

AFZA-AP-IO
SUBJECT: Notification of Article 32 Investigation

5. You may contact me at 559 [REDACTED].

[REDACTED]

MAJ, MP
Investigating Officer

Received by: [Signature]
JEREMY C. SIVITS, SPC

Date: 5 APR 04

006010



DEPARTMENT OF THE ARMY
Headquarters
16th Military Police Brigade (Airborne)
Victory Base, Iraq APO AE 09342

REPLY TO
ATTENTION OF:

AFZA-AP-CO

3 April 2004

MEMORANDUM FOR Major [REDACTED] 391st Military Police Battalion, Baghdad
Central Correctional Facility, Abu Ghraib, Iraq, APO AE 09335

SUBJECT: Appointment as Article 32 Investigating Officer

1. You have been appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the attached charges against Specialist Jeremy C. Sivits, HHC, 16th MP BDE (ABN), Victory Base, Iraq APO AE 09342. According to Article 32, UCMJ, and Rule 405, Manual for Court-Martial (2002), you are to:

- a. Conduct a thorough and impartial investigation into the truth of the allegation(s);
- b. Consider the correctness of the form of the charges; and
- c. Make recommendations as to the disposition of the charges in the interest of justice and discipline.

2. Prior to the commencement of the investigation, you must contact CPT [REDACTED] at the Administrative Law Division, Combined Joint Task Force Seven, Victory Base, Iraq, at DSN 318-822-[REDACTED] and advise him that you have been detailed to conduct this investigation. He, or a Staff Judge Advocate designee, will brief you on your responsibilities and provide you with advice throughout the investigation. You will not contact the government representative or defense counsel for assistance in matters, other than routine administrative or clerical matters, regarding this investigation.

3. Your duties as an Article 32 investigating officer takes precedence over any of your other assigned duties. The following guidance pertains to delays:

- a. Schedule the hearing as soon as you receive notice of this appointment. The hearing date should be within seventy-two hours of receipt of this appointment letter. If the defense or the government cannot proceed on the selected date, obtain a request for delay, in writing, from the party requesting the delay. Requests for delay should be attached to the report of investigation.

006011

AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

b. You have the authority to approve one reasonable delay requested by the defense or the government, up to a total of seven days. Any delays in excess of seven days must be approved by me. Requests for delay should be in writing and clearly state the supporting reasons and the dates covering the delay. Before granting a delay you must also consider matters submitted by the opposing counsel. Your decision to grant a delay should be in writing. It should state your reasons and the dates of the delay.

4. CPT [REDACTED] Trial Counsel, 16th MP BDE (ABN) DNV 588-[REDACTED], is appointed as the government representative and is authorized to participate in this investigation. You can contact Trial Defense Service at DNV 838-[REDACTED], to confirm the name of the detailed defense counsel. While these officers or their designees will attend the hearing and will question witnesses, it is your responsibility to conduct the investigation, not the government's representatives. Further, both of these parties play an adversarial role in the proceedings. You should therefore avoid discussing substantive matters pertaining to the case with either party outside formal sessions where all parties have opportunity to be present.

5. You should become familiar with the following reference materials/documents:

a. Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial, 2002 Edition

b. DA PAM 27-17, Procedural Guide for Article 32 Investigating Officer, (especially paragraphs 1-2, General Instructions, 2-3, informing the accused of the investigation and the right to counsel, and 2-4, consultation with counsel for the accused)

c. DD Form 458 (Charge Sheet) and allied documents

6. The Article 32 Investigating Officer Procedural Guide discusses in detail procedural aspects from appointment to submission of the final report. Included in Appendix B is a sample format for notification of the accused. A copy of the notification should be sent to the accused's unit commander to ensure that the unit commander is aware of the time and location of the hearing, thereby ensuring the presence of the accused at the hearing. If the accused is already represented by counsel, the written notice should be sent to that counsel. An information copy should also be provided to the appropriate trial counsel.

7. You are personally responsible for summarizing relevant testimony that is not already reduced to a written statement. SPC [REDACTED] has been appointed as your administrative and paralegal assistant for this case and will act as the reporter. You can contact her at DNV 559-[REDACTED]. However, the Article 32 Investigation will be a summarized transcript and not verbatim.

AFZA-AP-CO

SUBJECT: Appointment of Article 32 Investigating Officer

8. The complete report of investigation, DD Form 457, Investigating Officer's Report, with enclosures, and a chronology of the investigation from receipt of file to submission of the report, will be forwarded with one (1) copy to this headquarters no later than seventy-two hours after completion of the investigation.

2 Encls

1. DD Form 458

2. Case File



COL, MP
Commanding

OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (7) (C), 5 U.S.C. 552 (b) (7) (C):

Criminal Investigation Report

Contents cannot be released outside the Department of the Army without the approval of the Commander, United States Army Criminal Investigation Command, Fort Belvoir, VA.

000014

COURT-MARTIAL RECORD

NAME SIVITS, JEREMY C. SPC

SSN _____

ACTIONS CODED:
INITIAL _____
ACCA _____
FINAL _____

ASSIGNED TO:
PANEL 4
EXAM. DIV. _____

COMPANION(S):

**RETURN THIS FILE TO:
OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
901 NORTH STUART STREET, SUITE 1200
ARLINGTON, VA 22203-1837**

VOL II OF III VOL(S)

ARMY 20040551

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

SIVITS, Jeremy C.
(NAME: Last, First Middle Initial)
HHC, 16th MP Bde (ABN)
III Corps
(unit/Command Name)

(Social Security Number)

Specialist
(Rank)

US Army
(Branch of Service)

Victory Base, Iraq
(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

Headquarters, III Corps
(Unit/Command of Convening Authority)

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

19 May 2004
(Date or Dates of Trial)

COMPANION CASES:

PFC [REDACTED]
SPC [REDACTED]
SGT [REDACTED]
SSG [REDACTED]
SPC [REDACTED]
SPC [REDACTED]

Pretrial and related papers
US ARMY JUDICIARY
2004 JAN 18 P 2:14
RECEIVED
CLERK OF COURT

¹ Insert "verbatim" or summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)
² See inside back cover for instructions as to preparation and arrangement.

096016

OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (7) (C), 5 U.S.C. 552 (b) (7) (C):

Criminal Investigation Report

Contents cannot be released outside the Department of the Army without the approval of the Commander, United States Army Criminal Investigation Command, Fort Belvoir, VA.

006017

COURT-MARTIAL RECORD

NAME SIVITS, JEREMY C. SAC

SSN _____

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL 4

EXAM. DIV. _____

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL III OF III VOL(S)

ARMY _____

20040551

VOL III of III
ORIGINAL COPY

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

SIVITS, Jeremy C.
(NAME: Last, First Middle Initial)

(Social Security Number)

Specialist
(Rank)

HHC, 16th MP Bde (ABN)

III Corps
(unit/Command Name)

US Army
(Branch of Service)

Victory Base, Iraq
(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

Headquarters, III Corps
(Unit/Command of Convening Authority)

TRIED AT

Baghdad, Iraq
(Place or Places of Trial)

ON

19 May 2004
(Date or Dates of Trial)

COMPANION CASES:

PFC
SPC
SGT
SSG
SPC
SPC

[REDACTED]

Transcript thru exhibits

US ARMY JUDICIARY

2005 JAN 18 P 2:14

RECEIVED
CLERK OF COURT

000019

RECORD OF PROCEEDINGS OF COURT-MARTIAL

006020

RECORD OF TRIAL

OF

SIVITS, Jeremy C.

(Name: Last, First, Middle Initial)

(Social Security Number)

SPC

(Rank)

HHC, 16th MP Bde (ABN)

III Corps

(Unit/Command Name)

U.S. Army

(Branch of Service)

Victory Base, Iraq

(Station or Ship)

BY

SPECIAL (BCD) COURT-MARTIAL

Convened by: Commander

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

Tried at

Baghdad, Iraq

(Place or Places of Trial)

on

19 May 2004

(Date or Dates of Trial)

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TESTIMONY

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

SPC [REDACTED]	75	80	
LTC [REDACTED]	82	93	

DEFENSE:

SFC [REDACTED]	100/104	102	
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COURT:

None.

EXHIBITS ADMITTED IN EVIDENCE

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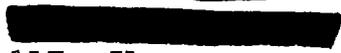
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RECEIPT FOR COPY OF RECORD OF TRIAL

I hereby acknowledge receipt of a copy of the record of trial in the case of the United States versus SPC Jeremy C. Sivits, delivered to me at TDS, Camp Victory, Iraq, this 24 day of May 2004.





1LT, JA
Defense Counsel

000023

1 PROCEEDINGS OF A SPECIAL COURT-MARTIAL

2

3 The military judge called the Article 39(a) session to order at
4 1258, 19 May 2004, pursuant to the following order:

5

6 Court-Martial Convening Order Number 2, Headquarters,
7 III Corps, Victory Base, Iraq, dated 14 January 2004.

8

[END OF PAGE]

006024

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

COURT-MARTIAL CONVENING ORDER
NUMBER 2

14 January 2004

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

COL [REDACTED] MI, 504th MI Bde
COL [REDACTED] CM, HHC, III Corps
COL [REDACTED] HHC, III Corps
COL [REDACTED] QM, HHC, III Corps
COL [REDACTED] AR, HHC, III Corps
LTC [REDACTED] TC, HHC, III Corps
LTC [REDACTED] SC, HHC, III Corps
LTC [REDACTED] AD, HHC Corps
MAJ [REDACTED] AR, HHC, III Corps
MAJ [REDACTED] MS, HHC, III Corps

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

MEMBERS

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

VICE

COL [REDACTED] CM, HHC, III Corps
COL [REDACTED] QM, HHC, III Corps
LTC [REDACTED] SC, HHC, III Corps
LTC [REDACTED] AD, HHC Corps
MAJ [REDACTED] AR, HHC, III Corps

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

BY COMMAND OF LIEUTENANT GENERAL METZ:

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

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

006025

1 MJ: Court is called to order.

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

8 The prosecution is ready to proceed with the arraignment of
9 the United States versus Specialist Jeremy C. Sivits.

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

12 COLONEL [REDACTED], MILITARY JUDGE;

13 CAPTAIN [REDACTED], TRIAL COUNSEL;

14 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;

15 FIRST LIEUTENANT [REDACTED] DEFENSE COUNSEL.

16 The members are absent.

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

19 All members of the prosecution have been detailed to this
20 court-martial by Captain [REDACTED], Chief of Military Justice,
21 III Corps. We are qualified and certified under Article 27 Bravo(b)
22 and sworn under Article 42(a), Uniform Code of Military Justice. We

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

3 MJ: Captain [REDACTED] what day was the accused served the
4 charges?

5 TC: 7 May 2004, sir.

6 MJ: Thank you.

7 Specialist Sivits, you have the right to be represented by
8 Lieutenant [REDACTED] your detailed military defense counsel. He is
9 provided to you at no expense to you. Do you understand that?

10 ACC: Yes, sir.

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

20 ACC: Yes, sir.

21 MJ: In addition, you have the right to be represented by a
22 civilian lawyer. The civilian lawyer would have to be provided by

1 you at no expense to the government. If you're represented by a
2 civilian lawyer, you can also keep your military lawyer on the case
3 to assist your civilian lawyer. Or, you could excuse your military
4 lawyer and be represented only by your civilian lawyer. Do you
5 understand that?

6 ACC: Yes, sir.

7 MJ: Do you understand your rights to counsel?

8 ACC: Yes, I do, sir.

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

10 ACC: Lieutenant [REDACTED], sir.

11 MJ: And by him, alone?

12 ACC: Yes, sir.

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

15 DC: I have been detailed to this court-martial by Major [REDACTED]
16 [REDACTED] Regional Defense Counsel, Region IX. I'm qualified and
17 certified under Article 27 Bravo and sworn under Article 42 Alpha,
18 Uniform Code of Military Justice. I have not acted in any manner
19 which might tend to disqualify me in this court-martial.

20 MJ: I've been properly certified, sworn, and detailed to this
21 court-martial. Counsel for both sides appear to have the requisite

1 qualifications and all personnel required to be sworn have been
2 sworn.

3 Trial counsel will announce the general nature of the
4 charges.

5 TC: The general nature of the charges in this case is
6 conspiracy to maltreat detainees, dereliction of duty and
7 maltreatment of detainees.

8 The charges were preferred by Captain [REDACTED] and
9 forwarded with recommendations as to disposition by Colonel [REDACTED]
10 [REDACTED]

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

13 MJ: The only matter I'm aware of is that earlier today, I
14 arraigned three other soldiers involved in this case. They were
15 simple arraignments. Does either side desire to question me on that
16 or any other matter or to challenge me?

17 TC: No, Your Honor.

18 DC: Your Honor, the defense has two quick challenges--quick
19 questions.

20 MJ: Go ahead.

21 DC: Sir, there's been a lot of press coverage in this case.
22 Can you make a fair decision as to Specialist Sivits based upon

1 evidence presented today and not how the media has reported the
2 events?

3 MJ: Lieutenant [REDACTED] I'll tell you two things, A, I try to
4 ignore as much as possible. And B, just because it's on TV, it ain't
5 true. So the answer to your question is "yes."

6 DC: That's fine, sir, I have no further questions.

7 MJ: Do you wish to challenge me?

8 DC: No, sir.

9 MJ: Specialist Sivits, you have the right to be tried by a
10 court composed of at least three officer members. Also, if you
11 requested, you would be tried by a court consisting of at least one-
12 third enlisted members, but none of those enlisted members could come
13 from your company-sized unit and no member of the court would be
14 junior in rank to you. Do you understand what I've said so far?

15 ACC: Yes, sir.

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

21 ACC: Yes, sir.

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

5 Do you understand the difference between trial before
6 members and trial before military judge alone?

7 ACC: Yes, sir.

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

9 ACC: Yes, sir.

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

11 ACC: Military judge alone, sir.

12 MJ: Is there a written request for trial by military judge
13 alone? [Reporter hands document to MJ.] Apparently there is. It's
14 been marked as Appellate Exhibit I.

15 On Appellate Exhibit I, is that your signature, Specialist
16 Sivits?

17 ACC: Yes, it is, sir.

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

20 ACC: Yes, sir.

21 MJ: My name was typed in up here?

22 ACC: Correct, sir.

1 MJ: Now, is your request a voluntary one? By that, I mean, are
2 you making this request of your own free will?
3 ACC: Yes, sir.
4 MJ: Now, if I approve your request for trial by me alone, you
5 give up your right to be tried by a court composed of members. Do
6 you understand that?
7 ACC: Yes, sir.
8 MJ: Do you still wish to be tried by me alone?
9 ACC: Yes, sir.
10 MJ: Lieutenant [REDACTED] is there a pretrial agreement in this
11 case?
12 DC: There is, Your Honor.
13 MJ: And is the judge alone request part of the pretrial
14 agreement?
15 DC: No, Your Honor.
16 MJ: It is not?
17 DC: No, Your Honor.
18 MJ: The request for trial by military judge alone is approved.
19 The court is assembled. The accused will now be arraigned.
20 TC: All parties to the trial have been furnished with a copy of
21 the charges. Does the accused want them read?
22 DC: The accused waives the reading of the charges.

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

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

3 [END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (<i>Last, First, MI</i>) SIVITS, Jeremy C.			2. SSN [REDACTED]		3. GRADE OR RANK SPC	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342					6. CURRENT SERVICE	
					a. INITIAL DATE 23 Nov 98	b. TERM 8 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None		9. DATE(S) IMPOSED N/A	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL				
\$1,814.10	\$100.00	\$1,914.10				

II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 81

THE SPECIFICATION: In that Specialist Jeremy C. Sivits, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with Staff Sergeant [REDACTED], Sergeant [REDACTED], Corporal [REDACTED], Specialist [REDACTED] and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Specialist Sivits took a photograph of nude detainees being forced into a human pyramid position.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 92

THE SPECIFICATION: In that Specialist Jeremy C. Sivits, U.S. Army, who should have known of his duties at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, was derelict in the performance of those duties in that he negligently failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to do.

(SEE CONTINUATION SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) [REDACTED]	b. GRADE O-3	c. ORGANIZATION OF ACCUSER HHC, 16th MP Bde (Abn) APO AE 09342
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 20 MAR 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20th day of March, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

[REDACTED]
Typed Name of Officer

O-3
Grade

[REDACTED]
Signature

HHC, XVIII Abn Corps
Organization of Officer

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

12.

On 20 March 2004, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[Redacted]

Typed Name of Immediate Commander

HHC, 16th MP Bde (Abn) APO AE 09342

Organization of Immediate Commander

O-3

[Redacted]

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1845 hours, 21 March, 2004 at Headquarters, 16th Military

Designation of Command or

Police Brigade (Airborne) APO AE 09342

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

FOR THE ¹

[Redacted]

Typed Name of Officer

Commanding

Official Capacity of Officer Signing

O-6

[Redacted]

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Headquarters, III Corps

b. PLACE

Victory Base, Iraq
AP0 AE 09342

c. DATE (YYYYMMDD)

MAY 5 2004

Referred for trial to the Special court-martial convened by Court-Martial Convening Order Number 2,
dated 14 January 2004

, subject to the following instructions: ² empowered to adjudge a
Bad Conduct Discharge

By Command of Lieutenant General Metz

Command or Order

[Redacted]

Typed Name of Officer

Chief, Criminal Law Division

Official Capacity of Officer Signing

O-3

[Redacted]

Signature

15.

On 7 May, 2004, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted]

Typed Name of Trial Counsel

O-3

Grade or Rank of Trial Counsel

[Redacted]

Signature

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

CONTINUATION SHEET DD Form 458, SIVITS, Jeremy C., SPC,
HHC, 16th MP Bde (Abn), III Corps, Victory Base, Iraq APO AE 09342

Item 10 (continued):

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 93

SPECIFICATION 1: In that Specialist Jeremy C. Sivits, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by escorting the detainee to be positioned in a pile on the floor to be assaulted by other soldiers.

SPECIFICATION 2: In that Specialist Jeremy C. Sivits, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by taking a picture of said detainees who were laying on a pile on the floor, while another guard, Corporal [REDACTED] [REDACTED] kneeled on top of the pile of detainees.

006035

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

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

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

12

[END OF PAGE]

1 DC: The defense has no motions, Your Honor.

2 The accused, Specialist Jeremy C. Sivits, pleads as
3 follows:

4 To the Specification of Charge I: Guilty, excepting the
5 words, "the said Specialist Sivits took a photograph of," and
6 substituting therefore the words, "that a photograph be taken of."

7 To the excepted words: Not guilty.

8 To the substituted words: Guilty.

9 To Charge I: Guilty.

10 To the Specification of Charge II and Charge II: Guilty.

11 To the Specifications of Charge III and Charge III:
12 Guilty.

13 MJ: Please be seated. [All resumed their seats.]

14 Trial counsel, if the accused is provident as pled, does
15 the government intend to go forward with any part of the
16 Specification of Charge I that is not encompassed by his guilty plea?

17 TC: No, Your Honor.

18 MJ: Specialist Sivits, your counsel has entered a plea of
19 guilty for you to virtually all the charges and their specifications,
20 except for some minor language. Your plea of guilty will not be
21 accepted unless you understand its meaning and effect. I'm going to
22 discuss your plea of guilty with you. If at any time you have any

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1 questions that you want to ask me or your counsel, stop and we'll do
2 that. Do you understand that?

3 ACC: Yes, sir.

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

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

14 ACC: Yes, sir.

15 MJ: By your plea of guilty, you give up three important rights,
16 first, the right against self-incrimination; that is, the right to
17 say nothing at all.

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

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

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

4 ACC: No, Your Honor.

5 MJ: Do you understand that by pleading guilty, you no longer
6 have these rights?

7 ACC: Yes, sir.

8 MJ: If you continue with your guilty plea, you will be placed
9 under oath, and I will question you to determine whether you are, in
10 fact, guilty. Anything you tell me may be used against you in the
11 sentencing portion of the trial. Do you understand that?

12 ACC: Yes, sir.

13 MJ: If you tell me anything that is untrue, your statements may
14 be used against you later for charges of perjury or making false
15 statements. Do you understand this?

16 ACC: Yes, sir.

17 MJ: Trial counsel, place the accused under oath. [The trial
18 counsel did as directed and the accused was sworn.]

19 Is there a stipulation of fact?

20 TC: Yes, Your Honor.

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1 MJ: It's been marked as Prosecution Exhibit 1 for
2 identification. Do you have a copy of this document in front of you,
3 Specialist Sivits?

4 ACC: Yes, sir.

5 MJ: Now, Prosecution Exhibit 1 for identification, the
6 stipulation of fact, consists of eight pages. Is that your signature
7 on the eighth page?

8 ACC: Yes, sir.

9 MJ: Did you read this document thoroughly before you signed it?

10 ACC: Yes, sir.

11 MJ: Do both counsel agree to this stipulation and that your
12 signatures appear on the document?

13 TC: Yes, Your Honor.

14 DC: Yes, Your Honor.

15 MJ: Specialist Sivits, a stipulation of fact is an agreement
16 among the trial counsel, your defense counsel and you, that the
17 contents of the stipulation are true, and if entered into evidence,
18 are the uncontradicted facts in this case. No one can be forced to
19 enter into a stipulation, so you should enter into it only if you
20 truly want to do so. Do you understand this?

21 ACC: Yes, sir.

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1 MJ: Are you voluntarily entering into this stipulation because
2 you believe it is in your best interest to do so?

3 ACC: Yes, sir.

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

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

10 ACC: Yes, sir.

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

12 TC: Yes, Your Honor.

13 DC: Yes, Your Honor.

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

19 ACC: Yes, sir.

20 MJ: I want to make sure that you and I have the same document.
21 The stipulation that was provided to the court has eight pages of
22 narrative with your signature on page eight. Is that what you have?

