

- Q. Was (b)(7)(C) around on that particular day?
A. I believe he was on emergency leave.
- Q. So, you testified that, on that date also, you were at Battalion meeting of some sort.
A. Correct.
- Q. Do you know what sort of meeting it was?
A. No. I may be able to find it in my record book, but I didn't usually volunteer to go over there for meetings. It was a pain for me and the Marines to get in two vehicles and travel all the way across town.
- Q. So with you gone, who is the ranking officer of (b)(7)(C)?
A. (b)(7)(C)
- Q. Which means he has responsibility for the ASP that was Field Guard and the ASP to the South. Right?
A. Right. I mean, I can be reached on radio for anything that needs to be, but he was the senior man in the company at the time.
- Q. Did you ever have any discussions with him to let him know we were short of officers and he had some additional responsibilities and burdens to be aware of?
A. I don't remember, no.
- Q. Did you think it was a lot for (b)(7)(C) to have to handle with this shortage of officers in the company at this point?
A. No, I didn't think it was.
- Q. Why is that?
A. You are a Marine officer, you are a Marine (b)(7)(C), you need to accept the responsibility and be able to handle the responsibility. (b)(7)(C) was still there running the platoon, if needed, and other staff NCOs and strong NCOs that knew their jobs.
- Q. Like who?
A. I don't know if he was there at the time, but (b)(7)(C), (b)(7)(C), (b)(7)(C), (b)(7)(C) I could list almost all my sergeants and NCOs or Corporals.

Q. Okay. You brought a point about your staff NCOs. Did you have some problem in your company with some staff NCOs?

A. Yes, I did.

Q. I'm going to start with (b)(7)(C) [REDACTED].

A. Okay.

Q. What went on with (b)(7)(C) [REDACTED] in your company?

A. A lot. He wasn't the (b)(7)(C) [REDACTED] what you would expect of a typical (b)(7)(C) [REDACTED]. He wanted to go into the airfield. I don't think he felt safe in our compound out in town. He had trouble, I think, with authority. He argued with me a couple of times when his opinion differed from mine.

Q. Did he get into a fight with (b)(7)(C) [REDACTED]?

A. I was away on a two-day outing and when I came back, I found out about it.

Q. So he did get into a fight?

A. Yes.

Q. And what did you do about that?

A. I brought it up with the (b)(7)(C) [REDACTED] and, actually, it was addressed to me by the CO that I should have been there to handle it, to try to get things -- to work things out. (b)(7)(C) [REDACTED] did eventually come down and talk to staff NCOs.

Q. You said you spoke to the CO. Are you talking about (b)(7)(C) [REDACTED]?

A. Correct.

Q. Did you understand that to be a counseling that he had given to you concerning that incident?

A. Yes, I did.

Q. Did (b)(7)(C) [REDACTED] remain in your company?

A. Yes, he did.

Q. And then was there also a situation with (b)(7)(C) [REDACTED] (b)(7)(C) [REDACTED] that his pistol went missing?

A. Yeah, yeah there was.

Q. Was it your concern that he had lost it or another Marine stole it?

A. It couldn't be determined. It might have been another Marine stole it because he never really left the compound, so I don't know where he would have lost it except on the compound. And if he did lose it and somebody found it, same thing.

Q: At that point, how was the morale within (b)(7)(C) (b)(7)(C)?

A. Its was pretty low. I think, in general, with the Battalion being away from home in the heat, Marines wanted to be there for the fight and we just missed it. So they didn't see a need, you know, they didn't want to be there anymore.

Q. Are you also familiar with a situation where one of the docs had the morphine syringe stolen?

A. I'm trying to remember the circumstances around that.

Q. Do you remember that happening in your company?

A. Correct.

Q. Did you conduct any investigation to find out who stole the morphine?

A. I don't think we did. I'm not sure.

Q. Some of the other staff NCOs, did you have to relieve any of your staff NCOs who were assuming platoon commander billets?

A. Like --

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

A. I don't know if he was a permanent relief or if it was temporary.

Q. Okay. What do you recall about the situation involving (b)(7)(C)?

REC: Sir, I am going to object. I think the objection is relevance in where this is a board about (b)(7)(C) (b)(7)(C), now we are traveling into every other problem that might have happened in (b)(7)(C) (b)(7)(C).

CCFR: Sir, I guess my response to that is --

SRMBR: So you are trying to make your point that there was chaos?

REC: There was chaos, there was a lot of problems going on within the company which made it very difficult for everyone to try to understand what their roles and responsibilities were, who they were supposed to be taking leadership from. The government is trying their case that (b)(7)(C) actions greatly disturbed the good order and discipline of the Marines and I think it's fair that we hear and recognize that (b)(7)(C) situation was, frankly, a product, perhaps, of a lot of problems that were occurring in (b)(7)(C) and that the bad morale and lack of good order and discipline existed as a result of things that were completely out of his control.

SRMBR: All right. Well, I think we have heard sufficient information on that from the witness and from the documents provided and from the other witnesses. So
--

CCFR: Move along, sir?

SRMBR: Yeah, let's move on.

CCFR: Okay, sir.

Questions by the civilian counsel continued:

Q. You testified -- I am going to move back to the detainee incident. Where these Iraqis had their clothes removed.

It was (b)(7)(C) who brought this to your attention. Correct?

A. Correct.

Q. He was forthright in telling you what had happened; wasn't he?

A. Yes. As you saw in my counselling sheet, he said it in a bragging manner. That's the way I perceived it, that he was bragging to me about what he did.

Q. But you didn't have to go to him and find out what happened? He came to you and told you what occurred?

A. Right.

Q. And you had testified that one of the things that

- you thought was bad about this was that it could impact the relationship that the Marines had with the Iraqis. Right?
- A. One of the reasons.
- Q. Was there anything that -- was there any fall out that you are aware of from that incident with the relationship between the Iraqis and the Marines?
- A. Not that I can connect, no.
- Q. And, of course, you weren't there when this disrobing occurred. Right?
- A. Correct.
- Q. When (b)(7)(C) told you about this, did you tell him that he should have taken those detainees out to the desert and tell them they were Army MPs?
- A. No, I didn't say, should have. I said I can't believe there was no plausible deniability for this. It was a bad decision that you didn't even try to cover it up. I don't remember ever saying anything about Army MPs.
- Q. Now, you made a comment that there wasn't plausible deniability. You told (b)(7)(C) that there wasn't plausible deniability?
- A. I think I used those words like, I can't believe you violated this order and that you didn't even, like, it was such a bad decision that you did it outside our front door, basically.
- Q. Did you tell (b)(7)(C) though, that because of what he did, he didn't even have plausible deniability?
- A. I believe I said that.
- Q. Did you get investigated because of that comment that you gave to (b)(7)(C)?
- A. Yeah, I talked to the Battalion XO, (b)(7)(C).
- Q. When you said to (b)(7)(C) that you didn't have plausible deniability, was it your intention that there wasn't a way for (b)(7)(C) to cover up what he did?
- A. It was my disbelief that what he ordered done and that it was magnified -- not only was it a bad, unlawful order, but it was magnified that it happened at our compound.

Q. Wouldn't it have been more magnified if he tried to cover it up?

A. I was not suggesting that he cover it up.

Q. Well, I'm having a hard time understanding what you meant when you said plausible deniability.

A. It was a bad decision that he didn't even have plausible deniability. I mean, I told (b)(7)(C) (b)(7)(C) to bring the Iraqis to the police station, so, that was a clear idea of what to do.

CCFR: Sir, I am going to hand you an exhibit.

Gentlemen, we're going to make this into an exhibit. This is the preliminary inquiry of the statements made by (b)(7)(C) to (b)(7)(C).

Have you seen this investigation?

SRMBR: It's not part of our evidence here.

CCFR: It was referenced, sir, by government counsel in her direct. (b)(7)(C) has it.

REC: It's Recorder's Exhibit 11, sir.

SRMBR: Okay. Go ahead.

Questions by the civilian counsel continued:

Q. If you look at paragraph five where it says (b)(7)(C) (b)(7)(C) did use the words 'plausible deniability' in his counseling of (b)(7)(C) Right?

A. Right.

Q. All I'm asking is, what did you mean when you said that to (b)(7)(C)?

A. As it also states, "his intent was to point out that (b)(7)(C) had made a decision to violate Marine Corps Orders and chose to do it in front of the entire company."

Q. To me plausible deniability means something you can explain away or cover up. Is that -- do you have a different definition?

A. No.

Q. But in your interactions with (b)(7)(C) he

never tried to cover up what he did.

A. It was, it was like a disbelief or, in two areas, I couldn't believe that he made such a bad decision or gave such a illegal order and I guess I was referring to the fact that such a bad, you know, unlawful order that he didn't even try to cover it up. Not that I recommended or thought he should have.

Q. All I'm asking now is, (b)(7)(C) never tried to cover up anything that he did?

A. Not that I know of, no.

Q. Now, let's move on a little bit here to this checkpoint, which occurred after this detainee incident. Right?

A. I would have to look at the dates.

Q. June 29th, June 28th. Does that sound right to you?

A. I'd have to look, but I believe you are right.

Q. Well, while you were over in Iraq, did your Marines burn trash to get rid of it?

A. We had a trash bin.

Q. Did you burn the trash to get rid of it?

A. Yes, we did.

Q. Did you see other people burning trash for trash disposal?

A. Yes, we did.

Q. Was there a lot of garbage that was uncollected laying throughout Al Kut and other place in Iraq?

A. Yeah, it was.

Q. Pretty dirty?

A. Very dirty.

Q. So it wasn't uncommon to burn your trash to get rid of it; was it?

A. No, it wasn't.

Q. Prior to going into Iraq, had you been briefed by anybody about the fact that you can get these skin conditions from sand fleas?

A. I don't remember it being prior to, but while we were there, I believe we got the brief on it. Was

it lieshmaniasis?

Q. Sand fleas, the sand fleas that caused the disease.
A. Right.

Q. Do you recall whether your Marines had their uniforms treated with promethium before you headed over to Iraq?

A. I don't remember.

Q. Are you familiar with the fact that the insurgents over in Iraq are using trash to disguise IEDs that they are using to attack convoys?

SRMBR: Hey, counsel let's stick to the point. I think we know what you are trying to get at. Narrow down. Ask him directly.

CCFR: Sure.

SRMBR: If the issue is whether it was reasonable for the clothing to be burned in order to reduce the risk of disease spreading, then let's ask that question.

CCFR: Okay.

Questions by the civilian counsel continued:

Q. Do you think it's a concern if -- is a concern for the welfare of the Marines to ensure that lice or pesticides aren't spread throughout the barracks and through the Marines gear?

A. Yes.

Q. Now, concerning the checkpoint incident, were you aware that there was some money that was found on the truck?

A. Yes, I was.

Q. And it was your understanding that it was turned over to the police?

A. Right.

Q. Were you also aware that there were some papers that were found?

A. (No response from the witness)

Q. Some documents?

- A. I was told that there were documents and that the Iraqis were looking for them and I asked (b)(7)(C) if the documents were burned and he stated no.
- Q. Are you aware the documents were coming back to the CP for the intel teams to exam them?
- A. I think (b)(7)(C) said he turned them over.
- Q. Turned them over to the --
- A. I believe, he did.
- Q. -- to the intel teams?
- A. Right. If I remember correctly.
- Q. Was it your understanding that what was burned was some clothes and some seat cushions?
- A. Initially, I didn't know what was burned, but later on I found out it was personal items out of the truck. I think eventually I saw a listing of items somewhere.
- Q. But you understood them to be clothes, clothing items of some sort?
- A. Right.
- Q. And you said you thought it was wrong for him to burn their property, but looking at the circumstances of this incident, don't you agree it's fair to say that it was the Marine's concern that they were going to get run over by this truck. Right?
- A. Correct.
- Q. Wouldn't you have considered that to be a threat to the lives with this truck that was barreling down on their checkpoint?
- A. Are we talking about the clothes or the shooting of the vehicle?
- Q. Yes. The shooting of the vehicle.
- A. Yes. They did what they were supposed to do.
- Q. And you had no problems with the fact they shot at the vehicle and disabled it?
- A. It turned out to be innocent civilian Iraqis and I wish it wouldn't have happened. We tried to improve our traffic checkpoints after that. That way they

would see it was us and would stop.

Q. But, at the time, it could have been anybody's guess whether they were insurgents trying to hurt them or to blow through the checkpoint?

A. Right.

Q. Wasn't that part of (b)(7)(C) concern that this might have intelligence value because they tried to run the checkpoint which is why the vehicle was searched?

A. Yeah. Expecting the vehicle to be searched for contraband or weapons or anything like that.

Q. And as soon as the vehicle was stopped and the ambulance came, those detainees or those Iraqis were taken to the hospital. Right?

A. I believe so, yes.

Q. Do you recall (b)(7)(C) going out at night to check the lines?

A. Yes, I do.

Q. You remember thanking him for that?

A. Yes, I do.

Q. Was it your observation that (b)(7)(C) -- well, explain what you understand checking the lines to be?

A. We had four corner posts manned 24-hours a day and at least two Marines at the front gate and two Marines manning shotguns on the roof of two buildings. And checking the post is walking around each one to make sure the Marines were awake and see if there is anything they needed.

Q. Wasn't it your observation that (b)(7)(C) did this more than any other officer in the company did?

A. Yes.

Q. And did you recognize that as being a strong leadership quality of (b)(7)(C) to do that?

A. Yes, I did.

Q. All right. So at some point, (b)(7)(C) is relieved from his command as the platoon commander. Right?

A. After the investigation, Battalion pulled him up

there.

Q. Did you ask to have him relieved?

A. No, I didn't.

Q. It was (b)(7)(C) call to relieve him?

A. Correct.

Q. Did (b)(7)(C) ask you whether or not you wanted (b)(7)(C) to be relieved?

A. He might have asked me, but if he did, I don't remember exactly, but I probably said, yes, I do.

Q. After he was relieved, what was he going to do after that while he was still in Iraq?

A. I believe he went and worked with (b)(7)(C) training Iraqi security guards.

Q. What did that involve, training these security guards?

A. Well, (b)(7)(C) had a couple of Marines who were training former Iraqi military to stand posts, guard ASPs, and other government sites. But I was also aware that once (b)(7)(C) found out that he wasn't at Battalion, he was actually with (b)(7)(C) (b)(7)(C); he was very upset about that.

Q. Did (b)(7)(C) stay with (b)(7)(C) continuing with the Facility Police Service?

A. I think, at that point, he did.

Q. The incidents that got (b)(7)(C) relieved were incidents which the command believed showed (b)(7)(C) (b)(7)(C) lack of respect for the Iraqis. Right?

A. Right.

Q. Did you think it was odd that he would then go work with (b)(7)(C) to train Iraqis?

A. No. I thought him and (b)(7)(C) had a personal relationship prior to going over, and I think he wanted to work with (b)(7)(C) to get away from Battalion, I think, soon after he was brought to work at the (b)(7)(C).

Q. Was there any concern he might not show the correct level of respect towards the Iraqis he was working to train?

A. No. I have no idea.

Q. Did you have any concern with that?

A. No.

Q. And as far as you know, how did he do in working with these Iraqis and training them to do their own police work?

A. I have no idea.

Q. (b)(7)(C) would know about that?

A. Yeah.

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

SRMBR: Okay. Let's recess for ten. Come back at 1410 and we'll go to board questions.

REC: Sir, the time is 1400 on 6 April.

The board of inquiry recessed at 1400 hours, 6 April 2004.

The board of inquiry was called to order at 1410 hours, 6 April 2004.

SRMBR: Okay. The board will come to order. All persons present when the court recessed are again present. The recorder will note the time and date for the record of proceedings and proceed with the witness.

REC: Sir, it's 1410 on 6 April.

REDIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, just a couple of follow up questions. You mentioned that once (b)(7)(C) was relieved that he worked with (b)(7)(C) for a while training Iraqi police. You didn't see a problem with him doing that, even after these last two instances. What did you mean by that, sir?

A. I wasn't concerned because I was more concerned with the effect it had on (b)(7)(C) Marines. And I felt they were better off now and I just, I had too much to focus on with them, I wasn't thinking

about the Iraqi civilians that he was working with.

Q. Okay. So you didn't -- so would you, would you have had a problem with him working with Iraqis?

A. Not if I had anything to do with it, no.

Q. So in other words, you wouldn't have wanted him to do that, but at the time, you just didn't --

A. I didn't think about it.

Q. Okay. Is it fair to say that when you counselled him about this plausible deniability we talked about, that that probably was a poor choice of words?

A. Reflecting back on it, it was a poor choice of words because he misinterpreted what I was saying. Yeah, I wouldn't use those words again.

Q. What platoon was (b)(7)(C) in, he's the Marine that got burns all over his body?

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

Q. Okay. What, were the burns all over his body?

A. Back of his legs, back of his arms and I believe on his neck.

Q. So the areas that he had clothing on -- his PT gear? What kind of shorts was he wearing?

A. Green issue PT shorts.

Q. So he wasn't burned under those?

A. No.

Q. So, it's reasonable to assume that if he was wearing what he was supposed to wear that he wouldn't have been burned?

A. Knowing the NCO that was there, if he had been aware that they were doing what they were doing, he would have stopped them.

REC: Okay. Nothing further, sir.

SRMBR: Okay. Redirect.

CCFR: Nothing, Gentlemen.

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

EXAMINATION BY THE BOARD

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

- Q. Okay. The incident with the missiles with 2/25, did you ever question anybody in 2/25s chain of command about the extra missiles?
- A. I had no way to contact 2/25. It came up at Battalion or Division a day or two later. It came down, our Battalion said, why did you fire more. But then I guess the issue was dropped at Division because they never asked anybody at Battalion about it anymore.
- Q. Okay. Prior to or during the deployment, did you or anyone else in the unit receive specific training or classes on the handling of detainees?
- A. There was training we conducted at 29 Palms while we were out there, but it was self-initiated.
- Q. But it had nothing to do with detainees or it did have to do with --
- A. It was mostly enemy combatants.
- Q. But there was no specific training on detainees?
- A. Sir, I don't remember.
- Q. Okay. You mentioned in your statement, you have a lot of different incidents, not a lot, two different incidents where judgement on (b)(7)(C) part is questioned. Did you ever think to make a page 11 entry to reflect those or was it all just informal counselling that you took care of?
- A. It was all informal. I was hoping that the counseling would correct it.
- Q. Did (b)(7)(C) ever state to you directly, with regards to the vehicle incident, why he burned those clothes?
- A. No, sir, I never asked him why. At the time, I asked him if the papers were in the clothes that were burned. I didn't realize he was there when it happened at this time and because they were looking for the documents, I was trying to get back the documents. He said, no, that the documents were not in the clothes.

Q. All right. Did anyone -- other than the incident where (b)(7)(C) got burned, did --

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

Q. Did anybody else under (b)(7)(C) supervision, did they ever get injured or hurt?

A. I can't think of anyone, sir.

Q. So the quality of his leadership, you don't have an issue with -- his judgment you might have an issue with -- but his overall quality of his leadership, the way he persuaded his -- his own self-initiated OJT, the way he was trying to pick up and learn things on the fly prior to the deployment, whatever he was doing while he was there, you have no issue with. But the judgment on the three instances that you have got here, you did an informal counseling with the hopes that it would correct his behavior?

A. Yes, sir. He's got some outstanding qualities and characteristics and traits, but he had trouble with his relationship with his (b)(7)(C) (b)(7)(C). I had some concerns about that. I don't think he took to heart (b)(7)(C) (b)(7)(C) advice coming from experience.

