he was given a second chance after losing his pistol as a young officer. BG Freakley once told me how he committed an error as a 1LT commander by unlawfully restricting a soldier for a weekend under lock and key in his supply room. Gen Powell was his brigade commander at the time, and gave him a second chance, too.

e. ARTICLE 32 HEARING DELAYS

Original date of hearing: 5 April 2004

Defense requested delay dated 30 March 2004 for a hearing NET 26 April 2004 for family reasons - approved by [REDACTED] 9 April 2004

Defense requested delay dated 17 April 2004 for a hearing on 11 May 2004 for psychiatric evaluations related to defense - approved by [REDACTED] 20 April 2004

Defense requested delay dated 3 May 2004 for a hearing on 14 May because of scheduling conflicts related to the defending counsel - approved by [REDACTED] on 3 May 2004.

Article 32 hearing was conducted on 14 May 2004.

003262

## SUMMARY OF THE PROCEEDINGS

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles was called to order at 0900 hours, 12 May 2004, Grafenwoehr Training Area, Building 621, 100th Area Support Group Conference Room, Grafenwoehr, Germany:

The following persons were present:

Investigating Officer, [REDACTED]

Trial Counsel, [REDACTED]

Assistant Trial Counsel, [REDACTED]

Defense Counsel, [REDACTED];

The Accused, [REDACTED];

The Reporter, [REDACTED];

Assistant Reporter, [REDACTED]

[REDACTED] 709th Military Police Battalion, was called as a witness, was sworn, and testified in substance as follows:

### QUESTIONS FROM THE DEFENSE COUNSEL

Lieutenant Niles was a platoon leader in the 615th Military Police Company. The 615th Military Police Company was one of the units that fall under my battalion. I believe it was one

of the sergeants from the 615th Military Police Company that told the Commanding Officer about the incident. I am not certain nor clear of the actual events. [REDACTED] [REDACTED] informed me of the incident, I agreed to remove Lieutenant Niles from his leadership position. I assigned the Lieutenant in the battalion staff. I appointed [REDACTED] [REDACTED] to investigate the allegations against Lieutenant Niles. [REDACTED] started his investigation after consulting with the brigade Judge Advocate. He took sworn statements from the witnesses present at the incident. While Lieutenant Niles was working at the battalion, he performed his duties very well. Even after the incident, he still performed very well. Lieutenant Niles told me what had happened. He took full accountability for his actions and he apologized. I asked him why he did it, and he could not give me a clear justification. I don't know how much stress Lieutenant Niles experienced, but it's clear to me that he snapped and lost control. Lieutenant Niles was performing as Provost Marshall. He was responsible for the administration of an Iraqi Police station that contractors were building. Lieutenant Niles was also responsible for training the Iraqi Police force. The Iraqis have no concept of the law enforcement system and that's one of the reasons why it was hard for the Lieutenant to complete his mission at the Iraqi Police Station. The Iraqi Police station was the northern most of Baghdad. The soldiers traveled about twenty minutes from their quarters to the Iraqi Police station. There were many hostiles that the soldiers had to go through just to get to the station. Lieutenant Niles was responsible for all the administrative process in the station. He was responsible for many things and I believe that his platoon took great pride in the Iraqi Police station because they were rebuilding something that was completely destroyed. They turned stone and rubble into a working police station, and I believe Lieutenant Niles took personal pride in his work. He rebuilt something that would benefit not only the Iraqis, but also his unit. Lieutenant Niles did not receive the actual

Provost Marshal training because it was reserved exclusively to the Captains and above. Therefore, Lieutenant Niles had to work without the actual training of a Provost Marshall. I don't believe that after he was removed from the platoon that the soldiers performed less. I mean, his platoon sergeant took over his position, but Lieutenant Niles' absence did not change the platoon's mission performance. Yes, his platoon sergeant now had additional duty and responsibility, but even with added task, the platoon was still able to operate the police station and train the Iraqis. I cannot say for certain that the morale became an issue when Lieutenant Niles was removed from platoon leadership. I wrote our brigade commander recommending Lieutenant Niles to resign his commission. I don't believe that such action warrants a person's life. I mean a federal conviction would end Lieutenant Niles' career and civilian chance of working at a reasonable job. I consider his past duty performance and his potential to overcome the incident. Yes, what he did was wrong, but he took full accountability for his action. How much punishment he should get depends on the authority imposing the punishment. I would take Lieutenant Niles with me again down range again.

#### **QUESTIONS FROM THE TRIAL COUNSEL**

The platoon sergeant and the platoon went through the same long work hours; lack of sleep; and hostile environment as Lieutenant Niles did. Yes, they did not strike the prisoners. Lieutenant Niles' action was not acceptable. He was training the Iraqi Police how to handle and treat the prisoners. The Iraqi Police had little or no training at all. If Lieutenant Niles was training the Iraqi Police and wanted them to follow his example, then it would send the wrong signal to the Iraqi Police if they had seen what Lieutenant Niles did. But to my knowledge, this was an isolated incident. The Lieutenant did a great job administering the police station. The

prisoners where suspected of criminal offense. They were in the station waiting to be transferred to the Iraqi judicial court system. There they would be tried for their offenses. They were still innocent until found guilty in an Iraqi court. I don't know what happened to them after they were transferred. I fully supported the company commander in handling the incident. It was [REDACTED] that made to me the recommendation of removing Lieutenant Niles from the platoon leadership. I believe the incident should be handled with a letter of reprimand.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Deposition Testimony of [REDACTED] in the case of  
U.S. v First Lieutenant Glenn A. Niles adjourned at 0945 hours, 12 May 2004.

## SUMMARY OF THE PROCEEDINGS

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles was called to order at 1450 hours, 13 May 2004, Grafenwoehr Training Area, Building 621, 100th Area Support Group Conference Room, Grafenwoehr, Germany:

The following persons were present:

Investigating Officer, [REDACTED];

Trial Counsel, [REDACTED];

Assistant Trial Counsel, [REDACTED];

Defense Counsel, [REDACTED];

The Accused, [REDACTED];

The Reporter, [REDACTED];

Assistant Reporter, [REDACTED]

[REDACTED], Tripler Army Medical Center, Honolulu, Hawaii 96859-5000, Currently TDY at the Laundstul Regional Medical Center, was called as a witness, was sworn, and testified in substance as follows:

## QUESTIONS FROM THE DEFENSE COUNSEL

I don't mind starting early today. I went to medical school and became a doctor, physician in surgery. I have specialized training in psychiatry from UCLA (University of California, Los Angeles) and USC (University of Southern California). I did a year of internship and three years of psychiatry practice. In 1984, I worked for the Atascadero State Penitentiary for the criminally insane and became certified in forensics. In 1966 to 1969, I was a Special Forces Medic and cross-trained in weapons and demolitions. I got out and went to school to become a doctor. In 1980, I became the battalion surgeon for the 12th Special Forces in Hamilton Field, California. In 1984, I became a psychiatrist for the SERE (Survival, Evasion, Resistant and Escape) School at Camp McCall in Fort Bragg, North Carolina. I have been a board certified psychiatrist for twenty years. I cannot talk about my work in the Army Special Forces.

The Defense Counsel stated that no questions were to be asked about any Classified work the witness conducted in the Army Special Forces.

The Trial Counsel asked the Investigating Officer if he had a copy of the witness' Curriculum Vitea.

The Investigating Officer stated that he had a copy of the witness' Curriculum Vitea.

