

- Q. So, at this point, would it be fair to say you weren't receiving a lot of feed back and communication with (b)(7)(C) about what to be doing and how to be conducting operations over there?
- A. No, not typically. (b)(7)(C) and I probably did the bulk of the planning.
- Q. After the shoot, you get back and find out (b)(7)(C) (b)(7)(C) is not happy with the fact that you fired two extra missiles?
- A. It didn't really happen that way. I got a radio call from (b)(7)(C) when I was about 10 clicks from Al Kut going North on that central road. He said (b)(7)(C) you need to talk to the S-3. I'm concerned that you might get in trouble about firing an extra missile. I said, roger that. That was the extent of the amount of time with (b)(7)(C) concerning that issue. I drove directly to the 3 shop at Blair Airfield.
- (b)(7)(C) the S-3, asked me why we fired a total of two extra missiles, and I said, sir, I wasn't running the range. I basically was going with the direction of the range OIC. And he said that was fine him and go back to the position. When I got back to the position, (b)(7)(C) asked me how the conversation went with 3. I told him exactly what I said and he said that's fine, I was concerned you might get in trouble. And left it at that.
- Q. Okay. Now, looking back at that, should you have done something like call back to (b)(7)(C) or called back to battalion to get some clarification on that?
- A. I suppose so knowing now that apparently someone did not do coordination with the range OIC. I should have, but maybe what I should have done was had my sergeants unload those extra rounds.
- Q. So you didn't --
- A. So we didn't even bring it up.
- Q. Another lesson learned?
- A. Yeah, it definitely was a lesson learned.
- Q. A couple of days later, somehow you get a tasking to go and patrol a checkpoint?

A. That's correct. 1st Marine Division started to task each one of the seven infantry battalions in theater at that point, start running checkpoints on the main supply routes. I asked higher, being my company commander, what type of SOP they particularly want us to set checkpoint up by, and he said there was none. And so, I talked to (b)(7)(C) We had a checkpoint class when we were in Camp Pendleton MOU training. So, we separated. I drew one picture of the way I thought the checkpoint should look, he drew another picture of the way he thought the checkpoint should look. We compared notes and the drawings were practically the same, so we just went with that SOP.

I double checked with the company commander on any special instructions that he might have and he said that all you needed -- the only instruction that he had, that he wanted me to do was go down to the MP station that said in Arabic "This is American military outpost checkpoint. Please comply with instructions." I was not actually running that checkpoint. At that point, my sergeants were running all the patrols. Myself, (b)(7)(C) (b)(7)(C) and (b)(7)(C) would go along to spot check things, at the most. It was the same technique that 2/8 would do. So, (b)(7)(C) who was in charge of that checkpoint, he and myself went into the MP station, we asked for that sign. That sign was being used elsewhere so we didn't have the sign. I contacted back -- actually, I had (b)(7)(C) contact back to (b)(7)(C) let them know we didn't have a sign and ask him if he still wants us to do the checkpoint. Yes, we were still supposed to do the checkpoint. So we went up to the position and (b)(7)(C) set everything up.

Q. Now, how many Marines were out there with you?
A. It was about 11. We had two vehicles worth of Marines, so actually, it was nine, about nine and one corpsman.

Q. And aside from sort of the obvious, setting up the checkpoint, what was your mission tasking?
A. Well, my mission tasking was to run a checkpoint. As far as I understood it, we were supposed to look for contraband. Contraband would be any type of weapons. They were not allowed to carry weapons

inside their cars. They could have weapons in their houses, but not in their cars, not even AK-47s. To look for any type of explosives, any type of military information that they might have.

Q. And you were supposed to be doing the searching as you were stopping the vehicles?

A. That's right. It was more of an inferred order. Division was a little bit vague about the checkpoints. They just wanted us to start patrolling the MSRs a little bit more.

Q. What guidance did you get from (b)(7)(C)?

A. To go out, set up a checkpoint, if there is contraband, take care of it.

Q. Okay. So did you set up a checkpoint?

A. Yes, we did.

Q. Did you start conducting operations?

A. Uh-huh.

Q. How many vehicles did you stop before the tractor trailer starting coming towards your position?

A. Well, if I could first throw this in. It was a checkpoint on both sides of the road. We had a northern portion of it and a southern portion of it. We were located right about here on this major road. Our ASP was over here. This is a high crime, high problem area for the Battalion. We set that checkpoint up and both, together, both the northern and southern portion of the checkpoint checked roughly 45 to 50 vehicles without incident.

Q. And do you have a personal recollection of seeing this truck approach the checkpoint?

A. Oh, yes.

Q. Explain what you saw.

A. I was assisting (b)(7)(C) on the southern portion of that checkpoint. We had (b)(7)(C) (b)(7)(C) who was out about fifty meters from us with a flashlight trying to wave vehicles down. And another 30 meters in front of (b)(7)(C) we had about 10 or 15 glow sticks spread out to try to alert the drivers. (b)(7)(C) had set up a (b)(7)(C) vehicle with (b)(7)(C). It had a Mark-19 on it, so we disengaged the Mark-19 -- we didn't want

to fire grenades on a vehicle that would try to run a checkpoint -- and (b)(7)(C) had a rifle. He was, essentially, the security for this checkpoint, so we had six people in that southern portion.

This large truck started coming at us. It was a Mercedes and it had two beds on it. It looked basically like an old 1950s version of the two bed trail trucks you see on the highways. It was stacked high with bags of something. We could see that it was really heavily loaded. (b)(7)(C) tried to flag this thing down. Instead of slowing down, he actually started to speed up to a considerable rate. (b)(7)(C) continued to try to flag him down and (b)(7)(C) moved out of the way, got out of the road. This vehicle was probably about 40, 45 meters from us at this point.

Q. When it was speeding up?

A. It had been speeding up for about 50 meters beyond that.

Q. Was one of the indications of the fact that it was speeding up the fact that the engine sound was louder?

A. Yeah. Well, it was roaring. Also, the driver starting to flash his lights. He started to honk his horn. And by then, he was probably going about 40 miles an hour, 45 or so. The vehicle got within literally 30 feet of myself, (b)(7)(C). At that point, we knew -- at least I knew it was going to go right through the checkpoint, a gigantic truck, and so, I opened fire on it. I was aiming at the engine block. I was trying to knock out the engine. I remember hitting it because there were sparks going off all around the engine.

(b)(7)(C) to the left of me was firing, (b)(7)(C) to the left of him was firing, and then (b)(7)(C) was firing also. And so, we were sort of hitting it from an angle. The vehicle passed us and the fifty gunner let loose a few burst. We saw the rounds come within ten feet of us at head level so (b)(7)(C), myself, and (b)(7)(C) flattened out. By about the third or fourth burst, they had a good burst in the engine block along with all M16 fire from (b)(7)(C) and a couple of other guys up there and

they knocked the thing out. The vehicle skidded to a halt and almost flipped into a ditch about 150 meters from where I was standing.

Q. And cease fire was called?

A. That's right. I remember hearing (b)(7)(C) (b)(7)(C) start yelling, cease fire, once the vehicle stopped moving.

Q. And these Iraqis came out of the cab?

A. They sort of fell out of the cab.

Q. Did they appear injured?

A. Yes. One of them had a hole here and a hole here. (b)(7)(C) thought they were bullet wounds, so he patched that man up, and the other one had a big gash in the back of his head, he was actually missing part of his scalp, and so he also did first aid on him.

Q. So the Marines were performing triage on these Iraqis?

A. Yes.

Q. And was a call placed then to get an ambulance out there?

A. Yes, I contacted (b)(7)(C). I gave them a spot report, told them what was going on, that we didn't have any casualties. There were two Iraqi casualties. That we have this big truck full of stuff that needs to be searched and he said he'd get an ambulance and the MPs out there.

Q. Why was it you called in for an ambulance?

A. I'm sorry?

Q. Why did you call for an ambulance?

A. We called for an ambulance because they were wounded. There was no way that our (b)(7)(C) could do real good care on them, especially if they were shot.

Q. You had some concern because of the way the vehicle was trying to get to the checkpoint, there might be something of intelligence value in there?

A. Absolutely. Since we had 45 to 50 other vehicles that stopped without a problem, we assumed this guy sped through for a reason.

Q. And he had this big trailer of bags?
A. Right. The bags were probably 50-pound bags?

Q. Did you have any idea what was in those bags before you searched the vehicle?
A. We had an idea in some of those bags because some of our rounds hit them. There was rice trickling out of them.

Q. But before the shooting started?
A. No. I just knew it was piled high with something.

Q. Okay. All right. And you requested some intel assistance?
A. That's correct. We requested intel assistance.

Q. Why did you do that?
A. Well, it just seemed to be the smart thing to do. None of my men spoke or read any Arabic. We had the -- I guess the basic rudimentary idea of how to search a vehicle from the little bit that we learned in Camp Pendleton; but we had two head teams which were collocated with us inside (b)(7)(C). And those guys didn't go out at night very often -- and I know this just because I was by them all the time, saw their operational tempo, and it made much more sense, in my mind, and also (b)(7)(C) mind to bring out the professionals, the guys who actually could do a good search and see if there was information of worth inside this vehicle. Plus, there were literally ten feet deep of bags and we couldn't get at the stuff underneath those bags. It's possible that something besides rice could have been hidden underneath those bags.

Q. And meanwhile, did you still have responsibility for the checkpoint's mission?
A. Yes. (b)(7)(C) decided to continue with the checkpoint after the wounded people were evacuated and we had turned in a wad of money, a roll of money, 500,000 dinars to the Iraqi police that came out with the MPs. We continued with the checkpoint. We probably checked another thirty vehicles, and, at that point, called back to (b)(7)(C) and requested permission to shut down the checkpoint.

Q. Why was that?
A. We had been out there searching vehicles from

roughly 2200 to 2330, which was roughly the time frame that they'd actually be out there for. They didn't want us to be out there for an hour or two. It was supposed to be, go out there, do your checkpoint search, come back. That's why we only had about nine guys with us.

Q. What happened?

A. (b)(7)(C) and myself, we had an impression from the MPs that the MPs were going to come back out to relieve us. We got that impression because a staff sergeant who was escorting the ambulance and the three or four MP vehicles said that he was going to talk to his OIC and have vehicles come back out to guard this vehicle since he didn't think that was necessarily our function. When I called back to (b)(7)(C) to request permission to regress from the situation or when the MPs were coming out, I was told that the MPs are not coming out, that you guys are going to be guarding this thing and do you need anymore supplies. At that point, we had enough water probably for three days and enough food for two, so we were fine in that regard. It was a little bit uncomfortable being in the middle of the desert with nine guys by a burned out vehicle by a couple of high crime areas. But I just said, okay. Roger that, and asked about the intel team. I was told the intel team wouldn't come out until the following morning.

Q. So, did you guy set up in a "D"?

A. We set up in a "D".

Q. What happened the next day?

A. Well, throughout the night, I stayed with the patrol, I didn't go back to (b)(7)(C). (b)(7)(C) and myself had been awake the whole night, we didn't sleep at all. We let our gunners sleep, specifically our machine gunners. We did roughly a 50 percent on, 50 percent off. That following morning, around 08, or actually earlier than that, I contacted (b)(7)(C) to see where the HEP team was and they said they really didn't know. We probably aren't going to have intelligence come out there until later. And I asked what do you want us to do.

At that point, (b)(7)(C) was not at the (b)(7)(C) (b)(7)(C) was not there, they only

had the Sergeant of the Guard. (b)(7)(C)
I requested to (b)(7)(C) that I talk to
(b)(7)(C) whenever he comes back.
Around 9:30 or 10, we finally got in touch with. I
finally got in touch with (b)(7)(C)
And (b)(7)(C) said he would work to
get a wrecker out there and he would try to see if
he could get some intel teams out there and to wait.
We waited, a wrecker really didn't come out for a
while. I want to say around 1100 or so, a wrecker
got out there and they tried to move the vehicle.

Q. How did that work?

A. It didn't work at all. It was just too heavy. They
basically almost burned out their tires trying to
spin this, just to move it.

Q. So then what happened?

A. Well, I contacted (b)(7)(C) and said the wrecker can't
move, what do you want me to do. And (b)(7)(C)
(b)(7)(C) asked me what the wrecker guys
thought about the wrecker not being able to move it.
So I double checked with them and they told me that
unless they had some real heavy assets -- I'm not
sure what that would be, because this was a big
truck that was trying to move this other truck --
that they weren't going to be able to budge this
thing at all. And so I asked (b)(7)(C) what he
wanted me to do, going back to (b)(7)(C)
earlier directive that if he's not in the CP, I
follow the directions from the company Gunny or the
First Sergeant. I asked the (b)(7)(C) what he wanted
and he said, well, you can't move it, you might as
well come back.

I double checked with the intel teams and they
weren't going to be coming out for one reason or
another. So I thought about that for a second or
so, a minute, and told my guys to search the vehicle
and to take anything that looked like it had
intelligence value, papers, documents, there was a
cassette tape in there, cassette tapes, anything
that had writing on it. And to pile that in the
sand bags and also to take all the personal items
that were inside of it and to pile those into
sandbags also.

Q. Why did you have sandbags?

- A. We carried extra sandbags just in case we had to mount a 50 on the ground. We needed to have a couple of sandbags over the thing or it jumps all over the place and you can't hit anything.
- Q. And how was it that someone had gone into the vehicle to get the 500,000 dinar?
- A. Well, neither one was really formal searches. That was a real hasty search right away after the guys had been wounded. We wanted to see if they had AKs in there, we wanted to see if they had grenades in the cab of the vehicle, the area which was easy to access. Instead, they just found this gigantic roll of dinars.
- Q. Why was it you decided to turn it over to the police?
- A. Well, it wasn't ours, so we decided that it was the Iraqi police's job to take care of anything along that nature. Those guys were wounded, they were going to the police station, excuse me, the hospital. It just seemed logical. I didn't want to have this wad of money out there.
- Q. So you go and have your Marines police up things that look as if they would have intelligence value?
- A. Right.
- Q. And did they go ahead and do that?
- A. They did.
- Q. As they were completing that, were you looking to move, egress from the situation.
- A. Yes. We were simultaneously searching the vehicle, about three or four people were searching the vehicle while we were moving our vehicles forward because we had actually pulled back about a hundred meters or so off the road into a more or less, a less conspicuous position. We were getting all our gear together, double checking to make sure we had everything that we brought out there initially, and policing up our own trash to include some glow sticks that we had out there.
- Q. Did one of your Marines grab some clothing and pillow items from the truck?
- A. Um hum. They were actually grabbing stuff from all over the place. The truck was large and it had a

bunch of bins in the side of it. In those bins, they had a tea set that I remember seeing, there was some other cutlery type items, maybe some cups, little tea type things, and they were putting everything as they went into the sandbags. The problem is, we ran out of sandbags. We only had a few of them. By then, we had been using quite a bit for other things. So they loaded all those things in sandbags, they had taken all the clothing out of the vehicle to search inside the clothing for any kind of documents. The clothing looked pretty ratty. Also, they took the seat cover off the vehicle to search inside the seat cover and to search inside of the cushion of the vehicle to see if anything was stuffed up into it.

We learned something about that in our hasty search class. They didn't find anything in there. My Marines next started to throw the clothing into the back of one of my vehicles. (b)(7)(C) was the person who was doing that. He took one of these long dish dashes, man dresses things, and threw it into the back of my vehicle. I remember, the clothing kind of covered all the stuff in the back because it was long and flowing. It was kind of yellowish looking and I had a sick feeling in my stomach at that point. It didn't look right, it didn't feel right. And one of my vehicles earlier had picked up some kind of fruit fly infestation. Going back to (b)(7)(C) the guy that almost got hit with the fragment in the stomach, I don't know what these guys did, but inside the vehicle, they had probably a hundred flies on any given day, and they couldn't get the stuff out.

- Q. How did the Iraqi men look in terms of their cleanliness when you saw them?
- A. Very dirty, disheveled. A lot of Iraqi men would take more time than American men to sort of primp themselves up before they go out in town. We'd see that in barber shops and all sorts of things like that. They were kind of -- they didn't have a lot of money, but they tried to look as good as they could. These guys did not look that at all. They looked kind of nasty, actually.
- Q. Okay. And the clothes that you saw in the back of your vehicle, they looked clean or they looked

- dirty?
- A. They looked dirty.
- Q. And seeing that, what did you tell your Marines to do with this clothing?
- A. I told (b)(7)(C) get that out of the vehicle, burn it, it's trash, it doesn't need to be in there.
- Q. Did you have some conversation with (b)(7)(C) about the fact it might have lice?
- A. I don't remember having a conversation specifically, these were the thoughts that were going on in my head. I think that was from my Marines discussing this amongst themselves that this stuff looks dirty and it might have lice.
- Q. So it was gathered up and were seat cushions put in there as well?
- A. Well, not a cushion, but the covering of one of the seats because we had thrown that in this pile of rags and dirty clothes while we were searching the vehicle.
- Q. How big was this pile?
- A. It was maybe this high and maybe this wide. It was maybe four garments. At that point, we had already taken their tea sets, taken some of their other personal items, their eating utensils, cassette tapes, all their papers and their documents and put that stuff and securing that in our sandbags. So this was what was left.
- Q. All right. And, did you consider this to be trash?
- A. Yes. I considered it to be trash and also just didn't like the idea of leaving a pile of anything out there in the theater probably because we were briefing that in the Czechian War, the Russians had a large problem with their troops rooting through crap on the sides of the streets and then the Czechnians using that to booby trap something. That thought kind of flashed through my head, and so it just seemed appropriate to burn it.
- Q. And, had you burned trash before?
- A. Oh yeah, we burned trash all the time. We had a gigantic pit of the stuff. There was all sorts of things that we would burn. We would burn our own MRE wrappers; we would burn our own old clothing, if

it got soiled; we had a lot of guys with dysentery; so we burned that stuff, we burn our crap or shit.