Q. Is that personality driven, in your estimate?

A. Yes, sir.

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

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

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

Q. How many incidents were there regarding detainee processing from the company or the two different ASPs? And, if there were more than one, where does this one fit into it? Is this the very first, is this the 5th, or is this the 10th?

A. As far as taking them to the police station?

Q. Yeah. You mentioned the verbal SOP for patrolling the perimeters and handling the detainees after they came out of the area. What was the SOP, whether verbal or written, on how to handle detainees. How many incidents of them have there been up to this point and how many after?

A. It's mostly, escort them away from the ASP area,

like I said. A couple were repeat offenders.

Q. Were you always supposed to radio in contact when there were?

A. Yes, sir.

Q. And were they?

A. They'd radio we apprehended so many and escorted them away. It was at the southern ASP. They couldn't leave so they couldn't bring them to the police station, guys that had entered multiple times, so we tried to get in touch with the MPs, who are co-located with the Al Kut police to come over and pick them up. I believe they did that and it took a while.

Q. So were you involved in -- were you the decision maker in whether or not to let them go or bring them to the police department or to hold them and wait for the police to respond and then let them go?

A. If I was there, I got involved. But sometimes the NCOs, you know, they might, these guys are repeat and they would request they be taken to the police station and that was not a problem.

Q. All right. How far and how long in duration would it take to get somebody from the ASP into the police station?

A. Well, sir, I believe what they were doing, somewhat on their own initiative, was waiting until the end of their shift to be relieved by another squad, and then when they're coming back to (b)(7)(C) at the end of their shift, they would go an extra 10 or 15 minutes to drop them off.

Q. Before they would come back to the compound?

A. Right.

Q. Is there a problem with getting chow at all?

A. I don't know, no.

Q. Battalion commander guidance, did you receive a lot as far as processing detainees and taking them to the police station? Was the Battalion commander involved in setting the SOP?

A. It came up to me as more coming from the [redacted] instead of from the Battalion commander.

- Q. And then similar to (b)(7)(C) question, just regard, this is your professional opinion of (b)(7)(C) judgment during the situation and time you served out there with him. Did you see these incidents just as errors in judgment or did you see his lack of ability to handle the stresses of the entire scenario or entire situation? How do you --
- A. I'm not sure, sir. I saw it as a recurring problem. I don't know what his -- the reasoning was behind it.
- Q. Is that his decisions was he ever -- were you ever unsure of his ability to lead his Marines and take care of his Marines?
- A. I believe he intended to take care of them, but there were times where he -- I thought he was looking for a fight when there wasn't one and he might have gotten his Marines hurt doing it?

MBR (b)(7)(C): Thanks.

SRMBR: Okay. Just a couple of questions.

Questions by the SRMBR:

- Q. Was the daily task list, as far as ROE and other SOPs, do you think those were sufficient for your company and your platoons to execute their missions and various tasks?
- A. Yes, sir. Because it was only three or four recurring tasks that the Marines were well versed in the SOP in what they were doing. The NCOs were the experts. They were out there leading the Marines on the foot patrols, distributing propane, guarding of the bank, guarding the ASPs, and vehicle and convoy security. Those were the missions that we were doing almost daily so they were well versed in those.
- Q. Okay. And back in October 2002, how many platoon commanders were you short in the (b)(7)(C)?
- A. Just one. I had (b)(7)(C) was my XO, (b)(7)(C) and (b)(7)(C) and (b)(7)(C) and that's more than capable. And we lost (b)(7)(C) upon activation because he was FAP trained and we didn't have a FAP.

Q. So he went up to Battalion. But you had your weapons, the (b)(7)(C) was missing an officer?
A. Yes, sir.

Q. And did you interview (b)(7)(C) before he joined the unit or did you have some help decision making in the selection of (b)(7)(C)?
A. (b)(7)(C), the I&I, I think pretty much brought him on. I think I talked to him briefly. If I had a problem with him, obviously, I didn't have to take him into the company, but he was pretty much already with the company.

Q. Would you have felt comfortable just leaving (b)(7)(C) (b)(7)(C) in charge of the platoon?
A. Yes, sir.

Q. Did you always have communications with your platoon commanders, radio or otherwise.
A. Almost always. The problem, when I left the immediate area, with VHF was really hard on long patrols, so they had cell phones they were supposed to call and check in whoever was in charge, whether it was the platoon commander or not.

Q. So each of the platoon commanders had phones?
A. No, sir, just on the long range patrols.

Q. But within the environs of Al Kut, you had Comm?
A. Yes, sir. The southern ASP, we had trouble at first, the comm was off and on and I believe we worked that problem out.

Q. Okay. I just wanted you to -- I think you mentioned once already, but you told (b)(7)(C) to take the Iraqis the third time they were apprehended to the Iraqi police station?
A. Yes, sir.

Q. And you told him that via radio?
A. Radio, yes, sir.

Q. Last question. What did you do with (b)(7)(C) (b)(7)(C)?
A. He was (b)(7)(C) brought it up that (b)(7)(C) ordered the Iraqis money to be taken from them. And when I found that out as well, that was involved in the investigation and I believe

the investigation recommended Battalion NJP so he was relieved of his duties and sent home.

Q. Okay. What about this altercation with (b)(7)(C) (b)(7)(C), it doesn't sound like that was followed up?
A. Well, I received a counselling from the Battalion commander saying I should have been there.

Q. What did you do to the (b)(7)(C)?
A. I talked to the Sergeant Major and the Battalion commander. They said that (b)(7)(C) going to stay there and that I have to work things out. I tried talking to him about, you know, counselling him on, hey, senior officer around, he's in charge when I'm not around.

Q. So you counseled him?
A. Yes, sir.

SRMBR: That's all the questions I have.

Any question from either side?

REC: I have no questions.

CCFR: Nothing further, Gentlemen, thank you.

SRMBR: Okay. Thank you very much.

REC: Sir, I don't believe I have anything further for this witness, but he does have a cell phone if we need to recall him for any reason.

SRMBR: Okay. Very good.

The witness was excused and exited the courtroom.

(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. Sir, if you will, state your name for the record and spell your last name?
A. My name is (b)(7)(C), last

name is spelled (b)(7)(C)

Q. And just a second.

Gentlemen, are you able to hear him?

Sir, if you could speak up just a little bit louder, I am trying to get the max on this speaker phone.

A. Is this any better?

Q. It is, sir.

Sir, what is your present status in the Marine Corps, are you active or reserve?

A. Okay. I have a little trouble hearing your question. Could you please repeat it.

Q. Sir, what is your present status in the Marine Corps, are you active component or reserve?

A. I am a reserve officer in the SMCR, currently.

Q. Where do you live, sir?

A. I live just outside of (b)(7)(C).

Q. What is your present billet in the reserves?

A. I just left as the (b)(7)(C) (b)(7)(C), and I am currently assigned to (b)(7)(C).

Q. Earlier in this proceeding, we heard a lot about (b)(7)(C) who was the (b)(7)(C); is that you?

A. That is me, correct. I was a (b)(7)(C) during that time.

Q. If you can, can you give the board members just a brief history of your experience in the Marine Corps, your various billets and your active and reserve time.

A. Okay, certainly. I entered the Marine Corps in early 85 as an active duty officer. I am an

(b)(7)(C)

(b)(7)(C)

- Q. Okay. Sir, how do you know (b)(7)(C) ?
- A. (b)(7)(C) was a member of (b)(7)(C) which is (b)(7)(C) and I got to know him, obviously, during our time in Iraq.
- Q. How much contact did you have with him, sir?
- A. Before we actually mobilized, very limited as (b)(7)(C) usually drilled separate from us, but once we activated both in the States and when we deployed overseas, I would probably see (b)(7)(C) (b)(7)(C) anywhere from a weekly basis to a semi-weekly basis.
- Q. Okay. How did you become, we're here for this board of inquiry, mostly for the reasons of (b)(7)(C) (b)(7)(C) NJP for the stripping down of Iraqis and burning of Iraqi's clothing. How did you become aware of those incidences, sir?
- A. The incidences came to my attention through, I can't remember the specific Marine actually telling me, but I remember hearing reports that there was possibly some problems, some inappropriate stuff that went on at one of the persons, it was a semi-tractor/trailer truck that tried to run a checkpoint. It was disabled by firing on it and then subsequently the burning of the personal property happened. I don't exactly remember a name of anyone, I just heard it through kind of a rumor from different Marines that something inappropriate happened.
- Q. What was Battalion's actions after you learned of these events?
- A. We conducted -- assigned an officer to do an

investigation to look into what actually happened and subsequent detaining of those two Iraqis that were in the truck.

Q. Okay. What -- and then there eventually was an investigation members have a copy of it -- both of the truck and the striping incident. How did this get up at the Battalion level that it ended up at NJP?

A. I know from both of the investigations, the substantial evidence was, there was enough evidence of -- it was recommended to the Battalion commander, the CO, that we should go further with this case and recommend charges. And I know any time that we were doing an investigation, we let the SJAs at the level know. We would actually exchange emails with them and phone conversations. So they were kept current on any ongoing investigations or pending charges. So there was an ongoing dialog, I know, that was happening between Battalion and Division Staff, particularly with the division SJA.

Q. Who was that SJA, sir?

A. Gosh, I'm not sure of that, I mean, I can't remember right now.

Q. Is it a (b)(7)(C) ?

A. If you said the name I'd probably remember. I just can't off the top of my head. I don't remember who the SJA was at that time.

Q. Does (b)(7)(C) sound --

A. Yes, thanks for jogging my memory, (b)(7)(C) (b)(7)(C) There was also, he had several Majors on his staff, too, that was always in our loop as far as e-mail loop and phone conversations that we would talk to.

Q. (b)(7)(C) was in Africa at the time or at this moment, but why did Battalion feel it was necessary to take this up to Division?

A. Well, certainly, I know the evidence that came out of the investigation was serious enough that we considered formal UCMJ type charges, so I know that it was discussed at Division level and ultimately the opportunity for (b)(7)(C) to go to a Commanding General's NJP vice face formal UCMJ charges was offered. I'm not sure why the

Commanding General had our Battalion commander decide that that would be appropriate, but I know that that obviously was -- that opportunity was afforded to him to select that vice a formal court-martial.

Q. What -- in your experience as an infantry officer, what is your opinion concerning what (b)(7)(C) did?

A. As far as for the two different incidents, that's what you're referring to?

Q. I am, sir.

A. Certainly, I do not approve of it. It's conduct unbecoming for an officer to allow those incidents to happen or to take in those types of actions. Certainly we were in a wartime environment in a hostile country where a Marine leader, that's what we train for and that's what we're responsible for. So, I really can't condone that at all. I was disappointed that that type of activity did take place and I was bothered. So I consider those two acts to be pretty harsh. I can't condone them or approve of those two acts.

Q. Why are your feelings so strong, sir, about that this is a wrong action, a poor action? Why are your feelings so harsh on this, sir?

A. I guess I saw the impact of what those actions do to a small unit. I had an opportunity to talk to some Marines that were in that (b)(7)(C) and also from talking to other Marines that had talked to Marines within (b)(7)(C). A lot of the junior Marines, young Marines, young NCOs knew that some of the things that were going on were inappropriate. They put them in a predicament, questioning their leadership and just wondering what they were doing was fundamentally -- some of those things were wrong that they saw happening. So, it did have a negative impact on the unit as a whole for their cohesion and also just putting some of those young leaders kind of in a predicament of what's right and what's wrong.

Q. How do you feel about having this officer return to your Battalion, sir?

A. I'm sorry, I missed part of that.

- Q. What is your opinion about that officer returning to Battalion?
- A. I'm really not for that. I know he was given a chance, that's why he went to an NJP. It was a nonjudicial punishment. He was afforded the opportunity to go before the CG vice going in front of a formal court-martial with formal charges. I think it would be an injustice if he was given a chance to come back without -- I think he would first have to go before a formal court-martial. The NJP, in my opinion, was what he went before and took his punishment and we would kind of circumvent that if he was allowed to come right back to the unit.
- Q. So, is this an officer who you believe ought to be separated from the Marine Corps?
- A. That's correct.
- Q. Sir, let me, just a moment, sir -- did you have a chance to read (b)(7)(C) Congressional Inquiry, sir?
- A. I have not seen the congruent concerning (b)(7)(C) (b)(7)(C). I haven't been privied to that.
- Q. This is -- I'm going to read a line out of this congruent and you can give an opinion as to whether or not this is true or not. (b)(7)(C) writes, "In summary -- this is Recorder's Exhibit 7, "In summary, I was fined, told I must resign my commission, and go before a board of inquiry without a guarantee of my type of discharge, and immediately shipped out of country."
- Is that accurate, sir? Was he told that he must resign his commission?
- A. Yes, I believe he was told that he -- part of the punishment at the NJP was a fine, forfeitures, a resignation of his commission. Those are the two things that stick out in my mind that came out of the NJP.
- Q. Do you remember whether he was ever told that he had to or whether or not that the BOI processing would start, that is just part of the process?
- A. I am almost certain that he was told, because I know even before he left country, from the (b)(7)(C) Division SJA staff, we were sending documents back and forth from their headquarters to our Battalion

concerning the formal documents he would need to be signing to resign his commission.

Q. Okay. Sir, I guess there's some ways of looking at this as possibly being just a poor judgment and that the Captain just made two bad judgment errors and maybe he could learn from this and go on.

A. Do you have an opinion regarding that?
Well, I don't disagree that they were poor judgment, but I think they were more than just poor judgment. There was criminal activity involved in it, violations of the Uniform Code of Military Justice, violations of our Rules of Engagement, and probably even violations of the Law of Land Warfare in contact in the way we should represent ourselves as Marines. So, yes, it was poor judgment, but also, I think it was, I'll use the word "criminal" violations.

Q. Sir, we just heard from (b)(7)(C). He testified that after -- that Major -- that after (b)(7)(C) (b)(7)(C) was relieved, he worked with (b)(7)(C) for awhile in training security forces and that you learned of that event.

A. What happened after you learned that he was working with Iraqis?
I didn't know that he was assigned exactly. I knew he was going to help (b)(7)(C), but I did not realize he was going to be out at the actual training compound working hand-in-hand with the Iraqi people. I was rather upset at that. As part of the intent that I got out of the NJP from the Commanding General was, he wanted him to, you know, not interface with Iraqis. I told (b)(7)(C) that he could no longer work at the actual compound where the Iraqis were training. He would have to do all his work away from the Battalion CP area, which is aboard the airfield where there was no Iraqis.

Q. We also heard a few things of problem in (b)(7)(C) (b)(7)(C).

A. What is your opinion, sir, about the leadership of that company and how that company was being run during this timeframe?
(b)(7)(C) had its share of problems. Not

unlike some of the other companies that struggled with just some of the day-to-day problems that we encountered over there. Was this the only incident where there was poor judgment, absolutely not. Every Marine leader over there struggled with leadership. (b)(7)(C) itself probably didn't struggle anymore than any other company did. They had their share of leadership problems. I know there was turmoil with the (b)(7)(C)

(b)(7)(C) and his First Sergeant, First Sergeant (b)(7)(C) I know there were problems with Captain (b)(7)(C). I know they had many disagreements. I can't remember exactly what every disagreement was, but I know it caused us to get involved. Where myself actually -- I talked to (b)(7)(C) before, I talked to (b)(7)(C) and I know the Battalion Sergeant Major also had many chats with the company First Sergeant and several of the staff NCOs within (b)(7)(C). So did the company have problems, certainly they did. But nothing so monumental that it required anybody to be relieved or any action taken other than just other leaders stepping in and giving guidance and mentoring problems with the leadership.

Q. (b)(7)(C) came into the company as a (b)(7)(C) (b)(7)(C) and then he was given some on-the-job training to be an infantry officer.

Do you think he had enough training in order to perform his mission in Iraq, sir?

A. I do. I know, as Marine officers, we are all coming out of the basic school, to basically, as a Marine officer, having fundamental infantry skills and certainly within the Marine Corps reserve, it's a problem that we struggle with, not just on our Battalion, I know it's reserve wide where you have a mismatch, especially in the officer corps. My entire time, almost 7 years working in the reserve, we have always had an MOS mismatch somewhere in the Battalion usually several. I'm not exactly sure in the time that (b)(7)(C) -- when he joined the Battalion and when we were activated or mobilized, exactly what type of training.

I know during our month and a half in 29 Palms, the type of training that was experienced on a daily basis out there as an infantry officer or a platoon

commander, and that is certainly enough. So I do believe that he had enough training as a platoon commander. If we didn't think he was, I know the company commander, the Battalion commander or anything in the chain would have said, you know, this officer is not capable of running a platoon. Also, the seniority of most of the officers that were doing platoon commander jobs, almost every one of them was a Captain or above that were actually doing platoon commander jobs, which is, traditionally in the Marine Corps, run by a 2nd Lieutenant or a 1st Lieutenant. So, (b)(7)(C) (b)(7)(C) I believe, at that time, had maybe six or more years as a Marine Corps officer. So I feel confident that he had fundamentally enough training to be successful as an infantry officer or platoon commander in an infantry battalion.

- Q. Sir, do any of these things, either his switch to his MOS or his -- or problems in (b)(7)(C) do either of those things mitigate or excuse these acts against the Iraqis?
- A. No, I don't think so. The two acts were directed directly to Iraqi individuals. In the case of the vehicle or to disable the vehicle and destroy the personal property. It was almost an act against those two Iraqi detainees. And then, in the other incident, where the detainees were stripped down and forced out of the compound, I mean, that was a direct act directed directly at those four or five Iraqi men.

So I don't know how any of these other, if some of these other issues that (b)(7)(C) may have struggled with in (b)(7)(C) with the company commander and the company (b)(7)(C) are mitigating circumstances or even a lack of training as an infantry officer. These were acts of humiliation directed directly at the detainees. So, I don't see how they could mitigate those types of acts.

REC: Okay. Sir, I have nothing further. The counsel for (b)(7)(C) will have some questions and the board members may have questions as well.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C) this is (b)(7)(C) I'm (b)(7)(C) civilian counsel. I do have some questions for you.

What was your understanding of (b)(7)(C) responsibility for guarding the ASP. The ASPs that were in Al Kut.

A. The responsibility was to guard those ASPs. In particular, I know, there was one on the east side and I believe there was a northern one also. They were rather large ammunition supplies and their mission was to maintain three or four squad size elements at those two locations on a continuous basis, to run patrols around those two ASPs. Our biggest fear was to keep the Iraqi people out and prevent them from hurting themselves, and also from looting. They were mostly after the brass in the looting. That was their mission. I know they were accomplishing it through rotating squad size elements in and out of the ASP, but our mission was, you know, around the clock, 24-hour-a-day, 7-days-a-week type mission.

Q. Now, what was -- what was your understanding of the danger level of the hazards within those ASPs?

A. Multiple hazards before we assumed the missions in both of those. We did have to bring in EOD to sweep the area where the Marines were bivouacking, establishing their post. And, also, pretty much on the perimeter roads that ran around and just inside the ASPs due to a number of reasons. Unexploded ordnance was all throughout those ASPs as well as there had been a lot of looting going on before we got to those locations, so there was just ammunition in addition to unburned increments from artillery and other type of rounds that were strung about. It was a very dangerous environment, very, very dangerous.

