



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

IN REPLY REFER TO:
1920
JAMO
SEP 01 2004

SECOND ENDORSEMENT on SMBR ltr 1920 SJA of 21 Jun 04

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

Subj: REPORT OF BOARD OF INQUIRY 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 Board of Inquiry (BOI) report in (b)(7)(C) case.
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. 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. The vehicle was searched for possible intelligence and intelligence support was requested. While searching the vehicle, the Marines uncovered clothing and seat cushions described as filthy and covered with unidentified stains. When it appeared that no intelligence could be gathered from these articles, (b)(7)(C) ordered them burned. (b)(7)(C) explained that this precautionary measure was intended to prevent the spread of fleas, lice, fruit flies and the disease leishmaniasis, an ailment becoming more common among the military in Southwest Asia. (b)(7)(C) also contended that such articles were commonly used by insurgents to conceal explosives on the sides of roads in other parts of Iraq. All other confiscated articles were turned into military intelligence.

c. On 1 August 2003, the Commanding General, 1st Marine Division imposed nonjudicial punishment upon (b)(7)(C) and found him guilty of violating Articles 103 (failing to report

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(b)(7)(C) (b)(6) - SSN /0602 USMCR

and turn over captured property) and 133 (conduct unbecoming) of the Uniform Code of Military Justice. The Commanding General, 1st Marine Division awarded (b)(7)(C) forfeiture of \$2,034.00 pay per month for 1 month and a Letter of Censure. (b)(7)(C) did not appeal his nonjudicial punishment.

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 was approved, his service would be characterized as Honorable.

e. On 8 October 2003, (b)(7)(C) was demobilized and returned to the cognizance of U.S. Marine Corps Forces, Reserve.

f. On 9 October 2003, my predecessor recommended that (b)(7)(C) resignation request be approved and that he be separated with an Honorable characterization of service.

g. On 6 November 2003, you disapproved (b)(7)(C) resignation request and directed him to show cause for retention at a board of inquiry.

h. On 1 December 2003, my predecessor directed the Commander, U.S. Marine Corps Forces, Reserve to convene a board of inquiry.

i. On 6 April 2004, the board of inquiry substantiated the allegations of misconduct and recommended that (b)(7)(C) be separated with an Honorable characterization of service. However, one of the members submitted a minority report in which he substantiated the allegations of misconduct but recommended retention.

j. On 19 July 2004, Commander, Marine Forces Reserve recommended that the findings of the board of inquiry be approved and that (b)(7)(C) be separated with an Honorable characterization of service.

4. After careful review of the applicable law and regulations, (b)(7)(C) statements during his nonjudicial punishment, the statements of his character witnesses, the transcript of the board of inquiry and the recommendations of the chain of command, I am satisfied that (b)(7)(C) involuntary

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(b)(7)(C) (b)(6) - SSN 0602 USMCR

separation with an Honorable characterization of service should be approved.

5. In accordance with reference (a), I recommend that you approve (b)(7)(C) involuntary separation, and that his service be characterized as Honorable. Your approval of this recommendation will effect the recommended action. The separation code will be (b)(2).

H. P. Osman

H. P. OSMAN
Deputy Commandant for
Manpower and Reserve Affairs

SEP -8 2004

APPROVED/~~DISAPPROVED~~

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



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4400 BALDUINE STREET
NEW ORLEANS, LOUISIANA 70146-3400

IN REPLY REFER TO:
1920
SJA
19 JUL 2004

FIRST ENDORSEMENT on SMBR ltr 1920 SJA of 21 Jun 04

From: Commander, Marine Forces Reserve
To: Secretary of the Navy
Via: (1) Commandant of the Marine Corps (JAM)
(2) Commandant of the Marine Corps (DC/S M&RA)

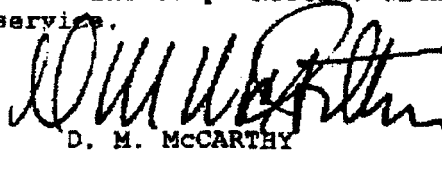
Subj: REPORT OF THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602 USMCR

Encl: (7) CFR ltr 1920 of 7 Jul 04

1. In accordance with reference (a), the Report of the Board of Inquiry (BOI) is forwarded for final action.
2. As indicated in enclosure (7), the Counsel for the Respondent was provided with the opportunity to review the Report of the BOI and submit additional written comments. Counsel for the Respondent submitted written comments, and objected to the BOI report, asserting the report mischaracterized the evidence presented at the BOI hearing. I have considered counsel's argument, and find that a preponderance of the evidence supports the Board's findings and recommendations and I concur with those findings and recommendations.
3. The record of the BOI reveals, and the BOI substantiated, that (b)(7)(C) failed to demonstrate acceptable qualities of leadership required of an officer of his grade. (b)(7)(C) endangered the welfare of his Marines by mistreating Iraqis under his charge thereby opening his Marines to Iraqi retaliation. In the first instance (b)(7)(C) ordered his Marines to strip Iraqi detainees to their underwear and sent them out on a public street in Al Kut, Iraq. In the second instance, (b)(7)(C) had his Marines burn the clothing of Iraqis stopped at a check point. (b)(7)(C) failed to treat these Iraqi detainees in accordance with Marine Corps orders and Geneva Convention standards. These findings clearly indicate this officer's lack of mobilization potential. Due to (b)(7)(C) service in Iraq and his unblemished prior record, the BOI recommended that (b)(7)(C) receive an Honorable discharge. However, anyone who reads this record should have no doubt that no Marine should ever again be subordinated to the command or supervision of this officer, whose documented conduct so deviates from accepted and recognized standards.
4. Accordingly, I recommend the findings and recommendations of

Subj: REPORT OF THE BOARD OF INQUIRY ICD (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR

the Board be approved and that (b)(7)(C) be involuntarily separated from the United States Marine Corps Reserve with an Honorable characterization of service.



D. M. McCARTHY

Copy to:
Respondent
Counsel for Respondent
Recorder



UNITED STATES MARINE CORPS
MARINE FORCES RESERVE
4400 DAUPHINE STREET
NEW ORLEANS, LOUISIANA 70148 5400

IN REPLY REFER TO:
1920
SJA

JUN 21 2004

From: Senior Member (BOI)
To: Secretary of the Navy
Via: (1) Commander, Marine Forces Reserve
(2) Commandant of the Marine Corps (JAM)
(3) Commandant of the Marine Corps (DC/M&RA)

Subj: FINAL REPORT OF THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 70602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16 (MARCORSEPMAN)
(c) MCO P5800.16A (LEGADMINMAN)
(d) CMC ltr 1920 JAMO of 1 Dec 03
(e) CMFR ltr 1920 SJA of 27 Feb 04

Encl: (1) Report of Findings and Recommendation
(2) Minority Report
(3) Acknowledgement of Service/Review of encl (3)
(4) BOI Transcript (verbatim)
(5) Government (original) Exhibits
(6) Respondent (original) Exhibits

1. In accordance with the references, a Board of Inquiry (BOI) was convened on 6 April 2004 and completed on 7 April 2004 at Marine Forces Reserve, New Orleans, Louisiana.

2. Enclosure (1) is the report of findings and recommendations by the board. Enclosure (2) is the Minority Report from a dissenting member. Enclosure (3), in accordance with references (a) and (c), is the acknowledgement of service and review of enclosure (4) by the Respondent's Counsel. The verbatim transcript is at enclosure (4). Enclosures (5) and (6) are the original Government and Respondent exhibits that were admitted into evidence.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the BOI was to make a recommendation on the retention of the Respondent. The specific bases for the BOI are set forth in enclosures (1) and (4), and reference (d).

4. ACTS ALLEGED. The specific allegations of misconduct against the Respondent are contained in the enclosures. The Respondent allegedly ordered members of his company to strip Iraqi detainees to their underwear and then send them out on a public street in Al Kut, Iraq, and that the Respondent burned the clothing and other items belonging to Iraqis stopped at a check point.

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6. FINDINGS. Enclosure (1) provides the findings for each reason for separation outlined in reference (d). The BOI substantiated Reason for Separation Substandard Performance of Duty, Misconduct, or Moral or Professional Dereliction as evidenced by: a failure to demonstrate acceptable qualities of leadership required of an officer of his grade.

7. RECOMMENDATIONS. The board substantiated the misconduct, and by majority vote recommended separation with an Honorable characterization of service. A minority report has been attached to the record.

8. SERVICE AND BACKGROUND. Per references (a) and (c), the Respondent's service record and background is as follows:

(b)(6) - Military Personnel File Personal Data

9. PRESERVICE MISCONDUCT CONSIDERED. None.

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(b)(7)(C) (b)(6) - SSN/0602 USMCR

In accordance with the requirement ref (a) I have reviewed and authenticated the transcript of subject BOI.

(b)(7)(C)

21 June 2004
Date

U.S. Marine Corps
Senior Member

BOI (BOARD OF INQUIRY)
IN THE CASE OF:

(b)(7)(C)

(b)(6) - SSN/0602 USMCR

Findings and Recommendation Report

NOTE 1: AS THE BOARD VOTES DURING DELIBERATION, THE SENIOR MEMBER INITIALS BLANKS ON THIS REPORT TO INDICATE THE BOARD'S DECISIONS. THE SENIOR MEMBER WILL THEN ANNOUNCE THE BOARD'S DECISIONS BY READING THIS REPORT WHEN THE BOARD RECONVENES.

(b)(7)(C)

my duty as Senior Member of this BOI is to inform you as follows:

I. Findings of the Board of Inquiry

1. By a preponderance of the evidence, this BOI finds that you (have/~~have not~~) demonstrated Substandard Performance of Duty, Misconduct, or Moral or Professional Dereliction by your:

a. (b)(7)(C) Failure to demonstrate acceptable qualities of leadership required of an officer of your grade;

b. _____ Failure to properly discharge duties expected of an officer of his grade and experience; and

c. _____ Commission of a military or civilian offense which could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction.

Specifically:

NOTE 2: BASED UPON THE FINDINGS, THE SENIOR MEMBER WILL READ EITHER RECOMMENDATION PARAGRAPH 1 OR 2 BELOW, AS APPLICABLE.

II. Retention or Separation

1. (b)(7)(C) By majority vote, the BOI recommends that you be separated from the Naval service for the reason(s) listed above. The Board of Inquiry further recommends that your service be characterized as:

(1) (b)(7)(C) Honorable.

Findings and Recommendation Report

(2) _____ General (Under Honorable Conditions).

(3) _____ Under Other than Honorable Conditions (OTH).

2. _____ By majority vote, the BOI finds that none of the reasons listed above warrant your separation from the Naval service and the case is, therefore, closed.

III. Minority Report

1. _____ (b)(7)(C) none.

2. _____ (b)(7)(C) Will be attached to the report of the board.

IV. Signatures

(b)(7)(C) _____
Date

Senior Member

(b)(7)(C) 7 APR 04
Date

Member

(b)(7)(C) 7 APR 04
Date

Member

NOTE 3: AFTER READING THE FINDINGS AND RECOMMENDATIONS REPORT DURING ANNOUNCEMENT OF THE FINDINGS AND RECOMMENDATIONS, THE HEARING GUIDE PROMPTS THE RECORDER TO SECURE A SIGNATURE FROM COUNSEL FOR THE RESPONDENT AT THAT TIME.

(b)(7)(C)

Counsel for the Respondent



UNITED STATES MARINE CORPS

MARINE FORCES RESERVE
4429 DAUPHINE ST
NEW ORLEANS, LOUISIANA 70140-5400

IN REPLY REFER TO:

1920

(b)(7)(C)

7 Apr 2004

From: (b)(7)(C) USMC, Member, Board of Inquiry
To: (b)(7)(C) Board of Inquiry
Subj: MINORITY REPORT; CASE OF (b)(7)(C) (b)(6) - SSN
0602, USMCR

Ref: a) Board of Inquiry conducted 6-7 April 2004

1. Per the reference, the following MINORITY REPORT is submitted in this case. It is evident to this Board member that there was sufficient evidence presented to mitigate the actual charges brought during the Non-Judicial Punishment against (b)(7)(C). However, that is not the reason for the dissension in this matter.

2. The Board members carefully deliberated the merits of both the Government's case and that of the Plaintiff and found much merit to both. However, in reviewing the overall content of the exhibits entered, listening to the sworn testimony presented and placing the actions of the officer in question in the context of the situation that he found himself in, I dissented from the opinion that this officer should not be retained. It is my opinion that he should be retained in our Corps for the reasons contained in the following paragraphs.

3. The charges brought against (b)(7)(C) were correct, however, the actual NJP process was not followed to the fullest extent of the rule of law. That process includes processing the NJP at the company and Battalion level prior to forwarding to the Division level. This matter could have been handled appropriately at the Battalion level and saved the Government tremendous amounts of time and effort.

4. The process of NJP was not accurately recorded: there was not an MOS 4429 Court Reporter present during the NJP process. This led to the (b)(7)(C) to take notes and make a summary transcript of the proceedings. This led to, in my opinion, key points being left out of the transcript which could have impacted the decisions of those up the chain of command to either concur or not concur and forward the decision along.

5. The fact that (b)(7)(C) issued two sets of orders/guidance that, on the surface, are innocuous at best, does not mitigate the fact that one set of orders were issued to the Marines under his charge. If he had committed the act, stripping the Iraqi detainees, himself, the charge would have rendered itself mute. But, since the order was issued to those Marines, it stands as a failure to demonstrate acceptable qualities of leadership required of an officer of his grade. That being said, it does not necessarily mean that the decision was not sound. In fact, the decision to have the Iraqi detainees stripped down to their undergarments was innovative and not outside the realm of possibilities open to the

Subj: MINORITY REPORT; CASE OF (b)(7)(C) U.S. 554
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Captain. That the action resulted in a charge of a violation of Art. 133 of the UCMJ only shows that the command was clearly looking to avoid creating a "tipping incident" and that they were influenced by the CNN effect, i.e., not having this particular event show up on the six o'clock news. The avoidance of that, especially in the absence of any specific training on the handling of detainees, is clearly evident.

6. It is my opinion that (b)(7)(C) demonstrated outstanding leadership in the application of his duties as a (b)(7)(C) Platoon Commander assigned with the arduous duty of guarding a volatile ASP subject to numerous incursions into the area by unknown "civilians". As demonstrated when the ammunition in the ASP detonated, he thought first of his Marines and followed recommended EOD guidance on re-entry of the ASP. That an OE-234 radio antenna and some sleeping bags were lost/stolen is irrelevant when taking into account that the Marines were evacuated from a potentially life threatening situation. The (b)(7)(C) demonstrated foresight by having the Iraqi detainees stripped, planning on the fact that these individuals would need to return to their homes in order to get another set of clothes on. The deterrent intent was met, as these gentlemen did not return to the ASP in the subsequent days after the incident.

7. The concept of burning the "dirty" clothing doesn't constitute, in my mind, an attempt to humiliate anyone. If the Iraqi gentlemen were interested in obtaining their possessions, they could have simply asked for them when they returned to the vehicle from the hospital. That they did not show concern for their personal effects clearly shows that it was of little concern to them.

8. The other incidents mentioned in the witness statements regarding counseling sessions given by the Company Commander only demonstrate one clear thing: there was not any adult supervision or leadership provided at that unit. Had the Company Commander issued clear commander's guidance and intent, demonstrated leadership by example instead of not being present or clearly accessible, there would not have been any confusion on the parts of any of the participants involved. This lack of leadership can also be pinpointed to the Operations Officer, Executive Officer and the Battalion Commander.

9. The comparison given by the Deputy Division Commander that (b)(7)(C) (b)(7)(C) actions and behavior were equivalent to those taken by William Calley at the massacre at My Lai are over the top and without merit. Granted, two "knucklehead" mistakes were made, but that does not mean that at some point down the road more egregious mistakes could be made that would jeopardize the lives of civilians or Marines. (b)(7)(C) actions showed that he had his Marines best interests at heart. Sound leadership at the company and Battalion levels would have allayed the fear that continued mistakes would ultimately have led to disaster.

10. During the course of the proceedings (b)(7)(C) demonstrated to me the potential for continued leadership and followership, provided that he is given strong and steady guidance and leadership himself. This is not possible at (b)(7)(C). Glaring failures exist there. My dissent is based on recognition of those facts and an

Subj: MINORITY REPORT; CASE OF (b)(7)(C)
/0602, USMCR

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understanding that during combat operations, many issues require solutions not contained within the normal "schoolhouse" textbooks. It is my opinion that (b)(7)(C) showed foresight, demonstrated concern for his Marines and concern for the Iraqi people during his tour in country and is clearly capable of continued service in other leadership billets and capacities.

(b)(7)(C) should be retained for the good of the service and offered the opportunity to execute an Inter-Unit Transfer to another command either in duties related to his current MOS of 0602 Communications Officer or as a formally trained 0302 Infantry Officer. (b)(7)(C) may not ever evolve into a Joe Foss or Chesty Puller, but he does possess the potential to accomplish many good things over the course of a Marine Corps career.

(b)(7)(C)

Copy to:
SJA



DEPARTMENT OF THE NAVY

NAVAL LEGAL SERVICE OFFICE
NEW ORLEANS DETACHMENT
2900 GENERAL MEYER AVENUE
NEW ORLEANS, LOUISIANA 70145-6100

IN REPLY REFER TO:
1920
CFR
7 JUL 04

From: (b)(7)(C) JAGC, USNR, Counsel
for the Respondent
To: Secretary of the Navy
Via: (1) Commander, Marine Forces Reserve
(2) Commandant of the Marine Corps (JAM)
(3) Commandant of the Marine Corps (DC/M&RA)
Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN /0602 USMCR
Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)
(c) COMMARFORRES' ltr 1920 SJA undated
(d) SMbr's ltr 1920 dtd 21 Jun 04
(e) (b)(7)(C) Minority Report (b)(7)(C) dtd
7 Apr 04
Encl: (1) (b)(7)(C) ltr dtd 28 Jun 04

1. Respondent's counsel submits this memorandum as an attachment to Enclosure (4) to Reference (c), ACKNOWLEDGEMENT OF RECEIPT AND OPPORTUNITY TO REVIEW THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C) (b)(6) - SSN /0602 USMCR. This memorandum contains Counsel for the Respondent's written comments regarding the record of proceedings in the subject case as submitted by the Office of the Staff Judge Advocate, Marine Forces Reserve on approximately 24 June 2004.

2. Paragraph four (4) of reference (d), the Senior Member's report to the Secretary of the Navy, warrants further clarification and elaboration. This paragraph reduces the facts of this extremely complex case to a seemingly Government-favored oversimplification of the events in question. Indeed, this sort of summarization of facts and reports to the Secretary of the Navy regarding (b)(7)(C) case served as a point of contention during the Board of Inquiry (please see page 17 of the Record of Proceedings).

Paragraph four fails to fully and accurately characterize the circumstances that surrounded the two alleged incidents. The first clause of the second sentence states: "The Respondent allegedly ordered members of his company to strip Iraqi

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
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detainees to their underwear and send them out onto a public street in Al Kut, Iraq." This statement fails to mention that these "Iraqi detainees" had been captured three times prior to this incident for stealing U.S.-secured items from an Ammunition Supply Point (hereinafter "ASP"). It further fails to mention (as does paragraph five, *infra*) that (b)(7)(C) ordered the men to have only their outer garments removed, but to be left with their T-shirts, shorts, and shoes. This paragraph further omits that these men were being released and were not the subject of some sort of "prisoner abuse" scandal. Most notably, this mention of the incident fails to reveal the complexity of the "ASP interloper" problem as was described by the Marines of (b)(7)(C). Particularly, this portion of the Senior Member's report omits mention of the dozens of Iraqi civilians who were killed and wounded by exploding ordnance in Al Kut ASPs. It fails to mention that each time these men were detained, (b)(7)(C) Marines were forced to enter non secure areas of the ASP and that this put the welfare of Marines under (b)(7)(C) at risk. It fails to mention that (b)(7)(C) issued this order in hopes that such measures would force the Iraqi ammunition thieves to, at the very least, return to their homes, thus preventing further exposure to risk of injury. Finally, the report fails to mention that the men were released at a bus stop and the Chaleby report (Respondent's Exhibit L), which indicates that Iraqi men are not uniquely humiliated by being seen in shorts and T-shirts.

