

REDACTED
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002553

COURT-MARTIAL RECORD

NAME AMBUHL, MEGAN M. SPC

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COMPANION(S):

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VOL III of III
ORIGINAL COPY

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

AMBUHL, Megan M.

(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

GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL

(Title of Convening Authority)

Headquarters, III Corps

(Unit/Command of Convening Authority)

TRIED AT

Victory Base, Iraq/Mannheim

(Place or Places of Trial)

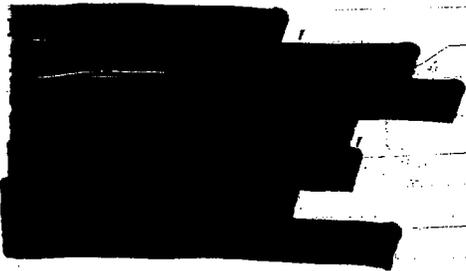
ON

11, 23 and 25 August 2004

(Date or Dates of Trial)

COMPANION CASES:

SGT
SSG
SPC
SPC
SPC
SPC
PFC



Transcript R.60 through appellate exhibits

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1 MJ: Why would it take 2 weeks to put that person....

2 TC: Sir, out of an abundance of caution, just to make certain
3 that I can get through all the hoops and arrange everything in order.

4 MJ: And [REDACTED] there's a separate issue here.

5 TC: And sir, sorry, one other point. There is, within the
6 theater, there is a trained psychiatrist who has some experience in
7 prisons, has worked in prisons for some time that's actually been----

8 MJ: What's his or her name?

9 TC: I'm sorry, don't know the name, sir. I was just given
10 this----

11 MJ: If I tell you to provide him today, within one week he will
12 be there talking to Specialist Ambuhl and get this thing going?

13 TC: Yes, sir, or the government would concede with the defense
14 request.

15 MJ: Or if I say, "If you don't do it within a week, then you
16 give them Dr. [REDACTED]"

17 TC: Yes, sir. We will have this individual identified. He may
18 be on leave right now, sir.

19 DC: Your Honor, if the court's inclined to rule overall in
20 favor of the defense, I guess that's not good enough for us. Sir,
21 we've gone out and done the legwork, spoken with Dr. [REDACTED]
22 identified him. And not that we've, again, there's an

1 attorney/client issue there, sir, but we've gone out and done the
2 legwork over 8 weeks ago now. And so, for the government to say,
3 "Well, we'll get to it maybe when this person isn't on the leave and
4 it's convenient with their schedule," assuming, Your Honor, that this
5 person isn't already conflicted in some way by having talked to any
6 number of people involved in this case. I mean, and that's a greater
7 assumption which I'm not sure the government has investigated,
8 whether this person has their own knowledge of the prison.

9 MJ: But you would agree with me, Captain [REDACTED] the state of
10 the law is the defense does not get to pick their experts by name.

11 DC: That's true, Your Honor.

12 MJ: That that's the default.

13 DC: That's true, Your Honor.

14 MJ: Once you've shown necessity.

15 DC: Yes, Your Honor.

16 MJ: But let me, and I don't want to raise a side issue here,
17 because I think it raises practical concerns, is that [REDACTED]
18 [REDACTED] you indicated to me in an 802 that you were PCSing to
19 Virginia?

20 DC: Yes, Your Honor.

21 MJ: And as a matter of fact, you will not be returning to Iraq
22 except periodically to work on this case.

1 DC: That's correct, Your Honor.

2 MJ: Well, practically speaking, since Specialist Ambuhl is
3 going back to back Iraq in approximately a week.

4 DC: Yes, Your Honor.

5 MJ: Well, who's going to be the--because [REDACTED] doesn't
6 live in Iraq, so who is going to--you know, correct me if I'm wrong,
7 but normally, regardless whether it's Dr. [REDACTED] or somebody else, is
8 that if this individual shows up to Iraq and talks to your client,
9 where's her defense counsel?

10 DC: Your Honor, we've discussed this with Specialist Ambuhl and
11 with Dr. [REDACTED]. Our plan at the time, if it's relevant to the court,
12 I guess, Your Honor, is that Dr. [REDACTED] will fly into Kuwait
13 commercial. The TDS office at Camp Doha will make sure that he gets
14 on a flight from a C-130 from Kuwait up to Baghdad where he'll be met
15 by the Legal NCO from the TDS office and Specialist Ambuhl, and she
16 basically will act as his escort and coordinate through the 16th MP
17 Brigade, which is what I would do, to go out to the prison. He will
18 meet with her, utilizing the TDS offices there in Baghdad and then
19 return to the States. Your Honor, I've spoken with him on the phone.
20 I'll continue to do that. As soon as he's approved, we have a CD-ROM
21 of the entire case file to get into the mail to him as soon as he's
22 approved. But it's our position, and we've spoken to him, we don't

1 need to be there. If he's appointed to the defense team, neither Mr.
2 [REDACTED] I actually need to be there to do what's already--we've
3 already toured the prison. We've already talked to Specialist
4 Ambuhl. He can do that without us, Your Honor.

5 MJ: Did you say--maybe I misheard you, that your client is
6 going to be the escort for Dr. [REDACTED] under your theory?

7 DC: Not the escort, Your Honor, but he has access to her there.
8 I mean, they have office space to meet. They have a confidential
9 private area in the TDS office space there. We don't see it as him
10 needing to meet with her for weeks on end, Your Honor.

11 MJ: Major [REDACTED]

12 TC: Just to interject as another option here, because it's
13 relevant to this point. The other option that the government would
14 present is we have a number of forensically trained psychiatrists and
15 psychologists at Walter Reed who have agreed to consult with the
16 accused by VTC, being counseled, could accompany the psychologist at
17 Walter Reed, speak to their client in a confidential manner over VTC.
18 I just present that as an option.

19 MJ: What about sending Specialist Ambuhl to Walter Reed?

20 TC: Sir, that is a possibility, although the current posture is
21 that the accused will remain in theater pending these offenses,
22 absent some order----

1 MJ: But obviously, we're sitting here, there's an exception to
2 that rule.

3 TC: Yes, sir, there are certain exceptions to that rule, they
4 would be limited, and I think this would probably qualify, and we are
5 willing to do that, Your Honor.

6 MJ: Captain ██████████, let's revisit the findings portion of the
7 trial.

8 DC: Yes, Your Honor.

9 MJ: I'm looking at your brief and I'm trying to figure out--and
10 it may be just because I'm slow, of how this expertise can be
11 relevant to any findings issue that another trained psychologist
12 slash psychiatrist couldn't also do.

13 DC: Your Honor, I think given the court's continuing dialogue
14 on this issue, certainly a psychologist, any psychologist could
15 probably testify just as easily on that particular issue. For
16 judicial economy, we would ask for Dr. ██████████ for sentencing anyway,
17 Your Honor. And so rather than have two experts, if we are
18 entitled----

19 MJ: And I don't want you to just--and Captain ██████████, I
20 understand, I mean, feel free to disagree, but I'm just trying to
21 figure out.... On findings, I'm trying to figure out how this guy is

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1 necessary as opposed to any other trained psychiatrist slash
2 psychologist.

3 DC: Your Honor, if Specialist Ambuhl's state of mind becomes an
4 issue with the findings case, Dr. [REDACTED] is in a unique position to
5 have his, basically his experience and background, Your Honor, is
6 what we'd be drawing on as to why it's him. Any other psychologist
7 can just come in and say, "Yeah, I talked to her, and here's what it
8 was." But with somebody who kind of understands the greater picture
9 and the impacts and the effects, they're going to be able to better
10 say, and not that, "Is this normal?" is really an issue for the fact
11 finder, Your Honor, because it's not. But Dr. [REDACTED] experience and
12 education and background are what we're relying on to make him an
13 expert.

14 MJ: I'm not sure you answered my question.

15 DC: I probably didn't, Your Honor.

16 MJ: I'm just saying is, is that on findings, now again, you
17 keep coming back to the way that some of these specifications are
18 charged, because two of them appear to be apparently some type of
19 visual crime, as alleged. By that, I mean, is they're alleging the
20 misconduct as the accused watching others commit misconduct. And
21 again, that's a short version of what they are. But anyway, but

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1 there's mental responsibility and partial mental responsibility on
2 findings.

3 DC: Yes, Your Honor.

4 MJ: And it strikes to the court that any trained psychiatrist
5 can provide that information.

6 DC: Your Honor, the defense is not ready to concede that.

7 MJ: Has there been a mental responsibility board in this case?

8 DC: No, there has not, Your Honor.

9 MJ: So....

10 DC: Your Honor, I guess because I see the mental
11 responsibility--the defense position with the mental responsibility
12 is not--it's the inaction, sir, that's what we want to explain, why
13 there is, and each of them, sir, did participate in a photograph.

14 MJ: That at least implies some acts.

15 DC: Yes, sir, as charged, it does.

16 MJ: The reality may be something different.

17 DC: The reality----

18 MJ: That's factually specific.

19 DC: Yes, Your Honor.

20 MJ: I'm just going by as charged.

21 DC: Yes, sir.

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1 MJ: And similarly, and on the dereliction of duty charge,
2 arguably, it's very broad, but I suspect--well, I don't know, there
3 may or may not be actual acts encompassing that.

4 DC: Well, we received a bill of particulars from the government
5 on that, Your Honor, and I think everything that's alleged in the
6 bill of particulars is not reporting, failure to report, failure to
7 report, and not being the dereliction, as charged.

8 MJ: And is she a military policeman?

9 DC: She is, Your Honor.

10 MJ: But the other two appear to be the inaction.

11 DC: Yes, Your Honor.

12 MJ: And those are offenses.

13 TC: Yes, sir.

14 MJ: Okay, I might add, that's not before me.

15 TC: Yes, sir. It may be before you again.

16 MJ: Well, I've just observed the charges, 93 and a 134 offense.

17 TC: Yes, sir.

18 MJ: Not as a 92 offense.

19 TC: Yes, sir.

20 MJ: And as an aside, in the bill of particulars, for the 92
21 offense, does that include the same thing as in Charges III and IV?

22 TC: I believe so.

1 DC: Yes, it does, Your Honor.

2 TC: But it's not exclusive, but it does include them.

3 MJ: But that issue is not before me at this time, so.... But
4 government, I'm concerned, and both sides, I'm concerned with two
5 practical issues here. One is that if I deny the motion for this
6 particular person and I tell the government to do what you've already
7 promised you're going to do, I have concerns about how expeditious
8 this process has been.

9 TC: Yes, sir, that's a valid concern.

10 MJ: That's my concern to you.

11 TC: Yes, sir.

12 MJ: And for defense, I have real concerns, this is your call,
13 not my call. I have real concerns for this type of--developing this
14 type of testimony with no defense counsel with the accused.

15 DC: I understand, Your Honor.

16 MJ: Now I'm not telling you how to break eggs.

17 DC: I understand, Your Honor.

18 MJ: But I have concerns about practically how you do this
19 without somebody being there.

20 DC: Your Honor, the defense understands the court's concerns
21 and we'll revisit that issue.

22 MJ: Okay.

1 TC: Sir, we can address the court's concern about the pace of
2 the assistance. Again, I think a deadline and then contingent upon
3 the deadline, the appointment of what the defense has asked for would
4 be appropriate, that if we don't provide this expert by X day, then
5 the court would order the appointment of Dr. [REDACTED]

6 MJ: For now, based on the record before me and the evidence
7 presented, is I'm not going to direct that Dr. [REDACTED] become a member
8 of the defense team. But Major [REDACTED] given your generous offer, if
9 by 1 September, identify an individual by name with qualifications,
10 provide that to the defense. And defense, this person will be part
11 of the defense team. And then defense, you decide whether or not
12 this person is acceptable or not. Understand what we're talking
13 about here is what I consider a threshold inquiry. And I'm not
14 excluding Dr. [REDACTED] forever. I'm simply saying based on what's
15 before me now, it appears to be pretty speculative whether he's a
16 necessary witness. And I think quite frankly, there is no showing
17 that he's necessary for any type of merits with what I have before
18 me.

19 Now, if this psychologist or psychologist that the
20 government gives you identifies issues, then obviously, you may need
21 somebody more experienced in a prison environment. And so what I'm

1 saying is, I'm perfectly willing to revisit the situation upon a
2 greater showing of necessity, but I just don't see it at this point.

3 But Major [REDACTED] we're talking about one week from today.

4 TC: Yes, sir.

5 MJ: By name and within, once the defense says, "That's okay,"
6 by one week, that individual, absent extraordinary circumstances,
7 will personally meet with Specialist Ambuhl.

8 TC: Yes, sir.

9 MJ: And if necessary, for Specialist Ambuhl to go to Walter
10 Reed. Is the person out of Walter Reed?

11 TC: Yes, sir.

12 MJ: You can take the mountain to Mohammad, whichever way you
13 want to do it.

14 TC: Yes, sir.

15 MJ: But this, "She has to stay in theater," doesn't cut it.

16 TC: Yes, sir.

17 MJ: And I expect this all to be resolved within 2 weeks, if
18 not, I'm not going to issue a contingent order at this point, but
19 within 2 weeks, if there is any problem, let me know by email and
20 I'll answer you by email of what we'll do, assuming that's acceptable
21 to both sides.

22 TC: Understood, sir.

1 DC: Yes, sir.

2 MJ: So you understand where we're at here, Captain [REDACTED]

3 DC: Yes, sir.

4 MJ: For now.

5 DC: Yes, sir.

6 MJ: I'm denying your request for this specific expert because
7 the court finds you've failed to establish sufficient necessity of
8 why this person is required at this point in time, based on the
9 evidence presented to me here. But since the government, since you
10 will have access to a psychiatrist, psychologist....

11 TC: Yes, sir.

12 MJ: If the facts change or the government doesn't get this
13 person within a period of time we talked about, if either of those
14 facts occur, we will revisit this issue. And after this person does
15 his evaluation, if you wish to revisit the issue, I'm certainly
16 willing to reconsider based on the circumstances of the case.

17 Any questions about where we're at with this issue?

18 TC: No, Your Honor.

19 DC: No, Your Honor.

20 MJ: Next motion. I have Appellate Exhibit VI, motion to compel
21 discovery. Government, do you have a written response?

22 ATC: We do not, Your Honor.

1 MJ: Let's review some of the bidding here. We discussed in the
2 802 there appear to be three outstanding investigations, although
3 apparently we have only two now?

4 ATC: That's correct, Your Honor.

5 MJ: And that deals with the [REDACTED] investigation, the
6 [REDACTED] investigation, and what's called the [REDACTED] investigation?

7 ATC: That's correct, Your Honor.

8 MJ: And apparently, the [REDACTED] investigation has been
9 released because it was on TV yesterday.

10 ATC: That is correct, Your Honor.

11 MJ: So you're going to provide a copy of that to the defense.

12 ATC: Yes, Your Honor.

13 MJ: And the [REDACTED] and [REDACTED] investigation?

14 ATC: I do not believe either one of those has been released yet,
15 but they'll be provided due to the court's ruling in their companion
16 cases by no later than 10 September.

17 MJ: And then the last issue, well, not necessarily the last
18 discovery issue, but the other outstanding discovery issue deals with
19 the classified server in the prison is being looked at one page at a
20 time by one CID agent?

21 ATC: That's correct, Your Honor. The government has already
22 made phone calls regarding that situation.

1 MJ: Okay, but when can you get that information?

2 ATC: Based upon the court's ruling in the companion cases....

3 MJ: Not based on what I say, what are the people doing it
4 saying?

5 ATC: Well, I expressed the concerns of the court to people.
6 They did not give me a deadline in return to say, "We'll have it done
7 by X date." I told them what dates the judge said to have it done
8 by.

9 MJ: What did they say, okay, what did they say X date is? Or
10 is that an unknown?

11 ATC: That's an unknown, sir.

12 MJ: They say, "It will be done by X date."

13 ATC: Well, what I was told when I talked to the individuals
14 doing this 10 days ago, is if it's just him doing it, it will be
15 December of this year.

16 MJ: Okay.

17 ATC: If he gets additional people, he believes that can be
18 accomplished in a much quicker time span.

19 MJ: And your follow up calls?

20 ATC: What I did was I told them what the judge had ruled and
21 they said, "All right, we'll get going on it." They didn't say, "All
22 right, that changes the----

1 MJ: Okay, well, the drop dead date on that is 1 December.

2 ATC: Right.

3 MJ: Okay, but understanding that on or about the 21st of
4 October, because we're going to have the next hearing in this case
5 and other cases on or about that time, is I want a status evaluation
6 of this. And I've said this in other cases, but since each case is
7 different, you understand this and make sure they understand this,
8 that if this comes into another, "We'll get to it when we get to it,"
9 then I'm seriously going to consider dismissing this case until the
10 government completes its investigation. Okay?

11 ATC: Yes, Your Honor.

12 MJ: Captain ██████████, rather than going through page by page,
13 what don't you have that you think you're entitled to?

14 DC: Your Honor, what is not mentioned in there but was
15 something that I believe the court had mentioned in a companion case
16 was the internal CID investigation of the actions of its own agents
17 with regard to this investigation.

18 MJ: Do you know anything about that, government?

19 ATC: Well, it's not the CID's actions in regards to this
20 investigation, it's alleged abuse by CID agents at Abu Ghraib.

21 MJ: Okay, so this is another variation of the theme, it started
22 with looking at the MPs with General Taguba.

1 ATC: Correct.

2 MJ: And then General Fay starts looking at the MI folks.

3 ATC: That's correct.

4 MJ: And now we've decided to have somebody else look at the CID
5 folks.

6 ATC: There were certain allegations that specific CID agents had
7 done specific acts out there.

8 MJ: Okay, so this is more of a focused criminal investigation.

9 ATC: That's correct, Your Honor.

10 MJ: And when did this investigation start, on or about?

11 ATC: From what we understand, it's been completed. I just do
12 not have a copy. I sent email correspondence to the CID agent to the
13 office that ran the investigation, which is in Tikrit, Iraq. I've
14 not received a response yet from that. I will renew my request
15 through them, but then I will also ask CID higher headquarters to
16 provide a copy.

17 MJ: Captain ██████████ I understand that you have to request
18 these things.

19 ATC: Right.

20 MJ: They are to provide that not later than 10 September.

21 ATC: Okay.

1 MJ: And I don't care what form it's in. When you tell me the
2 investigation is complete, because all we're talking about is
3 crossing T's and dotting I's and making things look pretty.

4 ATC: That's correct, Your Honor.

5 MJ: And then vetting it up for--there's no security
6 classification issue, is there?

7 ATC: No, Your Honor, and it's not a question of vetting or not
8 vetting, it's just, I haven't been provided with it.

9 MJ: Okay, 10 September.

10 ATC: Yes, Your Honor.

11 MJ: And when I tell you these dates, Captain [REDACTED] I expect
12 you, if you don't get it, I was about to say "when you don't get it,"
13 but that would be an unfair comment, if you don't get it, I expect
14 you to let me know and we'll go from there.