1 ACC: Yes, sir.

2 MJ: And attached to it are six pictures?

3 ACC: Yes, sir.

4 MJ: At this time, Specialist Sivits, I want you to read your
5 copy of the stipulation silently to yourself as I read it to myself.
6 [The accused did as directed.]

7 MJ: Specialist Sivits, have you finished reading the
8 stipulation?

9 ACC: Yes, sir.

10 MJ: Is everything in the stipulation true?

11 ACC: Yes, sir.

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

14 ACC: No, sir.

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

18 ACC: Yes, sir.

19 MJ: Defense counsel, do you have any objections to Prosecution
20 Exhibit 1 for identification?

21 DC: No, Your Honor.

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

4 Specialist Sivits, at this time, I'm going to explain to
5 you the elements of the offense to which you have pled guilty. By
6 "elements," I mean those facts which the government would have to
7 prove beyond a reasonable doubt before you could be found guilty if
8 you had pled not guilty. When I state each element, ask yourself two
9 things, first, is the element true; and second, whether you wish to
10 admit that it's true. After I list the elements for you, be prepared
11 to talk to me about the facts regarding the offenses.

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

13 ACC: Yes, I do, sir.

14 MJ: I'm going to begin with Charge II, the dereliction of duty
15 charge.

16 ACC: Yes, sir.

17 MJ: In the Specification of Charge II, you have pled guilty to
18 negligent dereliction of duty, in violation of Article 92 of the
19 Uniform Code of Military Justice. As alleged and pled, this offense
20 has the following three elements:

21 First, that you had certain prescribed duties, that is,
22 protect the detainees from abuse, cruelty and maltreatment.

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1 Two, that you knew or reasonably should have known of the
2 assigned duties.

3 And three, that at or near Baghdad Correctional Facility,
4 Abu Ghraib, Iraq, on or about 8 November 2003, you were derelict in
5 the performance of those duties by failing to protect detainees from
6 abuse, cruelty and maltreatment. Now, a duty may be imposed by
7 regulation, lawful order or custom of the service. A person is
8 derelict in the performance of his duty when he negligently failed to
9 perform them. "Dereliction" is defined as a failure in duty, a
10 shortcoming or delinquency. "Negligently" means an act or failure to
11 act by a person under duty to use due care which demonstrates a lack
12 of care for the treatment of others which a reasonably prudent person
13 would have used under the same or similar circumstances.

14 Now, I want you to turn to Charge III. In Specification 1
15 of Charge III, you have pled guilty to maltreatment of subordinates,
16 in violation of Article 93 of the Uniform Code of Military Justice.
17 As alleged and pled, this offense has the following two elements:

18 First, that a detainee was subject to your orders.

19 And two, that at or near Baghdad Central Correctional
20 Facility, Abu Ghraib, Iraq, on or about 8 November 2003, you
21 maltreated the detainee by escorting the detainee to be positioned in
22 a pile on the floor to be assaulted by other soldiers.

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1 In Specification 2 of Charge III, you've also pled guilty
2 to maltreatment of a subordinate, in violation of Article 93. This
3 offense has the following two elements:

4 First, that several detainees were subject to your orders.

5 And, that at or near Baghdad Central Correctional Facility,
6 Abu Ghraib, Iraq, on or about 8 November 2003, you maltreated the
7 detainees by taking pictures of said detainees who were lying on a
8 pile on the floor while another guard, Corporal [REDACTED],
9 [REDACTED] kneeled on top of the detainees.

10 Now, subject to the orders, and this applies to both
11 specifications of Charge III, includes persons under the direct or
12 immediate command of you and all persons who by reason of some duty
13 are required to obey the lawful orders of you, even if those persons
14 are not in your chain of command or members of the military. The
15 maltreatment must be real, although it does not have to be physical.
16 "Maltreated" refers to treatment that when viewed objectively under
17 all the circumstances is abusive or otherwise unwarranted,
18 unjustified and unnecessary for any lawful purpose and that results
19 in physical or mental harm or suffering or reasonably could have
20 caused physical or mental harm and suffering. Improper punishment
21 may constitute this offense.

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

5 First, that at or near Baghdad Correctional Facility, Abu
6 Ghraib, Iraq, on or about 8 November 2003, you entered into an
7 agreement with Staff Sergeant [REDACTED] [sic] Sergeant
8 [REDACTED] Corporal [REDACTED], Specialist [REDACTED]
9 [REDACTED] Specialist [REDACTED] and PFC [REDACTED] to
10 commit maltreatment of subordinates, an offense under the Uniform
11 Code of Military Justice.

12 Two, that while the agreement continued to exist and while
13 you remained a party to the agreement, one of the coconspirators
14 performed the overt act alleged, that is, take a photograph of nude
15 detainees being forced into a human pyramid position for the purpose
16 of bringing about the object of the agreement.

17 Now, the elements of the offense which you are charged with
18 conspiracy to commit, namely, maltreatment of subordinates, or as I
19 told you earlier for Charge III, proof that the offense of
20 maltreatment of subordinates actually occurred is not required.
21 However, it must be proved beyond a reasonable doubt that the
22 agreement include every element of the offense of maltreatment of

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

14 Specialist Sivits, do you understand the elements and
15 definitions as I've read them to you and as they apply to each
16 specification?

17 ACC: Yes, sir.

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

19 ACC: No, sir.

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

22 ACC: Yes, sir.

1 MJ: Do you believe and admit that the elements and definitions
2 taken together correctly describe what you did?

3 ACC: Yes, sir.

4 MJ: Specialist Sivits, at this time, I want you to tell me in
5 your own words what happened. First of all, give me a little
6 background. Are you a Reserve component soldier?

7 ACC: Yes, sir.

8 MJ: When were you activated?

9 ACC: February 24th of 2003, sir.

10 MJ: And when did you arrive in--did you come through Kuwait up
11 to Iraq?

12 ACC: Yes, sir.

13 MJ: And when did you arrive in Kuwait?

14 ACC: May 13th of 2003, sir.

15 MJ: And when did you get to Iraq?

16 ACC: May 30th, 2003, sir.

17 MJ: Now, some time in--and what's your MOS?

18 ACC: 63 Bravo, sir.

19 MJ: Which is a light-wheeled vehicle mechanic?

20 ACC: Light-wheeled vehicle mechanic, yes, sir.

21 MJ: Now, some time in November, were you working at the Baghdad
22 Correctional Facility, Abu Ghraib, Iraq?

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1 ACC: Yes, sir, I was put on a detail.

2 MJ: I was going to ask you, how did you get involved with that?

3 ACC: I was put on a generator detail to make sure that there was
4 fuel in the generators and if anything went wrong with them, we had
5 to check them to see if there was anything small that we could fix.
6 If not, we had to report it to higher.

7 MJ: Now, whether you were a light-wheeled vehicle mechanic, you
8 had enough experience with stuff you could work generators, too?

9 ACC: Some stuff, sir.

10 MJ: Now, were you assigned to the correctional facility or just
11 attached there to help them with generators, or was it unclear?

12 ACC: I was actually in the company TOC area, which was in the
13 building beside the hard site.

14 MJ: And what was your company-sized unit at that time?

15 ACC: 150 people.

16 MJ: No, no, I'm sorry, I wasn't clear. What was your company-
17 sized unit's name?

18 ACC: 372d MP Company, sir.

19 MJ: So, did that fall under the 800th MP Brigade?

20 ACC: Yes, sir.

21 MJ: So you were assigned to them?

22 ACC: Yes, sir.

1 MJ: Now, let me back up a bit. Now, you're a Reserve component
2 soldier and you were activated here, so you had been put on active
3 duty to support Operation Iraqi Freedom?

4 ACC: Correct, sir.

5 MJ: And you're still on active duty under that mobilization?

6 ACC: Yes, sir.

7 MJ: Now, it would appear that most of these events all occurred
8 on the 8th of November 2003. Is that correct?

9 ACC: Yes, sir.

10 MJ: Okay, first, I want to get--now, what time did this stuff
11 happen?

12 ACC: Between 19, 2000 hours that I can remember, sir.

13 MJ: Late evening?

14 ACC: Yes, sir.

15 MJ: Now, what were you doing at the time before all this stuff
16 happened?

17 ACC: I had just finished filling the generators so they could
18 run through the night, and I was sitting in our company TOC area, and
19 I was having a conversation with one of the people that was working
20 in the TOC at that time, sir.

21 MJ: And then how did you get involved with this?

1 ACC: Staff Sergeant [REDACTED] he'd come down, he had to print
2 some paperwork on our computer, on the company TOC computer. After
3 he was done, he asked me if I wanted to walk down to the hard site
4 with him, and I said, "Yes."

5 MJ: Okay, let me get the players down here now. Who is Staff
6 Sergeant [REDACTED]?

7 ACC: He was the NCOIC of the hard site, sir.

8 MJ: Now, when you say "hard site," was that the prison site?

9 ACC: Yes, sir.

10 MJ: And he was the NCOIC 24/7 or NCOIC for that shift?

11 ACC: From what I understand, sir, of that shift.

12 MJ: And he was an E6, so he said, "Do you want to come over to
13 the hard site?"

14 ACC: Yes, sir.

15 MJ: Did you know what he wanted to bring you over for?

16 ACC: He just wanted me to come down and talk with him because we
17 had started a conversation there, and we were talking and there
18 wasn't much for me to be doing in the company TOC, as long as I had a
19 radio.

20 MJ: Now, did you know Sergeant [REDACTED] before you were
21 stationed together there in the correctional facility area?

22 ACC: Yes, sir.

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1 MJ: Where did you know him from?

2 ACC: He was in my Reserve unit from back home.

3 MJ: Okay, so when they came over here as MPs, did you come over
4 attached with them, or did you get attached later on? I mean,
5 they're an MP unit, right?

6 ACC: Yes, sir.

7 MJ: Was your unit--were you part of the MP unit?

8 ACC: Yes, sir.

9 MJ: So you provide vehicle support for them as a mechanic and
10 whatever else you can figure out. But you're not an MP, yourself.

11 ACC: No, sir.

12 MJ: And you've never been trained as an MP.

13 ACC: No, sir.

14 MJ: But you've been a member of this unit, so you knew all
15 these guys.

16 ACC: Yes, sir.

17 MJ: Got it, okay. So you're there and Sergeant [REDACTED], and
18 you start walking over to the hard site.

19 ACC: Yes, sir.

20 MJ: Okay, what happened next?

21 ACC: We got down to the hard site and he said that there were
22 seven detainees that had come in from Ganci site, which was another

1 site on the compound, for a riot. They had to in-process them, and
2 we could just go on about our business and continue the conversation.
3 We got to the holding cell where the detainees were, and they started
4 taking the detainees down to the 1-Alpha tier.

5 MJ: Now, what's the 1-Alpha tier?

6 ACC: The isolation cell, the cells on the hard site, sir.

7 MJ: Okay, is that individual cells for one detainee per cell?

8 ACC: Yes, sir.

9 MJ: Okay.

10 ACC: And like I said, there were seven detainees and there were
11 three, maybe four guards there. And I asked Sergeant [REDACTED] if he
12 wanted me to escort one of the detainees down to the tier. He said,
13 "Yes, go ahead." So, I took the detainee by the arm and took him
14 down to the hard site--or down to the 1-Alpha tier, sir.

15 MJ: At this point, did you think something was going to happen
16 to the detainee when they got to the other end, something
17 inappropriate or illegal?

18 ACC: Not at that time, sir.

19 MJ: So what happened next?

20 ACC: When I got closer, I heard Corporal [REDACTED] yelling. He was
21 yelling in Arabic at the detainees that was already there from the
22 people that had taken him down prior to me going down. And when

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1 turned the corner, that's when I saw the detainees lying on the
2 floor. I escorted the detainee in----

3 MJ: Okay, what were they doing on the floor?

4 ACC: They were just laying there, sir, sandbags over their head.

5 MJ: Did your detainee have a sandbag over his head?

6 ACC: Yes, he did, sir.

7 MJ: Is that standard in-processing procedure, to your
8 knowledge?

9 ACC: To my knowledge, when they brought him into that facility,
10 yes, sir.

11 MJ: So the detainees, you saw a bunch of detainees with
12 Corporal [REDACTED] yelling at them, lying on the floor, and they had
13 sandbags on their head.

14 ACC: Yes, sir.

15 MJ: And you still have the one detainee with you.

16 ACC: Yes, sir.

17 MJ: Are all these detainees male?

18 ACC: Yes, sir.

19 MJ: So you turned the corner and you see that. Are there other
20 soldiers around the detainees that are on the ground?

21 ACC: Yes, there is, sir.

22 MJ: What are they doing to the detainees?

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1 ACC: Sergeant [REDACTED], PFC [REDACTED], were stepping on the toes of
2 the detainees. Specialist [REDACTED] was checking the ID numbers with
3 the papers that she had, making sure that everybody--they had the
4 proper detainees.

5 MJ: Now, go back to the first two. Who was stepping on the
6 toes and the hands?

7 ACC: Sergeant [REDACTED] and PFC [REDACTED].

8 MJ: And how were they stepping on them?

9 ACC: Walking around with their boots, stomping on their hands
10 and toes.

11 MJ: More of a stomp than simply----

12 ACC: Yes, Your Honor.

13 MJ: And then did they kind of grind it in like it was a
14 cigarette to put out?

15 ACC: Not that I could see. All I could see was the leg going up
16 and down.

17 MJ: Now when they were doing that, did you know that was wrong?

18 ACC: Yes, Your Honor.

19 MJ: I mean, have you ever seen a detainee abused like that
20 before?

21 ACC: No, Your Honor.

22 MJ: So you knew that was wrong.

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1 ACC: Yes, Your Honor.

2 MJ: And when you first saw that, where were you with your
3 detainee?

4 ACC: About 20 feet from the pile, Your Honor.

5 MJ: And then what did you do next?

6 ACC: I let the detainee in and I pushed him into the pile.

7 MJ: So at this point when--initially, you didn't know what was
8 going on, correct?

9 ACC: Correct, Your Honor.

10 MJ: But once you turned the corner and you see these two
11 soldiers stomping the detainee, did you know the detainees were going
12 to be assaulted?

13 ACC: At that time, yes, I did, Your Honor.

14 MJ: And then after that, what did you do with your detainee?

15 ACC: Pushed him towards the pile and then somebody had grabbed
16 him and put him on the floor. He was lying there and I just kind of
17 stood back after that, Your Honor.

18 MJ: And so, when you escorted him in there, did you know he was
19 going to be assaulted by other soldiers? Not to start, I'm saying,
20 after you see the people getting stomped on.

21 ACC: Yes, once I see the people getting stomped on, I knew he
22 was going to be assaulted.

1 MJ: You knew he was going to be assaulted. And you continued
2 your escort duties and put him in this pile where then he was
3 assaulted by the other soldiers.

4 ACC: Yes, Your Honor.

5 MJ: And you knew that at the time while you were still
6 escorting him.

7 ACC: [No verbal response.]

8 MJ: What I'm saying is, you started out, you didn't know
9 anything was going on. Part of the way there, you see these two
10 soldiers starting to assault the detainees in a pile. And could you
11 have turned around and taken the detainee out?

12 ACC: I feel that I could have, yes, Your Honor.

13 MJ: But instead, you chose to put him in the pile to be
14 assaulted, just like the others.

15 ACC: Yes, Your Honor.

16 MJ: Now, these detainees, these are Iraqi citizens, or at least
17 members of--people found in Iraq. They may be Iraqis, they may be
18 some other nationality.

19 ACC: Yes, Your Honor.

20 MJ: And this is in the prison, correct?

21 ACC: Yes.

1 MJ: And although you're not an MP or even a prison guard,
2 correct?

3 ACC: Correct, Your Honor.

4 MJ: But when they're in the prison, when they come in and meet
5 the definition of a detainee, do they become subject to your orders?

6 ACC: Yes, they do, Your Honor.

7 MJ: Even though you're not a guard or anything like that, but
8 you're part of the prison cadre, want of a better term.

9 ACC: Yes, Your Honor.

10 MJ: No doubt in your mind about it.

11 ACC: No doubt at all, Your Honor.

12 MJ: What happened next?

13 ACC: Once the detainee was put on a pile, that's when Corporal
14 [REDACTED] had asked me if I would take a photograph, and I told him that
15 I would, Your Honor. I took the photograph, the photograph that I
16 had taken was the one where he was cradling an inmate in his forearm
17 and drew back like he was going to hit him. He just staged the
18 photo.

19 MJ: Why did you take the photo?

20 ACC: Because he asked me to take it, Your Honor.

21 MJ: Go ahead, what happened next?

1 ACC: After that, there was some other photos being taken, and
2 then they started picking up some of the inmates and they would take
3 one at a time, having them strip down of all his clothes to search
4 him, and then they would--the first one they had kneel down facing
5 the wall, sandbag on his head.

6 MJ: Was he naked at this point except for the sandbag?

7 ACC: Yes, he was, Your Honor.

8 MJ: Okay, go ahead.

9 ACC: They did that to about two or three detainees. And after
10 that is when Staff Sergeant [REDACTED] walked over and picked up the
11 detainee that I had escorted to the tier and punched that detainee in
12 the chest, Your Honor.

13 MJ: Had the detainee done anything to him?

14 ACC: Negative, Your Honor.

15 MJ: Tried to run away, give him lip, anything?

16 ACC: No, Your Honor.

17 MJ: And so Sergeant [REDACTED] punched him in the chest.

18 ACC: Yes, Your Honor.

19 MJ: What happened next?

20 ACC: After that, the detainee went down, and Sergeant [REDACTED]
21 told me, he said, "I think I might have put him in cardiac arrest."
22 I walked over....

1 MJ: Take your time.

2 ACC: I walked over and got the detainee's attention and pointed
3 to my eyes for him to watch me. And then I showed him my chest and
4 had him watch how I was breathing so he could try to get his breath
5 back. That continued to work. They yelled up to the top tier and
6 asked Specialist [REDACTED] if they had an inhaler, and she said, "Yes,
7 I'll get it." I'm guessing one of the other inmates needed that
8 inhaler. So they brought it down and he took a couple puffs off of
9 that and we kept trying to get him----

10 MJ: Is this the guy that Sergeant [REDACTED] hit?

11 ACC: Correct, Your Honor.

12 MJ: Got it, go ahead.

13 ACC: Trying to get him to breathe, and finally, the medical
14 personnel come down, checked him out, said everything was okay.

15 MJ: Who was this medical person? Had you ever seen him or her
16 before?

17 ACC: No, Your Honor. All I know is she was a female medic.

18 MJ: She came in and checked the guy out.

19 ACC: Checked the guy out.

20 MJ: And she left.

21 ACC: Yes, Your Honor.

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1 MJ: While she was there, was she a member of your unit or just
2 a medic assigned to the facility?

3 ACC: Just a medic assigned to the facility.

4 MJ: Now, while she was there, was there any more of the
5 assaulted behavior on the detainees going on?

6 ACC: Honestly, I can't recall, Your Honor.

7 MJ: But she just came and went.

8 ACC: Yes, Your Honor.

9 MJ: And what happened after she left?

10 ACC: After she left, they continued to have the detainees strip,
11 and that's when Specialist [REDACTED] had found out that one of them was
12 a rapist, or a supposed rapist, took a black marker and wrote the
13 word "rapist" across their leg. After that had happened, Corporal
14 [REDACTED] walked over and punched one of the detainees that looked to be
15 in the temple or the head area, and it looked like he knocked the
16 detainee out.

17 MJ: Had this detainee done anything to Corporal [REDACTED]?

18 ACC: Negative, Your Honor.

19 MJ: Now at this point, were they all naked with a bag on their
20 head?

21 ACC: Not all of them, there was still a few that were still
22 clothed.

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1 MJ: But they all had the bags on their head.
2 ACC: Yes, Your Honor.
3 MJ: Were they any threat to anybody?
4 ACC: I didn't feel that they were, Your Honor.
5 MJ: Was there any indication they weren't obeying instructions
6 or anything like that?
7 ACC: No, Your Honor.
8 MJ: So [REDACTED] just walked up and popped this guy in the head
9 and knocks him out.
10 ACC: Yes, Your Honor.
11 MJ: Okay, what happened next?
12 ACC: I told [REDACTED] Corporal [REDACTED] I said, "I think you might
13 have knocked that guy out," and I walked over to see if he was still
14 breathing. He was, and [REDACTED] had said, "Damn that hurt," stating--
15 talking about his wrist because I guess he hit him so hard that it
16 hurt his wrist.
17 MJ: [REDACTED] was, "Damn that hurt," referring to [REDACTED] wrist,
18 not the detainee's head.
19 ACC: Correct, Your Honor.
20 MJ: Got it, go ahead. What happened next?
21 ACC: After that happened, they continued to have the detainees
22 strip down. Once they were all stripped, they had them put into a

1 human pyramid. They would tell them to get down on their hands and
2 knees and they would have them each--they would have them do one row
3 and then just make a pyramid the whole way up until all seven were on
4 the pyramid, Your Honor.

5 MJ: And they were naked with a bag on their head.

6 ACC: Yes, Your Honor.

7 MJ: Got it. What happened next?

8 ACC: That's when some of the photos were being taken of the
9 naked pyramid, and they were just making different comments that
10 happened. And after that had happened, they had the detainees
11 finally stand back up and put them facing the wall.

12 MJ: Let me ask, you said photos were being taken. Did you take
13 any pictures of that?

14 ACC: Negative, Your Honor.

15 MJ: Okay, just so I'm clear, on Specification 2, it talks about
16 when you took the picture, that hasn't come up yet?