- Q. So, when this was being burned, were you concerned for your Marines' welfare about infecting their gear and bringing it back to (b)(7)(C)?
- A. Absolutely. I didn't want to take the chance of another fruit fly infestation or lice or whatever else could be inside of someone's clothing.
- Q. Okay. So what happened after that?
- A. Well, we drove back to (b)(7)(C).
- Q. At that point, had anyone inspected or had a chance to inspect the bags of rice that were on the trailer?
- A. No. We didn't really have a chance to do that. Some of my guys crawled on top of the trailer and started poking around the stuff they could get at. They poked around also at the external bags but they really couldn't get at the internal stuff, they couldn't get at the bed underneath it, it would have been kind of a long, tedious job to give that truck a thorough search.
- Q. Okay. Did you also have some concern that somebody, some other Americans or coalition force may come out there to inspect the truck?
- A. I assumed that at some point, somebody would come out there to inspect it. It seemed logical to me that the intelligence teams, once they finished whatever they were doing, would view that as an important item and come out and take a look at it.
- Q. And burning the clothes, was it also a concern that you didn't know whether or not, whether some enemy force may get it or whether some other Americans may show up and decided it might be a nice souvenir?
- A. Sure. Almost every one of my Marines had a Saddam Fedayeen helmet. We picked those things up. They found other souvenirs, telescopic sights, all sorts of other things. It didn't seem outside the realm of possibilities to take someone's clothing as a souvenir, especially something as exotic as one of those outer garments.

- Q. Did you try to discourage a Marine from collecting souvenirs?
- A. It depends on the souvenir. The helmets, that was no big deal, the sights themselves, not a problem. No ammunition, nothing that could explode. I did discourage them from rooting around in stuff out in the streets on patrols. In fact, they were very well discipline in that regard. Never saw them do that, but it was always a potential that one of the other platoons might do that at some point.
- Q. Okay. After you got back to (b)(7)(C) did you have a chance to talk to (b)(7)(C) about the checkpoint?
- A. Yes.
- Q. And what happened?
- A. (b)(7)(C) and I wrote up a report on the checkpoint. We covered the major incidences of that checkpoint and it was recorded in the logbook.
- Q. And what feedback did you receive from (b)(7)(C) concerning that?
- A. Well, we thought we did -- he actually didn't have a problem with the checkpoint itself. Initially, he was irritated that we had returned and no one was guarding the vehicle. I explained that to him by talking to him about the conversation I had with (b)(7)(C), who was essentially running the company at that time. And once I mentioned that (b)(7)(C) told me to come back, he didn't ask, he didn't say anything at all.
- Q. Okay. All right. Now, here we are June 28th. When do you find out that you are being investigated for this detainee incident?
- A. Well, I was relieved by (b)(7)(C) on the 3rd of July. My understanding from him was that the relief was going to be the end of it; but several days later, after I started working in the (b)(7)(C) shop, (b)(7)(C) came up to me and said I was being, that there was an investigation concerning me. They did not have any charges on the investigation. I asked him what I was being charged with he said nothing as of yet and he wanted me to make a statement concerning those two particular issues.
- Q. Okay. Now, your conversation with (b)(7)(C) occurred after you had been relieved. Right?

- A. That's correct. I don't remember the exact date. I want to say it was around 8 July, probably four or five days after I had been relieved.
- Q. So by the time you had spoke to (b)(7)(C), you understood that somebody in the Battalion wasn't happy with some of the actions you had taken?
- A. Yes.
- Q. Who did you believe was unhappy with your performance?
- A. (b)(7)(C) and (b)(7)(C).
- Q. Okay. How did you feel when you got relieved?
- A. I felt horrible, it was probably the worst day of my life.
- Q. So (b)(7)(C) approached you about writing something, recognizing that you had gotten in trouble with (b)(7)(C) and relieved. What was your approach on helping out?
- A. Well, at this point I had already talked to (b)(7)(C) (b)(7)(C). I told him what I had done, I had been relieved. I thought that was that. After telling (b)(7)(C) what I had done, I didn't feel obligated for an open ended investigation where I didn't even know what I was being charged with to talk to the government. I said look, I waive my -- I am not going to make a statement concerning this situation.
- Q. Okay. And did you become aware that this investigation was sort of building steam towards you?
- A. Yes. I actually -- when I was back at Blair airfield, I was living right across the tent from (b)(7)(C) (b)(7)(C) mentioned that he was looking into possible Geneva Convention violations concerning what I did. Every once in a while, over the roughly three and a half week period that I had before I was NJP'd, he would sort of chat with me a little bit.
- Q. Okay. You were aware that the investigation was taking place?
- A. Yes. I was aware that the investigation was taking place.

- Q. How did you feel at this point?
A. Well, I was feeling as if they were kind of kicking me while I was down already. I mean, they had fired me and the impression I got from (b)(7)(C) was that was that. He said that this conversation is going no further than me, you are relieved, get out of here. I was trying to make myself as useful as possible to the Battalion. I was working in the assisting (b)(7)(C), reading a lot of reports. He used some of my patrolling experience to get a better view point of the city itself. Not a happy time, that's for sure.
- Q. Okay. Did you continue on doing your job?
A. Yes, I did.
- Q. At some point, you got pulled in by (b)(7)(C) to help out with him. Right?
A. That's right. About the 17th, 16th or 17th of July, he coordinated with (b)(7)(C) and he wanted to know if I wanted to be the XO for his facility protective service.
- Q. What did you think about that opportunity?
A. It sounded great. It got me out of the tent, got me back out doing something besides reading a computer all day. I thought also that whatever would occur to me, occur with me during this investigation, at least I was continuing forward, that I wasn't sulking back in the rear.
- Q. And did you put your full effort towards this project?
A. Yes.
- Q. Did you harbor any bad feelings towards the Iraqis?
A. No.
- Q. In any of the actions that you did, you know, with the detainees and with the burning, did you do that out of spite or malice towards those Iraqis?
A. No, I didn't.
- Q. And, when you had the opportunity to work in the FPS, did you think, I don't want to work with Iraqis?
A. No. I actually, I was kind of excited by that. It sounded somewhat similar to the JTF mission that I

had done before. I didn't have any ill harbored feelings towards the Iraqis at all. I might have had some ill harbored feelings towards one or two members of the command, but that was about the extent of it.

Q. Okay. And what were your responsibilities and jobs with FPS?

A. Well, I was the defacto Executive Officer. That entailed ensuring that the training schedule, the logistics of the training schedule that (b)(7)(C) had set up for these people was taken care of. I would spot check a series of buildings that were being constructed. I actually took part in PT with the FPS guys, maybe every other morning. I was a demonstrator, showing them how to run the actual obstacle course. I got a lot of supplies out in town with my Staff Sergeant and a couple other Lance Corporals. I worked very closely with the coterie that were teaching the FPS. All those men were former Iraqi Army, Airborne, and Special Forces soldiers, specifically, sergeants. So, I was talking with them continuously.

Q. (b)(7)(C) -- (b)(7)(C), why don't you come closer up there.

Why don't you explain to the members what this picture is.

A. This is the first graduation of the first FPS class. It had about 185 men in it. That's (b)(7)(C) that's Colonel Couvillon, I'm taking the photograph, I'm right behind them. Some of what we did with the FPS -- and it was (b)(7)(C) idea -- was to introduce them to close order drill to develop a sense of comraderie and that sort of thing. And so, each one of the platoons was symbolized by a different color flag. This one had a white one, there was a black one, a green one. And so they marched in, and essentially, it was kind of like a small version of a boot camp. They received a couple of speeches, one from (b)(7)(C) one from (b)(7)(C). Of course, we had an interpreter there to tell them what was going on. We had honor graduates, there were a total of eight. Those guys were really fun to work with because they were very excited about this mission.

- Q. Now, did you understand that a part of this program was also to develop a sense of comraderie with the Iraqi people as sort of a nation building aspect?
- A. Oh, sure. You can see that by this flag here. There is a hand with an American flag on it and a hand with a Iraqi flag on it and they are both shaking each others hands. So that was a lot of it right there.

Myself, (b)(7)(C), (b)(7)(C), (b)(7)(C), (b)(7)(C), we spent a lot of time with the Iraqis. We spent a lot of personal time just listening to them, listening to the instructors go through their curriculums and helping them out.

- Q. What is this picture here?
- A. This was a good day. This was us at the rifle range. We taught the different members of the class how to shoot the AK-47 from a standing, kneeling, and also from a prone position.
- Q. Now, is this individual here a member of the FPS?
- A. Yes. And also that person right there is a member of the FPS.
- Q. Who?
- A. There's a person behind me.
- Q. And that's --
- A. That's me. All the members of the staff kept an eye on the actual training aspect of it. We let the sergeants, the Special Forces sergeants, do 95 percent of the instruction. We would just help out occasionally, just walking up and down the line, making sure they had adequate ammunition for the different rates of fire and spot checking. For example, a couple of these gentlemen were school teachers and they had kind of a difficulty learning how to shoot an AK-47?
- Q. Why don't you explain -- what was this scene?
- A. This was right after that initial parade sequence. This was a series of graduates right here and they were just tickled, they were very happy about having a job, being a part of the FPS. They were very proud of their uniforms and they just wanted to come up and have a picture taken with me. They had a picture taken with some of the other guys, too.

Q. How did you feel about that?
A. I thought it was kind of fun, it was kind of interesting. It was a pretty relaxed environment with these guys. They worked hard and we assisted them with what they needed.

Q. Are you proud of them?
A. I was very proud of them. Especially considering what they looked like when they first came in and how they ended up. They did more in probably two or three weeks than any other group of people I had seen.

CCFR: Gentlemen, these photographs are in the exhibit package that the respondent has provided.

Q. Moving in a sort of happier scene to a less one. Sometime in August, you got NJP?

A. Correct. I was NJP'd on the 1st of August.

Q. Do you recall when it was that you finally got to see the investigation which was the foundation for your NJP?

A. I received that the day before the investigation -- excuse me, the NJP. I took that entire day to read through everything to try to familiarize myself with it.

Q. And who did you request to give you this investigation? Who did you ask, who did you ask to have the investigation?

A. I asked (b)(7)(C) I asked him probably about the Monday before the NJP and I was NJP'd on a Friday, about five days ahead of time.

Q. And you received this investigation the day before the NJP?

A. Right.

CCFR: And I believe the investigation package is contained in Government's Exhibit, as a whole, number 8.

Let me just point this out to you, (b)(7)(C)

Gentlemen, excerpts of that have been included in the Respondent's Exhibit package.

The command -- if you look at Exhibit 8, if you

would, (b)(7)(C).

WIT: Sure.

- Q. Was that essentially, was it (b)(7)(C) investigation that you received on the 30th?
- A. No. I received (b)(7)(C) investigation along with the endorsement from (b)(7)(C) (b)(7)(C) (b)(7)(C), and the statements that were involved with the investigation.
- Q. Okay. And when you had asked (b)(7)(C) to receive a copy of this investigation, what was it that he told you as to what the hold up was?
- A. He said that (b)(7)(C) hadn't finished his endorsement letter and that once he had the endorsement letter finished, that he can give me that copy. He wanted me to have, in his words, the whole investigation.
- Q. And when you received this investigation, how much time did you have to contact a defense counsel?
- A. I had to contact him immediately.
- Q. Because you had your NJP the next day?
- A. Pretty much, yes.
- Q. Did you get in touch with some sort of defense counsel?
- A. Actually, I got in touch with the defense counsel two nights before the NJP before they had actually given me the investigation.
- Q. Did you get a chance to speak to this defense counsel again?
- A. Yes. I spoke to him about 10 minutes or 15 minutes over the phone.
- Q. Okay. Now, at the NJP, you were told that you were being charged with an orders violation for potentially Geneva Convention violations from taking the clothes of these detainees and a second charge relating to the destruction of these Iraqis' property with the clothes?
- A. Right.
- Q. How did you plead to those two charges?
- A. The first charge, with regards to destroying the

property, I pled guilty, because, in fact, I had destroyed the property. I talked to (b)(7)(C) (b)(7)(C) a couple of nights before or the night and a half before I actually got the NJP and I explained -- or we talked about that, and he thought that due to the small amount of clothing and also the fact that it possibly had some type of disease that in an NJP hearing with a General Officer, you probably would be able to be allowed to express the reasoning behind the action. So he agreed with that.

- Q. Now, why was it you pled not guilty to the incident where they alleged you violated the order?
- A. Well, I didn't believe I did anything that was conduct unbecoming of an officer. It was definitely a unique situation, but I felt that I had a viable reason for it. I wasn't trying to humiliate these guys, I was just trying to find a way to get them out of there, find a way to get them back to their house.
- Q. And when you had issued those orders, you didn't consciously recognize that you were violating any order; did you?
- A. No, not at all.
- Q. Of course, recognizing the lessons that you have learned, you are not saying by pleading not guilty that you didn't wish you had a chance to take back that decision?
- A. That's correct. I mean, if I could take it back right now to remedy this situation, I would.
- Q. Now what happened at this NJP?
- A. I was in an NJP with (b)(7)(C) which is (b)(7)(C) (b)(7)(C). There was a (b)(7)(C) who was there with me. I found out later his name was (b)(7)(C). (b)(7)(C) was there and (b)(7)(C) was there. They were standing directly behind me.
- Q. How did this NJP go?
- A. Essentially, (b)(7)(C) asked me how I pled to the first case. I said, I plead guilty, sir. And he said okay, we're not going to discuss that. How do you plead to the second case?

Q. Which was the orders' violation?
A. The orders' violation, the stripping of the prisoners and for that one, I pled not guilty. And for the next, probably 15 minutes, I was doing my best to try to explain the rationale behind the multiple captures, the danger of the ASP, the fact that we had our own ammo there, the police department, and the fact I wasn't doing this just to screw with these guys. I was doing this to actually get them to go home.

Q. And how was his response to that?
A. Well, his response was -- he started to -- he said that, essentially, that if I would have put them in prison for a time period, he would have understood that. He couldn't really see where I was coming from. A couple of times, he shouted me down, swore at me. At one point I, at this point, I really wasn't sure how to proceed with the NJP. I was doing my best to try to explain where I was coming from, but it was kind of limited.

Essentially, he declared me guilty on both accounts and went into a very long speech on how what I did was similar to the break downs in discipline that Lieutenant Cally's platoon started to do months before they started to have their problems with that particular village in Malay.

Q. And who -- did you know -- did you know who Lieutenant Cally was?

A. Oh, yeah, I knew who he was.

Q. How did you feel about being compared to Lieutenant Cally?

A. I thought it was a completely different situation. I thought there was no bearing whatsoever between murdering a large number of people and burning a small number of clothes that might have had lice in it and doing what I did to those four detainees.

Q. How did that make you feel as a person?

A. About that point, I started to get a little bit mad, to be quite frank, because it just seemed as if there was no way I could get across my opinion, but I felt somewhat ridiculous more than anything being compared to Lieutenant Cally.

- Q. Okay. You had some folks that came and testified on your behalf. Who were they?
- A. That's right. I had some of the same people that came in today, (b)(7)(C), (b)(7)(C), (b)(7)(C), and also (b)(7)(C).
- Q. Okay. The NJP wraps up, and then what happens next?
- A. At this point, I am escorted -- well, I am told I'm guilty. (b)(7)(C) said he was going to fine me and then he was going to take away my commission. He said I just didn't have whatever, I think he called it, the special thing that made Marine officers different. At that point, I felt horrible, he took me out, actually, (b)(7)(C) took me out to a back room and left me there for a moment and then came back with a two-page document that outlined all the, their version of all of the incidences, of the two incidences, declared that I was guilty on both accounts, and also stated what I did could have been a possible tipping point, something along those lines. And they compared me to the former Iraqi regime by being brutal and inconsiderate.
- Q. This was how long after the NJP?
- A. This was immediately after, literally 2 minutes afterwards.
- Q. And this documentation was already prepared?
- A. It was already prepared. It was pages. It was long. In fact, I have it back at my house. (b)(7)(C) said he advised me to sign it, take the NJP to avoid a court-martial and they would work to get me an honorable discharge. At that point, he left me. A moment or two later, (b)(7)(C) came in, and I had never spoken to him about these incidences at all up until this point. The only person I discussed them with in the Battalion staff was (b)(7)(C) and he said, essentially, that it was a shame that this happened. He thought that one or two minor mistakes was too bad. He said, just sign the paper work, I will put you in for an honorable discharge and hopefully, we don't want this to get out for other people to hear.
- Q. And at that time in the conversation with (b)(7)(C) (b)(7)(C) that had been -- how many times

had you talked to (b)(7)(C) in your entire experience in the Battalion?

A. In my entire experience with the Battalion, I believe I talked with (b)(7)(C) three times. Once when we were loading on the planes to go to 29 Palms, he introduced himself, I introduced myself, that was it. A second time, he wanted to know how my platoon was preparing itself for operating inside the cities. I discussed different types of firing techniques with the Mark-19 using a forward spotter to guide the rounds and same thing with a 50-cal. And the final time I talked to him was giving him a short intelligence brief while I was working for (b)(7)(C). It was just a routine type thing. It had nothing to do with any of these incidences.

Q. And then this last time after the NJP, that was the 4th time you had spoken to him?

A. That's right.

Q. Then what happened?

A. I signed the paperwork accepting the nonjudicial punishment, was told I had five days to appeal if I wanted to.

Going back to (b)(7)(C), he said that I was going to be on the first plane leaving theater and he told (b)(7)(C) to get me out of there. So I went back to the Battalion, I went back to the FPS area. I had no idea when the first plane was coming in, so I actually went back to doing my duty as the (b)(7)(C). I worked there until the 3rd, then they pulled me out. (b)(7)(C) on the night of the 2nd presented me with three pieces of paper. I had not written these pieces of paper, they were pretyped. Basically, it was going along the lines of, I would request an honorable discharge in lieu of a board of inquiry. I would request a general discharge in lieu of a board of inquiry, I would request an other-than-honorable discharge in lieu of a board of inquiry.

