

VERBATIM
RECORD OF TRIAL
(and accompanying papers)

of

Trefny, Jeremiah J. (b)(6) Private First Class

2d Battalion, 2d Marines USMC Al Fallujah, Iraq

By

Special Court-Martial
Convened by Commanding Officer

2d Battalion, 2d Marine Regiment
1st Marine Division (REIN)

Tried at

Forward Operating Base Fallujah, Al Fallujah, Iraq, on 14 May 2004



UNITED STATES MARINE CORPS
LEGAL SERVICES SUPPORT SECTION
1st FORCE SERVICE SUPPORT GROUP
CAMP RIDGWAY, IRAQ

IN REPLY REFER TO:
5800
LSSS/D
14 May 04

From: Private First Class Jeremiah J. Trefny, (b)(6)
To: Convening Authority

USMC

Subj: REQUEST FOR VOLUNTARY APPELLATE LEAVE

Ref: (a) MCO P1050.3G
(b) MCO P1900.16D
(c) SECNAVINST 1050.1A
(d) SECNAVINST 5815.3G

1. Pursuant to the provisions of references (a) through (d), I hereby request that I be granted voluntary appellate leave without pay pending completion of appellate review of my Special Court-Martial, at which I was sentenced to a dishonorable discharge. I understand that:

a. While on such leave, I am continuously subject to orders of competent military authority.

b. While on such leave, I must keep my commanding officer advised of my current address. My leave address will be:

(b)(6)

c. Such leave may be terminated at any time by written notice to me, delivered to the address provided above. In the event a punitive discharge is not approved, I may be ordered to return to this or another command for a rehearing or other disposition of my case.

d. I understand that I am not entitled to a mileage allowance or transportation in kind at the time of departure. Accordingly, I must bear my own transportation expenses without recourse to the government. I understand that I remain eligible for reimbursement at the time my discharge is effected.

Subj: REQUEST FOR VOLUNTARY APPELLATE LEAVE

e. I understand that if I have accrued leave to my credit, I will be charged with annual leave until my accrued leave is exhausted and that leave beyond that which I have accrued will be charged as excess leave.

f. If the adjudged sentence in my case is approved and ordered executed, I will be discharged with a dishonorable discharge.

g. My leave will be terminated should:

(1) I be determined to be alcohol and/or drug dependent and I request thirty days inpatient treatment at a Veterans Administration Hospital for my dependency.

(2) A hearing, including a rehearing on the sentence only, of my Special Court-Martial be directed.

(3) My punitive discharge be approved.

(4) My sentence be set aside, suspended, terminated or disapproved during the review process, provided my EAS or other obligated service has not passed. In such an event, I hereby consent to be discharged for the convenience of the government, with the character of discharge warranted by my service record, under the provisions of reference (b), if this course of action is more appropriate than terminating my leave status.

Jeremiah J. Trefny
JEREMIAH J. TREFNY

APPELLATE RIGHTS STATEMENT

From: Private First Class Jeremiah J. Trefny, (b)(6)
To: The Judge Advocate General of the Navy

USMC

Subj: APPELLATE RIGHTS STATEMENT

1. I was convicted and sentenced by a SPECIAL court-martial on 14 May 2004 at Fallujah, Iraq. Pursuant to Article 70, Uniform Code of Military Justice, and R.C.M. 502(d)(5), R.C.M. 1105, and R.C.M. 1110, M.C.M., 2002, my defense counsel, Captain (b)(6) USMC, has advised me of my appellate rights and the review process or the record of my court-martial as follows:

a. The convening authority will take action on the sentence and may, in his discretion, take action on the findings. The action to be taken on the findings and sentencing is within the sole discretion of the convening authority. The determination of the action to take on findings and sentence is a matter of command prerogative. The convening authority is not required to review the case for legal errors or factual sufficiency. In taking action on the sentence, the convening authority may approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority is not empowered to reverse a finding of not guilty; however, the convening authority may change a finding of guilty to a charge or specification to a finding of guilty to a lesser offense included within that charge or specification, may disapprove a finding of guilty and order a rehearing, or may set aside and dismiss any charge or specification. Under no circumstances may the convening authority increase the severity of the sentence as adjudged. I have been advised by my defense counsel that it is counsel's responsibility to represent me during the convening authority's action stage of my court-martial conviction. In this regard, my defense counsel has advised me of my right to request deferment of any sentence to confinement, and of counsel's obligation to advise and assist me in preparing matters for submission to the convening authority for consideration prior to his taking action. I understand that I have 10 days after a copy of the authenticated record of trial is served in accordance with R.C.M. 1104(b) or the recommendation of the staff judge advocate or legal officer is served in accordance with R.C.M. 1105(c), whichever is later, to submit matters to the convening authority. The convening authority may, for good cause, extend the 10-day period for not more than 20 additional days. It is also understood that the failure to submit matters within the times prescribed waives the right to submit matters. I may also expressly waive, in writing, my rights to submit matters, and such waiver may not be revoked. My defense counsel has also advised me of his responsibility to examine the record of trial and to note any errors and to examine the post-trial recommendation by the staff judge advocate or legal officer for error or omissions, and to reply within ten days from the date of service of the record of trial under R.C.M. 1104(b) or service of the recommendation under R.C.M. 1105(c), whichever is later. The convening authority may, for good cause, extend this time period for up to 20 additional days.

b. If, after action by the convening authority, my sentence includes dismissal or a punitive discharge, as applicable, or confinement at hard labor for one year or more, I understand the record of trial will be forwarded to the Judge Advocate General for referral to the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) in Washington, D.C., for review. I understand that NMCCA is limited to reviewing the findings and sentence as approved by the convening authority and may not reverse a finding of not guilty, approve findings of guilty previously disapproved, or approve a sentence more severe than that previously approved. In this regard, I understand that no findings

Subj: APPELLATE RIGHTS STATEMENT

of guilty approved on review below may be affirmed by NMCCA unless that court is satisfied that each element of the offense or offenses of which I was convicted is established beyond reasonable doubt by legal and competent evidence of record. I further understand that if NMCCA approves a finding of guilty with regard to one or more offenses, the court is then required to determine the appropriateness of the sentence as approved on review below, and the court may not affirm a sentence as approved on review below unless it finds that the sentence is a legal, adequate, and appropriate punishment in view of all the circumstances.

c. If NMCCA affirms the findings and sentence, in whole or in part, I understand that I have the right to seek further review of my court-martial conviction before the Court of Appeals for the Armed Forces (CAAF). In this regard, I understand that CAAF is composed of five civilian judges and is located in Washington, D.C. Insofar as further review before CAAF is concerned, I understand that, whereas the review process described in the preceding paragraph is automatic, I must request review before CAAF by filing a petition for grant of review within 60 days from the earlier of the date of being notified of the NMCCA decision or the date on which my copy of the NMCCA decision, after having been served on my appellate counsel of record, if any, is deposited in the United States mail for delivery by first-class certified mail to the address I have provided; or, if I fail to provide such an address, to the latest address listed by me in my service record. Furthermore, I understand that a petition for grant of review before CAAF does not have to be granted by that court. I understand that such a petition is granted only on good cause shown and the CAAF determines whether good cause is shown. I understand that if CAAF should grant my petition for review, its review of my case is limited solely to questions of law, and that its review will also be limited to those questions of law for which review was granted. I understand that CAAF generally must accept the facts as found at trial or during the prior review of my case and that it has no power to amend the sentence as affirmed by NMCCA except in very limited circumstances.

d. If CAAF reviews my case, or otherwise grants relief, I understand that I may further petition the U.S. Supreme Court for review of the CAAF decision by writ of certiorari. I understand that the grant or denial of a writ of certiorari is within the sole discretion of the U.S. Supreme Court and that the application for a writ of certiorari must be filed in accordance with, and within the time limits prescribed by, the rules of the U.S. Supreme Court.