Atascadero is a state hospital for the criminally insane. It has approximately a thousand beds and houses various types of criminals. I worked with LAPD (Los Angeles Police Department) SWAT (Special Weapons and Tactics) Team 1983-1984. I became their psychiatrist consultant. My experience in psychiatry in the military began in Tripler Army Medical Center as director of in-patient psychiatric unit and later became director of psychiatry department. I moved to Shofield Barracks, Honolulu, Hawaii and became the Chief of Community Mental Health Center. I am engaged in private practice, military psychiatry, emergency psychiatry, consultation, and psychiatric interviews. I wrote an article in 1997, titled "Stress on the Battlefield." I studied law enforcement stress extensively. I have met Lieutenant Niles on two occasions. I reviewed the case file. I asked Lieutenant Niles if he could give a clear detail of what was going on in the field before the incident took place. I know things are very difficult in the field right now. I wanted to know the level of stress he was experiencing in the field before the incident. Some of the stress factors Lieutenant Niles was experiencing were long work hours, lack of sleep, climatic (hot) environment, and hostile environment. It was very different compared to the law enforcement shifts in the United States. The Lieutenant did not tell me if he had any days off. Lieutenant Niles told me when he heard the prisoners tried to escape; he asked two others MPs (Military Police) go with him. This act indicated to me that the Lieutenant was anticipating problem with the prisoners or he wanted an extra back up. The Lieutenant ordered the prisoners to face the wall where the hole had been made. He asked them if they made the hole in the wall. Lieutenant Niles stated the he got aggressive with them and punched them in the stomach and one of the sergeants pulled him as he kicked the third prisoner. The Lieutenant was very open and straightforward about everything. He did not try to hide or avoid talking about the incident. The Lieutenant was very emotional and sorry about his action.



During and after deployment, performance starts to go down hill. This means that every individual is subject to stress and job performance will be affected. I have seen MPs having a hard time making transition from the garrison to the field. I think the MPs have more stress because of the different rules they have to follow. The MPs are being told one thing and later being told another. I have formed an opinion in the Lieutenant's case. The Lieutenant had no bad past or prior record. It appears that the Lieutenant had been a very good soldier. I know the Lieutenant had a lot of stress. When the Lieutenant was taking control, he was maintaining control of the prisoners and he just snapped in the process. I think the Lieutenant's action should be recorded and be placed in his record for ninety days as a reminder of what not to do. The key to future misconduct is the past history behavior of the Lieutenant. There is no indication that his action would turn into a pattern in the future.

#### **QUESTIONS FROM THE TRIAL COUNSEL**

I remembered talking to you and [REDACTED] yesterday and I got in trouble for talking to you both. My boss thought that I was talking to the press. My boss asked if I was talking to the press and I told my boss that I was talking to the prosecutor. There is a difference between a medical training in psychiatry and medical training in body. The basic or initial part of the training is the same, pre-med. Later on during the course, you would go onto your specialized training, internship, residence, and then license. I am trained and licensed in medicine and psychiatry. I can prescribe medicine to mental patients. I went to Loma Linda University for my undergraduate. I went to the Medical School of Guadalajara. I did my fifth year at Pathway Medical Program in the United States. What I meant when I said, "Niles is

003270

going to have to pay for an outburst of anger" was Lieutenant Niles made a mistake and in the military justice system, his action has consequences. How much he has to pay will depend on the authority over him. He was not criminally impaired. The Lieutenant knew right from wrong. I have not done an extensive background examination on Lieutenant Niles. My evaluation is really not finished yet. I spoke with three sergeants but I don't know their names. They made statements that are in the packet. I spoke with them on the telephone. I met with Lieutenant Niles twice face-to-face. I reviewed the file Defense Counsel gave me. There is other information that could change my opinion. I do not yet know that information. I have not done a psychological test on the Lieutenant. I would conduct a full psychological test before making an evaluation on Lieutenant Niles. Lieutenant Niles had a diminished capacity during the incident. Did he know right from wrong? Yes, he did. However, diminished capacity and knowing right from wrong are two different things. Yes, Lieutenant Niles knew right from wrong. However, he had a diminished capacity due to the level of stress. His lack of sleep and long work hours would diminish his capacity to perform his duty. But would he know right from wrong after his diminished capacity? Yes, he would. But because I have not done a complete evaluation on Lieutenant Niles, I don't know where I stand as far as his diminished capacity. What I meant when I said, "Giving them a doughnut was not going to work" was having control by maintaining control. When a police shows a level of authority, the subject responds to that authority. If the subject sees weakness in the authority, the subject would more likely over turn that authority. Showing force is not abuse. It is a way for the subject to comply with authority or authority will use force to make the subject comply with authority. Law enforcements are trained to be aggressive. I don't know what happened with Lieutenant Niles' case but I know he was responding from frustration and anger. I am familiar with what I read in the case file. The

prisoners were not presenting a treat. I was doing my police work, I placed an individual up against the wall. I did not strike at the individual. Lieutenant Niles was baffled by his behavior. He could not give me an explanation for his action. He told me he stuck two in the stomach and kicked the third. The Lieutenant said he was frustrated and angry and he just snapped. There was no policy on how to handle the situation. I think there is a policy on not to strike at prisoners. Military Police are trained on when and when not strike at people. There are differences in Basic Military Police training and Combat Military Police environment. There is a stress level difference. Do I agree that what Lieutenant Niles did was wrong? It's a good question. Maybe he did it to make the prisoners from doing it again. Would it be wrong for a police officer to strike at the prisoner? It would depend on the situation. I cannot say that it was wrong for the Lieutenant to beat up the prisoner in a combat situation. All I know about Lieutenant Niles is what I have read in the case file. I need to do a more extensive background evaluation. But from talking to the people around him, he seemed like a pretty nice guy to me. I have not conducted an extensive background evaluation on Lieutenant Niles' background. I am about one quarter away from my evaluation.

#### **QUESTIONS FROM THE DEFENSE COUNSEL**

The Defense had not asked me to do a full extensive report. I was just asked to assess and consult with the Defense. I was asked to do a preliminary evaluation on Lieutenant Niles. Diminished capacity and knowing right from wrong are two separate things. Lieutenant Niles knowing right from wrong is not an issue. He knew what he was doing. The issue is the level of diminished capacity. I cannot give an answer to his level of diminished capacity. My opinion on

his diminished capacity is that it should be taken into consideration when imposing punishment. Lieutenant Niles never told me that what he did was okay. He took full accountability for his action.

### **QUESTIONS FROM THE INVESTIGATING OFFICER**

I will use suicide to explain Past History Behavior. When someone tries to kill himself or herself, psychiatrist look at the past history of the individual. The psychiatrist is looking for pattern of behavior that would indicate future or repeated pattern of the same kind of behavior. Basically, if someone tried to commit suicide twice, more likely the person would try to commit suicide again. I was looking for Lieutenant Niles' Past History Behavior to see if he had the same outburst of anger before. I did not find any.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Deposition Testimony of [REDACTED] in the case of U.S. v First Lieutenant Glenn A. Niles adjourned at 1645 hours, 13 May 2004.

## SUMMARY OF THE PROCEEDINGS

The Article 32 Investigation was called to order at 0859 hours, 14 May 2004, Rose Barracks Courtroom, Vilseck, Germany:

The following persons were present:

Investigating Officer, [REDACTED]

Trial Counsel, [REDACTED]

Assistant Trial Counsel, [REDACTED]

Defense Counsel, [REDACTED]

The Accused, [REDACTED]

The Reporter, [REDACTED]

The Investigating Officer stated that he was the Investigating Officer detailed in the case and read the rights of the Accused to an Article 32 Investigation and stated that he understood his rights.

The Defense Counsel waived the reading of the charges.

The Investigating Officer declared the three Iraqi prisoners as reasonably unavailable for purposes of testimony.

The Trial Counsel introduces the complete commander's inquiry report done by [REDACTED] 1LT Niles' sworn statement, 1LT Niles right waiver, two sworn statements from [REDACTED] sworn statement, [REDACTED] sworn statement, [REDACTED] sworn statement, and [REDACTED] sworn statement.

The Defense Counsel voir dire the Investigation Officer.

### QUESTIONS FROM THE DEFENSE COUNSEL

I have not had any conversations with the command concerning this case. I am familiar with the incidents in Iraq right now with the prisons and the MP's. I have heard statements made by government officials that justice would be handed out in these cases. I do not feel any pressure to recommend any certain disposition in this case based on the incidents in Iraq.