15 DC: Yes, Your Honor.

16 MJ: What else?

17 DC: Your Honor, specifically, it may assist the court in
18 looking at enclosure number 5 to the defense motion. Your Honor, not
19 only has the defense not received those----

20 MJ: Let me....

21 DC: Yes, Your Honor.

22 MJ: Trial counsel, do you have a copy of this document?

1 ATC: If the enclosure we're talking about is the request for
2 declassification for ICRC.

3 MJ: 26 June 2004.

4 ATC: That's correct, I do have that.

5 MJ: Do you have the documents referenced in here?

6 ATC: We have already provided at least one of these documents.
7 The government's position on these is, the ICRC is a private
8 organization that the defense can go and request these documents from
9 themselves.

10 MJ: Let me ask you this, well, let's go through these one at a
11 time. One alpha would appear to be not an ICRC document. Am I
12 right?

13 ATC: That is correct, Your Honor.

14 MJ: Has that been provided to the defense?

15 ATC: It has not.

16 MJ: And why not? And again, this document talks about
17 declassification. I'm going to ignore that issue temporarily,
18 because that's different than access to documents. Does this
19 document exist?

20 ATC: I'm unaware if it does or not. To be honest, since the
21 accused's case has been following along three other co-accused's
22 cases and it was just arraigned, I have not necessarily worked on the

1 specific discovery request in this particular case. So, I do not
2 know if this particular document exists or not.

3 MJ: Okay, how about one bravo?

4 ATC: I'm not sure if that exists yet, either.

5 MJ: But none of these have been--one Charlie?

6 ATC: I'm not sure if that exists yet or not.

7 MJ: Any of these--none of these look like to me like ICRC
8 documents.

9 ATC: That's correct, those three are not.

10 MJ: So I didn't understand your original comment about ICRC.

11 ATC: I was mistaken. I thought we were talking about--there's
12 also a request out there for the ICRC reports themselves, and that's
13 been given to--you're right, I was mistaken.

14 MJ: And Captain ██████████, you seem to know, what's your source
15 of these documents' existence?

16 DC: I believe that the legal clerk or the former legal clerk
17 for the 16th MP Brigade does have copies of them, Your Honor. But
18 because they are classified, they could not be distributed. They
19 just don't have them, Your Honor.

20 MJ: But you have a clearance, right?

21 DC: I do, Your Honor, however, the request for declassification
22 comes into play for two accounts, one, we'd like to utilize those

1 documents with witnesses and in talking to witnesses. We believe
2 that they may provide a basis of knowledge. The second basis, Your
3 Honor, is that because she is pending charges, Specialist Ambuhl, her
4 security clearance has been revoked and she is not able to review any
5 secret documents.

6 MJ: Well, I suspect it's really been suspended.

7 DC: It has been suspended, Your Honor.

8 MJ: But you've had an opportunity to review these documents.

9 DC: I have, Your Honor, briefly, Your Honor. I do have the
10 opportunity to go look at them when the 16th MP Brigade legal office
11 can find them.

12 MJ: So what I'm hearing both sides tell me, at least Captain
13 [REDACTED] knows where these documents are and has looked at them.

14 Captain [REDACTED]----

15 ATC: That's more than what I've done.

16 MJ: But the real issue here is whether they should be
17 declassified. Is there any--does the government have any response to
18 whether they intend to declassify these documents?

19 ATC: We'll put them in for a declassification review, Your
20 Honor. At this point, since I haven't seen them, read them----

1 MJ: But you have to understand, this document is really not a
2 discovery document, is what you're asking for. You're asking for
3 them to be declassified to prepare.

4 ATC: Right, so it's not a discovery issue as much as a
5 declassification issue, yes, sir.

6 MJ: And let me, and I really hate to ask this, is how long does
7 a declassification process take?

8 ATC: Depending on the priority of what's being asked to be
9 declassified, the issue that we have in this case is, a vast majority
10 of documents need to go through a declassification review, beginning
11 with the 6,000 pages of the General Taguba report, followed by
12 various documents that are in our joint intelligence note there at
13 Camp Victory, and to include, obviously, these three memorandums. So
14 what we elevate are, these are priority documents, will determine how
15 soon we can have it turned around. If the defense is saying, "These
16 are three priority documents for us," then we'll put them at the top
17 of the list. Otherwise, they're going to go into the mix of a lot of
18 declassification.

19 DC: Your Honor, they can certainly go into the mix. They're
20 not smoking gun-type documents. However, we would ask the court to
21 note that we did put our request in on the 26th of June.

1 MJ: Now, I understand Captain [REDACTED], you and Major [REDACTED]
2 are juggling all these balls. Captain [REDACTED] is the only one who's
3 asked that these be declassified?

4 ATC: That's correct, Your Honor.

5 MJ: Put it at the top of the list. There's only three
6 documents. It doesn't strike to be--and it would it be fair to say
7 that some of these documents were classified just out of habit, or
8 happened to be put on a classified server and became classified, as
9 opposed to any type of scrutiny?

10 ATC: That's correct. I believe----

11 MJ: These appear to be internal legal memorandums.

12 ATC: Well, what I believe the posture, from what has been
13 explained to me of the U.S. government towards ICRC, because this is
14 a request from ICRC, is they provide confidential reports to the U.S.
15 government and they like to receive that same confidentiality back.
16 So I believe that----

17 MJ: Confidential would be a need to know basis.

18 ATC: Right.

19 MJ: Which doesn't require....

20 ATC: There's a lot of inaccuracies when it comes to the
21 classification process.

22 MJ: Put these at the top and get them to the....

1 ATC: Yes, Your Honor.

2 MJ: But you've had copies--you've had a chance to see them,
3 Captain ██████████ so you still can prepare your case. You just
4 wanted to ask other people about them.

5 DC: Yes, Your Honor. Your Honor, this may be a good segue.
6 There are two additional documents that we've asked to be
7 declassified, and those are contained in enclosure 7, Your Honor,
8 which is the 1 July request for evidence from CID, and that would be
9 at item 1a.

10 MJ: Government, what's the position--well, let's break this up.
11 Captain ██████████, what do you mean by the four memoranda included in
12 this piece of evidence?

13 DC: Your Honor, I don't believe that the--I didn't want to
14 specify it more because I didn't know how the government is about
15 what's classified and what's not. My understanding is that if I say
16 what they are----

17 MJ: What piece of evidence are you talking about?

18 DC: The item number that's listed there, Your Honor, that's the
19 CID case file evidence.

20 MJ: Okay, I got it. Do we know what we're talking about here?

21 ATC: I personally have not gone back to review that piece of
22 evidence.

1 DC: I can give the court general information, sir.

2 MJ: No, I suspect both sides can figure out what this is.

3 ATC: Right, but as I stand here, the government has no issue in
4 putting it in for declassification.

5 MJ: And this logbook?

6 ATC: Our position on that is, it is available at the BIAP CID
7 office, and they're asking for a copy of it. They can send down
8 their 27 Delta and copy it.

9 MJ: How many pages is this logbook?

10 ATC: It's many, I mean, it's a logbook.

11 MJ: What's a logbook?

12 DC: Your Honor, the logbook is of different movement transfers
13 of prisoners from different parts of Tier 1A and Tier 1B, a logbook
14 of medical treatment that certain prisoners may have received on or
15 about with the dates and the people that treated them. Your Honor,
16 if I can add to that, with regard to most of the rest of that memo,
17 the defense has not received the evidence, and I guess we could deal
18 with the electronic items separately. With regard to the hard copies
19 of documents, as I represented to the government on previous
20 occasions, CID will not allow us to look at these documents without
21 the following conditions: that the evidence custodian be there with
22 the evidence, which is located at one spot in Baghdad; that the

1 actual case agent be there, who is located up at Abu Ghraib. It
2 can't be any agent, it must be the case agent. That the trial
3 counsel or a representative of the government be there; and that
4 Specialist Ambuhl and one of her attorneys be there. So those are
5 their requirements, sir, which is why we've asked, as noted in there
6 for judicial economy, just to give us copies.

7 The other issue, Your Honor, is that Specialist Ambuhl was
8 entitled to go last week. CID would not let her copy anything. So
9 she put aside the items she wanted copied. CID or a government
10 representative copied one set for Specialist Ambuhl and a copy for
11 themselves, Your Honor, and that doesn't give the defense equal
12 access when the government is--and certainly, they have access to
13 those documents, too, but were making an exact copy of what
14 Specialist Ambuhl has copied does not help the defense, Your Honor.
15 At this point, we're asking the court to order that we have this
16 stuff on CD-ROM so we can look at it at our leisure without the
17 watchful eye of the government.

18 ATC: Your Honor, I have no----

19 MJ: Firsthand knowledge of this----

20 ATC: Right, I have no idea.

21 MJ: Let me ask you this. Would it surprise you that CID would
22 act in such a way?

1 ATC: CID is always reluctant with all their pieces of evidence.
2 From what I understand, that their requirements are that a case
3 agent, not necessarily the case agent be there, and the evidence
4 custodian.

5 MJ: But Captain ██████████ let's deal in the real world. You
6 say they can just send over one of their legal clerks to do all the
7 copying, and so Specialist ██████████ knocks on the CID door, "I'm here
8 from TDS. I want to copy all of these documents. Can you show me
9 where they are, and where's your copy machine?" And they're going to
10 say what? "Sure, come on in."

11 ATC: Well, they'll probably have the evidence custodian there
12 for obvious reasons. I mean, the destruction of evidence,
13 potential...there's a lot of--I mean, it's not an unreasonable
14 request to have your evidence custodian be with someone who's going
15 through the evidence in a case file.

16 MJ: Yeah, but I understand what you're saying, and I'm not
17 saying it isn't unnecessary and unreasonable, but it's kind of like
18 they want it both ways. They want to make it as difficult as
19 possible for somebody else to copy it, but they don't want to copy it
20 themselves.

21 ATC: Yes, Your Honor. I mean, it's not an unsubstantial amount
22 of stuff they're asking for.

1 MJ: Does that mean it's a substantial amount?

2 ATC: Yes, it is.

3 MJ: Okay, what you're saying to me, trial counsel, is that the
4 defense, ignoring the scanning issue temporarily, you're saying
5 there's no problem with copying this stuff, now we're just talking
6 about who's going to turn on the machine and do it.

7 ATC: Right, it's a manpower issue. But at the same time, the
8 government doesn't believe we have to do every little thing for the
9 defense, either.

10 MJ: No, you don't, you don't, but you're going to have to do
11 this.

12 ATC: Whatever the judge wants us to do, that's what we're going
13 to do.

14 MJ: I'm just saying is, I understand there are concerns in--and
15 I'll take judicial notice of personal dealings with CID, but what
16 Captain ██████████ represented doesn't strike to me as out of the norm.

17 ATC: That's correct.

18 MJ: And so just tell them to do it.

19 ATC: Okay.

20 MJ: They want to make sure they know exactly everything the
21 defense is getting, then they do it. And if they want to copy each
22 thing the defense individually copies, which causes a little concern,

1 also, then they just copy everything and give a copy to the defense.
2 And once one copy is made, government...how many pages in this
3 logbook?

4 ATC: We're talking several thousand pages of stuff.

5 DC: Sir, the logbooks are only, there's about three--and I
6 don't have a copy of that, I think there's three or four logbooks
7 with may be 30 to 50 pages each in the book.

8 MJ: Okay, based on that representation, you're talking about
9 less than 200 pages.

10 DC: I am, Your Honor.

11 MJ: Well, then what I want you to do is you specify to the
12 government exactly which logbooks you're talking about, because you
13 appear to be talking about two different sets. He's talking about a
14 library, you're talking about a short----

15 DC: Your Honor, I want the ones that are identified in that
16 memo as the item. That's how CID has them marked is by evidence
17 number.

18 ATC: Okay, we'll go by evidence number.

19 MJ: Yeah, okay, well, she's saying it's less than 200 pages.

20 ATC: Okay.

21 MJ: Are these logs classified?

22 ATC: No, Your Honor.

1 MJ: I'm not going to order the government to scan documents.
2 They provide them to you in either a hard copy or other kind of copy.

3 DC: Yes, Your Honor.

4 ATC: I can short circuit the whole discussion about the----

5 MJ: Electronic stuff?

6 ATC: It'll happen, I just...once again.

7 DC: Your Honor, I guess with regard to the electronic items,
8 those are items that we don't even have access to because they're at
9 the USACIL lab. And it may assist both the government and the
10 defense if the court would order a deadline as to when those need to
11 be produced, because USACIL, it's my understanding that they don't
12 prioritize things unless there is a date, Your Honor.

13 MJ: We're talking about items 1 Echo through 1 M.

14 ATC: That's correct, Your Honor.

15 MJ: Is Captain [REDACTED] correct, that these are sitting at
16 USACIL for one of their....

17 ATC: She is correct that they're sitting at USACIL and USACIL
18 usually doesn't act without a court date, yes, Your Honor.

19 MJ: What do they do?

20 ATC: USACIL?

21 MJ: Yeah.

22 ATC: In which department?

1 MJ: Well, I'm just saying, is you apparently sent these things
2 to them to be copied, correct?

3 ATC: No, those were sent to them to go through each one of these
4 things. So they take the thumb drive, they go through each document.
5 They run their computer program that, you know, deleted items, all
6 that.

7 MJ: Okay, let's do the short version, 10 September they are
8 either produced or tell me why they're not doing their job. Is this
9 evidence I suspect that is more government evidence than it is
10 defense evidence?

11 DC: I believe there may be exculpatory evidence on the entire
12 hard drives, Your Honor. What CID did when they first did their
13 analysis----

14 MJ: Which hard drive are we talking about here?

15 DC: We're talking about Corporal [REDACTED] hard drive. We're
16 talking about Sergeant [REDACTED] thumb drive. We're talking about
17 CD-ROMs that were seized from other co-accused. And the CID's case
18 file only includes what CID thought was important, Your Honor, and we
19 think there may be some exculpatory information on those hard drives.

20 MJ: Okay, but it would seem to also put--most of it would
21 appear to be either irrelevant or inculpable or a chunk of it could

1 be--but of course, you don't know because you don't know what's on
2 it.

3 DC: Yes, sir.

4 MJ: Got it. Okay. I mean, if they want to do it--no, we don't
5 need to beat this horse. You understand where we're at, Captain

6 [REDACTED]

7 ATC: I understand, Your Honor.

8 DC: Your Honor, additionally----

9 MJ: Still on that enclosure?

10 DC: No, Your Honor, done with that enclosure. Your Honor,
11 additionally, in a prior hearing for one of the co-accused in this
12 case, the court had addressed the issue of the AARs from CID that
13 will not be released without a court order.

14 MJ: Okay, that's easy. Give them copies of the AARs. CID is
15 to copy them and provide them to the defense.

16 ATC: Yes, Your Honor.

17 MJ: Next?

18 DC: Yes, Your Honor. With regard to enclosure 4, which is a 17
19 June discovery request, it's a very minute subparagraph, Your Honor,
20 so the court doesn't necessarily have to look at the subparagraph,
21 but what it asks for are the government contracts with CACI and Titan
22 and other organizations where civilian contractors did

1 interrogations. Those contracts have not yet been provided, Your
2 Honor.

3 MJ: Trial counsel, what's the government's position on the
4 contracts?

5 ATC: I've already started the process of tracking those down.
6 They're classified contracts, and that's been one of the problems of
7 getting them. I believe that we have them now, and now it's going to
8 be a declassification issue once again. Now obviously, Captain
9 ██████████ and Mr. ██████████ both have security clearances, so it's a
10 matter of putting it on a CD and passing the information along to
11 the----

12 MJ: Now, it's my understanding is the classified documents in
13 this case are to be maintained in two places, Baghdad and Washington
14 D.C.

15 ATC: That's correct.

16 MJ: At this point, you foresee it to be relatively short in
17 time to provide that, at least in a classified form to the defense.

18 ATC: That's correct, Your Honor. [Pause.] My 27 Delta has
19 informed me that when we went and asked for the contracts, in
20 particular, for the linguists that the defense has requested, instead
21 of having one overarching contract, they have contracts with each of
22 the linguists, so we're talking about hundreds of linguists here. If

1 they can identify exactly who they're asking for, otherwise, we're
2 just going to have a lot of information.

3 MJ: Well, let me back up, because you indicated Titan
4 Corporation, CACI, and SOS are the primary--are we talking about
5 linguists or interrogators?

6 DC: Both, Your Honor, civilians that worked there at the time.
7 My understanding was that the U.S. government had overriding
8 contracts with these corporations that is going to tell them what
9 their expectations are, and that's----

10 MJ: Okay, so we're talking about at this point is the big
11 contracts, and then subcontracted individual linguists, that's a
12 different issue.

13 ATC: Right, correct.

14 DC: Yes, Your Honor.

15 ATC: And as far as linguists or interrogators, CACI provides
16 interrogators. Titan and SOS provide analysts and interpreters.

17 MJ: Then apparently, since I have a motion which I haven't
18 gotten to yet, there must be some type of contract for each of those
19 three entities, since----

20 ATC: That's correct, they are contracted with the United States
21 government.

22 MJ: And those are in U.S. government hands, obviously.

1 ATC: Yes, in Baghdad, yes, sir.

2 MJ: Provide the overall contracts. If you need to explore that
3 further, Captain [REDACTED], separate issue, we'll get there.

4 DC: Your Honor, again, I guess just to put on the record, we
5 would request the same names and general counsel contact information
6 that the government has agreed to provide to the other co-accused in
7 this case. And we certainly would narrow it down at a reasonable
8 basis once we were provided with that information, as well.

9 MJ: Do you have a copy of those third party motions?

10 ATC: I do. [Pause.] My apologies, Your Honor, I don't have the
11 one for CACI with me this morning. I have the protective order for
12 Titan.

13 MJ: I'll just note for the record that Titan Corporation, SOS
14 International Limited and CACI have requested that subpoenas be
15 quashed. You don't have the CACI one?

16 ATC: Not with me, Your Honor. I can provide it to the court
17 later.

18 MJ: We'll add that as Appellate Exhibit IX, the Titan brief as
19 Appellate Exhibit VII, and the SOS brief will be VIII, and we'll add
20 CACI. You've seen these documents, Captain [REDACTED]

21 DC: Yes, Your Honor.

1 ATC: Are you including the Titan brief, suggested protective
2 order?

3 MJ: No, because I'm not going to sign it.

4 And Captain ██████████ you're familiar with the court's
5 ruling in the companion cases on this issue?

6 DC: Yes, Your Honor.

7 MJ: Do you have anything to add or request why this issue
8 should be handled any different in this case as it did in the other
9 cases?

10 DC: No, Your Honor.

11 MJ: Government, similar question.

12 ATC: No, Your Honor.

13 MJ: Based on the representations of counsel and the briefs
14 filed by the third parties, the court directs that the government
15 provide names of the personnel involved during the relevant
16 timeframe, which is August through....

17 ATC: August through December.

18 MJ: August through December of employees of these companies
19 that worked at Abu Ghraib.

20 ATC: Yes, Your Honor.

21 MJ: And once you provide the names, the defense is free to make
22 contact with them through the general counsel of the respective

1 companies. And would it be fair to say that the general counsel
2 point of contact would be the person who signed the brief?