17 ACC: I had taken a picture already earlier.

18 MJ: Okay, let me back up to that one. Tell me what you did
19 when you took your picture. I'm talking about, it apparently
20 involved Corporal [REDACTED]?

21 ACC: Yes, Your Honor.

22 MJ: Back me up to that part.

1 ACC: Okay, he got in the middle of the pile of the detainees and
2 he grabbed the one detainee, he pulled the camera from his pocket and
3 he asked me if I would take the photo. And I said, "Sure," and I
4 took the photograph.

5 MJ: What was the photo of?

6 ACC: It was of a detainee, he had the detainee's head cradled in
7 his arms and had his fist drawn back like he was going to strike the
8 detainee.

9 MJ: Was this before he had--was this the same detainee he hit
10 later on or was it----

11 ACC: No, Your Honor, it was a different detainee.

12 MJ: And what was this detainee wearing at this time?

13 ACC: He was wearing an orange jumpsuit, and he had a sandbag
14 over his head.

15 MJ: Okay, was there an incident with [REDACTED] where he was
16 kneeling on a pile of detainees that you took a picture of?

17 Lieutenant [REDACTED], am I confused here?

18 DC: No, Your Honor, that's the same incident that Specialist
19 Sivits is referring to.

20 MJ: Which one?

21 DC: When Corporal [REDACTED] was on top of a pile and he took a
22 photo--Specialist Sivits took a photo of him.

1 MJ: Okay, I may have just misunderstood. I'm getting confused
2 by the piles here, so let me make sure.

3 You're talking about when he took a picture of [REDACTED] where
4 he's trying to hit somebody. Was he kneeling on top of other
5 detainees at the same time?

6 ACC: Yes, Your Honor.

7 MJ: And what were they wearing?

8 ACC: Some were in jumpsuits, blue jumpsuits, orange jumpsuits.
9 For the most, they were in civilian clothing, Your Honor.

10 MJ: They hadn't been stripped at this point.

11 ACC: Correct, Your Honor.

12 MJ: Now, how many were on the deck, on the floor?

13 ACC: There was seven of them, Your Honor, total.

14 MJ: And how was [REDACTED] positioned with these seven? You said
15 he was kneeling on top of them?

16 ACC: He was kneeling like in the middle of them and things like
17 that, Your Honor.

18 MJ: Was he kneeling on them, and they were between him and the
19 floor? Are you with me on this? What I'm saying----

20 ACC: I'm trying to....

21 MJ: His knees were on them and they were on the floor. His
22 knees weren't on the floor between them, for example.

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1 ACC: No, he was actually on them, Your Honor.

2 MJ: And then he grabbed one guy and he pretends he's going to
3 hit him?

4 ACC: Yes, Your Honor.

5 MJ: And he asks you to take a picture of that?

6 ACC: Yes, Your Honor.

7 MJ: Now, these are detainees still all subject to your orders.

8 ACC: Yes, they are, Your Honor.

9 MJ: Do you think you taking that picture of them humiliated the
10 detainees?

11 ACC: Yes, I do, Your Honor.

12 MJ: Why do you say that?

13 ACC: Because it was bad enough that they were embarrassed enough
14 to be in there, but what we were doing to them, I know that they
15 couldn't see the picture being taken, but they could hear the flash-
16 -or hear the click of the camera and probably see the flash through
17 the sandbags, Your Honor.

18 MJ: So as I explained to you earlier about how maltreatment can
19 cause mental suffering as well as physical suffering, the physical
20 suffering here was being caused by Corporal [REDACTED], but do you think
21 you caused them mental suffering by knowing their picture was being
22 taken as they were being humiliated?

1 ACC: Yes, I did, Your Honor.

2 MJ: Now, let's move forward to, we have a pile on the ground
3 now. What happened, now, you said they were naked on the pile on the
4 ground and some other people took pictures of that?

5 ACC: Yes, Your Honor.

6 MJ: You didn't take a-----

7 ACC: No, Your Honor.

8 MJ: What happened next?

9 ACC: After they were done with the human pyramid, they had the
10 detainees stand up against the wall, and they were--PFC [REDACTED] was
11 commenting about the size--their sizes of their penises, Your Honor,
12 and that's when a photograph was taken of PFC [REDACTED] pointing with a
13 smile on her face and cigarette in her mouth at the detainees and
14 giving a thumbs up. And that went on for a few minutes. There was a
15 picture of that, and then after that is when they placed one detainee
16 standing up, and they put another one on his knees in front of the
17 detainee standing up to make it look like he was giving the detainee
18 oral sex. They took some photos of that.

19 MJ: At this time, all of the detainees are naked except for the
20 bag on their head.

21 ACC: Correct, sir.

22 MJ: Go ahead.

1 ACC: And after that, they--Staff Sergeant [REDACTED] and Corporal
2 [REDACTED] walked over. Once they had the detainees stop that, they
3 walked over and took one of the detainee's hands and tried to get him
4 to masturbate himself, Your Honor. And when that started, I was
5 like, I'd had enough, and I left.

6 MJ: Now, although you told me earlier you weren't a guard
7 there, but you're a soldier in the United States Army, right?

8 ACC: Yes, Your Honor.

9 MJ: And you received training on the Geneva Convention of how
10 to treat POWs or detainees?

11 ACC: Yes, Your Honor.

12 MJ: And perhaps you don't even need training. Did you have a
13 duty to prevent this and to stop it?

14 ACC: Yes, I did, Your Honor, yes, I did.

15 MJ: Did you try to stop it?

16 ACC: No, Your Honor.

17 MJ: But you knew you should have, but you just didn't.

18 ACC: Yes, Your Honor.

19 MJ: Now the fact that you were outranked by these people, did
20 that excuse you not trying to stop it?

21 ACC: No, Your Honor.

22 MJ: Now, who was there besides you and Sergeant [REDACTED]?

1 ACC: Sergeant First Class [REDACTED] was there very briefly.

2 MJ: Who was Sergeant First Class [REDACTED]?

3 ACC: He was the platoon sergeant of the platoon that primarily
4 worked in that prison. I'm not sure of his main position at the
5 prison.

6 MJ: Was he there the whole time or just....

7 ACC: Honestly, Your Honor, the only reason that I knew he was
8 there was when Sergeant [REDACTED] was stomping on the toes, I heard
9 somebody yell, "Sergeant [REDACTED]" And for the size of Sergeant
10 [REDACTED], I never thought that that voice could come out of somebody
11 that little, and I turned and looked up and I saw that it was
12 Sergeant [REDACTED]

13 MJ: So this was right at the start.

14 ACC: Correct, Your Honor.

15 MJ: And when he said that, you would assume that that was to
16 tell him to stop?

17 ACC: Yes, for everything to stop right there, right. Specialist
18 [REDACTED]----

19 MJ: Did he leave, or did you not see him again?

20 ACC: I didn't see him after that, Your Honor. Specialist [REDACTED]
21 was there, PFC [REDACTED], Specialist [REDACTED], myself.

1 MJ: You mentioned earlier that, at least now, Specialist [REDACTED]
2 was there?

3 ACC: Yes, Your Honor.

4 MJ: And Sergeant [REDACTED]?

5 ACC: Yes, Your Honor.

6 MJ: So the group that was there for most of the time when you
7 were there were you, Sergeant [REDACTED], Sergeant [REDACTED], Corporal
8 [REDACTED] Specialist [REDACTED] Specialist [REDACTED] and PFC [REDACTED]

9 ACC: Correct, Your Honor.

10 MJ: Now, when you turned the hall, did all these people
11 participate in the abuse of these detainees?

12 ACC: Negative, Your Honor.

13 MJ: Who didn't?

14 ACC: Specialist [REDACTED] did not. She was upstairs. From what I
15 understood, she was actually in charge of the female and juvenile
16 side of that area. She was upstairs, and Sergeant First Class
17 [REDACTED].....

18 MJ: And correct me if I'm wrong, I believe you told me you saw
19 Sergeant [REDACTED].

20 ACC: Correct, Your Honor.

21 MJ: Okay, as I go through these names, tell me what you saw
22 each of these individuals do. Sergeant [REDACTED].

1 ACC: Strike a detainee in the chest, Your Honor.
2 MJ: Sergeant [REDACTED]
3 ACC: Stomped on hands and toes, Your Honor.
4 MJ: Corporal [REDACTED]
5 ACC: Punching a detainee, Your Honor.
6 MJ: Specialist [REDACTED]
7 ACC: Write the word "rapist" on an inmate's leg, Your Honor.
8 MJ: And PFC [REDACTED]
9 ACC: PFC [REDACTED] was taking photos and laughing.
10 MJ: And she was also the one....
11 ACC: Stomping on the hands and toes.
12 MJ: So, you turned the corner here and you escorted your
13 detainee in there. And you told me earlier, is you didn't know what
14 was going to happen, but as you get in there, you see what they're
15 going to do.
16 ACC: Yes, Your Honor.
17 MJ: And let's put Specialist [REDACTED] to the side for a second,
18 but the other six and you, remember I talked to you earlier about
19 what a conspiracy is?
20 ACC: Yes, Your Honor.
21 MJ: And a conspiracy can be like two people getting together or
22 three people, and saying, "Here's our plan to rob the bank. You do

1 this, you do that," and then kind of talk it out and work it out and
2 then they may or may not go rob the bank. But that agreement's in
3 words. There's also a way to get an agreement just by actions, to
4 join in common actions indicating that each individual member of the
5 conspiracy are all agreeing with the object of the conspiracy. Do
6 you understand what I'm talking about there?

7 ACC: Yes, I do, Your Honor.

8 MJ: And in this case, you're charged with conspiring with these
9 six other people. And again, let's put Specialist ████████ to the side
10 for a second. These six other people were conspiring to maltreat
11 these subordinates. Do you understand that? And the subordinates in
12 this case are the detainees.

13 ACC: Yes, Your Honor.

14 MJ: Now, before you walked in there, did you ever discuss doing
15 this with them or anything like that?

16 ACC: Negative, Your Honor.

17 MJ: But once you got in there, by your actions and their
18 actions, do you believe and admit that you formed an agreement to
19 maltreat these detainees?

20 ACC: Yes, I do, Your Honor.

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1 MJ: Do you understand what I mean by that? I mean, you didn't
2 talk about it. And although eventually you withdrew, by that point
3 you had already participated to a degree, correct?

4 ACC: Yes, Your Honor.

5 MJ: Took pictures?

6 ACC: Yes, Your Honor.

7 MJ: Escorting them--well, let me go--okay. Then after you
8 started participating in this, when were the pictures taken of the
9 detainees in the human pyramid position, sequentially. Later?

10 ACC: Later on.

11 MJ: After you had already participated.

12 ACC: Yes, Your Honor.

13 MJ: Who took that picture?

14 ACC: The detainees in the pyramid, Your Honor?

15 MJ: Yes.

16 ACC: I cannot recall because there was....

17 MJ: Let me ask you this. Was it one of the six people, you
18 just don't know which one it is?

19 ACC: Correct, Your Honor.

20 MJ: Was there anybody else there other than you seven?

21 ACC: No, Your Honor.

22 MJ: At that point?

1 ACC: No, Your Honor. [Pause.] Your Honor?
2 MJ: Yes, go ahead.
3 ACC: I'd like to clear on that, I didn't tell you, but I want to
4 clear it.
5 MJ: Sure.
6 ACC: Sergeant [REDACTED] had left once. Sergeant First Class [REDACTED]
7 told him that was enough. He had left the area, so at that time,
8 there would have only been five of us.
9 MJ: So [REDACTED] stomps the guy's hand. Sergeant First Class
10 [REDACTED] yells at him.
11 ACC: Yes.
12 MJ: [REDACTED] then leaves.
13 ACC: Correct.
14 MJ: But this was before you started participating in this?
15 ACC: Yes, Your Honor.
16 MJ: Specialist Sivits, who was in charge of these soldiers at
17 the time there, after Sergeant First Class [REDACTED] left? Well, let me
18 put it this way, maybe it appeared nobody was in charge, but who was
19 the senior guy?
20 ACC: The senior guy at that time would have been Staff Sergeant
21 [REDACTED]

1 MJ: Now, at that time, did he order you to do this, or did you
2 voluntarily participate?

3 ACC: Voluntary.

4 MJ: You knew it was wrong?

5 ACC: Yes, Your Honor.

6 MJ: Now, did any of these people--now, you said initially this
7 was a group that they thought were involved in a riot at another
8 location in the prison compound?

9 ACC: Yes, Your Honor.

10 MJ: And that's what they brought them over for.

11 ACC: Yes, Your Honor.

12 MJ: But had any of these people at any time done anything other
13 than comply with directions as far as you saw?

14 ACC: As far as I saw, no, Your Honor, they did everything they
15 were told to do.

16 MJ: Now, had you ever been involved with in-processing
17 detainees before?

18 ACC: Negative, Your Honor.

19 MJ: Had you ever been involved with interrogating detainees?

20 ACC: Negative, Your Honor.

21 MJ: Have you ever been involved with detainees to any degree,
22 other than this day?

1 ACC: Negative, Your Honor.

2 MJ: Now, Sergeant [REDACTED], you meet at the TOC, he asks you
3 to come over, and then these events happen that you relayed to me,
4 okay?

5 ACC: Yes, Your Honor.

6 MJ: And you've got all these people doing all of this stuff.
7 Did any of them tell you or say anything of why they were doing this,
8 other than just to...or, let me ask you this, why were they doing
9 this?

10 ACC: Honestly, I don't know, Your Honor. They had told me
11 before that they were asked to do this, and they were told to keep
12 doing whatever they were doing because the inmates----

13 MJ: Who told you that? Any of these six?

14 ACC: It was one of those six, but I can't recall exactly.

15 MJ: Did they tell you at this time or afterwards or before?

16 ACC: They had told me while they were in the tier area.

17 MJ: Okay. And what did this person, who you don't remember,
18 tell you?

19 ACC: They had said that they were told by MI for them to keep
20 doing what they were doing to the inmates because it was working,
21 they were talking, and I'm guessing what he meant by they were
22 talking, when they would interrogate them, they would talk----

1 MJ: Now, you don't remember who told you this, but it was one
2 of the male soldiers?

3 ACC: Yes, Your Honor.

4 MJ: Now, they tell you this and you see what they're doing, did
5 you think that made it okay?

6 ACC: No, Your Honor.

7 MJ: Did you believe that when they said that they were told to
8 treat detainees this way?

9 ACC: No, Your Honor.

10 MJ: So, in your mind, I'm not talking about their mind, I'm
11 talking about Specialist Jeremy Sivits' mind, you knew regardless of
12 what they were saying about what they were being told, that this was
13 wrong to do this.

14 ACC: Yes, sir.

15 MJ: To treat people this way.

16 ACC: Yes, sir.

17 MJ: Any doubt in your mind of that?

18 ACC: No doubt at all, Your Honor.

19 MJ: When you were all done with this, did you ever have a
20 discussion with Staff Sergeant [REDACTED] about what happened?

1 ACC: As I was leaving the tier, Your Honor, he told me that it
2 really wasn't like told, told me, it was just like, "You didn't see
3 shit."

4 MJ: What do you think he meant by that?

5 ACC: Of the abuse that had occurred while I was there, Your
6 Honor.

7 MJ: You didn't ask him, "Well, if you say this is okay, why
8 would you tell me that?"

9 ACC: No, I didn't ask any questions.

10 MJ: You just wanted to get out of there.

11 ACC: Yes, Your Honor.

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

13 TC: No, Your Honor.

14 DC: No, Your Honor.

15 MJ: Trial counsel, what do you calculate to be the maximum
16 punishment authorized in this case based solely on the accused's
17 guilty plea?

18 TC: Your Honor, 12 months confinement, reduction to E1, two-
19 thirds months forfeiture of pay for 12 months and a bad-conduct
20 discharge.

21 MJ: Do you agree, Lieutenant [REDACTED]?

22 DC: Yes, Your Honor.

1 MJ: Special Sivits, the maximum punishment authorized in this
2 case based solely on the accused's guilty plea is to be confined for
3 one year, to forfeit two-thirds pay per month for 12 months, to be
4 reduced to the grade of Private E1, and to be discharged with a bad-
5 conduct discharge. Do you understand that?

6 ACC: Yes, sir.

7 MJ: Do you also understand that based on your plea alone, this
8 court could sentence you to the maximum punishment that I just
9 stated?

10 ACC: Yes, Your Honor.

11 MJ: Do you have any question as to the maximum punishment that
12 could be imposed in this case?

13 ACC: Negative, Your Honor.

14 MJ: There is a pretrial agreement. Let me see Appellate
15 Exhibit--the offer portion, which is Appellate Exhibit II. Mark the
16 quantum portion as Appellate Exhibit III. Lieutenant [REDACTED], make
17 sure Specialist Sivits has both documents. I will only look at the
18 offer portion, Appellate Exhibit II.

19 Do you have a copy of these documents there, Specialist
20 Sivits?

21 ACC: Yes, I do, Your Honor.

1 MJ: Now, I have Appellate Exhibit II here. You should have
2 both Appellate Exhibits II and III. We refer to the first one as the
3 offer portion, and the second is the quantum portion.

4 ACC: Yes, Your Honor.

5 MJ: Did you sign this pretrial agreement?

6 ACC: Yes, Your Honor.

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

8 ACC: Yes, I did, Your Honor.

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

10 ACC: Yes, Your Honor.

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

13 ACC: No, Your Honor.

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

16 ACC: Yes, sir.

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

19 ACC: No, sir.

20 MJ: Counsel, are Appellate Exhibits II and III the full and
21 complete agreement in this case and are you satisfied there are no
22 other side agreements?

1 TC: Yes, Your Honor.

2 DC: Yes, sir.

3 MJ: Now, Specialist Sivits, basically, a pretrial agreement
4 means you agree to plead guilty, and in return, the convening
5 authority takes the favorable action in your case, usually in the
6 form of limiting a sentence that he will approve. Do you understand
7 that?

8 ACC: Yes, I do, Your Honor.

9 MJ: The law requires that I discuss the contents of your
10 agreement with you. Let's look at Appellate Exhibit II together.

11 The first paragraph is relatively straight forward, that
12 you understand you could plead not guilty and have a moral right and
13 legal right to plead not guilty if you so desire. Do you understand
14 that?

15 ACC: Yes, sir.

16 MJ: But nonetheless, you chose to plead as you have. Like I
17 said, it's relatively straight forward. It just kind of repeats what
18 your counsel said earlier. Do you have any questions about that
19 paragraph?

20 ACC: No, I don't, Your Honor.

21 MJ: Paragraph 2 says if you offer to do this, in return, the
22 convening authority will take the actions contained in Appellate

1 Exhibit III, which I'm not going to look at until the very end of
2 this trial, and I'll explain that to you in a minute. And, that the
3 trial counsel move the court to amend the specifications to conform
4 with the pleas. There are no other promises, conditions, or
5 understandings regarding my proposed pleas of guilty that are not
6 contained in this offer and the quantum at Appendix A.

7 Is that true?

8 ACC: Yes, Your Honor.

9 MJ: So this is the whole deal, this piece of paper and the
10 other one.

11 ACC: Yes, Your Honor.

12 MJ: Now trial counsel, I just want to make sure there's no
13 misunderstanding. It says to move to amend the specifications to
14 conform with his plea. And I understand that part. The difficult
15 part I have is that two of the named coconspirators appear to have
16 been either not part of the conspiracy or withdrew prior to his
17 involvement. And so, in order to be found guilty of that
18 specification, in accordance with his plea, it will be necessary to,
19 at least as I heard the providence, and I'm certainly willing to
20 listen to the contrary argument, to delete the names of Sergeant
21 [REDACTED] and Specialist [REDACTED] from the conspiracy specification only.

22 TC: May I have a minute, Your Honor?

1 MJ: Sure. [Pause.]

2 TC: Your Honor, we'll amend to take those two names out.

3 MJ: Okay. My suggestion is that we wait until immediately
4 prior to findings, and then we'll make the appropriate amendments.

5 TC: Yes, sir.

6 MJ: Okay, let's go back to the pretrial agreement. Paragraph
7 3, you offer to do some other things, first, you offer to enter into
8 a written stipulation of fact, which you have done, and you agree
9 that it could be used both to assist in the guilty plea inquiry and
10 adjudge an appropriate sentence. We talked about that earlier. Do
11 you have any question about that provision?

12 ACC: No, Your Honor.

13 MJ: Now, if your plea is not accepted, the offer to stipulate
14 [sic] is null and void, which is lawyer talk for three words to mean
15 one thing, it's canceled. Do you understand that?

16 ACC: Yes, Your Honor.

17 MJ: But the convening authority has approved the pretrial
18 agreement, so the stipulation is good to go. Do you understand that?

19 ACC: Yes, Your Honor.

20 MJ: Paragraph 3(b) talks about you're going to waive all
21 motions I have, except those listed in R.C.M. 907(b)(1). Let's talk

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1 about what you--Lieutenant ██████ this is going to be directed to
2 you. Is there any evidence of pretrial punishment in this case?
3 DC: No, Your Honor.
4 MJ: So you would have no such motions.
5 DC: No, Your Honor.
6 MJ: Is there any grounds for a motion for appropriate relief
7 for illegal pretrial confinement?
8 DC: No, Your Honor.
9 MJ: Do you believe any of these charges are multiplicitous for
10 either findings or sentencing?
11 DC: No, Your Honor.
12 MJ: And no unreasonable multiplication of charges.
13 DC: No, Your Honor.
14 MJ: So when you agreed to waive these motions, in essence, you
15 agreed to waive motions that, in your legal opinion, there was no
16 basis on law and fact to make?
17 DC: Yes, Your Honor.
18 MJ: Okay, you've discussed this with Specialist Sivits?
19 DC: I did, Your Honor.
20 MJ: So you understand, Specialist Sivits, that Paragraph 3
21 Bravo says that you agree to waive all motions, and your counsel has
22 looked into this and in his legal judgment, there are really no

1 motions to make so you're kind of giving nothing for something. Do
2 you understand that?