[REDACTED] 92nd Military Police Company, was called as a witness, was sworn, and testified in substance as follows:

### QUESTIONS FROM THE TRIAL COUNSEL

I was formerly deployed in Iraq. I was involved in the commander's inquiry for 1LT Niles. [REDACTED] appointed me to that duty. I was appointed to look into misconduct at the Al-Taji police station. After I was appointed I went to battalion to speak with [REDACTED] for a legal briefing on how to handle the investigation. Then I went to the Al-Taji police station to interview

003275

all of the soldiers there to see what they knew. The Al-Taji police station is on the north side of Baghdad. The battalion is on the west side of Baghdad. It's about 20-30 minutes from the battalion to the police station. I brought in all of the soldiers to explain to them what I would be doing. I told them not to discuss the incidents among themselves. I interviewed the soldiers one by one. There was a maltreatment of three detainees at the police station. I took five sworn statements. Three of the detainees tried to escape from the prison. The platoon sergeant informed 1LT Niles of the incident. The next day, 1LT Niles went to inspect the damages done by the prisoners. It was around 24 hours from the time of the attempted break out to the time of the incident. 1LT Niles discovered that the prisoners had attempted to break through the wall with a pipe. He told one of the sergeants to bring the detainees into the latrine where the damage was done. He grabbed one of the detainees and kind of threw him over to where they had attempted to break out. He repeated the same process with the second and the third followed. Then he struck the first detainee in the stomach. He did the same to the second and attempted to strike the third but [REDACTED] pulled him away. 1LT Niles then kicked the third detainee. It was not self-defense. The detainees were being compliant. Afterwards I reviewed all of the statements I had received, and then I interviewed 1LT Niles. I talked with him at the battalion TOC, in [REDACTED] room. I did read him his rights and he did do a rights waiver.

Trial Counsel hands [REDACTED] a copy of the commander's inquiry and [REDACTED] confirms that it is his commander's inquiry for the 1LT Niles incident.

1LT Niles explained everything to me exactly how I just explained the incident to you. 1LT Niles struck them because of what they did the night prior. I can't speculate as to whether he did

it out of anger. One soldier did say that while the unit was in Kuwait that 1LT Niles had pulled a soldier out of the tent because the soldier was not "moving fast enough". That was a previous display of his temper. I don't think that 1LT Niles should command soldiers in the future because of his temper and the position he put his soldiers in that day. The soldiers have a responsibility to report such behavior, so they had to choose between loyalty and duty. [REDACTED] [REDACTED] came forward about the incident. I am currently a company commander. 1LT Niles was a platoon leader. He was over approximately 30 soldiers. He has to set a good example for these soldiers. Striking these detainees did set a bad example. The MP's also did training with the Iraqi police. One of their missions was to train the IP's in proper police procedures.

Defense Counsel objects on grounds of speculation, to a question about how 1LT Niles' actions affected the Iraqi Police.

If the IP's would have found out about this incident it would have set a bad example for them.

#### QUESTIONS FROM THE DEFENSE COUNSEL

I think [REDACTED] told me about the incident where 1LT Niles had pulled the soldier out of the tent. It was not [REDACTED] that was pulled out of the tent. They did not mention the circumstances surrounding the event. I didn't hear anything about a fire. I did speak with [REDACTED] [REDACTED] once on the phone and once at the brigade. I did that before I spoke with the witnesses. I contacted him again to let him know the report was complete. I don't remember talking with him about my findings. I did see the damage done by the detainees. It wasn't actually a hole in the



wall. They used a metal pole to damage the wall. The damage was approximately three feet by four feet. If they would have gone all the way through the wall, the detainees could have slipped through it. I understood that the detainees were there because they killed a taxi driver and stole his car. 1LT Niles never dodged the issue. He was very forthcoming with all of the information. It took me about a week to complete my report. Once I turned in my report I did not have any further contact with the command, concerning the incident. I'm not sure why it took two months to prefer charges.

#### **QUESTION FROM THE INVESTIGATING OFFICER**

I met 1LT Niles last March when we deployed. We spent 7 months together, but did not have a lot of contact with each other because of our positions. I did not know any of the NCOs prior to the incident.

#### **QUESTIONS FROM THE TRIAL COUNSEL**

I believe the detainees were about five foot six to five foot eight and around 150-180 pounds.

There being no further questions, the witness was warned not to discuss his testimony with anyone, was permanently excused, and withdrew from the proceedings.

The Defense Counsel introduced the audiotapes from the VTC's with [REDACTED] and [REDACTED]  
[REDACTED]

[REDACTED] 615th Military Police Company was called as a witness, was sworn, and testified in substance as follows:

### QUESTIONS FROM THE DEFENSE COUNSEL

I was with the 615<sup>th</sup> MP Company in Iraq. We deployed in March and I took over the platoon sergeant slot in April. Prior to that, I did not really know 1LT Niles. When the incident occurred I was sitting at the front desk with the IP's. [REDACTED] came down the hallway and told me I needed to get back to where 1LT Niles was. As I came to the doorway to the D-Cell 1LT Niles was coming out. I saw three prisoners on the ground. [REDACTED] came out and was upset as well. I asked 1LT Niles what was going on and he just shook his head. I found out from [REDACTED] that 1LT Niles had struck some prisoners. It was out of character for 1LT Niles to not say anything. He is never at loss for words. I never did talk with him again about the incident. I gave a statement to [REDACTED]. I had been with 1LT Niles for about four months prior to this incident. I have been in the Army and an MP for 16 years now. I've been an NCO for about 12 years. I was a platoon sergeant at Fort Polk for a little over a year. Expectations are greater in a combat zone. 1LT Niles was a stern platoon leader who had high standards. He expected soldiers to toe the line. We did patrols in Iraq before we got the mission to get the police stations up and running. Most of them were looted and burnt, and we basically had to start from scratch. About 20 percent of the IP's were dependable. They had no ethics or police standards. One of the main

stresses was the heat. Force protection was a big issue as well. There was also the threat of IED attacks to and from the battalion and police station. There were no days off. We worked 12-16 hours a day. There were incidents about stations being attacked. I don't think that 1LT Niles should go to jail. A letter of reprimand would be sufficient. That would not send a message of toleration. A letter of reprimand is pretty serious for an officer.

### **QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL**

There were some serious effects because of this incident. I was the one who reported the incident. That was probably the most difficult thing I've ever had to do. I am responsible for helping train the LT and I kind of feel like I failed him. It's still in the back of my mind. 1LT Niles put his soldiers in a bad situation. You have to lead by example. This is something young soldiers would not picture an officer doing. They had to choose between 1LT Niles and the Company. As the platoon sergeant I had to step up. There were already plenty of stress factors. I got five hours of sleep if I was lucky. I did put in as many hours as 1LT Niles and was under the same kind of stress. I never did strike anyone. I found other ways to deal with the stress. The three detainees were accused of crimes, but that doesn't mean they deserve to be struck. Just because they tried to break out the night before does not mean they deserve to be struck. What 1LT Niles did was wrong. It was our duty to get the stations up and running and to train the IP's. IP's had different tactics in dealing with prisoners. It would not be uncommon for them to beat prisoners. We were trying to teach them to only use necessary force. We taught them the proper ways to treat detainees. We tried to lead by example. 1LT Niles did not set a good example.

003280

### **QUESTIONS FROM THE DEFENSE COUNSEL**

I did report the incident. 1LT Niles never told me to keep things between us. I think the day of the incident we had a force protection inspection. 1LT Niles did seem detached during this whole incident. I've never talked with [REDACTED] about this case. I don't recall any weapons being retrieved around the Taji station.

### **QUESTIONS FROM THE INVESTIGATING OFFICER**

1LT Niles never gave me any impression that I wasn't doing my job as a platoon sergeant. He actually complimented me. I do not believe that the IP's knew why 1LT Niles was re-assigned.

### **QUESTIONS FROM THE DEFENSE COUNSEL**

We moved those three detainees to Camp Crawford, and from what I heard, one of them was released due to a lack of evidence. They were not injured or taken to a hospital.

### **QUESTIONS FROM THE INVESTIGATING OFFICER**

003281

I have been with these NCOs for over a year now. They all have very strong character. I do not know of any personal conflicts between the NCOs and 1LT Niles. They may have procedural conflicts. There were complaints about how he wanted to run things, but I did support my platoon leader.

#### **QUESTIONS FROM THE DEFENSE COUNSEL**

I never felt that the things 1LT Niles wanted to do were inappropriate. He just had high standards. These were just basic soldier gripes. [REDACTED] does have a tendency to exaggerate things.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.