3 ATC: That's correct, Your Honor.

4 MJ: And you have copies of all the briefs, right?

5 DC: Yes, Your Honor.

6 MJ: And like I said, we'll add the CACI brief as Appellate
7 Exhibit IX.

8 Any other discovery?

9 DC: Yes, Your Honor. There are--it's the defense's
10 understanding that there were interrogation plans maintained by
11 either MI or MP personnel at Abu. Those interrogation plans
12 basically were a file folder for each detainee that talked about what
13 was required for each detainee regarding sleep management, food
14 management, exercise, those types of things, Your Honor.

15 MJ: Were these kept as separate--where were these kept?

16 DC: They were kept at Abu, Your Honor, and defense has
17 requested production or access to them from the government, and we've
18 not been provided access to them. We've listed in the 17 June
19 discovery request a list of detainees with their detainee number,
20 Your Honor, and we would limit that request to those individuals.

21 ATC: Part of this issue is tied to the CID SIPR net, because
22 that's where this stuff resides.

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1 MJ: It's been reduced to electronic copies, you said?
2 ATC: That's correct.
3 MJ: I think Captain [REDACTED] seems to imply to me that it was a
4 hard copy. Captain [REDACTED] you believe it was a----
5 DC: I believe it was a hard copy, Your Honor, but that may have
6 been on the SIPR net, as well.
7 ATC: I haven't seen any hard copies. I do know it's on the SIPR
8 net.
9 MJ: For all these people? You know what she's talking about?
10 ATC: Yes.
11 MJ: You believe those notes were eventually put in an
12 electronic form and then on the SIPR net?
13 ATC: That's correct.
14 MJ: So when you provide the SIPR net information, it should
15 have all this in it.
16 ATC: And any other interrogation plans that might be hard
17 copies, CID did seize all of the MP files from Abu Ghraib. Now, as
18 accurate as those are and as completed as those are, and those have
19 been at the BIAP CID office. Now some of these have been available
20 to the defense. There is a CD-ROM that's been available both in
21 Baghdad and in Washington D.C. with some of these interrogation plans
22 and reports, and those have been available since the first week of

1 July. And I made that known that I was bringing the classified
2 Taguba report and a CD filled with things that I had received from
3 our intelligence node.

4 MJ: Have you had an opportunity to review all this stuff that
5 he's talking about?

6 DC: I will concur with co-counsel, Your Honor, my
7 understanding----

8 MJ: Well, he's really not your co-counsel.

9 DC: I'm sorry, I meant with Mr. ██████████ Your Honor.

10 MJ: Oh, okay.

11 DC: I'll check with Mr. ██████████ who's in Washington D.C., but I
12 know that there were hard copies at the prison, because that's the
13 day-to-day files that they used. So an interrogation plan might have
14 come down on the SIPR, someone might have gotten it, but they
15 certainly weren't running to the SIPR to input their information
16 every time a detainee, you know.....

17 MJ: But what Captain ██████████ telling me is some of this
18 information is on an electronic format that you have already been
19 provided access to.

20 DC: Yes, sir.

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1 MJ: Some of it is on electronic format that you've not been
2 provided access to that deals with the classified computer issue.
3 Some of it may be in the CID report investigation, which they have.

4 ATC: Right, in the evidence room, boxes of files.

5 DC: Sir, we can reserve this issue, and readdress it with the
6 court later on.

7 MJ: Yes, I mean, really we're getting into so much voluminous
8 material here, Captain ██████████, you may have stuff that you don't
9 know you have or at least have access to.

10 DC: Okay, sir.

11 MJ: You understand what she's talking about.

12 ATC: Yes.

13 MJ: If there's a problem where the government says, "It's
14 sitting here," and you go there and you can't find it. I mean,
15 they're not going to have to hand you every individual document.

16 DC: Yes, sir.

17 MJ: And you understand that.

18 DC: Yes, sir, absolutely.

19 MJ: I'm not implying that that's what you're asking for. But
20 if you made efforts to secure or review the documents and you can't
21 find it, then I'm sure the trial counsel will provide ample
22 assistance. And also, I don't expect, and just convey this, is that

1 it was related to earlier about CID's sometimes approach to these
2 things, let's have reasonable rules here. The defense counsel shows
3 up and asks to see something, I don't think it's unreasonable for a
4 case agent to sit there. But if there's all these other rules, the
5 trial counsel being there or anything else, it seems to me to be
6 unnecessary.

7 ATC: I agree, I don't think the trial counsel needs to be there.

8 MJ: Or a particular agent.

9 ATC: That's correct.

10 MJ: And they don't have to drop everything----

11 ATC: As long as the evidence custodian is there.

12 MJ: I understand. And I'm not saying if the defense counsel
13 knocks on the door that the CID drops everything to do what they do,
14 but they make an arrangement or an appointment to go look at
15 evidence, I expect CID to act professionally and cooperate.

16 ATC: Yes, sir.

17 MJ: Not that they haven't, but just not....

18 ATC: Yes, sir.

19 DC: Sir, speaking of evidence that we've tried to get a hold of
20 from CID and that we are seeking government assistance on, this also,
21 I apologize, was referenced in the 1 July memo that we'd gone over
22 earlier in paragraph 2. There seems to be what is a missing hard

1 drive. Now certainly, I understand if the government doesn't have
2 something, they can't give it to us. It's the defense's
3 understanding that the hard drive, the hard drive from the office
4 computer of Captain [REDACTED] who is the 372d MP company
5 commander, he had his hard drive laptop that he used for official
6 business. He and Sergeant Frederick used that laptop computer at
7 Abu. There was testimony under oath from Captain [REDACTED] at an Article
8 32 hearing that CID came, took his hard drive, and never got it back.
9 And off the top of my head I don't know, but I think he did identify
10 an agent by name, Your Honor. I don't want to represent to the court
11 which one it was. But Captain [REDACTED] remembers that a CID agent came
12 and took that hard drive. Well, there's absolutely no record of that
13 seizure or that piece of evidence in CID records.

14 MJ: Did you ask the agent?

15 DC: We did, Your Honor, and they said they----

16 MJ: What's he say?

17 DC: He said he doesn't know what we're talking about. And I
18 guess we're asking the government...maybe an unusual----

19 MJ: I'm not sure where we go here, Captain [REDACTED] because
20 you say Captain [REDACTED] says that, "Agent [REDACTED]-----"

21 DC: X, yes, sir.

22 MJ: -----took my hard drive and left."

1 DC: Yes, sir.

2 MJ: And didn't give him a receipt.

3 DC: No, sir.

4 MJ: And didn't fill out a, to your knowledge, a chain of
5 custody document or anything like that.

6 DC: Correct, sir.

7 MJ: And Agent X says, "I don't know what Captain [REDACTED] is
8 talking about, I have no such thing."

9 DC: Correct, Your Honor.

10 MJ: Okay, and now where do we go next?

11 DC: Your Honor, I guess I don't know, and I'd like the
12 government to make additional inquiries. I am very clearly a defense
13 attorney, Your Honor, and I very often get the reaction of, "I don't
14 know what you're talking about."

15 MJ: Provide the name of the agent to the government.

16 DC: Yes, sir.

17 MJ: And government, check with the agent and see what he says.
18 Also, more than just check with him, it would strike to me in this
19 case is that a lot of computer hard drives have been seized.

20 ATC: That's correct, Your Honor.

21 MJ: And any reason to believe that Captain [REDACTED] is
22 misremembering that they took his hard drive?

1 ATC: I have not personally looked into this issue, so I have no
2 idea.

3 MJ: Just follow it down and provide an answer back to the
4 defense by a date of September. By 10 September, just let her know
5 where you're at.

6 ATC: Okay.

7 MJ: But Captain ██████████ you give them the name.

8 DC: Yes, sir, we'll do that.

9 MJ: And then it seems to me is, I'm not sure we can do much
10 more than that.

11 DC: Yes, Your Honor. Your Honor, the last thing is just that I
12 had filed the discovery request on 17 June. It is rather lengthy. I
13 understand the government's constraints with time. At this point, I
14 would ask that you set a date for the government to respond to that
15 in writing rather than go over every subparagraph and sub-
16 subparagraph. That would probably be the best for judicial economy,
17 sir, since they have not yet responded in writing, and there are a
18 certain number of very detailed requests about Article 15 records,
19 counseling records, offshoot investigations, those kinds of things,
20 Your Honor.

21 ATC: The government realizes the discovery responsibilities
22 under the rules and will respond accordingly, Your Honor.

1 MJ: The simplest way to do this is to provide a paragraph by
2 paragraph response.

3 ATC: Right, and that's our intention to do that.

4 MJ: Already provided, doesn't exist, go look here for it, we'll
5 get it by this date.

6 ATC: Yes, Your Honor.

7 MJ: Provide that response by 10 September.

8 ATC: All right.

9 MJ: Earlier is better than later.

10 DC: May I have one moment, Your Honor?

11 MJ: Sure. Captain [REDACTED], you gave me the Graner copy of
12 the brief.

13 ATC: Oh, did I? I apologize. I'll get the correct copy of the
14 CACI brief, Your Honor.

15 DC: Nothing further from the defense, Your Honor.

16 MJ: Trial counsel, do you have anything further?

17 ATC: No, Your Honor.

18 MJ: As we discussed in the 802, is that I intend to have the
19 next hearing in this case on or about 21 October, 22 October in
20 Baghdad. And as I stated yesterday, is absent a change of venue, all
21 further proceedings in this case will be conducted in Baghdad.

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1 At that time, defense, you indicated at the 802 that you'd
2 be prepared to litigate a command influence motion?

3 DC: Yes, Your Honor, that's correct.

4 MJ: Which would appear to be a significant motion that also
5 could change the entire posture of the case. Also, at that time--any
6 other motions?

7 DC: Your Honor, we intend to file an Article 13 motion to be
8 litigated at that time. And we may also file a motion for
9 unreasonable multiplication of charges, Your Honor.

10 MJ: Okay, your suspense for filing motions is 14 October, and
11 understand, right now, the current schedule for this is the Frederick
12 trial on 20 and 21 October, and the 39(a)s in Graner, Davis and this
13 case, which probably each one will take a whole day subsequent to
14 this. So I'm using on or about dates. But if you need any out of
15 theater witnesses for the motions, that request should be in no later
16 than 1 October. Obviously if something comes up and you need later--
17 but you understand, Captain [REDACTED] the difficulty in getting them
18 here.

19 DC: Yes, Your Honor.

20 MJ: Also, if you don't know where somebody is, assume they're
21 out of theater. So provide your tentative witness list, it's not
22 written in stone, not later than 1 October for the motions so the

1 government has ample time to make sure they're there. If it turns
2 out that somebody falls out, tell them that and just take them off
3 the list.

4 DC: Your Honor, is it sufficient for the court, with regard to
5 that, that the entire motion perhaps not be filed until the 14th, but
6 that we say for the motion, "For Article 13, I need these people?"

7 MJ: Yes, that's fine.

8 DC: Okay.

9 MJ: Now, give the court a synopsis of what these people will
10 say.

11 DC: Yes, sir, absolutely.

12 MJ: And if there's an issue, it's not sufficient enough or
13 whatever it is, government, we can handle that probably by email.
14 But again, we're talking motions here. So, I don't want to say it's
15 a loose standard, but it's not the same standard when it's production
16 for trial. Anything else?

17 TC: No, Your Honor.

18 DC: No, Your Honor.

19 MJ: The court's in recess.

20 [The session recessed at 0926, 25 August 2004.]

21

22

[END OF PAGE.]

AUTHENTICATION OF THE RECORD OF TRIAL

IN THE CASE OF

**AMBUHL, MEGAN M., SPECIALIST/E4
HEADQUARTERS AND HEADQUARTERS COMPANY,
16th MILITARY POLICE BRIGADE (AIRBORNE),
III CORPS, VICTORY BASE, IRAQ APO AE 09342**

I received the completed record of trial for review and authentication on 16 August 2004.

(ROT pp. 1-13 only)



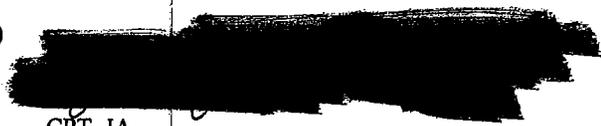
LTC, JA
Military Judge
(Pages 1-13)

DATE: 16 August 2004

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on 15 August 2004 and completed my examination on 15 August 2004.

(ROT pp. 1-13 only)



CPT, JA
Defense Counsel

DATE: _____ 2004

The record of trial was served on defense counsel on _____ 2004. After verifying receipt with defense counsel on _____ 2004 and conferring with the military judge on review by defense counsel on _____ 2004, the record was forwarded for authentication without completion of defense counsel's review.



CPT, JA
Chief, Military Justice

AUTHENTICATION OF RECORD OF TRIAL

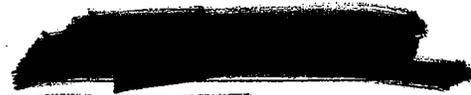
IN THE CASE OF

AMBUHL, Megan M., Specialist

Headquarters and Headquarters Company, 16th Military Police Brigade (Abn)

III Corps, Victory Base, Iraq, APO AE 09342

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



COL, JA
Military Judge

30 NOV 20 04
79P13-106

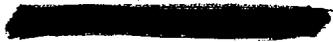
ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

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


CPT, JA
Defense Counsel

_____ 20 _____

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


CPT, JA
Chief, Military Justice

APPELLATE EXHIBITS

002603

UNITED STATES)

) MOTION TO DISMISS

v.)

Megan M. AMBUHL)

SPC, U.S. Army)

Headquarters & Headquarters Company)

16th Military Police Brigade (Airborne))

22 July 2004

III Corps, Victory Base, Iraq)

APO AE 09342)

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to move the Court to dismiss the charges and specifications preferred on 13 July 2004 for failure to comply with Rule for Courts-Martial (R.C.M.) 405(a).

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Dismiss be granted and that the Court dismiss with prejudice all charges and specifications that were preferred against SPC Ambuhl on 13 July 2004.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c).

C. FACTS

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts).

On 1 and 3 May 2004, an Investigating Officer (IO) conducted an Article 32 hearing concerning the 20 March 2004 charges and specifications. On 9 May 2004, the IO issued his findings and recommendations. The IO recommended that Charges I and II be referred to a General Court-Martial. The IO further recommended that Charges III and IV, effectively, be dismissed. The IO did not recommend that any additional charges or specifications be preferred against the accused. The government did not request that any uncharged misconduct be investigated.

From 9 May 2004 through 12 July 2004, there was no government activity on SPC Ambuhl's case. On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC

002604

APPELLATE EXHIBIT I

Recognized R. 16

Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment).

There was no Article 32 hearing to investigate these additional charges and specifications. SPC Ambuhl did not waive her right to an investigation regarding these charges and specifications.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

D. LAW

The defense relies on the following authorities in support of its motion:

Article 32, UCMJ
R.C.M. 405
R.C.M. 905
R.C.M. 906

United States v. Bender, 32 M.J. 1002 (N.M.C.M.R. 1991)
United States v. Miro, 22 M.J. 509 (A.F.C.M.R. 1986)
United States v. Castleman, 11 M.J. 562 (A.F.C.M.R. 1981)
United States v. Louder, 7 M.J. 548 (A.F.C.M.R. 1978)
United States v. Donaldson, 49 C.M.R. 542 (C.M.A. 1975)
United States v. Dozier, 38 C.M.R. 507 (A.B.R. 1967)
United States v. Cunningham, 30 C.M.R. 402 (C.M.A. 1961)
United States v. Mickel, 26 C.M.R. 104 (C.M.A. 1958)
United States v. Nichols, 23 C.M.R. 343 (C.M.A. 1957)
United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956)
United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954)
United States v. Westergren, 14 C.M.R. 560 (A.F.B.R. 1953)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion to Dismiss. The defense requests consideration of the following documents:

- a. Charge Sheet, dated 20 March 2004
- b. Charge Sheet, dated 13 July 2004
- c. Article 32 Report (including DD Form 457, Enclosures #1 - #3, the IO's Memorandum for Record, dated 8 May 2004, and the summarized transcript)

The defense requests government production of the Staff Judge Advocate's Pretrial Advice prepared in accordance with R.C.M. 406 for consideration by the Court.

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The defense requests government production of the following witnesses for this motion:

MG Thomas Metz, Commander, III Corps
CPT [REDACTED] Commander, HHC, 16th MP Brigade

The defense may call SPC Megan M. Ambuhl for the limited purpose of litigating this motion.

F. ARGUMENT

1. Violation of R.C.M. 405

The accused is entitled to a thorough and impartial Article 32 pretrial investigation. It is well established that, “no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation . . . has been made in substantial compliance with [R.C.M. 405].” R.C.M. 405(a). An Article 32 investigation is not a mere formality; rather, it is an integral part of the court-martial proceedings. See United States v. Nichols, 23 C.M.R. 343, 348 (C.M.A. 1957). Further, Article 32 proceedings are quasi-judicial and protect important rights of the accused, including the ability “to gain a soundly conceived recommendation concerning their disposition.” United States v. Cunningham, 30 C.M.R. 402, 404 (C.M.A. 1961).

Under certain circumstances, uncharged misconduct may be investigated at an Article 32 hearing prior to the preferral of additional charges. Article 32(d), UCMJ. However, the subject matter of the uncharged misconduct must specifically be investigated by the IO. Further, Article 32(d) requires that the accused be informed of the nature of each uncharged offense investigated. The proper procedure to follow “when evidence of additional offenses arises during an investigation is to recommend to the appointing authority that additional charges be preferred and referred for investigation while investigation is still in progress.” United States v. Bender, 32 M.J. 1002, 1003 (N.M.C.M.R. 1991) (rejecting the government’s “odd notion” that “additional charges may be preferred at the conclusion of an Article 32 investigation and referred for trial . . . if only there is, in retrospect, sufficient evidence in the report of investigation to warrant them”).

This required step was not done. The IO never informed SPC Ambuhl that he would be investigating any uncharged misconduct or any additional charges. Tellingly, the IO did not recommend any additional charges; rather, he found that the government failed to present sufficient evidence on two of the four charges.

The three additional specifications preferred on 13 July 2004, on their face, appear factually similar to allegations in the original charges preferred on 20 March 2004. Simply because the charges share the same factual predicate, does not relieve the government of its responsibility to insure that the additional specifications are investigated at an Article 32 hearing.

002606

a. Additional Charge I and its Specification

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge I, in violation of R.C.M. 405(a).¹

At the Article 32 hearing, the IO investigated one specification of maltreatment in violation of Article 93, UCMJ. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

On 13 July 2004, the government preferred the additional charge of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The factual basis for this charge appears to be the same basis as that of Original Charge III. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

Well-settled is the legal concept that, “[a] conspiracy to commit an offense is a separate and distinct offense from the offense which is the object of the conspiracy.” Article 81, para. c(8). Both a conspiracy and the underlying object of the conspiracy may be charged. Each is treated as a separate offense and must be charged, tried and punished of its own merits. See id.