e. My defense counsel has further advised me that I may waive the appellate review as just explained to me or I may withdraw the appeal of my case from such review. If I do waive the review or withdraw my appeal, then my case will be reviewed by a judge advocate. This judge advocate review must be in writing and set forth conclusions as to whether: (1) the court has jurisdiction over me and the offense(s); (2) the charge(s) and specification(s) stated an offense; and, (3) the sentence was within the limits prescribed as a matter of law. The judge advocate must also respond in writing to each allegation of error made by me or my defense counsel. If the judge advocate determines that corrective action is required or if the sentence includes dismissal, a punitive discharge, or confinement for more than six months, the record of trial and the judge advocate's review and recommendation will be sent to the officer exercising typical court-martial jurisdiction for action. The officer exercising SPECIAL court-martial jurisdiction may disapprove or approve the finding(s) or sentence, in whole or in part; may remit, commute, or suspend the sentence, in whole or in part; may order a rehearing on the findings or the sentence, or on both; or may dismiss

Subj: APPELLATE RIGHTS STATEMENT

the charge(s).

f. I further understand that the portion of my sentence providing for a punitive discharge or dismissal may not be ordered executed until the court-martial conviction is final and the sentence, as finally approved, including the punitive discharge or dismissal. A court-martial conviction is final when the review is completed by NMCCA and:

(1) I fail to file a petition for grant of review before CAAF within 60 days after notification, or the date of certified mailing, as appropriate, or the NMCCA decision in my case;

(2) My petition for grant of review is denied or otherwise rejected by CAAF;

(3) My case is not otherwise under review by CAAF; or

(4) Review is completed in accordance with the judgment of CAAF and:

(a) A petition for a writ of certiorari is not filed within the time limits prescribed by the U.S. Supreme Court;

(b) A petition for a writ of certiorari is denied or otherwise rejected by the U.S. Supreme Court; or,

(c) Review is otherwise completed in accordance with the judgment of the U.S. Supreme Court.

Additionally, if I have waived review of my case by NMCCA or withdrawn my appeal from that court, my court-martial conviction is final when review by a judge advocate is completed and action is taken by the officer exercising typical court-martial jurisdiction approving the findings and sentence. If my sentence includes a dismissal, approval by the Secretary of the Navy or such Under or Assistant Secretary as is designated is further required. If my sentence, as finally approved, includes a punitive discharge or dismissal, it is understood that I will be discharged or dismissed in accordance with the approved punishment.

2. In view of the foregoing, and should my court-martial be referred to NMCCA under Article 66 or Article 69, Uniform Code of Military Justice, I have been informed that I am entitled to representation before NMCCA, CAAF, and the U.S. Supreme Court by appellate defense counsel who is a lawyer qualified in accordance with Article 27(b), Uniform Code of Military Justice, designated by the Judge Advocate General of the Navy, and provided at no expense to me. Although I am entitled to such representation, I understand that I must request such representation. I also understand that, in addition to or in lieu of my designated appellate defense counsel, I may retain a civilian counsel to represent me before NMCCA, CAAF, and the U.S. Supreme Court, but that the services of a civilian counsel would be at my own expense and at no expense to the Government. Having fully discussed the foregoing with my defense counsel, I do desire to be represented by appellate defense counsel.

3. By my signature below, I hereby request the Judge Advocate General of the Navy to designate an appellate defense counsel to represent me. I understand that I may waive representation by appellate defense counsel, and that I may also waive or withdraw from appellate review. If I desire to exercise any of these rights, I will so indicate by separate correspondence to my appellate

Subj: APPELLATE RIGHTS STATEMENT

defense counsel.

4. In addition to, and separate from, my right to review by NMCCA, I have the right to sentence review by the Naval Clemency and Parole Board (NCPB). The NCPB will accept the findings of my court-martial and will not review my case for legal errors. After reviewing my case, however, the NCPB may grant clemency by reducing a part of my sentence. I understand that I may waive review by the NCPB. The decision whether to waive such review is an important one and I understand that I have the right to consult with counsel before making that decision.

5. For administrative purposes, the following information is provided:
- A civilian counsel was not retained to represent the accused at trial.
 - The services of an individual military counsel were not utilized.
 - Detailed defense counsel's address and telephone number are:

United States Marines Corps
Joint Law Center
P.O. BOX 452022
San Diego, CA 92145-2022

Phone Number (858) 577-1838

- Principal defense counsel was: Captain (b)(6) USMC
- I understand that in order for my defense counsel or any successor counsel properly to represent me, I must keep counsel informed of my current mailing address. In this regard, I may be contacted at:

(b)(6)

- By my signature, I agree to forward any change of address or phone number to:

Director, Appellate Defense Division (Code 45)
Navy-Marine Corps Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, DC 20374-1111

Jeremiah J. Trefny
JEREMIAH J. TREFNY

14 May 04
DATE

(b)(6)

Witnessed by: _____

(b)(6)
CAPTAIN
U.S. Marine Corps
Defense Counsel

SPECIAL POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That I, JEREMIAH J. TREFNY, having been convicted by a SPECIAL court-martial on 14 MAY 2004, do hereby make, constitute and appoint my appellate defense counsel of record appointed under the provisions of Article 70, Uniform Code of Military Justice, U.S.C. section 870, and R.C.M. 1202, MCM, 2002, for the defense of my case, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the U.S. Navy-Marine Court of Criminal Appeals (NMCCA) decision in my case and thereby start the running of the 60-day appeal period within which I may petition the U.S. Court of Appeals for the Armed Forces (CAAF) for a grant of review and, in the event any part of my conviction is affirmed by the NMCCA, to execute, file, and prosecute a petition for grant of review in the CAAF under the provision of Article 67, UCMJ, 10 U.S.C. section 867, or when in his judgment he deems further review of my conviction is unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the CAAF. I fully understand my statutory right under Article 67(c), UCMJ, 10 U.S.C. section 867(c), to have actual personal service of the decision of the NMCCA on myself and I hereby voluntarily, knowingly, and consciously waive that right.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents, and purposes as I might or could do if personally present at the doing thereof, with full power in my of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14th, day of May, 2004.

Jeremiah Trefny
JEREMIAH J. TREFNY

Signed, sealed, and delivered in the presence of:

(b)(6)

Witness

Witness,

With the United States Armed Forces at FALLUJAH, IRAQ

I, CAPTAIN (b)(6), the undersigned officer, do hereby certify that on this 14th day of May, 2004, before me, personally appeared JEREMIAH J. TREFNY, whose home address is:

and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ, 10 U.S.C. section 936.

(b)(6)

CAPTAIN, USMC

14 May 2004
DATE

Signed, sealed, and delivered in the presence of:

(b)(6)

Witness

Witness,

With the United States Armed Forces at FALLUJAH, IRAQ

I, CAPTAIN (b)(6), the undersigned officer, do hereby certify that on this 14th day of May, 2004, before me, personally appeared JEREMIAH J. TREFNY, whose home address is:

and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ, 10 U.S.C. section 936.