Q. Or a resignation of your commission?

A. And a resignation of my commission in lieu of a board of inquiry. I had been counseled by (b)(7)(C). I had been counseled by

(b)(7)(C) been told by the General that he wanted to take my commission away. I didn't really see what kind of options I had at that point. So (b)(7)(C) said that he thought that if he was in my position, what he would do is sign the honorable one due to the nature of what I did, and we would probably avoid a board of inquiry.

Q. And so?

A. And so resign my commission honorably.

Q. So you signed it?

A. I signed it.

Q. At this point, how are you feeling?

A. Bad, not very good at all. I felt as if, I definitely felt as if the deck was stacked.

Q. Now, you get back on the airplane and back to the United States. And do you start thinking about what had happened and what you were going to do with picking up your life?

A. Yes, I thought about that. I talked to all my family members, trying to come up with viable options for what I could do. After talking to my parents, they couldn't believe what had happened or at least the way it had happened. And so we tried to figure out how to remedy the situation and also how I could actually pick up the pieces and start doing something useful and put as much of the bad aspects behind me.

Q. And what did you do?

A. Well, with regard to civilian aspect of it?

Q. Yeah.

A. Well, I wasn't really in the mood to go back to sales at that point. I wanted to do something sort of low key. I have always been interested in history and so I wanted to go back to [redacted] and enroll in their history department or their language department, but at that point, I didn't have the money to do it. So, I probably did the best thing one could do in (b)(7)(C) when one doesn't have a job, I became a bartender. There is no shortage of bars there and that's what I have been doing ever since.

- Q. Did you go to some sort of night school to learn how to do bartending?
- A. I went to a bartending night school.
- Q. Is that what you are doing now?
- A. That's what I'm doing now.
- Q. And, some point along the way, is it fair to say that you said, might have made some mistakes, but I didn't deserve to be kicked out and treated the way that I did?
- A. That's right.
- Q. You decided maybe you wanted to try to fight this?
- A. Yes. I looked at it and I didn't see any type of way I could do it that effectively, so I did what some people did and I, essentially, contacted my Congressman.
- Q. And you submitted basically what is known as a congressional inquiry request?
- A. That's right.
- Q. And did you ever, what was your thought process in what you were hoping to accomplish?
- A. Well, at that point, I decided I didn't want to resign my commission. I felt that, essentially, I was put in a position where I had a lot of bad choices and only one bad choice to choose from without any real good counsel around me to talk to. So, I reevaluated the situation, especially after talking to my family, most of whom were in the military in combat, and I got their impressions of what occurred and I felt as if I might not get my commission back, but I am going to try the best I can and just give it a try.
- Q. Now, at what point did you learn that the Secretary of the Navy had disapproved your request for resignation?
- A. That was when I was contacted by a (b)(7)(C) and said that I was going to be going to a board of inquiry.
- Q. Despite the fact that you tried to resign, you were told that the Secretary of the Navy wanted to put you in front of a BOI?
- A. Right.

- Q. And how did you feel about that?
- A. At that point, it didn't surprise me too much, but I felt bad about it. I thought it was pretty shitty.
- Q. And the rest is history, so to speak?
- A. That's correct.
- Q. What is it you hope that you can do and convince this board to do for you?
- A. Well, I would hope that they would see that the actions that I took were taken for tactical reasons. It might have made unique and probably not the best decisions at the time, but they were made, at least I made a decision in situations. I didn't have a lot of guidance throughout those two months and that, essentially, I did the best that I could with what I had. I would hope that you, Gentlemen, would see that I am sincere about wanting to get my commission back so I have the option of going back to serve the Marines or the option of other types of federal service, if I decide to do that.
- Q. And do you feel that your decisions that you made while you were, you know -- wish you could take some of them back -- were made in the best interest of trying to protect your men?
- A. Yes. That is what I was focusing on the whole time. Those ASPs were extraordinarily dangerous. I briefed my higher headquarters, my company commander numerous times on the problems with the ASP. And when I went to talk to (b)(7)(C) on the 2nd of July, he was very, he didn't know that the ASPs were having explosions. He didn't know of the large influx of people going into them. That concerned him.
- Q. Now, were your decisions also made because you were looking after the welfare of the Iraqi people?
- A. Yes, inevitably. If those people had gone back into that ASP, it's possible they could have been shot. If they are dead, that's definitely worse off than being stripped down to their shorts and getting on a bus and going home. Those ASPs, I couldn't tell you how many people died inside of them. Some of my guys guessed dozens, maybe upwards of a hundred. They saw groups of five people run in there and five people didn't run back out. So trying to come up with a coherent plan to secure the ASP is not just

the ammunition, but also for the safety of my Marines and the safety of the Iraqis who kept going into them. It was very much in my mind.

Q. Now, (b)(7)(C) if you had the opportunity and the board decided to vote for your retention, if you were asked to go into combat next week, would you willingly go?

A. Absolutely. I actually asked to be extended over there before I was relieved. It was an interesting mission. Of course, now it would obviously be a lot more frightening, but I would go back.

CCFR: Gentlemen, if I may have just one second, I think I have my questions wrapped up. I just want to confer with my co-counsel.

SRMBR: Okay.

CCFR: (b)(7)(C) I don't have any further questions. (b)(7)(C) has some, please answer hers.

Gentlemen, would you like to take a break or shall we carry forward?

SRMBR: No.

Cross?

REC: Sir, if we would take ten minutes.

SRMBR: We'll take a ten-minute recess.

The Board of Inquiry recessed at 2017 hours, 6 April 2004.

The Board of Inquiry was called to order at 2030 hours, 6 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the board recessed are again present.

The recorder will note the time and date in the record of proceedings.

REC: Sir, the time and date is 2030 on 6 April.

SRMBR: Thank you.

CROSS-EXAMINATION

Questions by the Recorder:

- Q. I am going to show you some documents, (b)(7)(C) (b)(7)(C). This is in Record's Exhibit 4, that is the first endorsement on CG, 1stMarDiv's letter notifying you of the Article 15 proceeding.
- A. Is this your signature?
Yes, it is.
- Q. And this is the correct date, the 1st of August 2003?
- A. Yes.
- Q. Now, this letter states "I hereby acknowledge understanding the advice stated the commander's notification letter," which is this first letter of 28 July 2003.
- A. Did you have a chance to go over that letter prior to signing the notification?
May I see the first one, please?
- Q. Sure.
- A. Yes, I did.
- Q. Okay. And that 28 July letter states what violations you are charged with. Correct?
- A. Correct.
- Q. And in the notification, the endorsement, this first paragraph says that "I hereby acknowledge and understand my right to demand trial by court-martial in lieu of NJP. I do not demand trial by court-martial and willingly accept punishment under the Article 15 of the UCMJ and I have had opportunity to consult with a lawyer."
- A. Correct.
- Q. Is all that true, do you understand you had the right to demand a trial by court-martial?
- A. Yes. In fact, (b)(7)(C) and I discussed the possibility of requesting a court-martial and I was advised by him that due to the nature of the offenses, that they were probably not going to be a

career ender, that was, essentially, what he said. And to just try to explain as best you could why you did those particular things; and he didn't think that a General Court-Martial was necessary. And also, I found out from (b)(7)(C) earlier, roughly two or three days beforehand before the actual NJP that the Battalion was not going, or excuse me, that the Division was not going to seek a General Court-Martial and that led me to believe that some other type of processing would occur where I would be able to explain myself.

Q. So you willingly accepted the NJP?

A. Yes.

Q. I'm turning to Recorder's Exhibit 6, which is the record of nonjudicial punishment. It's the summarized transcript of what occurred at that NJP. Its --

CCFR: Excuse me, I don't really have an objection. I just want to make clear on the record that it's a summarized, it's a summary. It's not a transcript like from a literal interpretation of what occurred, so I just don't want there to be a confusion that this is, in fact, a verbatim.

SRMBR: I understand. We read it. We know what it is.

REC: It is this CG's --

SRMBR: My question is, who did the summary?

REC: It doesn't say, sir, I don't know.

SRMBR: Some recorder at the proceedings?

REC: I assume so, sir. A court reporter just like (b)(7)(C) (b)(7)(C). Otherwise, I don't know for sure.

WIT: There was no court reporter there at all.

SRMBR: Okay.

MBR (b)(7)(C): Was there any tape recording going on?

WIT: Not that I saw, sir. They didn't say they were going to be recording it. It was just (b)(7)(C)

(b)(7)(C) to my right, (b)(7)(C) and
(b)(7)(C) directly behind me to my left, and
(b)(7)(C) standing in front of me. I didn't see
any recording instruments. They didn't say anything
that they were going to be recording.

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

Questions by the recorder continued:

Q. In this summarized transcript, this commanding General says he asked you if you had been fully informed of your rights to NJP including your 31 Bravo rights and if you were aware of the charges against him -- against you -- and then it says that (b)(7)(C) acknowledged and understood all his rights and that he voluntarily accepted NJP; is that correct?

A. That is correct.

Q. On page 2 of the transcript, the CG states that he reviewed the evidence with you, specifically, (b)(7)(C) (b)(7)(C) investigation. He then asked if you were aware of the government evidence. You stated, yes, and that you did not desire further review?

A. That's not entirely true.

Gentlemen, I brought up the point that two people who were in that investigation were not entirely truthful with what they said, one being (b)(7)(C) (b)(7)(C), the other being my company commander. The (b)(7)(C) stated that I had forced him to disrobe those people and escort them out of the front gate. That did not occur at all. When I tried to bring that up to the General, that was one of the points where I was yelled at and told to "shut the fuck up" by the General. And also, essentially, the other issue didn't come out until later.

Q. And then this other issue is on page 3, I believe, about (b)(7)(C) account is inaccurate. This is your accused comments here that is in the transcript?

A. Right.

Q. But, any other objection to the evidence besides those two things or your chance to review?

A. Well, I assumed I would have a chance to explain myself with regards to the burning of the clothing. I did not have a chance to do that for whatever reason.

Q. But you had pled guilty to that charge?

A. That's correct.

Q. Did you consider yourself guilty of that charge?

A. I considered that I did destroy that clothing.

Q. The summarized transcript on page 2 states that you stated that you didn't have an excuse for that. That that was stupid and you don't really have a good explanation as to why you did it?

A. That's not true. I kind of wished somebody would have recorded this, but I was not allowed to explain why I did that. I, in fact, he merely asked me, did you burn the clothing, do you plead guilty or not guilty. I said, I plead guilty; and then we moved directly on to the next particular instance.

Q. So this whole paragraph on the page 2 is completely inaccurate and you stated the first incident was stupid and that you didn't have a very good reason for it.

A. Is that completely inaccurate?
May I see that whole paragraph?

SRMBR: Sure. What I am referring to is the accused's comments.

CCFR: I would just ask if the witness is going to be cross-examined on this that he have a copy to review as he's being questioned on it.

REC: Sure, yes, sir, that's fine.

WIT: No, parts of it are correct. I did plead guilty to the first charge as I talked to (b)(7)(C) about. I did burn the clothing. (b)(7)(C) felt that by pleading guilty, well, not by pleading guilty, but that I would be allowed to explain myself. I didn't get a chance to explain myself and I certainly didn't say what I did was stupid. However, in retrospect, I would not burn the clothing. I feel as if, no, I didn't say this at

all.

Q. Thank you. I will retrieve this from you.

You stated that after -- on direct, you stated that after the NJP, you felt that you weren't able to give your side of the story to the General; is that right?

A. With regard to the first incident, I wasn't. With regards to the second, I got a lot of it out, but I was shouted down at one point or another. In his final statement, I got the impression that he understood that I was trying to remedy the situation. I just don't think he understood that I was trying to remedy the situation, kind of an unwinnable situation, as best as I could.

Q. So you had some misgivings about the NJP after you left the NJP?

A. Yes.

Q. Now, the time after you were at division and when you were sitting by yourself, when (b)(7)(C) came back he had some documents for you to sign; is that correct?

A. Yes.

Q. How long were you sitting there by yourself?

A. Maybe, a minute at the most. It was a very, very short period of time.

Q. Now, one of those documents, Recorder's Exhibit 4, which is the acknowledgement of NJP Appeal Rights that is dated August 1st?

A. Yes.

Q. Now, is that your signature?

A. Yes, it is.

Q. And your initials?

A. Uh-huh.

Q. And your initials indicate that you do not intend to appeal the imposition of NJP?

A. Correct.

Q. And that you desire to submit a request in resignation of lieu of admin sep processing?

A. Correct.

Q. You also, on that same day, I imagine this occurred at the same time, you received a punitive letter of reprimand?

A. Right.

CCFR: What exhibit is that, (b)(7)(C) ?

REC: That's in Recorder's Exhibit 5.

Q. And there was a letter, I believe, that last paragraph you referenced about comparing your actions to what the former Iraqis did?

A. I'm sorry?

Q. That last paragraph on the first page, I believe, this is mentioned a letter that you received. I just want to demonstrate to the members this is the same letter that you are talking about where it talks about your actions being compared to what former Iraqis did.

A. Yes, that's correct. Specifically that last sentence.

Q. You had a chance to read over that document on that day?

A. Yes.

Q. This is the third page to that. Is that your signature?

A. Yes.

Q. And your initials?

A. Um hum.

Q. And this page is indicating that you do not intend to appeal your letter of reprimand. Correct?

A. Correct.

Q. I'm turning to Recorder's Exhibit 7. This is the section dealing with your Congressional inquiry. You stated here, on the 4th paragraph, that "I was never formerly charged with the Uniform Code of Military Justice"?

A. That's correct.

Q. Is that your understanding?

- A. Well, that investigation -- I never knew what I was essentially charged with and I did not know who had charged me. Essentially, between the timeframe up until just beforehand of the NJP, I didn't even have a copy. I really didn't know what was going on, what the focus was of the investigation. I had a chance to find out in the end. (b)(7)(C) mentioned that he was looking into Geneva Convention violations of me, but I didn't see that investigation until the day before the NJP.
- Q. On the day before the notification of rights, I believe you said on direct, that (b)(7)(C) prior to the NJP notification, told that you were being investigated with possible Geneva Convention violations?
- A. Kind of. What it was that before (b)(7)(C) relieved me of duty on the 3rd, (b)(7)(C) pulled me aside and said that I'm looking into possible Geneva Convention violations on you and that's probably part of the reason you are seeing (b)(7)(C) (b)(7)(C) right now.
- Q. Okay. You were informed of the charges against you; weren't you, at the NJP?
- A. Yes, definitely by then.
- Q. Okay. So you were formally charged with a violation of the UCMJ; weren't you?
- A. Inevitably. But my understanding was that formal charges would include, you are going to be charged with this and this, and then they do the investigation, not necessarily find out exactly what I'm being charged with the day beforehand just by having a series of documents handed to me for me to dig through.
- Q. I think we are playing a bit of word games here. You are saying you were never formally charged with violations of the UCMJ. Now, I read that sentence as you are saying, you're telling your Congressman that I was never formally charged with a UCMJ violation, whereas, we have documents, several of them, showing that you were charged with UCMJ violations and you were aware of what those violations were.
- A. At the NJP, by then, I definitely was.

Q. You also state that I was, you were told that you must resign your commission in lieu of a board of inquiry without a guarantee of any type of discharge. Is that -- is that still your testimony?
A. Can you repeat that?

Q. Sure. This is the last paragraph, it's the first sentence.

A. That's correct.

Q. So you are, you are standing by that statement that you were told you must resign your commission and that you were not guaranteed a type of discharge?

A. (b)(7)(C) said, literally, I am taking your commission away from you, and after work, the paperwork started to roll through. I don't have a lot of background with the legal nuances of a Division level NJP, so that could be where, it was very confusing.

Q. Did you read in your notification -- this is back on Recorder's Exhibit 4 -- your notification is on page 3 of that notification, of what the maximum punishments could be at NJP.

Did you at least talk with your defense counsel -- well, I can't get into client matters -- but did you at least read -- this is page 3, I am referring to, paragraph 4 -- the maximum punishment that could be imposed in an NJP: reprimanded; 30-day arrest in quarters, or 60-day restriction; forfeit half of one months pay for two months?

CCFR: Now, I'd like to object, sir. This is all documentation that is provided already to the board. I mean, the purpose here is evaluating the fitness for conduct. (b)(7)(C) has admitted that he accepted NJP. This process here isn't to appeal or to reverse the NJP or the documentation which exists in his record. The papers and documents speak for themselves.

SRMBR: That okay. We'll let the recorder proceed.

Questions by the recorder continued:

Q. Did you recall that part of the notification dealing with max punishments?

- A. I didn't quite understand the first part of your question.
- Q. Okay. This is part of the 28 July letter from the General to you notifying you of your NJP. This is that last paragraph talking about max punishments. Typically, most people that go to NJP want to know what could happen to him or her in NJP. Would you agree with me on that, that knowing what your potential punishments are are pretty important in making your decision whether you want to take NJP or go to court?
- A. Yes.
- Q. Okay. So max punishment would be something that is an important section. The max punishment section here states you could accept NJP, the max punishment is reprimand, 30-days arrest in quarters or 60 days restriction, and to forfeit half of one months pay for two months.
- Do you have a recollection as to your understanding of what the max punishment was based on this notification letter?
- A. Yes, just that.
- Q. Okay. Any place in that max punishment or that notification letter, does it state that the General could take your commission away from you?
- A. No.
- Q. If the General could take your commission away from you, don't you think you would have been notified of that?
- A. I have no idea.
- Q. Don't you think that would be in your max punishment, which a Lieutenant Colonel of the SJA Division signed off on as a proper notification, don't you think that would have been part of that notification?
- A. Well, all I know is that's what the General said to me.
- Q. Turning to Recorder's Exhibit 3, which is your request for resignation for cause. This is dated the 6th of August 2003.
- A. Yes.