In the present case, neither of the elements of the charged conspiracy were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl accountable for this offense and intends to subject her to possible punishment of an additional 12 months of confinement for a charge that never was properly investigated.

¹ Additional Charge I and original Charge III appear to allege the same factual basis. The charges are as follows:

Original Charge III & its Specification, 20 March 2004	Additional Charge I & its Specification, 13 July 2004
CHARGE III: ARTICLE 93, UCMJ In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.	CHARGE I: ARTICLE 81, UCMJ In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003 conspire with Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] and others to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Corporal [REDACTED] did place naked detainees in a human pyramid.

The defense recognizes that the recommendation of an Article 32 IO is not binding. However, in the present case, the IO's recommendation should be considered when evaluating the basis of this Motion. The IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense." The IO further recommended that the government provide additional evidence as to original Charge III. Despite this recommendation the government used the flawed foundation of Charge III as the basis for Additional Charge I.

b. Additional Charge II, Specification 1

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 1, in violation of R.C.M. 405(a).²

At the Article 32 hearing, the IO investigated one specification of indecent acts with another in violation of Article 134, UCMJ. The elements of this offense are: (1) that the accused committed a certain wrongful act with a certain person; (2) that the act was indecent; and (3) that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. If convicted of a violation of this offense at a general court-martial, SPC Ambuhl faces up to 5 years of confinement.

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual predicate for this charge appears to be the same as that of original Charge IV and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel

² Specification 1 of additional Charge II and original Charge IV appear to allege the same factual basis. The charges are as follows:

Original Charge IV & its Specification, 20 March 2004	Additional Charge II, Specification 1, 13 July 2004
CHARGE IV: ARTICLE 134, UCMJ In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, Staff Sergeant [REDACTED] Corporal [REDACTED] Specialist [REDACTED] and Private First Class [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.	CHARGE II: ARTICLE 93, UCMJ SPEC 1: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees being forced to masturbate in front of other detainees and soldiers.

toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

In the present case, neither of the elements of the newly charged maltreatment were presented to or evaluated by the Article 32 IO. The government now expects to hold SPC Ambuhl subject to an additional 12 months of confinement for a charge that was never investigated.

As highlighted with regard to the first set of charges, the IO recommended, "I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense," regarding original Charge IV. The IO further recommended that the government provide additional evidence as to original Charge IV, a charge that shares the same factual basis as Additional Charge II, Specification 1.

c. Additional Charge II, Specification 2

The Article 32 hearing conducted on 1 and 3 May 2004, did not sufficiently investigate Additional Charge II, Specification 2, in violation of R.C.M. 405(a).³

At the Article 32 hearing, the IO investigated one specification of conspiracy to commit maltreatment in violation of Article 81, UCMJ. The elements of conspiracy are: (1) that the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) that, while the agreement continued to exist, and while the accused remained a part to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy. If convicted of this violation of Article 81 at a general court-martial, SPC Ambuhl faces up to 12 months of confinement.

³ Specification 2 of additional Charge II and original Charge I appear to allege the same factual basis. The charges are as follows:

Original Charge I & its Specification, 20 March 2004	Additional Charge II, Specification 2, 13 July 2004
<p>CHARGE I: ARTICLE 81, UCMJ</p> <p>In that SPC Ambuhl did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire with Staff Sergeant [REDACTED] Sergeant [REDACTED] Corporal [REDACTED] Specialist [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 Ambuhl did participate in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck.</p>	<p>CHARGE II: ARTICLE 93, UCMJ</p> <p>SPEC 2: In that SPC Ambuhl at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003, did maltreat several Iraqi detainees, persons subject to her orders, by participating in a photograph with PFC [REDACTED] depicting PFC [REDACTED] holding a naked detainee by a leash wrapped around said detainee's neck and by watching PFC [REDACTED] hold a naked detainee by a leash wrapped around said detainee's neck.</p>

On 13 July 2004, the government preferred an additional charge of maltreatment in violation of Article 93, UCMJ. The factual basis for this charge appears to be the same basis as that of original Charge I and its specification. The elements of maltreatment are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. If convicted of a violation of Article 93 at a general court-martial, SPC Ambuhl faces up to an additional 12 months of confinement.

At trial, in order for an accused to be found guilty of a violation of Article 81 the government bears the burden of proof for the conspiracy and that the alleged agreement included every element of the underlying offense. In the present case, the government did not advocate at the time of the Article 32 hearing for an additional charge to encompass the underlying offense of the conspiracy. The IO did not recommend the additional charge of maltreatment, the underlying offense of the conspiracy. SPC Ambuhl is entitled to an Article 32 investigation regarding this additional Article 93 charge. See United States v. Donaldson, 49 C.M.R. 542, 543 (C.M.A. 1975) (finding that an accused is entitled to enforcement of his pretrial rights without regard to whether such enforcement will benefit him at trial); Bender, 32 M.J. at 1003 (prohibiting post-32 addition of charges simply because the government finds sufficient evidence, in hindsight, to warrant the charges).

2. Appropriate Remedy

If an accused is improperly denied a substantial pretrial right, such as a thorough and impartial pretrial investigation, reversal is required, upon timely complaint, regardless of whether accused suffers specific prejudice. See United States v. Miro, 22 M.J. 509, 511 (A.F.C.M.R. 1986); United States v. Castleman, 11 M.J. 562, 566 (A.F.C.M.R. 1981); see also Donaldson, 49 C.M.R. at 543; United States v. Mickel, 26 C.M.R. 104, 107 (C.M.A. 1958) (finding "if an accused is deprived of a substantial pretrial right on timely objection, he is entitled to judicial enforcement of his right, without regard to whether such enforcement will benefit him at the trial").

Among the rights to which an accused is entitled at an Article 32 investigation are the following: the right to cross-examine witnesses, have witnesses produced, have evidence (to include documents) within the control of military authorities produced, and to present anything in defense, extenuation or mitigation. R.C.M. 405(f)(1)-(12). This Court may grant appropriate relief if there is a failure to comply with R.C.M. 405. R.C.M. 906(b)(3).

Failure to comply substantially with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. The discussion to R.C.M. 405(a) provides for further investigation if charges are changed to allege a more serious offense than any of those investigated at the Article 32 hearing. See also United States v. Dozier, 38 C.M.R. 507, 508 (A.B.R. 1967) (providing for a new Article 32 hearing when there has been "a substantial change alleging a different offense" even though there was no additional evidence to be offered"). If convicted at a general court-martial, SPC Ambuhl faces an additional three years of confinement. This increase in the maximum punishment is analogous to the allegation of a more serious offense referenced in the discussion to R.C.M. 405(a). Further investigation is required if there is an essentially different offense.

While both of these legal “gates” are triggered in this case, further investigation is not the appropriate remedy.

The appropriate relief in this case for the government’s violation of R.C.M. 405 is dismissal of the additional charges and specifications. See Donaldson, 49 C.M.R. at 543 (granting discretion to the trial court to set aside findings and dismiss the charges when there was a R.C.M. 405 violation). Failure to provide appropriate relief, while not depriving the court-martial of jurisdiction, may require the reversal of a conviction. See generally United States v. McMahan, 21 C.M.R. 31 (C.M.A. 1956); United States v. Schuller, 17 C.M.R. 101 (C.M.A. 1954).

In United States v. Louder, the Article 32 IO recommended withdrawal of a certain specification because it charged a violation of a lawful order that was not punitive in nature. 7 M.J. 548, 549 (A.F.C.M.R. 1978). Rather than withdraw the specification, the convening authority amended the specification at referral to allege a violation of an entirely different lawful order. See id. The trial judge failed to grant the accused a new 32 or any alternate appropriate relief. See id. at 550. The appellate court found that the trial judge erred. As a remedy the court set aside the findings of guilt at the trial level and dismissed the amended specification. See id.; see also United States v. Westergren, 14 C.M.R. 560, 577 (A.F.B.R. 1953) (finding that failure to comply substantially with 10 U.S.C. § 832 may be grounds for reversal).

It is the government’s obligation to comply with R.C.M. 405. Any failure to meet this obligation should not prejudice the accused. The Court should not chose as a remedy to reopen the Article 32 hearing since this remedy causes prejudice to SPC Ambuhl. Thus, the only appropriate remedy for the Court is dismissal.

If the Court orders the Article 32 hearing to be reopened, SPC Ambuhl will suffer prejudice. First and foremost is the additional delay that SPC Ambuhl’s case will undergo if there are supplemental Article 32 proceedings. Even with expedient efforts by the government, coordination must be made for civilian defense counsel to attend the proceeding in Iraq. Requests for witness and evidence production must be addressed. Findings and recommendations must be issued and the case must then be forwarded through the chain-of-command for recommendations. This anticipated delay will cause significant prejudice to SPC Ambuhl who has been awaiting disposition of the original charges since 20 March 2004.

There was over two months of inactivity in SPC Ambuhl’s case. See Donaldson, 49 C.M.R. at 543 (the additional charges were preferred two months after the conclusion of the investigation for the original charges). The Article 32 IO issued his findings and recommendations on 9 May 2004. During that two-month period the government easily could have preferred additional charges and even conducted an Article 32 investigation. The choice belonged to the government. The government chose “eleventh hour” preferral of charges, just one week before referral.

The additional charges rely on the same factual predicate as the original charges. As such, the government knew as early as 20 March 2004 that SPC Ambuhl might face additional charges. The government had six weeks between the original preferral and the start of the

Article 32 hearing in which to prefer additional charges. The government chose not to do so. Further, the government did not advocate the additional preferral of charges at the Article 32 hearing, instead choosing the stated "eleventh hour" preferral of the additional charges.

SPC Ambuhl has been awaiting action on her case since 9 May 2004. To force the soldier to endure additional delay because of the government's error would be an abuse of discretion. Ultimately, the most significant prejudice to SPC Ambuhl is to force her to stand trial for three additional specifications, that carry an additional 3 years of confinement if she is convicted. Due process requires a remedy that does not penalize or prejudice the soldier – the only such remedy is dismissal.

G. CONCLUSION

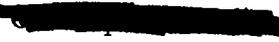
Dismissal with prejudice of the 13 July 2004 charges and specifications is the only appropriate remedy under the specific circumstances of this case. The defense respectfully requests that this Court grant the defense's Motion to Dismiss.

RESPECTFULLY SUBMITTED:



CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion to Dismiss was served on the government via e-mail to @vcmain.hq.c5.army.mil and @vcmain.hq.c5.army.mil and on and on the military judge via e-mail on 22 July 2004.



CPT, JA
Trial Defense Counsel

INVESTIGATING OFFICER'S REPORT

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

1a. FROM: (Name of Investigating Officer - Last, First, MI) ██████████	b. GRADE O-4	c. ORGANIZATION HHC, 420th Engineer Brigade APO AE 09391	d. DATE OF REPORT 8 May 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) ██████████	b. TITLE Brigade Commander	c. ORGANIZATION Headquarters, 16th MP Bde (Airborne) APO AE 09342	
3a. NAME OF ACCUSED (Last, First, MI) Ambuhl, Megan M.	b. GRADE E-4	c. SSN ██████████	d. ORGANIZATION HHC, 16th MP Bde (Airborne), Story Base, Iraq, APO AE 09342
			e. DATE OF CHARGES 20 March 2004

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X		
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) ██████████	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) ██████████	b. GRADE O-3
c. ORGANIZATION (If appropriate) ██████████		c. ORGANIZATION (If appropriate) Trial Defense Counsel, Tikrit Branch Office (FOB Danger) Region IX	
d. ADDRESS (If appropriate) 1101 15th ST, NW, Suite 202 Washington, D.C., 20005		d. ADDRESS (If appropriate)	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE		b. DATE	

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below)	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

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

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (if any)	ORGANIZATION/ADDRESS (whichever is appropriate)	YES	NO
[REDACTED]	E-5	302nd MI Battalion	X	
[REDACTED]	CW-2	CJTP-7	X	
[REDACTED]	E-9	418th MP Detachment	X	
[REDACTED]	E6	CID, Ft. Jackson, S.C.	X	
Please refer to the attached Enclosure #1 for additional witnesses				
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM		LOCATION OF ORIGINAL (if not attached)		
Prosecution Exh 1-Sworn statement of SPC [REDACTED]				
Prosecution Exh 2-Sworn statement of SGT [REDACTED]				
Prosecution Exh 3-Sworn statement of SPC [REDACTED]				
Prosecution Exh 4A thru 4R -20 photos from CID CD				
Prosecution Exh 5-Sworn statement of PFC Lyndie England				
Please refer to the attached Enclosure #2 for additional Exhibits from the investigation				
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT. (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 403(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Enclosure #1 - Continuation of DD Form 457 Block 12a				
Enclosure #2 - Continuation of DD Form 457 Block 13a				
Enclosure #3 - Defense Counsel's Objections Prior to and During the ART 32 Investigation.				
Enclosure #4 - Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #5 - IO Concurrence on Request for Delay, U.S. v. SPC Ambuhl				
Enclosure #6 - Article 32 Request for Witnesses and Production of Evidence - United States v. SPC Megan M. Ambuhl				
Enclosure #7 - Second Request for Delay - United States v. SPC Megan M. Ambuhl				
Enclosure #8 - IO Recommendation on 2nd Defense Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #9 - Approval of 2nd Request for Delay, United States v. SPC Megan M. Ambuhl				
Enclosure #10 - IO Determination on Trial Counsel's response to Defense Request for Witnesses and Production of Evidence				
Enclosure #11 - Appointment as Article 32 Investigating Officer				
Enclosure #12 - Transcript of ART 32 Investigation US v. SPC Ambuhl				
Enclosure #13 - ART 32 Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl				
Block #14 above, Def did not present any grounds to show that the accused was not mentally responsible for the offenses.				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
[REDACTED]		O-4	HHC, 420th Engineer Brigade APO AE 09391	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]			9 MAY 2004	

USAPPC V1.00

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Enclosure #1 - CONTINUATION OF DD FORM 457, BLOCK 12a

The following witnesses were Available but invoked their rights

1. [REDACTED] O-3 372nd MP CO - invoked at last 32
2. [REDACTED] E-8 372nd MP CO - invoked at last 32
3. [REDACTED] E-7 372nd MP CO - invoked at last 32

The following witnesses were Declared reasonably unavailable

CID Agents:

1. [REDACTED] SA 10th MP BN - Redeployed to the U.S.

Chain of Command:

1. [REDACTED] O-3 372nd MP CO - Redeployed to U.S.

Additional Witnesses --

1. [REDACTED] O-4 320th MP BN - Kuwait
2. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
3. [REDACTED] E-6 - LSA Anaconda -invoked at prior 32
4. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
5. [REDACTED] E-6 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
6. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
7. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
8. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
9. [REDACTED] E-5 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
10. [REDACTED] E-4 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.
11. [REDACTED] E-6 372nd MP CO - LSA Anaconda-Unit attempted to get to ART 32 Inv. but was unable to get to Baghdad.

Military Intelligence Witnesses:

1. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
2. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
3. [REDACTED] E-4 325th MP BN - Redeployed to U.S.
4. [REDACTED] O-6 205th MI BDE - Redeployed to U.S.

Other Witnesses:

1. [REDACTED] O-3 Former Interrogation OIC - Redeployed to U.S.

- 2. [REDACTED] O-3 205th MI BDE - Redeployed to U.S.
- 3. [REDACTED] O-3 Ft. Sam Houston - Redeployed to U.S.
- 4. [REDACTED] O-5 CJTF-7 - cannot locate
- 5. [REDACTED] O-4 Member of Australian forces - Redeployed to [REDACTED]

Co-Accused:

- 1. England, Lyndie R. E-3 372nd MP CO - Fort Bragg, awaiting court-martial

The following witnesses are co-accused, have invoked their rights and are represented by counsel.

- 1. [REDACTED] E-5 372nd MP CO
- 2. [REDACTED] E-6 372nd MP CO
- 3. [REDACTED] E-4 372nd MP CO
- 4. [REDACTED] E-4 372nd MP CO
- 5. [REDACTED] E-4 372nd MP CO

The following witnesses were requested by Defense Counsel and were available, Defense Counsel decided during the investigation to not call these witnesses and they were therefore deemed reasonably unavailable.

- 1. [REDACTED] Vigilant A, security detainee
- 2. [REDACTED] Vigilant A, security detainee
- 3. [REDACTED] Hard site, 6-B, criminal
- 4. [REDACTED] Ganci 5, security detainee
- 5. [REDACTED] Ganci 8, security detainee
- 6. [REDACTED] Hard site 3-B, criminal
- 7. [REDACTED] Ganci -1, security detainee
- 8. [REDACTED] Hard site 4-B, criminal
- 9. [REDACTED] Unknown, released
- 10. [REDACTED] Unknown, released
- 11. [REDACTED] Vigilant C, security detainee
- 12. [REDACTED] Ganci 5, Unknown
- 13. [REDACTED] Unknown, released
- 14. [REDACTED] Ganci 8, security detainee

Enclosure #2 - CONTINUATION OF DD FORM 457, BLOCK 13a

Prosecution Exhibit #6 - Sworn statement of SFC [REDACTED]
Prosecution Exhibit #7 - CD ROM of pictures and video clips
Prosecution Exhibit #8 - Sworn statement of SFC [REDACTED]
Prosecution Exhibits #9A thru 9O - Sworn statements of Detainees at the Prison
Case File

Defense Exhibit A - ARTICLE 15-6 Investigation of the 800th MP Brigade
Defense Exhibit B - Rebuttal of AR 15-6 for SFC [REDACTED]
Defense Exhibit C - Rebuttal of AR 15-6 for 1SG [REDACTED]
Defense Exhibit D - Rebuttal of AR 15-6 for CPT [REDACTED]
Defense Exhibit E - Sworn statement of [REDACTED]

Enclosure #3 – Defense Counsel's Objections prior to and during the ART 32 Investigation.

- The Defense objected to consideration by the IO of the following evidence. These were published in Defense Counsel's memorandum of 10 April, 2004.

1) Various Documents (From Detainee Medical Records, 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 16 pages of assorted medical documents obtained from Abu Ghraib. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, several of these records are dated outside of the alleged time period of abuse and have no relevance to the charged offenses.

2) Detainee Medical Records (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 30 pages of medical records that do not pertain to any of the alleged victims of the charged offenses. These records do not purport to have any connection to SPC Ambuhl or the charges she is facing.

3) Hard-cell Medical Log (From the 372nd MP CO, Medical Section, Abu Ghraib). The case file contains approximately 48 pages of a medical log. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. These documents do not go to any element of any of the charged offenses.

4) Treatment Logs (From B Company, 109th Area Support Medical Battalion, BIAP). The case file contains approximately 61 pages of treatment logs. These documents do not purport to be connected to any alleged victims or to SPC Ambuhl. Further, a significant number of these documents (49 pages) are outside the time period for the charged offenses and are simply irrelevant to the pending Article 32(b) investigation.

5) Canvas Interview Worksheets. The case file contains approximately 140 canvas interview worksheets that do not contain any pertinent information relevant to the ongoing investigation. Consideration of this collective piece of evidence is prejudicial to SPC Ambuhl. Any potential probative value does not outweigh the prejudice to the soldier under M.R.E. 403.