Q. Were you aware of explosions going off in those ASPs, essentially on their own?

A. We had several incidents in the ASP where the ASP would essentially catch on fire, yeah. And

ammunition would cook off from the bunkers and actually exploded. There were several occasions in that ASP and other ASPs where we pretty much had to abandon it. We would have to pull the Marines out of there, to pull the Marines out of there and pull back down a mile or two from the ASPs.

- Q. Were you aware that Iraqis were getting injured or killed in these ASPs trying to loot them?
- A. Correct. Yes. We knew that usually when the fires started, it was probably created from an Iraqi getting in there and smoking or igniting some of the propellants that would cause an explosion. It is very tough to keep them from going in there.

- Q. Sir, what was the procedure that you were aware of for what the Marines are supposed to do when they caught these individuals stealing from the ASP?
- A. When individuals -- well, there was two kinds of standing orders for individuals who were doing bad things in Iraq. If it was an act against coalition forces or it was a criminal type act, in both cases, you know, Marines were allowed to detain these people and then they, once they were detained it was determined was this an act against coalition forces or just a criminal type activity or Iraqi law violation.

If they were acts against coalition forces, they were handled through the military where they would actually go to a military detainee compound further down. They would be transported down South. If it was a criminal type activity, a violation of Iraqi type laws, they would be turned over to the Iraqi police.

- Q. And you said this was an order. Was it a written order of some sort?
- A. No. I don't -- I'm trying to think if that would have been written. I'm sure it would have been in documents that came from the Division. At our level, or even at the company level, if you are putting yourself out at the company level platoon, Division, they really didn't have to be that concerned over whether it was an act against Iraqi people or an act against coalition forces. That would all be determined once they were being detained and it would then be decided, should they

go to Iraqi justice system or should they go through a military detention system.

- Q. And what was your experience with how the Iraqi justice system was handling these detainees that were caught in the ASP?
- A. That system was quite broken. The Iraqis were struggling to keep the justice system going and we worked hand-in-hand with the them. But that system at that point in time was totally, I'll use the words "totally broken." I know detainees would possibly be detained for a couple of hours and then the Iraqi jailers would probably decide to release the detainees due to the fact that they didn't have room in their limited jail system. So I know it wasn't uncommon for somebody that was a looter to be right back on the street later on that afternoon or that evening or by the next morning.
- Q. What was talked about at Battalion as to how we remedied or fix this problem of these repeat looters?
- A. That was an ongoing problem. We didn't have a solution. We certainly related this over to our people who were working with the Iraqi justice system, which was very limited numbers of Marines that were actually working with the Iraqi justice system. To my knowledge, I know of two Marines that were part of our unit that were directly working with the Iraqi justice system.
- Q. And who were those Marines?
- A. One of them was our JAG officer at the time, he was actually a (b)(7)(C) within (b)(7)(C) I know he had a young Marine, an enlisted Marine, that was working with him. Those are really the only two that I know of that were working directly with the Iraqi justice system, I think within the Al Kut area.
- Q. Did you ever go up to Division to find out what assistance you could get to create a better deterrent or punishment for these looters?
- A. That was certainly not only sent up through correspondence emails, radio traffic, message traffic, but I personally sat in on conversations when we were visited from the operations officer from Division.

- Q. Sir, did you ever have a chance to talk to General Kelly about these problems?
- A. I never talked directly to General Kelly about that particular problem, but I know I did talk to the operation's officer and the Chief-of-Staff. The conversations were myself, the Battalion commander, our operation's officer, actually sat down and talked about some of the problems we had guarding these large ASPs. The one that (b)(7)(C) was involved in guarding was actually rather small compared to some of the larger ASPs that we were guarding throughout the Al Kut proper area in the Wassi province.
- Q. Do you remember how big that -- well, there were two ASPs that (b)(7)(C) had responsibilities for. Right?
- A. Correct. It was the one on the North side of town and one to the East side of town.
- Q. I know it's been a long time and it may be tough to recall, but what is your recollection as to the size of the ASP that was served on the South part of town?
- A. It was large. I wasn't trying to elude that it wasn't a large ASP. It would be the size of several acres, dozens of acres is the size of it.
- Q. Okay. So, recognizing that there was this ineffective Iraqi police system, how many -- sounds like you, you, your staff at the Battalion level and then you worked with the Division level staff to try to figure out a solution to this.
- A. Is that about right?
- A. Correct.
- Q. And was there ever a solution that was arrived?
- A. The solution was the continued 24-hour Marine presence. We augmented it with a combination of manned aerial flights and unmanned aerial flights, RTDs that flew over the different ASPs. But I'm not trying to say we had a perfect solution to it. It was a tough problem. There was no good solution at the time. The only good solution probably would have been to bring in an entire Battalion or other reinforced companies to put on each one of those ASPs.

And within our providence, we only had one battalion that was responsible for the whole providence. The one ASP to the South that we are referring to, that could have easily consumed a reinforced company to guard that, to properly guard where we could maintain integrity around the whole compound 24 hours a day, seven days a week. With the three or four squads out there, there's no way they had total knowledge of what was going on in that ASP all the time. The roaming patrols would deter and stumble upon people that were trying to loot, but if a looter wanted to get in there, the looters could certainly get in there.

Q. Now, was it discussed at the Battalion level that one of the concerns of these looters being there was the fact that Marines going in trying to chase these folks out could themselves become injured in that process?

A. That was a concern, that was a daily concern. The Marines were instructed to stay on the EOD swept roads, not to venture into certain areas of the ASP, but to stay on the, pretty much the perimeter roads that ran around the ASPs and that is where they would detain any people that were looting but not actually to chase them throughout the unsearched roads that ran all and out of the ASPs.

Q. Were you aware of there being a Marine in (b)(7)(C) (b)(7)(C) that was burned while he was trying to detain one of the looters in one of the ASPs?

A. Absolutely. Actually I was on site shortly after that incident happened and recommended we need to do an investigation on that incident. It was a young Marine, and I believe three other Marines were involved, where they had seen some looters coming in and out of the ASP. They went in a vehicle over to where the looters were at to detain them. The Marine, himself, who was injured, I know he ignited -- it was a large quantity of unburned increments, I believe, artillery type increments and he got some severe burns on his body.

Q. And it was your thought that this happened accidentally or deliberately?

A. From what I read out of the investigation, I know the Marine himself, it was determined, ignited the propellant that burned him. I don't think he

understood how rapidly and how fiercely that those propellants burn. I don't think he thought he would be burned, he was at a safe enough distance where he was okay.

- Q. Okay. All right, sir.
- A. I don't think he intentionally meant to hurt himself. I know he wanted to destroy the propellant, but it certainly was a dangerous thing.
- Q. Okay. Now, one of the comments you had on direct was that you thought that (b)(7)(C) and (b)(7)(C) (b)(7)(C) had some problems. Are you confusing that with the (b)(7)(C) or (b)(7)(C) and (b)(7)(C) (b)(7)(C) incident where they got into a fight?
- A. It could be. I was under the assumption, though, not trying to confuse two incidents, but I was under the assumption that (b)(7)(C) had difficulty, not because of (b)(7)(C) or anybody else. I think he was having difficulty with everybody in that chain of command, company commander, platoon commanders, and several of the staff NCOs.
- Q. But you became personally aware of the incident between (b)(7)(C) and (b)(7)(C)?
- A. I believe -- was that a yelling and screaming match that ensued over? I forget what it was. Was that the incident or where they actually argued in front of a large group of Marines.
- Q. There was an incident like that, but I'm asking if you recall there being some problem between (b)(7)(C) (b)(7)(C) and (b)(7)(C)?
- A. I can't remember anything specific as far as details. I don't have an incident that comes to memory where they had a personal conflict or any type of conflict. Maybe my assumption was, my assumption is that (b)(7)(C) had problems with -- from talking to him and talking to (b)(7)(C) (b)(7)(C) he had problems with just about everybody within the chain of command of (b)(7)(C). So if I'm assuming that he had a problem with (b)(7)(C) (b)(7)(C), I could be wrong.
- Q. Now, did you have any problems with (b)(7)(C) or did the Battalion have any problems with (b)(7)(C) (b)(7)(C)?

A. No, other than -- there were times when, certainly we would question a judgment or decision by (b)(7)(C) (b)(7)(C). I know myself, I have talked to him on several occasions and I know the battalion commander talked to him on several occasions over any variety of things that happened over the course of time that we were there.

Nothing is coming to mind that was so severe that it warranted anything other than talking to another Marine officer. Finding out what made him come to a certain decision and talking through that decision with him. I can't remember anything that, actually think of a life threatening situation, grossly negligent type of situation.

Q. Do you recall conducting an investigation on (b)(7)(C) (b)(7)(C) concerning a statement that he made to (b)(7)(C)?

A. I do. I think you meant to say (b)(7)(C).

Q. I'm sorry, I apologize.

A. I did a preliminary inquiry into a statement that he made. I believe after he discussed, after (b)(7)(C) (b)(7)(C) and (b)(7)(C) discussed the incident where Iraqi detainees were stripped at the compound.

Q. And was there some comment of plausible deniability that (b)(7)(C) said which you thought was a problem?

A. The way I became aware of that situation was that the Battalion commander asked me to do an inquiry concerning the comment that was made or the comment that, I believe, (b)(7)(C) said he made where, something about plausible deniability. The fact that he brought the detainees into the Weapons' Company compound in front of all the other Marines, kind of nullified any plausible deniability he would have as to, you know, anything he did to those detainees. When I talked to (b)(7)(C) concerning that type of a comment, what I got out of it was it wasn't a kind of thing, you shouldn't have brought them here, but it was a comment, you know, what are you thinking. You did something bad, you did it in front of the Marines, you don't have any plausible deniability that you didn't do this.

Q. So when you talked to (b)(7)(C) about this, did

you understand that his use of plausible deniability was something that (b)(7)(C) now couldn't cover up?

A. No. I think he -- the way I read his comment when I talked to him -- and certainly this was after he said this comment, so I wasn't present when he actually said it; but he was using it more in the way of, you know, you really screwed up and not only did you screw up, you did it front of everybody. You know, you can't deny that you didn't do this.

Q. Well, did (b)(7)(C) ever deny that he did do it?

A. Not to my knowledge, no.

Q. So there wasn't ever a question of (b)(7)(C) trying to cover this up. Right?

A. Not to my knowledge. Once it was brought out in the open, I don't think he ever denied it.

Q. Are you aware that (b)(7)(C) brought this to the attention of (b)(7)(C)?

A. I am not sure, no. I am not sure if he brought it to him.

Q. Do you know that is what (b)(7)(C) did, is brought this information to (b)(7)(C)? Are you aware of that occurring?

A. I guess I am confused on the question. I know at some point -- for (b)(7)(C) to have made those comments, I know at some point they had to have told him. So I am not sure what the timeframe was when that happened.

Q. Maybe my question was bad. My question is, is it your understanding that (b)(7)(C) reported this detainee incident to (b)(7)(C)?

A. No. I am not sure that he did and when it happened. I'm not disputing the fact that he probably did, but I didn't know that he -- are you saying that he came to him shortly after the incident happened?

Q. I'm asking what you know.

A. I guess I don't know. I don't have a good timeframe on it. My assumption is that it was something discussed later, not right after the incident happened or, you know, hours or the day after it happened. I assumed it was something that was

discussed much later, many days later or a week later or more.

Q. What -- just so that we are clear, what is it that you think occurred at this detainee incident at [REDACTED]

A. My understanding of that incident was that these were detainees brought from the ASP, from that actual ASP -- that's where they were detained -- brought inside the compound. At some point, they were ordered to strip off all their clothing, except for their underwear; and then shortly after that, they were forced to leave the front gate of [REDACTED] position, which goes right out into the community, basically, and were sent out through the front gate wearing only their underwear.

Q. Were you aware that these detainees had been captured or detained on prior occasions that same day?

A. [REDACTED] when I talked to him about the incident and some of the others, they did say that these Iraqi individual were people they had captured before.

Q. And -- all right. When you had this discussion with Captain -- well, were you the officer who relieved of his duties?

A. I don't have that power as the Battalion Executive Officer. That decision was actually made, was made in conjunction, I know, from the Battalion commander and the actual company commander.

Q. Did you communicate this to [REDACTED]?

A. I know that during that timeframe, I communicated that he would be relieved of duty, yes.

Q. When you had this meeting, did you ever tell [REDACTED] [REDACTED] what he should have done with these detainees?

A. Yes. I discussed it with him. I talked about the frustrations that he himself and the Marines were experiencing with repeat offenders, people that were looting on a repeated basis. But I know I told him that it's not something that -- I can't influence if that person is let out by the Iraqi people or the Iraqi justice system. We just have to detain these people and let the system deal with them. Maybe not

the best answer, but I didn't, I certainly wouldn't give him any recommendations to do anything else.

Q. Okay. And on this checkpoint incident, this truck incident, you are aware that this was the truck that the Marines felt was going to blow through their checkpoint. Correct?

A. Correct.

Q. And the command didn't have any problem with the use of force to disable the vehicle. Right?

A. No.. The investigation clearly shows that the truck was, you know, a large truck and it was accelerating and possibly endangering the lives of some of the Marines at that checkpoint. So as far as them actually firing on the vehicle, that was appropriate. That was well within their Rules of Engagement, the inherent right of self-defense for those Marines.

Q. And you are aware those Iraqis were not killed. Right?

A. Correct. They actually weren't, didn't receive any bullet wounds. They received some superficial wounds probably from some of the broken glass and maybe being jarred around within the truck itself. They had very superficial injuries.

Q. And you had commented on (b)(7)(C) direct that (b)(7)(C) had burned their personal belongings.

Is it your understanding that he burned everything in the truck?

A. No. My understanding from the investigation was that he took some personal property out. I think some personal garments, some of their clothing and some of their paperwork, some of the documents they had within the vehicle, the cabin of the vehicle and actually burned those on the roadside close to the truck.

Q. Were you aware --

A. Not that they burned the whole cabin of the truck or anything like that, they took some stuff out of the truck and burned it.

Q. And were you aware that they had captured five

- hundred thousand dinar and had to turn that over to the police?
- A. I don't remember that part of it, not to dispute it. I wouldn't doubt that they had captured some dinar, too. I don't clearly remember that part, but it was in the investigation. I'm sure that they did that.
- Q. Did you ever hear that it was (b)(7)(C) rationale of burning the clothes was because he was concerned it might be bug infested and could contaminate the personal belongings of the Marines?
- A. No, I didn't. I don't remember hearing that, that that was one of the concerns that would have made him burn the personal belongings.
- Q. Sir, you read the preliminary investigation involving that incident. Correct?
- A. Correct.
- Q. And there were statements in that investigation which described the incident. Correct?
- A. Correct.
- Q. And you don't recall any of those statements talking about the rationale that was employed at the scene for why the clothing was burned?
- A. No. I don't. And I believe it was actually two investigations or inquiries done on that. I know the first one was routine for us to do at a minimal of a preliminary inquiry any time there was a shooting for Marines to discharge their weapons. So I don't remember on that one, I focused more around were they justifiable in discharging their weapons. I don't remember anything in there that even talked about burning personal property. I believe there was another investigation done after that, if I am not mistaken. It kind of eluded more towards the charges of destroying personal property.
- Q. Okay, sir.
- A. That's my --
- Q. What's that, sir.
- A. That's my recollection of that.
- Q. But do you recall reading the investigation conducted by (b)(7)(C) ?
- A. Yes.

Q. Okay. And you recall there being statements given by some of the Marines that were there at the checkpoint?

A. Correct.

Q. All right. Gentlemen, if you wouldn't mind -- sir, hold on one second here -- turn to Respondent's Exhibit K, if you would.

Sir, I am going to read a portion of a statement by a Marine by the name of (b)(7)(C).

Have you ever heard that name before?

A. No, but go right ahead. I am assuming he is a devil dog in (b)(7)(C).

Q. Yes, sir, he is.

Gentlemen, what I am looking at here on my exhibit, it would be right after the rights page, turn one, turn 2. So the bottom will say, "went back to there."

Sir, I am reading to you a sentence in this from (b)(7)(C). It says, "I went into the cab and placed some clothes, cassette tapes, and other items in a sack while someone else cleaned out the glove compartment. I also cleaned out the storage bins on the side of the trailer. I asked what to do with the seat cushions in the cab and I was told, they may have lice and to put them in a pile. That pile was lit on fire."

Now, having heard that, does that refresh your recollection as to a rationale given for why those clothes were burned at the checkpoint?

A. No, it doesn't. And I'm not trying to dispute the fact that they may have thought those clothes or some of the stuff within the cabin of the truck could be lice infected or vermin infected or whatever. I just don't recall reading that portion.

Q. Okay.

A. I'm sure it's in there, but that phrase just didn't stick out to me.

Q. All right. If they were lice infested, wouldn't it

- have been advisable not to bring that into the barracks so that the rest of the barracks doesn't get contaminated?
- A. Certainly. I wouldn't recommend bringing any of that into the confines of where the Marines are billeted at, certainly not. I guess my only question on that, I am wondering why they wanted to bring anything that they would have seized in the cab of that truck into (b)(7)(C) area or into, you know, confined area. I would have thought that stuff would have been turned over to the military police or the Iraqi police that were going to detain those two individuals.
- Q. But you don't recall the five hundred thousand dinar that was given to the police. Right?
- A. No, I don't. And like I said, I don't dispute that. That was very routine and every, anytime we detained people that there was different quantities of dinar that were seized and turned over.
- Q. Now are you familiar, sir, that in circumstances where there was some belief that there might be some intelligence value to any of the documents, that it would be turned over to the HEP teams?
- A. I'm not sure what kind of intelligence value the documentation would have produced or if there was a thought that would be viable intelligence in that --
- Q. Was that the SOP, that if somebody felt there was some intelligence value, to ask for the HEP team's assistance?
- A. Well, absolutely. If they thought -- if the Marines out at the checkpoint or anywhere thought they might have uncovered some type of viable intelligence, they would certainly ask for help from Battalion to send a HEP team out there or anybody that could speak and read the dialect.
- Q. Were you aware that (b)(7)(C) had called Battalion for HEP assistance?
- A. Yes.
- Q. And you weren't at the checkpoint; were you, sir?
- A. No. I was never at that -- physically, at that sight.
- Q. So wouldn't it be the senior person at that sight to

make a determination as to what the potential value or intelligence value of that target might have been?

- A. Certainly. Certainly the senior Marine or any Marine who saw that and reported it the senior Marine, if they thought they some had viable intelligence, they should actually report that up and prosecute that further.
- Q. Now, are you aware that despite (b)(7)(C) request for HEP assistance, that he did not receive any?
- A. I don't particularly remember him not receiving it, but once again, I don't dispute that he didn't. We had very limited HEP assets in theater. That was a struggle that we struggled with almost on a daily basis on any operation. We didn't have enough intelligence Marines or actually translators or people that knew, you know, the dialect over there.
- Q. Okay. All right.
- A. So I am sure, I'm sure if he requested it and didn't get it, that would not be an uncommon thing that happened during the time we were over there.
- Q. Okay. Now, going back to the ASP -- and I will be short, I promise. Were you aware at the time -- this is back on June 23, 2003, were you aware of whether there were any shortages of the officers that were within (b)(7)(C) during that timeframe?
- A. I think they were short. They did not have, I don't believe they had an excess of officers at that point for the company. And I believe at that point, we had also, I believe the platoon commanders, (b)(7)(C) platoon commander, probably by that point, he's a (b)(7)(C) and he's the one that I referred to earlier. At that point, I believe he was helping out to establish an Iraqi justice system within Wassi province.
- Q. Okay. So you were also aware that (b)(7)(C) was away of emergency leave?
- A. Okay. That refreshed my memory. I know he did go home for a personal reason --
- Q. And --
- A. -- during that timeframe.