(b)(6)

CAPTAIN, USMC

14 May 2004
DATE

R E C O R D O F T R I A L

of

Trefny, Jeremiah J. (b)(6) Private First Class
2d Battalion, 2d Marines USMC Al Fallujah, Iraq

By

Special Court-Martial

Convened by Commanding Officer

*2d Battalion, 2d Marine Regiment
1st Marine Division (REIN)*

Tried at

Forward Operating Base Fallujah, Al Fallujah, Iraq, on 14 May 2004

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INDEX

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RECORD

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Article 39(a) Sessions:

On 14 May 2004	1
Introduction of Counsel:	3
Arraignment:	7
Pleas:	8
Motions:	39
Findings:	39
Sentence:	65
Appellate rights advisement:	66

TESTIMONY

PROSECUTION WITNESSES

PAGE

Capt (b)(6)
Direct Examination
Cross-Examination

41
45

Maj (b)(6)
Direct Examination
Cross-Examination
Examination by the Court

49
52
52

DEFENSE WITNESSES

PAGE

Cpl (b)(6)
Direct Examination
Examination by the Court

53
55

1stLt (b)(6)
Direct Examination
Examination by the Court

56
58

EXHIBITS ADMITTED IN EVIDENCE

PROSECUTION

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
PE-1	Photographs	40	40

* * * * *

DEFENSE

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
None			

* * * * *

APPELLATE

EXHIBIT	DESCRIPTION	OFFERED
AE-I	Stipulation of fact	12
AE-II	Pretrial agreement	34
AE-III	Sentence limitation	65
AE-IV	Appellate rights	66

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COPIES OF RECORD

_____ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

_____ copy (ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial of United States v. _____, delivered to me at _____ This day of _____

PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Forward Operating Base Fallujah, Al Fallujah, Iraq, at 1340, 14 May 2004, pursuant to the following order:



UNITED STATES MARINE CORPS

TASK FORCE 2/2
CAMP ZADAN, IRAQ
UNIT 73090
FPO AE 09509-3090

IN REPLY REFER TO
5800
Legal
CMCO Ser#1-04
12 May 2004

SPECIAL COURT MARTIAL CONVENING ORDER 1-04

Persuant to authority contained in Judge Advocate General of the Navy Instruction 5800.7C of 9 October 1990, a special court martial is convened and may proceed at Camp Fallujah, Iraq or at any such authorized place as directed with the following members:

Capt (b)(6)
Capt
Capt
1stLt
1stLt

(b)(6)

Lieutenant Colonel
U.S. Marine Corps
Commanding

(b)(6)

MJ: This court will come to order in the case of The United States versus Private First Class Jeremiah J. Trefny, United States Marine Corps.

TC: Sir, this court is convened by the Commanding Officer of Second Battalion, Second Marine Regiment, First Marine Division, by Special Court-Martial Convening Order 1-04, dated 12 May 2004, copies of which have been furnished to the military judge, defense counsel, accused, and court reporter for insertion in the record of trial. There are no modifications or corrections to the convening order.

The general nature of the charges in this case are as follows:

Charge I, violation of UCMJ Article 81, conspiracy to assault an Iraqi detainee;

Charge II, violation of UCMJ Article 90, willful disobedience of a superior commissioned officer's order;

Charge III, violation of UCMJ Article 92, dereliction in the performance of duties;

Charge IV, violation of UCMJ Article 93, cruelty and maltreatment toward an Iraqi detainee;

Charge V, violation of UCMJ Article 107, false official statement;

And Charge VI, violation of UCMJ Article 128, aggravated assault;

The charges were preferred by Corporal (b)(6) United States Marine Corps, a person subject to the Uniform Code of Military Justice, and sworn to before an officer authorized to administer oaths.

The charges have been properly referred to this court-martial by Lieutenant Colonel (b)(6) Commanding Officer of Second Battalion, Second Marine Regiment, the Convening Authority, and have not been referred to any court other than that reflected on the referral block of the charge sheet.

The charges were served on the accused today, 14 May 2004. The three-day statutory waiting period has

not expired.

The accused and the following persons detailed to this court-martial are present:

Colonel (b)(6) , United States Marine Corps, as
Military Judge;

Captain (b)(6) United States Marine Corps, as
Defense Counsel;

Captain (b)(6) United States Marine Corps, as
Trial Counsel;

And First Lieutenant (b)(6) United States Marine
Corps, as Assistant Trial Counsel.

The members are absent.

Sergeant (b)(6) United States Marine Corps, has
been detailed as court reporter for this court-martial
and has been previously sworn.

I have been detailed to this court-martial by the
Officer In Charge of LSST-Iraq. I am qualified,
certified, and sworn in accordance with Articles 27(b)
and 42(a). And I have not acted in any disqualifying
manner.

MJ: Thank you.

And Lieutenant (b)(6) your legal qualifications and
status as to oath as well as by whom you were detailed
are the same as the trial counsel?

ATC: Yes, sir. They are.

MJ: Have you acted in any manner which may tend to disqualify
you?

ATC: No, sir. I have not.

MJ: Thank you. Please be seated.

ATC: Thank you, sir.

MJ: And Captain (b)(6) are your legal qualifications and
status as to oath the same as trial counsel's?

DC: Yes, sir.

MJ: And have you acted in any manner which may tend to disqualify you?

n ^{DL}
ACC: No, sir.

MJ: And are you the only defense counsel in this case?

n ^{PC}
ACC: Yes, sir.

MJ: And were you detailed to this case by the senior defense counsel for Legal Service Support Team - Iraq.

DC: Yes, sir.

MJ: Thank you.

And are you in fact Private First Class Jeremiah J. Trefny, the accused in this case?

ACC: Yes, I am, sir.

MJ: All right. PFC Trefny, just go ahead and please keep your seat unless I tell you otherwise. All right?

ACC: Yes, sir.

MJ: PFC Trefny, you have a right to be represented at this court-martial by Captain (b)(6) your detailed defense counsel, or you may be represented by military counsel of your own selection if the counsel you request is available.

Military counsel are provided to you free of charge. If you are represented by military counsel of your own selection, you would normally lose the services of Captain (b)(6). However, you could request that he remain on your case. And the authority that detailed him, in his sole discretion, could either grant or deny your request.

Do you understand this?

ACC: Yes, sir.

MJ: In addition to military counsel, you have a right to be represented by civilian counsel at no expense to the

United States. Civilian counsel may represent you alone or along with your military counsel.

Do you understand this?

ACC: Yes, sir.

MJ: Do you have any questions about your right to counsel?

ACC: No, I do not, sir.

MJ: And by whom do you want to be represented?

ACC: By Captain (b)(6) sir.

MJ: Do you want any other defense counsel?

ACC: No, sir.

MJ: Very well. I have detailed myself to this court martial in my capacity as the Circuit Military Judge for the Sierra Judicial Circuit. I am certified in accordance with Articles 26(b) and (c) and sworn in accordance with Article 42(a), all of the Uniform Code of Military Justice.

I will not be a witness for either side in this case. I was, however, the presiding judge in the case of The United States versus Sting, which I believe is a related case.

With that in mind, does either side desire to conduct voir dire or challenge?

TC: No, sir.

DC: No, sir.

MJ: PFC Trefny, you have an absolute right to a three-day waiting period before you can be called into court to answer on a set of charges.

Do you understand this?

ACC: Yes, sir.

MJ: What that means is that since you were not served until today, the earliest you could be required to come to

court to answer to these charges would be the 17th of May.

Do you understand that?

ACC: Yes, sir.

MJ: Do you desire to avail yourself of that waiting period?

ACC: No, sir.

MJ: Have you had enough time to prepare with your defense counsel?

ACC: Yes, I have, sir.

MJ: And do you believe you are ready to proceed to trial today?

ACC: Yes, I do, sir.

MJ: Captain (b)(6) have you had enough time to prepare with your client?

DC: Yes, sir.

MJ: And you are prepared to proceed to trial today?

DC: Yes, sir.

MJ: Very well.

PFC Trefny, you have a right to be tried by a court-martial composed of members including, if you request it, at least one third enlisted members. And if you are found guilty of any offense, those same members would decide a sentence.

Do you understand this?

ACC: Yes, sir.

MJ: In addition, you have a right to request to be tried before military judge alone. And if I approve that request, then I alone will decide if you are guilty. And if I were to find you guilty of an offense, I alone would decide a sentence.

Do you understand this?

ACC: Yes, sir.

MJ: Have you discussed these choices with your defense counsel?

ACC: Yes, I have, sir.

MJ: Understanding the types of courts-martial, do you want to be tried by a court-martial composed of members or by military judge alone?

ACC: Military judge alone, sir.

MJ: Is that a free and voluntary decision on your part?

ACC: Yes, it is, sir.

MJ: Has anyone tried to force you or coerce you to get you to request trial before military judge alone?

ACC: No. They have not, sir.

MJ: Is it also being made as a part of your pretrial agreement?

ACC: Yes, it is, sir.

MJ: Very well. Your request is approved.

The court-martial is assembled.

The accused will now be arraigned.

Does the defense desire that the charges and specifications be read?