6) Investigative Worksheets. The case file contains approximately 150 investigative worksheets that do not contain any pertinent or relevant information regarding the ongoing investigation. The investigative worksheets are not an exhibit to the CID report and are irrelevant to the Article 32(b) investigation.

7) Photographs & Video Clips. The case file contains several hundred digital photographs and numerous digital video clips. The defense objects to the consideration of the images unless the relevant images can be tied specifically to SPC Ambuhl. None of the photographs were seized from SPC Ambuhl or from any electronic equipment belonging to her. Consideration of the photographs as a group is highly prejudicial to SPC Ambuhl. At a minimum the Government should be required to establish some

nexus between SPC Ambuhl and the photographs the Government wishes to be considered.

• DC had the following objections during the investigation.

- 1) Admittance of photos that do not apply specifically to the charges against SPC Ambuhl.
- 2) Consideration of statements from the detainees that have been released.
- 3) Consideration of the CD ROM and specifically those items not relative to the case against SPC Ambuhl.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 420TH ENGINEER BRIGADE
Victory Base, IRAQ
APO AE 09342



Builders in Battle!

AFRC-CAR-EBA-LG

8 MAY 2004

MEMORANDUM FOR RECORD

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States
v. SPC Megan M. Ambuhl

1. On 24 March 2004, I was appointed as an investigating officer (IO) pursuant to the Uniform Code of Military Justice (UCMJ), Article 32, to investigate the charges noted below against Specialist Megan M. Ambuhl, HHC, 16th MP BDE (ABN), Victory Base, Iraq APO AE 09342. The charges preferred were:

- a. Charge I: ART 81 Conspiracy
- b. Charge II: ART 92 Dereliction of Duty
- c. Charge III: ART 93 Cruelty and Maltreatment
- d. Charge IV: ART 134 Indecent Acts with Another

2. During the conduct of the investigation, there were two delays granted. Both were attributed to the defense. The first was a 15-day request to allow defense adequate time to prepare for the ART 32 investigation. The second delay was an 11-day request to allow for a civilian defense counsel to travel to Victory Base for the ART 32 investigation and to prepare for the investigation.

3. Upon completion of the investigation and consideration of all evidence presented during the investigation (as noted in block 13a of DD Form 457 and Enclosure #2), I have the following findings regarding the charges against Specialist Megan M. Ambuhl.

a. Charge I: Violation of UCMJ, Article 81, Conspiracy

i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 23 October 2003 conspire and enter into an agreement with SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] and PFC [REDACTED] to commit an offense under UCMJ, Maltreatment of subordinates, and did effect the object of the conspiracy when she participated in a photograph with PFC [REDACTED] who tied a leash around the neck of a detainee and led the detainee down the corridor with the leash around his neck. (See PE 4A thru 4D, PE 5)

ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.

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- iii. Strengths-The Trial Counsel presented evidence to show that SPC Ambuhl entered into an agreement with the co-accused to maltreat a detainee and then performed the overt act by proceeding downstairs with the co-accused to pull the detainee from the cell, place a tie down strap around his neck and then participate in a picture with PFC England as she held the leash.
- b. Charge II: Violation of UCMJ, Article 92, Dereliction of Duty
- i. The Specification: In that Specialist Megan M. Ambuhl, U.S. Army, who knew of her duties as a Military Police soldier at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, from on or about 20 October 2003 to on or about 1 December 2003, was derelict in the performance of those duties in that she willfully failed to protect Iraqi detainees from abuse, cruelty and maltreatment, as it was her duty to do. (See PE 3, PE 4A thru 4D, PE 5)
 - ii. I believe that the evidence presented shows that reasonable grounds exist to believe that the accused committed this offense.
 - iii. Strengths-Trial counsel presented compelling evidence to show that SPC Ambuhl had a duty as an MP and as the NCOIC of 1B to oversee and protect those housed at BCCF. It is reasonable to expect that SPC Ambuhl would have known those duties by virtue of her MOS and of being a U.S. Soldier. Finally, she was willfully derelict in those duties when she did not protect those detainees under her control.
- c. Charge III: Violation of UCMJ, Article 93, Cruelty and Maltreatment
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several Iraqi detainees, persons subject to her orders, by watching naked detainees in a pyramid of human bodies.
 - ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
 - iii. Weaknesses-There is no contention that element 1 of this charge has been met. I do believe that Trial Counsel failed to present adequate evidence to meet the second element of this charge. SPC Ambuhl was present as the pyramid was built but aside from showing that she was present, Trial Counsel did not present evidence that SPC Ambuhl carried out any act of cruelty or maltreatment other than being present at the building of the pyramid.
- d. Charge IV: Violation of UCMJ, Article 134, Indecent Acts with Another
- i. The Specification: In that SPC Megan Ambuhl, U.S. Army, did, at or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, wrongfully commit an indecent act with Iraqi detainees, SSG [REDACTED] CPL [REDACTED], SPC [REDACTED] PFC [REDACTED] by observing a group of detainees masturbating, or attempting to masturbate, while they were located

AFRC-CAR-EBA-LG

SUBJECT: Article 32(b) Investigating Officer's Findings and Recommendations, United States v. SPC Megan M. Ambuhl

in a public corridor of the Baghdad Central Correctional Facility, with other soldiers who photographed or watched the detainees' actions.

- ii. I do not believe that the evidence presented shows reasonable grounds exist to believe that the accused committed this offense.
 - iii. Weaknesses-Of the three elements of this charge, I believe that Trial counsel failed to provide adequate evidence to show that elements #1 and #2 were met. SPC Ambuhl was present when the detainees were forced to masturbate but Trial counsel failed to provide evidence that she played any role, other than being present, in the perpetuation of the act itself. I do feel that element #3 was proven adequately as SPC Ambuhl being present was prejudice to good order and discipline and certainly brings discredit upon the armed forces.
4. After review of all evidence presented and completion of the Article 32 Investigation, it is my recommendation that Charges I and II against Specialist Megan Ambuhl be referred to a General Court Martial. I further recommend that Trial Counsel provide additional evidence to show that the elements listed above as not met, were indeed met if they intend to proceed with charges III and IV.
 5. POC for this memorandum is MAJ Charles Ransome at [REDACTED]@us.army.mil or by phone at DNVY/DSN [REDACTED]

[REDACTED]
MAJ, EN
Article 32 Investigating Officer

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Article 32 Transcript

U.S. v Ambuhl

The Article 32 Proceedings were called to order at 1002 hours, 1 May 2004, at Victory Base, Iraq.

PERSONS PRESENT

MAJ [REDACTED], Investigating Officer
CPT [REDACTED], Government Counsel
1LT [REDACTED], Assistant Government Counsel
Mr. [REDACTED], Civilian Defense Counsel
CPT [REDACTED], Military Defense Counsel
SPC Megan M. Ambuhl, Accused
SFC [REDACTED], Recorder

PERSONS ABSENT

None

The Government Counsel stated that sometime today, he would like for all parties to review each packet to ensure all contents were the same.

The Defense Counsel conducted a voire dire of the Investigating Officer, and made no objection to the Investigating Officer being detailed to the hearing.

Government Counsel stated that all parties understand that due to witness location and different ways testimony would be given, the proceedings may not run as normal.

The Investigating officer stated that this was a formal investigation and that he had been detailed as the Article 32 Investigating Officer by order of Colonel [REDACTED] Commander, 16th Military Police Brigade (Airborne).

The investigating officer informed the accused that his sole function as the Article 32 investigating officer was to determine thoroughly and impartially all of the relevant facts of the case, to weigh and evaluate those facts, and to determine the truth of the matters stated in the charges.

He further stated that he would also consider the form of the charges and the type of disposition that should be made in the case concerning the charges that have been preferred against the accused. He stated that he would impartially evaluate and weigh all the evidence, examine all available witnesses, and give the accused and counsel full opportunity to cross-examine any available witness.

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The Investigating Officer advised the accused of her right to counsel.

The Accused stated she would be represented by Mr. [REDACTED]

The Investigating Officer instructed Mr. [REDACTED] to fill out items on DD Form 457, Investigating Officer's Report.

The Defense Counsel waived the reading of the charges.

The Investigating Officer notified the accused of her rights during the Article 32 Investigation.

The accused stated that she understood her rights.

The Investigating Officer stated that the following witnesses would be present:

CW2 [REDACTED], IMIR, CJTF-7
SGM [REDACTED], 418th MP Det, (CLD)
CPT [REDACTED], 372d MP CO
1SG [REDACTED], 372d MP CO
SFC [REDACTED], 372d MP CO

Telephonic testimony:

SGT [REDACTED], A CO, 302d MI BN, Germany
SA [REDACTED], CID
PFC [REDACTED], HHC, 16th MP BDE(ABN) (REAR), Fort Bragg, NC

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

Prosecution Exhibit 1: Sworn Statements of SPC [REDACTED]
Prosecution Exhibit 2: Sworn Statements of SGT [REDACTED]
Prosecution Exhibit 3: Sworn Statements of SPC [REDACTED]
Prosecution Exhibit 4A – 4R: 18 photos; with objection; Defense Counsel objected to photos not pertaining to SPC Ambuhl

The Assistant Government Counsel stated that the witnesses from the 372d MP CO, located at LSA Anaconda would probably not be here due to convoy difficulty.

The Government Counsel made an Opening Statement.

The Defense Counsel reserved his Opening Statement.

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SFC [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

CPT [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

1SG [REDACTED] 372d Military Police Company, was called as a witness, sworn, and testified in substance as follows:

The witness was informed of, and invoked his rights under Article 31, UCMJ, and was excused.

SGT [REDACTED] A CO, 302d MI BN, Germany, was called as a witness, sworn, and testified telephonically in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I was deployed to Abu Ghraib Prison Iraq at the end of September 2003 until February 2004; I left when my Battalion redeployed. I was the Systems Administrator and Trojan Spirit Operator for what was called the ICE Intelligence Center for the Interrogators. I was assigned to a MI Bn from Camp Victory, and worked with the interrogators that worked at Abu Ghraib. I worked in the center where the interrogators prepared their reports and collected data and kept information.

The MI personnel had to interact with MPs in order to do their interrogations. The MPs would provide security, or be told by individual interrogators from MI to alter diets or sleep of detainees. The Interrogation teams were usually made up of a civilian interrogator or interpreter. They would give direction to the MPs.

I may know SPC Ambuhl, but I don't recognize the name right now.

I do not know how Tier 1A and 1B is set up. I visited it once, and I was told that the real bad guys were there in individual cells.

I actually sat in on one interrogation with SPC [REDACTED] an interrogator from Victory Base. I was to interrogate a General, and I provided security.

To help with the interrogations, MP guards would play loud music, alter detainees' diets when feeding MRE's and taking out certain items. They would alter detainees' sleep,

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use dogs to intimidate, pour water over them and put them in the back of HMMWVs and drive around.

Physical Training that was authorized would be push-ups, overhead arm clap, instruction like from a Drill Sergeant to a Recruit.

I have not seen photos of abuse at Abu. My Chain of Command has not asked me if I have seen any photos, nor have they told me to delete photos from hard drives. I have only heard of incidents from interrogators.

I heard of the incident involving SPC [REDACTED] I was told that he was too aggressive, and was relieved. I do not know of any UCMJ action. He was placed in a more analytical role at the ICE. SPC [REDACTED] was also relieved because she had a detainee stripped naked and made him walk back to his cell naked in the view of all the other prisoners. This happened in November or December 2003.

My Bde Cdr, moved into the ICE; he was a LTC, and seemed pretty involved with everything that went on until he was replaced by a MAJ [REDACTED]

I would say that MI was in control of prison operations. The OPTEMPO was high. I was the system administrator, and there were many requests for new accounts to be added to the network. More and more personnel and prisoners would arrive.

I would say that there was pressure for the interrogators to produce info from the detainees. It was an overwhelming amount of detainees in the facility. There was no deadline to get detainees out of interrogations.

I recall my statement to CID when I talked of a conversation with SPC [REDACTED] I was sitting at the DFAC and heard him and his peers talking about what the MPs did to the detainees. Things like beating them up and using them as practice dummies and knocking them out.

I had just returned from leave, so this discussion was in December 2003.

Someone from the Nevada National Guard, an older female soldier, told me of some stuff that she saw going on. She documented it, and her chain of command reprimed her because of it. She was afraid of her chain of command. She sent the documentation to her relatives.

I spoke with a SPC [REDACTED] about the MPs using dogs on the detainees. She said how fearful the detainees were of the dogs. She described how a MP pretended to be a dog to scare the detainees. I don't know what happened to SPC [REDACTED] because she witnessed the incident. She is in the same unit as SPC [REDACTED] and SPC [REDACTED]. They are all in a Reserve Unit. She did take pictures of the facilities, but I do not know of her taking pictures of any detainees.

I did not report the abuse that I heard from others. I knew that some of the stuff was authorized, and did not need to be reported.

I talked to one woman about it only being a matter of time before the abuse got out and an investigation initiated. I spoke to at least everyone that I knew about how the place was poorly run. It was very unorganized. The response I got that it was a lot worse under Sadaam. LTC [REDACTED] made that statement after the Red Cross visited the prison and saw the conditions. The Red Cross criticized the food, from what I remember.

I remember soldiers from my BN visiting from Camp Victory being trained on how to interrogate and secure prisoners. They were also trained on how to better use their approaches.

I know that the detainees received blankets and clothing if the interrogators wanted them to have it. SPC [REDACTED] had mentioned to me that they made them wear women's panties, and if they cooperated, some would get an extra blanket.

SPC [REDACTED] was known to bang on the table, yell, scream, and maybe assaulted detainees during interrogations in the booth. This was to not be discussed. It was kept "hush hush" by the individual interrogators.

To my knowledge, the only thing that happened after the incidents was the team getting together to make reports after the interrogation. Nothing was said about not banging on tables. Nothing was put out about not stripping detainees naked after the SPC [REDACTED] incident. She was relieved because she made a detainee walk to his cell naked in front of other detainees.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

I don't know what training was given to the MPs of the 372d MP CO. The only time I saw MPs was while waking through the facility, or at chow.

SPC [REDACTED] also told me of two inmates that supposedly raped a child, and the MPs punished them by making them get into all sorts of sexual positions.

I am vaguely familiar with interrogation techniques. I know the IROE. Putting inmates in sexual positions naked would not be appropriate. I wouldn't do it if someone ordered me to do something like that; not even a CPT.

The different things I was told, I wondered if it was a joke for the guards. I wouldn't be surprised if the freed innocent prisoners retaliated against the prison after being treated this way, by helping to pinpoint locations in the prison for the mortar attacks.

The MPs were directed by the MI personnel to play loud music, vary diets, limit MREs, deprive sleep, and PT exhaustion.

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People got in trouble for being too aggressive. Physical violence would be over the limit of the IROE. It would not be authorized.

I would not hit someone to get them to soften up. Others shouldn't either. That would not be a legal order. Putting a leash around someone's neck, pretending to drag them and taking a picture would not be authorized.

Taking pictures was forbidden. Personnel were placing pictures on the database, and I was told to remove the pictures from the database. These were pictures of soldiers throughout the facility just walking around. It was totally inappropriate to take pictures of detainees. It is inappropriate to take pictures of detainees naked in a pyramid. You would not do this to soften them up. I don't know of anything that would allow MPs to have detainees masturbate to soften up for an interrogation. This would not be allowed. Pictures of this masturbation would be illegal also. Pictures of a detainee with his face next to another detainees genital area masturbating would also be unauthorized. This is not a technique used to soften someone up. I have never heard of any of these techniques used by MI.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ ██████████)

I didn't report the stuff that I heard, because I thought some of the things I heard was authorized. The dietary and sleep stuff was common knowledge within the ICE. MPs using dogs to scare detainees, I think was approved by our IROE.

Dragging detainees with at leash, making detainees masturbate, and piling them naked in pyramids and taking pictures of it is not authorized.

It was confusing the way the place was run. It was an important mission run by Reservists who did not know what they were doing. They were just on their own. It was a shocking experience.

QUESTIONS BY THE DEFENSE COUNSEL (Mr. ██████████)

I don't know if the MI personnel received efficiency reports; I got an NCOER, and I counseled my soldiers. I guess the people above me were counseled on their performance.

The goal of the interrogators was to get information, make diagrams of the info and piece together theories or hypotheses of terrorist events that was going on.

It was important to get the information to prevent terrorist activity, and find perpetrators of terrorist activity.

We would get attacked at the prison. There was pressure to get results by effectively interrogating the prisoners. If there were no results, then the supervisors would be concerned. The goal was to get results.

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General Sanchez opened more facilities, and made things better. The place was getting cleaned up. This was an incentive to get more information from the prisoners.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

Goals would not justify committing a crime; it would be definitely possible for maybe the civilian interrogators to overlook that. They were not under any authority.

General Sanchez never ordered anyone to commit crimes to get information. The Brigade, Battalion, Company, and MI Commanders, never told anyone to commit crimes to get information.

The facility in general, had no real authority base, other than LTC [REDACTED]. There were no clear-cut guidelines.

There is no justification to have detainees masturbate, piled in pyramids naked, or be pulled by leashes. The conditions might lead some people to act inappropriately. The people who act inappropriately should be punished.

I know that there is a separate facility for women and children. There are more than terrorists and security detainees at the prison. Some people were living there. The raids would round up people that were just in the area and probably innocent. If a prisoner was being kept for robbing an Iraqi bank, I wouldn't know about it.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1149, 1 May 2004.

The Article 32 proceeding reconvened at 1203, 1 May 2004, with all parties present.

CW2 [REDACTED] IMIR, CJTF-7, was called as a witness, sworn, and testified in substance as follows:

I organize and process reporting by Iraqi information collectors. I am a 351E, Interrogations Technician. Prior to my current job, I was at the JIDC at Abu Ghraib from September 2003 until January 2004. I was reassigned when my unit left. I was asked to stay.

I am familiar with the layout of the prison. The largest camp is Ganci; it holds security detainees primarily, next is Vigilant, it holds detainees of informational interest; and then there is the Hard Site; it holds detainees of MI interest, females and juveniles, problematic detainees from the other camps, like rioters, or crazy detainees.

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Tier 1A and 1B holds persons of MI interest. I do not know anything about what type of training the MP guards would have received at Tier 1A and 1B.

In January 2004, we ceased to bring problematic detainees into the Hard Site, because they created a chaotic environment. The FOB Commander ordered this change. They were troublemakers. I recall one who would rip up his mattress and relieve himself right on the floor of his cell; another would sling their feces at the guards.

I don't know if the MP guards received any special type of training.

I worked in the Operations section of the JIDC. We accounted for the detainees, and answered questions from CJTF-7. We tracked requirements and assessments of the detainees. Leaders would gather the information from the sections, The ICE NCOIC was SFC [REDACTED] and the OIC was CPT [REDACTED]. I don't recall seeing any suspense dates. We were short staffed; we requested for more personnel, and we got more personnel.

I think there was interaction with MPs and MI personnel. SPC [REDACTED] was a liaison, and would attend the FOB BUB daily. The personnel from each section would disseminate the info obtained from the BUB.