- Q. And that (b)(7)(C) at that point, who was the (b)(7)(C) platoon commander, was over with (b)(7)(C) (b)(7)(C) Right?
- A. Correct.
- Q. So that left (b)(7)(C) and (b)(7)(C) as the only two officers in (b)(7)(C) Right?
- A. Correct.
- Q. And were you precisely aware of that status on June 23rd of 2003?
- A. Yes, I would have been.
- Q. How were you made aware of that?
- A. Well, at that point, I would know from the daily muster sheets that we would review just -- and just from reviewing it, the status of each company and where they stood as far as how they were in not just officers, but staff NCOs and manpower. So I know we were aware of the fact that they only had their CO and one other officer within the company at that point.
- Q. Which was (b)(7)(C)?
- A. Correct.
- Q. And also at that point, you were familiar with the fact that the (b)(7)(C) was a liability to the company. Right?
- A. Yes. We would have known that he was having some trouble, certainly.
- Q. Was there any consideration given to the Battalion in trying to help out (b)(7)(C) while some of their officers and some of their leadership was down?
- A. That was looked at, but due to the fact the way the missions were coming to (b)(7)(C), the missions that were coming to them were not company level missions or even platoon level missions. They were usually being tasked with missions that involved squad sized elements whether it be an NCO or a staff NCO in charge of it. So there was no decision to send them an extra officer or try to get them an extra officer somewhere from the Battalion.
- Q. And --
- A. There weren't a lot of officers to go around

obviously, too. So, it's not something, I'm sure that would prevent an inordinate amount of time discussing either.

- Q. How many officers were on the Battalion staff?
A. Well, the Battalion staff, certainly each shop had an officer in it. The (b)(7)(C) would have had multiple officers. I don't want to throw a guess out there, but the Battalion staff was pretty much, the table of organization.
- Q. Okay. And at the time of this 23 June incident when these other officers were away, you were aware, then that (b)(7)(C) was still responsible for the security at the northern ASP and the eastern ASP?
A. Correct.
- Q. Okay. Sir, do you have any knowledge as to whether those four detainees, which were, had their clothes removed, whether they were ever caught again stealing or looting from the ASP?
A. No. I don't have any knowledge if they were ever caught again. I wouldn't be surprised if they were.
- Q. Did you have any knowledge as to whether or not the activity in the ASP that the (b)(7)(C) were guarding had been stopped in terms of looting after that incident?
A. No. I think there were probably, almost on a daily basis, other times that looters would try to get into that ASP.
- Q. But do you know this for a fact, sir, or is that just a guess?
A. That's just a guess. That's no factual.
- Q. And again, I want to bring you back to (b)(7)(C) (b)(7)(C) -- I hope I'm not butchering his name -- is it (b)(7)(C)?
A. I think it's (b)(7)(C).
- Q. Okay. You read (b)(7)(C) investigation. Correct?
A. Correct.
- Q. And that had a statement in there by a (b)(7)(C) (b)(7)(C) who was a Marine in the (b)(7)(C).
A. Correct. I believe so.

Q. Do you have any recollection of that?
A. I don't recall his testimony or his statement in that investigation.

Q. Okay.

Members, if we could please turn to Respondent's Exhibit H at the very last page of devil dog (b)(7)(C) statement.

Sir, I just want to read you a sentence here and see if you recall having read that and having thought anything about that when you had a chance to read the (b)(7)(C) investigation. This is a statement here by (b)(7)(C) which is signed on July 9, 2003, which would have been two weeks after the detainee incident. And (b)(7)(C) says, "it should be noted that we haven't caught anyone at the ASP since."

Does that ring any bell to you, sir?
A. That doesn't jump right out, but I certainly do believe that that was a statement in there.

Q. So it would be fair to say, even though it certainly may have been the wrong move, this action of disrobing them, may, in fact, have created a tactical advantage at this ASP?

A. Yeah. I see what you are saying and especially the Marine that made that statement was a Marine that was on the site and was certainly on there weeks at a time. So, he probably would have better recollection than I would of who was detained and who wasn't.

Q. So, if in fact that is true, then they were at least successful in preventing anybody, and he says anybody, in that ASP, that's a good thing; isn't it?

A. Maybe the fact that nobody was looting anymore, but it's not something that I can condone and say that we would change Rules of Engagement and Rules of the Geneva Convention to win a tactical decision.

CCFR: Okay. All right. Sir, I don't have any other questions. Thank you very much for your time.

WIT: Thank you.

SRMBR: Okay. Redirect.

REC: I have no questions, sir.

SRMBR: Okay. (b)(7)(C) do you have any questions for the witness?

CCFR: Sir, the members may have some questions for you, so don't hang up.

WIT: Certainly. No, I will stay with you.

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

EXAMINATION BY THE BOARD

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

Q. You made a reference to ROE and the Geneva Conventions. I asked a similar question to (b)(7)(C) (b)(7)(C). Did the unit receive any specific training or classes regarding the handling of detainees prior to or during the deployment?

A. We certainly did. Even before going into theater and while we were in Kuwait in base camp, we received formal classes on our ROE and how to apply them. Before we even left 29 Palms, the Battalion went through a week long MOUT environment type training at the MOUT facility aboard Camp Pendleton where detainee handling and treatment of detainees, searching the detainees and then handling the detainees, was practiced by all Marines. So, I'm not sure if I answered all of the question or not.

Q. Yes, you did.

MBR (b)(7)(C): Sir, that's all I have.

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

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

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

Q. Sir, was the rest of your Battalion as thinly spread out and over assigned as was (b)(7)(C)?

A. Yes, they all struggled. I know it might have been

hard for each individual company to see, but certainly from a Battalion perspective, companies could be spread out on a typical day. It was ranged from over 125-miles between units from where our CP was to our most outlined companies. It did vary on a daily, weekly basis. Elements could be as small as squad size level to be remotely 30, 40, 50-kilometer from the next friendly type units at other ASPs and other areas that we worked out in.

So, it was a struggle for the Battalion as far as manpower, logistics, and just to carry out the responsibility and lack of communication that all companies experienced a shortage of.

- Q. You are able to see that at least the company commanders pretty regularly -- at least the morning meeting, if not over the landline or some type of comm?
- A. Correct. There was daily communications at the company level to the company commanders. There was certainly -- it caused us to, the Battalion staff to, the Battalion staff was mostly based at the airfield right there at Al Kut, which was called Blair Field. It caused myself and the operations officer to go on the road almost on a daily basis so that we would have personal time in all the various locations throughout the Wassi providence. We actually would try to go on the road five to six days out of the week where we were traveling. We would go out to the company, platoon size positions to visit with the commanders there and bring them up on what we, you know, see what struggles they were having at their particular location.
- Q. I guess the last question I have is, or maybe a statement, is this the only incident of error in judgment that the Battalion had, you know, as far as officers are concerned or were there several other NJPs that, you know, had to get processed up the chain of command or were there others that the Battalion was able to handle at its level. I'm just wondering how this fits in the relative -- to the rest of the battalion?
- A. Let me paraphrase to make sure, because you broke up for one second.
- Q. Okay.

A: Was your question basically, were there other incidents within the battalion at the officer level that we dealt with any differently than in comparison to (b)(7)(C) is that the question?

Q. Yes, that's accurate.

A. We certainly did have over incidents where, I know the Battalion commander talked personally to other officers. I can't recall of any other incident. Most of those though were based off of something within the unit happening as far as a junior Marine did something wrong or something went wrong during an operation. I can't remember other incidents where an officer, it was really his conduct or what he personally did to an Iraqi citizen or an Iraqi detainee. There was no other similar circumstances. There were certain other officers that were talked to. You could say that it was a misjudgment of something that happened within their platoon, their squad, something that a junior Marine, junior enlisted Marine had done something stupid. We certainly had other incidences where some junior Marine may have acted inappropriately towards an Iraqi detainee, but it wasn't the officer himself who did that action.

MBR (b)(7)(C): Roger that. That's all, (b)(7)(C). Thank you and thanks for your service to the country, man. Oo-rah.

SRMBR: (b)(7)(C) this is (b)(7)(C)

WIT: Yes.

Questions by the SRMBR:

Q. You mentioned there are two acts that would determine what action would be taken with the detainees, an act against coalition or criminal act. Who would make that decision? Who would decide whether the detainees were acting against the coalition or if they were criminal?

A. Right. It would usually be determined, I wish I had a clear answer. The Battalion CO certainly would be cognizant of what was going on in any situation where we detained people. And a combination of the COC to include one of the key figures, would have been the Battalion intelligence officer would weigh

in on that. The battalion operations' officer would weigh in on that. Also, I know when detainees were routinely brought directly to the civilian police department in Al Kut and there was military American Army military police that were there, they would sometimes make that decision on whether or not this was an act, criminal activity or an act against the coalition forces.

- Q. Okay. To follow up on that, was the COC aware of the incident, the transportation of the Iraqis from Field Guard ASP to (b)(7)(C) when that occurred?
- A. Yeah, good question. I don't have a clear answer on that whether in that particular case, the COC knew at this point whether they had the detainees. I don't know if they knew when that one was occurring whether they had cognizance over it, that they had detained some individuals and bringing them back to the (b)(7)(C) compound.
- Q. Okay. And (b)(7)(C) was the company compound. Right?
- A. Correct. It was, that was the common name we used for (b)(7)(C) company size compound they maintained on the North side of town.
- Q. Where was the COC, where was the Battalion CP?
- A. Battalion COC would have been South of the city and the city was cut in half by the Tigris River. It actually wasn't cut in half, it ran just North of the airfield we were in. That was one of the reasons we wanted to maintain a company level position within the city on the side because of the roads.
- Q. Okay. So the COC was in the airport, at the airport?
- A. It was at the airfield, correct.
- SRMBR: Airfield. Okay. That's all the questions I have. Thank you very much.
- WIT: Thank you.
- REC: Sir, I have nothing further from this witness.
- SRMBR: Okay. Anything from --
- CCFR: No, sir.

SRMBR: Okay. Dismiss the witness.

REC: Okay, sir, that is all we have for you today.

WIT: Okay. I'm certainly available. If you need to call me back, I'll maintain this number for you.

REC: Okay, sir. Thank you.

WIT: Thank you.

The witness was excused from telephonic testimony.

REC: Sir, the government has nothing further to present. The defense, I believe, has several witnesses that are from out of town. There's three witness that are from (b)(7)(C) and I know it's getting late in the afternoon, but for their -- so they don't have to drive back and forth --

SRMBR: No, no, we're pressing on but we are going to take a break.

REC: Okay, sir.

SRMBR: Let's go into recess until 1550.

The Board of Inquiry recessed at 1540 hours, 6 April 2003.

The Board of Inquiry was called to order at 1553 hours, 6 April 2004.

SRMBR: The board will come to order. All persons who were present when the board last met are again present. The recorder will note the time and date for the record of proceedings.

REC: Sir, the time is 1553 on 6 April.

SRMBR: Okay. Proceed with your witnesses.

CCFR: Thank you, sir. Before I do and before I call my first witness, (b)(7)(C) I would just want to inform the board that it was initially -- we communicated to government counsel that we believe we would have enough evidence for two days. I am certainly prepared. We can push on through as long as this board desires for this evening, I just did

not want to get the board concerned that we had underestimated the amount of time we need. We don't need to take two days, but we had informed the government that it could be a two-day proceeding.

What we intend to do, sir, is call the witnesses who are from out of town so that we can maximize their time. (b)(7)(C) is standing by, so we will start with him.

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

DIRECT EXAMINATION

Questions by the civilian counsel:

- Q. If you will, state your name for the record and spell your last name.
- A. My name is (b)(7)(C) (b)(7)(C)
- Q. Good afternoon, (b)(7)(C).
- A. Good afternoon, sir.
- Q. Would just briefly introduce yourself to the members and run through your initial military background, please.
- A. Yes, sir. My name is (b)(7)(C) and I'm coming up to on 14 years in the Marine Corps both active duty and reserve. I have been on six

(b)(7)(C)

- Q. And, (b)(7)(C), what's your current status now in the military?
- A. I'm still a member of the IRR, sir.
- Q. All right. And do you know (b)(7)(C)?
- A. Yes, I do, sir.

- Q. And how do you know (b)(7)(C) ?
- A. I reported to (b)(7)(C) as a combat replacement in, I believe, 1 May 2003 in Al Kut, Iraq and I reported to the (b)(7)(C) (b)(7)(C) platoon, and (b)(7)(C) was my platoon commander.
- Q. And in working with (b)(7)(C) as your platoon commander, what assessments did you have of working with him?
- A. For the most part, I thought the (b)(7)(C) was a very professional officer.
- Q. Okay. And did you realize he wasn't an infantry officer by trade?
- A. Yes. We had talked about that and he told me that he was a comm officer by trade, and, you know, just a little bit about his background, and, you know, I talked to him a little about mine and we got along pretty well.
- Q. And did you have a chance to see how (b)(7)(C) would work on learning the skills and trades as an infantryman?
- A. Yes, sir. I think we worked together initially. I served as the (b)(7)(C) the platoon guide and the platoon sergeant was (b)(7)(C) and (b)(7)(C) and myself have been career infantry Marines and we worked with the (b)(7)(C). He had some ideas on stuff and he had a fairly open forum. He had final say on some things, and, you know, we discussed tactics and what to do and what not to do. So, you know, we did, you know, I did get to see him in the infantry element quite a bit.
- Q. Did you trust him as your platoon commander?
- A. Yes, sir.
- Q. Okay. And describe for us a little bit about the situation that the platoon had as far as their mission responsibilities in Al Kut?
- A. Well, sir, we had a very wide variety of missions being the (b)(7)(C) platoon. We had three sections, we're all vehicular mobile. So we were tasked with doing a real wide variety of missions, including long range patrols, waves, security, support for different organizations like the special forces and counter intelligence.

And we also did local security patrols in and around Al Kut. We escorted people to Baghdad and to the Iranian border. We supported the infantry companies at their different outposts as they rotated runs. There was just a whole bunch of things that we did.

- Q. And as the platoon commander for the (b)(7)(C) platoon, was (b)(7)(C) leading from the front?
- A. Yes, sir, he did, he did lead from the front. He definitely took a proactive stance. We actually had -- the sections were split up into doing very different tasks. So, the (b)(7)(C) I think, was very proactive along with myself and (b)(7)(C) in getting out to the different sections to see what they were doing. It was rare that the entire platoon was co-located at the same place at the same time because of our duties being pretty wide spread around the area.

He definitely lead from the front. He accompanied the patrols and he rotated from section to section. Sometimes I went with him, sometimes he went by himself and I went to a different section, and depending on our logistics and vehicle support, what we could get to. I always felt that, definitely he was always out there.

- Q. Okay. And even being a staff NCO, did you get a good pulse on whether the Marines in that platoon trusted and were inspired by (b)(7)(C)?
- A. Yes, sir. I think that the Marines, I didn't actually have the benefit of being with (b)(7)(C) through their predeployment stuff. I met them when they were already in Iraq. But I did -- my position, I did definitely understand the Marines, you know, feelings towards (b)(7)(C).

- Q. Would you say it was positive?
- A. I would say it was generally positive. I mean, I think the (b)(7)(C) was known as being very gung ho and outgoing. And, you know, so some people kind of poked fun at that and the (b)(7)(C) was, he was very interest in military history and stuff. So he would discuss history and stuff like that when we had downtime and stuff, but I would say, in general, it was positive.

- Q. In your observations, was he concerned about

- training the Marines to do their jobs?
- A. Absolutely. I would say that with both myself, (b)(7)(C) and the (b)(7)(C) working together as a team that, you know, are training the Marines on force protection while we're in Iraq and their own personal safety and the accomplishment of the missions that we were assigned were by far the most important thing.
- Q. Okay. Now, tell us a little bit about some of the challenges with guarding the ASPs that (b)(7)(C) platoon had to deal with?
- A. Well, we received, pretty early on in the mission for guarding the ammunition supply points and (b)(7)(C) actually had responsibility for two different ammunition supply points. (b)(7)(C) platoon had one and the other one was located between the (b)(7)(C) platoon and the (b)(7)(C) platoon with the rest of the (b)(7)(C) guys.
- Q. And let me interrupt you there, (b)(7)(C), because we have actually spent a lot of the day talking about these ASPs, but I guess my question to you is, was it your understanding, based upon being there, that these ASPs were a pretty dangerous environment?
- A. Absolutely. They were very dangerous.
- Q. What were some of the qualities that made them dangerous?
- A. Well, probably the first and foremost thing was they were filled with unexploded ordnance and dangerous munitions and they were strewn about the area. I mean, these were very, very large installations and, you know, a lot of them had had, the majority had significant battle damage and there was, you know, there was unexploded ordnance and, you know, debris from the buildings and just basically spread out over the entire area. And we did get, we did get the EOD guy to come out and look at it, but they were so tasked out that it was almost impossible for a small detachment to actually clear, you know, the entire ASP, which was never actually done as far as I know. So the unexploded ordnance was a definite issue, so we had to be very, very careful about that.
- Q. What about the challenges of the Iraqis going into

- the ASPs?
- A. Yes, sir. That proved to be a very challenging task because of the fact that the ASPs were very large and we did not have, you know, we have small units, squad sized or a section or even a half section size element, trying to guard these extremely large areas. So I would say it was anywhere from between 8 to 12 people guarding, you know, trying to keep people out of, you know, five to ten mile square radius area.
- Q. What was your understanding of -- did you come to learn what these Iraqis were doing in the ASP?
- A. Well, I think it was two-fold, sir. The Iraqis were coming in to take munitions from the bunkers that were blown up or even the ones that weren't blown up for, you know, for a couple of reasons. They were coming to take the munitions to sell out in town or to use, you know, for whatever reason, whether they sold it to insurgents to use as IEDs or they would use it for themselves for using parts of the explosives for, you know, cooking or heating, building fires, and stuff like that. And then they would also use the brass casings, they would melt down the brass casings and sell them in town and then also they used all the materials basically building material from the destroyed buildings and bunkers they could take, they would come and take to augment their houses or neighborhoods.
- Q. So while you were over there and while the [REDACTED] platoon was conducting these operations, it was a concern of yours based upon dealing with these Iraqis that they were stealing ammunition which could eventually be used against the American forces.
- A. Yes, sir. That is why we were there from the beginning I think. I think it was one of the initial reasons that the Battalion had assigned us the mission of guarding these due to the potential insurgents getting ahold of this ammunition and using it against us. And, fortunately, you know, it wasn't the use of IEDs, at the time it wasn't wide spread in the Wassi province in our area, but we were up in Bagdad in the northern area, we did hear of those incidents occurring.
- Q. And based upon your supervision of the Marines and,

you know, either your section, were you aware of (b)(7)(C) platoon Marines actually catching Iraqis stealing the unexploded ordnance?

A. Absolutely, sir. I spent, you know, numerous rotations in the ASPs with the different sections and it was, it was very common to, I mean, we could over a two or three-day period, I mean, we could catch, you know, 50 to a hundred Iraqis going in there and getting ordnance. They would come in at night, they would come in during the day in broad daylight, so it was definitely, it was definitely an issue.

Q. What options were you aware of that you and your Marines could use to accomplish the mission of guarding this ASP?

A. With concern to the Iraqis themselves, sir, or --

Q. In all facets?

A. Well, generally, what we did was we tried to adopt a very proactive patrolling measure where we occupied, basically, a site or patrol base inside of the ASP and we essentially, we would continuously patrol the perimeter both during the day and during the night.