DC: No, sir. Defense waives the reading.

MJ: The reading will be omitted.

[The charge sheet follows and is not a numbered page.]

[END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA			
1. NAME OF ACCUSED (Last, First, MI) Trefny, Jeremiah J.		2. SSN (b)(6)	3. RANK/RATE PFC
5. UNIT OR ORGANIZATION 2D Battalion, 2nd Marines, 1st MarDiv, Camp Pendleton, CA 92055-5380		4. PAY GRADE E-2	
7. PAY PER MONTH		6. CURRENT SERVICE	
a. BASIC \$1337.70	b. SEA/FOREIGN DUTY \$100.00	c. TOTAL \$1437.70	a. INITIAL DATE 16 Jun 03
8. NATURE OF RESTRAINT OF ACCUSED Not Applicable			b. TERM 4 yrs
			9. DATE(S) IMPOSED None

II. CHARGES AND SPECIFICATIONS

10. Charge I: Violation of the UCMJ, Article 81

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, conspire with Private First Class Andrew J. Sting, U. S. Marine Corps, Private First Class Joshua R. Gabbey, U. S. Marine Corps, and Sergeant Matthew K. Travis, U. S. Marine Corps, to commit an offense under the Uniform Code of Military Justice, to wit: assault of an Iraqi national detainee, and in order to effect the object of the conspiracy PFC Sting pressed live electrical wires against the bare skin of the said detainee with the intent to cause an electrical shock.

Charge II: Violation of the UCMJ, Article 90

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, having received a lawful command from Major _____ U. S. Marine Corps, his superior commissioned officer, then known by the said Private First Class Trefny to be his superior commissioned officer, not to discuss any information about the investigation with anyone, or words to that effect, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, willfully disobey the same.

16
5m 040504

(Continued on Supplemental Page)

III. PREFERRAL		
11a. NAME OF ACCUSER (Last, First, MI) (b)(6)	b. GRADE CPL	c. ORGANIZATION OF ACCUSER HqSvcBn, 1FSSG, MarForPac, CamPen, CA
		e. DATE 040504

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of May, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

(b)(6)

Typed Name of Officer

HqSvcBn, 1st FSSG, MarForPac, CamPen, CA

Organization of Officer

Captain, USMC

Grade and Service

Judge Advocate

Official Capacity to Administer Oaths
(See R. C. M. 307(b)—must be commissioned officer)

(b)(6)

Charge III: Violation of the UCMJ, Article 92

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, who knew of his duties at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, was derelict in the performance of those duties in that he willfully failed to treat an Iraqi detainee with dignity and respect and to protect the said Iraqi detainee from physical harm, as it was his duty to do.

Charge IV: Violation of the UCMJ, Article 93

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, was cruel toward and did maltreat an unknown Iraqi national detainee, a person subject to his orders, by assisting and encouraging Private First Class Andrew J. Sting, U.S. Marine Corps, to press live electrical wires against the said detainee's bare skin, creating an electrical shock.

Charge V: Violation of the UCMJ, Article 107

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 16 April 2004, with intent to deceive, make to Major (b)(6) U. S. Marine Corps, an official statement, to wit: "Sergeant Travis was not present at the time of the detainee mistreatment," or words to that effect, which statement was totally false, and was then known by the said Private First Class Trefny to be so false.

Charge VI: Violation of the UCMJ, Article 128

Specification: In that Private First Class Jeremiah J. Trefny, U. S. Marine Corps, on active duty, did, at FOB Al Mahmudiya, Iraq, on or about 13 April 2004, commit an assault upon an unknown Iraqi national detainee, by encouraging PFC Andrew J. Sting, U.S. Marine Corps, to commit and assisting PFC Sting in the commission of pressing live electrical wires against the said detainee's bare chest and back, creating an electrical shock, a means likely to produce death or grievous bodily harm.

12. On 5 MAY, 20 04, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

(b)(6)

Typed Name of Immediate Commander

2D Bn, 2nd Mar, 1st MarDiv, CamPen, CA

Organization of Immediate Commander

2nd Lieutenant

Grade

(b)(6)

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1700 hours, 10 MAY 20 04 at 2D Bn, 2nd Mar,

Designation of Command or

1st MarDiv, CamPen, CA 92055-5380

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

FOR THE¹ Commanding Officer

(b)(6)

Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

2nd Lieutenant

Grade

(b)(6)

Signature

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

2D Bn, 2nd Mar, 1st MarDiv

CamPen, CA 92055-5380

12 MAY 04

Referred for trial to the SPECIAL court-martial convened by COURT-MARTIAL CONVENING ORDER

SER # 1-04

Dated 12 MAY 20 04, subject to the following instructions:² None.

By //////////////////// of _____

Command or Order

(b)(6)

Typed Name of Officer

Commanding Officer

Official Capacity of Officer Signing

Lieutenant Colonel

Grade

(b)(6)

Signature

15. On 14 May, 20 04, I (caused to be) served a copy hereof on (each of) the above named accused.

(b)(6)

Typed Name of Trial Counsel

Captain

Grade or Rank of Trial Counsel

(b)(6)

FOOTNOTES

1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 801(e) concerning instructions. If none, so state.

MJ: Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Private First Class Jeremiah J. Trefny, United States Marine Corps, I now ask you how you plead. But before receiving your pleas, I advise you that any motions to dismiss or to grant any other relief should be made at this time.

Defense?

DC: Defense has no motions.

MJ: And your pleas?

DC: **To Charge I and
The Specification thereunder: Guilty;**

**To Charge II and
The Specification thereunder: Guilty; to
the Lesser
Included Offense
of Article 92,
failure to obey
other lawful
order;**

**To Charge III, IV, and V, and
The specifications thereunder: Guilty;**

**And to Charge VI: Not Guilty, and
the specification
thereunder.**

MJ: All right. As -- as to Charge II, you are pleading not guilty to a violation of Article 90, but guilty to the lesser included offense of violation of Article 92?

DC: Yes, sir.

MJ: So to the actual Charge, not guilty, but to the Lesser Included Offense, guilty?

DC: Yes, sir.

MJ: And guilty to the Specification thereunder?

DC: Yes, sir.

MJ: All right. Please be seated.

The accused and his counsel did as directed.

MJ: Private First Class Trefny, I will only accept your pleas of guilty if you understand their meaning and effect.

I am going to discuss your pleas of guilty with you at this time. This will be a somewhat lengthy process. So I want you to keep your seat unless I tell you otherwise. And I want you to keep a copy of the charge sheet in front of you so you might refer to it as necessary.

If at any time you become confused or have any questions, I want you to stop me and, if necessary, interrupt me. And I will give you the opportunity to discuss the matter with your defense counsel and clear up any questions you may have.

Do you understand this?

ACC: Yes, sir.

MJ: Do you have any questions at this time?

ACC: No, I do not, sir.

MJ: In addition, this is a large room. There is a lot of outside noise. If for any reason you can't hear me or you don't understand what I said, I want you also to indicate so. And I'll repeat it to make sure that you do understand. Okay?

ACC: Yes, sir.

MJ: A plea of guilty is the strongest form of proof known to the law. Based on your plea of guilty alone, without receiving any evidence, this court-martial can find you guilty of the offenses to which you are pleading guilty.

Your pleas of guilty, however, will not be accepted unless you understand that by pleading guilty you admit every element of the offenses to which you are pleading guilty and you are pleading guilty because you really are guilty. If you do not believe you are guilty, you

should not plead guilty for any reason.

Do you understand this?

ACC: Yes, sir.

MJ: Even if you believe you are guilty, you still have a legal and a moral right to plead not guilty and to require the government to prove its case against you, if it can, by legal and competent evidence beyond a reasonable doubt.

If you were to plead not guilty, you would be presumed under the law to be not guilty. And only by introducing evidence and proving its case against you beyond a reasonable doubt could the government overcome that presumption.

Do you understand this?

ACC: Yes, sir.