3 ACC: Yes, Your Honor.

4 MJ: Now, Paragraph 3 Charlie really doesn't impact on this
5 case. This case is a special court-martial where the maximum limit
6 of the penalty is what I told you earlier. At a general court-
7 martial though, you're required--before a general court-martial can
8 be referred to trial, there must be what's called an Article 32
9 investigation, okay? Did you discuss what that is with your counsel?

10 ACC: Yes, I did, Your Honor.

11 MJ: And at one point, apparently, that was an issue in this
12 case, and you agreed to waive that Article 32 investigation, correct?

13 ACC: Yes, Your Honor.

14 MJ: Did he explain it thoroughly to you what it is?

15 ACC: Yes, he did, Your Honor.

16 MJ: Now, I just want to go over this with you, even though it
17 doesn't apply in this case, because like I said, there's no
18 requirement for an Article 32 investigation in a BCD Special. But
19 obviously, this was, at one point, relevant to your case, which tells
20 me, Lieutenant [REDACTED] it would be a fair inference that a general
21 court-martial was being considered?

22 DC: That's right, Your Honor.

1 MJ: So when you waived the Article 32, I'll just go over it
2 with you, and understand you don't have a right to an Article 32 in
3 this case. But when you waived it, and if they want to go to general
4 court, these are all the rights you would give up, so just let me go
5 through them with you.

6 Now, you've discussed what an Article 32 investigation is
7 with your defense counsel, true?

8 ACC: Yes, Your Honor.

9 MJ: Do you understand that no charge against you may be tried
10 at a general court-martial without first having an Article 32
11 investigation concerning that charge unless you agree otherwise?

12 ACC: Yes, Your Honor.

13 MJ: Do you also understand the primary purpose of an Article 32
14 investigation is to have a fair and impartial hearing officer inquire
15 into the truth of the matter set forth in the charges and obtain the
16 information of which to recommend what disposition be made of the
17 case?

18 ACC: Yes, Your Honor.

19 MJ: Do you also understand your right to be present at the
20 Article 32 investigation and be represented by counsel at the
21 investigation?

22 ACC: Yes, Your Honor.

1 MJ: Do you understand you could call witnesses, cross-examine
2 the government witnesses and present documents for the investigating
3 officer to consider in arriving at his or her recommendation?

4 ACC: Yes, Your Honor.

5 MJ: Do you understand you could have provided sworn or unsworn
6 testimony at the Article 32 investigation?

7 ACC: Yes, Your Honor.

8 MJ: Do you also understand that one possible strategy for you
9 and your counsel at the Article 32 investigation could have been an
10 attempt to have the Article 32 officer recommend disposition of the
11 charge other than trial by general court?

12 ACC: Yes, Your Honor.

13 MJ: And again, we're not at a general court, so.... Did you
14 know about all these rights you would have at an Article 32 at the
15 time you elected to give up the Article 32 investigation?

16 ACC: Yes, Your Honor.

17 MJ: Now defense counsel, the way I read this is that if the
18 accused's plea of guilty is determined to be improvident, his waiver
19 is unconditional?

20 DC: That's correct, Your Honor.

1 MJ: At this point, that does not strike to the court as having
2 any legal significance. If it does have legal significance later on,
3 we will come back to it.

4 Now, Paragraph 3 Delta talks about what you agree to do in
5 cooperation. You agree to cooperate fully with the trial counsel in
6 the investigation and prosecutions of Staff Sergeant [REDACTED]
7 Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] Specialist
8 [REDACTED] and Private [REDACTED] [sic] and it talks about what that really
9 means, full disclosure to the trial counsel of what happened at the
10 Baghdad Central Correction Facility, Abu Ghraib, Iraq, identification
11 of the four said soldiers in digital photographs entitled "CPU exam"
12 in the Abu Criminal Investigation Division, to testify at all such
13 Article 32 investigations, court-martials, and evidentiary hearings
14 related to the investigation of those six named individuals. Do you
15 understand that?

16 ACC: Yes, Your Honor.

17 MJ: When this trial is over with, in order to keep your
18 pretrial agreement, you've got to cooperate with this. Do you
19 understand that?

20 ACC: Yes, Your Honor.

21 MJ: Now trial counsel, I just want to clarify something. All
22 this refers to cooperating with trial counsel in the investigation of

1 prosecutions of these other six soldiers. Would it be fair to say
2 that that would also include making himself available to be
3 interviewed by the defense counsel if they want to in those other
4 cases?

5 TC: Yes, Your Honor.

6 MJ: So it's full cooperation as if he were any other witness to
7 both sides.

8 TC: Yes, Your Honor.

9 MJ: Lieutenant [REDACTED] is that your understanding?

10 DC: It is, Your Honor.

11 MJ: And Specialist Sivits, is that your understanding?

12 ACC: Yes, Your Honor.

13 MJ: Paragraph 4 says if any specification is amended,
14 consolidated or dismissed with your consent and the mutual consent of
15 trial counsel, the agreement shall remain in effect. It appears to
16 the court that this is just boilerplate that doesn't apply to this
17 case. Is that true?

18 TC: Yes, Your Honor.

19 DC: Yes, Your Honor.

20 MJ: And Paragraph 5 talks about the things that will cancel the
21 agreement, if any of these four things happen, you'll lose your
22 pretrial agreement. First, you fail to enter into the stipulation of

1 fact or it's modified without the consent of both yourself and trial
2 counsel. Now, you guys have--it's signed, there have been no
3 changes, so you've got that agreement. But if something were to
4 happen between now and when this trial is over with that changes
5 that, we'll revisit this provision. Do you understand that?

6 ACC: Yes, Your Honor.

7 MJ: The withdrawal of either party for any reason whatsoever
8 from this agreement prior to the acceptance of my plea of guilty by
9 the military judge.

10 Now, despite how this is worded, I'm only going to talk
11 about your withdrawal. Because quite frankly, I have some doubts of
12 whether the government would be permitted to withdraw at this point,
13 so I really don't care what they're going to do. But, if you want to
14 withdraw from the agreement at any time prior to accepting your
15 guilty plea or quite frankly, until this case is over with, you can.
16 And if that happens, the pretrial agreement is canceled. Do you
17 understand that?

18 ACC: Yes, Your Honor.

19 MJ: Do you want to withdraw from the pretrial agreement?

20 ACC: No, Your Honor.

21 MJ: Paragraph 5 Charlie, if you fail to plead guilty and waive
22 motions agreed herein.

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1 Basically, what this means, if you don't do what you agree
2 to, you lose the pretrial agreement. That's common sense. [Accused
3 nods his head up and down.]

4 Five Delta would be the refusal--the record should reflect
5 the accused had nodded his head to the common sense remark.

6 Five Delta, the refusal of the military judge to accept
7 your plea or the changing of your guilty plea by the judge during the
8 trial. Now, what this means, Specialist Sivits, is from now until I
9 announce the sentence, if you tell me in any way, shape or form
10 inconsistent with your guilty plea, I will reopen this inquiry. And,
11 if I can't resolve the inconsistency, I will enter a plea of not
12 guilty on your behalf and we're back to starting this trial all over
13 again as a not guilty case. Do you understand that?

14 ACC: Yes, I do, Your Honor.

15 MJ: Do you have any questions about your pretrial agreement in
16 Appellate Exhibit II?

17 ACC: No, Your Honor.

18 MJ: Now, I'm not going to look at Appellate Exhibit III, the
19 quantum portion, until after I announce the sentence in your case.
20 But I want you to look at it now and read it silently to yourself and
21 tell me whether that is what you and the convening authority agreed

1 to. [Accused complied.] Is that what you and the convening
2 authority agreed to?

3 ACC: Yes, Your Honor.

4 MJ: Now, you get the benefit of whichever is less, the sentence
5 adjudged by this court or what the convening authority agreed to in
6 that document. If the sentence adjudged by this court is greater
7 than the one provided in the pretrial agreement, the convening
8 authority must reduce the sentence to one no more severe than the one
9 in your pretrial agreement. On the other hand, if the sentence of
10 this court is less than the one in your agreement, the convening
11 authority cannot increase the sentence adjudged. Do you understand
12 that?

13 ACC: Yes, Your Honor.

14 MJ: Specialist Sivits, when is your ETS date?

15 ACC: 112203, Your Honor.

16 MJ: So you're past it.

17 ACC: I'm sorry, Your Honor, it's of 2004.

18 MJ: 112304.

19 ACC: Yes, Your Honor.

20 MJ: Okay, I have to tell you something. At this point, we're
21 at what's called the findings portion of the trial. When this gets

1 concluded, we will be into the sentencing portion of the trial, and
2 once that is over with, I will adjudge a sentence.

3 ACC: Yes, Your Honor.

4 MJ: And so at this point, there's been no decision of what an
5 appropriate sentence is in your case. I haven't heard anything, so I
6 have an open mind. But, if confinement is adjudged and you're in
7 confinement past your ETS date, by operation of law, you go into a
8 no-pay-due status. That means no pay, no allowances. Do you
9 understand that?

10 ACC: Yes, Your Honor.

11 MJ: So when I told you earlier the maximum penalty in this
12 case, as far as the financial penalty, is forfeiture of two-thirds
13 pay per month for 12 months, that will only apply as a maximum to the
14 day you reach your ETS. If, and again, no decision has been made, if
15 you're in jail on the date of your ETS, at that point, you will be
16 placed in a no-pay-due status. Do you understand that?

17 ACC: Yes, I do, Your Honor.

18 MJ: Does that, in any way, impact on your decision to plead
19 guilty and enter into the pretrial agreement?

20 ACC: Negative, Your Honor.

21 MJ: Now, have you had enough time to discuss this pretrial
22 agreement with Lieutenant [REDACTED]

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1 ACC: Yes, I have, Your Honor.

2 MJ: Are you satisfied with his advice concerning this pretrial
3 agreement?

4 ACC: Yes, Your Honor.

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

6 ACC: Yes, Your Honor.

7 MJ: Has anyone tried to force you to make this pretrial
8 agreement?

9 ACC: No, sir.

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

11 ACC: No, sir.

12 MJ: Do you fully understand all the terms of the pretrial
13 agreement and how they affect your case?

14 ACC: Yes, sir.

15 MJ: Specialist Sivits, are you pleading guilty not only because
16 you hope to receive a lighter sentence, but because you are convinced
17 that you are, in fact, guilty?

18 ACC: Yes, sir.

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

21 TC: Yes, Your Honor.

22 DC: Yes, Your Honor.

1 MJ: Lieutenant [REDACTED] have you had enough time and opportunity
2 to discuss this case with Specialist Sivits?

3 DC: Yes, Your Honor.

4 MJ: And Specialist Sivits, have you had enough time and
5 opportunity to discuss your case with your defense counsel?

6 ACC: Yes, I have, Your Honor.

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

9 ACC: Yes, sir.

10 MJ: Are you satisfied that your defense counsel's advice is in
11 your best interest?

12 ACC: Yes, sir.

13 MJ: And are you satisfied with your defense counsel?

14 ACC: Yes, I am, sir.

15 MJ: Has anyone made any threat or tried in any way to force you
16 to plead guilty?

17 ACC: No, sir.

18 MJ: Are you pleading guilty voluntarily and of your own free
19 will?

20 ACC: Yes, sir.

21 MJ: Do you have any questions as to the meaning and effect of a
22 plea of guilty?

1 ACC: No, sir.

2 MJ: Do you fully understand the meaning and effect of your plea
3 of guilty?

4 ACC: Yes, sir.

5 MJ: Do you understand that even though you believe you are
6 guilty, you have the legal and moral right to plead not guilty and to
7 place the burden upon the government to prove your guilt beyond a
8 reasonable doubt?

9 ACC: Yes, sir.

10 MJ: Specialist Sivits, take one last moment now and consult
11 with your defense counsel and tell me whether you still wish to plead
12 guilty. [Accused conferred with his counsel.]

13 Do you still wish to plead guilty?

14 ACC: Yes, Your Honor.

15 MJ: Specialist Sivits, I find that your plea of guilty is made
16 voluntarily and with full knowledge of its meaning and effect. I
17 further find that you have knowingly, intelligently and consciously
18 waived your rights against self-incrimination, to a trial of the
19 facts by a court-martial and to be confronted by the witnesses
20 against you. Accordingly, your plea of guilty is provident and is
21 accepted. However, I advise you that you may request to withdraw
22 your guilty plea at any time before your sentence is announced and if

1 you have a good reason for your request, I will grant it. Do you
2 understand that?

3 ACC: Yes, Your Honor.

4 MJ: Trial counsel, in accordance with the pretrial agreement,
5 at this point, do you move to amend, I believe, it was only the
6 Specification of Charge I in accordance with his plea?

7 TC: Yes, Your Honor.

8 MJ: So that would mean excepting the words "Specialist Sivits
9 took a photograph of" substituting therefore the words "that a
10 photograph be taken of", correct?

11 TC: Yes, sir.

12 MJ: And also, in accordance with our previous discussion to
13 except out the words, "Sergeant [REDACTED]" and "Specialist
14 [REDACTED]".

15 TC: Yes, Your Honor.

16 MJ: That would appear that now it's in compliance with his
17 plea.

18 TC: That's correct, Your Honor.

19 MJ: I'm assuming there's no objection?

20 DC: No objection, Your Honor.

21 MJ: The government motion to amend the Specification of Charge
22 I is granted.

1 Accused and counsel, please rise. [The accused and his
2 counsel stood.]

3 Specialist Jeremy C. Sivits, in accordance with your plea
4 of guilty, this court finds you:

5 **Of all Specifications and all Charges: Guilty.**

6 Please be seated.

7 The court will be in recess for 10 minutes, and then we'll
8 begin sentencing proceedings.

9 [Court recessed at 1416, 19 May 2004, and reconvened at 1426, 19 May
10 2004.]

11 MJ: The court is called to order. All parties are again
12 present that were present when the court recessed.

13 Specialist Sivits, we now enter the sentencing phase of the
14 trial where you have the right to present matters in extenuation and
15 mitigation, that is, matters about the offense or yourself that you
16 want me to consider in deciding your sentence.

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

21 On the other hand, if you desire, you may make an unsworn
22 statement. Because the statement is unsworn, you cannot be cross-

1 examined on it. However, the government may offer evidence to rebut
2 any statement of fact contained in an unsworn statement.

3 An unsworn statement may be made orally, in writing, or
4 both. It may be made by you, by your counsel on your behalf, or by
5 both.

6 Do you understand these rights?

7 ACC: Yes, Your Honor.

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

10 DC: Yes, Your Honor.

11 MJ: Has the accused been under any form of pretrial restraint,
12 other than a soldier assigned to duty in Iraq?

13 DC: No, Your Honor.

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

16 TC: Yes, Your Honor, Prosecution Exhibit 2 for identification,
17 I would ask that the PQR and the 2-1 be entered.

18 MJ: Personnel records of the accused.

19 TC: Yes, sir.

20 MJ: Any objection to Prosecution Exhibit 2 for identification?

21 DC: No, Your Honor.

22 TC: There also is Prosecution Exhibit 3 for identification----

1 MJ: Just a second, Captain [REDACTED]
2 TC: Oh, I'm sorry, sir.
3 MJ: Prosecution Exhibit 2 for identification is admitted.
4 Prosecution Exhibit 3 for identification is being offered?
5 TC: Yes, sir, we have an Article from Time.com that is titled
6 "How the Prison Scandal Sabotages the U.S. in Iraq."
7 MJ: Any objection to Prosecution Exhibit 3 for identification?
8 DC: No, Your Honor.
9 MJ: One moment. [Pause.] Despite the lack of objection,
10 government, the court's not going to admit Prosecution Exhibit 3 for
11 identification. There are opinions in here that would never be
12 admissible at a trial and a lot of this has nothing to do with this
13 case or this particular accused. Accordingly, the court finds it to
14 be irrelevant on sentencing in this case.
15 Any other documentary evidence, government?
16 TC: No other documentary evidence, Your Honor.
17 MJ: Do you have live witnesses you wish to call?
18 TC: Yes, Your Honor.
19 MJ: Proceed.
20 ATC: Your Honor, at this time, the government would call
21 Specialist [REDACTED]

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

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel [Captain [REDACTED]]:

5 Q. Are you Specialist [REDACTED] of the 372d MP Company?

6 A. Yes, sir.

7 Q. Are you a military police officer?

8 A. Yes, sir.

9 Q. Now, around November of 2003, where was your unit
10 stationed?

11 A. The prison, Abu Ghraib.

12 Q. Now, were you present at the prison facility around
13 November 8th, sometime in the evening?

14 A. Yes, sir.

15 Q. Were you sent there for some particular purpose that
16 evening?

17 A. I was sent there to get Sergeant [REDACTED]. I needed to
18 talk with Sergeant [REDACTED]. One of my NCOICs told me get him about
19 an issue. I do not remember what that was.

20 Q. So you went down to get Sergeant [REDACTED]. Could you very
21 briefly tell the court what you saw at that point?

1 A. Yes, sir. I saw a naked prisoner standing up against the
2 wall masturbating with another naked inmate on his knees with his
3 mouth open under him.

4 Q. What did you do whenever you saw that?

5 A. I immediately went to my chain of command and my team
6 leader and reported it.

7 Q. How did that make you feel whenever you saw that?

8 A. It made me sick to my stomach, sir, disgusted.

9 MJ: Specialist [REDACTED]?

10 WIT: Sir.

11 MJ: Was Specialist Sivits there at the time?

12 WIT: I do not recall. I do not remember him being there, sir.

13 MJ: Captain [REDACTED], how do we know it's the same incident?

14 TC: Your Honor, I think from the----

15 MJ: No, from what we have before me, he's only going to be
16 sentenced for what he did, not what other people did another day.

17 TC: I understand, Your Honor.

18 MJ: This witness can't place him there. How do we know it
19 didn't happen another day with other people there?

20 TC: Your Honor, it's an accurate description based on what the
21 accused stated during his providence inquiry about what he witnessed.
22 However, before the court, I'm laying a foundation for his impact

1 testimony, just that he had personal observation also of what
2 occurred, and the government intends to shift into the impact
3 testimony on the end.

4 MJ: Because you can't tie him to this accused, I'm going to
5 disregard his testimony as relating to the specific instance. If you
6 want to go to unit impact, separate issue. Go ahead.

7 **Questions by the assistant trial counsel [continued]:**

8 Q. Now, you understand what the accused has pled guilty to
9 here today. Is that correct?

10 A. Yes, sir.

11 Q. Narrowing your answer to the acts that he's pled guilty to,
12 the conspiracy to maltreat detainees, dereliction of duty and the
13 maltreatment of detainees, do you feel that these acts that he's pled
14 guilty to have had an impact on your unit morale?

15 A. Yes, sir.

16 Q. Could you describe some of the impact that's had on your
17 unit's morale?

18 A. Well, on a lower scale, sir, when we were still working at
19 the prison in January, we were looked down upon by the people that
20 knew and all the companies at the prison with us. I had found out
21 pretty easily what had happened and what was going on and we were
22 getting looked down upon as undisciplined, worthless soldiers, and

1 that affected--it impacted the mission. It made it harder for us,
2 sir.

3 Q. Let me ask you, you said that you felt like everyone was
4 looking at you. Did that specifically make your morale less than
5 what it was before?

6 A. Yes, sir, because of the way they were looking at us as bad
7 soldiers when our previous record in the past proved that we had been
8 doing a good job the entire time we had been in country. Previously,
9 we worked in al-Hilla doing law and order, and we got great reviews
10 from there. And in the prison, we also got great reviews besides
11 these incidents. We were doing our job and getting looked down upon.

12 Q. Do you feel like these incidents that Specialist Sivits has
13 pled guilty to have tarnished the image of your unit?

14 A. Yes, sir.

15 Q. You started to mention something about making it more
16 difficult to accomplish your mission. How is that so?

17 A. It's just--it's very stressful, along with the--recently,
18 since it hid wide scale with the media, we have media attacking our
19 families at home. Our families are worried. We were worried.
20 Things like this make it very hard for us to do our current mission.

21 MJ: Specialist [REDACTED] you said "media attacking your families
22 at home," you don't mean physically, you mean simply----

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1 ACC: Not physically, sir.

2 MJ: Bothering them.

3 ACC: Yes, sir.

4 MJ: I got it, go ahead.

5 Q. Taking your focus away from what your mission is, it's your
6 testimony that that makes it harder for you to focus. Is that what
7 you're telling the court?

8 A. That's exactly right, sir.

9 Q. What about on the larger scale of what your unit's trying
10 to accomplish now. Is it affecting that?

11 A. I would say so, yes, sir.

12 Q. Could you briefly describe that for the court?

13 A. Again, as I said, just the people around us, they look at
14 us, they look down on us. The world now looks down on us. You know,
15 haven't had a chance at rebuttal, and you know, the media and all
16 this plays a huge factor on our personal morale with the unit, and it
17 suffered, sir.

18 TC: Pass the witness.

19 MJ: Lieutenant [REDACTED], do you have any questions of this
20 witness?

21 DC: Yes, Your Honor.

22 MJ: Proceed.

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1 **CROSS-EXAMINATION**

2 **Questions by the defense:**

3 Q. Specialist [REDACTED] morale was good in your unit from May to
4 January, correct?

5 A. Yes, sir.

6 Q. And on a scale of one to ten, with ten being the highest,
7 how would you rate the morale at that time?

8 A. Roughly an eight.

9 MJ: You're talking about May '03 to January '04?

10 ACC: Yes, sir.

11 MJ: Got it, go ahead.

12 Q. And then, from January '04 to April '04, after the incident
13 became known, morale in the unit was still okay. Is that correct?