The Article 32 investigation recessed at 1000 hours, 14 May 2004

The Article 32 investigation reconvened at 1002 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

[REDACTED], 615<sup>th</sup> Military Police Company was called as a witness, was sworn, and testified in substance as follows:

#### **QUESTIONS FROM THE DEFENSE COUNSEL**

I was in the same platoon down range as 1LT Niles and [REDACTED] I was the first squad leader in first platoon. I did observe what happened. [REDACTED] and [REDACTED] were also in the room with 1LT and myself Niles. I was the closest to 1LT Niles. The incident stopped when I grabbed the LT. Once I nudged him back he turned around and walked out the door. I followed him to the patrol room and I closed the door. I told 1LT Niles that he better not ever put me of my soldiers in that position again. 1LT Niles didn't respond. That was unusual and out of character for him. He seemed zoned out. He just kept looking straight ahead. I was not present for the conversation between 1LT Niles and [REDACTED]. None of us discussed it after that day. 1LT Niles never told me to keep this between us. He hit two of the detainees once each in the gut and kicked the third. I would not say that he used full force. He did not resist as I pulled him away. The detainees were brought in because they killed a taxi driver and stole his car. They tried to escape the same night they had been brought in. One of the other prisoners informed us of their attempt to escape. None of the three denied doing the damage. Had the hole been bored the whole way through, the prisoners could have escaped. I've been in the Army for 13 years. I've been an NCO for about 8 years and an MP all 13 years. 1LT Niles is a great lieutenant. Everything he did was for the platoon and he had high standards. Other than this incident there was nothing inappropriate in his actions. In Kuwait we had a trashcan by our tent that had caught fire. We had to get everyone out of the tent. I didn't see what 1LT Niles did, but I heard that he just grabbed the soldier and pulled him out of the tent. I don't think that 1LT Niles should be court-martialed. I think a letter of reprimand would be strong enough punishment.

#### QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL

The attempted escape happened the night before the incident. 1LT Niles wanted to talk to the detainees responsible. [REDACTED] is ordered to watch the remaining detainees as the three responsible were taking into the latrine area. It was 1LT Niles, [REDACTED], [REDACTED], and myself. I don't remember what the detainees were wearing. They were about five foot five or six and maybe 150 pounds. They were not a threat to us at that time. They did not make any threatening gestures. 1LT Niles makes first contact. [REDACTED] demonstrates 1LT Niles actions by grabbing [REDACTED] by the back of the neck and kind of pushing him about three feet over. He then demonstrates how 1LT Niles struck the detainees by performing a low punching motion towards [REDACTED] stomach area. [REDACTED] then demonstrates the position of the third detainee by crouching down on the ground with one knee on the ground and one hand in the air shaking, as he says, "no mister, no". He then demonstrates 1LT Niles actions towards this third detainee by showing a kicking motion while acting as if being pulled back at the same time. This kick was said to have landed in the chest area of the third detainee.

The detainees were lined up facing 1LT Niles. He keeps asking them, "Did you do this, did you do this?" in a forceful tone. He then punched one in the gut and I started to walk towards him. Before I got to him he had already punched the second one in the gut. I pulled him back and he kicked the third detainee, then turned around and walked out. [REDACTED] had left the room. None of the detainees attempted to lunge at 1LT Niles. He did not act in self-defense. 1LT Niles may have been stressed out and upset. 1LT Niles did put me in a bad situation. I had to choose between the LT and the Company. He did not put my career in jeopardy. I don't feel that it could come back on my soldiers or me because we had not done anything. I was concerned about the potential effect this could have on my soldiers and me. We did have stressful conditions. We had

no air conditioner. We did work long hours and little sleep. I never struck anyone. The detainees were the worst of the worst; car-jackers, rapists, murderers. This does not give us the right to strike them. "Sending a message" to the prisoners is not justification to strike the prisoners. We were there to show the IP's that abuse and unnecessary force was not the way to handle police situations. 1LT Niles set a bad example.

### **QUESTIONS FROM THE DEFENSE COUNSEL**

Typically, you may get three to four hours of sleep. This did add to the stress level. There were threats of mortar attacks and car bombs as well as other issues. Force protection was very important. There were some mortars found in a well right outside our station. These could have been used to attack our station. Leaders do have additional stresses. I had nine soldiers in my squad. 1LT Niles had about 30 soldiers under him. The detainees did not require medical attention. This incident was reported immediately.

### **QUESTION FROM THE INVESTIGATING OFFICER**

I know the NCOs in my platoon quite well. I am a friend with them. They have good character. The only conflicts they had with 1LT Niles were with some of his ideas on how to run things.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.



**[REDACTED], 615<sup>th</sup> Military Police Company was called as a witness, was sworn, and testified in substance as follows:**

### **QUESTIONS FROM THE DEFENSE COUNSEL**

I was present during this incident. I did observe what happened. 1LT Niles said he wanted to see the prisoners who had attempted to break out. [REDACTED] stayed with the remaining prisoners and we took the other three in to where they had tried to break through the wall. I did see the damage. They had taken a pipe and busted the wall. With more time they could have escaped. 1LT Niles grabbed the first prisoner and put him up to the wall and asked him, "Did you do this?" and then struck him in the stomach. Then he immediately grabbed the second one and struck him in the stomach. Then [REDACTED] pulled him back. I did not discuss the incident with 1LT Niles or anyone else because of the investigation. I was never encouraged to not tell the truth. The prisoners were not injured. I've been active duty for about 6 years now and was in the reserves for about 6 years before that. I've been an MP for about 12 years. I've been an NCO for less than a year now. There were things that 1LT Niles did as a platoon leader that I disagreed with. We butted heads a lot. His heart was always in the right place even if I didn't always agree with him. He did have very high standards. I think things have gone far enough as far as punishment. A letter of reprimand would be a strong enough message. I do fee that he is reformed and has repented. I am confident in his leadership and I would deploy with him.

## QUESTIONS FROM THE TRIAL COUNSEL/ASSISTANT TRIAL COUNSEL

We were all armed that day. The detainees were 5'5 to 5'10 and approximately 140-160 pounds. They were compliant to the orders they were receiving. There was no translator. I did not feel that they were a risk to us at that moment. 1LT Niles made first contact. He grabbed the first detainee and put him in front of the hole and asked, "Did you do this?" and then struck him in the stomach. He did the same with the second. Then [REDACTED] pulled him away. The third detainee was not a threat. 1LT Niles did not act in self-defense. I don't feel that I was put in a bad situation; maybe the platoon sergeant and the squad leader. I wasn't happy with the position they were put in. Security was not really heightened because of this. We worked 12 hours minimum everyday of the week. I lived in like a partial kitchen area. There were about six inches between my cot and the sink. It got around 140 degrees. I would get maybe four to five hours of sleep a night. I was in Iraq for almost a year. There were a lot of stress factors over there. There were a lot of times I was not in a good mood. I did soldier on. I never struck any detainees. Just because the detainees were in the prison for serious crimes does not make it right to strike them. Striking the detainees was wrong. One of our missions was to train the IP's proper police procedures. The IP's were drunk a lot of times and would beat the prisoners. We were there to try and help bring some reform. We had to lead by example. We tried to train them to use only the necessary force for the situation at hand. 1LT Niles actions that day did not set a good example.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was temporarily excused.

The Article 32 investigation recessed at 1046 hours, 14 May 2004

The Article 32 investigation reconvened at 1053 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

**[REDACTED], 1LT Niles [REDACTED], was called as a witness, was sworn, and testified in substance as follows:**

#### **QUESTIONS FROM THE DEFENSE COUNSEL**

We have been married for almost eight years. We have three children. Glen has been in the Army for almost four years. We got to Grafenwoehr at the end of 2001. His company deployed in March of 2003. He was gone for almost a year. He called me and told me that he was sorry. He was crying and said that he had put the kids and me in a bad situation. He couldn't elaborate but he kept saying he was sorry. It was a little hard in the beginning when he first got back. There was an adjustment time. He has been a little more withdrawn. Before he got in the military he worked with kids. He got his master's degree in counseling. He worked a lot with troubled kids. We went to lunch one day and Glen started talking to an Army recruiter and then a few months later, here we are. He always wanted to be a police officer and a soldier, so here he is having his cake and eating it too. Glen is our family's rock: financially, spiritually, and emotionally. There's nothing he would not do for his family. He has always said God first and then family. When I talked to him about Iraq, he said that he fought for God and country. The

fact that he got up everyday and did his job to his best ability even after knowing that his career was on the line shows what kind of man he is.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was permanently excused.