- Q. As that states -- is that about right?
A. No. I actually signed that before I flew on the 3rd or 4th. That's not my handwriting.
- Q. For the date, is that your signature on the page though?
A. That is my signature.
- Q. So, you would have signed that, what do you think, on the 2nd or 3rd?
A. I believe it was on the night of the 2nd and I flew on the 3rd.
- Q. Now, the first paragraph says "pursuant to the references, I voluntarily tenure my unqualified resignation of my commission in the United States Marine Corps Reserve in lieu of processing for admin sep for cause." Correct?
A. Uh-huh.
- Q. The second paragraph, the last phrase says "I shall subsequently receive a certificate of honorable discharge from the Naval Service;" is that correct?
A. Uh-huh.
- Q. So this document states you will receive an honorable discharge assuming that it's approved by SecNav?
A. Assuming it is approved by SecNav and by everybody else in the change of command.
- Q. So in your -- back to Recorder's Exhibit 7, your Congressional inquiry where you state "I was told I must resign my commission in lieu of board of inquiry without a guarantee of any type of discharge."
That document states you are requesting an honorable discharge. Correct?
A. I am requesting an honorable discharge, but there is no guarantee of that.
- Q. Well, the guarantee is that's what you are requesting and that that was your understanding you can't get anything lower than your own request without you being notified.
A. I was told by (b)(7)(C) and also by (b)(7)(C) when they handed me this paperwork, that they

suggested that I sign the honorable portion of it, which I was going to anyway. (b)(7)(C) simply told me that he felt that it probably would be an honorable discharge, but they couldn't guarantee it. (b)(7)(C) reiterated the same thing and that I'll probably find out within three to six weeks.

Q. Okay. The second sentence of that paragraph says, "I believe that both of my decisions were justified and good moves in the long run and I think the standard I was judged by was too harsh." That's in that last paragraph.

A. Is that still your belief?
I feel that there were justifications for them. I believe now I would definitely do something different looking at the circumstance. However, I think both of those situations, I had the interest of my Marines and their welfare and mission accomplishment at heart and that's exactly what I meant by that statement. I felt that I was judged pretty harshly.

Q. This, this document was written on the 8th of October; correct, 2003?

A. Yes.

Q. And now we are sitting at a board of inquiry in front of three officers in the beginning of April. Correct?

A. Uh-huh.

Q. Why did you have, why do you have a change of heart. Here, you are saying, I was justified in what I did. Now, you are saying, I am justified, but I probably wouldn't do it again?

A. Well, it's not really a change of heart. I've had a lot of time to reflect and consider this. I have talked to a lot of different people concerning this situation. They understood the idea I was trying to get across, what I was trying to do. The fact that I was trying to come up with a solution that would both save American lives potentially and also Iraqi lives. Now, sitting here in a board of inquiry because of this, I realize that, well, there might have been another option out there. And if I could redo it, I definitely would.

Q. So this is your testimony, that your actions were motivated out of concern for your Marines, both of them?

A. Uh-huh.

Q. Okay. Let's go through your actions here. I should have had this marked right around here. Is the command post of (b)(7)(C). Correct?

A. Sure. Do you want me to point out the exact area?

Q. No. I think as long as we have a general idea, that's alright.

A. Okay.

Q. I believe, from other conversations, the Iraqi police was around here?

A. Correct.

Q. The ASP was located about 20 kilometers?

A. No.

Q. How far?

A. 20 kilometers was, I don't know where that came from. It's about 10 clicks up, 7 miles at the most.

Q. So that's 7 miles North of the perimeter of the city?

A. Actually 7 miles from -- 10 kilometers from this point right here up this road.

Q. Okay. For the record, you are pointing to one of these black lines basically.

A. No. I was pointing towards the road's intersection. The main supply route right here and this road, which is the road -- which is the road between Al Kut and Badrah.

Q. Okay. I think it might just be easier if you point with a tack.

A. Which point do you want me to point out?

Q. The point where you were talking, it's 7 clicks away from.

SRMBR: You can turn that a little bit so that the counsel can see the map better if that's necessary.

CCFR: Thank you, sir. I'll stand over here.

The respondent did as directed.

WIT: Well, that's about 7-miles, roughly 10-kilometers from here.

Questions by the recorder continued:

- Q. Okay. So, these Iraqis, the first time that you saw them on that morning -- we're talking the day of the 23rd -- is when you went up to check on, on the ASP and see how things were doing up there?
- A. No. I really wasn't going to check on the ASP. I was going up there to specifically to find the serial numbers of a radio and a CAAT vehicle up there.
- Q. Okay. But while doing that, you ran into (b)(7)(C) (b)(7)(C)?
- A. Yeah. Just talking to him for a moment.
- Q. And (b)(7)(C) told you that earlier that day, he had seen these same Iraqis that were sitting there with flex cuffs in the ASP?
- A. No. He said that he had captured them. I took it to be he had captured them two times previously from that time.
- Q. But you learned from his testimony that he meant just one time?
- A. Right. Apparently, he had just captured them one time previous to this time.
- Q. So there was some misunderstanding between you and him over how many times?
- A. Right.
- Q. Okay. And then you decided well, I will go ahead and take care of these Iraqis?
- A. Uh-huh.
- Q. Did you call higher and ask for an opinion on what to do after, in what you thought, was the third time they had been caught.
- A. No.
- Q. (b)(7)(C), he certainly did that in his case; didn't he?
- A. We had already called in to say that they had been

captured.

- Q. Did you call in to ask what to do about them being captured?
- A. No.
- Q. You took it upon yourself to drive them North about three kilometers. Right?
- A. Probably closer to three miles which would be about six clicks, five clicks.
- Q. Okay. So about five or six clicks North and dropped them off?
- A. Correct.
- Q. Okay. And that was so that they would just learn a lesson?
- A. That was that they would hopefully hitch a ride and go home.
- Q. Okay. Hitch a ride and go home. Couldn't they have hitched a ride from the Iraqi police station and gone home?
- A. Perhaps.
- Q. It's a much longer -- it's about seven clicks from Al Kut to here; right? Then how many miles or how many clicks from there over to the Iraqi police station?
- A. Would you like me to measure it for you?
- Q. No. Approximate is fine.
- A. Just a second. About five.
- Q. So, total, it's about 12 clicks from where the ASP is to the Iraqi police station. Correct?
- A. Closer to 15.
- Q. Okay. So it's about 15. So 15 clicks down to the police station and five or six clicks from where you dropped them off?
- A. Uh-huh.
- Q. Now, isn't it more reasonable that even -- as you say, the Iraqi police would have just dumped them off and processed them for a minute and let them go, they have got a much longer distance to go back up to that ASP. Correct?

- A. Which part, the much longer distance or the reasonable part that you started?
- Q. It would have been a much longer distance for them to go from the Iraqi police station back up to the ASP?
- A. Yes, it would have.
- Q. Okay. So if your concern is keeping them out of the ASP, wouldn't it have been to take them to the farthest point?
- A. The reason why I didn't take them there is because, essentially, they would have been processed right away. And with people who are deliberately trying to get into an ASP -- they have been captured once, they have been captured twice, so that's two times. You take them down to the police station. They say, okay, no problem, and send them back out. Essentially, that's really no deterrent right there either.
- Q. Well, did they have a vehicle with them at this time?
- A. Not that I could see.
- Q. Okay. So they would have either had to hitch a ride back from the Iraqi police station, 15 clicks away, or walked it. Now, you dropped them off five or six clicks away, they would have either had to have hitchhiked or walked. Correct?
- A. Uh-huh.
- Q. So this one is three times as further away than was your solution. Correct?
- A. Yes.
- Q. Normally, three times the distance means three times the time in getting something back. Marines earlier today testified that -- it was (b)(7)(C) testified that it was standard operation procedure, if a Marine -- and (b)(7)(C) testified, his direction was, if the Iraqis had gone into that ASP multiple times, it was standard SOP to take them to the MPs, Army MPs, or to take them to the Iraqi police station; is that correct?
- A. Um hum.
- Q. So when you dumped them off of this highway, that

- wasn't standard SOP; was it?
- A. No.
- Q. And you didn't call anybody to see if it was okay to alternate from standard SOP?
- A. No.
- Q. Then you come back to (b)(7)(C) and you see Captain -- I'm sorry, you see (b)(7)(C) bringing these Iraqis into the camp. Okay. You don't like it because they are possibly showing intelligence value or they're possibly may get a feel for what's going on and you didn't think that was a good idea?
- A. Going with SOPs, we tried not to bring prisoners into our position. It happened from time to time, but inevitably, I ensured that my platoon did not do that. So that became our own SOP and the other, the company pretty much as a whole started to do the same thing.
- Q. Your decision was to teach them a lesson because they had come back, you thought, a fourth time, but in reality it turns out a third time, that you would take off their clothes and send them out. Not all their clothes, but most of their clothes basically.
- A. I'm sorry, what's the question?
- Q. Did you believe you were going to teach them a lesson in doing this and that would be a deterrent to them?
- A. It was more along the lines of that was the only way I could guarantee they would go home, because if they didn't have their stuff there with them, they would have to go home to get a new set.
- Q. Who ordered the money to be taken away from them?
- A. I don't know.
- Q. Were you aware of that order?
- A. No.
- Q. Did you tell your Marines about taking any of the money away from them?
- A. No?
- Q. So as far as you understood, they had their money on them when they left the area?
- A. Yes.

- Q. Your deterrent, you just wanted to keep them away from the ASP for as long as possible; is that right?
- A. I wanted to keep them away permanently.
- Q. Permanently. How would this idea of making them go home to get their clothes keep them away from the ASP permanently?
- A. Inevitably, it probably wouldn't, but it would take more time to go back home, get more stuff, instead of going to the police station, getting processed in, let's say, ten minutes, hitching a ride, driving back out, or any of the other options that I could think of or that have been illustrated here.
- Q. Did you know where these Iraqis lived?
- A. No.
- Q. Do you have -- so they could have lived right around here. Correct? Just a half a mile away from your compound. Correct?
- A. Well, the bus that they got into in the bus station across the street was going in the opposite direction, so I think they lived in town some place.
- Q. So they lived in town some place. So you don't know where these people lived. They could have lived across -- when you ordered them to take off their clothes, you didn't know where they lived; did you?
- A. No, I said that already.
- Q. They could have lived across the street. They could have, essentially, gone in their house, put on -- go across the street, put on some more clothes, and walked or hitched a ride back out to the ASP?
- A. Uh-huh.
- Q. Or you could have taken them down to the Iraqi police station?
- A. And they could have lived right by the police station, walked out the door, and got a ride back up.
- Q. The point is, you don't know. You don't know where they lived, you were just acting. Correct? And your action was, your intent was to try to get them permanently away out of that ASP?
- A. My hope was to get them permanently away from the ASP. My intent was to get them back to their house

to take up enough time so they would actually think about it and not want to go back to the ASP.

Q. You don't think that this was humiliating to them?
A. I don't think it was humiliating.

Q. You don't think that if you were stripped down to just your shirt and shorts, that you wouldn't find that humiliating?

A. No, not in this situation as a prisoner of war or a detainee. I wouldn't like it, and certainly wouldn't like it, but they had been in the ASP a few times already.

Q. Why wouldn't you like it?

A. Same reason anybody else wouldn't like it.

Q. Why is that?

A. Well, first of all, I don't have my outer garments on.

Q. So, this action, you didn't want them to like this action; did you?

A. I wasn't too concerned whether they liked it or not. I didn't think it would humiliate them. I definitely didn't want to beat them and I definitely didn't want to harm them physically. I didn't want to steal any of their personal items, their money or anything like that. I just thought the only way I could ensure that they would go home and that is the action I took.

Q. Did you ask anybody's opinion before issuing this order?

A. Yes.

Q. Whose opinion did you ask?

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

Q. What did he tell you?

A. He smiled, he laughed, he said, you are the ranking officer in charge. Let's do it.

Q. Did you ask anyone higher up?

A. No.

Q. Did you see any other Marines or any other Army MPs strip down Iraqis?

A. No.

Q. Did you receive any direction that this would be an appropriate action to take for a repeat offender?

A. I didn't receive any information whether it would be appropriate or not appropriate.

Q. Your mission at this time was stabilization, security stabilization. Correct?

A. Uh-huh.

Q. In a lot of ways, you are acting like a police force in certain ways?

A. In a very, very loose sense. Most police forces don't have to deal with automatic weapons fire every third night, most police forces don't have to deal with rival tribes having fire fights with each other --

Q. But in a sense of your actions out at the ASP, in a sense of the Iraqis going in, in and out, in and out, this is -- and you trying to guard this particular area, you're guarding it, you are taking people away who are trespassing, it's more like a police action?

A. Or, no, I don't really think of it as a police action, because there was military equipment there. I had 50-caliber rounds, I had Mark-19 rounds. I have read plenty of history of people guarding ammo dumps where they took considerably more severe measures than I took. I didn't want to take that. I didn't think it was part of the Rules of Engagement. The police station, that wasn't working at all. A lot of my Marines were very frustrated about it, and so I tried to pick a human, maybe, too creative middle ground.

SRMBR: Hey, skipper.

REC: Sir.

SRMBR: I hate to interrupt, but I think it might be best if we recess for the evening and reconvene in the morning. Is that possible or all the --

CCFR: That's fine, sir.

SRMBR: The other witnesses and people are going to be

available?

CCFR: Yes, sir.

SRMBR: Okay. What I would like to do then is do that and then continue with you in the morning at 0800. I have some questions for some additional questions for (b)(7)(C) and (b)(7)(C) and (b)(7)(C) whomever was at the NJP proceedings, and we can do that, you know, over the phone if they're in (b)(7)(C). Okay.

REC: Sir, for the record, the time is 2110 on 6 April and we are adjourned for the evening.

SRMBR: We convene at 0800 tomorrow.

The Board of Inquiry recessed at 2110 hours, 6 April 2004.

The Board of Inquiry was called to order at 0800 hours, 7 April 2004.

SRMBR: The board will come to order. All persons who were present when the board recessed are again present.

The recorder will note the time and date in the record of proceedings.

REC: Sir, the time is 0800 on 7 April.

SRMBR: Okay. You may proceed with your cross-examination. Do you swear him in again?

CCFR: He's already sworn in, sir.

SRMBR: Good.

Questions by the recorder continued:

Q. (b)(7)(C) the last point where we were at just to recap for the -- to get us back on where we were going -- I asked you if you would have felt humiliated if somebody had stripped you down to your T-shirt and PT shorts. And I believe your response was, no I would not have.

Is this exactly what you said?

A. In that situation, I probably would not have if I was trying to steal ammunition that many times.

Q. And you testified on direct that you got this idea of stripping down Iraqis from watching videos of actions taken against POWs in Vietnam and Korea?

A. Korea and World War II, yes.

Q. And these were POWs. Correct?

A. I'm not positive, I think so, yes.

Q. Would you agree with me that there is a difference between a POW and a detainee who is a civilian?

A. I would agree there's a difference.

Q. Let's move to the incident on the 29th of June. There is no contention here, the government is not arguing that there was a wrong action dealing with the shooting of the vehicle or anything like that or the search of the vehicle or the turning of the money over to the police. The issue that the government has is generally the issue of the burning of the clothes.

Now, that was about 2300, midnight, when your Marines shot up that vehicle. Correct?

A. I think it was 2245.

Q. 2245. So at 2245, the vehicle was shot up, your Marines got an ambulance for those Iraqis, took them away, and you turned over the money to the Iraqi police?

A. That's correct.

Q. And then from that point on, you were told to stand guard over that vehicle?

A. Right.

Q. Your Marines were out there from 2245 until that following morning about 0900?

A. I think we left probably close to around 1100.

Q. 1100. Were you relieved at 1100?

A. No.

Q. Was there anybody watching that vehicle at 1100?

A. No.

- Q. Okay. And (b)(7)(C) had told you to stay in that vehicle until you were relieved. Correct?
- A. That's correct, yes.
- Q. Okay. Now you had your Marines go through the belongings, their belongings on this vehicle for intelligence purposes. Correct?
- A. That's right.
- Q. And this included their personal belongings and some things like their tea pots and some things that were in canisters on the side of the truck. Right?
- A. Correct.
- Q. Now, once you saw that these things that, the clothing had something ugly looking on it, something yellow and nasty looking on it, you directed -- the Marines were just going to throw it in these little sandbags that you had? They were going to throw it in the truck, you didn't want that vehicle to get infested with whatever was on that?
- A. We were out of sandbags and I didn't want my vehicle to be infected. In retrospect, what I probably should have done was had my guys take the tea sets and some of the other items out of the sandbags, stuffed the clothes in the sandbags, zip tied that, and then done that. So, I definitely could have definitely done that particular incident much better.
- Q. You looked at these items of clothing?
- A. Yes.
- Q. Did you really think that there was any intelligence value in those items of clothing?
- A. Not the clothing per se, but the pockets had different pieces of paper with Arabic writing in them, identification, things like that.
- Q. You described these items as trash yesterday?
- A. Uh-huh.
- Q. Well, is it trash or something that has intelligence value?
- A. Well, we took everything that we thought had intelligence value out of it.
- Q. So instead of finding another way to transport what

you thought had intelligence value because they had little slips of paper in it, you burned it instead? So essentially, you went and destroyed what you thought had intelligence value?