The second clause of Paragraph four indicates that: "...the Respondent burned the clothing and other items belonging to Iraqis stopped at a check point." This statement additionally raises some concerns, in terms of its overall general accuracy and oversimplification of the incident. First, the Iraqis in question had not been "stopped" at a checkpoint as Paragraph four indicates. Rather, their truck had been shot off the road with small arms and .50 caliber machine gun fire after its drivers had attempted to blow through the checkpoint in their semi tractor-trailer, nearly running down several Marines. The paragraph fails to mention that (b)(7)(C) the ranking Marine on scene, ordered prompt medical care for the wounded Iraqi truck drivers and ensured their safe evacuation to a medical care facility. The paragraph further fails to mention that (b)(7)(C) and his men guarded the wrecked truck through the night and that, after it was clear that there was no way to tow the truck and that Human Intelligence Teams would not be arriving in the near future, (b)(7)(C) and his men set about to secure and seize items of potential intelligence value. The paragraph omits the poignant scientific and personal

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
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testimony that, when (b)(7)(C) attempted to place filthy articles of clothing into the Humvee, that (b)(7)(C) expressed to his Marines his well-founded fears that such articles may have sand flea, lice, tick, and fruit fly infestation. Furthermore, (b)(7)(C) issued the order to burn the clothing items with the understanding that trash should not be left along the side of the road: 1) for fear of use as an Improvised Explosive Device and 2) because subsequent units may then fall victim to any parasitic infestation. Respondent's Exhibits P through U detail the extensive parasite and disease issues that American troops faced and continue to face in this particular region of Iraq.

Accordingly, Counsel for the Respondent, while appreciating the need for brevity in such reports, feels that the facts as outlined in Paragraph four are incomplete and tend to unfairly characterize (b)(7)(C) as an "abuser of Iraqi civilians." Truly, a thorough examination of the complete facts in this case invites one to place (b)(7)(C) actions in context and ensure that a full, fair, and impartial explanation of the facts is considered.

3. Under the guise of outlining (b)(7)(C) position at the hearing, Paragraph five of reference (d) somewhat mischaracterizes the Respondent's Position at the Board. This paragraph (#5) within reference (d) substitutes for (b)(7)(C) (b)(7)(C) actual position the statement that the Respondent "acknowledged that he committed the misconduct." This assessment of (b)(7)(C) position is misleading at best, reduces his defense to an admission of guilt accompanied by a plea for retention, and abandons any pretense of context. (b)(7)(C) instead testified precisely regarding the actions he took during these two incidents and contended that his actions did not implicate any of the alleged bases for separation. (b)(7)(C) true position regarding these incidents is outlined as follows.

a. Not misconduct. (b)(7)(C) acknowledged that he did, in fact, issue the orders to have the outer layer of clothing removed from the men who had unlawfully entered the Ammunition Supply Point and to burn the tattered clothing items secured from the wrecked tractor-trailer. (b)(7)(C) did not, however, "acknowledge that he committed the alleged misconduct." (b)(7)(C) contended that, after an examination of the facts as a whole, his decisions were rooted in a desire to protect his Marines from harm and to maximize mission efficiency and effectiveness. Counsel for the

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
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Respondent respectfully contends that it is insufficient to state simply that "[Respondent] did not believe his actions warranted separation." Instead, (b)(7)(C) position was that his actions, when viewed in the light of the combat action environment which surrounded them, did not constitute a substandard performance of duty, misconduct, or moral professional dereliction demonstrated by: 1) a failure to demonstrate acceptable qualities of leadership required of an officer of his grade; 2) a failure to properly discharge duties expected of an officer of his grade and experience; or 3) the commission of a military or civilian offense which could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction. Instead, (b)(7)(C) acknowledges that, with the benefit of hindsight, there may have been more prudent choices available. (b)(7)(C) further contends, however, that given the exigencies of the circumstances, decisions needed to be made and he acted decisively and in the best interests of the mission and the welfare of his Marines. (b)(7)(C) contends vehemently that, in no way, were his actions intended to degrade or humiliate the Iraqi people involved.

b. Matters in extenuation. (b)(7)(C) position before the Board included extensive evidence of extenuating circumstances surrounding the two incidents. Much of this evidence is outlined above. It cannot be overstated that the summarized versions contained within the Senior Member's report fail to mention extremely probative matters of extenuation and mitigation. These brief synopses fail to mention the dangers attendant to (b)(7)(C) position in Al Kut, along with dangers facing Iraqi civilians who unlawfully entered those Ammunition Supply Points. They fail to capture the reasoning, logic, and rationale behind (b)(7)(C) decisions. The Respondent's counsel went to extraordinary efforts to assist the board and subsequent reviewing authorities in developing a full picture of Al Kut during this timeframe. These matters are contained fully within the Record of Proceedings and provide critical context to (b)(7)(C) actions.

With regard to the Iraqis detained after being caught in the ASP, (b)(7)(C) a Government witness, testified in depth regarding the dangers of the ASPs and the vast looting problem. (b)(7)(C) characterized the Iraqi system of handling looters as "quite broken" and "totally broken." (Transcript at 141). Several witnesses, including (b)(7)(C) (b)(7)(C) (b)(7)(C) and (b)(7)(C) relayed the story of a Marine in Weapons Company who was badly

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(b)(7)(C) (b)(6) - SSN 0602 USMCR

burned when Marines entered an ASP in order to prevent the vast removal of ordnance. The complete failure of the Iraqi police to handle the looting problem, when considered in light of the extraordinary dangers attendant to guarding the ASPs, place (b)(7)(C) attempts at crafting innovative solutions in the context where they belong.

The circumstances surrounding the checkpoint incident were equally harrowing. After (b)(7)(C) and his men had stopped 40 to 50 vehicles at an evening checkpoint without incident, a large tractor-trailer blew through the checkpoint, nearly hitting several Marines. (b)(7)(C) and his men were forced to disabled the truck. Then, after guarding the truck all night without relief and without supplies for an overnight camp, (b)(7)(C) repeatedly called in to the command position asking for support, asking for a wrecker, inquiring into relief. When finally ordered back to the compound without any relief, (b)(7)(C) and his men hastily searched the truck for anything of intelligence value. Items of intelligence value were placed in bags that the Marines had brought to the checkpoint the night before and turned over to the authorities. The decision to burn the tattered clothes, although made hastily after a night without sleep, was made for a tactical purpose. Standard Operating Procedure dictated that trash be burned in order to prevent use as an IED and to prevent the transmission of parasites and infectious diseases. (b)(7)(C) (b)(7)(C) in a hurry to get his exposed squad back to the compound, classified the filthy clothing as trash and had it burned.

c. Good military character. A fundamental element of the Respondent's case involves (b)(7)(C) exemplary military character and performance of duties while in Al Kut, Iraq. Even the witnesses who testified on behalf of the Government, such as (b)(7)(C) and (b)(7)(C) characterized (b)(7)(C) (b)(7)(C) as an officer who actively sought out knowledge and guidance regarding his position within Weapons Company, who was unafraid to make decisions, and who looked after the welfare of his Marines. Several Marines testified to (b)(7)(C) rapidly improving capabilities as an Infantry Officer, despite lack of any formal training and only one substantive drill as an Infantry Officer prior to activation. (b)(7)(C) after the alleged incidents, worked with (b)(7)(C) in the training of Iraqi Security Forces. (b)(7)(C) testified to (b)(7)(C) outstanding rapport with the Iraqi recruits and his impeccable performance of duties, even after being accused of misconduct. The Respondent presented to the Board

Subj: COUNSEL FOR THE RESPONDENT'S WRITTEN COMMENTS REGARDING
THE RECORD OF PROCEEDINGS FOR THE BOI ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN 0602 USMCR

roughly 12 letters from Marines who had worked with (b)(7)(C)
(b)(7)(C). These letters, written by the Marines who worked with
(b)(7)(C) on a daily basis, detailed (b)(7)(C)
skills, knowledge and leadership capabilities. A
characterization of the Respondent's position without reference
to the overwhelming evidence of good military character is a
substantial oversight.

4. With regard to Paragraph six of reference (d), the findings
portion states only that the misconduct was "substantiated" but
fails to mention that two of the alleged bases, commission of a
serious offense and failure to properly discharge duties
expected of an officer his grade, were not substantiated.

5. Finally, Counsel for the Respondent respectfully invites
attention to Paragraph seven of reference (d), which outlines
the board's recommendation. This paragraph makes reference to
the dissenting minority report, listed above as reference (e).
(b)(7)(C) Minority Report accurately and fairly
captures the attitudes and circumstances surrounding this
alleged offense.

6. This submission has attempted to supplement and correct
what Counsel for the Respondent perceives as grave deficiencies
in reference (d) and to respectfully request that the board's
recommendation for separation be vacated by the Secretary of
Navy and that (b)(7)(C) be retained. Enclosure (1) is a
brief letter from (b)(7)(C) and as Counsel for the
Respondent, I respectfully invite your attention to it. I am
confident that an examination of the verbatim Transcript of the
Board and the exhibits will reveal that (b)(7)(C)
is a tremendous asset and should be retained in the United
States Marine Corps Reserve.

7. If there are any questions on this matter, I can be reached
at (b)(7)(C) or (b)(7)(C). My email address is
(b)(7)(C). Thank you for your time and
consideration of these matters.

(b)(7)(C)

Counsel for the Respondent

28 June 04

From: (b)(7)(C) USMCR

To: Secretary of the Navy

Via: Chain of Command

SUBJ: STATEMENT REGARDING BOARD OF INQUIRY OF (b)(7)(C)

(b)(7)(C)

Sir:

I respectfully request that you read the Minority Report, written by (b)(7)(C) USMC, concerning my Board of Inquiry from events that occurred in Iraq last year with (b)(7)(C). The Minority Report succinctly offers insight that is essential to a just review of this case. The Minority Report also helps to show that my actions were logical and helped to solve a difficult, combat situation with no loss of life or injury (either my Marines or Iraqis).

Thank you very much for your consideration.

Very Respectfully,

(b)(7)(C)

ENCLOSURE (1)



UNITED STATES MARINE CORPS

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

IN REPLY REFER TO:

1920

SJA

24 JUN 2004

From: Commander, Marine Forces Reserve
To: Counsel for Respondent

Subj: RECORD OF PROCEEDINGS FOR THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) - SSN/0602 USMCR

Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)

Encl: (1) Senior Member Report of BOI ltr of 21 Jun 04
(2) Findings and Recommendations
(3) BOI Transcript (verbatim)
(4) Acknowledgement of Service re: BOI Report

1. Per reference (a), the enclosures are provided for your review and action. Note enclosures (2) and (3) have already been provided to you.

2. You have ten (10) days (please note not "working" days) to review enclosures (1) through (3), and submit written comments to the Commandant of the Marine Corps and the Secretary of the Navy, via this command. Immediately upon receipt of this correspondence, please acknowledge its receipt by signing and dating enclosure (4) at paragraph (1), then faxing an advance copy to: (b)(7)(C) at (b)(7)(C) (b)(7)(C)

3. Within 10 days, the original acknowledgement (enclosure (4), and any written comments) must be mailed to:

OSJA, MARFORRES
(b)(7)(C)
Bldg 601/ Rm 5A413
4400 Dauphine St.
New Orleans, LA 70146-5400

4. The point of contact is (b)(7)(C) at (b)(7)(C) (b)(7)(C)

(b)(7)(C)

By direction

Jun-16-04 12:37 PM
Jun 16 04 08:53a

A. RRES SJA NOLA

804 876 2707 T-517 P.082/093 F-084
SO. 378 0478 P.2

Jun-04-04 10:57 PM

804 876 2707 T-504 P.082/093 F-084

804 876 2707
1980
SJA

FIRST ENCLOSURE ON COMBINATION'S Ltr 1928 SJA of 27 Feb 04

From: (b)(7)(C) JAC, BRAC, Counsel for Defendant
To: Commander, Marine Forces Reserve (Act): (b)(7)(C)
4400 Dauphin Street, New Orleans, LA 70116-3400

Subj: ACKNOWLEDGMENT OF RECEIPT AND REVIEW ON THE VERACITY
TRANSCRIPT FOR THE RECORD OF INQUIRY IN THE CASE OF (b)(7)(C)
(b)(7)(C) (b)(6) - SSN/US02 JACRA

Encl: (2) COMBINATION'S Ltr 1928 SJA of

1. For the references, I hereby acknowledge that on the 15th day of July 2004, I received enclosure (2). I understand that I have five (5) working days from the date of receipt, to review the enclosure and submit any noted errors or corrections.

(b)(7)(C)

Date: 1 Jun 04

2. For the references, on the 8th day of June 2004, I reviewed enclosure (2) and submitted the following:

a. I have neither commented nor noted errors/corrections; or,

b. (b)(7)(C) I have noted the errors/corrections in the summarized transcript itself, and/or commented as follows:

Civilian counsels last name is spelled
(b)(7)(C) vice (b)(7)(C)

c. See attachment(s) for my comments regarding noted errors or corrections.

(b)(7)(C)

Date: 8 Jun 04

ENCLOSURE (2)



UNITED STATES MARINE CORPS

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

IN REPLY REFER TO:
1920
SJA
27 May '04

From: Commander
To: (b)(7)(C) JAGC, USNR, Counsel for Respondent
Subj: VERBATIM TRANSCRIPT FOR THE BOARD OF INQUIRY ICO (b)(7)(C)
(b)(7)(C) (b)(6) SSN 0602 USMCR
Ref: (a) SECNAVINST 1920.6B
(b) MCO P5800.16A (LEGADMINMAN)
Encl: (1) BOI Transcript
(2) CFR's acknowledgement of summarized transcript

1. Per references (a) and (b) the enclosures are provided for your review, and any necessary action.
2. As Counsel for the Respondent (CFR), you have five (5) working days to review and return the Board of Inquiry (BOI) summarized transcript, to include the statement in enclosure (2) that you reviewed the transcript and submitted any noted errors/corrections.
3. Within 5 working days enclosure (1) must be reviewed with any errors or corrections noted, and along with enclosure (2), mailed to:

OSJA, MARFORRES
(b)(7)(C)
Bldg 601, Rm 5A413
4400 Dauphine St.
New Orleans, LA 70146-5400

4. The subject point of contact is (b)(7)(C) at (b)(7)(C)
(b)(7)(C)

(b)(7)(C)

Copy to:
SJA, MarForRes

VERBATIM TRANSCRIPT OF
BOARD OF INQUIRY
IN THE CASE OF

(b)(7)(C)

U.S. MARINE CORPS RESERVE

HELD ON
6 AND 7 APRIL 2004
AT
MARINE FORCES RESERVE, NEW ORLEANS, LA

PERSONS PRESENT

Senior Member of the Board (SRMEM):

Board Member (MEM):

Board Member (MEM):

Court Reporter:

Recorder (REC):

Civilian Counsel for
the Respondent (CCFR):

Counsel for the Respondent (CFR):

USNR

Respondent (RESP):

(b)(7)(C)

The Board of Inquiry was called to order at 0805 hours, 6 April 2004.

SRMBR: Okay. We can proceed whenever you are ready, Skipper.

REC: Yes, sir. Sir, the time is 0805. The date is the 6th of April 2004; and this board hearing is taking place at Marine Forces Reserve, New Orleans. The Commander of Marine Forces Reserve has convened this board in the case of (b)(7)(C) USMCR, by appointing order dated 27 February 2004.

The officers appointed to this BOI are as follows:

(b)(7)(C) as the SENIOR MEMBER.
(b)(7)(C), as a MEMBER;
and
(b)(7)(C) as a MEMBER.

All officers named in the appointing order are on active status and are present.

(b)(7)(C) USMCR, has been detailed as recorder for this BOI and is present.

(b)(7)(C) JAG Corps, U.S. Navy Reserve, has been detailed as detailed counsel for the respondent and is present.

(b)(7)(C) is serving as civilian counsel.

Both recorder and detailed counsel for the respondent are lawyers certified under Article 27(b) of the UCMJ.

(b)(7)(C) if you will, would you please state your qualifications for the record.

CCFR: Certainly.

Good morning, gentlemen. My name is (b)(7)(C) (b)(7)(C). I am an attorney licensed in the states of Connecticut, Pennsylvania, the United States Supreme Court, of the district courts for Pennsylvania and for Connecticut, the United States Courts of Appeals for the Armed Forces, and also

certified under the UCMJ under 27(b); and I was a former judge advocate.

MBR: What's your specialty?

CCFR: Litigation, sir.

SRMBR: Litigation. Thank you.

REC: Members, (b)(7)(C) has been detailed as court reporter and has been previously sworn.

No legal advisor has been appointed. The respondent is present.

SRMBR: Okay. We will start with number two; right?

REC: Sir, we're on page four of four.

SRMBR: The record will reflect that this board is properly convened and constituted. The purpose of this board is to consider relevant facts in the case, and make findings on the reasons of separation and on separation from the United States Marine Corps. The specific reasons for separation for the board to consider are as follows:

The first reason for separation is substandard performance of duty as evidence by:

(A) failure to demonstrate acceptable qualities of leadership required of an officer of his grade;

(B) failure to properly discharge duties expected of an officer of his grade and experience; and

(C) commission of a military or civilian offense, which, if prosecuted under the UCMJ, could be punished by confinement of 6 months or more; and any other misconduct, which if prosecuted under the UCMJ, would require specific intent for conviction.

These reasons for separation are listed in a CMC Let?

Q. Ter dated 3 December 2003, to the respondent and a CMC Letter dated 1 December 2003, to the Commander of Marine Forces Reserve, and can be found in SecNav

Instruction 1920.6 Bravo, Enclosure 3.

I will now advise the respondent of his rights to counsel before the board. These rights were listed in the notification.

Does counsel desire that I explain these rights to the respondent?

CFR: Sir, the respondent would waive that.

SRMBR: Very well.

In addition to your rights to counsel, you have many other rights at this board. These were listed in the notification and acknowledgment of rights.

Does counsel desire that I explain these additional rights to the respondent?

CFR: No, sir. The respondent would also waive that.

SRMBR: Very well.

The purpose of this board is to give the respondent a full and impartial hearing and an opportunity to respond to and rebut the allegations which are the basis for referring this case to a board of inquiry.

After hearing evidence from both sides, the board will determine whether the preponderance of the evidence proves those allegations.

If a preponderance of the evidence does not support the allegations the case will be closed.

If the preponderance of the evidence supports the allegations, the board will recommend whether this respondent should be discharged.

If the board recommends discharge, it will also recommend the characterization of the discharge. Since a discharge would be at the grade the respondent currently holds, the board will not recommend a discharge grade if it recommends discharge.

Depending on the board's findings and

recommendations, final action on the case may be taken by the Commandant of the Marine Corps or the Secretary of the Navy.

The members are informed that Congress created two separate systems for adjudicating officer misconduct cases. The first system is the judicial system implemented by the Uniform Code of Military Justice. The purpose of the judicial system is to determine guilt and punishment, and such determinations are made at non-judicial punishment hearings or courts-martial.

The second system is the administrative system, which is implemented by statute and regulations. The purpose of the administrative system is not to punish but to determine whether an officer's performance or conduct warrants separation from the service. Thus, the board of inquiry examines allegations against an officer; and if it substantiates them, determines if the officer should be retained or separated.

The officer's commander reviews each case of officer misconduct and determines the most appropriate means of resolving the allegations against the officer: The judicial system alone, the administrative system alone, or both systems.

The judicial and administrative systems may work independently. For example, a board of inquiry may be held without an officer receiving non-judicial punishment. On the other hand, an officer may receive non-judicial punishment but never have the case referred to a board of inquiry.