I know SPC Ambuhl; she worked in Tier 1, and she is here today. I don't remember when I first met her, but I had a almost daily professional interaction with her. She would provide updates on who was present or not. I don't know how long she worked at the prison. She observed juvenile and female detainees. She had interaction with them; she helped move them from cell to interrogation wing.

I don't know if she received any training on how to interrogating prisoners. We did have a conversation about supplies and Iraqi food for the detainees. We once talked about rewarding detainees that helped clean and do tasks, with cigarettes, because they loved to smoke.

I was the "old Operations expert", everyone would just ask me stuff.

I remember a discussion with her about problem detainees; it was about reducing the environment that caused them to misbehave. Some of the detainees were cooperative and others were not.

There were a few approved interrogation techniques; for example, prod and go down – when you speak down to someone to get them to cooperate.

I do not know of any SPC [REDACTED]. I know SPC [REDACTED] he was an analyst that worked in the ICE shop. I understand that he was removed because of a situation when a detainee was stripped naked.

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SPC [REDACTED] was also involved in this same incident and was moved to my section after she was relieved from her duties. I asked her why she was moved, but I did not ask her what she did. I do not know if SPC [REDACTED] or SPC [REDACTED] received any UCMJ.

We had mandatory IROE training and implemented a mandatory sign out procedure. All MI personnel attended this training.

I heard about a riot at Ganci. I do not know of any punishment after they were moved to the hard site. I hope that they were segregated and silenced.

Embarrassment of the Arab culture would be contrary to producing results, in my opinion. Some of our most effective means to communicate is to just develop a rapport. I do not know if the MPs were trained on the Arab culture.

SPC Ambuhl would help move the prisoners from their cells to the interrogation wing or where we picked them up. The interrogator would ask for the prisoners they needed. SPC Ambuhl would cross-reference and tell which cell the prisoner was in, and she would facilitate the move.

Sleep deprivation would be documented in an interrogation plan. It is a separate book from other files.

I never had any problems with SPC Ambuhl.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT McCabe)

The Hard Site has problematic detainees in 1A and 1B. The rest of the Hard Site houses Iraqi corrections prisoners, such as robbers, and thieves. The CPA is in charge of the rest of the hard site, 2A, 2B, and so on. 1A and 1B contained security detainees for MI, females, and juveniles.

Ganci contained people possibly gathered from raids. There are many camps in Ganci, No one from Ganci has any interrogation value. Someone removed from a riot would not be interrogated. If detainees in Ganci could not be controlled, then they would be moved.

Our priority was to get information to stop the IED attacks, terrorist activity, and crimes against the Coalition.

Every detainee was inprocessed and assessed. After the screening, they were determined to be of value or not value to MI. These reports went to CJTF-7.

I am a trained interrogator. I finished my training in 1990; and I have been an interrogator for 14 years. MPs would do the sleep management plan, it was requested of MI. General Sanchez would have to approve speaking to someone about something that would make them upset. An MP could not just do this on his own.

I am familiar with the Geneva Conventions. We treated them the same as POWs; we treated them with dignity and respect. Anything outside of that required approval.

No MPs attended our training. MPs did not attend our Geneva training. The IROE is classified and located at the JIDC.

The worst criminals were to be treated with dignity and respect.

I never saw SPC Ambuhl treat anyone without dignity and respect. She would help us with the female detainees. She was nice and pleasant. She knew the difference between right and wrong, and what dignity and respect was. I saw her treat people with dignity and respect. I assume she was a guard; she took direction from the Shift NCO, SGT [REDACTED] CPL [REDACTED] or SSG [REDACTED].

There is nothing in the IROE that allows stripping detainees naked. There are times when they are naked for strip-searching. Detainees being piled in a pyramid naked, or being forced to masturbate has no MI or military purpose.

I've seen a handful of photos of the pyramid. That type of interrogation "plan" would not have made it to General Sanchez for approval; it would not have made it past me.

Forcing detainees to masturbate kneeling in front of one another would be outside of the bounds. Placing a leash around a detainee's neck would be out of bounds.

All of these acts would be criminal offenses. If I were ordered to do these acts, I would not carry them out. Embarrassment as a technique would be contradictory to achieving results.

Government Counsel shows the witness Prosecution Exhibit 4A.

This looks like 1A or 1B. I recognize the metal doors. SPC Ambuhl is in this picture. I have seen the other female around, but I do not know her name. I do not recognize the detainee on the "leash". This scene serves no military purpose; it is inappropriate. Interrogators would not tell MPs to do this. I have never seen SPC Ambuhl do anything like this.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ Ransome)

The rest of the Hard Site Tiers housed, as I understood it, Iraqi criminals; some I thought were actually sentenced and serving prison terms.

QUESTIONS BY THE DEFENSE COUNSEL (Mr. Volzer)

A "unclassified" description of the general requirements would be: who's attacking us-, what are some imminent attacks-, where is the WMD-, what do you know about terrorist activity-?

Reports were generated from the information obtained from the detainees interrogated. CJTF-7 developed the reporting requirement.

1 to 2 people would interview or interrogate a detainee, depends on the detainee.

You could not "fear up" or belittle someone without approval. MI would tell the MPs to make the detainees more receptive. It depended on the environment; a detainee may be moved to another area, monitored for interaction, told to keep quiet and not interact with others, with proper documentation, put on dietary management, and possibly be given cigarettes.

These were effective techniques were used by MI and required approval. Removing a blanket or other item required approval.

Saying MI personnel are aggressive is an unfair statement. Some are, and some are not. I am a former grunt. 11B and 11C grunts are aggressive too.

The interrogation techniques used are taught.

MI does not own the detainees. The sleep management procedure was directed by MI to the MPs to supervise and report at the end of the day.

After someone is interrogated, doesn't mean they could leave the prison. There may be more interest in keeping them.

Yelling was not authorized. We had a few that were loud with the detainees.

I saw the special reaction team at the Vigilant camp once. Sometimes handling a situation quietly works better and is more effective. If one technique is working, we continue to scrutinize that technique. Its not one of those "not broke don't fix it" scenarios. We do continue to develop rapport.

There was a sign in sheet in the beginning; it is kept with the NCOIC of each tier. The detainee interrogation plans are classified and kept in the ICE log. Detainee files are secret.

QUESTIONS BY THE INVESTIGATING OFFICER (MAJ [REDACTED])

To prod and go down is a technique, such as getting a captured officer, making them tired, and calling them a coward.

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You exploit how they were captured and use it to your advantage. An example of fear up would be, "okay, as long as you don't cooperate, you will just stay in here". Approval is need for these two techniques.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1315, 1 May 2004.

The Article 32 proceeding reconvened at 1412, 1 May 2004, with all parties present.

SGM [REDACTED] 418th MP Det (CLD), was called as a witness, sworn, and testified in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I first arrived to Iraq 1 February 2004. My mission was to work a BLD/CLD versus a EPW mission. CLD is Camp Liaison Detachment; BLD is Brigade. The 16th MP BDE (ABN) gave us our mission. We replaced the 381st BLD. There were no EPWs, except for a handful at Camp Bucca. We took on the detainee operations role.

The definition of detainee and EPW is in the Geneva Convention, Article 4.

Our mission falls under the 16th MP BDE (ABN). I have not aware of allegations of abuse and mistreatment of detainees. I have heard of the rumors.

I don't know what training was given in the past; I am aware that training is going on now. There are 30 corrections personnel from Fort Knox, Fort Leavenworth here to train soldiers at the prison. There is training on the Arab culture, ROE, and the Geneva Conventions.

I visit the prison often. I am aware of the prison breakdown; 1A and 1B houses MI holds, females and juveniles. Juveniles were moved recently. The Hard Site is fairly secure. Normally, females would be separated. We use the Geneva Convention as a guideline.

Changes are going on in Ganci and Vigilant to make conditions safer for the detainees. The 16th MP BDE (ABN) is refining policies, and SOPs.

I do not know of the officer involvement prior; but COL Quantock frequently visits the prison.

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We have MPs and MI personnel in the inprocessing center at the prison. I do not know of any cross over training. When we made our assessment, we noted that the nutrition and sanitation conditions were not within the Geneva Convention.

I do not know if the Geneva Conventions was followed before the 16th MP BDE (ABN) arrived. It is being followed now. There are weigh ins, and the meals are nutritional.

The Geneva Convention recommends that female detainees be guarded and searched by female MPs.

When a detainee arrives, they are assessed and inprocessed within 72 hours. I do not know of any SOPs being left behind or given to the 372d MP CO.

We at the BLD look at the prison from a Geneva Convention standpoint. We ensure that prisoners are treated properly, and that environmental conditions are correct.

The 372d MP CO was previously at Mosul. I am not aware of anyone else performing the prison mission before them.

We brought our regulations and documentation with us. I have walked throughout the compound and had casual conversations with the soldiers. We have a big switch of OIF1 and OIF 2 personnel.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1435, 1 May 2004.

The Article 32 proceeding reconvened at 1459, 1 May 2004, with all parties present.

SA [REDACTED] U. S. Army CID, Fort Jackson, SC, was called as a witness, sworn, and testified telephonically in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

I first became involved in the detainee abuse case when we received a anonymous letter and cd-rom containing pictures. In the preliminary stage of the investigation, I was the case manager. I left in February 2004. Our CID detachment was located at Abu Ghraib; we were three agents conducting interviews of prisoners. We also had three translators.

In order to find out who the detainees were that were abuse, we obtained logs of the prisoners that were in the isolation wing at the time of 7 November and a couple of other days.

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Initially, the person who came forward with the letter and cd-rom provided the names of the main persons involved. This was SPC [REDACTED], he went through the pictures with us and identified the military personnel involved. He identified the majority of the personnel, and knew who they were. Others, he did not know. We interviewed every single MI and military personnel that worked in the prison; we sent numerous requests for assistance to other CID offices worldwide to interview all other persons that were ever at the prison and identified in the photographs. I have no idea of any UCMJ action. The case is still open. I interviewed several hundred people, but I cannot remember a SPC [REDACTED]

I believe SPC [REDACTED] came forward because he knew this stuff was wrong, and that CPL [REDACTED] would go back to work in the isolation wing and continue the abuse. He wanted the abuse to stop. He received the pictures approximately one week before he came forward. He was weighing his conscience, and decided to do the right thing.

I think several people suspected abuse but did not report it. I don't know the status of any UCMJ against anyone. CID does not recommend what action be taken against subjects of our investigations. We just gather facts; the chain of command decides what to do. We briefed the Company and Battalion commanders about our progress during the investigation.

I remember my interview with SGT [REDACTED], he was interviewed twice. He lied in his first statement, and told the truth in his second statement; admitting to stepping, stomping, and jumping on the detainees.

After talking with the detainees and personnel, the names of the main perpetrators of the abuse were CPL [REDACTED], SSG [REDACTED], and SGT [REDACTED]. The ones taking pictures were SPC Ambuhl, PFC [REDACTED] and another I cannot recall. These names are based on the interviews, and who was there.

I recall the detainees mentioning SPC Ambuhl; they would refer to her as Miss [REDACTED]. I can't recall if she helped a detainee by giving him an inhaler.

When I interviewed a detainee, I explained why I was there, and just gave them a pen and a sworn statement form in Arabic or English; and they would write what they knew about the incidents. Their statements were later translated. If something wasn't clear, we had follow up questions. If they did not know someone's name, they were told to just describe that person using as much detail as possible.

I remember SGT [REDACTED] but not his statement. I remember SSG [REDACTED] once being a suspect; I thought he observed the abuse; he was later cleared of any wrongdoing. This was all based on our interviews of the personnel that were there.

SFC [REDACTED], as I remember was not involved. It became apparent through the course of the investigation, that the nightshift-- SPC Ambuhl, CPL [REDACTED], SSG [REDACTED], PFC

██████████, and on occasion SPC ██████████, would do these acts after SFC ██████████ had left; and after the chain of command had changed shifts and gone home. It became clear to me that they knew that SFC ██████████ would not tolerate these acts. There was one incident when SFC ██████████ was on the upper tier and saw an incident and ordered them to stop immediately; I believe he observed SGT ██████████ stepping on a detainee. They were shocked at how angry he was when he told them to stop. I don't believe that SFC ██████████ reported that incident.

I have no recollection of SGT ██████████ again, I spoke with several hundred personnel.

SPC ██████████ was identified as one of the people in the photos, but I don't recall his statement. He never came forward to report any misconduct to the CID office. SPC ██████████ and SPC ██████████ were MI soldiers identified in one of the photographs.

I am not sure of any UCMJ action pending on anyone; I left Iraq in February 2004, and until very recently, I did not know of anyone pending any UCMJ action. I turned the investigation over to SA ██████████. I don't know if he did any follow up interviews. We gave the 15-6 Investigation Staff a copy of our case file; we also provided the photos and statements we gathered.

I do not recall a SGT ██████████ again, I spoke with hundreds of personnel. Our main purpose was to identify the personnel in the photos; we also wanted to find out if MI told the MPs to do these acts. If so, we wanted to know who told them; that's why we interviewed everyone. No one said do this to that person, or anything specific. Our second purpose was to have the most thorough investigation that we could. We wanted to talk with each and every person mentioned in the interviews.

Most of the interrogators did not wear nametags. You knew who they were, if you knew them. We would figure out who was working, and interview all the handlers, interrogators, and guards.

I do not recall if there are any civilians involved in the investigation; several people were interviewed.

I remember ██████████. We listed someone as a subject if there was reasonable belief that they committed a crime. The investigative file is a working document, and the status of personnel involved may change. Like when SSG ██████████ was listed as a subject, and later taken off of the status report.

There are numerous things involved when determining if someone is derelict in their duty; if they inform their chain of command, then they are not derelict in my mind, and the way the UCMJ puts it, as I know.

No one reported any abuse up until January 15, 2004, to CID; however, there was one individual who reported the abuse to his chain of command—his NCOIC.

The NCOIC then went to SSG [REDACTED] to report the abuse; and because SSG [REDACTED] was the perpetrator in this incident, it did not go anywhere. The individual that reported it did the right thing.

Had SPC Ambuhl reported the abuse to SFC [REDACTED] she would not be a subject of the investigation. It would be different if she had reported it to SSG [REDACTED]; I am not a lawyer. This was an ongoing incident. The NCOIC that reported the incident to SSG [REDACTED] I believe, did not report it to anyone else. When he reported to SSG [REDACTED], he did not know that SSG [REDACTED] was the perpetrator.

I do not recall interviewing SPC [REDACTED] or SPC [REDACTED]. The investigation is still open, and pending a few requests for assistance. You can add and remove subjects as credible information becomes known.

I worked at Abu from October 2003 to February 2004; I would visit the Hard Site at least once or twice a week. We would interview suspects of crimes against U.S. Forces, or individuals who knew of deaths of U.S. Forces. On occasion, I visited with CPT [REDACTED] in tier 1a and 1B. I had no involvement with the Red Cross.

I heard of a deceased individual that was being stored at the facility, but I don't know the specifics. Our focus was Iraqis committing crimes against U.S. soldiers.

Based on our proximity and the amount of time, the 12th CID came over to help with the investigation. There were a lot of people to be interviewed. They were initially investigating hostile fire incidents. It was a higher priority to work the logistics of this case.

I had no interaction with SPC Ambuhl; I would see her when I went to the Hard Site. I did not see her commit any abuse. I only went there during the day in the morning; the alleged abuse happened in the evening or nighttime.

I never saw the detainees do any PT. I believe a SPC [REDACTED] or someone else hung a detainee in handcuffs for over six hours. I don't recall SPC Ambuhl letting the detainee down.

I don't recall if I interviewed PFC [REDACTED]. I read every document when I was there, but I cannot remember any statements that she made. I do not remember if she changed her stories; she may have. There were a lot of people and documents in this case.

We do criminal record checks on our subjects. I believe PFC [REDACTED] received an Article 15 for an improper relationship with CPL [REDACTED]. I believe CPL [REDACTED] was admonished, and they were told to stay away from each other. I don't remember if CPL [REDACTED] was recommended to take anger management by his commander.

When I interviewed the detainees, I did not provide any names. I would not ask, for instance, "Did CPL [REDACTED] hit you?"—I would simply ask "Were you in the isolation

wing-- and what happened when you were there?" We wanted a clear and unbiased environment.

I don't know if they wore their BDU Tops while in the isolation wing. I don't know if they were told to not use their first names; or to even use fake names. The MI personnel I interviewed never told me they told the MPs what to do to the prisoners.

In some of the incidents, some of the detainees being abused were not actively scheduled for interrogation. They were rioters. This appeared to me as just retaliation against the rioters. The riots were in separate camps.

We interviewed all of the MI personnel. No one admitted to telling the MPs to soften up any detainees; if they had, they would have been violating the UCMJ and the Geneva Convention. No one ever admitted to "good job, keep doing what you are doing".

MI had their very specific interrogation plan. It detailed things they could and could not do. No one I interviewed said they were abused during an interrogation. I am not aware of any MI investigation.

There was absolutely no evidence that the MI or MP chain of command authorized any of this kind of maltreatment. These individuals were acting on their own. The photos I saw, and the totality of our interviews, show that certain individuals were just having fun at the expense of the prisoners. Taking pictures of sexual positions, the assaults, and things along that nature were done simply because they could. It all happened after hours. The fear instilled in the prisoners after these incidents may have been a benefit, but I don't know for sure. These individuals wanted to do this for fun.

QUESTIONS BY THE GOVERNMENT COUNSEL (CPT [REDACTED])

Benefiting the interrogators did not come out in our investigation. The abused individuals were not going to be interrogated. The rioters would have been in another camp if they had military intelligence value. It is clear to me that the abuse was retaliation after the riot.

I know I am here today to help clarify the allegations against SPC Ambuhl. My investigation determined that she was present and took pictures. She is in the pictures with PFC [REDACTED] holding a leash around a detainee's neck. She is described as being present by some of the detainees during the abuse.

I do not recall her present at the riot incident. Our investigation did not determine her committing any abuse; nor did it determine that she stopped the abuse or reported the abuse.

I don't remember a statement from [REDACTED]. If he described a tall white female with green eyes named [REDACTED], he would be talking about SPC Ambuhl. I did not give the detainees any names.

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I told them to use the names if they knew them, and to describe what happened. [REDACTED] would also be SPC Ambuhl. In the Arab dialect, they have a hard time pronouncing [REDACTED] and end up saying [REDACTED].

QUESTIONS BY THE DEFENSE COUNSEL (CPT [REDACTED])

There was an amnesty period during the course of our investigation, ordered by the FOB Commander. We did not collect any of this evidence; none of it pertained to our investigation. We reviewed cds and media as requested by the chain of command. The commander had access to the amnesty boxes; it entirely a command function. The commander would have kept all the other contraband. We returned the stuff we reviewed to the chain of command to be destroyed.

The detainee statements were translated. [REDACTED] stated that all the guards were good except for SSG [REDACTED], CPL [REDACTED] and SGT [REDACTED], as I specifically recall. He also said that despite all the abuse, he realized that the majority of U.S. soldiers did not abuse detainees. He only pointed out SGT [REDACTED] and CPL [REDACTED] abusing him.