Q. Let me interrupt you there, (b)(7)(C). I don't want to get you off track, but I guess what my question is, what was your understanding of how to process the detainees that were captured stealing this material?

A. Yes, sir. Okay. Well, initially we started out when we would either detain somebody, we would call the (b)(7)(C), the company tag and request somebody to come out like the quick reaction force to come out and pick up the prisoners. They would either be brought directly to the police station or sometimes they would be brought back to (b)(7)(C). But it eventually turned out that just due to sheer numbers of Iraqis that we were detaining or deterring from coming into the area, it just wasn't logistically feasible because we had a small presence on the ground and we couldn't break -- we couldn't cut a half section in half again to transport prisoners and leave, you know, one vehicle guarding the site. And the company didn't have the logistical support to come out and get detainees routinely. They would, under extreme circumstances, send a 5-ton or send the react team out, but they really had to be

on call for other missions.

- Q. So what was happening to the Iraqis that were getting caught?
- A. Essentially, basically what would happen is, you know, when the Iraqis would come in, if we could see them actually coming in before they got to the perimeter, we would pretty much just intersect them and tell them to leave. And it was difficult because sometimes, the majority of the time, we didn't have interpreters for, for that, you know, specific purpose and, you know, we tried to explain to the Iraqis, it is just as much for their own protection if they happen to be wandering through. Because a lot of them did cut through the ASP just to get to a different part of town, you know. There was unexploded ordnance and it's dangerous to go in there and some of them seemed really thankful, others seemed pissed off that they had to walk around the whole ASP. The ones that were inside, we would chase them, we would attempt to chase them down as much as it wasn't dangerous to us wandering in and about the exploded bunkers with ordnance and everything laying about the area.
- Q. So is it fair to say there wasn't a real good solution that you knew of to keep these folks out of the ASP?
- A. No, there really wasn't, sir. Not with the resources that we had available to us. We just did not, you know, we weren't able to do as efficient a job as possible. The main thing we were attempting to do, deter Iraqis from getting in there until the time that the Iraqi police force was trained and ready to assume that responsibility on their own.
- Q. Now, in your interactions and working with (b)(7)(C) (b)(7)(C) is he an officer that you would go back into combat with?
- A. Yes, sir, absolutely.
- Q. You have any hesitations about going back in combat with (b)(7)(C)?
- A. No, I do not, sir.
- CCFR: (b)(7)(C), thank you very much for your time. (b)(7)(C) may have some questions for you.

WIT: Yes, sir.

CROSS-EXAMINATION

Questions by the Recorder:

- Q. I just have a couple of questions for you, (b)(7)(C)
(b)(7)(C)
- A. Yes, ma'am.
- Q. Was (b)(7)(C) action of ordering his Marines to strip down Iraqis, in your opinion, was that a good decision?
- A. I'm sorry, can you repeat the question, ma'am?
- Q. (b)(7)(C) when he ordered his Marines to take off the outer clothes of the Iraqi detainees, was that a good decision?
- A. I probably wouldn't have done that, but, you know, it seemed, in a sense that -- I know that those Iraqis didn't ever go back to the ASP. That was just, you know, the technique that he used at the time.
- Q. But that is not an action that you yourself would have done?
- A. I probably would not have used that technique, ma'am.
- Q. Okay. How about if you were at a checkpoint and you saw some, saw some of the personal belongings of the Iraqis, clothing, mats, would you have burned that, burned that, those belongings?
- A. I think it depends on the situation, ma'am. I mean, if I just saw belongings standing there and, you know, we didn't go around burning things without, you know, for no reason whatsoever. But I know, in the one specific incident where I'm thinking of where it became an issue, it wasn't -- we did -- we collected information and equipment that we thought would be of some type of intelligence value after an incident at one of our checkpoints. We took that equipment and personal belongings and stuff to turn over to the counterintelligence people. The belongings that were left over that were burned, I, I actually didn't observe the burning incident itself, but I would not say that it was out of the

realm of ordinary procedure to burn equipment that's not, to make it, to render it not usable for the enemy. I would say that is not, that that would be a normal practice.

Q. So it might be normal practice to burn equipment that is useful for enemy purposes?

A. Yes, ma'am.

Q. Okay. But in this instance, this was obviously clothing and floor mats. Correct?

A. I believe it was, ma'am. I don't know, it just, when I actually saw it when we were leaving, I hadn't realized it was a fire or anything and it just looked like a bunch of rags to me.

REC: Okay. Nothing further, thank you.

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

WIT: Yes, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q. I just have a few quick questions. When you saw the pile of clothes at the checkpoint, when you saw it, was it your assumption it looked like trash?

A. It looked like trash and rags to me, sir. It was already burning, so I can't say for sure.

Q. Were you aware of their being problems with sand fleas and bugs over in Iraq?

A. Absolutely, sir. It was a big problem everywhere in Iraq.

Q. If there was, if you had a concern that a pile of clothing had bugs or lice in it, would it be something that you would hesitate about burning?

A. No, sir. I mean it was common practice for us to burn all of our trash and, you know, I would probably burn something like that also.

CCFR: Thank you, (b)(7)(C)

SRMBR: Okay. Questions from the board members, (b)(7)(C)

(b)(7)(C)

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

EXAMINATION BY THE BOARD

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

- Q. You made a statement that your assessment is that (b)(7)(C) is a very professional officer for the most part?
- A. Yes, sir.
- Q. Did you notice any type of friction between (b)(7)(C) and (b)(7)(C) during the time you served with him?
- A. I did notice some type of friction, yes, sir, I did notice some. But I pretty much attributed that to some incidences that occurred before I arrived at the platoon for the predeployment training and some disagreements. I think there was some kind of liberty incident. There were some disagreements on the type of training that should be conducted during the predeployment training. I did notice there was some friction at various times, yes, sir.
- Q. So based on your experience, you would not classify that as unusual between a new OIC and staff NCOIC?
- A. It's not ideal, sir, but I don't think it's, I think it's not -- I think it's -- it happens sometimes.
- Q. Okay. In terms of the two incidents that are in question that went down, would you consider that detrimental to good order and discipline for the unit.
- A. No, personally I would not, sir. In both incidents, I was not there. I might have recommended a different course of action. However, many times that the (b)(7)(C) had asked my advice on things and taken my advice on different operational matters and unfortunately, he, you know, I wasn't there to provide guidance or my opinion on what should happen in those specific occasions, but, that's, you know, that's just my opinion, sir.
- MBR (b)(7)(C) : All right. That's all I have, sir.

SRMBR:

(b)(7)(C)

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

- Q. (b)(7)(C) how are you doing?
A. Good, sir.
- Q. Did any of the Iraqis ever come armed into the ASPs?
A. Yes, they did, sir.
- Q. Okay.
A. Mostly at night. It was not uncommon for us to encounter or observe Iraqis inside the ASP that were armed and often times, different groups of Iraqis inside the ASP, would get into fire fights with each other and there were numerous times that we did receive, to one degree or another, some sort of direct fire from Iraqis inside the ASP, sir.
- Q. Did higher headquarters with HEP teams or counter intel teams ever come down and interrogate any of them or were you aware of that?
A. Basically, basically, sir, I know that there were a few instances where Iraqis, that were detained at the ASP, were questioned by the HEP teams or the Marines working with the Iraqi police, but actually not directly at the ASP. Some way or another, we had to transport the Iraqi from the ASP to either to Tiger base or to the police station.
- And if I'm not mistaken, one ASP that Cat had was probably from 7 or 8 kilometers outside of the city and the one the (b)(7)(C) had was about 12 kilometers out of the city. So, it was kind of out of the way for the Army MPs or the Marines working with the MPs or the HEP teams to just hop in a vehicle and zip out there to question somebody real quick and then come back. So, there were a few instances where they were transported either to police station or to (b)(7)(C) where they were questioned and then either released or taken to the police station for more questioning.
- Q. Last question is, outside of this one incident where they were -- they came back, the same ones came back three times, were there other Iraqis you might have recognized coming back over and over again?
A. Absolutely, sir.

Q. How did you deal with them on a repeated basis?
A. Basically, sir, if, you know, we tried to size up and evaluate, you know, the intent of the Iraqis and the action they were taking. Obviously, if we found the Iraqis with munitions, we considered that a lot more of a threat, a lot more of a reason to detain somebody than, for example, if they were loading up a bunch of brass and bringing in one of their doggy carts or whatever. So we kind of had to take it on a case by case basis.

And people that we thought were acting out of the ordinary or in some type of, some type of deceiving type of manner towards us, those were the guys that we usually detained and either requested Army MPs to come pick up or brought to (b)(7)(C) or the police station for further questioning. Because we didn't have the capability of, you know, talking to these guys most of the time.

Q. All right, (b)(7)(C).
A. We had to explain ourselves, but, you know, there was the language barrier that made that impossible a lot of times.

MBR (b)(7)(C): Thank you very much, (b)(7)(C).

WIT: Yes, sir.

SRMBR: (b)(7)(C) this is (b)(7)(C).

Questions by the SRMBR:

Q. Just got one question for you. You mentioned that you would not have used the technique of removing the Iraqis outer garments as a deterrent to keep them from coming back into the ASP.

I'd just like you to explain that as to why you wouldn't use that technique.
A. Well, sir, I think that I probably would have attempted to transport them to a different organization, either to Army MPs, the Iraqi police or, you know, the counterintelligence people because, you know, there was just a lot of unknowns. There is things I am not going to be able to understand that these people are trying to tell me or, you know, that we can, you know, we can make

understood to them. So, you know, I probably wouldn't have used that just because I thought I would have considered it to be a waste of my time where I had, you know, other responsibilities, administratively and operationally, where my time was of better use of.

And in that specific incident, of course a large number of people had seen these guys brought in. I happened to look outside and see these guys. I realized that, hey, those were the guys that we picked up this morning, the same guys; but other than that, I had some other administrative things I needed to take care of, so I left because there was a lot of people out there. Was it an effective deterrent, maybe, you know. I never saw those Iraqis again, but, you know, probably would have just handed them over to the MPs where they could have taken the time and effort to make a bigger impact than what actually occurred.

SRMBR: Okay. Thank you very much. (b)(7)(C)

Do we have any questions by counsel?

REC: No, sir.

CCFR: No, sir.

SRMBR: Okay. That's it. Thanks a lot.

You can go ahead and dismiss (b)(7)(C)

REC: (b)(7)(C), we have no further questions for you but thank you for your testimony today.

WIT: Okay, thank you, ma'am, any time.

The witness was excused from telephonic testimony:

CCFR: Sir, at this time, we'd like to call (b)(7)(C).

SRMBR: Okay.

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

DIRECT EXAMINATION

Questions by the Recorder:

Q. Sir, if you would, state your name for the record and spell your last name.

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

Q. I have to ask a few preliminary questions as the recorder.

Are you in the active component or reserve?

A. Active duty.

Q. What is your billet and present duty station?

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

CCFR: Okay. Good afternoon (b)(7)(C)

WIT: Good afternoon.

Questions by the civilian counsel:

Q. If you would, please just give a brief introduction of your military background.

A. Okay. I came into the Marine Corps in 1991 OCS, TBS, IOC 3-6. Spent three years there, was in

(b)(7)(C)

Q. And when did you meet (b)(7)(C)?

A. I met (b)(7)(C) I believe, late Summer of 2002.

Q. And your meeting of him was in relation to him potentially joining (b)(7)(C). Correct?

A. As I recall, he called me on the phone several times and we had had a couple of conversations and then he came in to meet me.

Q. Okay. Explain how (b)(7)(C) got onboard with

- (b)(7)(C)
- A. Like I said, we had several phone conversations, I don't remember the exact number or the dates. He came in for a meeting. I was very impressed with (b)(7)(C) right off the bat. (b)(7)(C) was very well spoken, well read, Military history and things of this nature and certainly looking at a cross-section of reserve officers, I was impressed with (b)(7)(C).
- Q. And that impression is based upon comparison of other reserve officers you worked with?
- A. Correct.
- Q. And, at the time that (b)(7)(C) interviewed to come aboard, you understood he was a communications officer?
- A. Correct.
- Q. And he was interviewing for an infantry officer's billet?
- A. That is also correct, yes.
- Q. What thoughts went through your mind about that?
- A. I was glad to have him aboard in a reserve infantry company, throughout the Battalion really mismatched MOSs are very common. In fact, I don't have right now -- I don't have a single infantry officer who is an infantry officer on active duty that have gone to the Reserve Infantry Officer's Course since coming on active duty, but they are all from various backgrounds.
- Q. So the fact that he was a mismatch --
- A. Was not at all unusual.
- Q. At the time of the interview, what was your understanding of (b)(7)(C) potential involvement with OIF?
- A. We were leaning forward to mobilization at that time.
- Q. Did you have a discussion with (b)(7)(C) about that?
- A. I'm sure we did discuss it during some of our meetings together. To what degree, I don't recall.
- Q. And at some point, (b)(7)(C) got activated. Right?

- A. Correct.
- Q. And you got to see (b)(7)(C) in action on a daily basis?
- A. Initially, yes. In fact, when he joined the unit, I think it was in the Fall, maybe October, I don't remember the exact dates once again, to make up a set year, he drilled almost full time for a month. So he was working there in the office with me in (b)(7)(C) where I observed him daily. He was kind of performing duties as my XO.
- Q. And what were your observations of his skills and his abilities at this point?
- A. Once again, very positive, really required very little supervision, a lot of initiative, and did everything I asked him.
- Q. And did you have a chance to observe (b)(7)(C) working to learn his new trade?
- A. Absolutely, he was always asking for manuals. He was the heavy machine gun's platoon commander, machine gun, vehicle capabilities, things of this nature. He worked very hard in that month and the months proceeding mobilization to learn the trade and prepare himself for mobilization.
- Q. And (b)(7)(C) did not have a chance to go to Reserve Infantry Officer's Course; did he?
- A. Correct. Not in the short time that he was there, there was not an opportunity for him to do that.
- Q. Okay. Were you impressed with his efforts in trying to learn his skills and get himself as ready as he could?
- A. Absolutely.
- Q. And in seeing his work ethic and compared to the other company grade officers that were there at the Battalion, what were your thoughts in comparing (b)(7)(C) to them?
- A. I'd say on the average, he was quite a bit more motivated. And, once again, he showed a lot of initiative in preparing himself through studying various publications and preparing for his duties.
- Q. And did you have a chance to see (b)(7)(C) interact with his Marines?

- A. Yes, I did. And I thought their reaction to him was very positive from the get go. There was a little bit of friction between he and his platoon sergeant, which in looking in the perspective that it was, that platoon sergeant had been the platoon commander of that platoon for several years as a (b)(7)(C) (b)(7)(C) and was -- probably assumed a certain ownership with the platoon and closeness with the Marines. And having someone -- I don't think it mattered it (b)(7)(C). If it was anybody coming in as a new platoon commander, there would have been a natural little bit of friction there, but I don't think that was anything that contributed to (b)(7)(C).
- Q. And that was particularly so because everybody knew that (b)(7)(C) would be heading into war?
- A. I think that might have accentuated it slightly, yes.
- Q. And as the I&I, you have a special responsibility to ensure that the interaction and the efforts of the officers to reserve offices there, are doing their job and, you know, leading Marines and being Marines. Right?
- A. Yes.
- Q. And what observations and what thoughts did you have about the way and manner in which (b)(7)(C) was preparing his Marines for combat?
- A. Well, I thought he was doing very well. And when we got to Iraq, I only had one time to work with (b)(7)(C) tactically in Iraq, and that was our first movement from Kuwait to Iraq. We had a 75 vehicle convoy of all the Battalions wheeled assets. We were taken up North, about 350-miles into Iraq and (b)(7)(C) served as my security officer for that movement. He and his Marines performed superbly. We didn't have a single incident on the way up and he did a great job.
- Q. And did you work closely with (b)(7)(C) as he was prepare for that particular mission?
- A. Absolutely. We put the order together and we were very thorough in briefing. We wanted to let the Marines know this was the real deal and not just another drill, so our issuing of orders and briefing, everything was very thorough and (b)(7)(C) participated in that also.

- Q. And did you, did you consider his efforts to be certainly commensurate with his grade or above?
- A. Certainly.
- Q. All right. Now, once you get into -- and sort of backing track here -- and taking in a snap shot a couple of months before you were in Iraq and a couple of months in Iraq, having been in (b)(7)(C) (b)(7)(C) can you, can you talk a little bit about some of the internal problems which existed in (b)(7)(C)?
- A. Sure. We suffered from a shortage of staff NCOs. Typically, we rate eight at the (b)(7)(C) and we would have anywhere usually, from two to four staff NCOs, so there was always a gap between Majors and Captains and down to the NCO level. So, it was our problem. There's also problems in an infantry company, various types of personnel turnover, things of this nature, but those things are natural and they are overcome.
- Q. Did -- during the time in the early portion of Iraq, were you aware of whether (b)(7)(C) had problems with (b)(7)(C)?
- A. I was aware of that, yes.
- Q. Now, during the time that (b)(7)(C) was in Iraq, you were assigned to a different area of operations with Battalion. Right?
- A. Yes.
- Q. What were your duties in that context?
- A. On the way over and once we got into Iraq, I was the (b)(7)(C) for the battalion. And once the major hostilities ceased, I was assigned to training Iraqi security forces in Al Kut, which is the same city that the Battalion was at. I was on my own with several Marines working with me.
- Q. And this was towards -- this is in the July timeframe?
- A. It was actually, we started recruiting in early June but we probably didn't get training up until about the end of June, 1 July.
- Q. Okay. Can you talk a little bit about what this program was and what it was supposed to accomplish?

- A. Essentially, I was tasked with creating and training a Battalion sized unit of Iraqi Security Forces for use in the Wassi province, which included recruiting, training, and then deployment throughout the province at all the government facilities and municipalities throughout the province.
- Q. Now, at some point while you were in Iraq, you became aware that (b)(7)(C) had been NJP'd and relieved from his job. Right?
- A. Correct.
- Q. And at some point, did you seek to, did you seek him out or invite him to work for you on training the FP --
- A. FPS, yes.
- Q. FPS.
- A. I did. It was initially, I think, after his relief, he was assigned to work in the 2 shop under (b)(7)(C) (b)(7)(C) who was another one of the (b)(7)(C) who was serving as Battalion (b)(7)(C). And I asked him -- he and I were good friends being fellow (b)(7)(C) and I knew that his workload and the amount of work he probably had for (b)(7)(C) would have been minimal, and so I approached him about possibly getting (b)(7)(C) to work for me.
- Q. Were you interested in having his talents that you had been familiar with being a part of your team?
- A. Absolutely.
- Q. And what was it that you thought he could add and contribute to your effort?
- A. Well, I think (b)(7)(C) -- once again, on the average looking at a lot of the reserve officers who were available to assist me -- was the most infantryman like in his kind of outlook on things. He was a tough guy, physical fit guy, very confident. I could give him a task and I know he would go out and do it and get it done. So, I never had a problem with what he did for me.
- Q. Now, I know you weren't involved in (b)(7)(C) business when the problems occurred with the checkpoint and this detainee thing, but through the grapevine, you became aware of that. Right?
- A. I did. And it was not until I heard that (b)(7)(C) was

going to be relieved that there was an investigation pending.