Likewise, the systems may work together. For example, an officer may receive nonjudicial punishment and then have his case referred to a board of inquiry. Referring an officer's case to a board of inquiry after the officer's case has been to a court-martial or to a nonjudicial punishment hearing is not double jeopardy. Accordingly, this board of inquiry functions as an administrative rather than a judicial body. The rules of evidence applicable at courts-martial do not apply at this hearing. However, Article 31(b) of the UCMJ does apply. No military member may be compelled to

testify or produce evidence that will tend to incriminate that member or be required to answer questions not material to issues before the board.

The following will occur during the hearing: Presentation of the government's case; presentation of the respondent's case; rebuttal; closing arguments from counsel; instructions for the members; and deliberation by the members.

The members are cautioned not to make any decisions until after hearing all of the evidence, the final arguments of counsel, and instructions on deliberations.

All board proceedings will be conducted in this room while the board is in session. The board will consider any matters presented which is relevant to the issues before the board, whether written or oral, sworn or unsworn.

Real evidence, as distinguished from testimonial or documentary evidence, may be shown and admitted to the board and should be accurately described or reproduced for the record. The board may refuse to consider any oral or written matters presented if it is irrelevant, not authentic, or unnecessarily repetitive, or cumulative. However, evidence will not be excluded merely because it would be inadmissible in court. If evidence is classified, the provisions of the Department of the Navy information security regulations will be observed.

The burden of proof is on the government, and it never shifts. Board decisions are made by a majority vote based on the preponderance of the evidence, which is the standard of proof.

A preponderance, which is the same standard for nonjudicial punishment hearings, is less than beyond a reasonable doubt, which is the standard at a court-martial.

A preponderance of the evidence proves a fact, if the greater weight of evidence -- for example, fifty-one percent or more of the evidence supports the fact. The weight of evidence is not determined by the sheer number of witnesses or volume of

evidentiary matter. It is determined by the evidence which best accords with reason and probability. The board members will rely on their individual judgment and experience to determine the weight and credibility to be given to the evidence.

The senior member rules on all matters of procedure and evidence. The senior member rules on all challenges for cause except for challenges for cause to the senior member or legal advisor. The convening authority rules on those challenges for cause.

Since the procedures used at this hearing may be unfamiliar to the board members, the members are encouraged to ask questions during the hearing about those procedures. The hearing will be conducted in an atmosphere of decorum and dignity. Members and witnesses will be treated with respect and protected from questions which exceeds the bounds of proper examination and propriety or which are intended merely to harass, annoy, or humiliate. Witnesses will be excluded from the hearing until after their testimony is complete.

Does either side wish to question a member or legal advisor on possible grounds for challenge for cause?

REC: Sir, I have a few questions.

SRMBR: Okay.

REC: Do any of the members know (b)(7)(C) the respondent?

SRMBR: No.

MBR (b)(7)(C): No.

MBR (b)(7)(C): No.

REC: This case deals with allegations of mistreatment of Iraqis while he was in Operation Enduring Freedom Part I.

Have any of the members heard any of the facts of this case prior to seeing the actual exhibits?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: Both the government and the defense will call a number of witnesses. I'd just like to see if any of the members know any of these witnesses.

The government will call (b)(7)(C)

SRMBR: Don't know him.

REC: (b)(7)(C) ?

That's a negative response from the members.

(b)(7)(C) ?

SRMBR: No.

REC: Negative response.

(b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: And a (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: I believe the respondent would like to go through his witnesses as well.

CCFR: Yes. Good morning, gentlemen.

The respondent will be calling as their witnesses (b)(7)(C). Any of the members know --

SRMBR: No.

MBR (b)(7)(C) : What's (b)(7)(C) first name?

CCFR: (b)(7)(C)

That's a negative response from all members.

(b)(7)(C) ?

Negative response.

SRMBR: The name sounds familiar, but I don't know him.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) ?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

CCFR: (b)(7)(C) the respondent's father?

SRMBR: No.

MBR (b)(7)(C) : No.

MBR (b)(7)(C) : No.

CCFR: That about covers it.

REC: Just a few other questions, sir. This case has had a procedural history, which if you have already read, has gone up through I MEF; up to Lieutenant General Parks at DCMR; up to SecNav; and now it gets back down here. Do the members understand that the decision that's made today is your decision?

SRMBR: Yes.

REC: A positive response.

Would the members agree with me that -- have any members served in a combat setting?

SRMBR: Yes.

REC: Sir, would you explain what your billet was and your role.

MBR (b)(7)(C) : (b)(7)(C)

(b)(7)(C)

REC: Any other, gentlemen?

MBR (b)(7)(C) : I didn't get a Combat Action Ribbon, but I did serve in Kuwait and Baghdad from January till July of last year.

SRMBR: I was the [redacted] at Marine Forces Central Command, but we were headquartered in Bahrain during OIF.

REC: Would anything in your experience, do you think would either limit you or prejudice you in determining this case because you have served in a combat setting and this is dealing with a combat situation?

SRMBR: No.

REC: That's a negative response from the members.

Would the members agree with me that that -- if the board members determine that an officer -- if you can no longer trust an officer's judgment and that if the Marine Corps determined that they cannot

trust that officer's judgement, that that officer should not be an officer any longer?

SRMBR: Yeah, I don't think that --

CCFR: I would object to this.

SRMBR: We can just move on from that question.

CCFR: Thank you.

SRMBR: I don't think we need to disclose that.

REC: This procedure may last a long day. Is there anything in the members schedules that would inhibit them from lasting late into the afternoon or early evening?

SRMBR: No.

MBR (b)(7)(C) :No.

MBR (b)(7)(C) :No.

REC: Thank you. Nothing further.

CCFR: Gentlemen, I have no inquiries to make. Thank you.

SRMBR: Does the recorder or the respondent wish to challenge any board member or the legal advisor for cause?

CCFR: The respondent does not, sir.

REC: And the recorder does not, sir.

SRMBR: Okay. Are both sides ready to proceed?

CCFR: Respondent is prepared, sir.

REC: Yes, sir.

SRMBR: Okay. Does either side have any motions?

REC: No.

SRMBR: Then the recorder may proceed with an opening

statement.

REC: Yes, sir.

Sir, we are here today because (b)(7)(C) failed. He failed in his mission. He failed his Marines who were serving under him. He failed his command, and he failed those that were expecting a lot out of this Marine officer. In June of -- on June 23d of 2003, (b)(7)(C) was the platoon commander of (b)(7)(C). His Marines had -- some of his Marines were in charge of guarding an ammo supply point out in the desert of Al Khut. There were a number of Iraqis who would go into this ASP and take brass, basically, in order to sell it on the market. These Marines had caught some of these Iraqis and told them to get away because it was a dangerous place for them to be because there was live ammunition there. They didn't want Iraqi civilians walking around in this area. They sent them away, and they came back.

At close to the end of this day, his Marines finally arrested these two Iraqis who they had seen before and brought them back to Al Khut, the city itself, which is probably like a half hour-, 40-minute drive from the ASP to this town.

You'll hear (b)(7)(C) testify later how he had seen these Iraqis before and how he brought them back to the title command post where (b)(7)(C) was present. (b)(7)(C) intent was to stop at the command post in order to get chow for his Marines because they had been out all day and then take these Iraqis to the Army MPs or the Iraqi police station for them to be processed.

(b)(7)(C) saw (b)(7)(C) bring these Iraqis in; and because he was frustrated because he had seen them numerous times already on that day, he decided we're not going to send them off to be processed like the standard operating procedures. We're going to teach these Iraqis a lesson.

How he decided to do that was to order his Marines, junior Marines under him, to strip down these Iraqis into their undershirts and shorts. So (b)(7)(C) (b)(7)(C) and his Marines carried out those actions. Also present was (b)(7)(C)

(b)(7)(C) and (b)(7)(C) who didn't want to get involved. He didn't want to get involved in that action, even though they had reservations about that order.

You are going to hear from witnesses, from (b)(7)(C) (b)(7)(C) himself, who says, You know what: I should have said something; I shouldn't have done that. And about how this action of humiliation and the improper treatment of detainees could have lead to further repercussion down the line. These Iraqis were sent out of the command post half naked in the middle of the city for other Iraqis to see them. About a week later, on the 28th, 29th of June, (b)(7)(C) Marines were at a checkpoint, and a vehicle tried to run that checkpoint; and they shot it up and stopped it. No one was -- the Iraqis in the truck were briefly or minorly injured, but no one was killed.

That following morning -- they had been up all night. This event happened at around midnight, and they were up all night guarding this vehicle waiting for battalion to finally take it away; and then, the next morning about 10:00, (b)(7)(C) had his Marines burn these Iraqis' clothing. So he -- they had already taken out their -- any money, any things of intelligence value; but again, out of frustration, out of not wanting to follow proper procedures, he burned their clothing and some mats; not of great value to anybody, but of value to these Iraqi civilians. It turned out later on that these Iraqis weren't terrorists. They weren't trying to do anything harmful. They were just confused and ran a checkpoint and deserved to have their property returned to them.

For these two offenses, (b)(7)(C) was sent to nonjudicial punishment. You will see in the recorder's exhibits that he accepted NJP, that he was afforded his rights; and he waived his right to a court-martial and accepted nonjudicial punishment. You will see that he plead guilty to the first offense, the 103 of mistreatment -- of mishandling of the enemy's or retaining property. He plead not guilty to 133, conduct unbecoming an officer; dealing with the stripping down of the Iraqis incident. But Brigadier General Kelly found him

guilty of that offense. He had a chance to appeal his NJP. He did not.

SRMBR: I think General Mattis held the NJP; didn't he?

CCFR: General Kelly did, sir.

SRMBR: He did

CCFR: Yes, sir.

SRMBR: Okay. Go on.

REC: You will see in Respondent's Exhibit 6 is the transcript of that nonjudicial punishment. In this NJP Brigadier General Kelly gives a very eloquent statement as to why this conduct is so serious. It diminishes their mission, and their mission was not only to conquer Iraq and subdue Iraq. It was to win the hearts and minds of those Iraqis, and his actions failed in that mission to -- you know, no worse -- no better friend and no worse enemy, is General Mathis's phrase; and that's what all the Marines over there are assigned to do.

(b)(7)(C) put in for an unqualified resignation, which means he asked for an honorable discharge. That went all the way up the Marine Corps chain of command up to Lieutenant General Parks. That was approved. The person who didn't approve it was SecNav. SecNav said, No, I would like you to do a board of inquiry. SecNav could have retained this officer if he wanted to. He didn't. He wants to hear from a board; and that's why we are here today, to determine whether or not this officer should be separated or retained and at what level if separated, what level of characterization of service: Honorable, general, or other-than-honorable.

(b)(7)(C) you will see in Respondent's Exhibit 7, also wrote a Congressional Inquiry into these matters. This happened on the 8th of October. All of these proceedings with the Generals and SecNav happened in -- around in October. I doubt if anybody saw or had a chance to read this when this was going through the process of going up to Headquarters Marine Corps, like the members when

they have a chance to read this congressional inquiry and look and see if the allegations that (b)(7)(C) makes makes sense, especially looking at the record that is here dealing with his NJP and his acknowledgment of his rights and his appeal rights.

You are going to hear from a number of witnesses today that will talk about what happened on the 23rd and the 28th of June and what kind of effects that those actions had on the Marines in the command and what potential effect it could have had to the other Marines in Al Khut. You are also going to hear from (b)(7)(C) and from other officers in his command who had other issues with his judgment. These are not the first two instances where his command had to pull him back and make him less aggressive, get his judgment in line. He will explain to you that he fears Marines being under his charge. This is a Marine officer who can't be trusted in leading Marines anymore. He endangers other people's lives. We're asking that you separate this officer based on his failure of leadership and his failure of judgement.

CCFR: Gentlemen, may I proceed?

SRMBR: Just a second. Okay. Counsel for the respondent may proceed with an open statement. Okay. When does the counsel, okay -- we don't need to do that. All right. I just want to make sure I got the script. Okay. Go ahead.

CCFR: Thank you, Gentlemen.

Gentlemen, the quality that I think I would ask that each member put into perspective is the fact that we are dealing here entirely within a one-month span during combat, during combat in Iraq. (b)(7)(C) (b)(7)(C) isn't going to come up here and say that his combat-related responsibilities effected his attitude towards the Iraqis, that it effected his judgment in the sense he felt it would be justified to be vindictive. (b)(7)(C) and a number of other witness will explain to you the way the conditions were in combat, in an environment where you had Marines being injured, in an environment where you had unexploded ordinance, blowing up all

over the place, in an environment where you had a language barrier, in an environment where you had a weapons company that was out of control, that was in utter chaos from the very top to the very bottom. You had an environment in which you had mines on the side of the road, you had mortars on the sand, you have artillery shells which were being dragged out of ASP; and I guarantee that those are the same artillery shells which are being used to destroy our soldiers and Marines right now. (b)(7)(C) actions in every single regard, in every single thing he did when he was in Iraq, was for the welfare of his Marines, was for the accomplishment of his mission, and was for the respect of every single responsibility that he had as a United States Marine Corps officer. And you know what, gentlemen? At the end of the day -- at the end of the day, I hope that you ask (b)(7)(C), (b)(7)(C) how many of your Marines came back from Iraq; every single one of them. Every single one of his Marines made it home; and that's the evidence, gentlemen that you will hear.

This board of inquiry can be titled in one word as a "travesty." Listening to the board -- the recorder, and the recorder is doing the job that the (b)(7)(C) has to do; but when I was asked to take a look at this case, I kept digging because I said, there's got to be something else here. I'm a Marine officer. I understand what the responsibilities are of us as Marines, as Americans in performing our duties in Iraq. Here's a Marine officer that's volunteered -- (b)(7)(C) had no obligation to sign up for the Marine Corps Reserves. He completed his service obligations. He was a United States Naval Academy graduate, honorably discharged in 2002 and the service record material you, gentlemen, have is that he was a pristine officer. He was hand-picked for a very challenging mission, one of which was a joint task force mission where he was

(b)(7)(C)

hand-selected by his battalion commander for that duty because of his skills and his conscious, his judgment, his initiative.

No, no, no. The recorder said (b)(7)(C) failed. Gentlemen, the command failed (b)(7)(C)

Catallo; and ultimately, ultimately, gentlemen, if the Marine Corps separates this officer, the Marine Corps has failed (b)(7)(C).

I could stand up here all morning and tell you what you should do, but I am going to let the evidence do the talking for us. I am not going to tell you to be a rubber stamp for the NJP and a rubber stamp for General Kelly and a rubber stamp for the Secretary of the Navy. Gentlemen, you have the luxury because it's your sole discretion and it's your sole prerogative to evaluate these witnesses and take a look at the evidence.

I will comment, however, the fact that the recorder brought up the NJP and the SecNav. When you take a look at the documents, which I'll show you of the endorsements after the NJP up to the SecNav, you will understand why SecNav disapproved it. I'll tell you why. I told this to (b)(7)(C). He did us a favor. He was about this low by the time he got finished up with his NJP in Iraq; but the endorsements as it went to General Kelly, to General Conway, to the commandant, and to the Secretary of the Navy got summarized. It got condensed; so that two-page endorsement from General Kelly to General Conway became a one-page endorsement to the Commandant and half-page endorsement to the SecNav; and the facts got completely distorted. It was a completely separate situation by the time you read what the Secretary of the Navy got to read. So, when you see that, you will not find any need to place any credibility on what that decision was. Because those -- those individuals frankly didn't have the luxury of seeing the facts.

I don't blame the Secretary of the Navy, the Commandant, or General Conway because thousands of Marines are looking at thousands of pieces of documents that are going through. The people that should have made sure that the right information went up was (b)(7)(C) Battalion, and they failed. In addition to the fact that witnesses will come up to talk about what occurred in Iraq, we have also put together for you, gentlemen, in the exhibits some information, which the government never bothered to do their homework in the first place.

We have a report from a former Iraqi citizen, a gentleman who spent 18 years there in depression; got out; is a model American citizen; and has provided some expert cultural interpretation of the situation for you. His assessment is (b)(7)(C). (b)(7)(C) actions were exactly appropriate and precisely the type of deterrent that would be effective to ensure that these Iraqis would stop going in, stealing ordinance, hurting themselves, and endangering the lives of the Marines.

The government also has, frankly, the audacity to criticize (b)(7)(C) and his Marines at a checkpoint where they had to disable a vehicle that was about to kill his Marines. They opened fire when this vehicle was ten meters away from their checkpoint, despite the fact they tried to get it to stop. We are not talking about the little sand dune buggies that exist in Iraq. We're talking about semi-tractor trailer truck that was bearing down on them. They needed to use a .50 cal to stop this thing in its tracks. They did it without killing the occupants of the vehicle because they were aiming at the wheels and the engine. Talk about restraint.

So when the vehicle gets disabled, (b)(7)(C) and his limited number of Marines are out there still trying to provide security at the checkpoint. They go into the vehicle. They find five hundred thousand dinar. They find a whole bunch of grain and other various belongings; and at this point of the engagement in June, Saddam Huesen hadn't been captured. All those individuals -- lists of individuals hadn't been captured. Those checkpoints were out there to track down folks like that. (b)(7)(C) was out there leading his men from the front, not from the CP. He's out at the checkpoint with his men.

What eventually happens, as you will hear, is that he didn't get a whole lot of support from the Company. They were out there to provide security to make sure the vehicle didn't go anywhere. It was disabled; couldn't get moved. Eventually, the order came down to search the vehicle, take out anything of value, which (b)(7)(C) did. They gave five hundred thousand dinar to the MPs. They put papers,

which looked like potential intelligence value, in bags. There were some tea sets and some other personal effects; but there were some seat cushions, and there were some clothing, important enemy property.

Now, at this point when this occurred (b)(7)(C) and his Marines had been out in combat for twenty hours or so; and he asked to fall back to the CP because he's in a forward area. They weren't set up to be bivouacking for an extended period of time. (b)(7)(C) and anyone who's been to Iraq understands there's a massive bug problem over there. The Marines that are going over there are having their -- having uniforms treated with promethium. There is a terrible skin condition which our service people are receiving called lieshminiasis. We've provided some documentation for you in our Exhibits. It's nasty; not only nasty, it's possibly life threatening; and it degrades all combat efficiency and effectiveness. You can't donate blood if you've got the condition. It takes a year to heal, and this is what is occurring in Iraq because it's a filthy place.

(b)(7)(C) was trying to get his Marines out of that situation, trying to load up the material. He called for intelligence support, Hello, get in. The intel teams never came out. So (b)(7)(C) had to do the best job that he could with what he had. He picked up the belongings and equipment. As he was leaving, one of his Marines threw some of this clothing and these seat cushions in the truck.

(b)(7)(C) looks at it. They had a fruit fly problem in one of the other vehicles. He recognizes the fact that this place is a very dirty environment. He says, take it out, and we're going to burn it so it doesn't infest and infect the truck, the Marines' gear, and anybody else back at the CP. That's why he burns them.

You'll hear from witnesses that that's the SOP: You burn trash. It's the way you deal with it, because if you don't and if anyone's been studying what's going on in Iraq right now, they're using trash as disguises for IEDs. They are using animal carcasses for disguise of IEDs. They are using MRE wrappers for disguise of IEDs. You burn your trash. That's

what you do in combat. That's what he did. There is a statement from (b)(7)(C) from the preliminary investigation which said, We were told to burn it because it might have lice. (b)(7)(C) (b)(7)(C) made that call at the scene as he's trying to gather the intelligence, make sure the money gets to the MPs, get his Marines safely out of the checkpoint; and the government says he failed.

I want to get to the evidence, gentlemen; but the last comment I want to make is that this is a beyond interesting case because the argument I will offer to you at the end is that I think this case is somewhat an indictment on the Reserve system. It's been well known that Marine Corps Reserves are hemorrhaging for the lack of company grade officers; and there are far more reserve officers who are filling billets in the reserves that are within their MOS because you simply can't find that match all the time. It just doesn't happen.