14 A. It suffered a little bit, sir, because of micromanaging,
15 and as I said, the people at the prison looking down on us, we
16 weren't sure what to expect next. We were about to get out of there,
17 out of country, and so yeah, it probably went to about a seven.

18 Q. And would you agree that all of those factors that you just
19 described, the fact that you were being micromanaged and ultimately
20 that you were supposed to leave country, did that cause it to go
21 down?

22 A. Oh, yes, sir, significantly.

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1 Q. Have you worked with Specialist Sivits before?
2 A. A few times.
3 Q. And would you describe him as professional?
4 A. Yes, sir.
5 Q. Courteous?
6 A. Yes, sir.
7 Q. And I believe the quote you used before was, break his back
8 to help you?
9 A. Yes, sir.
10 Q. Based upon your knowledge of Specialist Sivits, and again,
11 on a scale of one to ten and with ten being the highest potential for
12 rehabilitation, how would you rate his ability to reenter society
13 today and become a productive member?
14 A. Speaking about Specialist Sivits by himself, I would say a
15 nine.
16 DC: Thank you very much. No further questions, Your Honor.
17 MJ: Trial counsel, any redirect?
18 TC: No, Your Honor.
19 [The witness was excused and withdrew from the courtroom.]
20 MJ: Government?
21 TC: At this time, the government would call Lieutenant Colonel
22 [REDACTED].

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

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel [Captain [REDACTED]]:

5 Q. Are you Lieutenant Colonel [REDACTED], the Deputy
6 Brigade Commander of the 16th MP Brigade?

7 A. Yes.

8 Q. Sir, how long have you been in the military?

9 A. 19 years next month.

10 Q. And could you tell the court when you arrived in theater?

11 A. Yes, our unit left Fort Bragg on January 11th, arrived in
12 Kuwait on January 12th and moved up into Iraq. January 21st is when
13 I actually got to Iraq.

14 Q. And at that point, did you receive an assignment to go to
15 Abu Ghraib Prison?

16 A. Yes, I did. On the morning of January 21st, Colonel
17 [REDACTED] informed me that I would be moving over to Abu Ghraib
18 Prison.

19 Q. And sir, from your recollection, was that roughly about the
20 time the incidents that the accused has pled guilty to here today
21 came known?

1 A. As I recall, it seems to be about the same timeframe that
2 we were made aware of that.

3 Q. Now, whenever you arrived there at Abu Ghraib facility
4 there in January, did you have an opportunity to interact and observe
5 the soldiers of the 372d MP Company?

6 A. Yes, I did.

7 Q. And you had an opportunity to read the stipulation of fact
8 in this case and you understand what the accused has pled guilty to,
9 correct?

10 A. Yes.

11 Q. Narrowing your answers and tailoring them just to the
12 things that he's pled guilty to, the maltreatment of detainees,
13 dereliction of duty and conspiracy to maltreat, do you feel like
14 those actions that the accused participated in had an impact on the
15 372d's morale?

16 A. Yes, I do. I felt that it had a very negative impact----

17 MJ: Colonel [REDACTED]?

18 WIT: Sir?

19 MJ: You got there in January?

20 WIT: Yes, sir.

21 MJ: Did you know what the morale was before you got there?

22 WIT: No, sir.

1 MJ: So you can't speak to relative terms of the morale, is that
2 true?

3 WIT: Before I arrived, no, sir, that's correct.

4 MJ: So you don't know whether it went up or down. But you have
5 an opinion of what the morale was when you----

6 WIT: Yes, sir.

7 MJ: Do you understand what I'm saying?

8 WIT: Yes, sir.

9 MJ: You were starting to say it went down, and I don't believe
10 you have a basis for knowledge. What was the morale of the unit like
11 when you got there in January?

12 WIT: Sir, when I arrived there in January, I felt like the
13 morale was very low at that time.

14 **Questions by the assistant trial counsel [continued]:**

15 Q. Did you feel that these events had been revealed whenever
16 you arrived, roughly, the week that you arrived there, had an impact
17 on the unit's ability to accomplish its mission from that point
18 forward?

19 A. Yes, I did.

20 Q. Could you describe for the court how you feel like that
21 impacted the 372d's ability to accomplish its mission from the point

15b

1 you arrived forward based on the revelation of the things that the
2 accused had participated in?

3 A. Yes, I felt like the unit had lost its focus on mission
4 accomplishment. At that time when I arrived, the unit did not have a
5 good focus on their mission accomplishment. A lot of the soldiers
6 had low morale. They were focused on just trying to get out of
7 there. They felt like they had a negative stigma attached to their
8 unit, and it caused them to lose focus, I felt, upon their mission
9 accomplishment. Minor tasks, such as performing counts, keeping the
10 cells and areas clean and orderly were not being accomplished in an
11 efficient manner. Tasks that I felt junior NCOs should have been
12 able to supervise and accomplish required micromanagement from senior
13 NCOs and officers.

14 MJ: Colonel [REDACTED], coming back to what I said before though,
15 do you have any idea how efficient this unit was before you got
16 there?

17 WIT: No, sir.

18 MJ: So, it's conceivable that the unit was very inefficient
19 long before these things happened.

20 WIT: Sir, it's possible, yes, sir.

21 MJ: That there was a failure of leadership at that time.

22 WIT: Yes, sir.

1 MJ: What you're saying, there was not a very efficiently run
2 unit when you got there.

3 WIT: That's correct.

4 MJ: Could or could not be related to these events. I mean you
5 can't say for sure, because you have no idea what it was before these
6 things came up.

7 WIT: That's correct, sir.

8 **Questions by the assistant trial counsel [continued]:**

9 Q. Because of these events, sir, did Specialist Sivits get
10 removed from the facility there?

11 A. Yes.

12 Q. So did you lose a soldier that you counted on?

13 A. Yes, we did.

14 Q. Was that a soldier that was going to be replaced?

15 A. No, the Reserve and National Guard units did not have a
16 good system in place to fill replacements. So when we lost a
17 soldier, and each soldier's position was critical because of the
18 current manning strength when I arrived up there, so every soldier
19 that we lost was a critical position to lose.

20 Q. Let's talk a little bit bigger picture. Do you feel like
21 the actions that the accused has pled guilty to here today has had an
22 effect on the 16th MP Brigade currently?

1 A. Yes, I think it has.

2 MJ: What's your basis for that opinion?

3 WIT: Sir, when we arrived here, when I was taken out of my
4 position as the Deputy Commander to go be the Commander at Abu Ghraib
5 Prison, there were a lot of actions, staff actions that I feel like
6 did not receive the proper level of attention and supervision because
7 I was----

8 MJ: No, I understand that, Colonel [REDACTED]. What I'm saying is,
9 the question is, is that as a result of the accused's actions, it
10 impacted your ability of the--you're the 16th MP Brigade?

11 WIT: Correct.

12 MJ: To do you mission. And my question comes back to is,
13 what's the basis of your opinion that it was the reports of abuse
14 that hurt your mission as opposed to some other cause, for example, a
15 poorly led unit or other reasons. Do you understand what I'm saying?
16 I mean, I know you got there after the fact, but the problem is, is
17 that you don't know how it was before the fact. So, your mission
18 becomes more difficult, but can you tie in the difficulty of your
19 mission directly to the reports of abuse or that just, the mission
20 was difficult for a lot of reasons, including the abuse?

21 WIT: Sir, the basis of my opinion, the reason I would directly
22 attribute it to that is because in my opinion, my understanding is

1 the former commander of the 320th MP Battalion was removed from his
2 duties due to the reports of the abuse which then caused me to be
3 moved from the 16th MP Brigade.

4 MJ: No, I understand that, but we're getting tangential here.
5 I'm not saying that you weren't put in there because things weren't
6 going well. I don't dispute that. But I'm still kind of back to,
7 Captain [REDACTED] is trying to connect in how the unit performed after
8 you got there, specifically to the abuse. And I come back to my
9 question which I've gotten to earlier, is that you really don't know
10 how good the unit was ahead of time to begin with. Apparently not
11 very good if the Battalion Commander got relieved. Are you with me
12 on this? I mean, do you just know? That's my question, is how do
13 you tie it in with the abuse?

14 WIT: Sir, I was understanding his question, his last question to
15 be, how did this impact our 16th MP Brigade?

16 MJ: Yes, but I'm saying--what I'm hearing is that there's all
17 sorts of problems in the previous unit when you relieve a Battalion
18 Commander that's not for misconduct. And what I'm saying is, can you
19 lay all the problems of the unit that made it hard at the feet of
20 Specialist Sivits' one day of misconduct or is it a whole
21 conglomeration of things with that unit that made your follow-on
22 duties very difficult. Are you with me on this?

1 WIT: Yes, sir.

2 MJ: I mean, and I understand that. You're saying that it was a
3 difficult mission, I got that. But Captain [REDACTED], I don't see how
4 this witness can lay this directly at the feet of this accused.

5 ATC: Your Honor, he's testifying that based on the acts of the
6 accused, specifically, the conspiracy, all of the overt acts that
7 were committed in furtherance of the conspiracy----

8 MJ: I got that, there's no foundation.

9 ATC: ----had an effect.

10 MJ: Captain [REDACTED] but you've laid no foundation that that's
11 the cause of the effect that you're trying to elicit. What I'm
12 hearing this witness tell me is that this unit had all sorts of
13 problems that resulted in NCOs not doing their job properly, the
14 Battalion Commander being relieved, and other things. And so, my
15 question is, how can he testify that this unit made life difficult
16 for them just because of what Specialist Sivits did that night with
17 the other soldiers as opposed to the whole way the unit was being run
18 that resulted in new leadership coming in.

19 ATC: Your Honor, what I heard him testify to is not about what
20 the 320th had done to make his job more difficult, and that's not the
21 question I asked him, sir.

1 MJ: Well, I know it's not the question I asked him, but what
2 I'm saying is the answer you've asked for, why is your job more
3 difficult? And I'm not saying it wasn't difficult for Colonel
4 [REDACTED] I'm not saying it's not. But the problem I have is that the
5 job was difficult, and what you're trying to say is the job was
6 difficult because of one night of Specialist Sivits. And what I'm
7 asking you is, can this witness differentiate his one night of
8 misconduct with all the other problems in the unit that made it
9 difficult for his follow-on mission. So I buy your conclusion, the
10 mission was difficult. I just don't buy your premise, because I'm
11 not sure this witness is qualified to say, "Specialist Sivits'
12 misconduct on that day made my mission very, very difficult." I
13 agree the mission may have been difficult and may be caused by a lot
14 of things. But do you understand what I'm trying to say here?

15 ATC: I understand what you're trying to say, Your Honor.

16 MJ: But you're disagreeing with me.

17 ATC: My point--or from what I understand is that the witness is
18 testifying to, and maybe I need to clarify that, but based on the
19 events that revealed, including Specialist Sivits' conduct, the
20 maltreatment of the detainees----

21 MJ: Captain [REDACTED] that's what I asked him. I said, "What's
22 the basis that the maltreatment, itself, as opposed to all the other

1 problems of the unit, caused the difficulty?" And I never got an
2 answer to that because I'm not sure...let me ask you this.

3 Colonel [REDACTED] can you--and I understand your position,
4 but I'm just saying, is can you differentiate between the problems of
5 8 November and what occurred that day and all the other things that
6 preceded long before he got there, has that event of 8 November
7 causing--at least, in your opinion, substantially make your mission
8 more difficult, or realistically, is it all tied up and you get there
9 and you find a mess?

10 WIT: Sir, in my opinion, I would relate the vast majority of the
11 problems to the reports of abuse.

12 MJ: Okay, let's leave the answer to that and move on to
13 something else if you have something else.

14 **Questions by the assistant trial counsel [continued]:**

15 Q. Colonel [REDACTED] are you aware of the revelation of the acts
16 of Specialist Sivits he engaged in with maltreatment. And you're
17 specifically aware of what he's pled guilty to here today, correct?

18 A. Yes, that's correct.

19 Q. And that's photographing Corporal [REDACTED], cradling the
20 detainee in a position like--posing like he's about to strike a
21 detainee, failing to protect the detainees from abuse that was

1 committed upon them, and then the conspiracy with some other
2 individuals to maltreat these detainees, correct?

3 A. That's correct.

4 Q. You're aware of those things? You've actually looked at
5 the charge sheet in this case?

6 A. [Affirmative response.]

7 Q. Based on the revelation of those specific events Specialist
8 Sivits engaged in, and narrowing your answer just to those events, if
9 you can, can you please tell the court if you feel, in your opinion,
10 that this has had an impact on the ability of the MPs to currently
11 accomplish their mission, not based on the acts of the 320th, solely
12 based on the revelation of the conduct that Specialist Sivits has
13 pled guilty to here today that's been revealed?

14 A. Yes. In my opinion, I think it has had a negative impact
15 on our ability to receive cooperation from local organizations that
16 we work with, to work with the Iraqi people. I believe, and again,
17 in my opinion, it has had a definite negative impact on our ability
18 to properly work with the Iraqi people to receive--or to maintain our
19 credibility and mission focus due to these reports.

20 Q. And would you also state that that applied to the Army as a
21 whole?

22 A. Yes, I would.

1 ATC: No more questions.

2 MJ: Lieutenant [REDACTED], do you have any questions?

3 DC: Yes, sir.

4 MJ: Proceed.

5 **CROSS-EXAMINATION**

6 **Questions by the defense:**

7 Q. Colonel [REDACTED] you served as the Battalion Commander of
8 the 320th for one month, correct?

9 A. That's correct.

10 Q. And that was from 23 January to 24 February, right?

11 A. That's correct.

12 Q. And what was your mission when you went to the 320th?

13 A. When I went to assume command of the 320th MP Battalion,
14 the 320th MP Battalion had five companies at that time underneath
15 them.

16 Q. I don't mean to interrupt you, but can you summarize what
17 your mission was?

18 A. Maintain custody and control, detention operations at Abu
19 Ghraib prison.

20 Q. Did you accomplish your mission?

21 A. Yes, I would say we did.

22 Q. And you accomplished your mission within one month, right?

1 A. The mission is still ongoing. During the time that I was
2 out there, I would say yes, the unit accomplished their mission at
3 the time.

4 Q. Okay, thank you. Now, you were assigned to the 320th not
5 to replace Specialist Sivits, right, but to replace its former
6 Battalion Commander.

7 A. That's correct.

8 Q. Do you know why this former Battalion Commander was removed
9 from command?

10 A. My understanding is due to the reports of abuse and
11 mistreatment.

12 Q. And solely the Abu Ghraib reports?

13 A. Yes.

14 Q. So you're not aware of any other instances of detainee
15 abuse before Abu Ghraib, right?

16 MJ: You mean at other installations?

17 DC: Yes, Your Honor.

18 MJ: Are you aware of any?

19 WIT: Yes, sir.

20 Q. You are aware that there were accusations of detainee abuse
21 at other installations before Abu Ghraib that the 320th was involved
22 in?

1 A. I had seen one report of a previous mistreatment case, yes.

2 Q. And is it your opinion that that didn't affect unit morale
3 at all?

4 A. That related to the 372d MP Company?

5 Q. Roger, or the 320th MP Battalion.

6 A. I'll try to separate those. To my knowledge, the previous
7 case, the 372d MP Company was not at the same location as the
8 previous case. For the Battalion Headquarters, my impression that
9 the other incident had been several months prior and when I arrived
10 out there, I did not see or feel a negative impact from that.

11 Q. Do you feel that while you were in command of the 320th for
12 one month that you made progress towards improving its morale?

13 A. Yes, I think we made progress.

14 DC: Thank you.

15 MJ: Any further questions?

16 TC: No further questions, Your Honor.

17 [The witness was excused and withdrew from the courtroom.]

18 MJ: Trial counsel, anything further?

19 TC: Your Honor, the government rests.

20 MJ: Defense?

21 DC: Yes, Your Honor.

1 MJ: Do you have any documentary evidence to present at this
2 time.

3 DC: We do, Your Honor.

4 MJ: Two stipulations of expected testimony marked Defense
5 Exhibits Alpha and Bravo.

6 DC: Yes, Your Honor.

7 MJ: Specialist Sivits, did you read Defense Exhibits Alpha and
8 Bravo thoroughly before you signed them, the stipulations of expected
9 testimony?

10 ACC: Yes, Your Honor.

11 MJ: Do you understand the contents of the stipulations?

12 ACC: Yes, Your Honor.

13 MJ: Do you agree to the contents of the stipulations?

14 ACC: Yes, Your Honor.

15 MJ: Before you signed these stipulations, did your defense
16 counsel explain the stipulations to you?

17 ACC: Yes, Your Honor.

18 MJ: Do you understand that you have the absolute right to
19 refuse to stipulate to the contents of these documents?

20 ACC: Yes, Your Honor.

21 MJ: You should enter into these stipulations only if you
22 believe it's in your best interest to do so. Do you understand that?

1 ACC: Yes, Your Honor.

2 MJ: I want to ensure you understand how they will be used. When
3 counsel for both sides and you agree to a stipulation of expected
4 testimony, you're agreeing that in Defense Exhibit Alpha for
5 identification that if Captain [REDACTED] and Defense Exhibit
6 Bravo for identification, Sergeant Major [REDACTED] were present in
7 court and testifying under oath, that they would testify
8 substantially as set forth in these stipulations. The stipulations
9 do not admit the truth of the person's testimony. The stipulations
10 can be contradicted, attacked or explained in the same way as if that
11 person was testifying in person. Do you understand that?

12 ACC: Yes, Your Honor.

13 MJ: Knowing now what I have just told you and defense counsel
14 earlier told you about these stipulations, do you still desire to
15 enter into them?

16 ACC: Yes, Your Honor.

17 MJ: Do counsel concur on the contents of the stipulations?

18 TC: Yes, Your Honor.

19 DC: Yes, Your Honor.

20 MJ: One moment, please. [Pause.] Defense Exhibits Alpha and
21 Bravo are admitted.

22 Defense?

1 DC: Your Honor, there is also a 15-6 Investigation by General
2 Taguba. I believe that's marked for identification as Charlie.
3 MJ: That's the unclassified version?
4 DC: Yes, sir.
5 MJ: Any objection to Defense Exhibit Charlie for
6 identification?
7 TC: No objection, Your Honor.
8 MJ: Defense, let me ask you a question, do you want me to read
9 the whole thing or do you want to direct me to a particular area?
10 DC: We would like----
11 MJ: Do you want me to read the whole thing?
12 DC: It's a lengthy document, Your Honor.
13 MJ: I've got all the time in the world.
14 DC: Well, I think it adds a lot of insight on why what occurred
15 occurred.
16 MJ: Defense Exhibit Charlie for identification is admitted.
17 Defense Exhibit Delta is a....
18 DC: Proof of employment, sir.
19 MJ: Okay, any objection to Defense Exhibit Delta for
20 identification?
21 TC: No, Your Honor, no objection.
22 MJ: Defense Exhibit Delta is admitted into evidence.

1 Defense Exhibit Alpha appears to be a good soldier book.

2 Any objection to Defense Exhibit--excuse me, Echo, any objection?

3 TC: No objection, Your Honor.

4 MJ: Are there original pictures in here?

5 DC: There are, Your Honor.

6 MJ: Okay, copies of original pictures may be substituted in the
7 record of trial, and the originals returned to the accused.

8 Do you have any other documentary evidence?

9 DC: No, Your Honor.

10 MJ: The court will be in recess while I review Defense Exhibits
11 Charlie and Echo.

12 [Court recessed at 1500, 19 May 2004, and reconvened at 1520, 19 May
13 2004.]

14 MJ: Court is called to order. All parties are again present
15 that were present when the court recessed.

16 If I haven't done it already, Defense Exhibit Echo for
17 identification is admitted at Defense Exhibit Echo.

18 Lieutenant [REDACTED]

19 DC: Sir, the defense calls Sergeant first Class [REDACTED]

20 [END OF PAGE]

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

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel [Captain [REDACTED]]

5 Q. Please state your full name and unit of assignment.

6 A. Sergeant First Class [REDACTED], 372d Military Police
7 Company.

8 Questions by the defense:

9 Q. Sergeant [REDACTED] how long have you been in the Army?

10 A. I've been in the Army for 27 years, sir.

11 Q. What's your military occupational specialty?

12 A. Military policeman.

13 Q. What is your current duty position?

14 A. I'm currently the operations sergeant for the 372d.

15 Q. Do you know Specialist Sivits?

16 A. Yes, I do.

17 Q. How do you know him?

18 A. I've just known him through the Reserve system.

19 Q. Would that be the 372d MP Company?

20 A. Roger that, sir.

21 Q. Have you had an opportunity to work with Specialist Sivits
22 in the 372d?

1 A. Yes, sir, I have.

2 Q. Have you worked with him often?

3 A. Yes, sir, for about the last 4 to 5 years, I guess.

4 Q. Do you have any opinion as to Specialist Sivits' work as a
5 soldier?

6 A. Good work, good soldier, good kid.

7 Q. Does Specialist Sivits have a reputation within the 372d?

8 A. Yes, sir, he does.

9 Q. What's his reputation?

10 A. He's the go-to guy to get stuff done. If you have a
11 problem, he's the one to go to.

12 Q. Do you have an opinion of Specialist Sivits?

13 A. My opinion is, again, I've gone to him before when I was
14 the platoon sergeant and he is the one to get things done for me.
15 He's the one I could trust to come through to get things done.