A. No. Actually, the mistake I made was destroying the clothing. I had my guys take everything that had writing on it or any piece of paper out of it. We did that correctly from an intelligence aspect of it.

Q. Okay. Why burn the clothing, why burn this trash?
(b)(7)(C) testified yesterday that he wouldn't have wasted a match on this thing.

A. After listening to that testimony, he was right. I could have done that better. I could have just had my guys throw it in the vehicle, we could have closed the vehicle and left. It was a hasty decision, it seemed like a good idea at the time. I have had a lot of time to think about it since then. In essence, there was really no dire need to burn the stuff.

Q. You had a lot of time to think about it from the date, the date of your Congruent; correct? On 8 October 2003 is when you dated that?

A. Uh-huh.

Q. These incidences happened, you were NJP'd in August. This is what you state about that incident, "I destroyed a small amount of captured clothing from a destroyed vehicle at a checkpoint. The clothes were dirty, possibly lice ridden, and posed no intelligence or other value to the government of the United States and had some value to the enemy."

Are you stating here that you believe that those Iraqis were the enemy?

A. At that time, I couldn't be sure. They were detained by the MPs. They were supposed to have been interrogated at some point. That vehicle was supposed to have a thorough search, so I didn't know if they were the enemy or if they weren't.

Q. Hadn't they come back that morning, that morning and tried to look for their stuff?

A. We had two men come back in bandages around 0900. I was about 60-meters from where they were at. They tried to get into the vehicle. Myself and my

Marines were extremely surprised that they were not in some type of detention. I had (b)(7)(C) and (b)(7)(C) put them back into their vehicle and sent them on their way.

- Q. So obviously by this morning, whoever had detained them and interviewed them didn't think that they were the enemy. They didn't think they were a threat or else they would have been detained?
- A. Well, I assumed that if they would have been interviewed or interrogated, that somebody would have called me and told me about that since I was guarding their vehicle.
- Q. Well, they're there. And you have had since -- they're there, so obviously, no one is going to release them if they think they are the enemy. So they are there, essentially, these were just civilians who thought you all were going to rob them and so they ran the checkpoint and now they want their stuff back. And certainly by this Congruent in October, you had the time to look over this investigation which determined that these people were not in a preliminary inquiry which was done -- we have not included any of these in the exhibits -- determined these people were not the enemy or they were not terrorists they were just Iraqis who were confused, tragically; isn't that correct?
- A. I don't know, I don't know if they were interrogated. No one ever mentioned that to me. (b)(7)(C) and myself, we were very interested in making sure that anything that was inside that vehicle was turned over to the HEP teams. These people had been released or let go by the hospital probably eight or nine hours earlier. And so, at that point, it was still considered to be some type of intelligence asset. I couldn't tell you about the other aspects involved with that decision.
- Q. Was that standard operating procedure in your company to burn possessions of Iraqis?
- A. We very rarely had possessions of Iraqis, but, no, it wasn't.
- Q. Did you call anybody and ask if you could burn what you thought was trash because you thought it might be dangerous?
- A. No.

Q. Do you understand the concept of a tactical corporal?

A. Yes.

Q. Basically, that means that we go into high viz places, places where we are not in full combat but we are trying to win over the hearts and minds of the people who we -- in that particular country for this operation.

Do you have a problem with that concept?

A. No.

Q. That's basically an action that 30 seconds of misconduct of a Lance Corporal that's caught on CNN or that's caught anywhere could end up blowing up in our face, basically?

A. Yes.

Q. Did those thoughts occur to you when you were going through these instances that you were stripping down Iraqis and sending them out in public?

A. I did think about that at the time, yes.

Q. Did you think about that when you were burning their personal property?

A. At that point, I couldn't tell you, I don't know.

Q. So you thought about this when you were stripping them down and you still continued with your actions?

A. Yes. In retrospect, I would handle it differently. I would take them to the MPs instead of the Iraqi police. That SOP was clearly not working and hopefully the MPs would deal with it. But, yes, I did think about it.

Q. We had witnesses come in here and come and testify:

(b)(7)(C) (b)(7)(C) (b)(7)(C)
(b)(7)(C) that repeatedly, they saw repeat offenders come into these ASPs. That was frustrating, time consuming. (b)(7)(C) talked about his frustrating experience dealing with the civilian jurists, a month and a half of him, you know, trying to do something and still frustrated.

So, a lot of other Marines had very frustrating experiences over there. Correct?

A. Correct.

- Q. Now, none of these Marines are -- burned or took off any of the clothing or did anything to harm these other Iraqis; did they?
- A. I don't know, not that I'm aware of.
- Q. You mentioned the other day that (b)(7)(C) was not giving you good advice on the ROEs for the ASPs. Did you speak to (b)(7)(C) about your concern about ROEs in the ASP?
- A. Yes, I did. I spoke to (b)(7)(C) a couple of times. The last time I spoke with him was on the 1st of July and I asked him if he thought it would be appropriate if I should visit (b)(7)(C) in the (b)(7)(C) and talk to him and what his thoughts were on that matter, and he said, yes, it sounds like a good idea.
- Q. Did you speak to him prior to the 1st of July?
- A. Yes.
- Q. And what advice did he give you?
- A. He and I talked a couple of times about the confusing nature of that particular company. We never really came to a good conclusion.
- Q. Did you talk to him specifically about your questions about the ROEs and, you know, this, you know, maybe just talking to him about hypotheticals. Well, you know, this happened, I saw this happening, what have you seen?
- A. No hypotheticals, no.
- Q. (b)(7)(C) is, you know, you know, he was the (b)(7)(C) at the time at the Battalion. You didn't think he was qualified to talk, at least to bounce back ideas or hypotheticals about what might happen in the ASP?
- A. I never thought of that. A day or so after the incident at (b)(7)(C), I did talk to him about that. I mentioned what I had done. His reaction was he started to laugh. So I didn't mention hypotheticals. That actually would be a good idea, though. I probably should have.
- Q. You stated that you did these actions because you were trying to look out for the welfare of your Marines and you were trying to look out for the welfare of the Iraqis?
- A. Yes.

- Q. Do you realize what kind of conflict you caused in your, in the Marines there who you issued that order to strip the Iraqis?
- A. Yes.
- Q. (b)(7)(C) testified earlier that he had to talk with his Marines later on, give them a debrief about what to do when an officer or somebody higher gives them an order that they don't agree with?
- A. Yes.
- Q. Is that something you want Marines to be discussing about in a combat zone?
- A. No.
- Q. This is a statement from a (b)(7)(C) He basically -- and he says in the investigation, "none of us were in any place that I know of to question the order. So we followed the order and let them go. The order was given by (b)(7)(C). This is the order concerning the stripping of the Iraqis." So this private seems to be indicating that he knows that it was wrong, but he couldn't do anything about it because he was following your order.
- Do you agree that there is a break down of good order and discipline?
- A. No, I would not agree with that. I would say, though, after looking at the situation for a long time, I could have handled it better, but I made a decision. I was decisive about that and I tried to do something that would be both effective and also not entail seriously injuring anyone.
- Q. You have heard the phrase, no better friend, no worse enemy. Correct?
- A. Yes.
- Q. Prior to these incidences, you had also heard the phrase, first do no harm. Correct?
- A. Yes.
- Q. You were familiar with the ROEs of treating all civilians humanely. Correct?
- A. Yes.
- Q. Prior to the incidences, you had heard the ROE about

respect private property and possessions. Correct? So you knew all these things. In addition, you had four years of the Naval Academy, OCS, TBC, 6 years as a commissioned officer. All of this in your background, all this knowledge based. Correct?

A.

Correct.

Q.

And yet you still made these decisions and every Marine who came up here and testified yesterday, even the ones who testified on your behalf, said, I wouldn't have done that. None of them could look these members in the eye and say, they all had this gut reaction that that was wrong; isn't that correct?

A.

Yes.

REC: I have nothing further.

SRMRB: Okay. Questions from the board members? Redirect?

CCFR: Redirect, thank you, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q.

Good morning, (b)(7)(C).

A.

Good morning.

Q.

Yesterday, the (b)(7)(C) was pointing out the map of Al Kut and asking you about the fact that it would have been a greater distance to bring them down to the police station than to bring them to where you brought them as sort of suggesting that perhaps the punishment would have been greater had you actually gone to the police station for them to walk. Right?

A.

Correct?

Q.

Where was the other ASP?

A.

The other ASP is located right here. So if you did bring them down to the police station, essentially, they would be equal distance to two points, actually closer to this ASP, which had more ammunition in it.

Q.

Okay. When you were out there on the line having a lot of responsibility, taking fire every now and

- then, did you feel that you had the luxury to sit and analyze all the available options that you could use and that might be available to you?
- A. No. Not all of them, typically though, I tried to come up with a couple of different ideas and then go from there.
- Q. You were asked on cross about whether you called back to (b)(7)(C) to burn the clothes and you said you didn't.
- A. Why didn't you call back to (b)(7)(C) on that? At this time, I did not think it that big a decision, to be honest with you. I was in the field, I had searched the vehicle as best I could. (b)(7)(C) told me to return. We had been out there for a considerable period of time at that point and, basically, it was a quick hasty decision.
- Q. And you were also asked about the fact that if you left that position, you left the vehicle.
- A. Why was it that you left it? That was after the truck company had tried to move it for a considerable period of time. They said they couldn't move it. I contacted (b)(7)(C) and this took place over a period of probably a couple of hours. I talked to (b)(7)(C) (b)(7)(C) and mentioned that they can't move the vehicle, what do you suggest, do we stay out here, should we come back? He said, since you can't move the vehicle, you might as well come on back. So we pulled everything out that we thought might have intelligence value, plus we also pulled out some personal possessions to return to the Iraqis, the tea sets and things like that, and left.
- Q. Did you think the clothes had any intelligence value in and of themselves?
- A. The clothes themselves, no.
- Q. Why did you feel it was appropriate to get authorization from (b)(7)(C) ?
- A. Well, he was the company (b)(7)(C) and the company SOP was if a platoon commander is in the field and the company commander isn't there, essentially, the platoon commander would take tactical direction from the (b)(7)(C) or maybe

the company (b)(7)(C). Plus, to be honest with you, I trusted his judgment. He had a good head on his shoulders. I had no problems with that.

Q. Okay. You were asked on cross about your collective military experience having been at the Naval Academy, OCS, TBS, Comm school, tours.

A. How many times have you served in combat?
This was the first time.

CCFR: No further questions, sir.

REC: I have no questions, sir.

SRMBR: Okay. Questions from the board members?

EXAMINATION BY THE BOARD

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

Q. Okay. (b)(7)(C)

A. Yes, sir.

Q. In the next series of answers, I don't want to hear the word "retrospect." Okay?

A. Okay.

Q. In regard to the stripping incident, what was your mindset at the time they needed to pick up -- you need to strip their clothes down?

A. My mindset was, I tried to think of a way to get them out of there, a way to get them to go home, maybe give them some time to think about not going to the ASP again. That's why I did it.

Q. Okay. How many Marines were actually there when you ordered the Iraqis to get stripped down?

A. I think all told, sir, 10 to 15.

Q. 10 to 15, which is not the entire unit?

A. No, sir.

Q. Okay. Have you ever received a Geneva Convention briefing?

A. I don't think so, sir, no.

- Q. Okay. The ROE, you did have a chance, you did have a chance to review?
- A. Yes, sir. We did have the rule, the Level 3 ROE, which was the Combat Ops Type ROE.
- Q. Define that.
- A. Essentially, the brief that we got when we first got into Kuwait, they were going from 3 Alpha, which is Intense Combat Operations to 3 Bravo, Less Intense Combat Operations. Those are the hypotheticals we got, sir.
- From there, anything that we had was kind of word of mouth or just informal SOPs.
- Q. When you told the (b)(7)(C) what you were going to do or what you were going to do, he responded how?
- A. Yes, sir. He smiled at me, he said, you are the ranking officer in charge, and yes, sir.
- Q. Okay. Yesterday you made a statement that someone made a suggestion to beat them down?
- A. Yes, sir.
- Q. Who did that?
- A. The (b)(7)(C) sir.
- Q. The --
- A. (b)(7)(C).
- Q. Okay. Let's focus on, right now, the plausible deniability statement. Where was that meeting with you and (b)(7)(C)? Where was that conducted at when this went down?
- A. Sir, that was (b)(7)(C) (b)(7)(C) and myself at one room in the corner of this Saddam Fedayeen headquarters, that was inside that room. We were pretty much by ourselves.
- Q. Okay. Now, let's go to the vehicle shooting incident or let's not call it an incident, let's call it an event. When you were taking the personal items, the items that you thought had some intelligence merit, did you inventory those items?
- A. No, sir.
- Q. So it was just, put it in the sandbags, I think this

- has some value, let's put it in the sandbags. You did a hasty search of the vehicle. There was clothing. You took the seat cover off, and then you decided, what? That it was that -- it was probably infested with some type of thing or it was just plain natty and dirty and all that?
- A. It was natty and dirty, sir.
- Q. So you didn't see any bugs or anything like that?
- A. No, sir. I didn't. It was real quick and when he, when (b)(7)(C) threw one of the items of clothes on the back of our HMMV, my gear, actually not my gear, it was his gear, I just had a sick feeling in my stomach that something wasn't right with it.
- Q. Okay. And when you called back to (b)(7)(C) -- and (b)(7)(C) is the actual --
- A. Yes, sir.
- Q. You are asking for instructions about what to do in regards to the vehicle itself and he responded to you, what?
- A. He said that since the truckers can't move it and you have been out there, you might as well -- and they think you should come in -- you might as well come in.
- Q. Okay. What is your state of mind in this entire period, from the stripping incident all the way down to the vehicle event? You're tired, you're frustrated?
- A. Yes, sir. I am tired and frustrated.
- Q. Do you think you are making rash decisions?
- A. The second one, yes -- at the time, no.
- Q. Okay. Let's flip back to the stripping day again. You testified that after you stripped them down, you told them to leave the compound, they went across the street to the bus station?
- A. Yes.
- Q. You actually saw them get on a bus. You testified that you saw another one get into a vehicle and they drove away?
- A. Yes, sir.

- Q. And I believe you said they were driving in the opposite direction?
- A. I think so, yes, sir.
- Q. Okay. Granted these guy are not enemy combatants or they haven't been classified as enemy combatants, but let's reverse the situation here. Let's say you are going into the ASP, what do you expect to have happen to you if you are caught?
- A. To be honest with you, I probably expect to be shot.
- Q. What time did you burn the clothes at the vehicle?
- A. Just before we left, sir. I want to say that was 1030 or 1100.
- Q. What time did the two Iraqi gentlemen get back to the vehicle?
- A. They got around there around 0800, 0830.
- Q. Did they express any distress about the vehicle itself?
- A. They were, we were pulled back to a defensive position about 60 meters from the vehicle. I had (b)(7)(C) go up there. I didn't hear what they were saying, they were kind of making a lot of noise in Arabic and they were waving their hands all over the place. (b)(7)(C) (b)(7)(C) when they came back, they weren't sure exactly what they wanted, whether they wanted to pick up their stuff or they wanted to get the truck. I think they were pretty pissed off about the truck because I remember seeing them point at the engine block, sir.
- Q. To your knowledge, did they ever get their personal effects back?
- A. I think so, sir, because those tea sets and what not, we turned those over to the intelligence team and I think they gave them back to them.

MBR (b)(7)(C) : That's all I have, sir.

SRMBR: Thank you.

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

- Q. When you checked in with the Battalion, did you talk to the Battalion commander, did you report to him?

- A. No, sir.
- Q. He never called you on the phone?
- A. No, sir.
- Q. When you were doing your workups or when you were at CAX, did you do a CAX before you went in?
- A. Yes, sir.
- Q. Did you sit in on commander intent, delivery of commander intent within or Comm Op briefings, or were you in the CP watching him issue orders to the Battalion?
- A. No, sir. He gave one or two briefs but the one brief that sticks in my mind was him introducing himself to the entire Battalion.
- Q. Where was that?
- A. That was in the theater of 29 Palms.
- Q. And then was there another opportunity where the Battalion commander got in front of the unit prior to the deployment or prior to crossing the line of departure from Kuwait or was there time for that? Was there any other opportunity where he pulled all his officers in and talked to them? Did that ever happen?
- A. We had one incident, not incident, we had one situation when we were in the officer's club in 29 Palms where the Regimental commander came down. I think the Battalion commander said a few words, introduced the Regimental commander and then the Regimental commander talked to us, sir.
- Q. Did the Battalion issue a lot of written orders during this time in theater, written Comm Ops, written commander's intents, and were you privied to them; did you read them?
- A. What they would do, sir, is they would write sort of a task list for the day to include some concept of operations. And (b)(7)(C) that is what he was referring to when he said he was reading or passing on orders, for example, for the missile shoot.
- Q. So would you say in written form you received a daily commander's intent or guidance from the commander or would you say guidance from the commander was lacking, nonexistent, or intermittent?

- A. I don't know, sir, if I am qualified to answer that being that I was new to an infantry Battalion.
- Q. But you had been with them for four months?
- A. Yes, sir.
- Q. Did you or did you not know his intent with regards to your platoon's mission within your company?
- A. I didn't know what his intent was with regards to my platoon, sir.
- Q. Switching a little bit here. But mentors, did you have any mentors or counselings for the time you were in the unit prior to these incidences, whether they be good or bad?
- A. With (b)(7)(C) yes, sir.
- Q. Okay. Did anybody ever pull you to the side and say, hey, you need to temper some of that aggressiveness or did anybody say, keep on doing what you are doing? What kind of feedback were you getting?
- A. After the (b)(7)(C) got into a fight, (b)(7)(C) talked to the (b)(7)(C) (b)(7)(C) myself, and (b)(7)(C) all together and that was sort of the intent of it dealing with all three of us.
- Q. How was (b)(7)(C) did he attend the NJP?
- A. Yes, sir.
- Q. Was he able to speak in your behalf?
- A. Yes, sir.
- Q. How was his testimony received by the Deputy General?
- A. He listened to it, sir.
- Q. I want to talk about command and control within the battalion and the company now, specific with staying with the vehicle. Would you say, how would you describe the procedures for, you have got two vehicles that are going to go to the police station. Were they briefed to the Ops center and were they tracked as far as their location and did they have checkpoints along the way? Were the reporting procedures disciplined enough so that somebody always knew somebody was out and they were going to

track them and stay on top of them until they came in?