(b)(7)(C) one of them. He filled a grunt billet. How much time did he have to get ready for war as a grunt, leading a grunt platoon? Forty days. Forty days was his opportunity to learn how to be a grunt officer, and he spends a month doing the best job that he can. And crushing him because he's not perfect. That's insane. It would be just as insane as the fact that my squadron needs an MTO and I'm a 4402. Now I'm an 0402 and I'm going to be motor transport officer. Great. I hope I can do as well as job as (b)(7)(C) did in getting his Marines ready for combat because the Reserve system operates in that capacity; and you slice (b)(7)(C) (b)(7)(C) out of this outfit, and you destroy his career, then you set a standard that is virtually impossible for any Reserve officer to ever meet; ever meet.

There is some documentation provided by some individuals who have some credibility in the world of the Marine Corps in combat. We have guys like (b)(7)(C) who has a silver star, two bronze stars, and five purple hearts in World War II, who knows a little bit about (b)(7)(C) situation. You have Colonel (b)(7)(C) retired, who has written a statement in support of (b)(7)(C) (b)(7)(C) a combat veteran. You've got (b)(7)(C) who is going to come and testify to you today, who

he, himself, is a combat veteran of Vietnam and can tell you that combat is not an easy environment. You have to make tough decisions and you have to make them quick, otherwise, Marines die.

Gentlemen, those letters aren't put in there so that you can take a scale and balance it and say, Is the government's book lighter or is the respondent's book heavier. It's not the purpose. Please take as much time as you need to review all that material because it gotten valuable nuggets of information. (b)(7)(C) career is on the line; more than just his career, his reputation, his future, and his life. The ten years that he's given to his country is honorable. It's valuable. And the month he spent in combat you, Gentlemen, are going to destroy his career for that? What a travesty. It's a travesty.

Thank you Gentlemen.

REC: Sir, at this time I would like to offer all my exhibits into evidence.

SRMBR: Okay.

REC: And absent objection from the respondent, I assume you may want to take a recess for the members to look over both the packages.

SRMBR: Okay.

CCFR: Gentlemen, we have no objections. We would also, of course, ask that you consider the Respondent's Exhibits, which have been provided to you as well.

SRMBR: Okay. We'll talk a recess until 930.

CCFR: Okay, sir.

REC: Sir, for the record the time is 0845.

SRMBR: Thank you.

The Board of Inquiry recessed at 0845 hours, 6 April 2004.

The Board of Inquiry was called to order at 0930 hours, 6 April 2004.

SRMBR: This board will come to order. All persons who were present when the board recessed are again present. The recorder will note the time and the date.

Does the recorder have any witnesses?

REC: Yes, sir.

Sir, the time is 0930 on the 6th of April.

Sir, a procedural matter came up. Counsel and I would like to alert the board members. (b)(7)(C) (b)(7)(C) -- I'm sorry -- (b)(7)(C) is in the background. Normally, witnesses aren't allowed -- who are going to testify are not allowed in the procedure until they actually come and testify, but he's -- (b)(7)(C) will serve as a character witness, and I understand he's a long time family friend. So I don't have -- he would like to be present here in support of (b)(7)(C). I don't have a problem with that, but it's up to the board members.

SRMBR: That's fine with me as long as you don't have any objections. His father is going to testify as well, so, and he's here.

REC: Yes, sir.

CCFR: Thank you, sir.

REC: Sir, our first witness is (b)(7)(C).

(b)(7)(C) if you would stand in front of the witness stand and raise your right hand.

(b)(7)(C) USMCR, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

- Q. Would you state your name for the record and spell your last name.
- A. (b)(7)(C) First name is spelled (b)(7)(C) last name is spelled (b)(7)(C)

Q. Are you currently a reservist or active duty?
A. Currently in the reserves; USMCR.

Q. What is your billet in the reserves?

A. I am the (b)(7)(C)

(b)(7)(C)

Q. What is your job in civilian life?

A. I am a maritime attorney at a law firm (b)(7)(C)

(b)(7)(C)

Q. If you could briefly tell the members a bit of your history in the Marine Corps: Your enlisted service, your officer service, and what sort of billets have you held.

A. Sure. I have been in the Marine Corps just over 15 years. (b)(7)(C)

(b)(7)(C)

- Q. And how many of those, sir, have been with (b)(7)(C) (b)(7)(C)?
- A. Probably close to 7 years.
- Q. And you served in a variety of billets in (b)(7)(C) (b)(7)(C)?
- A. I have held pretty much every billet in (b)(7)(C) (b)(7)(C), except (b)(7)(C) (b)(7)(C) or (b)(7)(C) (b)(7)(C) at one period of time.
- Q. How do you know (b)(7)(C) (b)(7)(C)?
- A. (b)(7)(C) (b)(7)(C) joined us -- I don't remember the exact date -- but it was some time -- I can't remember if he was there when I came back to the unit or not, but he was there after the September 11th timeframe when we were doing our predeployment build up, doing drills; and I know him from the regularly scheduled CAX we had. I served with him there, and also we had a predeployment CAX in Twentynine Palms; and also from our deployment during Operation Iraqi Freedom.
- Q. What sort of training -- or what sort of development as a commissioned officer did he have since he's coming over as a comm officer?
- A. (b)(7)(C) (b)(7)(C) did not go to IOC, which isn't uncommon. It's not uncommon because the reserve infantry officer's court is biannually. He had -- I can't recall the exact date he joined our unit, but he had whatever number of drills it was from the time he started until the time of our mobilization. I can't recall the exact number. He had two CAXs, and then he went to theater.
- Q. What was your opinion of (b)(7)(C) (b)(7)(C) prior to going in Iraq?
- A. In what respect, ma'am?
- Q. In his respect as knowledge as an officer, as being a -- tactically proficient in his new MOS?
- A. As an officer in general, I thought he was very knowledgeable, very intelligent. With his MOS, he zealously applied himself to learning his MOS; and I know he, you know, he was always studying or, you know, applying himself to learn his MOS; and I think he did a good job at that.

- Q. As part of your duties as (b)(7)(C) did that include training of the Marines as far as ROEs?
- A. Yes.
- Q. What was the training you gave or that you heard while you were in (b)(7)(C) about how to -- about ROE and prisoner SOP?
- A. My formal role in providing training to the Battalion didn't occur until part way through our deployment in Iraq. Prior to that, the training on ROE was provided during different training evolutions. Everything from our basic urban training skills we received in Camp Pendleton prior to our deployment. There was classes on prisoner-of-war handling, you know. So that was -- was essentially ROE handling on that specific issue. Then when we got into theater, there was law of war and specific theater ROE. The specific ROE that we would operate under was provided by a judge advocate in Kuwait prior to going in theater. Then after -- shortly after I became (b)(7)(C) there were a series of incidents, not just with our Battalion, but with just Marine Corps wide in theater that caused General Mattis, the SJA for Division and MEF, to order that all Marine Corps personnel would receive refresher training on the ROE; and I was given an order to do all hands in the Task Force across the Battalion in four days. I had to do ROE refresher training, and that is the formal training. Also with regard to ROE, it was a Battalion SOP -- and I'm not sure if it was higher than that -- but I know in our Battalion and our Company, it was a specific order that ROE would be discussed prior to any Marines going on any mission, wether it was convoy or resupply or patrol. ROE would be discussed and briefed during any permission orders.
- Q. In general terms, what was the mission of Division as you understand it as far as Iraqis, as far as the treatments of Iraqi civilians who weren't hostile?
- A. There is a couple of mantras that General Mattis put out as easy rule, one-liners for (b)(7)(C) (b)(7)(C) to remember. Some of those were in the New York Times, and those were briefed in our ROE; and they were common terms used and common knowledge across the Battalion. First was no

better friend, no worse enemy; and that's one of the things right there. No better friend, no worse enemy. If the Iraqis are peaceful, then they will have no better friend than 1st Marine Division. No worse enemy: If they cross the line, then we're going to jump and land on their head with both feet, and they are going to understand that. The other one was first do no harm, specifically towards civilian, another little one-liner that was in the ROE and one of the things that General Mattis also put out. Those are the little no-brainers that were put out there. Specifically, in the ROE with regard to civilians, the ROE specifically stated, it's pulling this directly from the Geneva Conventions and the Hue Conventions, the International Convention of Human Rights of 1948, comes directly from that is that civilians will be treated with dignity and respect or civilians and their property will be treated with dignity and respect; and it goes on beyond that, but that's the specific phrase that I can recall from that.

- Q. These events we're talking about at this BOI -- or focusing on those, they happened in late June. Were all these issues talked about prior to the events in mid-June?
- A. Well, obviously, not the sources of the ROE, but the ROE itself. The no better friend, no worse enemy, first do no harm, civilians and their property will be treated with dignity and respect were discussed. Also all the way down to your standard boot camp, TBS, five S's and a "T" of how to handle an EPW from that level all the way up to the ROE itself were discussed again. What aspect of the ROE would be discussed at a patrol briefing or something like that would vary; but during the formal training that was receive in Kuwait and during my refresher training, which the time frame of that refresher training was between July 1 and July 4, all of these -- those were discussed during that formal training, yes.
- Q. When did (b)(7)(C) arrive in Iraq?
- A. Around the beginning of April.
- Q. Okay. What was your mission? What happened after you arrived in Iraq?
- A. I was the (b)(7)(C). When we

first arrived [REDACTED] was securing the city of Al Khut, and there were four active duty infantry battalions in the province; and we turned over with [REDACTED] when we first arrived. I think within 48 hours, we did a turn over with Al Khut; and then over the next two weeks, we took over the entire province from the other battalions. I was in charge of my 68 Marines as an infantry platoon commander.

Q. We have got a map here, several maps that you forwarded on to me: One a larger map of Iraq, one of -- is the Wassi province, and one of Al Khut itself. If you could, I think --

REC: Can all the members see this, and counsel?

CCFR: That's fine.

REC: Okay. If you would explain a little bit more what the mission of (b)(7)(C) [REDACTED] was in Al Khut.

WIT: Sure. In the bottom left-hand corner is an airfield. It's a large Iraqi airfield. It's called Blair Field, and we had Task Force Tarawa there for a little while until they pulled out; and that was also the Battalion CP. The Combat Service Support Detachment was there. MP Company, everybody -- everybody was based there to start with. We had -- my platoon was out by the front gate, which is up here. I had one section there with four mortars and a mortar firing point, and we also did the airfield's entry control point security right there. The other -- the maneuver companies, or line companies, were assigned certain sectors of the city; and the city was divided up into alphabetical sectors, and the line company was stationed in the city. Also, (b)(7)(C) [REDACTED] was designated as (b)(7)(C) [REDACTED]. (b)(7)(C) [REDACTED] It was plussed up with various assets, and we detached other assets out. (b)(7)(C) [REDACTED] was stationed out on the Northeast side of the city right in this little open area. It doesn't appear on this map, but there is a little schoolhouse out there; and (b)(7)(C) [REDACTED] was that schoolhouse, and it was the Battalion quick reaction force. (b)(7)(C) [REDACTED] (b)(7)(C) [REDACTED] for the first portion was to provide the QRF, quick reaction force, to line companies, vehicle patrols; and also we were assigned certain sections of the city. We did vehicle patrols, foot

patrols, vehicle check points, riot control, humanitarian assistance, your normal security stabilization-type operation.

- Q. So at this point, after April, you were in security and stabilization.
- A. There was a -- it was a transitional phase pretty much where we had mortars set up -- half my mortars set up ready to fire; and eventually the mortars were taken down and boxed up, and we were all putting all the mortar boxes -- and we were down to probably anywhere from a 15-, 20-minute fire capability on the mortars; but my platoon was turned into provisional rifle -- essentially, two provisional rifle platoons of 68 Marines.
- Q. When approximately did that happen?
- A. That happened probably 3 or 4 weeks into the deployment.
- Q. So late April, early May?
- A. Something like that.
- Q. Okay. Could you -- this, sir, the first part, it deals with the ASP. Could you point out where that -- approximately where the ASP is. I know that's kind of difficult on this map.
- A. There are two ASPs.
- Q. This is the ASP dealing with the stripping of the Iraqis?
- A. That ASP was referred to as a field guard ASP. One of the missions we had been assigned from the Division was -- various things would come down from Division. Division would have some sort of intel that's called down, **SECRET** you need to guard this ASP. One of the ASPs we were assigned to guard was the field guard ASP, which was 24 kilometers north, almost directly north of the city. This highway right here is the Badrah Highway, which goes from Al Khut to Badrah; and it's essentially the main -- the MSR between Iraq and Iran right here. Twenty-four miles up the road was a massive ASP with, you know, tussler rockets, 122-millimeter rockets, 122-millimeter RE, 120-millimeter mortar, all types of rounds. They had -- the reason we were guarding it is there were anti-aircraft guns on that ASP; and helicopter pilots would fly by, get a little nervous

about seeing the anti-aircraft guns there. That was one ASP we guarded; and (b)(7)(C) also guarded an ASP that was southeast of the city. There were other ASPs that were not guarded that were equal in size. One of those ASPs was right here in the city. This open area on this map is a Republican Guard Base for a division that was in the Baghdad division. This whole open area as far as the eye can see was 122-millimeter mortars, just thousands and thousands and thousands of rounds.

- Q. Is it fair to say there is an ASP --
A. The country is an ASP. This canal bank right here had 85-millimeter rounds, 100-millimeter tank rounds. The airfield had -- this is base housing up here. That was floor to ceiling RPGs, rockets, artillery. It was just about -- if you pull over in the desert somewhere and start walking off, you will start finding mortar rounds.
- Q. I'm sorry. What was the platoon that was guarding the northern ASP?
A. That was a rotating guard. We had a squad on that post, and it rotated between (b)(7)(C) platoon and my platoon.
- Q. Why weren't all these other ASPs guarded?
A. There's too many to guard.
- Q. Thank you. You can take your seat. What did your Marines do when they were guarding that northern ASP? What did you tell them they were supposed to do?
A. When they were assigned to guard that ASP, I was not there. I was already doing (b)(7)(C). From my understanding of talking to my Marines that were out there, it is a massive ASP. I have been to the ASP. I went out there to check on my Marines; and, also, right next to the ASP, the battalion set up a range for everything up to 60-millimeter mortars; and the Marines out there -- with a squad of Marines, it was too big to set up a perimeter. So they would set up, you know -- go up there in two HumVs, set up a CP with a radio; and then they would patrol a perimeter in a vehicle and patrol around the ASP. If they saw activity or something like that, they would react to it.

- Q. What activity would they react to?
A. Iraqis in the ASP.
- Q. What would they do with Iraqis in the ASP?
A. Detain them, call back to (b)(7)(C) and ask for direction; and then (b)(7)(C) would tell them what to do with them, let them go or bring them back into town.
- Q. Why would the Iraqis go into the ASP?
A. The Iraqis were going into the ASPs with -- one of the common activities they would do is take brass. These artillery rounds got massive brass shells. If you went to the market at the center of town, they were selling them for recycling. In America, people collect cans. In Iraq they collected brass from the ASP. Another thing they would do is take the gun powder and they would pack it into cans and make homemade bombs and throw them in the Tigris River to go fishing. Another common thing they would do is collect the increments and gun powder and give it to their daughter and have them make a cooking fire with it. Frequently, at the front gate, and also after we moved from the schoolhouse to another location, we would, every once in a while, have a small girl come up to the front gate with severe burns from gun powder from trying to cook.
- Q. Were you aware of any incidents of Iraqis trying to take anything from the ASP in order to use it against Americans?
A. The entire time we were in -- the entire time we were deployed in Iraq, we did not have a single improvised explosive device used against us on the road or, you know, the things that are going on in Faluja where you see soldiers getting blown up by some bomb laying on the side of the road. That was something we were very attuned to. Towards the tail end of the deployment in the northern part of the province, there were some laying on the ground out of mortar rounds; but in Al Khut and for the most part of the province, in almost the entire duration of the deployment, there were no improvised explosive devices used against us in any vehicle checkpoint that I ever did; and also while I was (b)(7)(C) I did search vehicles when I saw activity as I was driving by, stopped and searched vehicles. Never found a single artillery round or explosive device in any vehicle.

- Q. So the Iraqis base this as a flea market or basically as a garbage dump to get stuff like brass?
- A. The field guard ASP was not being used as a garbage dump. The ASP that I referred to as the Republican Guard Base ASP, that was actually being used as a garbage dump. But mostly the activity in the ASPs were Iraqis going in there to take brass to make a dime, taking gun powder because propane cooking fuel, which is their main stay cooking fuel, was hard to come by. So they were using the gun powder to cook dinner with. We didn't have anybody stealing out of the ASPs, out of that ASP in particular -- taking any ordinance out of that ASP.
- Q. When your Marines picked up an Iraqi in the ASP, what were they supposed to do with that Iraqi?
- A. Five S's and a "T"; call higher. That's what the Marines did in this instance.
- Q. What would happen -- what would higher normally tell them?
- A. Usually, the course of action was to transport them to the Iraqi police station.
- Q. What would happen to them then?
- A. They would be handed over to the Iraqi justice system.
- Q. Do you know what happened to them in the Iraqi justice system after they were brought in for trespassing on an ASP?
- A. Trespassing on an ASP was usually treated as a rather minor offense by the Iraqi's court. It's a province of about a million, a million and a half people; and it's the only province in Iraq without a formal prison or a jail. So prison crowding, jail crowding was an issue. So you know, the murders and terrorists and those guys were on top priority of the list and somebody stealing brass out of the ASP was a low-grade offense for the Iraqi court system.
- Q. What were the Iraqi police like at this time? Were they the Iraqi police we heard about under Saddam Hussein, that they were feared and corrupt?
- A. When we first arrived, there was no Iraqi police system and we had our -- the Army had a military police company in the police station. When we would

arrest an Iraqi, we would bring him to the military police station for the MPs to handle. Quite often the Iraqi gentlemen that you arrested would urinate on himself and evacuate his bowels at the mere sight of the building. Everything was done under my oversight after I became (b)(7)(C). (b)(7)(C) (b)(7)(C) who's a (b)(7)(C) state trooper, took over the police department; and the military police ran the jail with Iraqi police once we were able to recruit them. They definitely weren't very professional corps police; but they were not, you know -- they did their job to the capability that they had, which was minimal.

- Q. So these weren't the murders and torturers?
A. They had a tendency to lash out; but again, we embedded Marine reservists with police experience in the Iraqi Police Department to try and teach them how to do it. I taught -- we set up police academies. I taught at that police academy. Marine Reserve police officers taught there, and also the Army MPs taught the police academy. So there was a program of formal education and supervision while we were there.
- Q. When did you go over to (b)(7)(C)?
A. About half way through the deployment, so actually, it was -- the exact date I started was 1 June 2003.
- Q. Did you serve on a checkpoint or have your Marines set up a checkpoint?
A. Yes.
- Q. What was that -- what is the procedures for that?
A. The procedures changed. What we did initially -- again, I refer to the basic urban skills training or BUST training, we were taught techniques to use, an SOP to use for setting up a vehicle checkpoint; and the initial strategy there was -- you don't want to advertise your vehicle checkpoint like they make the (b)(7)(C) police do here for DWI checkpoints. You have to run an ad in the paper before you can do it. You had hasty checkpoints or deliberate checkpoints, and we did both. Hasty checkpoint is you suspect some activity and you just set up a quick down and dirty checkpoint. Deliberate checkpoint, you would plan it out, have an op order, and rehearse and everything like that; but the hasty checkpoint might

just be block the road with two vehicles and some Marines and stop vehicles. Frequently, you know -- frequently, you would do it with a flashlight and a devil dog in the middle of the street stopping the vehicles. A deliberate checkpoint, you would have barbed wire, sand bags, or something to create an obstacle across the road. You would set it up, you know, better coordinated and more deliberate and longer term; but we did both types of those checkpoints all the time; and then later, the SOP changed to a more formal SOP because a lot of folks were getting killed that didn't need to get killed at these checkpoints. There was a requirement that you post signs in Arabic, plain out, military checkpoint, you must stop or you will be fired upon. A formal sign that we had Iraqi contractor make, paint, and you had to have a sign at each end of your checkpoint.