16 Q. Were you surprised of his involvement with the abuse at Abu
17 Ghraib?

18 A. Yes, sir, I was.

19 Q. Why?

20 A. Because that is not typical or what I expect of Jeremy.

21 Q. Now, based upon everything that you know about Specialist
22 Sivits, on a scale of one to ten, with ten representing the highest

1 potential for rehabilitation, how would you quantify Specialist
2 Sivits' potential to leave this courtroom today and reenter society?

3 A. I'd say a ten, sir.

4 DC: No further questions. Thank you.

5 MJ: Trial counsel, do you have any questions of this witness?

6 ATC: A couple, Your Honor.

7 **CROSS-EXAMINATION**

8 **Questions by the assistant trial counsel [Captain ██████████]**

9 Q. Sergeant ██████████ you're aware of what the accused has pled
10 guilty here to today, correct?

11 A. Yes, sir.

12 Q. And would you agree with me that there's more to being, as
13 you said, a good soldier, a good boy, or a good kid, I think were
14 your words, than just doing your duty and being a go-to guy on your
15 job?

16 A. Yes, sir.

17 Q. Certainly as an MP, you would agree with me that whenever
18 you cross the line and commit criminal acts, you step beyond being a
19 good soldier and a good kid.

20 A. I would agree, sir.

1 Q. Do you feel that the acts that Specialist Sivits has pled
2 guilty to here today are consistent with someone who is a good
3 soldier?

4 A. No, sir.

5 Q. And certainly, you're not here today to tell the court that
6 someone who commits a criminal act should not be punished, are you?

7 A. No, sir.

8 Q. In fact, you've made a statement to me, I think, that
9 you're merely asking the court to consider the facts that you're
10 testifying to, rather than say he shouldn't be punished, but that you
11 think he should be punished.

12 MJ: Captain [REDACTED] his opinion of whether or not he should be
13 punished is irrelevant. Move on to something else.

14 Q. But you would agree with me, with the statement that crimes
15 should be punished, correct?

16 A. Yes, sir.

17 ATC: That's all I have at this time.

18 MJ: Sergeant [REDACTED] thank you for your testimony. You're
19 excused.

20 DC: Sir, I have one other----

21 MJ: I'm sorry, Lieutenant [REDACTED], do you have anything more?

22 DC: Yes, sir.

1 MJ: Go ahead, I'm sorry.

2 **REDIRECT EXAMINATION**

3 **Questions by the defense:**

4 Q. Sergeant [REDACTED] you would agree that good soldiers make
5 mistakes sometimes, don't you?

6 A. Yes, sir.

7 [The witness was excused and withdrew from the courtroom.]

8 MJ: Lieutenant [REDACTED]?

9 DC: Sir, the defense calls Sergeant First Class [REDACTED]
10 [REDACTED]

11 **Sergeant First Sergeant [REDACTED], U.S. Army, was called as a**
12 **witness for the defense, was sworn, and testified as follows:**

13 **DIRECT EXAMINATION**

14 **Questions by the assistant trial counsel [Captain [REDACTED]]**

15 Q. Please state your name, rank and unit of assignment.

16 A. [REDACTED], 372d Military Police Company.

17 **Questions by the defense:**

18 Q. Sergeant [REDACTED] how long have you been in the Army?

19 A. I've been in the military for 23 1/2 years, sir.

20 Q. And what is your MOS?

21 A. 31 Bravo.

22 Q. That's military police officer?

1 A. That's correct.

2 Q. And you're a Reservist, correct?

3 A. That's correct.

4 Q. What do you do in your civilian job?

5 A. Maryland State Police, Transportation.

6 Q. Do you know Specialist Sivits?

7 A. Yes, I do.

8 Q. How do you know him?

9 A. I've known Specialist Sivits for 5 1/2 years.

10 Q. And how do you know him? Do you know him from the Reserve
11 unit?

12 A. Yes, sir, I do.

13 Q. From the 372d?

14 A. That is correct, sir.

15 Q. Have you had an opportunity to work with Specialist Sivits
16 in the past?

17 A. Yes, I have, sir.

18 Q. What are your observations based upon your work with
19 Specialist Sivits?

20 A. My observations from working with Specialist Sivits as a
21 platoon sergeant is he is a hard worker. He is a good worker, he's
22 dedicated. He does whatever needs to get done as far as his job is

1 concerned, and he's willing to put in the extra effort to make sure
2 the job gets done.

3 Q. Does Specialist Sivits have a reputation within the 372d?

4 A. Yes, sir, he does.

5 Q. And what's his reputation?

6 A. Specialist Sivits, when something needs fixed, is generally
7 the person that people go to because he's reliable and dependable to
8 make sure it happens.

9 Q. Were you surprised to learn of Specialist Sivits'
10 involvement in the detainee abuse at Abu Ghraib?

11 A. Yes, I was.

12 Q. Why were you surprised?

13 A. It's out of character for Specialist Sivits.

14 Q. Do you feel he's a good soldier?

15 A. Yes, I do.

16 Q. Now, on a scale of one to ten, with ten representing the
17 highest potential for rehabilitation, how would you quantify
18 Specialist Sivits' potential based upon everything you know about him
19 to leave this courtroom today and join society as a productive
20 member?

21 A. I believe Specialist Sivits is a ten, sir, or I would not
22 be here.

1 DC: Thank you very much. No further questions.

2 MJ: Trial counsel, do you have any questions of this witness?

3 ATC: Just very briefly, Your Honor.

4 **CROSS-EXAMINATION**

5 **Questions by the assistant trial counsel [Captain ██████]:**

6 Q. Sergeant ██████, you've worked with the accused for 5 years.

7 Is that correct?

8 A. That's correct, sir.

9 Q. During that time, you've gotten to know him pretty well?

10 A. Fairly well, yes, sir.

11 Q. And you think that based on your opinions that he knows
12 right from wrong?

13 A. Most definitely, sir.

14 Q. Would you agree with me that certainly the actions that he
15 committed that he's pled guilty to here today are wrong?

16 A. Yes, sir, I would.

17 ATC: No further questions.

18 MJ: Lieutenant ██████, anything further?

19 DC: No questions, Your Honor.

20 [The witness was excused and departed the courtroom.]

21 MJ: Defense?

22 DC: No further witnesses, Your Honor.

1 MJ: Defense rests?
2 DC: Yes, Your Honor.
3 MJ: Trial counsel, you may argue--do you have rebuttal?
4 DC: Oh, I'm sorry, I would like to have Specialist Sivits give
5 an unsworn statement.
6 MJ: Oh, okay, go ahead.
7 DC: I apologize.
8 MJ: That's okay.

9 [The accused took the stand for an unsworn statement.]

10 **UNSWORN STATEMENT**

11 **Questions by the defense:**

12 Q. Specialist Sivits, you're a Reservist, right?

13 A. Yes, I am, sir.

14 Q. Where do you live when you're not on active duty?

15 A. I live in a small town called [REDACTED]

16' sir.

17 Q. Can you describe [REDACTED]

18 A. Small town in between some mountains, a very lovely town.

19 There's about 45 people that live in that town.

20 Q. Do you have family in the area?

21 A. Yes, I do, sir.

22 Q. Tell the court about your family.

1 A. I have a beautiful and loving wife, [REDACTED]
2 and a great dad and mom, [REDACTED]. And, I have two
3 adorable goddaughters, also, sir.

4 Q. Do you have any hobbies?

5 A. Yes, I do, sir.

6 Q. What are they?

7 A. When I'm not on active duty with the Reserves, I'm very
8 active with the VFW. I do Honor Guard for Memorial Day parades,
9 Veterans Day parades. I'm the Assistant Varsity Head Coach at [REDACTED]
10 [REDACTED], and also, assist helping Little League baseball players
11 learn how to be teammates and how to work together, also, sir.

12 Q. Did you go to school in the area?

13 A. Yes, I did, sir.

14 Q. Did you go to high school?

15 A. Yes, sir.

16 Q. Did you graduate?

17 A. First one to in my family, sir.

18 Q. And what did you do after high school?

19 A. I joined the Army Reserves, sir.

20 Q. And why did you join the Army Reserves?

1 A. Because I felt it was my duty to serve my country, and
2 also, because my father and my uncle, who was killed in action, and
3 my grandfather all served in Vietnam in the Army, sir.

4 Q. And you're a light-wheeled vehicle mechanic, right?

5 A. Yes, sir.

6 Q. Can you tell the court what a light-wheeled vehicle
7 mechanic does?

8 A. Check the oils in the trucks, make sure that they're
9 mission capable.

10 Q. Now, is this your first deployment with the Army?

11 A. Negative, sir.

12 Q. When have you deployed before?

13 A. Bosnia, sir, in 2001.

14 Q. How long was that deployment?

15 A. Seven months, sir.

16 Q. And why were you deployed to Bosnia?

17 A. I volunteered for a peacekeeping mission, sir.

18 Q. And why did you volunteer?

19 A. Because I wanted to help out the people of Bosnia, and I
20 also knew it was my duty to be with my company and serve my country?

21 Q. When did you get back from Bosnia?

22 A. February 24th, 2003, sir.

1 Q. And when were you mobilized to come here to Iraq?
2 A. I'm sorry, sir, it was February 24th, 2002 that I'd come
3 back, and I was mobilized February 24th, 2003.
4 Q. One year later, exactly?
5 A. Yes, sir.
6 Q. How did you feel about the back to back deployment?
7 A. I was proud, sir.
8 Q. Why were you proud?
9 A. Because once again, my country called for me to serve, and
10 I wanted to help the people of Iraq be free of Saddam Hussein, sir.
11 Q. When did your unit arrive in Iraq?
12 A. May of 2003, sir.
13 Q. And at some point, you went to Abu Ghraib.
14 A. Yes, sir.
15 Q. Can you describe what Abu Ghraib was like when you arrived
16 there?
17 A. It was hell. It honestly was. We were being attacked by
18 mortars, rockets, small arms fire. It was dark. The prisons were
19 overcrowded. It was like out of a horror movie, sir. It was just
20 hell.
21 Q. Did you see a lot of combat there?
22 A. I saw my fair share, sir.

1 Q. Did you see a lot of wounded soldiers there?

2 A. I also saw my fair share of that.

3 Q. Do any particular instances come to mind?

4 A. Yes, sir.

5 Q. Can you describe them for the court?

6 A. There was a night that a fellow soldier and myself were
7 coming, we were coming back from the TOC area. We started getting
8 hit hard with mortars. On the way back, we noticed a soldier that
9 was flagging down for help. He had been wounded from shrapnel in the
10 upper leg. We got the soldier into the HMMWV. We took him to the
11 medic station, and I grabbed the soldier and carried him in and was
12 yelling for a medic to help the soldier because his pants leg
13 was...his pants leg was full of blood, sir.

14 Q. Now, we're here today because of something that occurred at
15 Abu Ghraib on or about 8 November. How long did that entire incident
16 last from the time you first went down to the tier and the time you
17 left?

18 A. It wasn't 30 minutes.

19 Q. Now, other than what occurred at Abu Ghraib that night, how
20 would you characterize your service here in Iraq?

21 A. As far as my section goes, the motor pool section, I think
22 we did a great job. We got the mission done and made sure, worked

1 hard to make sure that the trucks were up and running to keep our MPs
2 out and doing their job, also.

3 Q. Have you learned any lessons from this?

4 A. I learned huge lessons, sir.

5 Q. What did you learn?

6 A. How to stand up for what's right. You can't let people
7 abuse people like they were doing. It was wrong. It shouldn't have
8 happened.

9 Q. Do you have anything else you'd like to say to the court?

10 A. Yes, I do, sir.

11 Q. Go ahead.

12 A. Sir, first of all, I'd like to apologize to the Iraqi
13 people and to those detainees. I want to apologize to the court, and
14 I want to apologize to the Army, to my unit, and my family. I've let
15 everybody down. That's not me. I should have protected those
16 detainees that night. I should have done the right thing. I
17 shouldn't have taken that photo. And second, sir, I ask to stay in
18 the Army. I want to stay in. I love the Army. I love that flag.
19 That's all I've ever wanted to be was an American soldier. I'm truly
20 sorry for what I did. And, I honestly think that I could be a great
21 learning tool for other soldiers, and other soldiers and teach them
22 to stand up for what's right, and don't let people do the wrong

1 thing, that you've got to stand up for the right thing. Sir, I'm
2 truly sorry. I'm sorry for what I've done.

3 DC: You can have your seat. [The accused resumed his seat at
4 counsel table.]

5 Defense now rests, Your Honor.

6 MJ: Trial counsel, any rebuttal?

7 TC: No, Your Honor.

8 MJ: Government, you may argue first on sentencing.

9 TC: Thank you, Your Honor.

10 Your Honor, these acts committed by the accused are
11 horrendous, appalling and were simply wrong. At a very basic level,
12 the accused's actions are fundamentally against Army values, and for
13 that matter, they are against human values. A human being does not
14 deserve to be treated like this. Those who do treat human beings
15 like this commit criminal acts and deserve the most serious
16 consequences for these acts. Your Honor, it does not matter if
17 you're an MP or a mechanic. These criminal acts violate our Army
18 values and human values.

19 So how do we know these acts were contrary to such values?
20 We know that, Your Honor, Army regulations, Geneva conventions,
21 policies, SOPs, criminal codes that all prohibit such conduct. But
22 it's more basic than that. Growing up as children, Your Honor, we

1 learn the golden rule. Treat others as you would want to be treated,
2 basic human decency. The accused stepped woefully over this line.
3 He conspired with others to maltreat Iraqi detainees that were in the
4 care and custody of military police. The accused escorted a detainee
5 and was put with other detainees in a pile like animals on the floor.
6 They were assaulted by colleagues for no military purpose. They were
7 flex-cuffed and they were no threat. The accused photographed
8 detainees as another acted as he was going to assault the detainee.
9 His colleagues and the accused were laughing at his behavior and
10 enjoying these acts. Iraqi detainees were then stripped naked and
11 put in a compromising position, to include being forced to masturbate
12 and simulate fellatio. Your Honor, utter humiliation and criminal
13 behavior. The accused took advantage of others who were vulnerable.
14 Why? They were laughing and joking, it seemed like just for fun.

15 Your Honor, the accused knew this was wrong. He didn't
16 need rules, regulations or training. He knew it was wrong, and his
17 own words, his own statement to CID he was asked a question. "Do you
18 think the incidents you witnessed were wrong?" Answered by the
19 accused, "All of them were."

20 MJ: One moment.

21 TC: Yes, Your Honor.

22 MJ: Is that statement before me?

1 TC: Yes, sir, it's in the stipulation of fact.

2 MJ: Could you point it out to me, please?

3 TC: Yes, Your Honor.

4 MJ: Oh, I see it. Paragraph 14.

5 TC: Paragraph 14, yes, Your Honor.

6 MJ: Proceed.

7 TC: CID then asked, "Why were they wrong?" Answered by the
8 accused, "To be honest, it was mistreating the prisoners." And then
9 he went on to say, "That is abuse of the Geneva Convention." The
10 accused's own words, Your Honor. A mechanic, but he knew. He knew
11 these were improper, against Army values, against human values,
12 against the law.

13 The accused now does stand up today and does what's right.
14 He takes responsibility for his actions. He agrees to cooperate
15 against others, perhaps who are more culpable. Does he deserve
16 credit for that? Yes, Your Honor, we believe he does. He's doing
17 the right thing. However, his actions have caused many consequences
18 to others, so now that he takes responsibility, there must be
19 consequences for his actions. Also, sir, he's taking responsibility
20 for the actions, but what about the timing? Even though he knew what
21 he did was wrong, he continued and he did nothing, or he could have
22 stopped. He told no one. The accused did not stand up and do what

1 was right that night. In fact, you heard in his providence, Your
2 Honor, one man went, he thought went into cardiac arrest. One other
3 man was knocked out. He didn't stop it. He didn't do anything at
4 that point. He takes responsibility now, but maybe it's a bit too
5 late. He did it after he got caught. He did it after CID was tipped
6 off by Specialist [REDACTED] and began an investigation. CID came to him.
7 That's when he started to cooperate. The accused should have come
8 forward as others did, Specialist [REDACTED] At that point, Your Honor,
9 if the accused would have stepped forward that night, he might be a
10 witness in a court-martial rather than the accused.

11 Your Honor, we've heard the impact on the soldier, on the
12 unit, on the country, both the U.S. and the newly free Iraq. I do
13 not believe the government can overestimate the seriousness of these
14 criminal acts and the impact. However, should the accused bear the
15 full responsibility for all that has occurred since this story is out
16 in the news and the pictures are released? The government doesn't
17 believe the full responsibility, sir. But one cannot ignore the
18 consequences and his acts are many, the disturbing acts of a few have
19 caused national and international repercussions and even have
20 affected our current operations and perhaps the safety of our
21 soldiers here in Iraq. Have others contributed to this? Yes, they
22 have, sir. There may have been leadership failures, to include the

1 military police who were present that night. Were conditions bad at
2 the prison? You bet they were, sir. This was not good duty, long
3 hours, and the constant threat of attack. And you've heard testimony
4 the accused is well liked. He's a good guy. However, Your Honor,
5 all that does not excuse individual responsibility for criminal acts.
6 There must be serious consequences for the actions of the accused.

7 The punishment of the accused is not the only
8 consideration. We must send the message to other soldiers, to our
9 nation, to the Iraqi people, that the United States Army does not
10 tolerate such behavior in our soldiers. These horrendous and
11 appalling acts photographed for the world to see, while this soldier
12 knew it was wrong and became a part of this, must be punished in the
13 harshest way possible.

14 For these reasons, Your Honor, we respectfully ask for the
15 maximum 12 months confinement, the maximum forfeitures and a bad-
16 conduct discharge. Your Honor, the accused violated Army values.
17 The accused violated human values.

18 MJ: Defense?

19 DC: Thank you, Your Honor.

20 It's easy to label Specialist Jeremy Sivits as a sadistic
21 monster and act as though he's not part of the Army. But he is part
22 of our Army. He's part of an Army that is one in purpose and

1 mission, but made up of many individuals. An Army made up of human
2 beings who did extraordinarily good things in places like Iraq, but
3 like all human beings, make mistakes. Specialist Sivits was wrong
4 for what he did and what he failed to do on the evening of November
5 8th, 2003. No one is disputing that, especially not Specialist
6 Sivits. In fact, from the beginning of CID's investigation to a
7 statement to the court today, Specialist Sivits has repeatedly
8 admitted his wrongdoing. He does not blame others, but rather, he
9 accepts responsibility for his actions. Specialist Sivits is very
10 much aware and regrets that he let his unit, the detainees and his
11 family down by not doing the right thing. But no matter what those
12 detainees may have done to end up at Abu Ghraib Prison, it was his
13 duty as a soldier to protect them. Knowing that, Specialist Sivits'
14 mistakes are the beginning, not the end, of determining a proper
15 sentence. In determining a proper sentence, our courts look beyond
16 labels and balance what happened with whom Specialist Jeremy Sivits
17 is and who he can be in the future.

18 Before considering who this soldier is, look first at the
19 real adverse impact of Specialist Sivits' individual action on the
20 unit. The government suggests that he has caused a reduction of
21 morale in his unit. While misconduct may impact morale to some
22 unquantifiable degree, it is clear that poor morale in the unit was

1 caused by a wide variety of factors, not the least of which was a
2 complete breakdown in leadership at the brigade level and below. The
3 defense suggests, Your Honor, that Major General Taguba's report on
4 command climate reveals that this mechanic's misconduct on the night
5 of 8 November had very little to do with any erosion of morale. It
6 is easy to label him as the cause of poor morale and indiscipline in
7 the unit, but the evidence before the court regarding actual impact
8 is clear. The defense would ask the court to consider the actual
9 impact of these actions on the unit and not the impact caused by
10 other soldiers' acts or the failure of some of his commanders.

11 So who is Specialist Sivits? According to his wife, [REDACTED]
12 he is a compassionate husband who is missed and needed very much. He
13 is an only child of [REDACTED] and a godfather to two young
14 children back home in Pennsylvania. He lives in a small town called
15 [REDACTED] with only 45 residents. Specialist Sivits is the first
16 person in his family to graduate from high school. He's a volunteer
17 varsity baseball coach for his local high school, a Little League
18 coach and an active volunteer in the VFW color guard. Specialist
19 Sivits joined the Army Reserve as a mechanic right out of high school
20 because he knew it was his duty to do so and because he comes from a
21 family rich in military service. He wanted to honor the former
22 service of his dad, his grandfather and his uncle who was killed in

1 Vietnam. We know, too, from his former company commander, a sergeant
2 major, the rear operations sergeant and the operations sergeant, that
3 Specialist Sivits is a good soldier. We know that he is a volunteer.
4 Captain ██████ indicated that Specialist Sivits volunteered to deploy
5 to Bosnia in 2001 and that his hard work and dedication to the Army
6 contributed to the success of the mission. He volunteered because he
7 thought he could in some way help his unit and the Bosnia people.

8 We also know that Specialist Sivits' service to this
9 country did not end in Bosnia. Less than a year after arriving home
10 from Bosnia in 2002, Specialist Sivits learned that his unit was
11 being deployed to Iraq. When mobilized exactly one year after he
12 returned home from a 7-month deployment to Bosnia, Specialist Sivits
13 was not upset. Instead, he told the court that he felt proud to be
14 serving his country again and he wanted to help the Iraqi people.
15 Specialist Sivits arrived in Iraq shortly after the start of the war
16 and has been here ever since. In the fall, he was sent to Abu Ghraib
17 Prison, a dark, overcrowded, filthy place where he and his unit were
18 repeatedly exposed to daily attacks from mortars, rockets, and small
19 arms fire. As noted in General Taguba's report, the quality of life
20 for soldiers there was poor, yet Specialist Sivits did what he could,
21 and but for the night of 8 November, he accomplished his mission as a
22 mechanic and as a soldier, and he accomplished his mission well.