The accused (1LT Niles) makes an unsworn statement.

The Article 32 investigation recessed at 1106 hours, 14 May 2004

The Article 32 investigation reconvened at 1347 hours, 14 May 2004

All parties present before the proceeding recessed were again present.

The Defense Counsel introduces 1LT Niles Officer Enlisted Records, and two letters of support written by [REDACTED].

[REDACTED], 615<sup>th</sup> Military Police Company was called as a witness, was sworn, and testified in substance as follows:

#### QUESTIONS FROM THE DEFENSE COUNSEL

003289

I am still with 615<sup>th</sup> MP Company. I have been with them for almost two years. I PCS to Fort Leonard Wood on Monday. I was the company commander and 1LT Niles was one of my platoon leaders. He has grown to be a very good lieutenant. He did make a mistake, which has brought us here. He was a lieutenant that was learning and had challenges to overcome. There was the incident about pulling the soldier out of the tent. He has had developmental issues that all lieutenants go through. I never questioned his integrity. Our mission in Iraq was to train the Iraqi police and to stand up the police stations. Our unit had about seven stations to oversee. I worked as the liaison for the sector commander. Our guys worked as provost marshals and chiefs of police. The lieutenants were also in charge of setting up all force protection measures for the stations. Our platoons were stretched pretty thin. There were attacks on the police stations. It was extremely hot there, between 120 and 140. 1LT Niles accomplished the missions. 1LT Niles was moved out of the platoon pending the commander's inquiry report. He was moved to battalion staff. He worked under the Executive Officer in the S4 and also as a night battle captain. I still talked to him on a regular basis because he was still one of my soldiers. He soldiered through all of this. Soldiers who get in trouble either let it get to them, or they soldier on. I do know who [REDACTED] is and I talked to him on a regular basis. [REDACTED] spoke with him first concerning this incident and then I talked with [REDACTED]. First we wanted to let the commander's inquiry to be done first. Once it was determined that the incident did in fact occur, [REDACTED] and me discussed what to do with the case. [REDACTED] and I disagreed on the basis of this case. He felt that it was a war crime and I did not. I interpreted this as an assault. I would not compare this to the current issues in the news concerning the prison abuse. It was my signature that did prefer charges. I think that he should receive a letter of reprimand or a general officer Article 15. I think that the statement that this will not be tolerated has already been made.

003290

## **QUESTIONS FROM THE TRIAL COUNSEL**

One of the squad leaders came to me saying that 1LT Niles had placed his hands on one of the soldiers. It turns out that he did not place his hands on the soldier. He did grab the soldier's LBV and pulled them out of the tent. I was briefed that they were looking for a magazine containing 9mm rounds. I don't know the exact reason except that he was trying to clear the room. He told me that he was just trying to get the soldiers out of the room. I had no thought that he was trying to injure the soldier. I do know that JAGs do not make the final decision and that it was me who preferred charges. There was no undo command influence. We did scenario base things but I was free to do as I saw fit. I've been an MP for about nine and a half years. MP's do get trained on when and when not to use force. We are not trained to use force for no reason. MP's are only supposed to use force when necessary. It was not necessary for 1LT Niles to use force. 1LT Niles was responsible for about 26-28 soldiers. As a leader you are set apart to set an example for your platoon or company. The troops knew that what he did was wrong. Part of his mission was to train the IP's. This kind of behavior would not send a good message to the IP's we're trying to train.

## **QUESTIONS FROM THE DEFENSE COUNSEL**

1LT Niles never denied that the incident happened. He has taken full responsibility for everything.

## QUESTIONS FROM THE INVESTIGATING OFFICER

Our company was attached to [REDACTED] battalion. Our battalion commander is normally [REDACTED]. [REDACTED] was in Kosovo during the time of the incident. This incident was not included in that particular rating period reflected on the ORB. I had seven platoon leaders in my company. One was rated under [REDACTED], and [REDACTED] rated all the others. I recommended 1LT Niles at center mass. We were responsible for seven police stations. The brigade commander at the time was [REDACTED]. Force protection was the most important thing during his inspections. The next big issue was overall sanitation. He would tell you if your station was not adequate but he wouldn't chew out any junior officers. I do highly recommend 1LT Niles. I do not want to see his career ended. He does need to be held accountable for his actions. Court-martial or dismissal is definitely career ending. An Article 15 is close to a career ender, but it can be overcome with a lot of hard work. I would like to see him continue his career.

There being no further questions, the witness was warned not to discuss his testimony with anyone and was permanently excused.

The Government Representative asked the defense if they wanted any of the other possible witness to be called.

Defense counsel declined the calling of further witnesses.

003292

The Investigating Officer permanently excused all of the witnesses.

The Article 32 investigation adjourned at 1440 hours, 14 May 2004.



**CURRICULUM VITAE**

**DATE OF BIRTH:** 4 October 1946

**PLACE OF BIRTH:** Glendale, California

**SSN:**

**PERSONAL DATA:** Married

**HIGH SCHOOL:** San Fernando Valley Academy  
San Fernando, CA

**COLLEGE:** Loma Linda University  
09-1964 to 06-1966 Loma Linda, CA  
08-1969 to 08-1973 B.S. degree - Major - PreMed  
Degree received 14 March 1974

**MEDICAL:**  
09-1973 to 06-04-1977 Universidad Autonoma De Guadalajara  
Guadalajara Jalisco, Mexico  
M.D. Degree

**POSTGRADUATE:**  
07-01-1977 to 06-30-1978 Pre-clerkship in general medicine in preparation for the  
5<sup>th</sup> Pathway Program - Granada Hills Community Hosp.  
Granada Hills, California  
07-01-1978 to 06-30-1979 Pre-externship in general medicine in preparation for the  
5<sup>th</sup> Pathway program - Los Angeles County,  
Olive View Medical Center-Sylmar, California  
07-01-1979 to 06-30-1980 5<sup>th</sup> Pathway Program  
Loma Linda University School of Medicine  
Loma Linda, California

**INTERNSHIP:** General Psychiatry Internship  
Los Angeles County-Olive View Medical Center  
Sylmar, California

This consisted of an eight months of rotation. One month in the emergency room, three months psychiatric outpatient, four months psychiatric inpatient (locked psychiatric ward).

003294

Page Two  
Curriculum Vitae

09-1980 to 12-1980                      Sepulveda Veterans Administration Medical Center-UCLA

This included two months of outpatient with emergency room work, two months of medical wards.

RESIDENCY:

07-01-1980 to 06-30-1984      Psychiatry Residency – Los Angeles County  
Olive View Medical Center, UCLA  
Sylmar, California

PROFESSIONAL EXPERIENCE:

07-1984 to 02-01-2000              Private Practice – Psychiatry

MILITARY EXPERIENCE:

08-23-1966 to 06-12-1969      CO C –6<sup>th</sup> Special Forces Group (ABN)  
1<sup>st</sup> Special Forces US CONARC – Fort Bragg, NC

COMMISSIONED:

10-15-1981 to 02-01-2000      United States Army Reserves  
Rank – Lieutenant Colonel, 13 Dec 1995  
Rank – Major, 14 Dec 1988  
Rank – CPT, 15 Dec 1981  
Rank – 1LT, 10 Sept 1981

BOARD CERTIFICATION: Eligible, General Psychiatry, June 29, 1984

BCFM - Forensic Medicine  
Diplomate of the American Board of Forensic Examiner  
Certificate #944 issue date 05-07-1996

BCFE – Forensic Examiner  
Diplomate of the American Board of Forensic Examiner  
Certificate #2501 issue date 03-15-1996

LICENSURE:

California #A36936, issued 07-01-1981, exp 10-31-04  
Alaska #AA2849, issued 08-04-1992, exp. 12-31-04  
Hawaii #11166, issued 08-11-00, exp 08-11-04

003295

Page Three  
Curriculum Vitae

ECFMG CERTIFICATE: Passed 1980 – took 5<sup>th</sup> Pathway Clinical training program to replace this certification.