- Q. Did you have Iraqis trying to run your checkpoint?
A. I never personally had anyone try and run the checkpoint, you know. I had several that pushed you to the edge of do I fire or not fire, and there was -- there was a lot of car jacking, a lot of hijacking of trucks and cargo trucks over there, a lot of crime; and there was a tendency by the Iraqis when they saw -- they see a bunch of guys with guns at night, frequently, their first reaction was not to stop. So there was quite often a lot of tension there for the Marine and probably for the Iraqis themselves as to what's about to happen.
- Q. So the Iraqis thought the Marines were trying to rob them; and the Marines thought that, possibly, these guys, were actually trying to run over them?
A. Exactly. That's the moment of tension there. That Marine has to make a decision. The Iraqi has to make a decision, and that's why there was a change in the SOP to mandate these formal road block signs.
- Q. Once a Marine stopped a vehicle either because they fired upon it and they thought it was running them over or they thought they had -- they needed to search it, what were the processes for searching it and going through that vehicle?
A. Well, the process for searching a vehicle, whether -- my platoon and myself, we never fired upon a vehicle at a checkpoint; but the process to

search the vehicle would be the same, whether the vehicle was fired upon or not. You are going to have a cover team, Marines providing security facing outboard so the roadblock doesn't get hit. You are going to have Marines providing security on the vehicle, providing security on any vehicles that are, you know -- if you are building up a line of traffic, providing security on that; and then you are going to have a search team that would go in and search the vehicle, again depending on your mission or your orders or the time, you know, whatever you -- whatever the leader of the troops decided to do, how detailed the search would be, hasty search or pull the guy over and let other traffic go through while you rip that car apart looking for whatever. It varied.

Q.
A.

What would you seize and take out of a vehicle? You were looking for contraband items. The Iraqis were allowed to possess weapons up to AK-47. They were allowed to possess ammo for those weapons. One weapon per individual, but they were not allowed to possess the weapons outside of their home. They were essentially allowed to have the AK-47 over the doorway for home protection. They were not allowed to have weapons in public. Any Iraqi with a weapon, the weapon was confiscated, the ammunition was confiscated. You are looking for explosives; car bombs, which, again, I never personally found in any roadblock I did. You were looking for contraband amounts of money. Contraband amount of money, I can't remember what it was off the top of my head; but it was a very substantial sum of money; and that caused a lot of confusion for Marines at first because we watch drug movies where the drug lord has a brick of money and the exchange rate over in Iraq was about 1,500 dinar to one U.S. dollar, so there were many times you would pull over a vehicle and just be shocked by the number of bills; but the actual U.S. dollar amount might only be \$15, \$20. Again, I cannot recall the exact amount of money that it was; but it was in the thousands of U.S. dollars that you had to have before it was contraband. Any intelligence that you might find, but it's very unlikely that -- I don't recall ever having a translator at a checkpoint that I did to read any documents, but that's essentially what you are looking for.

- Q. How about clothing or personal items, that of the Iraqi's?
- A. No.
- Q. What were the Marines supposed to do with those items?
- A. Leave that alone. You search it to make sure there is no contraband item hidden in it, and that it is personal effects of the Iraqi and it's not any item that you are supposed to take from them.
- Q. There was some discussion of the defense exhibits about sand fleas and causing a disease lieshmaniasis.
- A. Lieshmaniasis.
- Q. Was that a concern?
- A. We received briefings on it before going into the country. You would have to ask the medical officer wether or not we had any reported cases of it or not. I don't recall any in (b)(7)(C) but essentially, you're reminded of your field hygiene, bug spray. I believe it was flea born, you know -- bug spray, personal hygiene, and also to stay away from the dogs. There was a lot of stray, you know -- tons of dogs over there.
- Q. Was that a concern of you or did you tell your Marines about that when they searched vehicles? You know, don't touch certain things because you may get a disease?
- A. No, no.
- Q. Okay. Would that give you reason, because you thought something might have lice or sand fleas, would that give you reason to burn particular items?
- A. No. The Marines were never given any instruction to burn personal effects of anyone at any time.
- Q. Have you read the investigation in this case, there was (b)(7)(C) ps. He had spoken to the stripping incidents and the burning incident.
- A. Yes. It's part of my duties as (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

- Q. And looking at those witnesses' statements and your knowledge of the ROEs, did (b)(7)(C) actions of having his Marines take off the outer clothes of the Iraqis, does that follow the ROE or Battalion SOP on how to handle a detainee?
- A. No, it doesn't.
- Q. You mentioned, and the members have a copy of that this incident, could have been a tipping point. What do you mean by that?
- A. Tipping points is something that was also discussed during the ROE training in Kuwait in briefings throughout the deployment over there. Tipping points are something that -- it's a military term that the United States military picked up from the Israelis where you don't know what action -- you don't necessarily -- you don't fully understand the consequences of your actions, what they might incur. For example, a Palestinian child runs out in front of an Israeli armored personnel carrier, the Israeli soldier has no intent to kill the child; but the child gets run over by a tank. The next thing you know, the Gaza Strip is in turmoil. That's a tipping point. It could be a deliberate action or a nondeliberate action by coalition forces in Iraq that could have drastic consequences, beyond out of proportion to the actual action. That's what a tipping point is; and that's what I was referring to that, you know. In this instance there was no drastic reaction from the local population; but this is an incident, that from my knowledge in close interaction with the numerous leaders of the local population, that this is exactly something that could have put the population of Al Khut in the streets.
- Q. We have an exhibit from defense from an Iraqi, basically saying that nudity -- that (b)(7)(C) (b)(7)(C) actions sending out his Marines -- these Iraqis half-dressed, wasn't really that bad. It wasn't really that humiliating in that culture.

There are things that are a lot worse.

Do you have an opinion as to -- first, what is your background in the Middle East?

A.

I lived in the Middle East for three and a half years, lived in Bahrain. I have been to Iran, Syria, Jordan, Egypt, Saudi Arabia, United Arab Emirates. I have been all over the Middle East. I have got something like five hostile country waivers even to enlist in the Marine Corps because I have been to so many Middle Eastern countries that were unfriendly to the United States. I have got a degree in (b)(7)(C)

(b)(7)(C) I have served in the Middle East on two occasions and two wars within the United States Marine Corps, part of my duties (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

their blown out street lights. I was -- suffice it to say, I was embedded in the local Al Kut, Iraqi culture for over three months on a daily basis. That's the background I have on the Middle East and, specifically, the City of Al Kut.

Q.

Given that, your three-month exposure to Al Kut and their citizens, what do you think their reaction

could have been?

- A. Considering that they protested over the death of a horse, I think they would have protested if this was a more visible incident. (b)(7)(C) was in the city, it was on the very outskirts of the city. If this would have happened at the police station in the center of the city, surrounded by Iraqis, I think -- I think this would have been something that they would have been would -- have protested. I do know, from my understanding of Middle Eastern culture and the Iraqis that I work with on a daily basis, that shame plays a major role in their culture. And I use that to my advantage in my daily interaction (b)(7)(C)

I couldn't get them to work through kindness, I couldn't get them to work through threats, I was finally able to get them to work through shame. An Iraqi male being nude, not nude, but in his gym shorts, probably is not something shameful if they do it themselves because they used to swim in the Tigris like that. However, having a coalition soldier or soldiers forcefully strip them down in the middle of the city, that's shameful in our culture and I disagree with that, gentleman. I think it's shameful in their culture. Specifically in that city, it would be shameful.

- Q. During that investigation -- this is a two part question -- did you see any reason for (b)(7)(C) to strip down these Iraqis?
- A. No.
- Q. Did you see any reason for his Marines to burn their personal property at this checkpoint?
- A. No.
- Q. Do you have any other opinions or any other instances of (b)(7)(C) leadership of his Marines in Iraq that you believe is important for the board members to know about his judgement in handling his Marines or dealing with carrying out his orders?
- A. I have no first hand knowledge of anything derogatory. I am aware of things that I cannot testify about because I don't have first-hand knowledge, so I wouldn't want to render an opinion on anything that I do not have first-hand knowledge

of that others who are testifying may know about. The only other thing -- I think it's important for the members to know is, is (b)(7)(C) applied himself to learning his MOS? (b)(7)(C) -- when I was at OCS, I was taught it takes all kinds, all kinds of leadership skills are available and viable in the Marine Corps and (b)(7)(C) is different than I am. You know, the only thing I can think of is, you know, we have the proverbial box we have to stay in and there's formal rules we have got the stay in. Perhaps my box is smaller than his and his is larger than mine. The only thing I can think of is that in the environment we were in, (b)(7)(C) (b)(7)(C) leaned very far forward and approached the edges of the box and the sand started to spill over the side and the lines of his box became ill defined and he stepped over the formal line of where that box is drawn. But, you know, I have no problem with him personally or professionally as far as operating in infantry skills and doing anything like that. I did not have a problem with him in that regard. I think he showed incredibly poor judgement in these two specific incidents.

REC: Thank you. I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

- Q. Good morning, (b)(7)(C)
A. Good morning, sir.
- Q. My name is (b)(7)(C) and I'm a civil attorney out in Pennsylvania. I represent (b)(7)(C) here.
- How was life in Iraq in terms of the danger that existed out there?
- A. It was, you know, Iraq was essentially the quintessential hours of boredom with seconds of horror.
- Q. Were people getting shot at?
A. People were getting shot at. I got shot at, (b)(7)(C) (b)(7)(C) got shot at. Iraqis were getting shot at by Iraqis.

- Q. People were getting killed?
A. People were getting killed, but none of us, thankfully.
- Q. The ASPs that you talked about with (b)(7)(C) were they dangerous environments?
A. They were dangerous environments in that the Iraqi methods of storing ordnance do not comport to Marine Corps or United States military standards and their disposal of out-of-date ordnance and things like that aren't to our standards. And I can recall several incidences of ordnance spontaneously combusting and igniting and exploding.
- Q. Blowing up?
A. One day we thought that perhaps we were taking substantial artillery fire because of the nearby ASP to our position started going up like the 4th of July.
- Q. Now the ASPs you are talking about near your position was the northern ASP?
A. There are two ASPs to the north. On that map, you can see, you have got the field guard ASP, which is off the map about 20 kilometers directly north of the city.
- Q. Which is the one that your platoon was taking care of?
A. Correct. The ASP, there are two ASPs I know that started having explosions. (b)(7)(C) platoon had one. I can't recall specifically which ASP that was, but I know his platoon had an incident where the ASP started going up. There was another incident where, right about sundown, the ASP immediately northwest of our position in that republican guard base started going up.
- Q. So it was knowledge that you had -- it's fair to say it was common knowledge in the company, that ordnance in these ASPs were self-detonating?
A. For whatever reason, they were self-detonating so much that the Army MPs would not go into the ASPs.
- Q. What about EOD, what was their policy on that?
A. EOD, we had two EOD teams. We had one EOD assigned

to the Marine Aircraft Group, Helicopter Aircraft Group and we had one personally for [REDACTED] we had 6 EOD techs and their policy was -- the coalition policy which was if it's not an immediate threat to coalition forces or an immediate threat to Iraqi civilians, that nothing was going to be done about it because there's not enough EOD technicians in the world to take care of the ordnance problem over there.

- Q. Because there was so much ordnance laying around?
A. Correct. The EOD would do things where -- if for our mission we had to do something in this spot and we found ordnance, we would call back to EOD and we would get put on their list of taskers to go blow stuff up. One of the things they might go do, is if there is ordnance in a school, and the Iraqi school children need to go to school, that would be something that would be put on their list. Blowing up an ASP is not going to make it on their list.
- Q. Now, did you ever learn about whether any Iraqis had been killed trying to steal ammunition out of these ASPs?
A. Yes. They were killed by everything from ordnance blowing them into a pink mist -- there was another incident with [REDACTED] Platoon where an Iraqi juvenile boy was crushed by a building falling on him at an ASP.
- Q. Now, one of the missions that [REDACTED] (b)(7)(C) had was not only provide security at the ASP so that looters weren't going to take things, but it was also to protect the Iraqis because it was understood they would injure themselves going into the ASPs. Correct?
A. That was an implied mission.
- Q. Implied how?
A. I don't recall ever being told to protect the Iraqis from themselves at the ASPs. I know the field guard ASP was specifically tasked and I know I was tasked because I was at the COC when the order came in. We were tasked to guard the field guard ASP because there were two 40-millimeter aircraft guns and a couple of 23-millimeter -- quad 23-millimeter antiaircraft guns that made the helo pilots nervous.

- Q. So when you say implied mission, is your testimony that you don't recall a direct order by anybody to have as part of your mission to protect the Iraqis from injuring themselves in the ASP.
- A. I do not -- that -- I cannot recall receiving that order and because I cannot recall that specific order, that is why I would say if I am told to guard an ASP for whatever, you know, go guard the ASP. That's an implied mission to me that I need to keep people out of the ASP because it's a dangerous place; and it would be humane to help them by protecting their lives so they don't go and injure themselves in this dangerous facility. Right?
- A. That would be one way of putting it.
- Q. Well, do you disagree with that?
- A. You know, I don't disagree with -- that it's humane to protect people from ordnance, no. The reason I say that would be one way of putting is that the whole country is an ASP. If somebody wants to go blow themselves up, they don't need to go to the field guard ASP to do it. They could go to any number of places that are not guarded by Marines and they have equal opportunity to kill themselves with ordnance.
- Q. Were you in every single location in Iraq, (b)(7)(C)?
- A. No.
- Q. Now, let's talk a little bit about your involvement with (b)(7)(C)
- A. (b)(7)(C)?
- Q. (b)(7)(C). Sorry, (b)(7)(C). You started out as an enlisted Marine with (b)(7)(C)?
- A. Correct. No. I did not start out -- I started with (b)(7)(C) as an enlisted Marine. That's not as far as my Marine Corps goes, so, yes and no.
- Q. How long were you with (b)(7)(C) as an enlisted Marine?
- A. I was with (b)(7)(C) about six years straight. Three years enlisted, three years as a Lieutenant. Then I came on active duty and then I came back.
- Q. What would be your combined amount of time that you spent at (b)(7)(C)?
- A. Combined amount of time at (b)(7)(C), going on seven years.

- Q. And when you joined up at (b)(7)(C), were you an 0311 when you started out?
- A. I was a (b)(7)(C) when I started out.
- Q. (b)(7)(C) ?
- A. Correct.
- Q. They didn't have any (b)(7)(C) in the battalion; did they?
- A. No. But we had a lot of machine guns on the Hueys
(b)(7)(C)
- Q. As an enlisted Marine with the battalion, did you go to any schools for your trade?
- A. Yes, I did. I sure did.
- Q. What schools did you go to?
- A. I went to 1st Marine Division Schools, Infantry Machine Gunner Course, MCIs.
- Q. And that helped you learn the trade of being an infantry Marine. Right?
- A. Yes.
- Q. And when you got commissioned and you joined back up with (b)(7)(C), did you at some point as a reservist with (b)(7)(C) go to the Reserve Infantry Officer's Course?
- A. No, I have not.
- Q. And in the timeframe that you have been with (b)(7)(C) how many CAX have you gone on?
- A. Let's see, I have been to three Combined Arms Exercises, one in (b)(7)(C), one or two as the (b)(7)(C). I have been on Joint Task Force Six missions doing (b)(7)(C) (b)(7)(C) as a sergeant, doing long range patrolling for about a week at a time looking for marijuana and methamphetamine labs and marijuana gardens.
- Q. You would consider yourself as having had a fair amount of experience, then, as an infantry officer, at this point?
- A. Although I have not been to the Infantry Officer's Course, I think I have a good deal of experience in the infantry field considering I have been working in it for seven years.

Q. And this timeframe you spent with (b)(7)(C), have you been with the same detachment?

A. I was never with (b)(7)(C).

Q. I'm sorry (b)(7)(C).

A. I have always been with (b)(7)(C) except for the time I was assigned to the Battalion CP as the (b)(7)(C).

Q. So when you headed out to Iraq with some of your fellow Marines from (b)(7)(C) you had known (b)(7)(C) for a fair amount of time, Right?

A. I have known (b)(7)(C). I was a platoon sergeant for him, I was section leader for him, I have been -- I have known -- I have known a lot of officers. I have known the Battalion commander since he was a Captain and I was a sergeant -- the former Battalion commander.

Q. (b)(7)(C)?

A. Right.

Q. So you --

A. There is other personalities in (b)(7)(C) that -- having been there for seven years that I know.

Q. But you were friendly with (b)(7)(C) when you headed over to Iraq.

A. I was friendly with (b)(7)(C) (b)(7)(C) and many other people, yes, sir.

Q. You also went to high school with (b)(7)(C) Right?

A. No, I did not.

Q. You didn't go to high school with him?

A. No, I did not.

Q. You guys went to different high schools?

A. Yes, we did.

Q. Now, (b)(7)(C) did you ever go to any (b)(7)(C) training?

A. Yes, I did.

Q. And what sort of (b)(7)(C) training did you attend?

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

Q. When did you attend that school?
A. 1999.

Q. Now, are you talking about the (b)(7)(C) (b)(7)(C), where you need to attend to become a (b)(7)(C) or is there a separate course?
A. No. I'm talking about their (b)(7)(C) Course.

Q. For (b)(7)(C)
A. No. I'm talking about (b)(7)(C), MOS producing, (b)(7)(C)

Q. Okay.
A. I also have other training that is not military. I also have provided -- was requested by Marine Forces Reserve (b)(7)(C)
(b)(7)(C)
(b)(7)(C) Impact of our current operations in Iraq on several occasions.

Q. We'll get there?
A. I have provided lectures to various (b)(7)(C) (b)(7)(C) ROE.

Q. We'll get there. I will let you explain that. But I want to first figure out the (b)(7)(C)
(b)(7)(C)

A. The same one as it was at the time I went to it, but yes, that is the course I am talking about.

Q. Okay. Now you are aware there is a separate (b)(7)(C) like a PME that you can attend. Right?
A. Yes, sure. Yes, I am aware.

Q. Did you attend that one?
A. No, I did not.

Q. Okay. Now, when your battalion and your company was getting ready to fight a war in Iraq, it was your understanding that you were going to be the (b)(7)(C) (b)(7)(C) Right?

A. Correct.

Q. Did you plan on being the (b)(7)(C) for the battalion when you headed over there?

A. No, I was not.

Q. So your focus in getting your Marines ready was from a tactical perspective and taking care of what mortarmen needed to do to get ready for war.

A. Exactly. There is one comment to that that I would like to --

Q. Sure.

A. I also had the collateral duty as the (b)(7)(C) (b)(7)(C) had. But my main focus was mortar platoon.

Q. (b)(7)(C) asked you a little bit about what your impressions were of (b)(7)(C) when you first met him, and you felt that he was zealously applied to learning his MOS; is that right?

A. Yes, and I would use those exact words again.

Q. What were some of the things that he did that you observed which led you to feel he was zealously applied to learning his new MOS?

A. The machine gunners bible, the machine guns and machine gun gunnery book, he was always reading that. He was always out in the sand, outside. If somebody walked up on him and didn't know what he was doing, they would think he had gone batty because he was playing with little toy vehicles in the sand, little combat vehicles and he was rehearsing in his mind the various vehicle formations of the (b)(7)(C) platoon. I know he, much to the chagrin of the motor transport section of our battalion, he was zealously leading his Marines in those formations across 29 Palms, popping a ton of tires and upsetting a lot of people. I don't mean to say that in a derogatory manner. I mean to say that he was aggressively leading those Marines in that CAX environment and not just sticking to trails.