MJ: If you plead guilty, there will not be a trial of any kind. So by pleading guilty, you have to waive, or in other words give up, three very important rights.

First is the right against self-incrimination. That is the right to say nothing at all about these offenses.

Second is a right to a trial of the facts by this court-martial. That is a right to have this court-martial decide whether you are guilty or not guilty based on the evidence introduced by the prosecution and, if you choose to do so, by the defense.

And third is a right to confront the witnesses against you and to call witnesses on your own behalf.

Do you understand these rights?

ACC: Yes, sir.

MJ: Do you understand also that you keep these rights with respect to those offenses that you have pleaded not guilty to?

ACC: Yes, sir.

MJ: Have you discussed the waiver of these rights with your

defense counsel?

ACC: Yes, I have, sir.

MJ: And with respect to those offenses that you have entered pleas of guilty, do you want to waive or in other words give up those three rights? h

ACC: Yes, sir.

MJ: Defense, what advice have you given your client as to the maximum sentence?

DC: Sir, I have advised PFC Trefny that the maximum punishment in this case is confinement for one year, discharge from the Marine Corps with a (b)(6) forfeitures of two-thirds base pay per month for one year, and reduction to the lowest enlisted pay grade, E-1.

MJ: Government?

TC: Concur, sir.

MJ: PFC Trefny, your defense counsel has accurately advised you as to the maximum sentence you could be subjected to based on your pleas of guilty alone. That is you could be confined for a period of up to one year, ordered to forfeit two-thirds pay per month for up to one year, ordered reduced to the lowest enlisted pay grade of private, E-1, and separated from the Marine Corps with a (b)(6)

Is that your understanding?

ACC: Yes, sir.

MJ: And was that your understanding when you entered your pleas of guilty?

ACC: Yes, it was, sir.

MJ: Have you had enough time to prepare your case with your defense counsel?

ACC: Yes, I have, sir.

MJ: Are you satisfied with your defense counsel and do you

believe that his advice has been in your best interest?

ACC: Yes, I do, sir.

MJ: Are you pleading guilty voluntarily?

ACC: Yes, I am, sir.

MJ: Has anyone tried to force you or threaten you to get you to plead guilty?

ACC: No. They have not, sir.

MJ: In a moment, I am going to have you placed under oath, and we are going to discuss the facts of your case. If what you tell me should later prove to be untrue, your answers could be used against you in a prosecution for perjury or false statement.

Do you understand this?

ACC: Yes, sir.

MJ: In addition, the government may ask that I consider your answers in deciding on an appropriate sentence.

Do you understand this as well?

ACC: Yes, sir.

MJ: All right. Stand and face the trial counsel, and he will administer the oath.

The accused was sworn.

MJ: PFC Trefny, I have Appellate Exhibit I here, which is a stipulation of fact.

Do you have a signed copy of that at counsel table?

ACC: Yes, I do, sir.

MJ: I want you to turn to the sixth page of it, which is actually the last page of that document. There is a name type there, "Jeremiah J. Trefny."

Do you see that?

ACC: Yes, sir.

MJ: And above it appears to be a signature.

Is that your signature?

ACC: Yes, it is, sir.

MJ: Prior to your signing this document, had you fully read it and discussed it with your defense counsel?

ACC: Yes, I did, sir.

MJ: And did you understand that a stipulation of fact is an agreement between you, your defense counsel, and the trial counsel that the matters contained in the stipulation were true?

ACC: Yes, sir.

MJ: Do you also understand that no one can force you to enter into a stipulation of fact?

ACC: Yes, I do, sir.

MJ: Do you also understand that if I accept this stipulation that it will bind the parties? And by that, I mean neither you, nor your defense counsel, nor the trial counsel will be allowed to put on any evidence to challenge or contest or disprove any of the matters contained in the stipulation?

ACC: Yes, sir.

MJ: Do you understand that if I accept this stipulation, it will be used in three ways; first, I will use it to determine if you are guilty of the offenses to which you have entered pleas of guilty to; second, if I find you guilty of those offenses, I will use it to determine an appropriate sentence; and third, if I find you guilty and impose a sentence, the appellate courts and any reviewing authorities will use this stipulation in part to determine the appropriateness of my decisions?

ACC: Yes, sir.

MJ: Do you agree to those uses?

ACC: Yes, I do, sir.

MJ: Was it a free and voluntary decision on your part to enter into this stipulation?

ACC: Yes, it was, sir.

MJ: Is this stipulation being made as a part of your pretrial agreement?

ACC: No, it is not, sir.

MJ: In other words, you understand you are free to enter this or not enter this --

ACC: Yes, sir.

MJ: -- as you desire and it will in no way affect the pretrial agreement?

ACC: Yes, sir.

MJ: Is there anything in this stipulation that is untrue or inaccurate?

ACC: No, sir.

MJ: Is it entirely correct?

ACC: Yes, sir.

MJ: And you want me to consider it?

ACC: Yes, sir.

MJ: Do both sides agree to the stipulation and its uses?

TC: Yes, sir.

DC: Yes, sir.

MJ: Very well. I will accept it.

PFC Trefny, I am now going to explain to you the elements of the offenses to which you have entered pleas of guilty. By "elements," I mean the facts which the government would have to prove beyond a reasonable doubt before you could be found guilty.

As I state each of these elements, I want you to ask yourself if it is true and whether or not you want to admit that it is true and then be ready to discuss those facts with me. All right?

And you have a copy of the charge sheet in front of you?

ACC: Yes, I do, sir.

MJ: Let me ask counsel, on the conspiracy, it alleges "to assault an Iraqi national" by -- and it goes on to talk about that the act committed in furtherance of it was the application of electric wires to a detainee, which would appear to constitute the offense of assault consummated by a battery. Was it the intent of the parties and the understanding of the parties that that is what is actually alleged is -- or was the object of the conspiracy, was assault consummated by a battery?

TC: Yes, sir.

MJ: Do you agree with that?

DC: Yes, sir?

MJ: And Captain (b)(6) you have not been in any way misled by this Specification?

DC: No, sir.

MJ: All right. Thank you.

All right. PFC Trefny, we are going to start with the Charge I, which alleges a violation of Article 81, conspiracy, and we will just work our way through the charge sheet in order. All right?

The offense of conspiracy has two elements:

The first is that at Forward Operating Base Al Mahmudiyah -- Mahmudiyah?

How do you produce that?

TC: Mahmudiyah, sir.

MJ: Mahmudiyah?

TC: Yes, sir.

MJ: -- Mahmudiyah, Iraq, on or about 13 April 2004, you entered into an agreement with Private First Class Andrew J. Sting, United States Marine Corps; Private First Class Joshua R. Gabby, United States Marine Corps; and Sergeant Matthew K. Travis, United States Marine Corps, to commit an offense under the Uniform Code of Military Justice, that being the offense of assault consummated by a battery.

The second element is while this agreement continued to exist and while you remained a party to the agreement, Private First Class Sting pressed electric -- pressed live electrical wires against the bare skin of an Iraqi national detainee with the intent to cause an electric shock.

Do you understand those elements?

ACC: Yes, I do, sir.

MJ: You are further advised proof that the actual offense of assault consummated by a battery occurred is not required. However, you must have intended each and every element of that intended offense.

Do you understand that?

ACC: Yes, sir.

MJ: Okay. The elements of assault consummated by a battery are that, on the date and place indicated, you did bodily harm to this Iraqi detainee.

The second is that you did so by placing electrical wires against his bare skin, thereby causing an electric shock.

And the third is that the bodily harm was done with unlawful force or violence.

You are further advised that the term "assault" is an attempt or offer with unlawful force or violence to do bodily harm to another.

An assault in which bodily harm is inflicted is called a "battery."

A "battery" is an unlawful and intentional application of force or violence to another. The act must be done without any legal justification or excuse and without the lawful consent of the victim.

"Bodily harm" means any physical injury to or offensive touching of another person, however slight.

Do you understand all that?

ACC: Yes, sir.

MJ: You are further advised that an agreement in a conspiracy does not have to be in any particular form. It is sufficient if the minds of the parties agree to a common understanding or purpose.