- Q. And you were one of the officers who volunteered to speak up, who spoke on (b)(7)(C) behalf at the NJP. Correct?
- A. Correct.
- Q. Did you feel that you had much of an opportunity to talk about (b)(7)(C) traits during that process?
- A. Probably not in the detail that I would have liked.
- Q. Why is that?
- A. I'm not sure exactly.
- Q. Did the General limit what he wanted you or limit the amount of information that he made available for you to provide?
- A. I think he, intentionally or unintentionally, by the questions that he asked, that was the limit of it.
- Q. Because you were familiar with the fact that he had been relieved, you understood that he had been in trouble as a result of conduct towards Iraqis?
- A. Yes, yes.
- Q. Did you have any concerns in your mind in light of that, having him work for you with these Iraqis that you were training to be police officers?
- A. Absolutely not.
- Q. Could you explain why?
- A. Well, I guess, it is kind of a complicated answer. (b)(7)(C) performed well for me. I don't know if it was, perhaps, my particular style or experience or relationship. I knew that I could give him my intent and guidance and that it would be followed. And, really, when I asked him to come work for me, I wasn't really concerned if he had a problem interacting.
- Q. Because of your confidence in your leadership skills?
- A. Right.
- Q. As an I&I, of course, you have a unique role in somewhat evaluating the reserve officers that are

working for you, but did you have some concerns with the leadership that (b)(7)(C) had been providing at (b)(7)(C)?

A.

Yes.

Q.

Could you elaborate on that?

A.

I can. He was an adjutant on active duty and spent some time in the reserves, I think, with a track unit and had never really -- other than being a platoon commander -- a drilling platoon commander, never really had any substantial leadership experience. At the time, he was a platoon commander, certainly at (b)(7)(C) he had a very, very experienced (b)(7)(C) working with the platoon. It was the same (b)(7)(C) that was (b)(7)(C) platoon sergeant. Very competent, very capable which, in my estimation, probably didn't require him to do a whole heck of a lot.

Q.

What were some other problems that you saw in (b)(7)(C) leadership within (b)(7)(C)?

A.

I think, more than anything, based on his lack of experience in action, maybe taking too long to address certain problems and inability to correct problems in a timely and decisive manner.

Q..

Do you think that (b)(7)(C) is a good officer?

A.

I do. He certainly worked very well for me.

CCFR:

Sir, I don't think I have any other questions for you. Thank you.

WIT:

Okay.

REC:

Good afternoon, sir.

CROSS-EXAMINATION

Questions by the Recorder:

Q.

Sir, as part of your training of Iraqi police force, what was your duties, or their duties, after they were trained?

A.

Once they were trained and we'd established steps of force and unarmed force, various facilities throughout the province that Marines were guarding,

they took over those roles incrementally. It was kind of an essential part of our Battalion leaving Iraq was that we handed that over to the Iraqis.

- Q. Were they put in charge of guarding ASPs?
A. Yes, they were.
- Q. When did they start guarding ASPs, sir?
A. I don't remember exactly. There were three different ASPs that we assumed control of during the month of August.
- Q. Did Iraqis trespass in those ASPs?
A. Absolutely.
- Q. In August?
A. Yes, everyday. It was not unique.
- Q. Okay. How did you process those Iraqis who trespassed?
A. We had established a guard force at each of the ASPs and they didn't have vehicles of their own. They were on foot, so when they caught trespassers, they would collect them up, we would make rounds to all the various sites during the day and when they had detainees for us, we would pick them up and take them to the police headquarters that was nearest the ASP in question.
- Q. Ever have a repeat offender come back over and over again?
A. All the time.
- Q. Did you ever -- did any of the Iraqi police force ever strip down any of these Iraqi offenders?
A. No.
- Q. Did they ever, when they had possessions or personal belongings, burn their personal belongings?
A. No.
- Q. Why is that?
A. Well, I don't think you would see that kind of interaction between Iraqis. Most of them knew each other in Al Kut. It was like a little big city. It was fairly sizable, but everyone seemed to know someone who knew someone. So, the chances of reprisals or things of this nature, they usually

handle each other as delicately as possible in situations like that so they wouldn't come back the next day with a gun.

Q. How about as a Marine, would you have advised (b)(7)(C) or condoned him in his actions of having his Marines strip down Iraqis?

A. I would not have, no.

Q. How about burning Iraqi's personal belongings even if they did have bugs on them?

A. I mean, generally speaking, I would say no, but I wasn't there, I don't know the situation, the specifics. I know kind of generally what happened, but generally speaking, I wouldn't have probably done that.

REC: Nothing further, sir. Thank you.

SRMBR: Okay.

MBR (b)(7)(C): Well, you just answered on of my questions, so I won't go there

EXAMINATION BY THE BOARD

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

Q. In the amount of time that you have been exposed to (b)(7)(C), would you say that his leadership style and leadership traits -- you characterized him as being the most infantry like of all the platoon commanders you had in the unit.

A. Well, sir -- and I haven't had a chance to talk to (b)(7)(C) a whole lot since we have been back, so it's a difficult question to answer. But I would say this -- and you probably know the answer having listened to the testimony today. If (b)(7)(C) has showed an acceptance for responsibility for what he did and was incorrect, I would certainly agree that he should be retained.

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

SRMBR: Before we go, we missed the redirect. Did you have anything else before we --

CCFR: I did not have anything else further, sir.

SRMBR: Thank you.

(b)(7)(C)

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

- Q. Good afternoon. Did you notice anything different in his behavior or leadership abilities after the incident when he came to you in FBS as opposed to before you deployed?
- A. Sir, I did not. When I saw him at the airfield on a few occasions before he came to work for me, as any officer in his situation, he was a little bit down, but he seemed to get right back into the swing of things as soon as he came to work for me.
- Q. If you could address for me the Battalion commander's involvement in his role as the leader of the Battalion as well as in the handling of this situation, how it went the way it did and is this the only way it could have gone.
- A. Sir, I don't know if this is the only way it could have gone. I think it's probably something that may have been able to be handled at the Battalion level, but it got very high visibility very quickly. The Colonel's involvement in the Battalion was largely limited because of his duties as the governor of the Province. The amount of time that we saw him, at the Battalion CP -- and I wasn't there that often myself -- but he would typically be there at the staff meeting in the morning and at the end of day, he would be there. But most of the day would be spent out doing his provincial duties.
- Q. The last question I have is at IOC, how detailed and involved can you explain the Law of Land Warfare and POW handling and detainee handling, how big is that package at IOC?
- A. Well, sir, I don't recall exactly or even more specifically, the package. I know that, yeah, we were all instructed on it. It's something that, I guess -- I think, I personally have a natural sense for it -- can look at a situation whether it's

really my instincts, will tell me that it's probably even if it's along the line, I'll go the right way. I can make a decision in that situation. It's a difficult situation. It's difficult to look through eyes here in New Orleans. If you are not there on the ground facing those frustrations in the heat with those same guys day after day coming back to steal ordnance and the same guys you are rounding up and, not to justify what (b)(7)(C) did, but it's a difficult situation SASO operations are one of the most difficult situations for an infantryman to be in.

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

SRMBR: Okay. I have a couple of questions.

WIT: Yes, sir.

Questions by the SRMBR:

- Q. Who did you consult before joining (b)(7)(C) to the unit? Did you talk to (b)(7)(C)?
- A. Yes, sir, I did. I think I even had a conversation with the Battalion commander.
- Q. Did you talk to him on the phone?
- A. Yes, sir. I told him I had a perspective officer to join. Told him about his background, that he had been an academy grad and things of this nature. I was very impressed by him and they were very happy to have him. I don't know that the Battalion commander got a chance to meet (b)(7)(C) before he was joined, but I'm sure he did shortly after. He's local --
- Q. Did (b)(7)(C) ?
- A. Yes, (b)(7)(C) did.
- Q. He did?
- A. As far as I recall.
- Q. Okay. Just from your perspective, what was the relationship between (b)(7)(C) and (b)(7)(C) (b)(7)(C)?
- A. I think, sir, initially they had a good relationship. Knowing (b)(7)(C), like I said, he is a very aggressive gung ho type of guy and one of those

guys that's either, follow me or get the hell of out of my way. And I think (b)(7)(C) hesitation or lack of guidance -- (b)(7)(C) was a platoon commander and lead his Marines.

Q. But its fair to say that the gung ho nature of (b)(7)(C) would cause friction with the more laid back, apparently more laid back, (b)(7)(C).
A. Sir, I think that is probably fair to say.

Q. Okay.
A. Yes, sir.

SRMBR: That's all the questions I have.

Does either counsel have anymore questions?

REC: I have no questions, sir.

CCFR: Sir, I apologize. I think I do have a few more.

RECROSS-EXAMINATION

Questions by the civilian counsel:

Q. Do you recall -- going back to when (b)(7)(C) joined the FBS, did you have any interaction with the Battalion XO concerning (b)(7)(C) while working for you?
A. No. Conversations pertaining to really what he had done other than just letting him know that, nobody ever actually gave me permission and said, here, you can have (b)(7)(C). I just pretty much went up, (b)(7)(C) (b)(7)(C) said he didn't really need him, I told the XO, he doesn't need him, I'm going to take him.

Q. So you had communicated to (b)(7)(C) ?
A. Yes.

Q. And did (b)(7)(C) at that time express any concern that he had to you?
A. He said, well, do you feel comfortable with that based on the nature. I said absolutely.

Q. Did he indicate to you that he was angry at all?
A. At me for asking or --

Q. You for asking?
A. No he didn't. We're good friends.

CCFR: Sir, thank you.

SRMBR: Okay. Thank you very much.

The witness was excused from telephonic testimony.

CCFR: Sir, we'll call our next witness, which is (b)(7)(C)
(b)(7)(C).

SRMBR: Yes.

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

DIRECT EXAMINATION

Questions by the Recorder:

Q. If you will, state your name and spell your last name?
A. (b)(7)(C), (b)(7)(C).
Q. Are you a member of the USMCR?
A. Yes, I am.
Q. What is your billet and duty station in the USMCR?
A. I am the (b)(7)(C) of (b)(7)(C) and I'm a (b)(7)(C).

Questions by the civilian counsel:

Q. Good afternoon, (b)(7)(C). Would you please give a brief introduction about your military background to the members?

A.

(b)(7)(C)

Q. You are the platoon commander for what?

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

Q. Do you know (b)(7)(C) ?

- A. I do.
- Q. How did you get to know and meet (b)(7)(C)?
- A. I met (b)(7)(C) when he joined the unit in the Fall of 2002 and we served together during Operation Iraqi Freedom.
- Q. In the time that you have known him, have you developed any opinions about (b)(7)(C) as an officer?
- A. We developed a repoir during the workups for that.
- Q. What are you comments and thoughts about (b)(7)(C) (b)(7)(C) as a Marine Corps officer?
- A. Professional, conscientious, intelligent, well rounded.
- Q. Did he seem to work hard?
- A. He did. He worked very hard to learn his billet as a new platoon commander for (b)(7)(C).
- Q. Did you get a chance to work with him as a peer and see how he ran his platoon?
- A. Limitedly with his platoon, but I did observe him as, in the capacity of staff meetings and planning.
- Q. Okay. And did it seem to you that (b)(7)(C) was making progress in understanding the infantry world?
- A. (b)(7)(C) made a very concerted effort to learn his MOS, to learn his platoon, and I think he worked very hard at that.
- Q. You mentioned a comment that he is a very conscientious person?
- A. Yes.
- Q. What do you base that on?
- A. Conversations. Him wanting to study tactics, develop plans, and to know his people.
- Q. Okay. Did you ever get a chance to see (b)(7)(C) interact with (b)(7)(C)?
- A. Yeah. He was our company commander.
- Q. Did you come up with any opinions as to what the relationship was like between (b)(7)(C) and (b)(7)(C)?

A. At what point?

Q. At any point.

A. Yeah.

Q. Okay. Did you have a concern that (b)(7)(C) didn't like (b)(7)(C)?

A. I don't know if he disliked (b)(7)(C). He never told me that he disliked (b)(7)(C). So I didn't get any feelings that it was anything personally against him that he just didn't like him.

Q. Did you have any observation that it seemed like there was a good relationship there?

A. In the beginning, I would say, yes.

Q. Did you notice if they changed at all as you got into Iraq?

A. Towards the end of our tour, yes.

Q. Okay. Towards the end, what was it you observed concerning that relationship?

A. Friction.

Q. Over what types of things?

A. I guess that we were looking for a little stronger stance from the commanding Officer so it was a little strain between the commander and his platoon commanders.

Q. You say platoon commanders plurally. Do you put yourself in that group?

A. I do.

Q. Did you have some frustrations with (b)(7)(C) because of a lack of guidance?

A. I did.

Q. Did you feel that your relationship was strained with (b)(7)(C) because of what you felt was some minor guidance.

A. I did.

Q. Was there ever a time in which (b)(7)(C) had somehow restricted you to, you know, the company vicinity or something like that?

A. I was ordered not to patrol with my platoon any longer for a while.

Q. He ordered you not to patrol with your platoon?
A. He did.

Q. And was that like a disciplinary type of thing?
A. I think so.

Q. So what were you supposed to do?
A. I didn't have any guidance on that, I don't know.

Q. So who was leading your platoon?
A. Nobody. Well, I was still involved with my platoon, I just couldn't patrol with them.

Q. And that was (b)(7)(C) call?
A. Yes.

Q. What did you think of that?
A. Well, personally, I didn't like it but professionally I had to obey it.

Q. Did you think that was potentially something that like warranted requesting mast or going to the Battalion?
A. Not at that time.

Q. At some point later?
A. But I didn't have to, it probably would have warranted that, sure, but I didn't have to. He relaxed that.

Q. Eventually?
A. Eventually, sure.

Q. Can we talk a little bit about the incident that happened between you and (b)(7)(C)?
A. Okay.

Q. What happened?
A. You, Gentlemen, want to hear that?

SRMBR: He asked.

WIT: Where would you like me to begin because that is a pretty lengthy story?

Questions by the civilian counsel continued:

Q. My understanding is that there was an incident in

A. which there was fight between the two of you.
Okay. You want me to pick up there?

Q. Please.

A. I guess what's relevant to this, (b)(7)(C) I mean, as I was -- the commanding officer went on a raid, left me in charge of the company to move from one position to the next. I had specific orders from the company as a staff, we all developed a plan of action and this is how I wanted it to go and the following day, the plan was not executed very well. We got to our new position, (b)(7)(C) being the (b)(7)(C) platoon commander, and I went to the tops of different roofs, different positions deciding where we should place the machine guns, without making any final decisions; but just part of the planning process.

(b)(7)(C) was irate when we came back down from the roof tops and he pulled me, asked me to come outside so he could talk to me. Went outside and started to curse at me and counsel me like a PFC. So that's --

Q. Was this in front of the rest of the Marines?

A. It was.

Q. And how did you respond?

A. I told him to calm down and we could go away from the area and talk about it and he said "F" you. So I pushed him and I told him he was relieved, pack his stuff, he was going to the Sergeant Major, and he could sit and wait there until the CO comes back.

Q. When the CO came back, did he get reinstated?

A. He did.

Q. And whose call was it to reinstate him?

A. I assumed the company commander's.

Q. Which would be (b)(7)(C) ?

A. Yes.

Q. (b)(7)(C). I don't have any other -- oh, I do. Knowing and having experienced and working with (b)(7)(C) is he somebody you would go back to combat with?

A. Sure, I would.

Q. You have any hesitation?
A. No.

CCFR: Thank you.

CROSS-EXAMINATION

Questions by the Recorder:

Q. Were you on emergency leave on the dates of the incidences that we are talking about at this BOI in late June?
A. Yes.

Q. So, you weren't present when these things happened?
A. That's correct.

Q. But would you agree with me that being an officer of Marines is a privilege?
A. Yes.

Q. That is something that the individual officer has responsibility and accountability for?
A. Yes.

Q. And that whatever else is going on with that officer, that that officer still has a duty to do his or her duties?
A. Certainly.

REC: Thank you.

SRMBR: Okay. Questions from the board members.

MBR (b)(7)(C): Okay (b)(7)(C), I'm (b)(7)(C)
(b)(7)(C)

EXAMINATION BY THE BOARD

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

Q. First thing I want to ask you is, you said you went to IOC. The full class or the short class?
A. The short class in 2002.

- Q. Okay. In during the work ups -- and I have asked this question to several of the other witnesses -- did you or any of the Marines in the unit receive any specific training on the handling of detainees prior to the deployment or during deployment?
- A. The training we received was just the Rules of Engagement brief.
- Q. ROE and how to handle EPW?
- A. Not specifically handing EPWs, but the ROE.
- Q. Okay. Just the ROE itself. Okay. (b)(7)(C) ordered you not to go on patrol with your unit.
- A. Did he give you a rationale as to why? He told me I was too close to my platoon. (b)(7)(C) and I went to the command, actually to the Executive Officer, the Battalion for guidance and I think that upset him, so that was maybe part of the punishment. Although not specifically said, I just took it as, roger that, sir. After about a week and a half, that went away.
- Q. Okay. This fight with the (b)(7)(C), you believe that (b)(7)(C) reinstated the (b)(7)(C) (b)(7)(C)?
- A. Sir, it could have been the Battalion commander, it could have been (b)(7)(C). I'm not really sure.
- Q. Were you counselled as to the fight itself?
- A. Yes, sir.
- Q. And in that counseling, I mean, what came out of that?
- A. For me to stay out of company affairs?
- Q. I'm sorry. Say that again?
- A. For me to stay out of company affairs, company business, and that was it as far as my reprimand.
- Q. But the fight was because you and (b)(7)(C) went up and did your site survey in your planning?
- A. Yes, sir.
- Q. And the (b)(7)(C) didn't think that was the right thing to do?
- A. He thought that was his job and he was upset that he was not included. Actually, he had developed his

own plan, and I think he communicated to (b)(7)(C) (b)(7)(C) about their specific plan, which I was not privied to them doing a site survey. I was not privied to any plan they had. So he became upset that I was developing a new plan, without -- and acting on any plan, he became so upset to where he had to say something about it. But the way it happened was wrong. So we, unfortunately had a little scuffle in front of a handful of Marines.

Q. Okay. So (b)(7)(C) coming back to the unit. Was it ever explained to you by (b)(7)(C) or the XO why he was reinstated?

A. There was a big push by the Sergeant Major to make things work out for (b)(7)(C) so.

Q. But they didn't ever say why? Was it a shortage of staff NCO leadership, good old boy network?

A. No, sir, I wasn't privied to that.

Q. So no one gave you a specific reason other than, just work it out?

A. Yes, sir.

Q. Do you have an additional 0302 MOS or are you just currently in an OJT status?

A. Yes, sir.

Q. Which one?

A. It's formally been changed 0302, but I was a 6002 up until -- in the books, it was just recently changed.

Q. Okay.

A. But I had the two years of OJT, 0302, and the school in 2002.

Q. Okay. So your elevation to (b)(7)(C) ?

A. Is recent, sir.

Q. How resent?

A. January, sir.

Q. Okay. And the CO doesn't have an issue with that?

A. As (b)(7)(C) ?

Q. Yeah.

A. No, sir. He appointed me (b)(7)(C)

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

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

WIT: Yes, sir.

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

Q. For the months of May and June, how often did you interact with (b)(7)(C) regarding mission tactics and mission responsibilities that each of you had?

A. As peers, everyday.

Q. And did you have repeat infiltrators in your areas that you had to deal with?

A. I never pulled any ASP duty, I did a lot of patrolling.

Q. You discussed handling strategies and how to handle the Iraqis in whatever different aspects you said you had to deal with?