FLEX – Passed 1980.

WORK EXPERIENCE: As a licensed M.D. from 1981 to Present

1. L.A.P.D. (SWAT Team), Crisis Negotiating Team - Psychiatric consultant  
Dealing with personal police problems; barricaded suspects, evaluation of police stress.
2. Granada Hills Community Hosp.-Hospice, Psychiatric consultant  
Specific problems dealing with death and dying of terminally ill patients and family members.
3. Granada Hills Medical Center, General practice, outpatient clinic.  
Dealing with general medical problems with outpatients and night call.
4. Olive View Medical Center, Ward, on-duty  
General medical and psychiatric problems occurring on the wards.
5. Olive View Medical Center- Psychiatric Emergency Room  
Acute psychiatric emergencies, evaluations and hospitalizations.
6. 12<sup>th</sup> Special Forces Group, Battalion Surgeon – Rank, Captain  
Function as a general medical officer, dealing with combat injuries, educating Medics.
7. Granada Hills Community Hospital – Hypnosis with pulmonary lab.
8. Atascadero State Hospital – Staff Psychiatrist, Forensic Medical Admissions, documentation of Legal Statutes.
9. S.E.R.E. Committee (Survival, Escape, Resistance and Evasion), Project Officer, Fort Bragg, North Carolina
10. Granada Hills Psychiatric Medical Group, Inc. – Private Practice, General Psychiatry.
11. Learning Skills Laboratory, Medical Psychiatric Director  
10515 Balboa Blvd., Granada Hills, CA 91344
12. Community Living Resource Center, Patient Consultant  
6740 Kester Avenue, Van Nuys, CA
13. Lakeview Medical Center, Psychiatric Medical Director- inpatient unit
14. Mission Hills Psychiatric Medical Group, Inc. – General Psychiatry, private practice. 11550 Indian Hills Road, Mission Hills, CA 91345 from 1984-1992.
15. Edgemont Hospital – Assistant Medical Director
16. San Fernando Valley Community Hospital, Medical Director, in and outpatient psychiatric unit.

003296

Page Four  
Curriculum Vitae

17. Pacifica Hospital of the Valley, Psychiatric Medical Director, in and outpatient unit.
18. Center For Living and Learning, Inc., staff psychiatrist and psychiatric Medical Director.
19. Forensic testifying in California courts as an expert witness on mental competence 5150 and 5250 hearings.
20. Coldwater Canyon Hospital, Woodview Calabasas Hospital, Charter Hospital, Thousand Oaks, California- Psychiatric Consultant
21. Active Duty Military –October 1990, rank- Major. Operation Desert Shield Fort Bragg, NC. Interviewed soldiers leaving for Saudi Arabia and also evaluating psychiatric casualties returning from Saudi Arabia. Consultant for Special Forces at the S.E.R.E. School.

Active Duty Military – March 1991, rank –Major. Operation Desert Shield, Fort Irwin, CA. Chief, Mental Health at the National Training Center. Evaluated forces undergoing desert warfare training. Treated dependants and also ran the chemical dependency treatment program.

22. El Dorado Mental Health – outpatient psychiatrist. 03-1991 to 09-1991
23. [REDACTED], M.D.- private practice 1992 to 08-1998
24. 113<sup>th</sup> Combat Stress Company, Consultant to Commander 03-27-1991 to 06-27-1992.
25. 176<sup>th</sup> ARCOM Headquarters, Chief of Psychiatry 01-30-1993 to 02-02-1996
26. National Earthquake Disaster-United States Army Reserves assigned to the American Red Cross 01-27 to 02-10-1994.
27. Holy Cross Hospital, Mission Hills, CA, - Chief of Psychiatry 01-01-1994 to 08-09-1998.
28. Pacifica Hospital of the Valley, Medical Director, Behavioral Health Unit inpatient psychiatric programs 12-01-1994 to 08-09-1998.
29. Henry Mayo Newhall Memorial Hospital, Medical Director, Behavioral Health Unit, partial hospitalization program and inpatient psychiatric program 01-01-1995 to 08-09-1998.
30. Serra Medical Clinic, Psychiatric Consultant, 01-01-1995 to 08-09-1998.
31. United States Army Reserve, 2<sup>nd</sup> Medical Brigade, San Pablo, CA. Psychiatrist, Mental Health Section 06-1995 to 01-1999.
32. Promoted to Lieutenant Colonel, United States Army Reserve, Medical Corp., 12-13-1995.
33. Charter North Behavioral Health System AKA Charter North Hospital, Anchorage, Alaska – Medical Director outpatient clinics 08-10-1998 to 09-17-1999.

003297

Page Five  
Curriculum Vitae

34. [REDACTED] - private practice, General Psychiatry, Anchorage, Alaska 08-10-1998 to 02-01-2000.
35. United States Army Reserve - 1984<sup>th</sup> Army Reserve Hospital 01-1999 to 02-01-2000.
36. Tripler Army Medical Center, Tripler, Hawaii. Active Duty United States Army.  
Chief, Inpatient Psychiatric Services 02-04-2000 to 06-2000  
Chief, Outpatient Psychiatric Services 06-2000 to 06-2001  
Chief, Community Mental Health, Schofield Barracks 06-2001 to 12-01  
Chief, Community, Operational Psychiatric Services, 01-2002 to present
37. Uniformed Services University of the Health Sciences- appointed Instructor in Psychiatry, 02-05-2001 to present.

Publications:

- 1). [REDACTED]  
P. [REDACTED]  
[REDACTED]  
[REDACTED]
- 2). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 3). [REDACTED]  
[REDACTED]
- 4). [REDACTED]  
[REDACTED]

003298

**Court cases: Expert Witness Testimony**

Appointed as expert in the following cases;

**California**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]

**ALASKA**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

**MILITARY**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

003299



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
Headquarters, 100<sup>th</sup> Area Support Group  
APO AE 09114

126 MAR 2004

AETTV-SB-CO

MEMORANDUM FOR [REDACTED] Chief, GTA OPS, 100<sup>th</sup> Area Support Group, APO AE 09114

SUBJECT: Appointment of Article 32(b) Investigating Officer in the case of U.S. v. First Lieutenant Glenn A. Niles, Jr.

1. You are hereby appointed to investigate the enclosed charges against First Lieutenant Glenn A. Niles, Jr. [REDACTED] 615<sup>th</sup> Military Police Company, APO AE 09114. Article 98, UCMJ, prohibits any unnecessary delay in the processing of court-martial charges. This investigation is your primary duty until completed. It takes precedence over all other assignments, including field duty, as well as scheduled leave and TDY. If you believe you have a compelling reason to be excused from this duty, you must submit your request to me within 24 hours of receiving this notice.
2. Conduct your investigation in accordance with Article 32(b), UCMJ, and RCM 405, Manual for Courts Martial, Edition 2002, and follow the procedural guidance of DA Pam 27-17. Conduct your investigation no later than 7 duty days after receipt of this letter. You are, however, authorized to grant a one-time, seven-day delay at the request of the Defense Counsel, Trial Counsel, or for your convenience. I must approve any delay of greater than 7 days. Document all delays in writing.
3. Upon receipt of this endorsement, immediately contact [REDACTED] at [REDACTED]-6187/7114. Advise [REDACTED] that you have been detailed to conduct this investigation. He will schedule an appointment for you to receive a briefing. [REDACTED] will provide you with legal advice and guidance. Direct all questions relating to the investigation, including the admissibility of evidence, to [REDACTED]. Although you may consult with him about procedural matters outside the presence of the accused and defense counsel, you should notify the trial and defense counsel if you intend to discuss substantive matters of law. Do not contact the trial counsel for assistance in legal matters regarding the investigation of this case.
4. Complete your investigation and forward it to the Office of the Staff Judge Advocate, 1st Infantry Division, ATTN: Military Justice, Grafenwoehr Law Center, APO AE 09114. Upon completion of your investigation, deliver seven copies of DD Form 457 (Appendix 5, MCM), with enclosures and a detailed chronology of your handling of this investigation.
5. [REDACTED] (8436) is currently designated as the trial counsel in this case. While this attorney will attend the hearing and question witnesses, it is your responsibility to conduct the investigation. The Trial Defense Service ([REDACTED] 2191) will detail counsel to represent First Lieutenant Niles.