Q. He was training his Marines for war?

A. Yes, he was.

- Q. And as a peer, you recognize that and you respected his efforts in getting his Marines ready for war?
- A. Having had to do that myself, coming from a different MOS, I greatly appreciated his efforts and I understood what he was going through and I felt that he was doing an excellent job at learning his MOS.
- Q. Now, the battalion gets activated, mobilizes, and heads out to Kuwait. Correct?
- A. Correct.
- Q. And the movement from Kuwait to Iraq, it was a convoy, a massive convoy out to your position in Iraq. Right?
- A. I personally did not go on the convoy. I was supposed to go on the convoy originally, but then I was sent as a (b)(7)(C) advance party since I had commanded and had experience in all three platoons, I was sent up on a C-130. (b)(7)(C) and a portion of (b)(7)(C) did go up on the convoy.
- Q. So you are aware of the fact that the main battalion was moved by convoy?
- A. The vehicles and a portion of it were, but there was a substantial -- I can't remember the exact split, but there was a ton of C-130 flights and I do know that he was on the long convoy, two-day convoy from Kuwait to Iraq.
- Q. And you are aware that -- who's (b)(7)(C) ?
- A. (b)(7)(C) is the (b)(7)(C). (b)(7)(C) right now.
- Q. Were you aware that (b)(7)(C) had (b)(7)(C) be the security officer for that convoy?
- A. Yes.
- Q. That is a pretty important role; wasn't it?
- A. Yes.
- Q. At some point while you were over in Iraq, you got moved from being the (b)(7)(C) to going into the (b)(7)(C) there in Iraq. Right?
- A. Yes.
- Q. And that was the beginning of June?

A. The exact first day that I did it was 1 June 2003.

Q. And who took over for your platoon?

A. I had a platoon sergeant, a staff sergeant, and I had two staff sergeant section leaders.

Q. Who became the platoon commander?

A. (b)(7)(C)

Q. And during that timeframe in June, May, in Iraq, were you aware of there being some problem with the company (b)(7)(C)?

A. I was aware of the problem with the company (b)(7)(C) (b)(7)(C) before June.

Q. Tell the members about the problems you are aware of.

Would you like some water? We can take a break or something.

A. I don't know if you have any water in here. If it requires a break --

SRMBR: Come on up here, counselor.

WIT: With (b)(7)(C) the question is where should I begin.

Q. It's fair to say he was a problem in your unit in Iraq?

A. Yes.

Q. All right. Let me try to help simplify it then, and (b)(7)(C) eventually got relieved and sent back to the United States?

A. Correct.

Q. At one point, he essentially mutinied?

A. I don't know what point you are referring to, but again, I was not physically at (b)(7)(C) when a lot of things happened with (b)(7)(C) I was running around the post or running around the province doing my (b)(7)(C) duties, but I am aware of many things from talking with (b)(7)(C) other officers, having read investigations and things like that. I'm aware of them, but I physically was not present when many things happened.

Q. (b)(7)(C) was in (b)(7)(C)?

A. Yes, he was. He was the (b)(7)(C).

Q. He had his pistol lost or stolen?

A. That is the \$60,000 question.

Q. In any event, he ended up not having his pistol?

A. Correct.

Q. And you would agree, in your experience in the infantry world, a (b)(7)(C) is a pretty important player in the functioning of the company?

A. Yes, he should be.

Q. Now, when (b)(7)(C) came on board (b)(7)(C), who was the platoon commander for (b)(7)(C) platoon at the time?

A. It was probably --

Q. (b)(7)(C)

A. Yes. It was probably (b)(7)(C). I was trying to recall if he was there or not but it was probably (b)(7)(C).

Q. When (b)(7)(C) came on board, (b)(7)(C) had already been trying to work his Marines up to get ready for war over in Iraq; hadn't he?

A. Yes.

Q. And there was some friction, a little bit of discomfort that he had because he was being replaced with a brand new platoon commander; didn't he?

A. I was never present during any conversation with (b)(7)(C) and (b)(7)(C) when there was any discord. (b)(7)(C) has never told me anything like that. He is not the type of person that would tell me that. I don't have that type of relationship with him. I am aware (b)(7)(C) had some issues with his (b)(7)(C) as I did with mine because we were peers and we discussed those things amongst each other. The details which (b)(7)(C) talked to me enough to tell me he was having a problem with him. The exact problem he was having with him, I don't know, but my assumption was there was some dissatisfaction with (b)(7)(C) (b)(7)(C) to have a (b)(7)(C) come in and take over the platoon.

- Q. Okay. All right. Well, let's get back to Iraq with the situation with the ASP. You commented that it wasn't, at least to your knowledge, you weren't aware of there being any IED incidents while you were there; is that right?
- A. I am aware of IEDs being placed in the northern part of the province toward the tail end of the deployment, but nothing in the immediate vicinity of Al Kut. We did have hand grenades thrown, but not any improvised explosives.
- Q. Well, wouldn't you agree that it would be a tactical concern in guarding these ASPs that if Iraqis are stealing this ordnance, that it could be used in IEDs?
- A. I was present in the battalion CP when missions like that were assigned and discussed with Battalion Operation's Officer, (b)(7)(C) and the -- we had combined Army, Navy, and Air Force, approximately 15,000 service members there to guard a province the size of New Jersey. A million and a half people with, on that map alone, there was, I could probably point out ten different places where there is an ASP of some kind. We did not have the personnel available to guard every ammunition dump, ASP, or hiding point. So, there was an operational decision made that we were going to guard the ASPs that Division told us to guard.
- Q. My question is simply, though, wouldn't you agree that it should be a concern for those tactical commanders out in the field, that ordnance which had been taken from the field could be used to blow up Americans?
- A. Yes. And that is what I am saying. It is a concern and the response was, we don't have the time or the personnel available to guard all of these ASPs and there is an operational decision made weighing the risk and the benefit that we were only going to guard the ASPs that division assigned. But that was a concern, yes.
- Q. Well, which was the greater concern, you know, since you were with the battalion staff. Was there a greater concern with preventing people from stealing the ordnance to use as IEDs or was there a greater concern for preventing these tipping incidents with the Iraqis?

- A. Greater concern about the tipping incidents. Our concern was to control the population, not to control the ammunition.
- Q. Well, you are still obviously in the Marine Corps and I know you follow the news, it's fair to say that the situation in Iraq hasn't gotten any better; has it?
- A. It's probably gotten worse, which raises the concern of tipping points.
- Q. Well, this incident that occurred at the (b)(7)(C), which is the CP for the company. Right?
- A. Correct.
- Q. You weren't there during that incident?
- A. No, I was not.
- Q. And at that time, you had already been out of the (b)(7)(C) Right?
- A. I was with (b)(7)(C) duties, yes.
- Q. And with your familiarity with the investigation that occurred, the incident of the disrobing of these Iraqis occurred on the 23rd of June. Correct?
- A. That sounds about right.
- Q. You were taken out of your (b)(7)(C) role on June 1st?
- A. I was never removed from that position, but I was doing other things, yes, and I was not physically present when that occurred.
- Q. Did you consider yourself to still have responsibility as a (b)(7)(C) for (b)(7)(C)?
- A. I was specifically told that I did and I was specifically directed to get to that platoon as much as possible to meet with the staff sergeants, as I hinted to, there were issues with my Staff NCOs and I was still the (b)(7)(C).
- Q. And you still have responsibility for the leadership of the (b)(7)(C)?
- A. Yes, I did.

- Q. Now, on June 23rd, another officer from (b)(7)(C) was also no longer present. Right? (b)(7)(C)
- A. (b)(7)(C) I believe was on emergency leave.
- Q. So, of the officers then that were remaining within (b)(7)(C) that were with -- I guess, still available was (b)(7)(C) and (b)(7)(C) Right?
- A. Correct.
- Q. Now, this incident where the Iraqis were captured, on all occasions, was in the field guard ASP; wasn't it?
- A. On all occasions, you're talking about --
- Q. On one particular day.
- A. On that day, yes. I believe it is all from the field guard ASP.
- Q. (b)(7)(C) is your Marine?
- A. Yes, he is.
- Q. And (b)(7)(C) had the responsibility for guarding security in that ASP?
- A. Correct.
- Q. Where were you?
- A. At the time he arrested them, I wasn't at the field guard ASP. I wasn't at (b)(7)(C).
- Q. You weren't at (b)(7)(C) you weren't with the (b)(7)(C) where were you?
- A. I was in any number of places that -- I cannot recall where I was at June 23rd at whatever hour. I could tell you where I wasn't because I know I wasn't at the ASP and I wasn't at (b)(7)(C).
- Q. Who was at (b)(7)(C)?
- A. (b)(7)(C) I know was at (b)(7)(C) and there were other people at (b)(7)(C).
- Q. Okay. So, it would be fair to say that (b)(7)(C) (b)(7)(C) had a leadership responsibility for your Marines in the (b)(7)(C) ASP. Right?
- A. Correct.
- Q. And (b)(7)(C) also had responsibility for his

- A. Marines at the northern ASP; didn't he?
Are you talking about the southeastern ASP?
- Q. There is two that (b)(7)(C) was taking care of. Right?
- A. Right. Field Guard ASP is at the North and the Cat ASP was southeast.
- Q. Tell me what you want to call that ASP?
- A. Cat ASP.
- Q. Cat ASP. That's what we'll call it.
- Did he have a responsibility of taking care of and providing security to Cat ASP?
- A. Yes, he did.
- Q. Who was taking care of (b)(7)(C) business while he was gone?
- A. His platoon sergeant was doing police duties and their -- I can't remember who was the senior in his platoon at that time. I don't know if (b)(7)(C) was back, but the only officer present at Cat on June 23rd at the time of these incidents was (b)(7)(C).
- Q. Where was (b)(7)(C)?
- A. It is my understanding that (b)(7)(C) was at a meeting at Battalion CP.
- Q. So, two of his officers are no longer in this area where you were providing security, and the only officer present is (b)(7)(C) who has got double duty. Right?
- A. Triple duty.
- Q. Triple duty. And based upon your familiarity of the Marines, didn't your Marines express to you they were having a frustrating time handling this truck or this Iraqi looter trespassing problem?
- A. No.
- Q. Your Marines never complained to you about that?
- A. No. My Marines have showed me the photographs of those Iraqis smoking Marlboro Reds and drinking water in the only shade available. My Marines arrested those guys and took care of them and transported them to (b)(7)(C).

- Q. I'm not talking about that incident. I'm talking about prior to that. Were you aware of Marines in (b)(7)(C) expressing a concern about every time they catch these looters and bring them to the police station, they're let go and they show back up.
- A. That was a frequent occurrence, not just with looters, but Iraq was a frustrating place. I don't specifically recall my Marines telling me that, but that is something they may have expressed.
- Q. They may have expressed this to you?
- A. They may have. I don't have a specific recollection.
- Q. Were you aware of the fact that prior to this June 23rd incident, it was frequent enough that every time you catch a looter in this ASP, bring them to the police station, they would be processed for a couple of minutes and let go?
- A. Correct.
- Q. Now, these folks that were in the ASP, were they dressed like in uniforms.
- A. Are you talking about the Iraqis?
- Q. Iraqis.
- A. The pictures I saw, they were dressed in typical Iraqi dress, anywhere from a dishdosh, which is what we called a man dress, a long shirt, goes down to your ankles, trousers -- just civilian attire.
- Q. Was there anything -- sitting here today, are you certain those weren't the insurgents that are planting IEDs right now?
- A. Am I certain they are not?
- Q. Are you a hundred percent confident that those folks that were out there stealing ordnance in the ASP aren't the insurgents that are planting the IEDs now which are killing our servicemen over in Iraq?
- A. I am not a hundred percent certain of that, but there is nothing I have read, seen, or been told that indicates those guys were doing anything other than trespassing on an ASP to steal brass to make a dime.
- Q. Are you saying that you are not aware of them ever

- stealing whole ordnance?
- A. What I am saying is the evidence in that investigation, my conversations with my Marines after the fact, all indicate that those guys were stealing brass.
- Q. I'm not talking about that incident. I'm talking about during your timeframe there in Iraq, isn't it true that they, the Iraqi looters, not just those folks on 23 June, have been caught stealing unexploded ordnance?
- A. I'm sure there's been incidents of people stealing unexploded ordnance.
- Q. When you say you are sure, are you not positive?
- A. Am I not positive? What I am saying is that, if I'm an Iraqi insurgent, I'm going to go steal some ordnance, but I'm not going to the one with the Marines on it. But I don't know if these guys were insurgents or not, I don't know that. I can't tell you they are not trying to kill somebody right now, I don't know.
- Q. Did you see them steal ordnance.
- A. Did I ever see anybody steal ordnance, no.
- Q. Are you aware of your Marines ever reporting to you that Iraqi looters had stolen unexploded ordnance?
- A. I am not aware of my Marines at the Field Guard ASP doing that, but I do not my Marines have caught people with mortar rounds. I know that the alpha sector there, the tip of the peninsula, there's an arms market, an active arm's market, where you can go down there a buy a Sam 7 on occasion. What I am saying is that there is a myriad number of places in that country that they can go to get ordnance.
- Q. Now, this ASP, this Field Guard ASP, did it also house or store some of the Battalion's own weapon ordnance?
- A. It was a rifle range.
- Q. Are you saying it had no ordnance at all from the Battalion stored there?
- A. I never saw any on any visits I went. The Battalion ASP was on Blair Field behind the wooden latreen. Behind a bunker that (b)(7)(C) who is also one of my Marines, that's where the battalion ASP

was.

- Q. So you are certain that no Battalion ordnance was stored at the Field Guard ASP?
- A. Not to my knowledge.
- Q. As the (b)(7)(C) if ordnance was stored there, it should be something you would have been aware of.
- A. Not necessarily.
- Q. Why not?
- A. Because I know where (b)(7)(C) ordnance is. I don't know where every speck of ordnance in the Battalion is. I do know where the Battalion's ASP was because my Marine, (b)(7)(C), is the only ordnance technician in the Battalion. The Battalion ASP was on Blair Field. (b)(7)(C) had an ASP on (b)(7)(C) where they had the javelin missiles, mortar rounds, large ordnance like that, and extra 50-cal, Mark-19 ammo, and things like that. I am not aware of any ordnance being stored at the Field Guard ASP from the Battalion. I have --
- Q. Okay.
- A. I may be incorrect, but I have serious doubts that any ordnance was stored there.
- SRMBR: Okay. Counsel how many questions do you have?
- CCFR: A few more, sir.
- SRMBR: How much longer would you take?
- CCFR: Would the board like to take a break, sir. It would probably depend on how long the witness responses are.
- SRMBR: Yeah. Let's take a ten minute recess.
- REC: Sir, for the record, the time is 1045 on the 6th of April.
- SRMBR: Okay.

The Board of Inquiry recessed at 1045 hours, 6 April 2004.

The Board of Inquiry was called to order at 1058 hours, 6 April 2004.

SRMBR: The board will come to order. All parties 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 1058 on the 6th of April.

SRMBR: Before we begin, how many witnesses do you plan on calling, (b)(7)(C) ?

REC: Sir, I have four other witnesses, sir. They should not be as long as this one, sir.

SRMBR: Okay. How many witnesses do you have?

CCFR: Sir, I have (b)(7)(C) --

SRMBR: Three, four, five?

DC: Five.

SRMBR: Five. Okay. I understand (b)(7)(C) is an important witness, but lets make our point and move on.

CCFR: Yes, sir.

Questions by the civilian counsel continued:

Q. Okay. (b)(7)(C) you mentioned on direct that some of your involvements with the (b)(7)(C) (b)(7)(C)

A. Correct.

Q. And you commented that sometimes you would have to shame them to get them to act?

A. Yes.

Q. What sort of things would you do to shame them?

A. The specific thing I did was over the course of approximately a month and a half. I tried to get them to (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

shaming them. Confronting them with their own inaction and telling them, you know, politicking and everything like that, essentially, shaming them with their own inaction. That's what I mean by shaming them, not stripping them.

- Q. And embarrassing them among their peers?
A. Essentially, yes. And, also, there is a cultural aspect to that, as well, that, you know, essentially, there is a cultural shame there as well. Almost an oriental sense of face in the Arab world and that's what I'm talking about, shaming them.
- Q. By embarrassing them in front of their colleagues.
A. Essentially, yes.
- Q. And you would also have to use threats?
A. Threats of firing them, yes.
- Q. Just taking their jobs away?
A. Yes. They are not doing the job, I am not going to pay them the tax payer's money.
- Q. Did you ever have to use or threaten them with any sort of force?
A. No. Except for (b)(7)(C) that pulled the gun on me.
- Q. And you pulled a gun on him?
A. Myself and (b)(7)(C) yes.
- Q. Now, you talked about your experience in the Middle East. How many total years did you have in the Middle East. You mentioned a few countries, but how long was your total stay?
A. Three and a half years the first time; eight months the second time; and six or seven months this last time.

Q. Okay. You speak Arabic?
A. No, I don't. I used to be able to at one point. I used to be able to speak Arabic well enough to get around Bahrain.

Q. Now, you heard from (b)(7)(C) that (b)(7)(C) (b)(7)(C) who is a former Iraqi citizen, still has family there, lived there for 18 years, in Saudi Arabia for five, commented about this case. Right?
A. Yes.

Q. Did you have a chance before this BOI to review this report?
A. No, I have not.

Q. But yet, with the information that (b)(7)(C) told you, you disagreed with his assessment?
A. I disagree with his assessment based upon my first-hand experience dealing with the complaints of the Iraqi people in that city, yes.

Q. Okay. He says that disrobing the detainees would not be considered humiliating or degrading by Iraqi customs. Do you disagree with that?
A. I disagree with that.

Q. Now, some -- because you have been there, you are probably familiar with some examples which are different in the West than the Arab culture, like it is in the United States culture in terms of respect, but for instance, showing the heels of your shoes to an Iraqi is insulting; isn't it?
A. In the manner in which you do it, yes. If you are just sitting down and your heels tend to -- they sit down with their heels exposed to each other.

Q. And it would be disrespectful, too, if you were approaching a group of individuals and you didn't speak to the senior male in the group and instead spoke to the female, that would be insulting to the senior male. Right?
A. Correct.

Q. Was it also your experience, when you were there, that the Iraqis respected strength as opposed to weakness?
A. Yes.

- Q. And that they would see weakness as, you know, they would seek to exploit the weakness that they saw?
- A. Yes.
- Q. Did -- was there any nonlethal force that was available to the Marines when they were guarding the ASP?
- A. Not that at that time, there was not, other than zip ties or fisticuffs. As far as gas or any nonlethal agents or batons or anything like that, no.
- Q. That had been taken away by the CG. Right?
- A. The CG of 1st Marine Division made that decision for no nonlethal.
- Q. Now, I want to show you the endorsement which you put together on the investigation.
- Gentlemen, it's Exhibit D in the respondent's exhibit package.
- Is that the endorsement that you put together?
- A. This looks like it, yes.
- Q. I want to point your attention to a sentence in paragraph number 2 that says all soldiers, sailors, and Marines of (b) (7)(C) were instructed in prisoner detainee handling procedures as well as instruction at company level authorization is required to confiscate anything and a receipt must be provided to the owner?
- A. Correct.
- Q. How many times do you recall receipts being provided to owners?
- A. I can recall no receipts at any checkpoints or anything like that that we ran because we never confiscated anything there. I have provided receipts and I have seen other Marines provide receipts for weapons that were taken. I have also received receipts issued from all across the province by the various companies when Marines, I'm sorry, not Marines, but Iraqis would come to me wanting their item returned.
- Q. Now, you have commented on this incident at the checkpoint in your investigation. Right?
- A. Correct.