Do you understand that?

ACC: Yes, sir.

MJ: The overt act required for this offense does not have to be a criminal act. But it must be a clear indication that the conspiracy is being carried out. And the overt act may be done either at the time of or following the agreement. The overt act must clearly be independent of the agreement itself. And it must be more than merely the act of entering into the agreement.

Any questions about any of that?

ACC: No, sir.

MJ: All right. Let's look at the Specification under Charge II. And you have pled guilty not to a violation of Article 90, but rather a violation of Article 92.

There are four elements to this offense:

The first is that on or about 13 April 2004, there was in existence a certain lawful order, that is, an order from Major (b)(6) United States Marine Corps, to not discuss any information about the investigation with anyone, or words to that effect.

The second is that you had knowledge of this order.

The third is that you had a duty to obey the order.

And the fourth is that on or about 13 April 2004, at Al Mahmudiyah, Iraq, you violated this order by discussing the investigation with Private First Class Sting.

Do you understand all that?

ACC: Yes, sir.

MJ: Let's look at Specification -- or rather the Specification under Charge III, which alleges a willful dereliction of duty. There are three elements to this offense:

The first is that you had certain prescribed duties, that is, to treat Iraqi detainees with dignity and respect and to protect them from physical harm.

The second is that you knew of or reasonably should have known of these duties -- excuse me, rather, that you knew of these duties.

The third is that on or about 13 April 2004, at Forward Operating Base Al Mahmudiyah, Iraq, you were willfully derelict in the performance of these duties in that you failed to treat an Iraqi detainee with dignity and respect and protect this same detainee from physical harm, as it was your duty to do.

A "duty" may be imposed by regulation, lawful order, or custom of the service.

A person is "derelict in the performance" of that duty when he willfully fails to perform those duties.

"Dereliction" is defined as a failure of duty, a shortcoming or a delinquency.

"Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of that act.

Any questions about that?

ACC: No, sir.

MJ: All right. Let's look at the Specification under Charge IV, which alleges a maltreatment.

There are two elements to this offense:

The first is that an unknown Iraqi detainee -- unknown Iraqi national detainee was subject to your orders.

The second is that on or about 13 April 2004, at Forward Operating Base Al Mahmudiyah, Iraq, you were cruel towards and maltreated this unknown Iraqi detainee by assisting and encouraging Private First Class Andrew J. Sting, United States Marine Corps, to press live electrical wires against the said detainee's bare skin, thereby creating an electrical shock.

The "cruelty and maltreatment" must be real, although it does not have to be physical. The imposition of necessary and proper duties on a military person, or in this case the requirement of obedience to certain orders or directives of this Iraqi national, do not necessarily establish this offense, even though the duties or the requirements were difficult or objectionable.

"Subject to the orders of" includes persons under the direct and immediate command of the accused and all persons who by some reason of duty are required to obey the lawful orders of the accused. And even if those persons are not in your direct chain of command, it extends to those both in and out of the military who by some law or otherwise are required to obey your orders.

"Cruel and maltreated" refer to unwarranted, harmful, abusive, rough, or other unjustifiable treatment which under all of the circumstance, A, results in physical or mental pain and suffering and, B, is unwarranted, unjustified, and unnecessary for any lawful purpose.

Do you understand those elements?

ACC: Yes, sir.

MJ: Any questions?

ACC: No, sir.

MJ: All right. Let's look at the specification under Charge V, which alleges a false official statement. There are four elements to this offense:

The first is that on or about 16 April 2003, at Forward

Operating Base Al Mahmudiyah, Iraq, you made to Major (b)(6) United States Marine Corps, a certain official statement, that is Sergeant Travis was not present at the time of the detainee mistreatment.

The second element is the statement was totally false.

The third element is that you knew it was false at the time that you made it.

And the fourth element is the statement was made with the intent to deceive Major (b)(6)

The term "intent to deceive" means to purposely mislead, to cheat, to trick another, or to cause another to believe as true that which is false.

Any questions about that offense?

ACC: No, sir.

MJ: All right. Let's pull out the stipulation of fact, and we will start working our way through it.

And you said everything in this stipulation is true?

ACC: Yes, sir.

MJ: And there is nothing you want to change.

Is that correct?

ACC: Yes, sir.

MJ: All right. Up at the top there in Paragraph 1, it says that you came on active duty on the 16th of June of 2003.

Is that a correct statement?

ACC: Yes, sir.

MJ: And that was for a period of four years?

ACC: Yes, sir.

MJ: Have you ever been released from active duty or discharged since that date?

ACC: No, sir.

MJ: Were you on active duty stationed at the Forward Operating Base Al Mahmudiyah, Iraq, on or about 13 April 2004?

ACC: Yes, sir.

MJ: And on that date, did you enter into an agreement with Sergeant Travis, Private First Class Sting, and Gabby, to assault some Iraqi national?

ACC: Yes, sir.

MJ: Tell me how you came to enter into that agreement?

ACC: That morning, sir, Sergeant Travis had brought in the wires and handed them to us, making the statement, you know, No-es-coot, this --

MJ: He what?

ACC: No-es-coot. That is Arabic for be quiet. And he said, you know, No-es-coot, you know. This will make him be quiet. When Gabby started making head calls, he -- when -- he got to the detainee that got shocked. And when he took him out, me and Sting got the wires ready, prepped them. And when he brought him in, he walked him by, and we could not shock him the first time he walked by. I believe he walked him by too fast. So we told him to turn him around and take him back to the door and bring him back a second time, so we could shock him. He brought him back the second time and stopped him, and then PFC Sting shocked him on the arm, and we put him back into his cage.

MJ: How is it that you came to enter into this agreement? Describe the discussion for me between you, Gabby, Sting, and Travis?

ACC: I don't believe Gabby -- we didn't -- I don't think he really knew until we told him to take the Iraqi back to the door and to walk him back again the second time. Me and Sting knew. I don't remember what we discussed, sir, but we were getting -- we were getting it ready. We both were talking about shocking him. I don't remember the exact conversation we had, but we were getting --

MJ: Both you and Sting were talking about it?

ACC: Yes, sir.

MJ: Well, were you talking also with Sergeant Travis?

ACC: No, sir.

MJ: Was he talking to you at all --

ACC: I don't remember him talking to us, sir.

MJ: Did he provide the wires?

ACC: Yes, he did, sir.

MJ: How is it that he came to ⁱgive you these wires. *h*

ACC: He brought them into the tent and just, like, handed them to us. I don't know where he got them from.

MJ: And you said he said something about -- in Arabic about shutting him up?

ACC: Yes, sir.

MJ: And what did you think he meant when he said that and handed you the wires?

ACC: That if -- I believed that if we -- we shocked him -- and that would get -- get him to shut up and he would be more afraid to talk.

MJ: So do you believe that based on what Sergeant Travis said and your discussion with Sting and ultimately with Gabby bringing the prisoner back around a second time -- or the detainee back around a second time, that there was a meeting of the minds?

ACC: Yes, sir.

MJ: Do you think that you all arrived at an understanding that you were going to try to shock this individual and thereby, in doing so, commit an assault?

ACC: Yes, sir.

MJ: And that was your intent?

ACC: Yes, sir.

MJ: And when I say "assault," I mean assault consummated by a battery as I defined that offense for you?

ACC: Yes, sir.

MJ: Do you need me to go over that for you again?

ACC: No, sir.

MJ: And you remained a party to this agreement through the -- the shocking of this Iraqi national?

ACC: Yes, sir.

MJ: And was the application of this electric charge to this Iraqi's arm, was that done in furtherance of your agreement? In other words, was it done in order to bring about the -- the assault that you agreed to commit on this Iraqi national?

ACC: Yes, sir.

MJ: Did you ever try to withdraw from the agreement?

ACC: No, I did not, sir.

MJ: Did you ever counsel anybody that you ought -- ought not to be shocking this prisoner -- or detainee rather?

ACC: No, sir.