With neither side having anything further, the witness was warned not to discuss his testimony with anyone other than the parties present, and permanently excused.

The Article 32 proceeding recessed at 1608, 1 May 2004.

The Article 32 proceeding reconvened at 1617, 1 May 2004, with all parties present.

PFC [REDACTED], HHC 16th MP BDE (ABN) (REAR), Fort Bragg, NC, SC, was called as a witness, sworn, and testified telephonically in substance as follows:

The witness was read her Article 31 rights; she acknowledged and understood them, and stated that she would participate in the proceedings without a lawyer. Upon discussion with all parties present, the Defense Team decided that they did not wish to question PFC England.

The Article 32 proceeding recessed at 1640, 1 May 2004.

The Article 32 proceeding reconvened at 1643, 1 May 2004, with all parties present.

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

- Prosecution Exhibit 5: Sworn Statements of PFC [REDACTED]**
- Prosecution Exhibit 6: Sworn Statement of SPC [REDACTED]**

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The Article 32 proceeding recessed at 1643, 1 May 2004.

The Article 32 proceeding reconvened at 0713, 3 May 2004, with all parties present except for the Assistant Government Counsel.

The Government Counsel asked that the members of the 372d MP CO be declared unavailable since they could not make their convoy to Victory Base.

The following exhibits were presented by the Government Counsel and admitted into evidence as follows:

Prosecution Exhibit 7: CD Rom containing photos and video clips; with objection; the Defense objects to photos that do not pertain to SPC Ambuhl's charges.

Prosecution Exhibit 8: Sworn Statement of SPC [REDACTED]

Prosecution Exhibit 9A – 9O(oscar): Sworn Statement of detainees; with objection; the Defense objects to the statements of detainees that have been released.

THE GOVERNMENT RESTS

The following exhibits were presented by the Defense Counsel and admitted into evidence as follows:

Defense Exhibit A: 15-6 Investigation of 800th MP Bde

Defense Exhibit B: Rebuttal to 15-6, by SFC [REDACTED]

Defense Exhibit C: Rebuttal to 15-6 by 1SG [REDACTED]

Defense Exhibit D: Rebuttal to 15-6 by CPT [REDACTED]

Defense Exhibit E: Sworn Statement of CPT [REDACTED]

THE DEFENSE RESTS

The Government Counsel made a closing statement.

The Defense Counsel made a closing statement.

The Article 32 proceeding adjourned at 0814, 3 May 2004.

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UNITED STATES)

v.)

) GOVERNMENT'S RESPONSE
) TO DEFENSE MOTION TO
) DISMISS

) AMBUHL, Megan M.
) SPC, U.S. Army
) HHC, 16th MP BDE (ABN),
) III Corps
) APO AE 09342

) 21 AUGUST 2004

RELIEF SOUGHT

The accused requests that this Court dismiss Additional Charge I and its specification and Additional Charge II and its specifications for alleged failure of compliance with Rule for Courts-Martial (R.C.M.) 405(a). The government objects to the accused's motion and maintains that the accused was afforded a thorough and impartial investigation that fairly embraced the two additional charges. Consequently, the government requests that this Court deny the accused's motion to dismiss the additional charges.

BURDEN OF PROOF AND PERSUASION

The defense has the burden of persuasion since it is the moving party. R.C.M. 905(c)(2). The burden of proof that the defense must meet is a preponderance of the evidence. R.C.M. 905(c)(1).

FACTS

The accused, a military police enlisted soldier, was the noncommissioned officer in charge (NCOIC) of Tier 1B at the Baghdad Central Correctional Facility (BCCF), Abu Ghraib, Iraq during the latter part of 2003. The accused, along with a number of other co-accused, allegedly maltreated and assaulted foreign national detainees while acting as prison guards at the BCCF. The maltreatment was brought to light when a fellow soldier, Specialist (SPC) [REDACTED] delivered a compact disk to CID containing multiple pictures of detainee abuse. A co-accused, SPC Charles Graner, had given SPC [REDACTED] the compact disk and the accused appears in a large number of these pictures.

Captain (CPT) [REDACTED] preferred charges of conspiracy to maltreat subordinates, dereliction of duty, maltreatment of subordinates, and indecent acts against the accused on 20 March 2004. On 24 March 2004, the Special Court-

002642 APPELLATE EXHIBIT II

Recognized R. 16

Martial Convening Authority, Colonel (COL) [REDACTED] appointed Major (MAJ) [REDACTED] as the Article 32 investigating officer.

The Article 32 investigation was held on 1 May 2004 and re-opened on 3 May. MAJ [REDACTED] heard testimony from four witnesses and admitted nine government exhibits and five defense exhibits (See Summarized Transcript, attachment, Defense Motion). Of those exhibits, government exhibit #4 contained 18 photos (A-R), government exhibit #7 (a copy of the CD-ROM SPC Darby turned over to CID that contained numerous photos and video clips), exhibit #9 contained sixteen translated, sworn statements from the abused Iraqi detainees, and defense exhibit A was the lengthy Army Regulation (AR) 15-6 report prepared by Major General (MG) Antonio Taguba.

Subsequent to the Article 32 investigation, CPT [REDACTED] preferred two additional charges. The first additional charge was conspiracy to maltreat subordinates on 8 November 2003. This charge is connected to conduct that the accused was previously charged with in the first set of charges (See Charge Sheet, Charge III, specification 1, dated 20 March 2004). The second additional charge carried two specifications for maltreatment of subordinates on 23 October 2003 and 8 November 2003. Both of these specifications involve misconduct associated with the charges found on the original charge sheet (See Charge Sheet, Charge I and its specification and Charge III, specification 2, dated 20 March 2004).

LAW

Under Article 32, Uniform Code of Military Justice (UCMJ) and R.C.M. 405, no charge or specification can be referred to a general court-martial until all the matters set forth in those charges and specifications have been thoroughly and impartially investigated by an investigating officer whose function is to inquire into the truth and form of the charges and to make a recommendation as to the disposition of those charges. When reviewing an alleged error in an Article 32 investigation, substantial compliance is the appropriate legal standard. R.C.M. 405(a).

ARGUMENT

The accused complains that the additional charges were not subject investigation under Article 32, UCMJ. While it is true that the Article 32 investigation was not re-opened to specifically look at these additional charges, the subject matter of these offenses is the exact same as what was previously impartially investigated by MAJ [REDACTED]. The additional charges

are integrally connected to the original charges and are substantially similar to the charges and specifications MAJ [REDACTED], investigated on 1 and 3 May 2003. Consequently, R.C.M. 405 has been substantially complied with in the accused's case.

Stepping out of order and addressing the last of the additional charges first, additional Charge II, specification 2 is a violation of Article 93, UCMJ, maltreatment of subordinates. This charge is a clear outgrowth of Charge I and its specification, conspiracy to maltreat subordinates, on the original Charge Sheet. The Article 32 officer was presented with pictures showing the accused standing mere feet away as her co-conspirator, Private First Class (PFC) [REDACTED] holds a naked detainee with a leash wrapped around the detainee's neck. See Attachment 1, Article 32 - Exhibit 4A. In addition, MAJ [REDACTED] was also presented the sworn statement of PFC [REDACTED] acknowledging the accused's complicity that night. See Attachment 2, Article 32 - Exhibit 5.

It is well settled law that a co-conspirator is also legally liable for the substantive offense that is the object of the conspiracy. Furthermore, as the accused admits in her motion, in order for the government to be successful in proving the conspiracy charge both at trial and during the Article 32 investigation, all of the elements of underlying offense of maltreatment of subordinates must be proved. Additional Charge II, specification 2 merely adds this underlying offense to the listed charges against the accused. Since the accused was present at the Article 32 investigation, knew of the conspiracy charge and the underlying misconduct that was the object of the conspiracy, was afforded the right to representation and cross-examination, and did present evidence concerning this misconduct, R.C.M. 405 and Article 32, UCMJ has been substantially complied with in relation to this charge. R.C.M. 405(a).

The other two additional charges stem from the same night of abuse, 8 November 2003, that is the subject matter of Charge III and Charge IV on the original Charge Sheet.¹ During the Article 32 investigation, MAJ [REDACTED] received into evidence numerous photographs documenting the subject matter of additional Charge I and additional Charge II, specification 1 as well as the sworn statements of several co-accused that detailed the events of that night to include those of SPC [REDACTED] Sergeant (SGT) [REDACTED]

¹ While it is true that MAJ [REDACTED] stated that he did not believe there were reasonable grounds to believe that the accused committed these offenses, the convening authority was appraised of this recommendation prior to referral of both the original and additional charges. See Attachment 3, Pretrial Advice, dated 21 July 2004. The convening authority disagreed with MAJ [REDACTED] recommendation and, within his due discretion, decided to refer these charges to general court-martial.

██████████, SPC ██████████ and PFC ██████████ See Attachment 4-9, Article 32 - Exhibits 4J-0. It can hardly be said that the series of abuses that occurred the night of November 8 were not thoroughly investigated by MAJ ██████████. Moreover, like additional Charge II, specification 2, these additional charges have a clear relation to the original charges.

Additional Charge I and its specification is a conspiracy charge directly related to Charge III in that Charge III is the underlying offense of newly preferred conspiracy charge. Throughout the Article 32 investigation, it was clear that a number of soldiers acted in concert to maltreat and abuse soldiers on the night of 8 November. *Additional Charge II, specification 1 deals with the same sexual in nature misconduct as Charge IV, the forced masturbation of the detainees in her care. This is not a case where the misconduct was not investigated or the accused was not on notice of the conduct being investigated.

The amount of evidence that MAJ ██████████ reviewed, to include the large number of photographs, statements of co-accused, and the lengthy AR 15-6 investigation completed by MG Antonio Taguba, and the detail of his report clearly shows the absolute thoroughness of his investigation. The Article 32 investigation took in so much evidence that the government could determine no discernable benefit to re-opening the investigation for the additional charges that were fairly raised by the evidence adduced and which dealt with the same matter that had been investigated. This point is underlined by the inability of the accused to identify any witness or evidence that she would present in a re-opened Article 32 investigation.

The accused's inability to identify any benefit that she might receive from a re-opened Article 32 investigation forces her to take the untenable position that the only appropriate remedy is dismissal of the additional charges. However, if this Court should determine that the government erred in not re-opening the Article 32 investigation prior to referring these additional charges, the proper remedy would be to order the re-opening of the Article 32 investigation for a number of reasons. First, all of the cases that the accused cited in support of the proposition that dismissal is the only fitting remedy are cases that deal with remedying a defect to a pretrial right *after* trial on the merits. The accused's case is in a different trial posture altogether. A trial date has to be set. Discovery for the accused's case has been voluminous and is still underway. Evidence and investigations that the accused has specifically

requested is still being compiled and have yet to be released.² Even if this discovery is finalized and released in short order, a trial date for the accused is still at least two months away. This realistic assessment of the accused's case shows that there is ample time to re-open the Article 32 investigation and not unduly the accused's trial in the least.

The accused goes on to allege that "there was over two months of inactivity" in her case. Defense Motion at 8. However, this allegation belies reality. The actions of the accused and her co-accused have been the subject of numerous and wide-ranging investigations to include the AR 15-6 investigation conducted by MG Taguba, an AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones, and the extensive investigation being conducted the Criminal Investigation Division. As the Court and all of the participants in this case are well aware, these investigations, with the exception MG Taguba's investigation, have been active and have taken longer than originally expected to complete. Of particular interest to both the government and the accused, the AR 15-6 investigation being conducted by MG Fay and LTG Jones studying the role that military intelligence played in the abuses at the BCCF originally had a suspense date of 1 June that has been extended on a number of occasions so as to continue to interview relevant witnesses. It was only after the deadline for that investigation was extended yet again was the decision made to recommend and prefer the additional charges at issue.

² While trial counsel has yet to see the investigation, it has been reported that the AR 15-6 investigation conducted by MG George Fay and LTG Anthony Jones into the role that military intelligence played in the abuses will consist of over 8,000 pages of witness statements and supporting documents.

CONCLUSION

In sum, the accused received a thorough investigation into the charges that have been brought against him. Therefore, the defense's motion to dismiss should be denied.

[REDACTED]

CPT, JA
Trial Counsel

Delivered to defense counsel, by email, this 22nd day of August 2004.

[REDACTED]

CPT, JA
Trial Counsel

002647

**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 Exhibit

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UNITED STATES

v.

Megan M. AMBUHL
SPC, U.S. Army
Headquarters & Headquarters Company
16th Military Police Brigade (Airborne)
III Corps, Victory Base, Iraq
APO AE 09342

MOTION FOR EXPERT ASSISTANCE

16 August 2004

COMES NOW the accused, SPC Megan M. Ambuhl, by and through counsel, to request that Dr. [REDACTED] a psychologist, be appointed to the defense team, pursuant to Rule for Courts-Martial [R.C.M.] 703(d).

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion for Expert Assistance be granted and that Dr. [REDACTED] appointed to the defense team as an expert consultant with the expectation that Dr. [REDACTED] will also become an expert witness for the defense at trial. In lieu of Dr. [REDACTED] the defense will accept a comparable substitute expert witness, if once can be identified by the government. The defense further requests that Dr. [REDACTED] be designated as a member of the defense team under U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987), Military Rule of Evidence [M.R.E.] 502(a), and Article 46, UCMJ.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c). The current legal standard for employment of a defense expert is a convincing showing of a compelling need. See U.S. v. Cameron, 21 M.J. 59 (C.M.A. 1985).

C. FACTS

SPC Megan M. Ambuhl entered the U.S. Army Reserves in early 2002. SPC Ambuhl never served on active duty prior to this initial enlistment. In October 2002, SPC Ambuhl was notified that she would be activated in support of Operation Iraqi Freedom. As a civilian, SPC Ambuhl worked as a technician in a medical laboratory. She had no law enforcement training or experience prior to her joining the military as a Military Police Officer. As an MP, SPC Ambuhl was trained to conduct combat support operations, not relocation and interment operations. During her time in the military, she has never received any training on how to conduct detainee operations or how to work in a prison.

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APPELLATE EXHIBIT IV

Recognized R. 40

In October 2003, while deployed to Iraq, SPC Ambuhl and members of her unit were relocated from Hillah, to Abu Ghraib Prison or Baghdad Central Correctional Facility (BCCF). SPC Ambuhl was assigned to work at Tier 1B of the maximum security section of the prison. The command gave SPC Ambuhl this assignment because they needed a female soldier to work on the wing to assist with the female detainees housed on Tier 1B. SPC Ambuhl worked at BCCF until January 2004.

On 20 March 2004, CPT [REDACTED] preferred charges against SPC Megan M. Ambuhl for violations of the Uniform Code of Military Justice (UCMJ). The charges and specifications alleged the following UCMJ violations: Article 81 (conspiracy to commit maltreatment), Article 92 (dereliction of duty), Article 93 (maltreatment), and Article 134 (indecent acts). All of these offenses are alleged to have occurred at BCCF during the time of SPC Ambuhl's assignment to the prison.

On 6 July 2004, the defense submitted a Request for Expert Assistance, regarding Dr. [REDACTED] to MG Thomas Metz, Commander, III Corps. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein.

On 13 July 2004, CPT [REDACTED] preferred additional charges against SPC Ambuhl. The following violations were alleged: Article 81 (conspiracy to commit maltreatment); and Article 93 (x2) (maltreatment). These additional charges are alleged to have occurred at BCCF while SPC Ambuhl worked on Tier 1B.

On 21 July 2004, MG Thomas Metz, Commander, III Corps, referred the 20 March 2004 and the 13 July 2004 charges and specifications to a General Court-Martial.

On 14 August 2004, MG Metz denied the defense's 6 July 2004 Request for Expert Assistance. However, MG Metz indicated that the government would detail a military expert of suitable training, education, and experience to assist the defense.

On 16 August 2004, the government notified the defense of MG Metz's decision. The defense immediately requested that the government identify who they deemed as a suitable alternative prior to 23 August 2004.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. U.C.M.J. Article 46
- b. R.C.M. 703(d)

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- c. M.R.E. 502
- d. Ake v. Oklahoma, 470 U.S. 68 (1985)
- e. United States v. Ford, 51 M.J. 445 (C.A.A.F. 1999)
- f. United States v. Gonzalez, 39 M.J. 459 (C.M.A. 1994)
- g. United States v. Burnette, 29 M.J. 473 (C.M.A. 1990)
- h. United States v. Toledo, 25 M.J. 270 (C.M.A. 1987)
- i. United States v. Garries, 22 M.J. 288 (C.M.A. 1986)
- j. United States v. Cameron, 21 M.J. 59 (C.M.A. 1985)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion for Expert Assistance. The defense requests consideration of the following documents:

- a. Memorandum through SJA, III Corps, for CG, III Corps, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 6 July 2004
- b. Curriculum Vitae of ██████████ Ph.D.
- c. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]
- d. Memorandum for Defense Counsel for SPC Ambuhl, SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl, dated 14 August 2004

The defense may call SPC Megan Ambuhl to testify for the limited purpose of litigating this motion.

F. ARGUMENT

A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (C.M.A.), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her "[m]eaningful access to justice." Ake, 470 U.S. at 77.

Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate "a proper showing of necessity." U.S. v. Burnette, 29 M.J. 473, 475 (C.M.A. 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (C.M.A.), cert. denied, 513 U.S. 965 (1994); see also U.S. v. Ford, 51 M.J. 445, 455 (C.A.A.F. 1999).

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1. Why is expert assistance needed?

Expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all of the charges, with specific reference to SPC Ambuhl's complacency or inability to act. Dr. [REDACTED] is a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person's behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

Granting expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report, conducted by MG Taguba, is a "Psychological Assessment" conducted by COL [REDACTED] USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

Dr. [REDACTED] should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. [REDACTED]. Dr. [REDACTED] holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. [REDACTED] has provided evaluations of prison conditions and their psychological effects.

2. What would the expert assistance accomplish for SPC Ambuhl?

For SPC Ambuhl's case, Dr. [REDACTED] would provide invaluable insight and expert assistance. Dr. [REDACTED] will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. [REDACTED] will visit Abu Ghraib for a first-hand evaluation of the facility. He will review training documents and evaluate the training given to soldiers prior to their work at the prison. He will review the standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. [REDACTED] can also assist the

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CERTIFICATE OF SERVICE

I certify that this defense Motion for Expert Assistance was served on the government via e-mail to [redacted]@vcmain.hq.c5.army.mil and [redacted]@vcmain.hq.c5.army.mil and on the military judge via e-mail on 16 August 2004.

[redacted signature block]

CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

6 July 2004

MEMORANDUM THRU Staff Judge Advocate, III Corps, Victory Base, APO AE 09342-1400

FOR Commanding General, III Corps, Victory Base, APO AE 09342-1400

SUBJECT: Request for Expert Assistance in United States v. SPC Megan M. Ambuhl

1. The defense requests that the government appoint Dr. [REDACTED] as a confidential expert consultant to the defense team to provide advice on the psychological and sociological impact of working in a prison, areas of expertise that fall outside the experience of defense counsel.