A. The company -- I have a pretty good feeling that they knew that, sir. We did have a series of probably 60 checkpoints set up throughout the Al Kut area. The procedure with (b)(7)(C) platoon was to radio, we are leaving right now. If it was a long distance type thing, you would generally have a half-way point where you would call in. Typically, in the city, you didn't have to worry about that so much. But once you arrived, you would have to call back to (b)(7)(C) and report. As for the Battalion, I don't think so, sir.

Q. So with regards to what the (b)(7)(C) said, go ahead and disengage. You had given them enough data. The situation changed, so it wasn't just a rash decision to say, okay, we're out of here, we've been waiting too long, it's time to go?

A. That's right, sir.

Q. So would you say everything, the movement control and the reporting of detainees and the waiting for instructions from higher headquarters was all done in somewhat a disciplined and deliberate mode?

A. Yes, sir. I was on the radio probably every half hour to Battalion to try to get a wrecker out there. It took probably two and a half hours, maybe three. There was a lot of radio communication.

Q. Just to reverse the roles for a minute. You are the company commander and (b)(7)(C) comes and tells you he stripped these detainees.

How do you handle this situation?

A. I probably would have thought about it for a bit, sir, and then as a company commander, I definitely would not want to have that happen in my company to be honest with you, now that I think about it. I probably would have counselled him along the lines of saying, well, you tried something. It was aggressive, perhaps a little bit stupid, let's try this and this next time. Maybe talk to the Marines about it.

Q. And then the last question is, the Battalion commander hears about this from some other Marines and comes to see you as a company commander with

questions.

- A. How do you handle that situation?
As a company commander, sir?
- Q. You are the company commander?
- A. I would tell him exactly what happened and how I dealt with it, sir.

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

SRMBR: Okay. I am going to jump around a little bit here.

Questions by the SRMBR:

- Q. Tell me what's the purpose of the Rules of Engagement?
- A. Sir, the purpose of the Rules of Engagement is to ensure that we are able to accomplish our mission but also to make sure that the Rules of Land Warfare are followed.
- Q. Okay. So you would agree that they are important in that combat environment?
- A. Yes, sir.
- Q. And far more real to your daily activities than they would be if you were in training?
- A. Yes, sir.
- Q. When you called back -- well, several times -- I got a couple questions here that are related to you calling back during the semi trailer truck event with the Iraqis in the ASP.
- A. You said you talked to (b)(7)(C) and you said you talked to Battalion a couple of times?
Yes, sir.
- Q. Who other than (b)(7)(C) at (b)(7)(C) did you talk to?
- A. I talked to --
- Q. In your numerous radio transmissions?
- A. I talked to (b)(7)(C) he was the sergeant of the guard, sir. I talked to him three maybe four times.

Q. And where was (b)(7)(C) ?
A. I don't know, sir.

Q. At some meeting somewhere?
A. I assumed so, sir. He was typically going to meetings.

Q. Was there a means for you in an emergency situation to talk to (b)(7)(C) no matter where he was?
A. If he was at Blair Field, yes, sir.

Q. But not if he was in some other location?
A. Just depending on radio transmissions. Typically, I could get in touch with him.

Q. Via radio in his HMMV, pretty much wherever he went or was with someone who did. Right?
A. Yes, sir.

Q. And he kept you informed of his locations?
A. Most of the time, sir.

Q. Most of the time?
A. Yes, sir.

Q. Okay. On the truck deal, just so I get the timing right, you -- the Iraqis showed up about 0800, you left about 11?
A. Yes, sir.

Q. And you left the Iraqis and the truck there on the road?
A. No, sir. I had (b)(7)(C) and (b)(7)(C) (b)(7)(C) put them back in their cab and send them back. They were covered in bandages. I wasn't sure what I was supposed to do with two wounded Iraqis.

Q. Now, this was the following morning when they returned?
A. That's what I'm referring to, sir.

Q. Okay.
A. I didn't know what I was supposed to do with these guys. I had assumed that they were going to be held and interrogated. I had heard nothing about that. I really didn't want to have two Iraqis out at my position who were covered with bandages. I didn't think that would look too good. Plus, if someone

starts bleeding, all I have is the corpsman right there. Along with the fact I had no idea what they were saying.

Q. Okay. Did they drive the truck away?

A. No, sir. The truck was shot up.

Q. So you put them in the cab and then you went back to (b)(7)(C)?

A. We put them in the cab, they drove back to wherever they came from, sir.

Q. So the truck was running?

MBR (b)(7)(C): No, sir, a taxi cab.

WIT: A taxi cab, sir. Someone else was driving them.

Questions by the SRMBR continued:

Q. Okay. You got legal counsel, prior to your NJP, from (b)(7)(C)?

A. Yes, sir.

Q. Okay. Go over again what he advised you of?
A. I described the incidences, sir. He advised me to explain the situation to the General. He felt that would be possible. I decided that I wanted to plead guilty to burning the stuff, because inevitably, I did burn it, and explain that to him. He thought that was fine. He also advised me to plead not guilty to the other charge, the conduct unbecoming.

Q. Okay. Did he explain to you about NJP procedures?

A. Yes, sir.

Q. Walk you through the protocol, what was going to happen?

A. Not so much the protocol, more along the lines of, we talked maybe four or five minutes concerning, kind of a thumbnail of it. He didn't go too deep into protocol aspects, sir.

Q. Okay. So he didn't go into the procedures of an NJP and having the charges read to you?

A. No, sir.

Q. Your rights concerning those charges; your pleas;

A. what would happen after a decision was made?
No, sir.

Q. He didn't talk to you about that?

A. No, not really. I think he said something along the lines of that he felt both of them were relatively minor and that NJP would actually be somewhat of a vehicle for me to explain my actions.

Q. Okay. What did the Battalion commander say in your NJP?

A. He didn't say anything, sir.

Q. Was he asked?

A. No, sir, I don't think so.

Q. Did you talk to the Battalion commander prior to the NJP?

A. No, sir.

Q. How old are you?

A. 29, sir.

Q. How long had you been a Captain before you deployed with (b)(7)(C)?

A. Since June of 2000, sir.

Q. And you were in the IRR prior to that, right, or when you separated?

A. Yes, sir.

Q. You were in the IRR and hadn't been on duty?

A. Right.

Q. Prior to going to (b)(7)(C)?

A. That's correct.

Q. Okay. (b)(7)(C) was the (b)(7)(C) right, of (b)(7)(C)?

A. He was, sir, for a period of time and then after the (b)(7)(C) thing, he was told he wasn't the (b)(7)(C) and to stay out of company business.

Q. Okay. Was there any consideration given to replacing him or fleeting you up to being (b)(7)(C) particularly when (b)(7)(C) went on emergency leave?

A. No, sir.

Q. No discussion at all about that option?
A. No. I was also told, pretty much, to focus on (b)(7)(C) and that the (b)(7)(C) or perhaps the (b)(7)(C) would take care of some of those issues or responsibilities.

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

REC: I don't have any questions, sir.

SRMBR: Counsel, questions?

CCFR: Sir, I don't have any other questions.

SRMBR: Okay. Very good. Thank you, (b)(7)(C).

The respondent was excused and returned to counsel table.

CCFR: Can we take a brief five minute break, sir?

SRMBR: Okay. Five-minute break. We'll reconvene at 0850.

The Board of Inquiry recessed at 0844 hours, 7 April 2004.

The Board of Inquiry was called to order at 0850 hours, 7 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the court recessed are again present.

The recorder will note the time and date on the record of the proceedings.

REC: Sir, the time is 0850 on 7 April 2004.

SRMBR: Okay. Any more witnesses?

CCFR: No, sir. But we do have some additional exhibits.

SRMBR: Did you say no more witnesses?

CCFR: No more witnesses.

DC: Sir, may I approach?

SRMBR: Pardon me?

DC: May I approach?

SRMBR: Yes, indeed.

DC: Sir, I am handing you what's been marked as Respondent's Exhibit Romeo Romeo, along with Sierra Sierra, Tango Tango, and Uniform Uniform. Two of these are already in the government's exhibits but they are (b)(7)(C) most recent fitness reports, (b)(7)(C) brief, I'm sorry, preliminary inquiry, and the ROE.

SRMBR: Okay. And (b)(7)(C), you have seen all these?

REC: I have no objections, sir.

SRMBR: No objections. Okay.

CCFR: Gentlemen, the respondent concludes with their evidence.

SRMBR: Okay. This fitness report was already in there.

REC: Yes, sir. I believe they have a number of duplicates that are already in the recorder's exhibits.

SRMBR: But we don't have a completed report because the reviewing officer is not --

REC: Yes, sir. I believe that (b)(7)(C) wasn't able to locate (b)(7)(C) for a signature so he is waiting for that in order to get it finalized.

SRMBR: Okay. Does the government have any rebuttal evidence?

REC: Yes, sir. I would like to call (b)(7)(C) over the cell phone.

SRMBR: Okay.

DIRECT EXAMINATION

Questions by the Recorder:

Q. (b)(7)(C) this is (b)(7)(C)

A. Yes, ma'am.

Q. I will remind you you are still under oath from yesterday.

A. Right.

Q. I just wanted to ask you some questions dealing with (b)(7)(C) platoon ammunition that was kept on the field ASP?

A. Okay.

Q. What -- how much ammunition, how much (b)(7)(C) platoon ammunition was kept up there?

A. I would say it varied. We didn't usually store ammo out there regularly. I really couldn't say.

Q. Okay. How often would (b)(7)(C) platoon store its ammunition up there?

A. I would say rarely.

Q. Okay. Did any other company or any other platoon at (b)(7)(C) store their ammunition up there?

A. No, ma'am, not to my knowledge.

Q. Okay. What was the purpose of them storing this ammunition up there?

A. Well, I don't really recall the purpose of the exact storing ammo directly at the site. I do know that there was a, a firing range that was made behind the ASP that was used by forces in the area, the coalition forces in the area.

Q. Where was this ammunition stored?

A. It was stored at the guard shack or the guard entrance to the ASP?

Q. Okay. How often was there a Marine stationed there?

A. Twenty-four hours a day, 7 days a week.

Q. And how many Marines were stationed at the guard shack?

A. Well, an entire squad would be, but at times, when we normally did patrols, there would be at least three to four Marines at the post.

Q. How likely is it that an Iraqi could have trespassed on the ASP and gotten this ammunition?

A. That wouldn't happen at all.

Q. And you also stated that this was a rare occurrence

A. for (b)(7)(C) ammunition to be up there?
I would say, yes. I mean, I would say it would be rare, right.

REC: Okay. Thank you I have no further questions. There may be questions from the counsel or from the board members. Thank you.

WIT: Okay, yes, ma'am.

CCFR: I have no questions.

EXAMINATION BY THE BOARD

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

Q. Just one. (b)(7)(C) this is (b)(7)(C)

A. Yes, sir, good morning.

Q. You stated that the ammunition for Coalition Forces were stored at the guard shack; is that correct?

A. No, sir. The ammo, the only time I ever saw ammo there was for (b)(7)(C) platoon. And for some reason or another, they couldn't shoot and they just stored the ammo there with us since we were there guarding the ASP. If you are asking me was the range used by Coalition Forces, yes, it was.

Q. Okay. Well, in reference to (b)(7)(C) platoon ammunition, was it SOP that it be stored at the guard shack or was it supposed to be stored in one of the bunkers at the ASP?

A. No. We wouldn't use the ASP at all. We were not even allowed to even go in the ASP.

SRMBR: Okay. That's all I have. Thank you.

MBR (b)(7)(C): Okay. We have no more questions (b)(7)(C) (b)(7)(C) thank you very much.

(b)(7)(C) will dismiss you.

WIT: You are welcome.

REC: (b)(7)(C) thank you. We have nothing further.

WIT: Yes ma'am, thank you.

The witness was excused from telephonic testimony.

REC: Sir, the other witness would be someone who was there at the NJP. I am trying to get an SJA who was out there, (b)(7)(C) but he's at Pendleton. So if I could check my messages and see if he's there, it's 0700 out there.

SRMBR: Well, first of all, does the government have any rebuttal evidence other than the additional -- or not the government, the respondent have any additional?

CCFR: Sir, we don't know. I mean, typically, we might have rebuttal after the government finishes its rebuttal. It's in its rebuttal stage right now.

SRMBR: Well, (b)(7)(C) was rebuttal. Actually, the request for a witness at the NJP was a board member request. That was a my request, at least I'm considering it my request.

CCFR: In that case, we don't have any, thank you, sir.

SRMBR: And the next thing is, does any member of the board want to recall a witness we called, call any additional witnesses, to obtain further evidence?

Yes, I'd like you to do the best you can with it. We'll recess here. Try to get somebody that was there, (b)(7)(C) perhaps he is available. I believe he was there.

REC: Yes, sir. The only person who was there the entire time would be (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) and possibly (b)(7)(C) He was actually there. (b)(7)(C) (b)(7)(C) and (b)(7)(C) are out of the country. (b)(7)(C) could testify, but there's also, one of my questions is about procedures and so I thought having the SJA testify, he can answer some broader questions.

SRMBR: Okay.

REC: So if I can't find him, then I will call (b)(7)(C)

(b)(7)(C) sir.

SRMBR: Okay. Very good.

MBR (b)(7)(C): You just made mention of procedures?

REC: Yes. I got a feeling that the board members had a few, or maybe not, but had some questions about NJP notification and appeal rights and things like that, when it was offered. So that's why I am having the SJA testify. He might be able to clarify some of those issues.

MBR (b)(7)(C): I can't speak for the other two board members, but for me, there is the issue of corroboration of testimony.

SRMBR: Right. That's what we are trying to do.

REC: Okay.

SRMBR: And there is a procedural issue because I specifically would like a little more information on how the NJP summary was compiled.

REC: Okay, sir.

SRMBR: Whether there was a recorder present at the NJP, which is a procedural matter. So I think you are right on with the SJA. And (b)(7)(C) (b)(7)(C) has an additional question.

MBR (b)(7)(C): Did either ask, counsel for the government ask the Battalion commander to attend this proceeding?

REC: Yes.

SRMBR: This BOI.

CCFR: Sir, I would like to say that I will submit the witness list that the respondent has asked for. We requested (b)(7)(C) to testify, we requested (b)(7)(C) to testify, (b)(7)(C) to testify, (b)(7)(C) to testify, they were denied. They were not recommended by trial counsel to approve those requests and the recommendations of

the trial counsel were approved by the General. So we asked to have them present and they were denied.

REC: Yes, sir. The reason for all those denials, they were all out of the area. If you gentlemen would like to get into the rules of witnesses -- immediate -- this is a board of inquiry, not a court-martial. The commander will make available people who are in the immediate area so Baton Rouge, New Orleans is immediate area, (b)(7)(C) (b)(7)(C). I would like to testify as well, but he's in Africa. Obviously, we're not going to fly him back here for a BOI. A lot of these other Marines are located in Tennessee, Alabama, so out of the area. So they could testify via, telephone which (b)(7)(C) did.

SRMBR: Okay. Thank you.

REC: Okay. And these were also ruled on by the convening authority as well.

SRMBR: Okay. Thank you. We will recess until you coordinate a witness for us and then come back when we hear from you.

REC: Yes, sir. Hopefully I will have an answer for you in 10 or 15 minutes. If not, I will let you know, sir, and you can make a decision whether you just want to go forward without --

SRMBR: Okay. Thank you.

REC: For the record, the time is 0905, 7 April.

The Board of Inquiry recessed at 0905 hours, 7 April 2004.

The Board of Inquiry was called to order at 0930 hours, 7 April 2004.

SRMBR: We'll reconvene. All the members present when the board recessed are again present.

Please record the time.

REC: Sir, the time is 0930 on 7 April.

CCFR: Sir, before we call this witness, two things I want

to do is; one, introduce as exhibits the witness request and the responses from the government and the General on this so it's part of the record. So if you Gentlemen are interested in seeing it, it would be numbered as the next exhibit in order.

SRMBR: Okay.

CCFR: Secondly, that I wanted to just simply raise for the record is if you turn to Government's Exhibit 6, which is the summarized transcript of the NJP proceedings, the first page has a list of individuals who were present.

SRMBR: Uh-huh.

CCFR: Now, it's my understanding that the government wants to call (b)(7)(C) to talk about his recollection of what occurred at the NJP. His name isn't identified as one of these individuals who was present. I do have an objection to him testifying. I understand that the latitude that the board has and I just want it clear on the record. This exhibit does not reflect that he was in attendance.

SRMBR: Okay. Let's call him up.

REC: Yes, sir.

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

DIRECT EXAMINATION

Questions by the Recorder:

- Q. Sir, would you state your name for the record and spell your last name?
- A. (b)(7)(C) last name is (b)(7)(C)
- Q. What is your present billet and duty station?
- A. I am the (b)(7)(C) at Marine Corps Base Camp Pendleton, California.
- Q. Sir, if you could give a brief history of your career in the Marine Corps to the members.
- A. I joined the Marine Corps in 1992, completed OCS,

completed TBS in '95, while at Naval Justice School,

(b)(7)(C)

CCFR: Excuse me. I have an objection. This was a witness that the board called and the government's rebuttal case is already gone. I think that it would be appropriate for the board to initiate these questions since it's your witness.