A. Not specifically with my peers, no, sir.

MBR (b)(7)(C) : I have no further questions. Thanks.

SRMBR: I have no questions.

Questions by the counsel?

REC: I just have a follow up question on one of (b)(7)(C) (b)(7)(C) questions, sir.

SRMBR: Okay.

RECROSS-EXAMINATION

Questions by the Recorder:

Q. (b)(7)(C) I'm going to show you Respondent's Exhibit 10 -- Recorder's Exhibit 10. It's the ROEs for 1st Marine Division. You mentioned was training of the ROEs. Is this that training, if you recall? Have you seen that document?

A. Not that specific document, but I have -- we had crisp sheets we used.

Q. Okay. Were the things that are mentioned in this document, was that the ROE training that you had been given in Kuwait?

A. Yes, it is.

Q. Okay. And this is prior -- obviously that was prior to you going into Iraq?

A. Yes.

REC: Okay. Thank you.

SRMBR: Okay. Any other questions?

CCFR: Yes, sir.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Q. (b)(7)(C), when you were told -- after (b)(7)(C) (b)(7)(C) came back from this incident, you were told to stay out of company business. What did you understand that to mean?

A. Ordered me not to act as one of the staff members, to stay as a platoon commander. Although when I was told not to actually patrol with my platoon, that I was too close, I received that as a punishment for the fight that incurred that cost (b)(7)(C) problems with the Battalion commander. So I didn't argue the point, but I was disappointed in that call, but it's his company.

Q. Were you ever present in a situation where (b)(7)(C) (b)(7)(C) had told you and (b)(7)(C) that you could receive orders from either First Sergeant or (b)(7)(C) for the company?

A. Did I ever hear that?

Q. Yeah.

A. No.

CCFR: I have no further questions, sir.

SRMBR: Okay. Anything? Okay.

Thank you, (b)(7)(C), you are dismissed.

WIT: Yes, sir.

The witness was excused and exited the courtroom.

CCFR: Do you want to take a quick break here?

SRMBR: Who's your next witness?

CCFR: Yes, sir. (b)(7)(C)

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

DIRECT EXAMINATION

Questions by the Recorder:

Q. A couple of preliminary questions. Would you state your name for the record and spell your last name?

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

Q. Are you a regular Marine, active duty Marine?

A. Yes, ma'am.

Q. What is your billet and present duty station?

A. I am (b)(7)(C), I'm the (b)(7)(C) for that company.

REC: Thank you.

Questions by the civilian counsel:

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

If you would, please introduce yourself to the members and give a little bit of a background as to your military experience and history. You may sit, by the way, too.

A. Gentlemen, I am (b)(7)(C). I have been in for approximately 19 years. I spent a three year tour

(b)(7)(C)

Q. Okay. Do you know (b)(7)(C) ?

A. Yes, sir.

Q. And when was it you first met him?

A. I think it was around November or December timeframe 2002.

Q. Okay. And this was when he was drilling at (b)(7)(C). Right?

A. Yes, sir.

Q. And at the time (b)(7)(C) came onboard with (b)(7)(C), what platoon did he go into?

A. The (b)(7)(C) sir.

Q. And who was the platoon commander before?

A. (b)(7)(C)

Q. And are you close with (b)(7)(C) ?

A. Not particularly, sir.

Q. Do you know of him?

A. Yes, sir.

Q. When (b)(7)(C) became platoon commander, do you have any knowledge as to whether (b)(7)(C) (b)(7)(C) was put off, perhaps, by the fact his job had been taken?

A. I could say with reasonable assurance that he was, in fact, put off that his job had been taken and he was like anybody else. I mean, (b)(7)(C) coming in, instituting his changes etcetera, like everybody else, he had some resistance to those changes.

Q. It wasn't just because of (b)(7)(C) as much as being the fact that he was being replaced from his job?

A. Yes, sir. I mean, it would have been too early in the relationship period to be put off by anybody's specific personality, just the fact that he was no longer the man in charge.

Q. And, as a member of the (b)(7)(C), what observations did you have with (b)(7)(C) learning to become an infantry officer?

A. He was pretty diligent. I mean, he came in and asked for the publications and any information I

might have had, (b)(7)(C) platoon operations, (b)(7)(C) (b)(7)(C) platoon operations, and he was trying to assimilate in there as quickly as he could.

Q. You understand he wasn't an 0302?

A. Yes, sir.

Q. Okay. And you headed out to Iraq with (b)(7)(C) Right?

A. Yes, sir.

Q. What was your role when you were over there with (b)(7)(C)?

A. As the (b)(7)(C) at times, I would sort of fill in as the (b)(7)(C) in a limited capacity. At times, I would fill in as the (b)(7)(C), depending on who was available at the time.

Q. In your responsibilities in the (b)(7)(C), did you have any knowledge about the responsibilities at (b)(7)(C) -- had some ASPs in Al Kut?

A. Yes, sir.

Q. And what understanding did you have about the threat situation with those ASPs?

A. The biggest threat being the unexploded ordnance and some of the ordnance out there being -- it had been contaminated by a lot of the Iraqi looters and thieves that were out there. They had taken it out of the original packaging, they just got propellant all over the fricken place, you know. God only knows what they might have done with some of system munitions, i.e., the fuses, the things like that, to go along with the artillery shells and everything else that was out there.

Q. Did you ever have any concerns while you were there that some of this unexploded ordnance could have fallen into the hands of people who were trying to hurt our Marines and soldiers?

A. Yes, sir. I mean, that was always a concern.

Q. That was always your concern or always the Battalion's concern?

A. I would think that would have to be everybody out there that was guarding that ASP's concern. I mean, there was, we were in a fair proximity to Iran. There were some Iranian agents operating in the Al

Kut area that we knew of as well as just there may have well been some disgruntled Iraqis that -- I mean, we took fire probably not on a daily basis, but probably every three, four, five days we'd take fire. Nothing of any large caliber or anything, but you would feel overtly threatened by it, but enough to give you the sense that those people didn't necessarily like us there.

- Q. You were aware that the (S)(7)(C) position was the barracks formerly used by the Saddam Fedayeen?
- A. Yes, sir.
- Q. And you understood that Saddam Fedayeen to be some pretty bad people?
- A. Yes, sir.
- Q. And one of the ASPs was an ASP for the Iraqi Republican Guard?
- A. Yes, sir.
- Q. Was this commonly understood for the battalion staff?
- A. I would think so. I mean, I don't know, at least the Republican Guard ASP. I mean, everybody had to have known that. It was never -- I mean, I wouldn't say it was published in an order, that, oh, this is a Republican Guard, but the Republican Guard compound was here and the ASP was right next to it. It had to be -- the connection would not have been very hard to make.
- Q. Did anyone ever discuss a concern that possibly some of these former members of Saddam Fedayeen who were using the old (S)(7)(C) facility and some of the members of the Iraqi Republican Guard were still out there living in Al Kut?
- A. We knew they were out there. Of course, they didn't go anywhere. I mean, they just took their uniforms off and blended in with the civilian population. Threw down their weapons or whatever. That was the whole purpose of the civilian defense force that we were trying to put together, the whole nine yards.
- Q. You had this understanding when you were over in Iraq?
- A. Yes, sir.

Q. Do you recall having any discussion with anyone anybody in the Battalion staff about that?
A. Not in particular, per se. I mean, I understood the vetting process that they were undergoing trying to find suitable members for the new civil service they were trying to elect, so on and so forth.

SRMBR: Where are you going with this, counsel?

CCFR: I'm going to move on, sir.

SRMBR: I was kind of losing your train, there.

CCFR: I'm sorry. Yes, sir.

Questions by the civilian counsel continued:

Q. (b)(7)(C), while you were over -- while you were in operations, did you ever become aware of a situation involving the (b)(7)(C) where they had to leave an antenna behind?
A. Yes, sir.

Q. What was your understanding about that situation?
A. Well, basically, pretty much without warning, the large ammunition supply point that would have been next to the Republican Guard area exploded. Whether that was caused by someone in the ASP or whether it was just caused by the ordnance itself being improperly stored and being very old and it being rather hot out, it just detonated, I don't know. But it was a rather large blast, probably in excess of five thousand pounds of explosives going off at once. The Marines that were out there guarding that ASP pulled back and began to evacuate that area. So in their haste to basically get out of the danger zone, they left some equipment back their at the ASP.

Q. Were you aware that (b)(7)(C) ordered them not to go back there to retrieve it?

A. Not specifically, but I know they were not supposed to go probably within 2 or 3,000 meters of that area for at least 24 to 48 hours depending on when the last explosion was.

Q. Where do you come up with that?

A. That was an EOD kind of running policy. They would

not go anywhere near the area within 24 hours after a recent explosion or fire.

- Q. And knowing what you knew about that situation, do you think that was a good move to leave that gear behind and get out of there as fast as they could?
- A. Given the situation, yes, sir. I mean, they did what they needed to do. Okay. You left an antenna and a couple of sleeping bags. It wasn't like you left weapons or any type of harmful ordnance. The antenna, being that we were rather short of them, we certainly would have liked to not left it, but when it comes down to leaving an antenna or possibly risking Marines getting blown up, then we will leave the antenna.
- Q. Would you want to work with (b)(7)(C) again if he was in the Marine Corps?
- A. As a caveat, I think that with a little more infantry training, I think, sure he'd be fine or, you know, working as a comm officer in that something that he was trained up into that capacity, I wouldn't have any reservations with it, sir.
- CCFR: Thank you very much, (b)(7)(C)

CROSS-EXAMINATION

Questions by the Recorder:

- Q. (b)(7)(C), we spoke a day or two ago. Correct?
- A. Yes, ma'am.
- Q. And in that conversation, you mentioned something about the CNN factor?
- A. Yes, ma'am.
- Q. And the concept about us teaching Corporals. The members -- explain what you meant by that, particularly in context of this BOI.
- A. Probably just the fact that on the reserve side, if you compare say an active duty sergeant or an active duty Captain to a reserve Captain, those Marines have been overseas and they have done two or three deployments, they are used to ROEs, their used to working under the microscope, so to speak. So the active duty side gets a lot of training in the ROE,

gets a lot of training in and understands a little better, I think, the whole concept of the tactical Corporal as opposed to the reserve side that doesn't quite see -- as it was phrased, I have heard it phrased one time that they want the citizen soldiers because they bring a level of common sense to the battle field, where as sometimes, you know, the active duty side, there is missions where you are required to stand there and take it whether you believe you should or not.

- Q. We were talking about this in the context of the instances for which we are here today, of (b)(7)(C) (b)(7)(C) had his Marines strip down the Iraqis and burning some of their personal belongings. And I asked if you would have advised on that course of conduct?
- A. Yes, ma'am. My answer was no, I wouldn't have. As far as stripping down the Iraqis that was probably, that was not the right answer or a solution to that problem. As far as burning any of the Iraqis property or anything, to me, it would have -- it posed no value one way or the other. I would have just left it or I would have thrown it back in the truck. I wouldn't have wasted my time or a pack of matches.
- Q. So the burning of the clothing doesn't make any sense to you?
- A. No, ma'am. I wouldn't see the point to it either way.
- Q. (b)(7)(C) seems to argue that the material was lice ridden and were possibly infectious and it could have been a health hazard to his Marines.
- A. Do you have a comment on that?
- Q. Possibly, but then I wouldn't have touched them again.
- Q. Okay. You would have left it in the truck or left it on the side of the road?
- A. Yes, ma'am. I mean, if it posed no value to me, no military value, no intelligence value, I would have just left it.
- Q. And do you know, what are the sanitary conditions in Iraq?

- A. Rather hideous.
- Q. Why do you believe that stripping down the Iraqis was the wrong decision?
- A. I mean, this is a -- as we are all very well -- this is a Muslim's conservative country that dresses their women in their burbas and the whole nine yards. I mean, for them, any sort of public nudity or displays of affection or anything is very offensive to their religion, to their culture, so that's a big no no. The public ridicule, the whole nine yards, that's not the way to go with that. It doesn't win any public favor.
- Q. And you gave the response on direct about whether or not, (b)(7)(C) -- whether you would want to serve with (b)(7)(C) with a caveat?
- A. Yes, ma'am.
- Q. That caveat is either if he's in a different MOS or he gets more training?
- A. Yes, ma'am. I mean, how far out on this limb do I want to climb.
- Q. That's fine. Answer if you like, I don't want to push. I just want to clarify that.
- A. Yes, ma'am. I will qualify that saying that as I served with through the years in several different deployments with many different infantry battalions, these are all regular active duty infantry Battalions with Marines that served in command that that's what they have done for their entire time.

In the Marine reserve community, that is not the case. As we have seen here today, you witness the only officer that comes in here that has a primary infantry MOS is (b)(7)(C). Every other officer under this command, including the company commander, all started out in a different MOS. So there is a difference in the level of experience that can be expected when serving under a reserve command. So, I guess I would qualify my statement with that, is it's different when you are working with people that have grown from boot camp on up doing a profession as opposed to trying to retrain a group of people that have had some training but not the level that you would see on the active duty side.

REC: Okay. I have nothing further.

SRMBR: Okay. Questions from the board, (b)(7)(C)
(b)(7)(C)

EXAMINATION BY THE BOARD

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

- Q. (b)(7)(C), good afternoon.
- A. We don't know each other; do we?
- A. Sir, you have a familiar look, but I couldn't place it.
- Q. It's the haircut, it's got to be the haircut. It could be the shoes.
- A. The OE-34 is compatible with the PRK-113 and the O-117 only, if I'm not mistaken; is that correct? 119, or you could take it, you know, if you have got a vehicle plugged in, you hook it up to the amp and run a bigger antenna, I mean, it's just an antenna.
- Q. Yeah, but it's not common knowledge. If you were somebody out on the street and you just took it, you wouldn't know what to do with that?
- A. I wouldn't think so.
- Q. You said the EOD has had a running policy about everybody staying away 24 to 48 hours, at least two to three clicks away from a blast zone wherever there is ordnance going off.
- A. Yes, sir. Depending on the level. If there is a fire or smaller explosions, you know, the Marines might actually hold their post. But in this case, the EOD had been to some of these magazine areas before, so they knew which ones were okay. This one over here, it's on fire, but small arms or just bags of propellant or something like that, when it blows, it's not going to create a blast zone a thousand meters wide; where some of the other magazines -- I mean, these things were full of artillery shells or whatever. When it went off, it went off.
- Q. So the Republican Guard ASP was one of the bigger ones?

A. Yes, sir.

Q. And when it did, when the rounds started cooking off, it was hazardous?

A. Yes, sir.

Q. And so, in your opinion, the decision to vacate was a sound one?

A. Yes, sir.

Q. Okay.

A. I mean, those Marines, considering their proximity and some of those magazines were within two to three hundred meters of the outside perimeter of the berm. I mean, they were in fairly close proximity.

Q. Okay. In regards to the stripping incident, you said that it was probably not the right answer. And then you also, earlier on, made reference to what is commonly referred to as the CNN effect.

Do you believe that the course of events leading up to where we are today are based on political correctness and the CNN effect or is it just, it was just the wrong thing to do?

A. Perhaps some of both, sir. I mean, if you were in a less conservative country or, say, a European country, hypothetically where they would not look at that quite as harshly. I mean, they weren't stripped fully naked, so there might be other places where you can have somebody marched around in their underwear and that would be acceptable, whereas in the Middle East, that is unacceptable. So, I think it's a little of both.

Q. So did you notice, anywhere within the AOR, the company's AOR, was there any type of local reaction to the striping?

A. Sir, to my knowledge -- I was actually in the states due to a death in the family, so I was not present during the incident, so my knowledge is second or third hand at best; but no, sir, I am unaware of any public outcry or anything like that.

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

SRMBR: (b)(7)(C) ?

- Q. And (b)(7)(C) came back with you?
A. Right. (b)(7)(C) came back with me.
- Q. And around that timeframe, (b)(7)(C) had to leave on emergency leave?
A. That's correct. He was gone on emergency leave for roughly two weeks.
- Q. Now, when he went on emergency leave, was that after the incident he had with the (b)(7)(C)?
A. Yes. His incident with the (b)(7)(C) was right when we made our transition from our initial position, which was right there, all the way to the Saddam Fedayeen headquarters right here. So that was around the 19th or so of May. He went on emergency leave in the latter half of June.
- Q. And where, didn't that, what was your understanding of where that placed you in perspective of your responsibilities in the company?
A. Well, it was a tricky situation. Normally, I would have been very comfortable just perhaps, I thought that, I normally would have thought that I would have been in a XO type position. And to a certain extent, I tried to conduct myself as such. And so, from time to time, I'd go out with (b)(7)(C) platoon or (b)(7)(C) platoon on their foot patrols just to be an observer. But (b)(7)(C) eluded to the fact that he didn't want either Hornsby or myself dealing with any type of company business and that, in essence, if we were out doing a mission, we should follow the directives of whoever was back at headquarters whether that was the (b)(7)(C), the (b)(7)(C), or (b)(7)(C).
- Couple that with the fact that, a lot of the times, I would stay awake for a good half of the night walking the lines or looking through our (b)(7)(C) sites, because we set up a (b)(7)(C) site on the top of the (b)(7)(C) position to look at the dead space around us. And (b)(7)(C) was very happy that I was checking the lines at night and he actually thanked me for it at some point, so I was somewhat confused as to what my role was besides being the (b)(7)(C) platoon commander.
- Q. And, to your knowledge, was there any other officers that were checking the lines at night?
A. No. I was up a lot at night. That's when a lot of

stuff happened, generally from about 1 to 3.
(b)(7)(C) talked about every fourth day or so, we took fire or there was fire in our area. That's very correct. It was almost to that schedule. So I would be awake at those times to see what was going on.

- Q. Now, during this time, had you already instructed one of your sergeants to keep a log on the explosions occurring at the southern ASP?
- A. About halfway through June, it got to a point where the southern ASP would have five to ten explosions a day. You would have everything from 60-millimeter rounds from a mortar go off to a hundred foot flame go into the air and firebursts go off from anti-aircraft rounds that got blown into the air. I saw this myself several times.

And so, since I was very confused on how exactly we were supposed to guard this thing, I had my sergeants starting off with (b)(7)(C) start a log of explosions; the magnitude of the explosion; roughly where in the ASP it was, and then after that was recorded, to contact the Battalion headquarters to let them know.

- Q. Did you ever try to -- at this point when you felt confused about how you were supposed to conduct your security, did you ask (b)(7)(C) for amplification on that?
- A. Yes. I probably asked him maybe two times a week.
- Q. And what was his response to you?
- A. At one point, he told me I asked too many questions and that to just continue doing what I'm doing.
- Q. Did you ever receive any clarification on your mission responsibility?
- A. Yes. The day before I was relieved, I did receive clarification but not from him.

Q. Who then?

A. (b)(7)(C)

- Q. All right. Now, on -- do you remember the incident of June 23rd?
- A. Yes, I do.

Q. How did your day start out?
A. Well, at that point, all three of my (b)(7)(C) sections were out. One section was at the ASP, another sections was down in Al Hay, which is south of Al Kut about halfway to the border. They were assisting one of the line companies down there which was a further mission we picked up about the initial part of June, and another company was on some type of long range patrol.

Q. Okay. And you were located at (b)(7)(C)?
A. That's right. Myself, (b)(7)(C), and (b)(7)(C) those were the only three people left in my platoon at (b)(7)(C).

Q. And this was the new (b)(7)(C) position?
A. That's correct. That was the old Saddam Fedayeen headquarters.

CCFR: And we have, Gentlemen an exhibit as a collection here.