2. A military accused has, as a matter of Equal Protection and Due Process, a right to expert assistance when necessary to present an adequate defense. See Ake v. Oklahoma, 470 U.S. 68 (1985); U.S. v. Garries, 22 M.J. 288 (CMA), cert. denied, 479 U.S. 985 (1986). Failure to employ this expert consultant could effectively deprive SPC Ambuhl of her ability to present a defense in this case and would deny her "[m]eaningful access to justice." Ake, 470 U.S. at 77.

3. Servicemembers are entitled to the assistance of investigative and other expert assistance when necessary for an adequate defense. See Garries, 22 M.J. at 290-91. To be entitled to investigative and expert assistance at government expense, the accused must demonstrate "a proper showing of necessity." U.S. v. Burnette, 29 M.J. 473, 475 (CMA 1990). The defense request must satisfy the three-pronged test for determining whether investigative and/or expert assistance is necessary: first, why the expert assistance is needed; second, what would the expert assistance accomplish for the accused; third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Gonzales, 39 M.J. 459, 461 (CMA), cert. denied, 513 U.S. 965 (1994).

a. First, expert assistance is needed to explore and develop possible defenses involving the psychological impact of prison environments on prison guards. An expert is needed to explore a defense to all four charges, with specific reference to SPC Ambuhl's complacency or inability to act. Dr. [REDACTED] a Professor of Psychology at the University of California, Santa Cruz. As one of the original researchers in the ground-breaking "Stanford Prison Experiment," Dr. [REDACTED] has dedicated over 30 years of research to the unique subject-area of prison psychology. Dr. [REDACTED] research has shown that prisons are powerful social settings and that much of what people do inside of them is shaped by the conditions that exist therein. Dr. [REDACTED] will analyze the situational pressures that may have existed at Abu Ghraib that may help to account for a person's behavior or inaction inside the prison. In addition to emphasizing the ways in which correctional officers must be elaborately trained to handle these pressures, Dr. [REDACTED] will analyze the way prisons can create potentially destructive tensions and psychological

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forces that must be controlled in order to prevent disintegration of an otherwise orderly prison environment.

b. Second, for the accused, Dr. ██████ would provide invaluable insight and expert assistance. Dr. ██████ will share insight with the defense team about how corrections officers are affected by living and working in prison environments. He will interview military police who worked at Abu Ghraib during the relevant time period, detainees who were held at Abu Ghraib, and SPC Ambuhl, to develop a psychological profile of those that worked at the facility. In addition to meeting with SPC Ambuhl to obtain a first-hand account of day-to-day life and operations at Abu Ghraib, Dr. ██████ will visit Abu Ghraib for a first-hand evaluation of the facility. He will review documents about the training that personnel were provided before beginning work at the prison and standard operating procedures at the prison. Essentially, he will evaluate anything that might bear on the situational pressures that were created inside the facility that might have influenced and affected those that worked there. Should SPC Ambuhl be convicted of any of the charged offenses, Dr. ██████ can also assist the defense in developing evidence in extenuation or mitigation, in effect, why good people do bad things.

c. Finally, the defense is unable, on its own, to gather and present the evidence that the Dr. ██████ would be able to develop. Neither counsel maintains any type of degree or background in psychology. Neither counsel has researched the psychological or social impacts of prisons on the corrections guards that work there. Dr. ██████ over-30-years of experience can not be replicated even with the most diligent of efforts by counsel. Further, Dr. ██████ is anticipated to testify at SPC Ambuhl's court-martial, a task clearly beyond the ethical boundaries permitted by any defense bar.

4. Authorizing expert assistance at government expense will provide the defense with equal access to the type of expertise that the government already has utilized in this case. The first annex to the government's AR 15-6 report is a "Psychological Assessment" conducted by COL ██████, USAF psychiatrist. This annex provides for the government an overview of life at Abu Ghraib and the effects on Military Police of working at the prison. The defense is asking for the same access to expert assistance as that provided to the government.

5. Dr. ██████ should be appointed to the defense team because there is no adequate substitute in the Armed Forces who has the same quantity or quality of experience as Dr. ██████. Dr. ██████ holds a Master's Degree, a Juris Doctor degree, and a Ph.D. in psychology, all from Stanford University, one of the premier academic institutions in the United States. He has dedicated over 30 years of his professional career to conducting research in this unique psychological field. For over 22 court cases, Dr. ██████ has provided evaluations of prison conditions and their psychological effects.

6. If this request is granted, the defense further requests that Dr. ██████ be bound by the attorney-client privilege under Military Rule of Evidence 502. The defense requests that Dr. ██████ assist in the investigation of the case, and, if requested, be present with SPC Ambuhl at trial as a

member of the defense team. It is also requested that confidentiality extend to all research assistants that may assist Dr. [REDACTED] in his work with the defense.

7. For his assistance, Dr. [REDACTED] charges \$175 per hour. He anticipates spending between 100 and 200 hours in preparation of SPC Ambuhl's defense. Once Dr. [REDACTED] is appointed to the defense team and is able to speak with SPC Ambuhl and to begin to review discovery documents, he can provide a more accurate cost/time estimate.

8. Once Dr. [REDACTED] is appointed, funding will be required so that Dr. [REDACTED] can travel to Iraq to consult with SPC Ambuhl and to visit the Abu Ghraib prison. Please inform us of your decision as quickly as possible so there will be no undue delays in this case. Dr. [REDACTED] intent is to visit Iraq in late August or early September 2004 to minimize disruption to his academic duties at UCSC caused by approximately 10-days of travel to Iraq.

9. Thank you for your prompt consideration of this request. If I may be of further assistance in this matter, please contact me via unsecured email at [REDACTED]@us.army.mil or by phone at DNV: 553-[REDACTED]

[REDACTED]

CPT, JA
Trial Defense Counsel

Encls

1. Curriculum Vitae of [REDACTED] Ph.D.
2. *Interpersonal Dynamics in a Simulated Prison*, 1 International Journal of Criminology and Penology 69-97 (1973) [the "Stanford Prison Experiment"]

CURRICULUM VITAE

[REDACTED]
Professor of Psychology
Department of Psychology
University of California, Santa Cruz 95064

home address: [REDACTED]
Santa Cruz, California 95062
phone: [REDACTED]
fax: [REDACTED]
email: [REDACTED]
birthdate: 3/8/47
citizenship: U.S.A.
spouse: Aida Hurtado

PREVIOUS EMPLOYMENT

1985- University of California, Santa Cruz, Professor of Psychology
1981-85 University of California, Santa Cruz, Associate Professor of Psychology
1978-81 University of California, Santa Cruz, Assistant Professor of Psychology
1977-78 University of California, Santa Cruz, Lecturer in Psychology
1976-77 Stanford University, Acting Assistant Professor of Psychology

EDUCATION

1978 Stanford Law School, J.D.
1978 Stanford University, Ph.D.
1971 Stanford University, M.A.
1969 University of Pennsylvania, B.A.

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HONORS AWARDS GRANTS

- 2004 National Science Foundation Grant to Study Capital Jury Decisionmaking
- 2002 Santa Cruz Alumni Association Distinguished Teaching Award,
University
of California, Santa Cruz.
- United States Department of Health & Human Services/Urban Institute,
“Effects of Incarceration on Children, Families, and Low-Income
Communities” Project.
- American Association for the Advancement of Science/American
Academy of Forensic Science Project: “Scientific Evidence Summit”
Planning Committee.
- Teacher of the Year (UC Santa Cruz Re-Entry Students’ Award).
- 2000 White House Forum on the Uses of Science and Technology to Improve
Crime and Prison Policy.
- Excellence in Teaching Award (Academic Senate Committee on
Teaching).
- Joint American Association for the Advancement of Science-American
Bar Association Science and Technology Section National Conference
of Lawyers and Scientists.
- 1999 American Psychology-Law Society Presidential Initiative
Invitee (“Reviewing the Discipline: A Bridge to the Future”)
- National Science Foundation Grant to Study Capital Jury Decisionmaking
(renewal and extension).
- 1997 National Science Foundation Grant to Study Capital Jury Decisionmaking.
- 1996 Teacher of the Year (UC Santa Cruz Re-Entry Students’ Award).
- 1995 Gordon Allport Intergroup Relations Prize (Honorable Mention)
- Excellence in Teaching Convocation, Social Sciences Division
- 1994 Outstanding Contributions to Preservation of Constitutional Rights,
California Attorneys for Criminal Justice.

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- 1992 Psychology Undergraduate Student Association Teaching Award
SR 43 Grant for Policy-Oriented Research With Linguistically Diverse Minorities
- 1991 Alumni Association Teaching Award (“Favorite Professor”)
- 1990 Prison Law Office Award for Contributions to Prison Litigation
- 1989 UC Mexus Award for Comparative Research on Mexican Prisons
- 1976 Hilmer Oehlmann Jr. Award for Excellence in Legal Writing at Stanford Law School
- 1975-76 Law and Psychology Fellow, Stanford Law School
- 1974-76 Russell Sage Foundation Residency in Law and Social Science
- 1974 Gordon Allport Intergroup Relations Prize, Honorable Mention
- 1969-71 University Fellow, Stanford University
- 1969-74 Society of Sigma Xi
- 1969 B.A. Degree Magna cum laude with Honors in Psychology
Phi Beta Kappa
- 1967-1969 University Scholar, University of Pennsylvania

UNIVERSITY SERVICE AND ADMINISTRATION

- 1998-2002 Chair, Department of Psychology
- 1994-1998 Chair, Department of Sociology
- 1992-1995 Chair, Legal Studies Program
- 1995 (Fall) Committee on Academic Personnel
- 1995-1996 University Committee on Academic Personnel (UCAP)
- 1990-1992 Committee on Academic Personnel

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1991-1992 Chair, Social Science Division Academic Personnel Committee

1984-1986 Chair, Committee on Privilege and Tenure

WRITINGS AND OTHER CREATIVE ACTIVITIES IN PROGRESS

Books Limits to Prison Pain: Using Psychology to Improve Prison Policy, American Psychological Association, forthcoming, circa 2005.

Articles

“Indifferent as They Stand Unsworn?: Pretrial Publicity, Fairness, and the Capital Jury,” (with [REDACTED]), in preparation.

“Death Penalty Attitudes, Selective Memory, and Instructional Incomprehension in Capital Jury Decisionmaking,” (with [REDACTED]), in preparation.

“Race and Capital Sentencing: Another Look at Discriminatory Death Sentences,” (with [REDACTED]), in preparation.

PUBLISHED WRITINGS AND CREATIVE ACTIVITIES

Monographs and Technical Reports

1989 Employment Testing and Employment Discrimination (with [REDACTED]). Technical Report for the National Commission on Testing and Public Policy. New York: Ford Foundation.

Articles in Professional Journals and Book Chapters

2004 “Special Issue on the Death Penalty in the United States” (co-edited with [REDACTED]), for Psychology, Public Policy, and Law, in press.

- "Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation, and the Empathic Divide," DePaul Law Review, 53, 1557-1590.
- 2003 "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," Crime & Delinquency (special issue on mental health and the criminal justice system), 49, 124-156.
- "The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment," in [REDACTED] (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press.
- "Comments on "Dying Twice": Death Row Confinement in the Age of the Supermax," Capital University Law Review, in press.
- 2002 "Making Law Modern: Toward a Contextual Model of Justice," Psychology, Public Policy, and Law, 7, 3-63.
- "Psychological Jurisprudence: Taking Psychology and Law into the Twenty-First Century," (with [REDACTED]), in [REDACTED] (Ed.), Taking Psychology and Law into the Twenty-First Century (pp. 35-59). New York: Kluwer Academic/Plenum Publishing.
- "Science, Law, and Psychological Injury: The Daubert Standards and Beyond," (with [REDACTED]), in [REDACTED], The Handbook of Psychological Injury (pp. 184-201). Chicago, IL: American Bar Association. [CD-ROM format]
- 2001 "Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times" (with [REDACTED]). In [REDACTED] (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association.
- "Afterword," in J. Evans (Ed.), Undoing Time (pp. 245-256). Boston, MA: Northeastern University Press.
- 2000 "Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty" (with [REDACTED]), Law and Human Behavior, 24, 337-358.

"Cycles of Pain: Risk Factors in the Lives of Incarcerated Women and Their Children," (with [REDACTED]), Prison Journal, 80, 3-23.

1999 "Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences ('The SPE and the Analysis of Institutions')," In [REDACTED] (Ed.), Obedience to Authority: Current Perspectives on the Milgram Paradigm (pp. 221-237). Hillsdale, NJ: Erlbaum.

"Ideology and Crime Control," American Psychologist, 54, 786-788.

1998 "The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment," (with [REDACTED]), American Psychologist, 53, 709-727. [Reprinted in special issue of Norwegian journal as: USAs fengselspolitikk i fortid og fremtid, Vardoger, 25, 171-183 (2000); in [REDACTED] (Ed.), Debating Points: Crime and Punishment. Englewood Cliffs, NJ: Prentice-Hall, in press; and in Annual Editions: Criminal Justice. Guilford, CT: Dushkin/McGraw-Hill, in press; [REDACTED] (Ed.), The American Prison System (pp. 17-43) (Reference Shelf Series). New York: [REDACTED] (2001).]

"Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency," Hastings Women's Law Journal, 9, 27-78.

"Becoming the Mainstream: 'Merit,' Changing Demographics, and Higher Education in California" (with [REDACTED]), La Raza Law Journal, 10, 645-690. [Reprinted in

1997 "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," (with [REDACTED]), New York University Review of Law and Social Change, 23, 477-570.

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MEMBERSHIP/ACTIVITIES IN PROFESSIONAL ASSOCIATIONS

American Psychological Association

American Psychology and Law Society

Law and Society Association

National Council on Crime and Delinquency

INVITED ADDRESSES AND PAPERS PRESENTED AT PROFESSIONAL ACADEMIC MEETINGS AND RELATED SETTINGS (SELECTED)

2003 "Crossing the Empathic Divide: Race Factors in Death Penalty Decisionmaking," DePaul Law School Symposium on Race and the Death Penalty in the United States, Chicago, October.

"Supermax Prisons and the Prison Reform Paradigm," PACE Law School Conference on Prison Reform Revisited: The Unfinished Agenda, New York, October.

"Mental Health Issues in Supermax Confinement," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

"Roundtable on Capital Punishment in the United States: The Key Psychological Issues," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

"Psychology and Legal Change: Taking Stock," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

“Economic Justice and Criminal Justice: Social Welfare and Social Control,” Society for the Study of Social Issues Conference, January.

“Race, Gender, and Class Issues in the Criminal Justice System,” Center for Justice, Tolerance & Community and Barrios Unidos Conference, March.

2002 “The Psychological Effects of Imprisonment: Prisonization and Beyond.” Joint Urban Institute and United States Department of Health and Human Services Conference on “From Prison to Home.” Washington, DC, January.

“On the Nature of Mitigation: Current Research on Capital Jury Decisionmaking.” American Psychology and Law Society, Mid-Winter Meetings, Austin, Texas, March.

“Prison Conditions and Death Row Confinement.” New York Bar Association, New York City, June.

2001 “Supermax and Solitary Confinement: The State of the Research and the State of the Prisons.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“Mental Health in Supermax: On Psychological Distress and Institutional Care.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“On the Nature of Mitigation: Research Results and Trial Process and Outcomes.” Boalt Hall School of Law, University of California, Berkeley, August.

“Toward an Integrated Theory of Mitigation.” American Psychological Association Annual Convention, San Francisco, CA, August.

Discussant: “Constructing Class Identities—The Impact of Educational Experiences.” American Psychological Association Annual Convention, San Francisco, CA, August.

“The Rise of Carceral Consciousness.” American Psychological Association Annual Convention, San Francisco, CA, August.

- 2000 "On the Nature of Mitigation: Countering Generic Myths in Death Penalty Decisionmaking," City University of New York Second International Advances in Qualitative Psychology Conference, March.
- "Why Has U.S. Prison Policy Gone From Bad to Worse? Insights From the Stanford Prison Study and Beyond," Claremont Conference on Women, Prisons, and Criminal Injustice, March.
- "The Use of Social Histories in Capital Litigation," Yale Law School, April.
- "Debunking Myths About Capital Violence," Georgetown Law School, April.
- "Research on Capital Jury Decisionmaking: New Data on Juror Comprehension and the Nature of Mitigation," Society for Study of Social Issues Convention, Minneapolis, June.
- "Crime and Punishment: Where Do We Go From Here?" Division 41 Invited Symposium, "Beyond the Boundaries: Where Should Psychology and Law Be Taking Us?" American Psychological Association Annual Convention, Washington, DC, August.
- 1998 "Psychology and the State of U.S. Prisons at the Millennium," American Psychological Association Annual Convention, Boston, MA, August.
- "Spreading Prison Pain: On the Worldwide Movement Towards Incarcerative Social Control," Joint American Psychology-Law Society/ European Association of Psychology and Law Conference, Dublin, Ireland, July.
- 1998 "Prison Conditions and Prisoner Mental Health," Beyond the Prison Industrial Complex Conference, University of California, Berkeley, September.
- "The State of US Prisons: A Conversation," International Congress of Applied Psychology, San Francisco, CA, August.
- "Deathwork: Capital Punishment as a Social Psychological System," Invited SPPSI Address, American Psychological Association Annual Convention, San Francisco, CA, August.
- "The Use and Misuse of Psychology in Justice Studies: Psychology and Legal Change: What Happened to Justice?," (panelist), American

- Psychological Association Annual Convention, San Francisco, CA, August.
- “Twenty Five Years of American Corrections: Past and Future,” American Psychology and Law Society, Redondo Beach, CA, March.
- 1997 “Deconstructing the Death Penalty,” School of Justice Studies, Arizona State University, Tempe, AZ, October.
- “Mitigation and the Study of Lives,” Invited Address to Division 41 (Psychology and Law), American Psychological Association Annual Convention, Chicago, August.
- 1996 “The Stanford Prison Experiment and 25 Years of American Prison Policy,” American Psychological Association Annual Convention, Toronto, August.
- 1995 “Looking Closely at the Death Penalty: Public Stereotypes and Capital Punishment,” Invited Address, Arizona State University College of Public Programs series on Free Speech, Affirmative Action and Multiculturalism, Tempe, AZ, April.
- “Race and the Flaws of the Meritocratic Vision,” Invited Address, Arizona State University College of Public Programs series on Free Speech, Affirmative Action and Multiculturalism, Tempe, AZ, April.
- “Taking Capital Jurors Seriously,” Invited Address, National Conference on Juries and the Death Penalty, Indiana Law School, Bloomington, February.
- 1994 “Mitigation and the Social Genetics of Violence: Childhood Treatment and Adult Criminality,” Invited Address, Conference on the Capital Punishment, Santa Clara Law School, October, Santa Clara.
- 1992 “Social Science and the Death Penalty,” Chair and Discussant, American Psychological Association Annual Convention, San Francisco, CA, August.
- 1991 “Capital Jury Decisionmaking,” Invited panelist, American Psychological Association Annual Convention, Atlanta, GA, August.