REC: All right, sir.

Sir, the board members are going to ask you questions.

SRMBR: All right. I will start.

This is (b)(7)(C)

WIT: Yes, sir.

EXAMINATION BY THE BOARD

Questions by the :

- Q. (b)(7)(C), how are you doing?
A. Just fine, sir.
- Q. First question is, were you present for the entire NJP proceedings held on (b)(7)(C) by Brigadier General Kelly?
A. I was, sir. I actually served as a scribe. Didn't have a lot of clerical support, so, that basically fell on me, sir.
- Q. Okay. Your name isn't on the summary of the NJP results, though?
A. That's correct, sir.
- Q. Is that normal practice not to have, since you were present, not to have you on that list?

- A. Yes, sir.
- Q. Okay. I just wanted to ask you a little bit -- you just took notes basically; right, for this.
- A. I did, sir.
- Q. And then summarized it in the document that we have afterwards. Right?
- A. That's exactly what I did, sir.
- Q. Okay. Can you tell me about the, about (b)(7)(C) (b)(7)(C), you know, presence, demeanor, and attitude during the NJP?
- A. Yes, sir. I'd say after seeing three other NJPs total, he was not the most remorseful or apologetic person I have ever seen in a commanding General's NJP. Not that he was disrespectful, but he was very defensive, I think, is probably the best way to describe it. I got the impression in some ways, he didn't feel that he had done anything wrong and I think that kind of came through pretty quickly to everyone present. This was a little different than your standard, I'm going to command, fall on my sword NJP, which is kind of the norm for most officer cases.
- Q. Okay. Did, you think General Kelly provided (b)(7)(C) (b)(7)(C) with ample opportunity to either, you know, present mitigating evidence to the charge he pled guilty for and to explain the charge he pled not guilty for?
- A. Yes, sir. I believe he had plenty of opportunity to express himself and present the evidence that he had for the General to consider.
- Q. Did the general ever interrupt him and tell him to be quiet?
- A. Sir, I don't remember him telling him to be quiet, but I do know General Kelly got very upset, particularly about the aspect of the orders. And General Kelly's background, I'm not sure if you are familiar with, he was prior enlisted Marine and he had reached the rank of sergeant. And I think that has really influenced his leadership style and his expectations of what officers are going to do. I believe he expects officers to be mentors and issue reasonable orders, lawful orders, and not put their subordinates in the horns of a dilemma. And I

really think that's what really got to General Kelly in this case.

In both cases, the orders were questioned by the subordinates. I think the (b)(7)(C) in one case and maybe a (b)(7)(C) in the other instance, and it just seemed that (b)(7)(C) (b)(7)(C) didn't understand that that's what the real harm was. Not so much the embarrassment for the Iraqis or the loss of property, but as a leader, he put his subordinates in a position to, number one, to question his leadership and his orders; and then two, to force them to basically execute orders that most people would look at and say, clearly, this is wrong.

- Q. Okay. We read the summary and the summary pretty much reflects that. When did the, was it early on in the proceedings that the General expressed his anger?
- A. No, sir. It was definitely towards the end. It was almost a lecture, like a father-to-son lecture, if you will, as I recall it. It was that kind of information, you know, the crutch of the problem is not the impact this may have on our ability to maintain good order and discipline and the effect it has on the relationship. All that's important but the real problem is that as a leader, you have an obligation to your Marines. And for an officer to behave in that fashion, he just recalled his own experiences as a junior NCO. And then the reverence he had for officers and he couldn't understand why (b)(7)(C) would put that in the context of understanding the effects his actions had on those junior Marines.
- Q. Okay. (b)(7)(C) was advised by (b)(7)(C) (b)(7)(C). Do you know (b)(7)(C) ?
- A. Yes, sir. (b)(7)(C) was one of the defense counsels from (b)(7)(C) Legal Service Support Section. I don't know if they ever met in person. For most of the time we were in Iraq, the (b)(7)(C) guys were down in Kuwait. So it may have been via telephone. I don't recall, sir, for sure.
- Q. I think they met, based on evidence we have seen, they met in person. But did (b)(7)(C) you know, ever talk to you or talk to a more senior

judge advocate in the course of giving advice to (b)(7)(C). You know, going to officer's NJP, it's pretty serious business. (b)(7)(C) is a pretty junior, young officer?

A. Yes, sir. I think, ethically, it would be kind of difficult for us to advise or coach (b)(7)(C) (b)(7)(C) on the proper course of action. We are there to provide support and advice to the commanding General and our commanders. If (b)(7)(C) had questions, either about whether or not this was a good case for NJP, you know, he has folks in his defense counsel chain of command that are available to him. I don't think that (b)(7)(C) talked to him about the validity or whether or not this was a decent deal for his client. That would be inappropriate.

Q. Okay. And the rest of his defense team or seniors were down in Kuwait, right, or were they up there with you?

A. Yes, sir. As I recall, the (b)(7)(C) pulled out most of their folks in May, June timeframe. They left a team of about four or five. What (b)(7)(C) would do, periodically, is get on the PX convoys that would come up, they went through all the areas. They would stop, you would be able to get your Gatorade and if someone had a legal assistance or defense counsel related question, (b)(7)(C) was there to field those. I don't know if there was another defense counsel in Kuwait. My understanding is that most of them were actually back here in Camp Pendleton.

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

Is there any other questions from the board members?

MBR (b)(7)(C): This is (b)(7)(C).
How are you doing?

WIT: Yes, sir.

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

Q. I had one question, can't remember if I've seen it in the transcript or not. At one point, did the General make a comment that he could have understood if (b)(7)(C) had detained the Iraqis, at least he'd have understood where he was coming from?

A. Sir, to be honest, I don't really recall the details or the actual commentary. I think based on the way that we were doing things at the time, that would have been reasonable based on the Rules of Engagement and based on current operations. I think if the General became frustrated with anything, it was this notion that, you know, you could see the frustration, the actions, both of them, really speak to the level of frustration in dealing with the locals. Going that step, stripping these guys and embarrassing them in public is really kind of out of touch with what Arabic sensitivities are and the loss of face involved there. These guys show up at the same ASP three or four times, they are not getting it, clearly. I think they would be good candidates to go into our detention system for a while. So, I wouldn't be surprised if the General said that, but to be honest, sir, I don't recall him, specifically him saying that.

Q. Did you see any moment of insight from (b)(7)(C) when, at least trying to understand the difference between his decision and his decision to put his Marines in a precarious situation? Did you see that he sensed the difference between the two?

A. Sir, I didn't get the impression that it sunk in. I'm not surprised. It's a very awkward position to be in. You're deployed, you're in the General's office and you're getting your butt chewed and I don't think that's always going to be a case where the enlightenment is going to come. I think he heard what the General was saying, I just don't think, at the time, he had a chance to process all of it and put it in a context. I found him to be very defensive and that's natural given that your judgment and your decisions are being questioned.

But like I said, from most other officer NJPs, I think that's kind of played out before you go in to see the CG because I think that there's always a danger that if you are not coming clean and if you are not remorseful, the CG is going to say, time out. It looks like you don't value these proceedings, you don't understand the gravity of your situation. You need to go to a court-martial to sort that out.

Q. Actually, I have one more. Was there a certain

moment were the CG said, I am going to take your commission, and could you describe what that meant?
A. Sir, I don't believe he said he would take his commission. I think he questioned whether or not (b)(7)(C) was fit to lead Marines anymore. I think he may have mentioned it in the context of, that is a possibility, but General Kelly is smart enough to know that that decision of, you know, of anything with someone's career is not his call. That's something that is down the line for the show cause authority and ultimately with the SecNav. I don't recall him saying that, but I do remember him talking about the notion of, you know, there may be a board of inquiry, there may be some time where you have to justify why you need to stay on active duty.

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

SRMBR: This is (b)(7)(C) again, (b)(7)(C).

WIT: Yes, sir.

Questions by the :

Q. How many officer NJPs have you been involved in?
Did you hear me?

A. I'm sorry, sir, you are breaking up.

Q. Sure. How many officer NJPs have you been involved in?

A. Sir, it's a total of three or four, I think, in my time with the Division.

Q. All with Brigadier General Kelly?

A. No, sir. At least two were with General Matteson.

SRMBR: Okay. I am going to let -- well, okay, go ahead.

MBR (b)(7)(C): (b)(7)(C), this is (b)(7)(C)
(b)(7)(C)

WIT: Yes, sir.

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

Q. What is the requirement for submission of transcripts for NJPs?

A. Provision of transcripts, sir?

Q. No. What is the requirement for the submission of transcripts for all NJPs?
A. If possible, sir, it's supposed to be verbatim.

Q. Okay. If possible. Was there a scribe in the area?
A. No, sir.

Q. They were called away for some other duty?
A. No, sir. There were no court reporters left in theater. When (b)(7)(C) left in May, June timeframe, they left a skeleton crew of approximately four officers and that was it.

Q. The Division doesn't have any court reporters?
A. No, sir. That changed, I think back in the early '90s, when they created Legal Services Support Section. That kind of economy of force type thing. They own all the court reporters, I think, Marine Corps Base owns one.

Q. Okay. Do you have any experience as a court reporter?
A. No, sir. Absolutely not.

Q. Okay. But the best case scenario is to have a verbatim transcript for the NJP proceeding. Correct?
A. Yes, sir.

Q. Okay. Let's carry this on a little bit farther. At what point was the NJP decision presented to (b)(7)(C) (b)(7)(C)?
A. Probably two or three days before it was actually conducted, sir.

Q. The decision to hold the NJP was two to three days before it was actually held. And then the General's decision following the proceedings was presented to (b)(7)(C) when?
A. Right there, sir.

Q. In?
A. (b)(7)(C) before he left, the General's work space, knew what the sentence was and knew what the findings were and knew verbally what General Kelly was going to recommend in terms of show cause or not.

MBR (b)(7)(C): Okay. That's all I have. Thank you.

SRMBR: Okay. I am going to let counsels follow up here with (b)(7)(C) going first.

DIRECT EXAMINATION

Questions by the Recorder:

- Q. Sir, did, did the General ever tell (b)(7)(C) to shut up?
- A. I don't recall him saying that at all.
- Q. Okay. Or shut the fuck up?
- A. Again, I don't recall General Kelly saying that at all.
- Q. Does that sound like something that General Kelly would tell an officer at an NJP?
- A. It was the first one I have seen with General Kelly. I don't believe that is the type of thing he would say. He may have said something that he had done was fucked up. I don't put that past him. He can be a little coarse at times. But again, I don't remember him telling (b)(7)(C) to shut the fuck up at all.
- Q. Okay. Did (b)(7)(C) this is in your summarized transcript when he's talking about the burning of the clothes incident, you have in the summarized transcript that (b)(7)(C) says that it was stupid, that it was a bad mistake. It was just a dump decision.
- A. Is that approximately what he said, sir?
- A. I tried to be as accurate as possible, particularly with his commentary because it was his NJP. To be honest, I don't recall exactly what he said in there, but I would trust my memory at the time of writing that down instantaneously as he was going through that that's what was said.
- Q. Sir, why wasn't your name listed in the individuals who participated in the NJP or present at the NJP?
- A. In the other NJPs I conducted, I never listed myself as being there as a scribe. I just list the key players and witnesses present.

- Q. Okay. And I guess, sir, this goes without saying, but this is an officer NJP. Obviously all these proceedings are going to go up to a higher level, and you took -- because there wasn't a court reporter available -- you took your duties as a scribe seriously?
- A. Yes. Absolutely.

REC: Thank you. I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

- Q. (b)(7)(C) ?
- A. Yes.
- Q. My name is (b)(7)(C), I am a civilian attorney for (b)(7)(C). I have some questions for you.
- Did anyone have a tape recorder?
- A. No, sir.
- Q. The entire -- you didn't -- did anyone look for a tape recorder?
- A. I didn't look for one, sir. The only folks that may have had one was maybe the NCIS agents. We had approximately two off and on throughout our proceedings out there. But no, sir, I didn't look for a tape recorder.
- Q. Did anyone have -- did they -- did anyone bring like boom boxes out to the field that had tape decks?
- A. No, sir. We were traveling pretty light. Shoot, we didn't get cuffs until June timeframe. We were pretty much just whatever you can carry on your back.
- Q. Did -- to you knowledge, did anyone approach NCIS with the opportunity to get ahold of one of these tape recorders?
- A. No, sir.
- Q. And when you said you took notes on this, do you still have those notes?
- A. No, sir. I don't have anything from my time in the Division. Everything I left up there was either on

the laptop computer, which, I believe, is redeployed with the folks that replaced me or is up in the SJA's office with some of the other assorted notes and things I had on hand at the time.

Q. Do you remember how long it was after the NJP that you transcribed -- to create the summarized transcript?

A. Yes, sir. It would have been the same day if not the next day. Quick turnaround time on these things. The Generals don't have a lot of time to deal with administrative matters in that environment. Pretty much, as soon as we got done, (b)(7)(C) may have talked to the commander of (b)(7)(C) and I probably turned around and started typing almost immediately.

Q. You said that it wasn't your practice to put your name on the transcript?

A. That's correct, sir.

Q. Is that just the policy that you have or do you think that is some sort of legal policy in the Marine Corps?

A. To be honest, sir, like I said, I have handled about three or four officer NJPs. Prior to that, my boss was actually doing them, (b)(7)(C). During the other, probably almost three years worth of time, he did all the officer NJPs himself. So basically, what I did, was I worked off his model. He was the SJA and he was present and he was listed. There was no other scribe present. This is kind of a different circumstance than the ones I had seen previously.

Q. My question to you, (b)(7)(C), was is this standard operating procedure by some sort of JagMan or some sort of order that the scribe isn't included in the list of people in attendance?

A. Sir, I don't recall. All I know is the examples I had seen before. There was never a scribe listed on it. It was just the parties present.

Q. And you were a person present?

A. Yes, sir. Not a party.

Q. Well, you also listed the witnesses here as well. Right?

- A. Right. Because anyone that had a speaking role, I listed.
- Q. The caption says, "the following individuals were present." And then there's the list of the various players, including the SJA. Right?
- A. Yes, sir.
- Q. Now you said that your assessment was that (b)(7)(C) (b)(7)(C) wasn't all that apologetic?
- A. Yes, sir.
- Q. You understood that he pled guilty to one of the offenses and not guilty to other. Right?
- A. Yes, sir.
- Q. If he pled not guilty, isn't that your understanding that he has an intention to try to defend that charge?
- A. Absolutely, sir.
- Q. Now, you said in your other NJPs, people sort of fell own their sword. Right?
- A. Yes, sir.
- Q. And in those other NJPs, did those individuals plead guilty to all the offenses that were in front of them?
- A. Probably about 80 percent of them, yes, sir.
- Q. So is it your experience more often or not that when people showed up to NJP, they were pleading guilty to everything and they were just trying to work on what the repercussions would become out of the NJP?
- A. Absolutely, sir.
- Q. And, of course, you don't disagree that (b)(7)(C) (b)(7)(C) has a right to try to present a case on his behalf at NJP?
- A. Absolutely not, sir. That is completely his right to do that.
- Q. So when you said he wasn't that apologetic, he did plead guilty to one of the offenses. Right?
- A. He did.
- Q. And, in fact, in your summation, the way you summarized it, you claimed that he acknowledged that

- A. it was a stupid mistake?
Right after being questioned by the General, yes, sir.
- Q. Okay. So he fell on his sword on that one. Right?
A. Eventually, yes, sir.
- Q. But he pled guilty going in?
A. To one offense, yes, sir.
- Q. The comment about, that was a stupid mistake, is in reference to the charge he pled guilty to.
Do you understand that?
A. Yes, sir.
- Q. All right. These other officer NJPs that you said you were involved with, were they, you were the scribe for each one of those?
A. Yes, sir. If I recall, it was the two other ones we conducted out there in Iraq.
- Q. Okay. So (b)(7)(C) was the third?
A. Yes, sir. It may not have been the third in order, but it was one of three I recall doing out there.
- CCFR: (b)(7)(C), thank you very much. I don't have any further questions for you.
- SRMBR: Okay. Any further questions from the board?
Okay. Thank you very much, (b)(7)(C) Wait, one more question.

EXAMINATION BY THE BOARD

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

- Q. (b)(7)(C) this is (b)(7)(C) again.
I am looking over the transcript.
Did the General ever ask any of the witnesses for their account of what happened?
A. Sir, I don't believe he did. What I remember about this NJP is that it was unusual in that the

Subj: NOTIFICATION OF BOARD OF INQUIRY

(2) If the board finds that the reasons for separation are not supported by sufficient evidence to warrant separation for cause, your case will be closed.

3. The most adverse characterization of service that may be recommended by the Board is Under Other Than Honorable Conditions.

4. You have 30 days in which to prepare your case. As the respondent, you are entitled to exercise the rights set forth in enclosure (1). Your failure to invoke any of these rights will not be considered as a bar to the Board of Inquiry proceedings.

5. This letter is the notice required by reference (a). You will be notified of the names of the Board members and of the date and location of the hearing by the senior member of the Board.

6. You are directed to acknowledge this notification by completing enclosure (2) and returning it to this Headquarters (JAM) within 5 working days of receipt.

(b)(7)(C)

By direction

RIGHTS OF A RESPONDENT

(a) The Respondent shall be given the following rights, which may be exercised or waived:

(1) 30 days to prepare his or her case with reasonable additional time, as determined necessary by the Board of Inquiry. The respondent may, for good cause, further petition the convening authority in a timely manner, for a continuance.