003300

AETTV-SB-CO

SUBJECT: Appointment of Article 32(b) Investigating Officer in the case of U.S. v. First Lieutenant Niles

6. [REDACTED], ([REDACTED] 8429) will record the hearing and provide clerical support to you. Contact [REDACTED] to schedule time and date of the hearing, reserve the hearing room, and notify the witnesses.
7. Conduct a swift, fair, impartial investigation of the alleged offenses. Accordingly, you must coordinate with the trial counsel, defense counsel, and reporter to ensure that all parties and reasonably available witnesses are aware of the time and location of the hearing.
8. The duty uniform will be worn at this hearing to facilitate the witnesses returning to their regularly prescribed duties after they testify.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Commanding

26 MAR 2004



DEPARTMENT OF THE ARMY  
18TH MILITARY POLICE BRIGADE  
APO AE 09302

AETV-MP

3 October 2003

MEMORANDUM FOR Major [REDACTED] IPS OIC, 18th Military Police Brigade, APO  
AE 09302-1322

SUBJECT: Appointment of Article 32(b) Investigating Officer in the Case of U.S. v. 1LT Glenn Niles,  
515th Military Police Company, 709th Military Police Battalion, 18th  
Military Police Brigade, APO AE 09302

1. You are hereby designated to investigate the attached charges in the case of 1LT Glenn Niles, 615th Military Police Company, APO AE 09302.
2. Your investigation will be conducted IAW Article 32(b), UCMJ, R.C.M. 405, MCM (2000 Edition) and AR 27-10. Procedural guidance is contained in DA Pam 27-17.
3. Promptly upon receipt of this endorsement, you will contact the Administrative Law Section, CJTF7 SJA, [REDACTED] 0709 to have a legal advisor appointed for you. You are directed to contact your legal advisor within 24 hours of receipt of this endorsement to arrange for a legal briefing. Your appointed advisor will assist you in technical legal advice and guidance. All questions concerning the law applicable to this case, as well as questions concerning admissibility of evidence, etc., will be directed to the advisor. You will not contact the government representative ([REDACTED] and [REDACTED]) for assistance or advice in any substantive legal matters regarding the investigation.
4. Your investigation will be completed and forwarded to the 18th Military Police Brigade, Legal Section, not later than ten duty days from receipt of this correspondence. You may approve reasonable defense-requested delays, not to exceed ten duty days in length, occasioned by scheduling conflicts or defense requests for witnesses, and such periods will be excluded from your allotted time. Any requested delays beyond twenty duty days from your receipt of this correspondence will be immediately forwarded through the trial counsel to me for action. Upon completion of your investigation, you will deliver the original Investigating Officer's Report, DD Form 457, with enclosures, and a detailed chronology of the investigation to the Legal Section, 18th Military Police Brigade.
5. [REDACTED] 5110/5112, is the designated government representative in this case. [REDACTED] 0709, will be assisting with this case. While these officers may attend the hearing, question witnesses, and present the government's case at your discretion, it is your responsibility to conduct the investigation. The accused will be represented by an attorney assigned to or detailed by the Trial Defense Service.

003302

AETV-MP

SUBJECT: Appointment of Article 32(b) Investigating Officer in the Case of U.S. vs. 1LT Glenn Niles, 615th Military Police Company, 709th Military Police Battalion, 18th Military Police Brigade, APO AE 09302

The government representative and the defense counsel play adversarial roles in the proceeding. Avoid talking to either of these parties (and any prospective witnesses) about the merits of the case outside of formal sessions in which all parties have the opportunity to be present.

6. Your clerical support will be provided by the Legal Section, 18th Military Police Brigade, [REDACTED]-5110/5112. The duty uniform should be worn at this hearing to facilitate witnesses returning to regular duties.

7. Article 98, UCMJ, prohibits any unnecessary delay in the processing of court-martial charges. This is your primary duty until completed and it takes precedence over all other assignments, including field duty, and scheduled leave or TDY.

[REDACTED]  
[REDACTED]  
Commanding

Encls

003303



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS 18<sup>th</sup> MILITARY POLICE BRIGADE  
BAGHDAD, IRAQ

AETV-MP-S3

S: 1 NOV 03  
21 OCT 03

MEMORANDUM FOR 1LT Glenn Niles, 615<sup>th</sup> MP Company, 709<sup>th</sup> MP Bn, 18<sup>th</sup> MP BDE, Baghdad Iraq APO AE 09302

SUBJECT: Postponement of Article 32(b) Investigation

1. The request for delay in the Article 32(b) Hearing for 1LT Niles is granted.
2. The hearing is rescheduled for NOV 1, 2003 at 1000 hrs in Warrior Palace. I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning charges preferred against you by [REDACTED]. The charges are: Charge I: Violation of the UCMJ, Article 93, Cruelty and Maltreatment, and Charge II: Violation of the UCMJ, Article 133, Conducting Unbecoming an Officer and a Gentleman.
3. The name of witnesses known to me, who will be asked to testify at the hearing are:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Additionally, it is my intention to examine and consider the following evidence:

DA Form 2823, [REDACTED]  
DA Form 2823, [REDACTED]  
DA Form 2823, [REDACTED]  
DA Form 2823, [REDACTED]  
DA Form 2823, [REDACTED]  
DA Form 2823, [REDACTED]

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 25 OCT 03. If, at a later time, you identify additional witnesses, inform me of their names and addresses.

5. You may contact me at [REDACTED] 5131/ [REDACTED] -6747.

[REDACTED]

Investigating Officer

003304

**PRETRIAL ALLIED PAPERS**

003305



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
7th Army Training Command  
Directorate of Simulation-Forward  
APO AE 09114-3700

126 MAR 2004

AEAGC-TS-F

MEMORANDUM FOR First Lieutenant Glenn A. Niles, Jr..  
Company, APO AE 09114

615<sup>th</sup> Military Police

SUBJECT: Article 32 Investigation

1. At 1000 hrs 5 APRIL in the Rose Barracks Courtroom, Vilseck, Germany, Building 343, I will conduct an investigation pursuant to Article 32, UCMJ, to investigate the facts and circumstances concerning court-martial charges preferred against you by [REDACTED]. The general nature of the charges are three specifications of cruelty and maltreatment, in violation of Article 93, UCMJ; and one specification of conduct unbecoming an officer and a gentleman, in violation of Article 133, UCMJ. The uniform for this investigation is the Battle Dress Uniform (BDU).

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during this investigation by legally qualified counsel. Such counsel may be a civilian lawyer of your choice, provided at no expense to the United States, or a qualified military lawyer of your selection, if reasonably available, or a qualified military counsel detailed by the Senior Defense Office, U.S. Army Trial Defense Service, Bamberg Field Office, APO AE 09139. There is no cost to you for military counsel. You also have the right to waive representation by counsel.

3. Additional rights you may reserve include:

- a. The right against self-incrimination under Article 31, UCMJ.
- b. The right to cross-examine any witness presented against you.
- c. The right to present anything in defense, extenuation, or mitigation.
- d. The right to make a sworn or unsworn statement, oral or in writing.

4. The names of witnesses as known to me, who will be asked to testify at the Article 32 investigation, are: [REDACTED] 92<sup>nd</sup> MP CO, [REDACTED]-7281.

5. Additionally, I intend to examine and consider the following evidence:

Commanders Inquiry into LT Nile's misconduct dated 7 August, 2003 investigated by [REDACTED]  
[REDACTED] (Entire Investigation and all enclosures.)

003306

AEAGC-TS-F  
SUBJECT: Article 32 Investigation

6. As investigating officer, I will try to arrange for the appearance of any witnesses that you may want to testify at the hearing. Send me the names, addresses, and telephone numbers of any such witnesses by NLT 3 days after the receipt of this notification. If, at a later time, you want additional witnesses, inform me of their names, addresses, and telephone numbers.