MJ: As I look at this stipulation, it looked like you brought him by the first time and it was too quick, you couldn't get the wires on him, so he was brought back a second time. And initially Sting put one wire on his back and one on his chest. But it did -- it did not cause shock that you desired to cause.

Is that true?

ACC: Yes, sir.

MJ: Do you know why not?

ACC: I believe it was because he had clothing on, sir. I don't think they made enough contact to spark.

MJ: What exactly was your part in preparing the wires to be used on this Iraqi?

ACC: I believe I may have plugged them in, sir. I don't remember. I know I helped plug them in either way. And I also told PFC Sting how to burn off the dead wires at the end so that they would be live.

MJ: What do you mean "burn off the dead wires"?

ACC: When they were first put together, they weren't sparking. So I told him, kind of twist them up. And I told him, basically, how to burn off the dead, the burned out strands so that --

MJ: To get the oxidation and things off of the end of the -- of the wire?

ACC: Yes, sir.

MJ: So it would pass the electricity like you desired?

ACC: Yes, sir.

MJ: And you plugged the wires into this transformer?

ACC: Yes, sir.

MJ: And that would -- and that would administer the shock?

ACC: Yes, sir.

MJ: How much voltage was involved?

ACC: The converter drops it down to 110 volts, sir.

MJ: So your intent was to -- to shock him with 110 volts of AC electricity?

ACC: Yes, sir.

MJ: And that is in fact what Sting did?

ACC: Yes, sir.

MJ: And where was Travis at this time?

ACC: In the -- back towards the door when he got shocked, sir.

MJ: He was back towards the door into the --

ACC: Are you talking about when we plugged the wires in, sir.

MJ: No. I am talking -- well, where was he at when you plugged the wires in?

ACC: I don't remember, sir.

MJ: Where was he at when you actually shocked the detainee?

ACC: Back towards the doorway where we kept the water and their blankets, sir.

MJ: Was that an exit to the -- from the -- into and out of the tent?

ACC: Yes, sir.

MJ: Did you believe you had to shock this detainee because of anything said by Sergeant Travis?

ACC: No, sir.

MJ: Did you ⁱⁿ any way interpret anything that Sergeant Travis did or said as an order for you to shock this detainee?

ACC: No, sir.

MJ: Do you feel that you had a free and voluntary decision to make there?

ACC: Yes, sir.

MJ: And when making that decision, you elected to enter into this agreement and ultimately to shock this detainee?

ACC: Yes, sir.

MJ: Did anyone or anything force you to do that?

ACC: No, sir.

MJ: Was this detainee subject to your orders?

ACC: Yes, he was, sir.

MJ: And that is because he had been taken into U.S. custody by

the United States Marine Corps?

ACC: Yes, sir.

MJ: And you were placed over him?

ACC: Yes, sir.

MJ: And so it was your responsibility to protect this detainee from any -- any harm, to include any indignities, and to treat this individual with respect?

ACC: Yes, it was, sir.

MJ: Do you believe your actions in having him shocked violated those responsibilities?

ACC: Yes, I do, sir.

MJ: And how so?

ACC: It wasn't protecting him, it was causing him harm. It was what we were supposed to be preventing from happening, sir.

MJ: Well, do you believe that shocking someone or subjecting him to electric shock would adversely impact the dignity that they are deserving of?

ACC: Yes, sir.

MJ: And it would show them some disrespect?

ACC: Yes, sir.

MJ: Do you think your actions in doing so were wrong?

ACC: Yes, sir.

TC: Sir, I request a brief recess.

MJ: The court is in recess.

The court-martial recessed at 1415, 14 May 2004.

The court-martial was called to order at 1416, 14 May 2004.

MJ: The court will come to order. The record will reflect all

those present when the court recessed are again present.

PFC Trefny, I am looking at Page 4 of the stipulation. And up at the top under the word "specification," it indicates that you were aware of your duty to treat this prisoner or this detainee with dignity and respect and that you became aware of this through training that you received.

Is that a true statement?

ACC: Yes, sir.

MJ: Was there anything that this prisoner did that caused you to think it was necessary to apply this electric shock to him?

ACC: No, sir.

MJ: Did his talking and failing to comply with your directions -- apparently, he wouldn't stand up when you told him to, he wouldn't stop talking when you told him to, were these things such that they represented a threat to either the security or safety of either the facility or the people in the facility?

ACC: No, sir.

MJ: Were there other things that you could have done with this detainee to keep him from talking to other prisoners -- or rather other detainees, short of shocking him?

ACC: Yes, sir.

MJ: Could you have placed him in another location where he would have been more isolated from the other detainees?

ACC: Yes, sir.

MJ: Would that have been a viable option?

ACC: Yes, sir.

MJ: Could you have gagged him?

ACC: I don't believe, sir.

MJ: Why not?

ACC: By "gagging," do you mean, like, taping his mouth shut
or --

MJ: Yes.

ACC: I don't know -- I don't know if they would have -- or the
command there would have allowed that, sir.

MJ: But that would have been something you could have explored
with the command?

ACC: Yes, sir.

MJ: That may have been a viable option that would have been
maybe more appropriate than applying electric shock to
this individual?

ACC: Yes, sir.

MJ: And that would have, of course, kept him quiet?

ACC: Yes, sir.

MJ: Was there anything about his conduct that you believe
justified your actions in -- in assisting to have him
subject to this electric shock?

ACC: No, sir.

MJ: Were your actions in assisting -- in applying this
electric shock willful actions on your part?

ACC: Yes, sir.

MJ: Would you describe it as a willful dereliction then?

ACC: Yes, sir.

MJ: In other words, you purposely deviated from your
responsibilities in applying this electric shock?

ACC: Yes, sir.

MJ: And do you believe that this detainee was required to
submit to your direction?

ACC: Yes, sir.

MJ: That was because you were armed?

ACC: We were not armed, sir.

MJ: Then why was he required to submit to your direction?

ACC: We were in charge of him, sir.

MJ: Did he have any way to resist?

ACC: I am not sure I know what you mean, sir.

MJ: Well, if you told him to do something, like if you told him to get up and go to the head, could he have refused?

ACC: I don't -- I don't think so, sir.

MJ: Do you --

Let's take a short recess. The court is in recess.

The court-martial recessed at 1419, 14 May 2004.

The court-martial was called to order at 1422, 14 May 2004.

MJ: The court will come to order. The record will reflect all those present when the court recessed are again present.

In looking at the violation of Article 93, you believe that this detainee had to comply with your orders?

ACC: Yes, sir.

MJ: It says here in the stipulation -- I am on Page 4 -- that your behavior was unwarranted, harmful, abusive, rough, or other unjustifiable treatment. How would you characterize it, one or all of those things?

The accused consulted with counsel.

ACC: All of them, sir.

MJ: So we could take out the "or" and substitute the word "and"?

ACC: Yes, sir.

MJ: Do you believe as such that it constituted cruelty and

maltreatment as I defined those terms for you?

ACC: Yes, sir.

MJ: Do you believe this detainee in any way consented to being shocked electrically?

ACC: No, I do not, sir.

MJ: Would you describe that as a harmful act?

ACC: Yes, I would, sir.

MJ: And that it caused that detainee pain or other suffering?

ACC: Yes, sir.

MJ: Let's talk about the violation of Article 107. It indicates in here that you did in fact submit to an interview by Major (b)(6)

Is that a true statement?

ACC: Yes, sir.

MJ: And you knew Major (b)(6) was conducting an official investigation?

ACC: Yes, I did, sir.

MJ: Now, it says here that you did not receive any kind of a warning, in other words an Article 31(b) warning or a Fifth Amendment warning about remaining silent.

Is that true?

ACC: Yes, it is, sir.

MJ: Have you discussed with your defense counsel that failure to warn most likely would render that statement as being inadmissible against you at a trial by court-martial?

ACC: Yes, sir.

MJ: Do you specifically understand that by pleading guilty to this offense, you are waiving any possible defense based on that failure to warn you?