Q. And in the package, was this, explain to the members what this is.

A. Sure. This is, Gentlemen, this is apparently, this is the Saddam Fedayeen symbol. Those are supposed to be the hands of Saddam Hussein and, basically, the sword of the State of Iraq defending Islam.

Q. And this was at the position that you guys were occupying?

A. That's correct. This was the position we were occupying. Along with that, there was a gigantic stone slab about 10 feet high by 5 feet wide that was right across from this. And this, essentially outlined, it was the Saddam Fedayeen headquarters. On the back of the slab, we found out from the special forces people who had this position earlier -- because most of them read Arabic -- that the back of the slab said, "This is Saddam Fedayeen, our duty is to kill all Jews and Americans."

Q. Okay. While you were there at (b)(7)(C) you were aware that (b)(7)(C) were guarding this ASP to the North?

A. Correct.

- Q. And at some point, you make your way up there. How come?
- A. At that point, we were doing a CMR inventory. The Battalion did not do a CMR inventory in 29 Palms before deploying. So, while we were out in Al Kut, they decided we need to count all of our serialized gear, find all our weapons, and make a record of that. And so, myself, (b)(7)(C), and (b)(7)(C) were driving to our different positions and essentially just marrying up serial numbers from the list of serial numbers that I carried with me in my pack to the weapons. There was a vehicle that we, there was a (b)(7)(C) vehicle out in this northern ASP. It was a broken vehicle and -- at any time, we had probably three broken vehicles and to ensure that we could always have four vehicles in the field per (b)(7)(C) team, we would swap out the stuff that was broken and use it as best as we could while motor transport could work on their items. So, we went out there, basically, just to check on the radio and the vehicle serial number of that one out there.
- Q. Now, the time you went up there on June 23rd, was there still ammunition that belonged to (b)(7)(C) (b)(7)(C) stored up there?
- A. That's right. I had some of my 50-caliber, some of my Mark-19 ammo, a lot of 762 ammo. Basically, all my machine gun ammo that wasn't being carried in my vehicles was up in --
- Q. And you say, "mine," you are talking about it was ammunition dedicated to (b)(7)(C) platoon?
- A. That's correct. It was ammunition dedicated to (b)(7)(C) platoon. I'm assuming some of the 762 rounds were also a part of (b)(7)(C) (b)(7)(C) didn't have any 762, but part of (b)(7)(C) because they had three 240-Golfs.
- Q. So you head up to Field Guard ASP, which is what it's referred to, and you meet up with (b)(7)(C) (b)(7)(C)?
- A. That's right.
- Q. And what happens?
- A. I'm checking the equipment with (b)(7)(C) (b)(7)(C) and (b)(7)(C) (b)(7)(C) came up to me. He said, essentially, that he had a difficulty with three Iraqis. He said that he had

captured them two previous times. I took that to mean this was the third time that he had captured them. Apparently, I misunderstood him by his statement, but he captured them at least two times and they were moving in and out of the ASP.

Now, that ASP not only had our ammunition, but it also had Russian ammunition throughout that. He was very frustrated. I saw the way he actually tried to convince these guys not to come back. And after I saw him do that, I thought it would be a good idea that (b)(7)(C) and myself would just take them out of the ASP. (b)(7)(C) and I discussed it for a moment. We knew that, from personal experience and also from listening to our sergeants, that the Al Kut police department would not incarcerate anybody for something like that. I remember taking a prisoner in myself at one point and then seeing him ten minutes later walk out the door.

Q. He was a prisoner for -- you caught him doing what?
A. I believe he -- I'm trying to remember what he did. He was one of the guys captured at the ASP.

Q. So you are interacting with (b)(7)(C) then what happens?
A. Well, we take these gentlemen out, these Iraqis out. I decide I'm not going to take them to the police department and I figured that if I drove them to a point far enough away, that they would probably hitch a ride home. Now this road right here -- actually, gentlemen, would you mind if I get up?

SRMBR: Yeah.

WIT: Okay.

This is Al Kut right here and there is Badrah. This road right here actually starts in Al Kut and goes all the way up to Badrah. Just as kind of a background to this road, I did the first vehicle patrol up to Badrah to check on the Iranian border, which is extremely porous. There were 15 different guard shacks that used to be manned by Iraqi military that were -- only one of those was manned.

So consequently, there was a large number of Iranians moving into this area. And just from a

simple fact, there was a lot of vehicle traffic between and Al Kut. I decided to take these guys about three-miles North of ASP North, drop them off on the road, take off their flex cuffs, and assumed that they would hitch a ride, because I saw four or five trucks on the road at that time and I had also seen other Iraqis hitchhike on this road. I assumed that they would hitch a ride and go home, they didn't.

Q. Okay. Now, did you take anything from them at that point?

A. Yes, we searched them. There was kind of a switchblade folding knife that one of them had. I took that from him as a potential security problem, and I gave that to my sergeant, (b)(7)(C).

Q. Okay. Was there any money that you took from them?

A. No. We looked through their wallets real quick to see if maybe they had some sort of ID card or anything like that, but, no. We left all their money with them, all their personal possessions and we just let them go on the side of the road.

Q. And there was vehicle traffic there?

A. Quite a bit of it, yes.

Q. And was there other individuals standing around there?

A. Where we dropped them off, no, but on several patrols that I went up and down the Badrah road, there were plenty of people hitchhiking. In fact, all throughout the Wasit Province in the middle of the hottest parts of the day, it wouldn't be uncommon to see a gentlemen in his flowing garment that they wore, standing out in the middle of the desert just waiting to hitch a ride.

Q. What was your purpose, what was your intent on doing this?

A. Well, I knew the Iraqi police would let them go and that wouldn't be any type of deterrent. By that same token, I didn't want to beat them, I didn't want to do anything that would inflict any type of physical harm to them. And I was somewhat concerned they might get shot going back into the ASP since they had been captured two or three times already. And I decided that I would take sort of a middle

ground approach and just take them out far enough away from this thing that it would be a pain to walk into it again, but on a road where they could get a ride back into town.

- Q. And, at some point later in that day, did you learn they went back to the ASP again?
- A. That's correct. I learned that the three people went back into that ASP along with a fourth, a new person that apparently picked them up and drove them into it.
- Q. How did you find out about that?
- A. I had gone back to (b)(7)(C) at that point. (b)(7)(C) (b)(7)(C) and I finished that portion of the CMR. (b)(7)(C) came in. I saw him drive in with these people and these Iraqis were essentially gawking at all of our equipment, all of our Marines. One of them just kind of had a strange look on his face like he was enjoying himself. I was surprised. I was surprised that the (b)(7)(C) brought them back into our position.
- Q. Why was that a concern for you?
- A. Well, it was a concern for me because all my (b)(7)(C) vehicles at that point were gone because they were out doing other types of patrolling exercises. But if they were there, they could have found out that I had 15 vehicles in my platoon, they actually saw all the vehicles that we did have there. They saw we had four vehicles. If they were relatively astute, they could have just looked around and seen where our guard positions were. We had them in the corners of the position along with machine gun positions on top. They could have seen how we were armed. Every Iraqi male was very familiar with small arms. Almost all of them owned an AK-47. And so they had a pretty good idea.
- Q. So you were concerned that it was an intelligence breach?
- A. Absolutely.
- Q. Now, did you know (b)(7)(C) was going to come back to (b)(7)(C) with those detainees?
- A. No.
- Q. Did you ask or request (b)(7)(C) to come back

- to (b)(7)(C) with those detainees?
- A. No, no, I did not.
- Q. What was your understanding of (b)(7)(C) as to how they got there or why they got there?
- A. I asked him why he brought them here. I mentioned the fact that you brought them right into the middle of our compound, they could see our Motor T assets and they could size us up if they wanted to. He said that they were going to take them to the police station, that before he took them to the police station, he wanted his Marines to eat chow, eat hot chow.
- Q. All right. So, where were the detainees at this point?
- A. They were quite literally right in the middle of the camp. They were sitting in a truck, they had flex cuffs on but they didn't have any type of bag over their head, they could see everything that was going on. It was a very unsecured situation.
- Q. Were you and your Marines taking care of them at that point, making sure they had water or shade?
- A. Oh, yes. The sun was actually going down at that point. It wasn't that hot out. They were in the shade, the sun was actually very low in the ground or in the horizon. Earlier, (b)(7)(C) had mentioned that he had given them water, given them cigarettes. They basically took care of that for them. And they didn't look like they were really concerned about being in the middle of a Marine Corps post.
- Q. Okay. Now, at some point, a decision has to be made to move them. How did you get involved in that?
- A. Well, the (b)(7)(C) -- excuse me, the (b)(7)(C) (b)(7)(C) decided that he was going to walk them out of the position. I started to go back into my little quarters, the little room I stayed at, and I thought back to videos that I had seen of the Korean War and also World War II with the North Korean people's Army, the Chinese Army, and the Japanese Army. In a lot of those videos, the Marines would strip off the outer garments of the POWs and bring them into the camp and store them like that for extended periods of time. I thought about that for a moment. I knew that if we took them to the police

station, they were definitely going to be let out right away.

At this point, I had thought they had been captured four times, they had at least been captured three times. I was very concerned about the fact that it was (b)(7)(C) ammunition along with old Iraqi ammunition up there.

- Q. That they were trying to get access to?
A. Yeah. They were trying to get access to it. And the tenacity and the sheer audacity these people showed by not even spacing out their raids by a day or two lead me to the conclusion that they would probably end back up there very soon. I thought to myself, how do I get these people to go home. That was the initial thought. How do I get them home. I didn't want to physically harm them in any way. I didn't want to beat them. I had seen one or two of the Marines make this kind of motion at them like they were going to shoot them coming back into the position.

- Q. Not with their guns, with their fingers?
A. With their fingers. One of the NCOs actually said, Bang bang. We will shoot you if you come back in the ASP. I didn't want that to happen. And so I thought, going back to these earlier videos, that one way of ensuring these people go home, is if I take off their outer garments, not their underwear, not their shoes, leave them their money. If I take off their outer garments, they're at least going to have to go home to get on a new set of clothes.

And just that process in itself, would probably make them think twice about going into this or think again about going to this ASP that they had been in four times.

- Q. And, what was the order that you gave?
A. I gave the order to take off their outer garments. If I can refer back to this map? There was a bus station right across the street from (b)(7)(C) that had buses going in and out of it roughly once every half hour. There weren't a whole lot of people in this area at that point.

- Q. And (b)(7)(C) -- let me interrupt you. And,

gentlemen, I apologize, of all the copies that we made of photographs, there appears one that appears to be, that's more relevant, is just the miniaturized one. And why don't you explain to the members -- we'll make this an exhibit.

- A. This is pretty much the front position of (b)(7)(C). This is that large block that says "kill all Jews and Americans" on the back of it. This is one of the barracks blocks right here and this was the barracks block that (b)(7)(C) took them right out to. This is our front berm. This is our side berm, we had a position right here. The machine gun position is on top. Along with a couple of Marines at the front gate, which is located right about here. Now, as you can see, there are some houses right here that on the map would be over here, roughly 600 meters away. There were some houses also behind this. This is a very violent neighborhood. That's roughly 300 meters behind our position. And mainly, where this bus station was, there is a palm grove and a couple of car shops where they did repairs and a limited amount of traffic in that area.

Q. (b)(7)(C) is there anything else you need to show the members on that picture?

A. No.

Q. Okay. So, you gave the order, and what happened next?

- A. (b)(7)(C) and (b)(7)(C) took them to the front gate, they took off their outer garments, the men had T-shirts and boxer shorts or shorts underneath their garments, they had their shoes on. The Marines gave them back their money, we watched them march out the gate. Half of them got on the bus and another one got in a cab and they drove off.

Q. Did you call any sort of a formation to have people see this?

A. No, not at all.

Q. Did you take pictures?

A. No, I did not.

Q. Were you trying to make a display or spectacle of these individuals?

A. No, I was not.

- Q. Was it your intention to humiliate them?
A. No, not to humiliate them.
- Q. Was it your intention to degrade them?
A. No.
- Q. Your intention was to give them a deterrent to not come back into the ASP?
A. To give them a deterrent to not come back in the ASP and also to come up with the only way that I could find out to make them actually go back to their houses.
- Q. Now, after having done that, having had some chance now to reflect, do you think that was the right call to make?
A. At that time, I did. In retrospect, no. I could have probably come up with something else. However, I had seen some Iraqis outside watering, well, trying to water their gardens in boxer shorts on patrols. I saw all sorts of manner of clothing that the males would wear, the women were very conservatively dressed, but I did note that a lot of Iraqi males would just kind of scant around in their boxers from time to time. So I didn't necessarily think that was going to be a humiliation.
- Q. Did you think that you were violating any Marine Corps Order by what you did?
A. No, not at all.
- Q. You know now that some people, (b)(7)(C) considers it a Geneva Code violation?
A. Yes.
- Q. Knowing that, would you ever issue the same order again?
A. Well, being in the situation I'm at right now, no, I would not.
- Q. Do you think you learned a lesson from that?
A. Yes, I certainly did.
- Q. Recognizing the fact that there are some challenging things for you at that particular time and the lack of leadership that was involved, you know, do you recognize now that perhaps you could have gone or should have gone to the police station or somewhere

else to try to find some other mechanism to deal with these detainees?

- A. Well, like I mentioned earlier, I talked to (b)(7)(C) quite a few times on how we have to handle things inside the ASP. While doing that, I mentioned the fact that the police department was basically a revolving door and how are we supposed to deal with that. I couldn't really get any good guidance in that regard, so I kind of had the feeling that I was sort of damned if I do, damned if I don't. I had to make some type of decision. There weren't a lot of options that were open to me. I definitely didn't want to do what some other people suggested, which was to beat them down.

Q. If you were back there again, and you had the same call that you have to make, what would you do?

- A. I have thought about that. I definitely wouldn't strip them down. In this case, I would probably take the ultra conservative choice and drive them to the police station. Actually, no, I wouldn't drive them to the police station, I would drive them to the MPs directly and turn them over to the MPs, explain to them they have been caught four times and hopefully they could deal with it before turning it over to the Iraqi police.

Q. Okay. Now, after this incident occurred, how soon after that did you report what occurred to (b)(7)(C)

- (b)(7)(C)
- A. Well, (b)(7)(C) was at some type of meeting as far as I understood. He came back within an hour after that position -- excuse me, after I made that decision and I reported it to him immediately. My demeanor was not bragging at all. At that point, I did not feel good, I felt as if I was in a catch 22 with these ASPs, especially with an ASP that had some of my own ammunition in it and the company's ammunition. I felt depressed that there was no viable way of handling these people, and I expressed that. I said, sir, I feel as if I was in a catch 22 situation. We caught these guys four times, this is what I did. They were released out the front gate, they had their money back, and they left and didn't come back. I told them they went to the bus station.

Q. And what was (b)(7)(C) response when you

- explained this to him?
- A. Well, this is what I remember and I remember this quite distinctly because I was, quite frankly, surprised. He said, (b)(7)(C) that was extremely stupid. You should have taken them out into the desert, done the same thing to them, said you were Army MPs that way we can have plausible deniability.
- Q. When he said to you "plausible deniability," what did you interpret that to be?
- A. Essentially, that if he wouldn't have known about it, he wouldn't have cared, and now that he knows about it, he might have to do something.
- Q. Did you have any intentions of covering up what you had done?
- A. No. I told him immediately afterwards. In fact, I did it out the front gate, if I wanted to cover it up, I would have done it elsewhere.
- CCFR: All right. Now, Gentlemen, I just want to move this along. We did bring some of these video tapes that are (b)(7)(C) father's possession are the ones he mentioned. They're very small snippets. I'll leave it up to the board's discretion if they want to review that during deliberations. I only do that because it's not untrue that that material exists on there?
- SRMBR: Video tapes of what?
- CCFR: There are video tapes of Marines detaining POWs and stripping them down to their underwear.
- SRMBR: What era?
- CCFR: World War II and Korea, which are both instances after the Geneva convention had been established. And I'll leave it up to the board's discretion.
- REC: Sir, as the government, I would object on the relevance of those videos. I mean, I'm not contesting that he saw those videos. I just don't believe that is relevant in this proceeding. Those are different battles, different wars and that operations are not relevant to what happened in this one.

SRMBR: Well, my question is, you know, was going to be, where did you get the idea, you know, what made you think of that? And, if it's true the idea came from historical videos of Marines in the Korean War and World War II doing that, then that's sufficient for me.

CCFR: And, Gentlemen, for the record on the transcript, one of them is this *Quest of the Korean War: A Time in Hell*, and this one is *Death Tide Tarawa: The Historical Battle Series*, and this other one is from the History Channel, *The Fellowship of Battle*.

SRMBR: Well, we'll just reserve the right to look at them if we deem it necessary.

Questions by the civilian counsel continued:

Q. After you informed (b)(7)(C) about this, did you continue doing your job the best you could?

A. Yes.

Q. Did you take off your pack, if you will, and throw up your hands and say, you know, there is nothing else I can do?

A. No, not at all.

Q. You kept marching forward?

A. Kept marching forward. We had too many missions to have that sort of luxury to step back and say, hey, look, I'm not in the mood to play with this anymore. We were right in the middle of Al Kut, Iraq.

Q. Were your Marines taking fire?

A. My Marines were taking fire quite regularly. I took fire a couple of times. We just had to continue moving forward doing the best we could with what we had.

Q. Now, somewhere between a few days later, did you get involved in participating in a missile shooting?

A. Yes. It was about the 25th or 26th of June.

Q. What sort of shoot was this going to be?

A. It was supposed to be a combined (b)(7)(C) shoot. I had never been -- actually, I had never seen either of the systems fire before. And (b)(7)(C) team was going to go down to

Nazaria. It was 2/25, it was a New York Battalion that was actually running the shoot. They had the OICs, they were the range OICs, they did most of the coordination with Division for this particular shoot. I went down as an observer to try to learn how these systems actually operate out of a book setting.

Q. Now, prior to going out there, was it some understanding for you that Division had designated a (b)(7)(C) shoot?

A. Yes, it was. Division mentioned that they wanted to do (b)(7)(C). And I asked (b)(7)(C) (b)(7)(C) if we could fire more, and I guess he contacted higher and requested more and that was turned down. It was supposed to be (b)(7)(C) (b)(7)(C). But once we actually got down to Nazaria, the situation changed somewhat. We had brought some extra missiles.

(b)(7)(C) had, I think, a total of seven or eight and he asked me if we could fire more just before we went down to Al Nasrieh. I said, as of right now, no. We were only supposed to fire three and three, but if the situation changes, we'll see how it goes. Got down to Nazaria, went through the briefs that the range OICs, both a Major and a Gunnery Sergeant, were putting together. They, being 2/25, I'm not positive what type of coordination they did with Division. I was not there for that, but they ended up shooting about fifteen (b)(7)(C) and five (b)(7)(C) and they also were supposed to fire three and three. And being that they were controlling the range at that time, we took the opportunity to fire one more (b)(7)(C) one more (b)(7)(C) so we fired four and four, but the extra (b)(7)(C) we fired was a dud. It landed 30 feet in front of us and didn't work.

Q. Now, in making that call, did you feel that the word from Division had changed because the OICs were running the range and allowed the 2/25 to fire more?

A. At that point, I really wasn't even thinking that deeply into it. I was just following the instructions of 2/25 who set up the range and coordinated with Division for it. So, it just seemed logical that they had taken care of whatever type of coordination they had.