(2) The right to counsel, as provided in paragraph (b) below.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the Board of Inquiry.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the DC (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of Board of Inquiry proceedings. Failure to provide any information or the name of a witness shall not preclude the Board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board of Inquiry.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required, the convening authority shall appoint a new member who is qualified. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

Enclosure (1)
Page 1 of 3

(7) The right to request from the convening authority or the Board of Inquiry the appearance before the Board of any witness whose testimony is considered to be pertinent to the case.

(8) The right to submit, at any time before the Board convenes or during the proceedings, any matter from the respondent's service record, letter answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the Board of Inquiry. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by Article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the Board of Inquiry.

(11) The respondent or counsel may present argument on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the Board of Inquiry for consideration of the Secretary of the Navy.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the Board of Inquiry proceedings, findings, or recommendations.

Enclosure (1)
Page 2 of 3

(b) Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per Article 27(b)(1), UCMJ.

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in Section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the convening authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

(c) Waiver

(1) Respondent may waive any of the aforementioned rights before the Board of Inquiry convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph (a) of this enclosure.

Enclosure (1)
Page 3 of 3

1920
JAMO

From: (b)(7)(C) (b)(6) - SSN 0602 USMCR
To: Commandant of the Marine Corps (JAM)
Via: Commander, U.S. Marine Forces, Reserve

Subj: ACKNOWLEDGMENT OF NOTICE

Ref: (a) CMC ltr 1920 JAMO of DEC 03 2003

1. I acknowledge that I was notified by the reference that my case will be heard by a Board of Inquiry. I understand that I have 30 days in which to prepare my case and that I am entitled to exercise the rights set forth in enclosure (1) of the reference.

2. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date notified _____

Enclosure (2)



UNITED STATES MARINE CORPS

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

IN REPLY REFER TO:
1920
SJA
06 JAN 2004

FIRST ENDORSEMENT on CMC ltr 1920 JAMO of 1 Dec 03

From: **Commander, Marine Forces Reserve**
To: (b)(7)(C) USMCR, (b)(7)(C) - HOME ADDRESS/PHONE
(b)(7)(C) - HOME ADDRESS/PHONE

Subj: **NOTIFICATION OF BOARD OF INQUIRY**

1. Pursuant to the basic correspondence, you are notified that a Board of Inquiry (BOI) will be convened to make a recommendation on your retention in the U. S. Marine Corps Reserve. Upon receipt of this letter, you are directed to sign and date enclosure (2) of the basic correspondence, a copy of which must be received by this office within five (5) working days from receipt of this letter. An advanced copy may be faxed to the Office of the Staff Judge Advocate (OSJA) at CML: (504) 678-0478. The original must be mailed to:

**SJA, MARFORRES
ATTN: Military Justice Officer
4400 Dauphine Street, BLDG 601
New Orleans, LA 70146-5400**

2. My intention is to hold the BOI sometime during the month of February 2004. The exact date, time, and place of this hearing will be determined, and you will be duly notified. A military defense counsel (Counsel for the Responent---CFR) will be detailed to your case. Any question or defense related matter should be directed to (b)(7)(C) USMCR. He may be contacted at the Navy Legal Service Office (NLSO), Detachment New Orleans, LA; CML: (504) 678-2520/2522.

(b)(7)(C)

By direction of the
Commander

Copy to:
CFR

1920
JAMO

From: (b)(7)(C) (b)(6) - SSN 0602 USMCR
To: Commandant of the Marine Corps (JAM)
Via: Commander, U.S. Marine Forces, Reserve

Subj: ACKNOWLEDGMENT OF NOTICE

Ref: (a) CMC ltr 1920 JAMO of DEC 03 2003

1. I acknowledge that I was notified by the reference that my case will be heard by a Board of Inquiry. I understand that I have 30 days in which to prepare my case and that I am entitled to exercise the rights set forth in enclosure (1) of the reference.

2. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date notified 19 Jan 04

Enclosure (2)



UNITED STATES MARINE CORPS

(b)(7)(C)
1ST MARINE DIVISION, PAF
AL KUT, IRAQ

IN REPLY REFER TO:
1920
SJA/jal
6 Aug 03

From: (b)(7)(C) (b)(6) - SSN 70602 USMCR
To: Secretary of the Navy
Via: (1) Commanding Officer, 3rd Battalion, 23rd Marines
(2) Commanding General, 1st Marine Division (Rein)
(3) Commandant of the Marine Corps (JRM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

Ref: (a) MCO P1900.16F (MARCORSEPMAN), paragraph 4104
(b) SECNAVINST 1920.6B

1. Pursuant to references (a) and (b), I voluntarily tender my unqualified resignation of my commission in the United States Marine Corps Reserve in lieu of processing for administrative separation for cause.
2. My resignation is offered under paragraph 4104.3a of reference (a). I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I shall subsequently receive a certificate of honorable discharge from the naval service.
3. This resignation is based on my recent Commanding General's non-judicial punishment for violations of Articles 103 and 133 of the Uniform Code of Military Justice.
4. Pursuant to reference (b), I understand that a Reserve commission is normally not authorized for officers resigning for cause and I do not desire such a commission.
5. I understand that if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (DSNA, ROTC, FLEP, etc.) I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION, MFM, USMC
DDC 42410
FPO AF 94428-2410

IN REPLY REFER TO
1900
CO
9 Aug 2003

FIRST ENDORSEMENT on (b)(7)(C) ltr 1920 SJA/jal of 6 Aug 2003

From: Commanding Officer, 3d Battalion, 23d Marines, 1st Marine Division
To: Secretary of the Navy
Via: (1) Commanding General, 1st Marine Division (Rein)
(2) Commander, Marine Forces Reserve, 4400 Dauphine Street,
New Orleans, LA 70146-5400
(3) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

1. Forwarded, recommending approval.

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
CAMP BABYLON, IRAQ
UC 39702
FPO AP 96425-9702

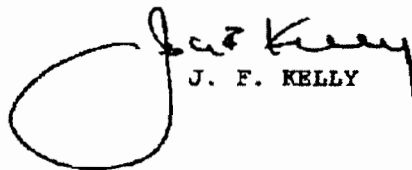
IN REPLY REFER TO:
1920
SJA/jal
10 Aug 03

SECOND ENDORSEMENT on (b)(7)(C) ltr 1920 SJA/jal of 6 Aug 03

From: Commanding General, 1st Marine Division (Rein)
To: Secretary of the Navy
Via: (1) Commanding General, I Marine Expeditionary Force
(2) Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR UNQUALIFIED RESIGNATION FOR CAUSE

1. Forwarded, recommending approval.
2. Although (b)(7)(C) was the subject of Commanding General's non-judicial punishment on 1 August 2003, I believe that his service was otherwise unblemished, and that his expeditious separation is in the best interests of the Marine Corps.


J. F. KELLY



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

IN REPLY REFER TO:
1920
JAMO
OCT 09 2003

SECOND ENDORSEMENT on CG, 1stMarDiv's ltr 5812 17/jal
of 10 Aug 03

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

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

1. Forwarded for review and final action.
2. The basic correspondence is the Report of Nonjudicial Punishment in (b)(7)(C) case. (b)(7)(C) unqualified resignation request in lieu of processing for administrative separation and its accompanying endorsements are included as enclosure (8) of the basic correspondence.
3. A brief chronology of this case follows:
 - a. On 23 June 2003, while serving as a (b)(7)(C) Platoon Commander in Iraq, (b)(7)(C) and his Marines detained four Iraqi men for looting. (b)(7)(C) directed that the men be searched, stripped of their clothes (except for their shoes and underwear), and then released.
 - b. In a separate incident, on 28 June 2003, (b)(7)(C) and his Marines fired upon and disabled a truck that attempted to speed through their checkpoint. Two Iraqi men, wounded by the Marines' fire, were given medical treatment and evacuated. When the men returned the next day to recover their personal belongings, (b)(7)(C) denied them access and instructed his Marines to burn the Iraqi men's property.
 - c. On 1 August 2003, the Commanding General, 1st Marine Division (Reinforced) imposed nonjudicial punishment upon (b)(7)(C) and found him guilty of violating Articles 103 (failing to secure captured or abandoned property) and 133 (conduct unbecoming) of the Uniform Code of Military Justice. The Commanding General, 1st Marine Division (Reinforced) awarded (b)(7)(C) forfeiture of \$2034.00 pay per month for one month and a Letter of Censure.

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 70602 USMCR

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

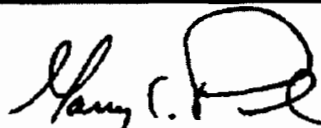
e. On 9 August 2003, the Commanding Officer, (b)(7)(C) (b)(7)(C) recommended that (b)(7)(C) resignation request be approved.

f. On 10 August 2003, the Commanding General, 1st Marine Division, recommended that (b)(7)(C) resignation request be approved.

g. On 30 August 2003, the Commanding General, I Marine Expeditionary Force, recommended that (b)(7)(C) resignation be approved.

4. After careful review of the applicable law and regulations, (b)(7)(C) statements during his nonjudicial punishment, the statements of his character witnesses, and the recommendations of the chain of command, I am satisfied that (b)(7)(C) unqualified resignation in lieu of processing for administrative separation should be approved.

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



GARRY L. PARKS
Deputy Commandant for
Manpower and Reserve Affairs

~~APPROVED~~ / DISAPPROVED



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



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
UIC 39658
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 96813-1786

IN REPLY REFER TO:
5800
SJA/jal
28 Jul 03

From: Commanding General, 1st Marine Division (Rein)
To: (b)(7)(C) (b)(6) - SSN /0602 USMCR

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

Ref: (a) Paragraph 4, Part V, MCM (2000 ed.)
(b) SECNAVINST 1920.6B

1. You are hereby notified that it is my intention to conduct an Article 15 hearing in accordance with reference (a). Prior to that hearing, you are advised of the following:

a. That you are accused of the following:

1. A violation of Article 103, UCMJ failing to report and turn over captured or abandoned property: In that (b)(7)(C) U.S. Marine Corps Reserve, on active duty, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned.

2. A violation of Article 133, UCMJ, conduct unbecoming an officer and gentleman: In that (b)(7)(C) U.S. Marine Corps Reserve, did, on active duty, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

b. That you may, upon request, examine available statements and evidence upon which the allegations are based.

c. That you have the right not to make any statement concerning these offenses.

d. That any statement you do make may be used against you during these proceedings or in trial by court-martial or in administrative separation proceedings under reference (b).

e. That you may consult with a lawyer, either a civilian attorney retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

f. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing or, if you waive such personal appearance, to submit written matters for consideration;

(2) To be advised of the offenses of which you are suspected;

(3) That you will not be compelled to make any statement regarding offenses charged and that any statement you do make can be used against you;

(4) To be present during the presentation of all information against you, including the testimony of witnesses present and the receipt of written statement. Copies of any statements will be furnished to you;

(5) To have made available to you for inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation or defense of alleged charges. Matters in mitigation do not constitute a defense but do reduce the degree of culpability such matters might include a fine military record, either previous or subsequent to the alleged offenses. Matters in extenuation are matters which render an offense less aggravated or reprehensible than it would otherwise be, but such matters do not also constitute a defense. A matter offered in defense is offered as a reason in law or in fact why you should not be found guilty of the charges alleged;

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative. It is your own obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer; and

(8) To have the proceedings open to the public unless good cause for closing the proceedings can be shown or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

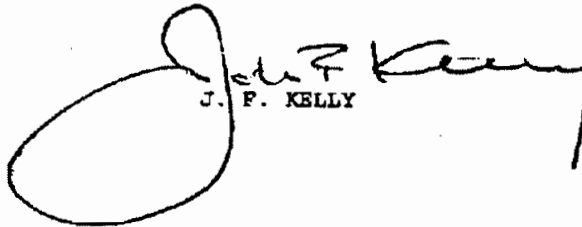
2. A report of this nonjudicial punishment [NJP] will be made to the Commandant of the Marine Corps (CMC) and you may be subject to involuntary separation proceedings directed by CMC. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

3. You are further advised that if NJP is imposed, you have the right to appeal to the next superior authority within 5 working days, if you consider the punishment unjust or disproportionate to the offenses for which it is imposed.

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

4. Unless attached to or embarked in a vessel, you have a right to refuse NJP. If you refuse NJP, charges could be referred for trial by general court-martial. If charges are referred to a general court-martial you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept NJP is to be reprimanded (orally or in writing), 30 days arrest in quarters or 60 days restriction and to forfeit half of one month's pay for two months.

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within five (5) days.


J. F. KELLY



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
LIC 39858
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 88613-1786

IN REPLY REFER TO:
5800
SJA/jal
AUG 01 2003

FIRST ENDORSEMENT on CG, 1st MarDiv (Rein) ltr 5800 SJA/jal of 28 Jul 03

From: (b)(7)(C) (b)(6) - SSN /0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

1. I hereby acknowledge my understanding of the advice stated in the Commander's notification letter, and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. Prior to taking this decision, I have had the opportunity to consult with a lawyer.

2. I also acknowledge that if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred and if I received advanced education assistance (USNA, ROTC, FELP, etc...), that I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

(b)(7)(C)

Date: 8/1/03

Witness

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
UIC 39838
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 96613-1786

IN REPLY REFER TO:
5800
SJA/jal
AUG 01 2003

From: (b)(7)(C) (b)(6) - SSN 10602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: ACKNOWLEDGEMENT AND RIGHTS FORM

1. Knowing and understanding all of my rights as set forth in the notification letter dated 28 July 2003, I desire to exercise the following rights:

a. Lawyer

_____ I wish to talk to a military lawyer before completing the remainder of this form.

_____ I wish to talk to a civilian lawyer before completing the remainder of this form.

(b)(7)(C) I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

(b)(7)(C)

(b)(7)(C)

1 Aug 03
(Date)

30 July 03

I talked to (b)(7)(C), a lawyer, on

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

1 Aug 03
(Date)

b. Right to refuse nonjudicial punishment

_____ I refuse nonjudicial punishment.

(b)(7)(C) I accept nonjudicial punishment. I understand that acceptance of nonjudicial punishment does not preclude further administrative action against me.

Subj: ACKNOWLEDGEMENT AND RIGHTS FORM

c. Personal appearance

I request a personal appearance before the Commanding Officer.

I waive a personal appearance.

I do not desire to submit any written matters for consideration.

Written matters are attached.

d. Elections at personal appearance

I request that the following witnesses be present at my nonjudicial punishment proceeding: (b)(7)(C)

(b)(7)(C)

I request that my nonjudicial punishment proceeding be open to the public.

(b)(7)(C)

(b)(7)(C)

9 Aug 03
(Date)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT

(b)(7)(C) (b)(6)-SSN 0602 (b)(7)(C) /USMCR (b)(7)(C)
Name SSN Rank/Branch Unit

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(b)(7)(C) (1) I am suspected of having committed the following offenses:

a. A violation of Article 103, UCMJ failing to report and turn over captured or abandoned property: In that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 29 June 2003, fail to give notice and turn over to proper authority without delay, certain captured property which had come into his custody and possession to wit: personal clothing, blankets, pillows, cassette tapes, and seat covers, of a value under \$500.00 U.S. dollars, by ordering that the items be burned.

b. A violation of Article 133, UCMJ, conduct unbecoming an officer and gentleman: In that (b)(7)(C) U.S. Marine Corps Reserve, did, at or near Al Kut, Iraq, on or about 23 June 2003, wrongfully and dishonorably violate international law, customs and treaties by subjecting four Iraqi male detainees to embarrassment, scorn and ridicule, by directing his Marines to strip them down to their underwear and then escort them out of the (b)(7)(C) command post, to the disgrace of the armed forces.

(b)(7)(C) (2) I have the right to remain silent;

(b)(7)(C) (3) Any statement I do make may be used as evidence against me in trial by court-martial;

(b)(7)(C) (4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and

(b)(7)(C) (5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT (cont'd)

WAIVER OF RIGHTS

(b)(7)(C) I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that,

(b)(7)(C) (1) I expressly desire to waive my right to remain silent;

(b)(7)(C) (2) I expressly desire to make a statement;

(b)(7)(C) (3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning;

(b)(7)(C) (4) I expressly do not desire to have such a lawyer present with me during this interview; and

(b)(7)(C) (5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any type having been used against me.

(b)(7)(C)

(b)(7)(C)



UNITED STATES MARINE CORPS

1ST MARINE DIVISION (REIN)
UIC 39858
BOX 1786
CAMP BABYLON, IRAQ
FPO AP 96613-1786

IN REPLY REFER TO:
5800

17/jal

AUG 01 2003

From: (b)(7)(C) (b)(7)(C) - SSN 0602 USMCR
To: Commanding General, 1st Marine Division (Rein)

Subj: ACKNOWLEDGEMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16F (MARCORSEPMAN)

1. I, (b)(7)(C) (b)(7)(C) - SSN 0602 USMCR, assigned to (b)(7)(C) have been informed of the following facts concerning my right of appeal as a result of the Commanding General's nonjudicial punishment held on 1 August 2003.

2. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances, which I believe will make it extremely difficult or not practical to submit an appeal within the 5-day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

a. The appeal must be in writing.

b. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense for which it was imposed.

3. I understand that, if I submit an appeal, it must be referred to a military lawyer for consideration and advice before action is taken on the appeal.

4. _____ I intend to appeal the imposition of NJP.

(b)(7)(C) I do not intend to appeal the imposition of NJP.

Subj: ACKNOWLEDGEMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

5. I have been notified of my right to submit a request for resignation in lieu of administrative separation processing.

(b)(7)(C) desire to submit a request for resignation in lieu of administrative separation processing in accordance with reference (a) and (b).

_____ I do not desire to submit a request for resignation in lieu of administrative separation processing.

(b)(7)(C)

USMCR

Aug 03
(date)

(b)(7)(C)

8/1/03
(date)

(b)(7)(C)

PRINT NAME AND RANK

(b)(7)(C) ✓ **(b)(7)(C)**