7. You may contact me by calling [REDACTED] 7945.

[REDACTED]  
[REDACTED]  
Investigating Officer



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
Headquarters, 1st Infantry Division  
Grafenwoehr Law Center  
Unit 21830  
APO AE 09114-3700

AETV-BGJA-G (27-10e)

MEMORANDUM FOR Record of Trial

SUBJECT: Receipt of Service of the Article 32b, Investigating Officer Notification Letter

Enclosed is a copy of the notification letter of the Article 32b, Investigating Officer. Please sign and date the acknowledgement below.

[REDACTED]

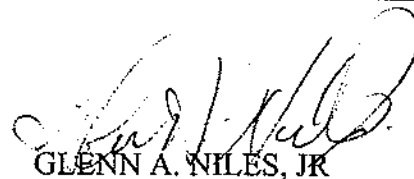
29 March 04

Encls  
as

[REDACTED]

Military Paralegal

I hereby acknowledge receipt of the above documents on \_\_\_\_\_



GLENN A. NILES, JR

1LT, U.S. Army

Accused

29 March 2004

003308

**DEPARTMENT OF THE ARMY**  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
BAGHDAD FIELD OFFICE  
CAMP VICTORY, IRAQ  
APO, AE 09342

REPLY TO  
ATTENTION OF:

AETV-THH-TDS

14 October 2003

MEMORANDUM FOR Commander, 18<sup>th</sup> Military Police Brigade, Baghdad, Iraq, APO AE 09304

SUBJECT: Request for delay - Article 32 Investigation, US v. 1LT Niles

1. The defense requests a delay in the Article 32(b) investigation to pursue alternate resolution of this case. The Article 32 Investigation is currently scheduled for 18 October 2003.
2. I am 1LT Niles' military defense counsel. 1LT Niles wishes to pursue alternate resolution to this case. Delaying the court-martial proceedings while alternate resolution is pursued has several benefits for the command, most importantly time and resources.
3. This delay is premised on the fact that alternate resolution is a real possibility. This is evidenced by the fact that 1LT Niles Company and Battalion Commanders have already given their support to alternate resolution of the case.
4. Defense assumes full responsibility for this delay. Should alternate disposition not work out the defense will be prepared to conduct the Article 32 Investigation 5 days after being notified of such decision.
5. I am the point of contact for this memorandum at [REDACTED]@us.army.mil and [REDACTED]-1135.

// original signed //

[REDACTED]  
[REDACTED]  
Trial Defense Counsel

003309



From: [REDACTED] <[REDACTED]@hq.2[REDACTED].army.mil>

Sent: Thursday, October 30, 2003 4:33 pm

To: "[REDACTED]@us.army.mil" <[REDACTED]@us.army.mil>

Cc:

Bcc:

Subject: U.S. v. Niles

Attachments: Article 32 delay request 2 - Niles.doc

31K

[REDACTED],  
Attached is a delay request in this case. As I stated earlier on the phone, the only outstanding document is a letter of recommendation from his Battalion Commander, [REDACTED]. Once obtained, his resignation packet is complete.

Thank you and the command for the patience.

[REDACTED]

003310

**DEPARTMENT OF THE ARMY**  
**UNITED STATES ARMY TRIAL DEFENSE SERVICE**  
**BAGHDAD FIELD OFFICE**  
**CAMP VICTORY, IRAQ**  
**APO, AE 09342**

REPLY TO  
ATTENTION OF:

AETV-THH-TDS

30 October 2003

MEMORANDUM FOR Commander, 18<sup>th</sup> Military Police Brigade, Baghdad, Iraq, APO AE 09304

SUBJECT: Request for delay – Article 32 Investigation, US v. 1LT Niles

1. The defense requests a delay in the Article 32(b) investigation to pursue alternate resolution of this case. The Article 32 Investigation is currently scheduled for 1 November 2003.
2. I am 1LT Niles' military defense counsel. 1LT Niles submitted a request to resign in lieu of general court-martial on 30 October 2003. One supporting document to this request remains outstanding. 1LT Niles is diligently trying to obtain this document. Delaying the court-martial proceedings while alternate resolution is pursued has several benefits for the command, most importantly time and resources.
3. The timeline of processing this resignation action is out of 1LT Niles hands. Therefore, the defense requests that the Article 32 Investigation be delayed pending resolution of the resignation action.
4. Defense assumes full responsibility for this delay. Should 1LT Niles resignation not be accepted the defense will be prepared to conduct the Article 32 Investigation 5 days after being notified of such decision.
5. I am the point of contact for this memorandum at [REDACTED]@us.army.mil and [REDACTED]-1135.

// original signed //

[REDACTED]  
[REDACTED]  
Trial Defense Counsel

003311

30 March 2004

MEMORANDUM THRU Article 32 (b) Investigating Officer (Attention: [REDACTED])

FOR Commander, 100th Area Support Group (Attention: [REDACTED]), APO, AE 09114

SUBJECT: Request for Article 32 Delay – U.S. v. 1LT Glenn A. Niles

1. I am a U.S. Army Trial Defense Services attorney representing 1LT Niles.
2. On behalf of my client, I request a delay in the pending Article 32 hearing until no earlier than Monday, 26 April 2004. The purpose for this request is to allow 1LT Niles to tend to urgent family matters. Specifically, his wife is scheduled for surgery and will be hospitalized from 1 April until approximately 7 April. She will be in recovery for several days, and has a follow-up procedure scheduled for 20 April. The Niles family has three children; 1LT Niles must be available to tend to the children during Mrs. Niles' hospitalization and recovery period.
3. I understand that this time will be "defense delay" for purposes of "speedy trial" IAW Rule for Court Martial 707.
4. POC is myself at [REDACTED]@cmtymail.100asg.army.mil, or at [REDACTED] 2191.

Cc:

[REDACTED], OIC, Grafenwoehr Law Center  
[REDACTED], Trial Counsel

[REDACTED]  
[REDACTED]  
Defense Counsel

603312

**DEPARTMENT OF THE ARMY**  
Headquarters, 100th Area Support Group  
APO AE 09114-3700

06 APR 2004

SFIM-GU-G-Z

MEMORANDUM FOR Commander, 100th Area Support Group, APO AE 09114-3700

SUBJECT: Article 32b, Investigation, Defense Delay Request

In the case of *U.S. v First Lieutenant Glenn A. Niles*, 615th Military  
Police Company, APO AE 09114, the Defense's delay request in the pending Article 32  
hearing until 26 April 2004 is (approved) (disapproved).

Commanding

003313

17 April 2004

MEMORANDUM THRU Article 32 (b) Investigating Officer (Attention: [REDACTED])

FOR Commander, 100th Area Support Group (Attention: [REDACTED]), APO, AE 09114

SUBJECT: Request for Article 32 Delay – U.S. v. 1LT Glenn A. Niles

1. I am a U.S. Army Trial Defense Services attorney representing 1LT Niles.
2. On behalf of my client, I request an additional delay in the pending Article 32 hearing until Tuesday, 11 May 2004. The purpose for this request is to allow for the appointment of a military psychiatrist as an expert assistant to the defense team; for 1LT Niles to meet with this doctor; and for the doctor to complete his evaluation report.
3. I understand that this time will be "defense delay" for purposes of "speedy trial" IAW Rule for Court Martial 707.
4. POC is myself at [REDACTED]@cmtymail.100asg.army.mil, or at [REDACTED] 2191.

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
Defense Counsel

003314

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Monday, April 19, 2004 10:14 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED] (Judge Advocate)  
**Subject:** FW: US v. Niles - Req for Add. 32 Delay

-----Original Message-----

**From:** [REDACTED] (Defense Counsel)  
**Sent:** Saturday, April 17, 2004 10:00 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED] (OIC, Law Center); [REDACTED] (Judge Advocate)  
**Subject:** US v. Niles - Req for Add. 32 Delay

[REDACTED]

As we discussed on the phone on Thursday, we request delay until Tues., 11 May so that [REDACTED] can evaluate the accused and produce a report (in addition to getting appointed). Signed delay request is attached. Thanks,



Art 32 Delay Req  
#2.pdf

V/R,  
[REDACTED]  
Defense Counsel

003315