1 The evidence before the court is clear. This is a good
2 soldier. For example, Sergeant Major [REDACTED] indicated that
3 Specialist Sivits is a good soldier and his entire unit has a
4 favorable opinion of Specialist Sivits. Sergeant First Class [REDACTED]
5 and Sergeant First Class [REDACTED] each testified that Specialist Sivits
6 was a good soldier with a good reputation and excellent
7 rehabilitation potential. Captain [REDACTED], Sergeant Major [REDACTED],
8 Sergeant First Class [REDACTED] and Sergeant First Class [REDACTED] all know
9 what Specialist Sivits did and all agree that it was entirely out of
10 character for him. This man made a mistake on 8 November, but he has
11 proven by his behavior and his actions both before and after that
12 night that he was a good soldier worthy of a chance at rehabilitation
13 who has and can continue to contribute immediately. This is a
14 soldier who has told the truth when asked what he did and fully
15 cooperated with the Army in addressing this matter. When questioned
16 by CID, he confessed, provided truthful information and made multiple
17 statements. He waived his right to a preliminary hearing. He pled
18 guilty today in front of the world media and has demonstrated his
19 rehabilitative potential throughout this process. Good soldier,
20 family man and provider, a valued member of a small town and a man, a
21 human being who made a mistake by not protecting his fellow man on 8
22 November. That is who Specialist Sivits is. All of those labels fit

1 Specialist Sivits, and a member of our Army who will, without
2 question, accept whatever punishment this court feels is appropriate.

3 So what punishment is appropriate for an otherwise
4 exemplary soldier who has the respect of his peers and his superiors,
5 is remorseful, who has accepted responsibility for his wrongdoing
6 while fully cooperating with the government and who can be easily
7 released into society today? If Specialist Sivits is punished solely
8 for what he did, taking into account who he is, neither protection of
9 society, rehabilitation, the preservation of good order and
10 discipline or deterrence justify either a long term of confinement or
11 a discharge for this young soldier. Does society need to be
12 protected from Specialist Sivits? The answer, Your Honor, is clearly
13 no. Those who know Specialist Sivits told this court that the 30-odd
14 minutes of misconduct on 8 November is totally out of character for
15 him. Indeed, the members of the two societies into which Specialist
16 Sivits would be released into, his home town of [REDACTED]
17 Pennsylvania, and the Army have written numerous letters and
18 testified on his behalf. Those people and soldiers know that they do
19 not need to be protected from Specialist Sivits and they actually
20 want Specialist Sivits to remain in their respective societies.

21 Does Specialist Sivits need long-term confinement or a
22 discharge from the Army to be rehabilitated? No. How do we know

1 this? First, Sergeant First Class [REDACTED] and Sergeant First Class
2 [REDACTED] all testified that Specialist Sivits can immediately transition
3 back into civilian life. Even Specialist [REDACTED] the government's
4 own witness testified as to Specialist Sivits' rehabilitative
5 potential. Second, Specialist Sivits not only came before the court,
6 indeed, the entire world to admit his wrongdoing, but he did so as
7 soon as he was asked about what happened. Third, Specialist Sivits
8 knows that he should have stopped the other soldiers from mistreating
9 detainees, that he should have protected those detainees and that he
10 should have not taken the photograph. And finally, Specialist Sivits
11 has a job as a garage mechanic waiting on him. Although the job
12 might not look like much to most people, it speaks volumes to who
13 Specialist Sivits is, where he comes from, and just how out of his
14 element he was at Abu Ghraib.

15 Specialist Sivits stands as an example to other soldiers
16 that the actions of every individual in the Army are important. Our
17 Army is strong enough to acknowledge to the Iraqi people that we are
18 made up of individuals who all work hard to do good and sometimes
19 fail. Our Army is also strong enough to accept those individual
20 failures and not cast out those who, like Specialist Sivits, can
21 still contribute. We are a nation and a military that follows the
22 rule of law. Here today, in this historical place, the defense would

1 ask the court to show our soldiers, the Iraqi people, the people of
2 the world that our rule of law is about punishment, but it is also
3 about justice and appropriate punishment based before the court--
4 based on the evidence before the court alone. Follow the rule of law
5 today, Your Honor, and determine an appropriate punishment for what
6 Specialist Sivits did based on the totality of who he is and not on
7 the other soldiers. Thank you.

8 MJ: Court is closed.

9 [Court closed at 1554, 19 May 2004, and reopened at 1622, 19 May
10 2004.]

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

13 Lieutenant [REDACTED], have you advised the accused orally and
14 in writing of his post-trial and appellate rights?

15 DC: I have, Your Honor.

16 MJ: And that's been reduced to Appellate Exhibit IV.

17 DC: Yes, sir.

18 MJ: Specialist Sivits, is that your signature on Appellate
19 Exhibit IV?

20 ACC: Yes, sir.

21 MJ: And Lieutenant [REDACTED] that's your signature below his?

22 DC: Yes, sir.

1 MJ: Specialist Sivits, did your defense counsel explain his
2 post-trial and appellate rights to you?

3 ACC: Yes, sir.

4 MJ: Do you have any questions about your post-trial and
5 appellate rights?

6 ACC: No, sir.

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

9 Specialist Jeremy C. Sivits, this court sentences you:

10 **To be reduced to the grade of Private E1;**

11 **To be discharged with a bad-conduct discharge; and**

12 **To be confined for 1 year.**

13 Please be seated. [The accused and his counsel resumed
14 their seats.]

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

17 Reading the pretrial agreement, part of the pretrial
18 agreement was to refer it to this level of court, and therefore, the
19 convening authority is free to approve the adjudged sentence. I do
20 have one question though. The pretrial agreement also states,
21 Lieutenant [REDACTED] that the convening authority agrees to waive all
22 automatic forfeitures and direct such forfeiture be provided to

1 support Specialist Sivits' family, understanding that when he reaches
2 his ETS, assuming--and we're going to be close, because 6 months, I
3 believe, is the maximum. When he reaches his ETS, the convening
4 authority will not be able to waive any more forfeitures. Do you
5 understand that?

6 DC: Yes, Your Honor.

7 MJ: And Specialist Sivits, do you understand that?

8 ACC: Yes, Your Honor.

9 MJ: And despite that limitation, like I told you earlier, you
10 still wanted to plead guilty and you still want the pretrial
11 agreement.

12 ACC: Yes, Your Honor.

13 MJ: So it's no misunderstanding that the waiver provision may
14 stop at your ETS.

15 ACC: No, Your Honor.

16 MJ: And the second provision here says that Specialist Sivits
17 has absolute immunity from further prosecution. So I read that, use
18 of immunity for anything related to this matter in the future.

19 DC: Yes, Your Honor.

20 MJ: So the convening authority is free to approve the adjudged
21 discharge, reduction and period of confinement. Is that the
22 understanding of the defense?

1 DC: Yes, Your Honor.
2 MJ: Is that the understanding of the government?
3 TC: Yes, Your Honor.
4 MJ: And most importantly, Specialist Sivits, is that your
5 understanding?
6 ACC: Yes, Your Honor.
7 MJ: Any other matters to take up before this court adjourns?
8 TC: No, sir.
9 DC: No, sir.
10 MJ: This court is adjourned.

11 [The court-martial adjourned at 1625, 19 May 2004.]

12 [END OF PAGE.]

AUTHENTICATION OF RECORD OF TRIAL

in the case of

United States v Specialist SIVITS, Jeremy C., JS Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342

COL, JA
Military Judge

2004

I have examined the record of trial in the foregoing case.

1LT, JA
Defense Counsel

2SMAY

2004

AUTHENTICATION OF RECORD OF TRIAL

in the case of

United States v Specialist SIVITS, Jeremy C., US Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342

W'd 26 May 04



COL, JA
Military Judge

26 May 2004

I have examined the record of trial in the foregoing case.



1LT, JA
Defense Counsel

25 MAY 2004

ACTION

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

In the case of Specialist Jeremy C. Sivits, [REDACTED], U.S. Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), 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. The automatic forfeiture of pay and allowances required by Article 58(b), UCMJ, are hereby ordered waived effective 22 May 2004, for a period of six months, with the direction that those forfeitures be paid to the accused's wife for her personal financial support.



THOMAS F. METZ
Lieutenant General, USA
Commanding

DEC 18 2004

006157

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

006158

UNITED STATES)

v.)

SIVITS, Jeremy C.)
SPC, U.S. Army,)
Headquarters and Headquarters Company,)
16th Military Police Brigade (Airborne))
III Corps,)
Victory Base, Iraq, APO AE 09342)

STIPULATION OF FACT

16 May 2004

I. NATURE AND USES OF THE STIPULATION:

1. It is agreed between Specialist Jeremy C. Sivits ("the accused"), the 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. He entered active duty on 7 January 1999 and attended Light Wheel Vehicle Mechanic School at Fort Jackson, South Carolina. He completed his MOS training and was released from active duty on 29 May 1999. He was voluntarily mobilized in support of OPERATION JOINT FORGE for service in Bosnia from 4 August 2001 until 11 March 2002. His only MOS is 63B, Light Wheeled Vehicle Mechanic. The accused was activated for his current period of service in support of OPERATION ENDURING FREEDOM on 24 February 2003. The accused has a total of approximately five years and five months of service in the United States Army Reserve. As a civilian, he worked at Wal-Mart as a stocker. 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 the 372d Military Police Company, 320th Military Police Battalion and arrived in Iraq on 13 May 2003. The accused is now assigned to Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne). 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.

PROSECUTION EXHIBIT ¹ ~~FILE~~ 006159
OFFERED R. 14 ADMITTED R. 14

III. THE INITIATION OF THE INVESTIGATION:

4. The accused learned from the CID case file provided to his counsel that the investigation began on 13 January 2004 when SPC ██████ slid a compact disc containing images of detainee abuse under the office door of the criminal investigation division (CID) at Baghdad Central Confinement Facility (BCCF) near Abu Ghraib, Iraq. SPC ██████ had received two compact discs from CPL ██████, another soldier assigned to BCCF, a few days earlier. SPC ██████ had asked for pictures of the hardsite. SPC ██████ downloaded the images from both discs to his computer without looking at them. After saving the pictures, SPC ██████ opened the files which included innocuous pictures of palaces in Iraq and soldiers working at the BCCF. The images also included pictures of naked detainees in forced sexual positions (Attachments 2 and 6). SPC ██████ returned the two discs to CPL ██████ and then burned the images to a compact disc that he anonymously provided to CID. The disc also contained images of CPL ██████ having sexual intercourse with a female soldier at BCCF. Before turning the disc over to CID, SPC ██████ showed some of the detainee abuse images to his roommate.

5. The CID investigation further showed that the day after SPC ██████ slid the disc under CID's door, SPC ██████ spoke to investigators and made a sworn statement describing the abuse of detainees at the BCCF. In his statement, SPC ██████, a junior enlisted soldier, explained that he knew abusing detainees was wrong and wanted it to stop. He did not cite any rule of law or policy of the facility; he stated that he simply "felt the pictures were morally wrong."

6. The CID investigation further revealed that CID reviewed the disc and started questioning suspects. After questioning two of the soldiers photographed on the disc, investigators questioned the accused. The accused voluntarily waived his rights under Article 31, UCMJ, cooperated with CID once he was identified as a suspect and consented to a search of his living area. Prior to preferral of charges, the accused provided two sworn statements about his misconduct and the abuse he and other soldiers committed against detainees at the facility. CID investigators found the accused's statements to be truthful and his attitude cooperative in providing statements.

7. Charges against the accused were preferred on 20 March 2004 and the accused unconditionally waived his right to an Article 32 hearing. As part of his pre-trial agreement, the accused assisted the Government in its investigation and prosecution of other soldiers and agreed to continue his cooperation once his case has concluded.

**IV. CHARGE 1, THE SPECIFICATION – Conspiracy to Maltreat Subordinates
(In Violation of Article 81, UCMJ).**

8. On or about 8 November 2003, the accused was working on a detail as a generator mechanic at BCCF. Staff Sergeant (SSG) ██████ the noncommissioned officer in charge (NCOIC) of the BCCF hard site and a Military Police officer, came by the accused's work area and asked the accused to come down to the hard site. The hard site is a section of BCCF that houses civilian internees, security internees, and

criminal detainees in cells much like a normal prison facility. It is a hallway with prison cells lining the walls. SSG [REDACTED] told the accused that new detainees had arrived and he wanted the accused to come talk with him. The accused agreed to come down to the hard site to visit with SSG [REDACTED] SSG [REDACTED] and the accused went to the hard site where seven detainees were located in a holding cell.

9. The accused asked SSG [REDACTED] if SSG [REDACTED] wanted the accused to escort one of the detainees down to 1A tier. The 1A tier is a section in the hard site where detainees are kept segregated from one another in individual cells. SSG [REDACTED] told the accused to go ahead and escort one of the detainees. Following the discussion with SSG [REDACTED] the accused escorted the detainee to the 1A tier. The detainee that the accused escorted and six other detainees were tossed into a human pile, clothed, lying on top of one another, in the middle of the floor. All of the detainees were flex-cuffed with their hands behind their backs and sandbags on their heads. They were unarmed, restrained, and did not pose any threat whatsoever to the accused or anyone else.

10. The detainees were subject to the orders of the accused and the other co-conspirators. The accused and the other co-conspirators are soldiers in the United States Army. The detainees are subject to the orders of members of the military of the United States under the Geneva Convention, and under the provisions of AR 190-8.

11. The accused was told by SSG [REDACTED] that the detainees were ordered to be put in isolation in Tier 1A as punishment for a riot earlier that night.

12. Once the accused began to escort the detainee to the 1A tier of the hard site, the accused entered into a nonverbal agreement, with, SSG [REDACTED] (SGT) [REDACTED], Corporal (CPL) [REDACTED], Specialist (SPC) [REDACTED] Specialist (SPC) [REDACTED] and Private First Class (PFC) [REDACTED] to maltreat the detainees (subordinates), a violation of Article 93 of the Uniform Code of Military Justice. The agreement was based on the presence of personnel in the tier on or about 8 November 2003 and the participation as well as failure of the accused to intervene or stop the maltreatment on that date. SSG [REDACTED] was the NCOIC of the hard site facility, CPL [REDACTED] was the NCOIC of 1A tier, SPC [REDACTED] was the NCOIC of the 1B tier, and SGT [REDACTED] was the NCO of an unrelated tier. SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED], and SPC [REDACTED] are Military Police officers.

13. While the agreement to maltreat detainees continued to exist, and while the accused remained a party to the agreement, the accused and/or at least one of his co-conspirators did maltreat the detainees for the purpose of bringing about the object of the conspiracy. In particular, the accused and/or at least one of his co-conspirators committed the following overt acts in furtherance of the conspiracy to maltreat the detainees, and for the purpose of bringing about the object of the conspiracy

a. The accused escorted a detainee to the 1A tier of the hard site. The tier is an open hallway with cells on each side. The tier also includes a second level of cells with small walkways on both sides that allow passersby to look down on the tier. The Iraqi detainees were pushed into a pile on top of each other to the floor in the middle of the

Stipulation of Fact – United States v. Sivits

hallway. The prisoners' hands were tied behind their backs with flex-cuffs and empty sandbags covered their heads.

b. Because the detainees were wearing flex-cuffs and were effectively blindfolded, they posed absolutely no danger to the accused or the other soldiers.

c. After the soldiers piled the detainees on the floor, SSG [REDACTED] SGT [REDACTED] and CPL [REDACTED] jumped on the detainees. The detainees cried out in pain as the soldiers jumped on them. SGT [REDACTED] also walked around the pile of detainees and deliberately stepped on their hands and feet while he was wearing military combat boots. When he stomped on the detainees' hands and feet, they cried out in pain.

d. SSG [REDACTED] and CPL [REDACTED] stripped the detainees of their clothing. The accused has since been told that the act of exposing genitals in front of females and other males is a particularly unacceptable and humiliating practice in the Arab culture.

e. SSG [REDACTED] and CPL [REDACTED] placed the detainees into the humiliating and demeaning position of a naked human pyramid. Because the detainees did not speak English, they were physically pushed and forced into these degrading positions. The co-conspirators then began photographing, and posing for photographs with the detainees in humiliating and degrading positions. Other co-conspirators took multiple photographs and the accused took a single photograph at CPL [REDACTED] request. The accused did not pose for any photographs but watched other co-conspirators pose for photographs.

f. The co-conspirators then forced the detainees to masturbate or attempt to masturbate in front of each other, as well as in front of male and female soldiers, the accused did nothing to protect them. The Iraqi detainees were forced into positions to simulate homosexual acts, fellatio, or other sexual demeaning and degrading positions. As with the prior abuse that evening, the detainees did not speak English so SSG [REDACTED] and CPL [REDACTED] physically placed the detainees into the positions. At no time did the accused attempt to stop the abuse or alert his chain of command.

g. The accused engaged in the maltreatment by taking a photograph of CPL [REDACTED] posing with his knees on top of the detainees as the detainees were clothed and in a pile on the floor. The taking of this photograph was humiliating to the detainee in the photograph.

h. SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] PFC [REDACTED] and the accused were all present for, observed the acts described above, and by these actions, agreed to these acts. No one ordered the accused to abuse detainees at BCCF. The accused does not believe that the other soldiers were ordered to abuse the detainees or that any member of the United States Armed Forces or other agent of the United States government, to include contract employees and employees of other government agencies directed, encouraged, or otherwise ordered the accused or his co-conspirators to abuse or maltreat these detainees. There was no legitimate or

acceptable reason known to the accused for forcing these detainees to humiliate themselves while being photographed by American soldiers.

j. 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 on top of one another in simulated acts of homosexuality and forcing them to masturbate or simulate masturbation seriously violated the tenets of Islamic law and degraded the detainees.

14. While the abuse was occurring, CPL ██████████ and PFC ██████████ joked and laughed. SPC ██████████ smiled and wrote the word “rapeist [sic]” on a detainee’s leg. While some of the maltreatment surprised the accused, he also laughed at some of the abuse. The accused knowingly, intentionally, and willfully participated in the acts set forth above. At the time, the accused thought it was “funny” to see naked detainees in a human pyramid. Some of the abusive acts also disgusted the accused. In a statement made to CID, the accused admitted was asked if the incidents that night were wrong; he replied, “All of them were.” He added, “To be honest, it was mistreating prisoners. I know the war has stopped, but I know if they are POW’s that is abuse of the Geneva Convention.”

15. The agreement between the accused and his co-conspirators to maltreat and the overt acts in furtherance of that conspiracy described herein were wrongful. The accused had no legal justification or excuse for these offenses. In fact, recognizing the illegality and deplorability of these acts, and in an attempt to keep them secret, SSG ██████████ told the accused “you did not see shit.”

16. The accused did not report these crimes even though he knew he had a duty to report them. The accused knowingly, intentionally, and willfully failed to prevent or report the abuse and maltreatment. To the contrary, he was a willing participant in the abuse of detainees on or about 8 November 2003.

**V. CHARGE II, THE SPECIFICATION – Dereliction of Duty
(In violation of Article, 92, UCMJ)**

17. On or about 8 November 2003, the accused was derelict in his duties in that he failed to protect Iraqi detainees from abuse, cruelty and maltreatment. The accused was under orders from his chain of command to not harm and to take care of prisoners. The accused had a duty to treat all detainees with dignity and respect and to protect detainees and prisoners in his presence from illegal abuse, cruelty, and maltreatment.

18. The accused knew of his duties with respect to the detainees. The accused knew that abusing the detainees was wrong. The accused failed to protect the detainees in his presence, as was his duty, or report the abuse to superiors or the chain of command.

Stipulation of Fact – United States v. Sivits

19. The accused photographed detainee abuse and watched as other soldiers forced Iraqi men to simulate masturbation and oral sex. He did not report this abuse in November, December or January but once identified as a suspect, the accused answered questions on several occasions from CID about the abuse in mid-January 2004, provided two sworn statements and allowed CID to search his living area.

**VI. CHARGE III, SPECIFICATION 1 – Maltreatment of Detainee
(In violation of Article 93, UCMJ)**

20. On or about 8 November 2003, the accused maltreated a detainee by escorting the detainee to be positioned in a human pile on the floor and assaulted by other soldiers. As an American soldier acting as an agent of the U.S. Army, the detainee was subject to the orders of the accused, and therefore subordinate to the accused.

**VII. CHARGE III, SPECIFICATION 2 – Maltreatment of Several Detainees
(In violation of Article 93, UCMJ)**

21. On or about 8 November 2003, the accused maltreated several detainees by taking a picture of them while they were forced to lie in a human pile on the floor, and while another guard, CPL ██████ the NCOIC of 1A tier, kneeled on top of them. CPL ██████ asked the accused to take a photograph of him posed cradling a detainee's head in a headlock, as though he was going to punch the detainee in the head. The accused maltreated the detainee by taking the photograph. The detainees were subject to the orders of the accused as previously set forth in paragraph 10. The detainees were escorted to the hard site tier 1-A as described above in paragraphs 8 and 9. The detainees were flex-cuffed with their hands behind their backs and had sandbags over their heads. The detainees were restrained, unarmed, were not a threat to the guards, and were complying with the orders given to them by SSG ██████, the NCOIC of hard site facility, and CPL ██████

22. After ordering the detainees to lie in the pile on the floor, SGT ██████ ran across the corridor and jumped on the pile of detainees. CPL ██████ said to another soldier to "come and get some," meaning to jump on the detainees. SGT ██████ also ran and jumped on the detainees. When SGT ██████ jumped on the detainees, he hurt them and they cried out in pain. SGT ██████ wearing combat boots, then stomped on the detainees' fingers and bare toes.