- Q. And you are aware that at that checkpoint after the Marines disabled the vehicle, two Iraqis were injured. Correct?
- A. Yes.
- Q. And that first aid was immediately applied to those Iraqis?
- A. Yes.
- Q. They were taken away to the ambulance?
- A. Yes.
- Q. Obviously, since they weren't there, you would have expected the Marines to provide them a receipt for the items that they took out of the truck. Right?
- A. The items in the truck shouldn't have been taken in the first place.
- Q. Well, you are familiar with the five hundred thousand dinar that was found?
- A. Yes.
- Q. And that was turned over to the police?
- A. Correct.
- Q. And you are aware that (b)(7)(C) had called in to have an intelligence team come and inspect the vehicle.
- A. I'm aware of that, yes.
- Q. You are aware that the intelligence team never came out to that checkpoint to conduct that search?
- A. I don't recall whether they did or not. I don't have any specific recollection.
- Q. At some point, (b)(7)(C) and his Marines had to gather up some of his belongings and they brought it back to (b)(7)(C); didn't they?
- A. It is my understanding that they were supposed to guard the truck until relieved.
- Q. But did they bring back some of those items they took from the truck back to (b)(7)(C)?
- A. I do not know, I was not there when they returned.
- Q. Last sentence there, that paragraph where you said the undersigned officer personally conducted this training with all units between 2 July 2003 and

5 July 2003.

- Do you see that?
- A. Yes, I do.
- Q. What was the date of the incident involving the checkpoint?
- A. It was prior -- I don't recall the incident with the checkpoint offhand, but that's the dates that I provided the training to the entire Battalion Task Force.
- Q. Okay. Is it your recollection that the checkpoint incident occurred before you gave this refresher ROE?
- A. I'd have to look at the checkpoint investigation, the actual investigation itself to know what date it was. And that document speaks for itself.
- Q. I am showing the witness what's been marked as -- this is in the government's exhibits, but this is the command investigation; right, that (b)(7)(C) put together?
- A. This looks like it, yes.
- Q. Does that help you refresh your recollection as to when the checkpoint incident occurred.
- A. It would take me a couple of minutes to find it. It looks like on the subject line one was on 1 June and the other was on 29 June. I can also say that the reason that sentence is in there is if you look at the date of the investigation, it's 22 July and if you look at the date that the training was conducted, it was on 2 July and 5 July. The purpose of the sentence being in there is to report to Division that our training was actually completed because that was an issue. We were given a direct order to conduct our training and that was to inform Division that our Battalion had complied with their order and had conducted that refresher training.
- Q. But this was an endorsement on the investigation involving the checkpoint?
- A. Correct.
- Q. So, at that point, your briefing of this was irrelevant because it occurred after these incidents.

A. It is relevant. It is not to import that (b)(7)(C) (b)(7)(C) received refresher training prior to that. It's in there to inform Division. Also, another aspect of this is, as with (b)(7)(C) investigation and my (b)(7)(C) on this, this document was written probably about 02 or 03 in the morning. So there's a lot of things you are trying to cram into a day and you are trying to analyze this as (b)(7)(C) (b)(7)(C) is trying to be a (b)(7)(C) as well as --

SRMBR: Okay. I think we have got it. The refresher ROE training --

WIT: Occurred after.

SRMBR: -- occurred after the incidents.

Questions by the civilian counsel continued:

Q. At the point that the investigation started heating up against (b)(7)(C) when did you become aware that he was going to be going to an NJP?

A. I became aware that he was going to be going to an NJP in a telephone conversation with the Deputy Staff Judge Advocate of 1st Marine Division.

Q. Okay. And you remember when (b)(7)(C) received the investigation package?

A. I don't recall when he received it. I can't recall when he received it, but I do have the vague recollection of (b)(7)(C) and (b)(7)(C) (b)(7)(C) asking for the investigation. One issue we did have over there was a lack of reproduction capability. Essentially, the lack of a photo copier, a functioning photo copier, so it was difficult, when you are working with one original to get it up to Division to get endorsements and get it back, allow them to view it or get Division to photo copy it. There were issues there with him getting an investigation.

Q. If (b)(7)(C) received the investigation on June 30th and his NJP was on August 1, is that your recollection?

A. I can't recall when he was NJP'd. The NJP will speak for itself as to when it was. I don't have any specific recollection of when his NJP was or

when he received the investigation.

Q. Do you recall (b)(7)(C) for a copy of the investigation?

A. I have vague recollection of that, yes.

Q. Did you tell him you couldn't give him the investigation yet until you received (b)(7)(C) endorsement?

A. I may have told him that, yes, and I could not give him an advanced copy until the investigation was finalized. If you give the investigation to the Battalion commander and he orders a reopening of the investigation or additional investigation, then it's not closed.

Q. Okay.

A. So I may have told him that, yes.

CCFR: Gentlemen, you just have to give me one second because I have a few exhibits I want to use. Gentlemen, this isn't the government's exhibits, but I will use this for this purpose here.

Is that (b)(7)(C) endorsement?

A. This appears to be it, yes.

Q. What's the date on it?

A. 23 July 2003.

Q. Do you have any knowledge as to when it was that you gave (b)(7)(C) a copy of the investigation?

A. I don't recall.

SRMBR: He's answered that question three times already.

CCFR: Now this is the acknowledgments of rights form on the NJP. Correct? Does it help refresh your recollection as to when the NJP occurred?

WIT: I wasn't present at the NJP, but, as I said earlier, the document speaks for itself. It appears that it occurred on August 1, 2003.

CCFR: Thank you.

Gentlemen, I don't have any further questions for (b)(7)(C) at this time. Thank you.

SRMBR: Okay. Redirect.

REDIRECT EXAMINATION

Questions by the recorder:

- Q. Sir, just for the sake of clarification, could you point out where the (b)(7)(C) Command Post is?
- A. Okay. I guess I didn't mention it, I mentioned (b)(7)(C) started out over here, I didn't mention where it went to. (b)(7)(C) moved to open up the school and get the kids in there. We moved to an Al Kut's Army terrorist facility right there across from the palm grove, that corner of the palm grove and that neighborhood right there.
- Q. And this is where the incident of the stripping occurred?
- A. Correct.
- Q. You mention that the Battalion was more -- Division was more concerned about controlling the population and not ordnance?
- A. Correct.
- Q. Why is that?
- A. Because there, number one, there is just so much ordnance everywhere. It's along the canal banks, it's in the schools, it's everywhere. It was just a monumental task to try to control all the ammunition and we would lose control of the city if we guarded every stash of ammunition.
- Q. You mentioned about your job as an (b)(7)(C) affairs when dealing with the Iraqis. And that was frustrating because the Iraqi (b)(7)(C) weren't listening to you and you explained to them over and over again what they were supposed to do and they didn't do it?
- A. Yes.
- Q. So you felt the need to counsel them basically and get them all together and counsel them together?
- A. Yes.
- Q. And that's why you felt that shame was appropriate.
- A. Yes. That's exactly what it was. You know, here is

a 36-year-old guy from America counseling 60, 70-year-old Iraqi judges on what they should be doing. They should be judges and judging. They were refusing to do that -- and threatening to fire them; and, you know, providing them funding and everything like that wasn't working. Giving them kindness and resources didn't work; threatening to fire them wasn't very successful; so, the only thing I had really left to do was to just lay it on the line for them. I threatened to fire every single one of them and just do it myself at that point.

Q. This is about a month and a half of the same issues?
A. At least.

Q. Is anywhere in procedures, an SOP, about an appropriate measures for Iraqis not responding to you is to take off their clothes?

A. No. It's in direct violation of international law, treaties, ROE, Marine Corps Orders.

Q. In your billet there as (b)(7)(C) do you believe that your Marines understood that even prior to the training in July?

A. Yes. And I think their statement in the investigation reflect that.

Q. So we are talking about privates, lance corporals, corporals, sergeants?

A. Yes.

Q. This is probably self evident, but why do we have things like ROEs? Why is there such an emphasis placed on instruction and training, on training Marines in this subject?

A. Well, there's, you know, there are several reasons why you have ROE. Number one, is to ensure that -- to implement national policy, command policy, on what level of force we are going to use. There are, there's a reason to maintain the humanity of the conflict. Number one, psychologically in our own Marines, we put them in a moral conundrum that it's not natural for human beings to want to kill somebody else. So, you provide them guidelines within when to kill, when not to kill. You also try to make sure that our Marines are complying with international law and treaty law. We try to make sure that you don't stiffen the resistance of the

enemy by resorting to extralegal measures.

Q. You also mentioned that during cross that those items at the checkpoint shouldn't -- those personal items shouldn't have been taken out of the truck?

A. Correct.

Q. What do you mean by that?

A. They were not contraband. There's no reason whatsoever under the ROE or any instruction at all or even like I said before, your five S's and a "T" of EPW handling, you don't take the personal effects of people from them.

Q. When did you meet (b)(7)(C) ?

A. I believe it was in 1995, when he got to (b)(7)(C) (b)(7)(C). I had been there about a year and he came in as a (b)(7)(C) off of active duty.

Q. What is your relationship like with him?

A. I have a friendly relationship with him. I see him at drills and I talk to him about business over the telephone.

Q. There is also an allegation that (b)(7)(C) was out of control. Could you describe whether you felt, being a (b)(7)(C) in that company, whether it was out of control?

A. It wasn't out of control. As with any command there was issues and those issues were dealt with. Whether it's an issue with an officer's judgement, Staff NCO or NCO judgement, Lance Corporals or PFCs, Marines broke the rules, Marines were NJP'd from Privates all the way up to Captain.

REC: Nothing further.

SRMBR: Wait a minute. He's got -- recross and then you will answer our questions if we have any.

RECROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) the ROE or the Marine Corps order doesn't specifically itemize disrobing as being a violation; does it?

- A. If you provide me the Marine Corps Order to refresh my recollection, I can tell you what it says and what it says specifically with regard to treating people with dignity and respect and they should not be exposed to public humiliation.
- Q. My question to you is, does it include the words "not to disrobe?"
- A. Well, it doesn't include the words "not to disrobe," but we are getting into semantics and what public shame and humiliation --
- Q. Insults?
- A. Insults. Forcible. And the only thing I have to respond to that is that there are cultural differences between American culture and Arabic culture. Their culture is far more guarded about sexual things and nudity and things like that than ours is. If I went outside this base and were forcibly stripped by the New Orleans police department, you would be shamed. You would be humiliated and then that goes for United States Marines stripping Iraqis, too.
- Q. Now, you provided in your endorsement your subjective interpretation that that conduct that occurred violated the order. Correct?
- A. In my subjective interpretation is also objecting based upon my legal training, also, my subjective and objective opinions have been endorsed by every general in the chain that has reviewed the investigation.
- Q. You were the one who initially put the connection between (b)(7)(C) conduct and your interpretation of the order. Correct?
- A. I was the one who interpreted the order initially and I am the one, along with everybody else in the chain of command, that has reviewed the investigation that agrees that what was done is in violation of this order. I started that, yes.
- CCFR: Thank you. Gentlemen, I don't think have I any further questions.
- SRMBR: Okay. Questions from the board.

EXAMINATION BY THE BOARD

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

- Q. Skipper, do you consider -- you made mention of the fact that although (b)(7)(C) didn't attend IOC or go to the reserve IOC course, you say he zealously applied himself. Do you consider him to be a good platoon commander?
- A. I think he was a good platoon commander, sir. I can tell you this, that (b)(7)(C) with a map over the hood of a HMMV can come up with a coordinate search plan in a matter of minutes, a solid, good coordinate search plan. We were able to do that on numerous occasions.
- Q. Are you familiar with anybody who has ever graduated from RIOG?
- A. Yes, I am.
- Q. Can you compare his skill level to those individuals as being on par, below par, above par?
- A. I don't, I don't think that the officer I'm thinking of -- I don't think reserve IOC did anything for him.
- Q. Okay.
- A. Reserve IOC is two weeks long and it's a check in the box. You got to -- to get the MOS, you got to have your two years in the school, and I don't think the school provides much benefits beyond the experience you get OJT certified.
- Q. Okay. Defense made reference of the fact that you have got the (b)(7)(C) MOS, but you have never been to (b)(7)(C) course?
- A. No, sir, I have not, but --
- Q. But you do have the skill says -- required to interpret ROE and Geneva conventions and make a determination on whether there was a violation of any specific set of those requirements?
- A. Yes, sir. And as I said, in answering my question, sir. The Colonels here at MarForRes (b)(7)(C) asked me to come and give lectures to Lieutenant Colonels and Colonels on the subjects and also I was one of two officers from the Battalion that participated in the

after action debriefings with 4th Marine Division.

MBR (b)(7)(C): That's all I got.

SRMBR: Okay.

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

- Q. Just a question on Exhibit 10, which is the first MarDiv ROE training, 10 North 3 Victor. Was that available prior to the deployment or was this what you wrote up after deployment?
- A. I did not write that and I don't know if I provided that when (b)(7)(C) gave me the defense request. There's also, it looks like, some powerpoint. Those items and powerpoint was produced by 1st Marine Division and that is the instruction tool that was used by the First Lieutenant in Kuwait as well as myself in the refresher training, sir. Those are products from 1st Marine Division. Those are not my products.
- Q. But was this done in country or was it done CONUS before you all left?
- A. We did not receive the theater specific ROE training until we were in Kuwait. We received that instruction, the powerpoint instruction, which is from the ROE for official use only, 10, was it whatever, Victory, the actual ROE itself is classified, but that's the declassified version of it.
- Q. The second question, the last question I have is how often did the Battalion commander come around to the different areas and different ASPs? I mean, what involvement or interaction took place?
- A. I doubt if he ever came around to the ASPs. I had frequent interaction with them because of my duties but going out to the actual companies themselves, (b)(7)(C) being in the city of Al Kut, I can't remember the exact number of times, but you can probably count them on one hand.

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

Questions by the senior member:

- Q. Okay. I have a question about the order to guard

- the ASPs. Which ASPs; where the order came from; how it was articulated, and how it was promulgated. So, based on what you know, who issued the order to guard those two ASPs that are our primary points?
- A. It is my understanding that that came down from 1st Marine Division.
- Q. How did they convey that?
- A. That would be conveyed probably in a telephone call to (b)(7)(C)
- Q. Based upon intel?
- A. Based upon intel and it's primarily pilots were at the airfield, pilots fly over head, they see antiaircraft guns, they can't tell whether it's functional or not. And it got to the point where we were spray painting antiaircraft guns with red paint to let the pilots know that this is not functional. But they would call in with, AA gun, red 1, 2, 3, 4, 5, 6 and next thing you know, we were guarding it.
- Q. Okay. Someone would issue a verbal order from Division G-3 or wherever down to Battalion, to (b)(7)(C) (b)(7)(C), and then the Battalion commander or the S-3 would issue it?
- A. It would probably come from the Battalion S-3, sir. The way things were functioning over there, the Battalion commander was also the provincial governor and he was eyeball deep in running the province. The day to day -- the operations officer ran operations, the XO ran the Battalion, and the Battalion commander was running around like a chicken with his head cut off dealing with the province.
- Q. Do you know whether the order from Battalion, the 3, down to (b)(7)(C) was a verbal order or a written order or --
- A. You would have to ask (b)(7)(C) about that, sir, but the order to (b)(7)(C) or myself or to whoever to guard the ASP would have been a verbal order. Probably, go guard the ASP.
- Q. Did you say that -- how long was the, if you know, how long was the security maintained on those two ASPs?
- A. I can't recall when they started, sir, but it was probably weeks if not longer.

- Q. Based on that same verbal order, intel order, or concerns of the pilots that caused us to put Marines on the ground?
- A. Yes, sir.
- Q. What other, what other actions, you know, in your mind, are permissible under the ROE, you know, other than turning folks over to, Iraqis over to the Iraqi police for incursions into the ASP or whatever?
- A. Under the ROE, it's very frustrating, those ROEs are a very frustrating set of ROEs. That's part of the problem, that's part of our role as leaders. What else could those Marines have done? There's not much else they could have done under those ROEs. They arrest them, they transport, they put them into the Iraqi system, and it's just a matter of when the Iraqi judges getting frustrated with seeing the same guys over and over. You have already heard about the illustrious Iraqi court system. You know, a New Orleans police officer arrests the same crack addict over and over and over again, doesn't give him a license to strip him down. He still arrests, takes him to the jail, books him. That's the same thing that we were operating with under those ROEs, sir.
- Q. Okay. Just one last thing. Who was in charge of the EOD teams?
- A. That was the --
- Q. Specifically operational control, tactical control --
- A. The (b)(7)(C) the (b)(7)(C) he was the guy that maintained the list and he would sign it to I can't remember the Gunnery Sergeant's name.
- Q. Who were the teams attached to?
- A. We had one team, direct support to us. And that was headed up by a Gunnery Sergeant. We had one team with the Marine Aircraft Group that we would have to go beg to get them to work, you know, they would support occasionally. So, essentially, you had six Marines, occasionally twelve Marines to take care of the EOD issues, massive EOD issues, in this entire province.
- SRMBR: Okay. That's all the questions I have. Questions

by counsel?

REC: No question, sir.

CCFR: Nothing further, sir.

SRMBR: Okay. Thank you.

REC: Sir, if I may, I might like to keep (b)(7)(C) on recall. He's in the local area. We could have him by cell phone if the members have other questions for him later on in the day if we need to bring him back to testify.

SRMBR: Are you available?

WIT: Yes, sir. I am off for the whole day, I booked the whole day for this.

SRMBR: Okay. Very good.

REC: Sir, the government's next witness is (b)(7)(C) (b)(7)(C). I'm hoping he would be a shorter witness possibly half an hour, or would the members like to break?

SRMBR: Call (b)(7)(C).

REC: Okay, sir.

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

DIRECT EXAMINATION

Questions by the Recorder:

Q. Please state your name for the record and spell your last name for the record?

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

REC: Members and counsel, are you all able to hear him?

SRMBR: Yes.

Q. What is your present -- are you in the reserves or on active duty?

A. I drop to the IRR on March 5th.

Q. Okay. Are you planning to go back into the regular Marine Corps or USMCR?

A. I'm sorry, ma'am.

Q. Are you planning to go back into USMCR or regular Marine Corps?

A. It's a possibility that I will go back to the reserve.

Q. Okay. What is your present occupation?

A. Currently, I am unemployed at this time.

Q. What city, state do you live in?

A. (b)(7)(C)

Q. Okay. I am going to pull you back to the incidents that happened in Iraq that are the concern of this board of inquiry. What was your billet in OIF-1?

A. (b)(7)(C)

Q. Of what platoon?

A. (b)(7)(C)

Q. Okay. In (b)(7)(C) Correct?

A. Correct.

Q. What were some of your, your assignments as a (b)(7)(C) (b)(7)(C) in that platoon?

A. Ma'am.

Q. What were some of your responsibilities as a (b)(7)(C) (b)(7)(C) in that platoon?

A. Well, responsibilities as a (b)(7)(C), I actually had SOGT duties when my Marines were on post. My responsibilities to my squad to make sure they understood and knew that what we were doing as far as patrol orders are concerned, and supervised the guys and make sure they were doing their job.

Q. How long have you been in the Marine Corps?

A. Off and on, 12 years.

Q. And what's been, how much of that was active duty?

A. Probably about 3 years of active duty.

Q. Okay. What's been your MOS over the course of the

- 12 years?
- A. [REDACTED]
- Q. Okay. How long have you been a part of [REDACTED] [REDACTED]?
- A. Since 1990.
- Q. Okay. And how long have you been a [REDACTED] [REDACTED] in [REDACTED] platoon?
- A. My duties actually fluctuated depending on billeting that we had there. It's been all the way from [REDACTED] [REDACTED] basically, of the whole platoon.
- Q. I'm going to bring you back to the 23rd of June, the incident when you were at the ASP and you brought back some Iraqis to the [REDACTED] Command Post. Can you explain to the members what happened on, in the morning of that day and take me through the events of that day?
- A. Okay. Taking it from the top, all the way from the top, from the time we detained the first, the group the first time. Correct?
- Q. Yes, yes, please.
- A. Okay. On that morning, on that morning we were on post and we noticed a few Iraqis that were actually in the compound. So I assembled a team to go around and investigate and find out what they were doing. We rolled around half the compound. The compound is actually is a circular compound. We rode around half the compound and I had some Marines get out and motion for the Iraqis to come out of the compound. Finally they came out, we got them on the ground and searched them.
- And then, at that time, I tried to explain to them -- none of the Iraqi subjects spoke English, so I drew on the ground, the perimeter of the compound and told them basically by throwing sand, you guys are not supposed to be in here and if I catch you in here again, we are going to arrest you by basically doing hand and arm singles or what have you. Just told them they would be arrested if they came back. A few hours later, some of my Marines spotted some Iraqis on the other side of the compound. We went to investigate again, and it was the same individuals. At that time --

Q. -- I'm sorry. I'm going to interrupt you for just a second. Who was in charge of the Marines that were guarding the ASP?
A. I'm sorry, ma'am, you broke up.