23. The co-conspirators removed the detainees' flex-cuffs. CPL ██████ and SSG ██████ then ordered the detainees to take off their clothes. Because the detainees did not speak English, the soldiers directed the undressing with hand gestures. The detainees were visibly uncomfortable while removing their clothing and standing in the hallway in the nude. The accused has since learned that this was particularly humiliating abuse in the Muslim world, a culture in which male nudity is considered shameful and homosexual acts are a violation of Islamic Law. CPL ██████ and SSG ██████ ordered one detainee at a time to strip.

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24. Next, CPL [REDACTED] knelt down by one naked detainee with a sand bag over his head. CPL [REDACTED] put the detainee in to a cradled head lock, position and punched the detainee with a closed fist and extreme force to the temple of his head. CPL [REDACTED] hit the detainee so hard in the temple he knocked the detainee unconscious. The accused walked over to the detainee to make sure if he was still alive. The detainee was still breathing. CPL [REDACTED] said, "damn that hurt" referring to hurting his hand when he punched the detainee.

25. CPL [REDACTED] then went to the pyramid of clothed detainees and kneeled on top of the detainees. At CPL [REDACTED] request, the accused took a photograph of [REDACTED] kneeling on the human pile of detainees. SSG [REDACTED] then struck a detainee in the chest with a closed fist. SSG [REDACTED] struck the detainee with so much force that the detainee could not breathe. While waiting on the medic to arrive, the accused assisted the detainee in catching his breath, although the accused took no action to prevent the assault on the detainee and did nothing to report the illegal assault on the detainee.

26. CPL [REDACTED] then ordered the rest of the detainees to remove their clothing. Several detainees were seated on the floor. CPL [REDACTED] and SSG [REDACTED] forced other naked detainees into a seated position on the backs of the detainees seated on the floor. CPL [REDACTED] then forced the detainees into a human pyramid by physically pushing them into position. Detainees kneeled on the bottom and CPL [REDACTED] placed the next row on top of the first row by kneeling the second row on the backs of the first row of detainees. SSG [REDACTED] and CPL [REDACTED] then ordered the nude detainees to masturbate. SSG [REDACTED] took his hand and placed it on the hand of the detainee and moved the detainees hand back and forth on the detainee's penis to simulate the motion of masturbating. SSG [REDACTED] performed this disgusting, degrading act on several of the detainees until he had several performing the act of masturbation at the same time. While the detainees were masturbating, the soldiers, including the accused, watched the humiliation. The humiliation was photographed by CPL [REDACTED] and PFC [REDACTED] although the accused did not take any photographs of this abuse.

27 The accused's and his co-conspirators' maltreatment of the detainees was wrongful and without any legal justification or excuse.

VIII. ADDITIONAL INFORMATION:

28. The accused provided the following truthful answers when questioned by CID:

Q: If a member of the chain of command, including SFC [REDACTED] [Acting First Sergeant], or SSG [REDACTED] [Assistant Hardsite Wing Nightshift Supervisor], was present would the abuse have happened?

A: Hell no.

Q: Why not?

A: Because the command would have slammed us. They believe in doing the right thing. If they saw this going on, there would be hell to pay.

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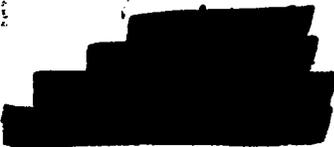
To the accused's knowledge, no one in his chain of command was aware of this abuse or otherwise endorsed these actions at BCCF.

29. The accused now knows that: in addition to the CID criminal investigation, the Army initiated other investigations into detainee abuse at BCCF. Following SPC [REDACTED] revelation of the abuse of detainees at BCCF, Lieutenant General Ricardo S. Sanchez, Commander, Combined Joint Task Force Seven, appointed Major General Antonio Taguba to conduct an investigation into detainee abuse at the facility. On 11 May 2004, Major General Taguba was called to testify at the Senate Armed Services Committee hearing regarding his investigation. Because of the high level of public interest in this case, the hearing was televised live on several cable news channels. At the hearing, Major General Taguba stated, "We did not find any evidence of a policy or a direct order given to these soldiers to conduct what they did." The unclassified version of the Article 15-6 Investigation conducted by MG Taguba will be admitted as a defense exhibit during presentencing proceedings without objection from the government.

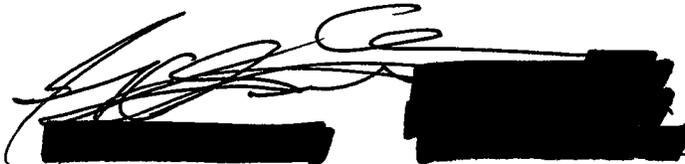
30. Over the past two weeks, both Middle Eastern and Western media outlets have broadcast some of the attached photographs, among others of the accused and his co-conspirators' abusing detainees. The accused's and his co-conspirators' acts, as reflected in these photographs and others, have tarnished the reputation and image of the United States Armed Forces and the United States.

IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE

31. 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.



1LT, JA
Defense Counsel



SPC, USA
Accused



CPT, JA
Trial Counsel

Attachments:

1. Photograph of CPL [REDACTED] cradling detainee (taken by SPC Sivits).
2. Photograph of detainees masturbating.
3. Photograph of naked detainees in human pyramid (from front).
4. Photograph of naked detainees in human pyramid (from back).
5. Photograph of naked detainees in human pyramid (with soldiers).
6. Photograph of naked detainee simulating fellatio.

006166

**OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837**

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAS [HAVE] BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION 6 and 7(C):

Photographic Exhibits

006167

CERTIFICATE

I HEREBY CERTIFY THAT I AM THE CURRENT CUSTODIAN OF THE PERSONNEL RECORDS OF SPECIALIST JEREMY C. SIVITS, SSN: [REDACTED] HHC 16TH MP BDE (ABN) VICTORY BASE, IRAQ APO AE 09342, AND THAT THE ATTACHED PERSONNEL QUALIFICATION RECORD & DA FORM 2-1 IS A TRUE AND ACCURATE COPY AS MAINTAINED, IN ACCORDANCE WITH REGULATION, IN THE SOLDIER'S RECORDS.

[REDACTED]

2LT, AG
Brigade Adjutant

006168
PROSECUTION EXHIBIT 2 FID
OFFERED R. 73 ADMITTED R. 73

REGIONAL LEVEL APPLICATION SOFTWARE (RLAS) PERSONNEL QUALIFICATION RECORD (ENLISTED)

PCN: HOH-R07 TYPE RECORD: SPECIAL REQUEST RCS: AG-883

JNT: 0372 MP CO CO (-) CBT SPT UIC: WTEZAI MUSARC: 1U - 99TH REGIONAL SUPPORT COMMAND TCC: 1G36

SECTION I PERSONAL DATA

1. NAME: SWITS JEREMY CHARLES
 2. SSN: [REDACTED]
 3. VSSN: [REDACTED]
 4. DOB: [REDACTED]
 5. SEX: M - MALE
 6. MARITAL STATUS: [REDACTED]
 7. MIL SPOUSE / SSN: [REDACTED] / 000-00-0000
 8. NUM DEPENDENTS: [REDACTED]
 9. A - SSN VERIFIED ON NAME, DATE OF BIRTH AND SEX
 10. SOLE PARENT INDICATOR: N
 11. FAMILY CARE PLAN STATUS: [REDACTED]
 12. FAMILY CARE STATUS DATE: 2001/04/09
 13. RACE: C - WHITE
 14. ETHNIC GROUP: X - OTHER
 15. CITIZENSHIP: A - NATIVE BORN
 16. REL DENOM: [REDACTED]
 17. ADDR STREET: [REDACTED]
 18. CITY, STATE ZIP: [REDACTED]
 19. ADDR VAL CD/DATE: 4 / 2001/07/18
 20. CIVILIAN OCC CAT: 998 - UNEMPLOYED

SECTION II SERVICE DATA

1. MIL PER CLASS: E - ENLISTED
 2. GRADE / GR ARMD SVC: CPT - / SPE
 3. DATE OF RANK: 2004/06/30 - 991123
 4. TRNG PAY CAT: A - SELECTED RESERVE INDIVIDUALS TRAINED IN UNITS
 5. DEPLOYABILITY: G1 - SUSPENSION OF FAVORABLE PERSONNEL ACTION
 6. YRMO DEPLOY END: 2003/11
 7. PEBD: 1998/1/23
 8. EXP RDY RES OBLG: 2006/1/22
 9. EXPN STAT OBLG: 2006/1/22
 10. EXPN TPU SVC: 2004/1/22
 11. QUAL RETN STAT: [REDACTED]
 12. QUAL RETN YRMO: [REDACTED]
 13. INITIAL ENTRY MIL: 1998/1/23
 14. INITIAL ENTRY RES: 1998/1/23
 15. 20 YEAR CERT: [REDACTED]
 16. SOURCE MPC: J - VOLUNTARY ENLISTMENT IN A RES COMP, ANY SVC, ON OR AFTER 840501
 17. AD CALL UP EVENT: [REDACTED]
 18. YRS ACT FED SVC: 01.00
 19. DATE LAST REL AD: 2002/03/11
 20. DATE LAST EVAL REG: 2008/11
 21. YRMO ELIG AFRM: 2004/11
 22. YRMO ARCAM SUSP: [REDACTED]
 23. IND INCENT STATUS CD: [REDACTED]
 24. IND INCENTIVE EFF DATE: [REDACTED]
 25. INCENTIVE BONUS TYPE: [REDACTED]
 26. INCENTIVE PROGRAM CD: [REDACTED]
 27. TERM REASON CODE: [REDACTED]
 28. TERMINATION EFF DATE: [REDACTED]

SECTION III QUALIFICATION DATA

1. PSSI / SSSI / ASSSI: 63810 / /
 2. ASI-1 / ASI-2 / ASI-3: / / /
 3. DLAB SCORE: [REDACTED]
 4. YRMO DLAB TEST: [REDACTED]
 5. CURR AERO RATE: [REDACTED]
 6. CURR FLY STATUS: [REDACTED]
 7. PHYS CAT / PULSES: A / 111111
 8. YRMO LAST PHYS EXAM: [REDACTED]
 9. YRMO LAST HIV TEST: [REDACTED]
 10. YRMO DRUG TEST: [REDACTED]
 11. DENT XRAY LOC: Y
 12. DNA SAMPLE INDIC: [REDACTED]
 13. HEIGHT / WEIGHT: [REDACTED]
 14. HGT WT INDIC / YRMO: E / 2002/08
 15. APRT INDIC / YRMO: F / 2002/08
 16. FLD DETM PSSTAT: F - SECRET
 17. DTE FLD DETM PSSTAT: 2001/10/12
 18. PS INVEST TYPE / DATE: / 2001/10/12
 19. DEPT DETM PSSTAT: F - SECRET
 20. AFQT PCTL / GRP: 44 / D
 21. MIL EDUC ENRLD: Y3 - NO APPLICABLE COURSE
 22. MIL EDUC COMPL: [REDACTED]
 23. CIV EDUC LEVEL: C - 12TH GRADE
 24. CIV EDUC CERT: L - HIGH SCHOOL DIPLOMA
 25. MAJ COLL SUBJ: YYY - NO MAJOR

691

555C

TYPE RECORD: SPECIAL REQUEST

JNIT: 0372 MP CO CO (-) CBT SPT
NAME: SIVITS JEREMY CHARLES

PERSONNEL QUALIFICATION RECORD
(ENLISTED)

UIC: WTEZ11
SI: [REDACTED]

MUSARC: 1U - 99TH REGIONAL SUPPORT COMMAND

CURR UIC / FPC: WTEZ11 /
UNIT NAME: 0372 MP CO CO (-) CBT SPT

EFF DATE ASG: 2002/03/11
PROJ YRMO DPRT:
RSN PROJ LOSS:

- 6. DATE CONDL REL:
- 7. PREVIOUS UIC:
- 8. DATE ASG PREV UIC:
- 9. DATE DPRT PREV UIC:

- 10. UIC OF ATTACH:
- 11. EFF DATE ATTACH:
- 12. REASON ATTACH:
- 13. EXPN DATE ATTACH:

POSITION NBR: 0905

PARA / LINE NBR: 101 / 15

POSITION TITLE: RECOVERY VEH OPR

POSN ASG DATE: 2002/03/11

- 5. DUTY POSITION: 63B10
- 6. DUTY QUAL CODE: Q - QUALIFIED
- 7. AUTH GRADE: E4
- 8. AUTH BRANCH: N

- 9. AUTH MPC: E - ENLISTED
- 10. AUTH SEX: I - INTERCHANGEABLE
- 11. PS INVEST RGRD:
- 12. POSITION PSSSTAT:

ELIG STATUS: F - ELIG - MEETS ELIGIBILITY CRITERIA
BENEFIT RECOUP:

- 3. DATE START MGIB: 1999/05/29
- 4. DATE TERM MGIB: 2009/05/28

- 5. INIT CONTRACT DATE:
- 6. 2ND CONTRACT DATE:

SECTION VII LANGUAGE PROFICIENCY DATA

LANGUAGE IDENT CODE:
PROFICIENCY SOURCE:
YRMO PROFICIENCY TEST:
LISTENING PROF LEVEL:
LISTENING EVAL METHOD:
SPEAKING PROF LEVEL:
SPEAKING EVAL METHOD:
READING PROF LEVEL:
READING EVAL METHOD:

2. LANGUAGE IDENT CODE:
PROFICIENCY SOURCE:
YRMO PROFICIENCY TEST:
LISTENING PROF LEVEL:
LISTENING EVAL METHOD:
SPEAKING PROF LEVEL:
SPEAKING EVAL METHOD:
READING PROF LEVEL:
READING EVAL METHOD:

I BELIEVE THAT (I AM) (IF AM NOT) EMPLOYED IN A KEY POSITION WITH THE FEDERAL, STATE, OR LOCAL GOVERNMENT OR SUPPORTING DEFENSE AGENCY / INDUSTRY; OR PREPARING FOR THE MINISTRY, OR HAVE AN OBLIGATION TO PERFORM MISSIONARY WORK; OR MY ENTRY ON EXTENDED ACTIVE DUTY WOULD CREATE AN EXTREME PERSONAL OR COMMUNITY RISKSHIP.
I BELIEVE TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT I HAVE NO MEDICAL CONDITION OR PHYSICAL DEFECT THAT WOULD PREVENT MY PERFORMANCE OF ACTIVE MILITARY DUTY EXCEPT AS FOLLOWS:

None

SIGNATURE:

DATE REVIEWED: 23 Nov 09

M 2A (USAR)

006 170

0079123045 SECTION I - IDENTIFICATION DATA

SECTION II - CLASSIFICATION AND ASSIGNMENT DATA (Continued)

1. NAME: SIVITS JEREMY CHARLES
 2. S.S.N. [REDACTED]

SECTION II - CLASSIFICATION AND ASSIGNMENT DATA

3. MOS EVALUATION SCORES

MOSC	YR & MO	SCORE	YR & MO	SCORE	YR & MO	SCORE

4. ASSIGNMENT CONSIDERATIONS

USBR
 63810
 F35C
 11 weeks
 Bonus
 090318
 091210
 FEB 27 11

5. OVERSEA SERVICE

FROM	THRU	AREA AND COUNTRY	MO	TYPE	NTC	CONT	DEPN ARR OS
010824	022022	BOSNIA	6	MDS	NO		
090804		SW ASIA (ELAQ)		MDS			

6. MOSC: 63810 (P)
 TITLE: LIGHT ARTILL BATT
 DATE: 950528

7. AVIATION ASI & GUNNERY QUALIFICATION

AIRCRAFT	F/W	R/W	F/W	R/W	TNG	INST	CONT

9. AWARDS, DECORATIONS & CAMPAIGNS

ARMY-SVC-RBN / AR-COMP-ACHVMT-ADDL
 (011122) / DVC-MECH-BA D W W / AD M-58 / 2
 ARMED-FCS-EXP-MDL / MHL-DEF-SVC-MDL-1 /
 NATD-MDL / ARMED-FCS-RES-MDL W M-DEV /

11. AMERICAN BOARD CERTIFICATION & LICENSES OR CERTIFICATES HELD

RIFLE M16 (M16) QUAL BAD 35
 HAND GREN (M16) QUAL BAD 35
 CONT

12. LANGUAGE PROFICIENCY

DA FORM 330 SUBMITTED DATE

DEFENSE EXHIBITS ADMITTED INTO EVIDENCE

006175

217

REMOVED BATES PAGES 6178 - 6224
(RECORD OF TRIAL – PVT JEREMY SIVITS)

(47 TOTAL PAGES)

DOCUMENTS CONSIST OF PERSONAL LETTERS TO THE
CONVENING AUTHORITY WRITTEN BY FAMILY AND FRIENDS
ON BEHALF OF PVT SIVITS AND OTHER RECORDS, WHICH WERE
DETERMINED TO BE NONRESPONSIVE TO THE PLAINTIFF'S FOIA
REQUEST AND DUPLICATES OF THE DOCUMENTS LOCATED AT
BATES 5944 - 5989

6177A

APPELLATE EXHIBITS

006225

Request for Trial Before Military Judge Alone

(Article 16, UCMJ)

United States

v.

SPC JEREMY C. SIVITS

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)¹ officers (and, if I so request, enlisted personnel).²

a. Typed Name (Last, First, Middle Initial)	b. Rank	c. Signature	d. Date Signed
SIVITS, JEREMY C.	SPC		14 MAY 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)¹ 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).²

a. Typed Name (Last, First, Middle Initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	ILT	[REDACTED]	14 MAY 2004

3. TRIAL COUNSEL

Argument is (not) requested.

a. Typed Name (Last, First, Middle Initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	CPT	[REDACTED]	16 MAY 2004

4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (x one) approved disapproved³

a. Typed Name (Last, First, Middle Initial)	b. Rank	c. Signature	d. Date Signed
[REDACTED]	COL	[REDACTED]	19 MAY 2004

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

006226

APPELLATE EXHIBIT I

R.7

UNITED STATES)
)
 V.)
)
 SPC JEREMY C. SIVITS)
 SSN#)
 HHC, 16th Military Police Brigade)
 (Airborne), III Corps, Victory Base, Iraq)
 APO AE 09342)

OFFER TO PLEAD GUILTY

30 April 2004

1. I, SPC JEREMY C. SIVITS, 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 the Specification of Charge I: Guilty, excepting the words, "the said Specialist Sivits took a photograph of", and substituting therefore the words, "that a photograph be taken of".

To the excepted words: Not Guilty.

To the substituted words: Guilty.

To Charge I: Guilty.

To the Specification of Charge II and Charge II: Guilty.

To the Specifications of Charge III and Charge III: 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 A and agrees to direct the Trial Counsel to move the Court to amend the specifications to conform with the pleas. 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 A.

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 this stipulation may be used by the Military Judge during the guilty plea inquiry and in adjudging an appropriate sentence. If my plea is not accepted, this offer to stipulate is null and void.

b. I agree to waive all motions I may have except for those listed in Rule for Courts-Martial (R.C.M.) 907(b)(1). The motions I agree to waive include, but are not limited to, motions for appropriate relief in the nature of Article 13, UCMJ pretrial punishment, R.C.M. 305 illegal pretrial confinement, multiplicity, and unreasonable multiplication of charges.

006227

APPELLATE EXHIBIT II

R.53

UNITED STATES

v.

SIVITS, JEREMY C.
SPC, U.S Army, [REDACTED]
HHC, 16th Military Police Brigade
(Airborne), III Corps, Victory Base, Iraq
APO AE 09342

POST-TRIAL AND
APPELLATE RIGHTS

28 April 2004

I, SPC JEREMY C. SIVITS, 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 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 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. This recommendation 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 the discharge or confinement for a year or more, my case will be reviewed by the 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.

5. After the Army Court of Criminal Appeals completes its review, I may request that my case be reviewed by the 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

006230 v
APPELLATE EXHIBIT
R. 125

Post-Trial and Appellate rights – United States v. Sivits«Last name»

States. I would have the same rights to counsel before those courts as I have before ACCA.

6. If neither a punitive discharge nor confinement for a year or more is approved, 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 ACCA.

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 offense, error prejudicial to my substantial rights, or the appropriateness of the sentence.

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

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

JCS b. I would like a copy of the record of trial served on my ~~civilian counsel~~, my military counsel, and myself.

JCS c. My defense counsel, 1LT [REDACTED] will submit R.C.M. 1105 matters in my case.

JCS 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: USALSA, Defense Appellate Division, 901 North Stuart Street, Arlington, VA 22203.

JCS e. I have been informed that I have the right to retain civilian counsel at my own expense.

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

Name: Jeremy C. Sivits

Street: [REDACTED]

City, State, Zip: [REDACTED]

Area Code & Telephone: [REDACTED]

Email Address: [REDACTED]

Permanent address (if different from above): SAME

Name:

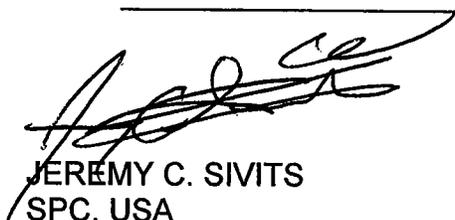
Street: _____

City, State, Zip: _____

Area Code & Telephone: _____

Email Address: _____

28 April 2004


JEREMY C. SIVITS
SPC, USA

I certify that I have advised SPC Jeremy C. Sivits 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.

28 April 2004


1LT, JA
Defense Counsel

006232