Q. Who was in charge of the Marines guarding the ASP?
A. Who was in charge at the location or who was in charge in the rear?

Q. Both.
A. At the location, I was in charge of those Marines.

Q. Okay. And in the rear?
A. I would have to assume it would be the CO or whoever was in charge at the time.

Q. Okay. How many other Marines were with you guarding the ASP at that time?
A. I had 8, 9 Marines and a doc, Navy doc.

Q. Okay. What happened after the first incident when you drew the pictures in the sand to try and explain to the Iraqis, what did you do to them?
A. We let them go.

Q. Okay. So you just let them go down the highway.
A. Right. There had no weapons, they were just in there milling around the compound. And, basically, I just explained to them, hey, guys, you don't need to be in here. If I catch you again, we are going to arrest you.

Q. Did you perform a search of the Iraqis?
A. Ma'am.

Q. Did you perform a search on the Iraqis at that time?
A. Yes, ma'am. Every time.

Q. What did they have on them the first time?
A. They were unarmed.

Q. Did they have anything, any brass and ordnance?
A. No, they did not.

Q. Okay. I interrupted you, I'm sorry. You were talking about the first time, you just let them go. Now, you're on to the second time.
A. The second time, we detained them, went back to the

main gate at the ASP, we had a radio there. I called it in and I was waiting on further instructions. At this time, (b)(7)(C) and another Marine, I am not too sure who that Marine was, drove up to our area and he saw the detainees on the ground; and, of course he asked, you know, why -- who are these guys and what did they do. So, anyway, I told him we were waiting on higher instructions on what to do with them. He said, well, don't worry about it. Just Put them in the back of my HMMV and I will take care of them. So we did. They disappeared for about three hours. About three hours later, the same individuals came back in a blue flatbed truck. One of my guys noticed a blue truck rolling across the desert, a couple thousand meters away, and it looked like it was trying to go around the back of our compound. So we waited for a while and then I sent another patrol out to check it out. And, sure enough, it was the same guys loading brass in the flatbed truck.

- Q. Okay. (b)(7)(C), I just want to break this down a little bit. On the second incident, you saw them, obviously your Marines saw them so they went and picked them up. Correct?
- A. Right.
- Q. And they brought them back to you?
- A. Right. Well, I was with them. I was with them at time. We brought them to the main gate, where we held them at the time.
- Q. How did you hold them? What did you do to keep them there?
- A. We had them sitting on the ground with their legs headed straight out. I had them underneath, they had built a wooden shack and we had some cammie netting over the top, so I kept them out of the sun. We kept them pretty much sitting down the whole time. They were -- they still had the flex cuffs on at the time.
- Q. Were they given water or cigarettes or anything?
- A. I don't know if we gave them water that time, but we did give them water the third time.
- Q. Okay. So you were just waiting to hear from higher of what they wanted to do with them?

A. Correct.

Q. And that is when (b)(7)(C) came up?

A. Correct.

Q. He took them in the back of his truck. And what was your understanding of what he was going to do with them?

A. I just figured he would take them to the police station or take them back to (b)(7)(C). I just assumed he would take them to the police station. Especially after the first time we detained them.

Q. And then a few hours later, you saw them in a blue pick-up truck?

A. Probably about three hours later. I'm not exactly sure of what time. Of course, I didn't know it was the same guys in the blue pick-up truck. We just saw the blue pick-up truck, which was very unusual, coming to our compound area at a different route and different angle, a couple of thousand meters away. I guess they were trying to sneak around the back.

Q. Okay.

A. Anyway, my Marines went to go and investigate the blue truck and they caught them out there loading up some brass. My Marines searched the vehicle, got the detainees on the ground, they searched them for weapons. We went ahead and flex cuffed all the detainees. We took the blue vehicle and drove it up to the front and I took all the detainees in the back of if hummer and we set them next to the guard post. There was an extra Iraqi there at that time and I guess it was his vehicle. I hadn't detained the other individual previously, it was the first time I saw this guy -- but, it was his vehicle.

As soon as we brought them back to the guard shack, I called higher to get instructions on what to do with them, I explained the situation. At that time, the CO came back, which was (b)(7)(C) and he instructed me to hold them and that as soon as we get off our shift, we were to bring them directly to the police department and explain to the MPs at the police department that that was the third time that we had detained the individuals in this sector.

Q. What do you think happened that second time?

- A. The second time, the way I understand it, I think the (b)(7)(C) just brought them out somewhere and let them go.
- Q. Why don't you think he brought them to the Iraqi police station?
- A. Well, I heard from another Marine, somebody told me he just let them go.
- Q. Okay.
- A. It was kind of funny, three hours later, they are coming back out there and I kinda figured they weren't sitting in the police station because they probably would have been detained for longer at the police station.
- Q. What was your experience of how long it took to process an Iraqi because he was detained for trespassing in the ASP?
- A. I'm sorry, can you restate the question?
- Q. In your experience of being a guard out there, when you transported an Iraqi to the Iraqi police, how long did it take Iraqi police to process that person?
- A. I am not sure of that, ma'am. I have never sat and watched the processing procedures at the police station.
- Q. Okay. But would it take a day or half a day or you just don't know.
- A. I really don't know. I couldn't speculate, ma'am.
- Q. Okay. So you were instructed by (b)(7)(C) to wait and hold them until the end of your shift and to bring them back to the Iraqi police station; is that right?
- A. That is correct.
- Q. Okay. What happened in between you seizing them and the end of your shift?
- A. Okay. When my shift ended, I was properly relieved by a Marine named (b)(7)(C). We loaded the detainees up and we were bringing them enroute to the police station -- which in that route, our compound is along that route. As we were heading to the police station, I realized it was about the time that our chow truck came by, so I decided to go

ahead and pull off in our compound and let half of my Marines out to go eat chow and I was going to take the rest of my Marines, myself, and the detainees to the police station to drop these Iraqi detainees off. We pulled into the compound, and, as soon as the vehicle stopped, we were met by (b)(7)(C) (b)(7)(C) and some other Marines that were out there in the front. And the (b)(7)(C) I think, was pretty displeased that we brought the detainees into the compound.

CCFR: (b)(7)(C) was that displeased or pleased?

WIT: I'm sorry?

CCFR: Was that displeased or pleased?

WIT: Displeased.

Questions by the civilian counsel continued:

Q. Why was he unhappy about you bringing these detainees into the compound?

A. Well, we had had a couple of patrols do that in the past. Marines had actually brought detainees into the compound. I had seen it done before. I just did it because I was trying to drop my Marines off at chow. There was nothing these detainees were going to see, anyway, of any intelligence value to them. The only reason I know he was displeased is because he wanted to know why these detainees were in the compound.

Q. What did they have on them when you seized them at the ASP. Were they carrying anything?

A. Most of them wore mismatched clothes, had mismatched clothing on. Most of them, I think, all of them had sandals. One of them had a traditional light dress on. The other ones mostly had just slacks or blue jeans or whatever and T-shirts.

Q. Were they, were the Iraqis armed when you seized them?

A. No, they were not.

Q. Were they carrying any brass or ordnance on that third time?

A. On the third, time they were loading brass up.

- Q. So, they were loading brass into this truck?
A. Correct.
- Q. For what purpose?
A. I would have to assume for selling it for scrap.
- Q. Okay.
A. They would come into the compound sometimes and blow some of the ammo up in order to retrieve the brass.
- Q. Okay. So you brought the Marines into the compound.
(b)(7)(C) asked you why you did that, then what happened?
A. I basically explained to him, sir, we were ordered, I was ordered by the (b)(7)(C) to bring them to the police station. In route, I decided to stop and let half of my Marines off for chow; and, you know, we're getting right back in the vehicle and heading on to the police station with these guys. At this time, he stopped me and actually just wanted to release them at the gate. And I think I made a comment to the effect, sir, you know, these are the same guys I have detained three times today. They are just going to go right back out the gate, go back to the ASP and do the same thing tonight. So, I probably said something along those lines. And he said, well, no, just take them to the gate and he told us to strip their clothes off -- I am thinking he is trying to teach them a lesson. That is probably what his rationale was in the matter. Take them to the gate, strip their clothes off, and let them go.

And then I said, well, sir, they are going to get into a taxi and they are going to go straight back to the ASP, and he said, well, go ahead and take their money. So the first couple of Iraqis we took money from and we, I know I handed some off to the First Sergeant, and the other money, I don't know where the other Marines put the other money; but we were escorting the Iraqis to the front gate and we stripped their clothes off. All of the Iraqis wasn't totally disclothed, they had clothes on, underwear or whatever they were wearing, undergarments that they were wearing. We took their outer clothing off and we released them at the gate.

- Q. Did (b)(7)(C) did (b)(7)(C) tell you

this was around midnight on the 28th.

- Q. Were you aware of that incident, sir?
- A. Yes. I heard over the radio. They came and got me and I was informed of it over the radio. I informed the Battalion and we were instructed to provide medical attention. We contacted the ambulance to go out there and check on the Iraqis that were injured and we were told to man the site, don't leave there until relieved by either Army MPs or Marines that would come out the next day to try and get a record, and I passed that on to (b)(7)(C).
- Q. What did you specifically tell (b)(7)(C)?
- A. I don't remember the specifics, but it was, that's your post, stay there until relieved.
- Q. Okay.
- A. I had no idea how long it was going to be. Occasionally, I kept calling the Battalion to get an update on times so I could tell my Marines when they might get relieved.
- Q. Did you have any idea how long that would take?
- A. No.
- Q. What -- why did it take so long? This happened about around 2300, midnight, and now we are talking about they weren't relieved until 09 or 1000 the next day.
- A. I don't know if the Army couldn't send anybody at this time or were busy doing other things. They tried to get with CSSD to provide a heavyduty wrecker to come tow the truck away. And that just took awhile.
- Q. So basically, (b)(7)(C) Battalion didn't have the assets to haul away this truck that had been shot up?
- A. Correct.
- Q. And you are waiting for the Army or somebody to come and take it away?
- A. At the time, we didn't have Marines to come and relieve them, so the next day we sent Marines out to relieve who was out there.
- Q. What was SOP revolving around the personal

- belongings of Iraqis that were stopped at checkpoints? What were Marines supposed to do with those items?
- A. Search for contraband, if we turned the Iraq detainee over to the local police or MPs, turn all their articles over to them.
- Q. Okay. (b)(7)(C) had his Marines burn some of the personal items that were found in the truck of the Iraqis, basically indicating that they had lice or they were infected with something and he had them burned.
- Does that course of action make sense to you?
- A. No, not at all.
- Q. Okay. How come, sir?
- A. Well, the night before when they initially searched the vehicle and they didn't find any contraband, they left the articles in the truck. Then he came back to (b)(7)(C) later that night, I believe, went back out there and that's when he ordered his Marines to take the articles out of the vehicle and burn them, which they are already in the truck, why not leave them there. It was about lieshmaniasis or something.
- Q. Yes, sir.
- A. We were told by medical those were fleas on dogs, just keep the dogs away. We were never advised to burn clothing.
- Q. So that wasn't something that you had heard at that time that you can get sand fleas from this clothing or wherever and this could effect Marines, so you need to take extra precautions and you need to burn it?
- A. No.
- Q. Okay. Sir, is this a Marine officer you want back in your company?
- A. No, in light of what happened, absolutely not.
- Q. And why is that, sir?
- A. Well, there was the repetitive poor decisions that lead to lost gear, possibly getting other Marines in trouble for it. I believe if he was to come back to the unit and not realize that his actions were

wrong, that he would continue to possibly make poor decisions that could lead to Marines getting injured or worse.

Q. Is the Marine you described earlier intelligent and eager and trying to learn, so you are weighing that against those actions and you still come to this same conclusion?

A. Correct.

Q. That this Marine might be a danger to the Marines underneath him?

A. Correct.

REC: I have nothing further.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) my name is (b)(7)(C) I am one of the lawyers for (b)(7)(C)

How was it for you when you adjusted to learning the infantry trades from being an adjutant?

A. It was a big adjustment. What do you mean "how"?

Q. Did you find it to be a lot different than the work you had done as an adjutant?

A. Definitely. I mean, I learned from OJT on the weekends, advice from other officers and NCOs that knew what they were doing and went to reserve IOCs and multiple ATs.

Q. And by the time you and the Battalion went to Iraq, you had been with Weapons for at least five years working as an infantry officer?

A. Correct.

Q. Now, when (b)(7)(C) joined you in October 2002, you were -- this was his first work in the infantry field. Right?

A. Right.

Q. And basically, between the time he joined and the time the Battalion went to CAX, there were maybe three drills?

- A. You mean, when we got activated?
- Q. Correct. By the time you activated, there had only been three drills in which (b)(7)(C) had drilled?
- A. Correct.
- Q. And one of those was the Marine Corps Ball. Right?
- A. And Toys-for-tots in December.
- Q. So really out of that, there was only one really, say, tactical drill.
- A. I'm not sure, but January and February are usually field drills.
- Q. And you knew that (b)(7)(C) hadn't been to IOC?
- A. Right.
- Q. Did you have any concerns that because (b)(7)(C) (b)(7)(C) didn't have this background that should he be coming with the company to Iraq?
- A. No. He was trying to learn, worked hard. He had an outstanding (b)(7)(C) that had been in the infantry field as a TOW gunner in Desert Storm. He had been with us a while. I encouraged the (b)(7)(C) to learn from the (b)(7)(C) as much as possible.
- Q. Did you notice whether there was any friction between (b)(7)(C) who (b)(7)(C) replaced as a (b)(7)(C) for that replacement.
- A. There was friction, it was probably a little bit stemmed from the fact that (b)(7)(C) went from (b)(7)(C) to (b)(7)(C). And some of it was because, I believe, (b)(7)(C) (b)(7)(C) was not listening to all of the advice of (b)(7)(C).
- Q. Okay. Now, you mentioned on direct that your initial impression of (b)(7)(C) were very favorable, that he was eager to learn. What were some of the things you witnessed (b)(7)(C) doing getting himself prepared and getting his Marines prepared?
- A. 29 Palms, he took initiative and tried to schedule more training out in the field of vehicle maneuvering when there wasn't any live fire. He was

in the books studying the vehicle tactics. He was trying to create SOPs for his platoon.

- Q. You noticed him working on his own to try to improve his skills?
- A. On his own and with (b)(7)(C) and, occasionally, he'd run things by me.
- Q. Now, the Battalion gets sent over to Kuwait -- and then Kuwait -- to put -- (b)(7)(C) gets assigned as a security officer for one of the convoys. Right?
- A. I believe so. I had to fly in ahead of time on the C-130, but that's probably true.
- Q. Do you have any recollection of the feedback that you heard from the person he reported to on how he handled that convoy?
- A. I don't remember feedback either way.
- Q. Do you remember when it was that you guys -- the (b)(7)(C) conducted operations in Al Kut?
- A. Probably, the first week or two in May.
- Q. And how soon after that do you recall being tasked with the responsibility for some of these ASPs, security missions?
- A. Three to five weeks, maybe. Not right away after we started.
- Q. So you think --
- A. I'm not sure. I know there were other security details. We first did a lot of foot patrols, we tried to do about five a day, we did vehicle patrols, there was convoy security. I'm not sure exactly when the ASP tasker was scheduled.
- Q. And you mentioned that OpsO would assign the missions. Would the OpsO go to you if it was your company that was going to be assigned?
- A. Right.
- Q. And then it would be your responsibility to go to your platoons to delegate to them what their field of operations were going to be?
- A. Right. Who was tasked with what.
- Q. The (b)(7)(C) platoon ASP, is that the larger of the two

- A. that (b)(7)(C) was providing security for?
I don't remember which one was larger. It was the one to the South. They are both pretty large. It might have been larger.
- Q. What -- do you have any recollections as to what your rationale was for assigning (b)(7)(C) Platoon to that particular duty?
- A. It wasn't the whole platoon. They rotated CAAT teams, sometimes two to four vehicles. I wanted to have four vehicles at night. Instead of two hours traveling at one time. It was further away and they had the wheels.
- Q. Did you ever go, well, when did you become aware of explosions taking place in the (b)(7)(C) Platoon ASP?
- A. When (b)(7)(C) called me and advised me that there were explosions and they had to pull out to a safer area.
- Q. And it was your understanding that they had to pull out because they were actually getting shrapnel?
- A. They were, where their post was, was right on the burn, of barely inside some cement homes, cement buildings. That was close enough to where they felt it was unsafe so they moved a safe distance away.
- Q. Do you know a (b)(7)(C)?
- A. Yes.
- Q. Do you recall whether (b)(7)(C) received shrapnel in his -- hit his weapon as a result of one of the explosions that occurred in the ASP?
- A. I don't remember. I might have been told that but that's why they pulled out a quarter mile or so. It was pretty flat and open. It was an old base.
- Q. And did you ever find out or hear about a Marine that was injured in one of these ASPs?
- A. Yes.
- Q. It was one of your Marines?
- A. Right.
- Q. Do you know which one it was?
- A. Are we talking about (b)(7)(C)?
- Q. (b)(7)(C)?

- A. Right.
- Q. Explain how he got injured?
- A. Iraqis were looting ammunition from this ASP and they came -- well, two vehicles of Marines jumped in without letting the NCO in charge know what was going on. Some were in PT gear, flak and helmet -- which is totally against SOP -- went over to detain them, they apprehended them and made them put the ammunition inside the ASP and made them leave. And when -- there was a piece of propellant on the ground, I believe he flicked a cigarette, I don't know if it was intention to burn him or an accident, but when he turn away, it flashed and burned the back of his legs and arms. He had to be med evac'd.
- Q. So you understood that these ASPs were a very dangerous area?
- A. Right.
- Q. And when you assigned out the missions to patrol for (b)(7)(C) to patrol these ASPs, what were your mission parameters that you had given to your units?
- A. Patrol the perimeter from the outside. They weren't supposed to enter unless somebody's life might have been at stake. And that actually came from higher too, don't go in. Just to keep the Iraqis from taking ammunition and keep them from blowing themselves up by entering the ASP.
- Q. So it would be fair to say there is a couple of dual roles. One was a concern of ammunition that would be stolen?
- A. Right.
- Q. And another one was, we were looking out for the welfare of these Iraqis?
- A. Right.
- Q. Did you ever become informed or learned that Iraqis themselves were getting injured and killed inside these ASPs?
- A. Yes, I did.
- Q. How did you find out this information?
- A. Occasionally, in these ASPs, the ammunition would cook off. There was a building that collapsed

inside one of the ASPs and some Iraqi family members said they lost somebody that was inside the building and they wanted us to go look for them, but we called the Iraqi police and informed them about it.

Q. So it was a dangerous area.

Moving to the evening of the day of June 23rd when (b)(7)(C) had captured some Iraqis up in his ASP. What was your understanding of which platoon had responsibility for that ASP?

A. Well, that, (b)(7)(C) Platoon mostly had responsibility for the southern one, fell to (b)(7)(C) acting as rifle platoons to rotate the duties out there, different squads, eight to twelve Marines. Occasionally, I believe, Cat helped out up there and there was other security duties that we needed to fill in.

Q. Now, on this day, this particular day, who was the platoon commander for the (b)(7)(C)?

A. (b)(7)(C)

Q. Who was Platoon commander before (b)(7)(C) (b)(7)(C)?

A. (b)(7)(C)

Q. How did it happen and what is your understanding of how that came to be -- (b)(7)(C) became the Platoon commander?

A. The senior man after (b)(7)(C) left the company.

Q. Was it your understanding that (b)(7)(C) no longer had responsibility for (b)(7)(C)?

A. I tried to have him oversee the duties, especially being an officer with the evaluations and concern for his Marines. I mean, every chance he got, he tried to come over but pretty much, (b)(7)(C) (b)(7)(C) was filling that duty.

Q. Was it a clear debarkation of who was in charge of that platoon?

A. Probably not.

Q. Also on that particular occasion, on June 23rd, who was the platoon commander for the (b)(7)(C) -- the platoon commander for the (b)(7)(C)?

A. (b)(7)(C)