ACC: Yes, I do, sir.

MJ: That would mean that not only could it not be used against you for that particular charge but any other charge.

Do you understand that?

ACC: Yes, sir.

MJ: And is it your intent, Captain (b)(6) to waive that?

DC: Yes, sir.

MJ: Thank you.

PFC Trefny, do you believe that Major (b)(6) was conducting an official investigation?

ACC: Yes, I do, sir.

MJ: And that as such, your statements made to him were required to be true?

ACC: Yes, sir.

MJ: Even though you could have said nothing at all. But when you chose to speak, you had to speak truthfully?

Do you understand that?

ACC: Yes, sir.

MJ: And was it your intent to deceive Major (b)(6) ?

ACC: Yes, it was, sir.

MJ: What was false about your statement?

ACC: I had told him that Sergeant Travis was not there, sir.

MJ: And was Sergeant Travis there?

ACC: Yes, sir.

MJ: Was he there through the whole period or minimally before and after the -- or before and during the shocking of this individual?

ACC: Before and during, sir.

MJ: Did Major (b)(6) also give you an order not to discuss the subject of his inquiry with anyone?

ACC: Yes, he did, sir.

MJ: Did you understand that order?

ACC: Yes, I did, sir.

MJ: Did you know Major (b)(6) to be a commissioned officer in the Marine Corps?

ACC: Yes, I did, sir.

MJ: And you knew that at the time that he issued that order to you?

ACC: Yes, I did, sir.

MJ: Do you believe you had a duty to obey that order?

ACC: Yes, sir.

MJ: And why is that?

ACC: He was a superior commissioned officer to me, sir.

MJ: And did you obey that order?

ACC: No, I did not, sir.

MJ: Why not?

ACC: I wanted to talk to Sting about the incident, sir, and see what was going on.

MJ: So you -- you did in fact disobey that order?

ACC: Yes, I did, sir.

MJ: Was that a free and voluntary decision on your part?

ACC: Yes, it was, sir.

MJ: Did you understand the order at the time it was given?

ACC: Yes, I did, sir.

MJ: Was there any question in your mind as to the nature and scope of the order?

ACC: No, there was not, sir.

MJ: Do you believe you had any legal justification or excuse for disobeying that order?

ACC: No, I do not, sir.

MJ: And did that happen on the 16th of April of this year?

ACC: Yes, sir.

MJ: Did all of these events take place in Iraq at Forward Operating Base Al Mahmudiyah?

ACC: Yes, it did, sir.

MJ: Were these free and voluntary actions on your part throughout?

ACC: Yes, they were, sir.

MJ: Did anyone or anything force you to undertake these actions?

ACC: No. They did not, sir.

MJ: Okay. Had you wanted to, could you have avoided undertaking these activities?

ACC: Yes, I could have, sir.

MJ: Do you believe you had any legal justification or excuse for any of your actions?

ACC: No, I do not, sir.

MJ: Do you think you were wrong on each account?

ACC: Yes, I do, sir.

MJ: Do the elements as I described them for you, along with the facts we have discussed and the matters contained in the stipulation of fact, describe accurately what you

did on each and every occasion?

ACC: Yes, sir.

MJ: Does either side desire any additional questions?

TC: No, sir.

DC: No, sir.

MJ: PFC Trefny, ~~have~~ I have Appellate Exhibit II, which is a memorandum of pretrial agreement.

Do you have a signed copy of that in front of you?

ACC: Yes, I do, sir.

MJ: I want you to turn to the fourth page of that document. And up on the top, there is a name typed there, "Jeremiah J. Trefny."

Do you see that?

ACC: Yes, I do, sir.

MJ: There appears to be a signature above it.

Is that your signature?

ACC: Yes, it is, sir.

MJ: Does your signature also appear on the sentence limitation provisions of the agreement?

ACC: Yes, it does, sir.

MJ: Prior to your signing these two documents, had you fully read them and discussed them with your defense counsel?

ACC: Yes, I did, sir.

MJ: And did you understand and agree to each and every provision, to include the sentence limitation provisions?

ACC: Yes, I did, sir.

MJ: Was it a free and voluntary decision on your part to enter

into this agreement?

ACC: Yes, it was, sir.

MJ: Has anyone tried to force you or threaten you to get you to enter into this agreement?

ACC: No, sir.

MJ: Let's start with Paragraph 1 of the pretrial agreement. And I know you have said you understand it, but the law requires that we discuss it here in open court. So we will start with Paragraph 1 and work our way through.

All right?

ACC: Yes, sir.

MJ: Paragraph 1 says in exchange for your pleas of guilty, the convening authority has agreed to limit the sentences you have indicated. And it goes on to say that he will withdraw, ultimately to dismiss with prejudice, those charges and specifications you have pled not guilty to.

Do you understand that?

ACC: Yes, sir.

MJ: Paragraph 2 says you are fully satisfied with your defense counsel.

Does that remain true?

ACC: Yes, it does, sir.

MJ: Paragraph 3 says you have been advised and understand that neither the offer nor the agreement may be used against you in a determination of your guilt.

Do you understand that?

ACC: Yes, sir.

MJ: Paragraph 4 says that you understand that for purposes of this agreement, the punishments to be considered in the five parts listed, that is period of confinement -- or rather, excuse me, punitive discharge, period of confinement, amount of forfeiture of pay, reduction in

rate or grade, and any other lawful punishment.

Do you understand each of these?

ACC: Yes, sir.

MJ: Paragraph 5 indicates that you understand you get the benefit of the lesser of either the sentence this court adjudges or that provided in the pretrial agreement.

Do you understand that?

ACC: Yes, sir.

MJ: Paragraph 6 says you have been fully advised and understand the various provisions of the UCMJ which deal with automatic execution of certain sentences as well as automatic forfeiture and reduction provisions.

Do you understand each of these?

ACC: Yes, sir.

MJ: Paragraph 7 says you have been fully advised and understand the meaning and effect of your pleas of guilty and the intended consequences, to include the possibility of an administrative discharge, in which case your service could be characterized as other than honorable.

Do you understand each of those?

ACC: Yes, sir.

MJ: Paragraph 8 says that you understand that if for some reason your pleas of guilty do not remain in effect until I announce sentence, the convening authority is free to withdraw from this agreement.

Do you understand that?

ACC: Yes, sir.

MJ: Paragraph 9 says that you understand you may withdraw from this pretrial agreement at any time -- or rather, withdraw your guilty pleas at any time before I announce sentence. And if you have a good reason, I will permit you to do so.

Do you understand that?

ACC: Yes, sir.

MJ: Patrol 10 lays out the pleas that you have agreed to enter, which you have complied with.

Paragraph 11 indicates that you have agreed to testify truthfully at both the pretrial investigations of the individuals listed there, that is Sergeant Travis, PFC Sting, and PFC Gabby.

Do you understand that -- that information?

ACC: Yes, sir.

MJ: Paragraph 12 indicates your understanding that, for purposes of this agreement, misconduct is defined as any act or omission on your part that would constitute a violation of the Uniform Code of Military Justice.

Paragraph 13 indicates your understanding that all of the terms of this agreement are material, which means that they have significance to the parties. And it goes on to say that you understand that any act of misconduct or any violation of a term of this agreement, either before or after trial, could cause you to lose the benefit of this agreement.

Do you understand that?

ACC: Yes, sir.

MJ: Paragraph 14 indicates that the maximum sentence that the convening authority can approve is contained in the sentence limitation provisions of the agreement.

Paragraph 15 indicates you are requesting trial before military judge alone, which we have discussed.

Paragraph 16 is a waiver on your part of government expense of any non-local witnesses.

Do you also understand that there are other methods for you to present such testimony should you desire to do so?

ACC: Yes, sir.

MJ: Paragraph 17 indicates that there is no other understandings between you and the convening authority other than what is contained in this written document.

Is that a true statement?

ACC: Yes, sir.

MJ: Do both sides agree and do both sides agree to The Court's interpretation?

TC: Yes, sir.

DC: Yes, sir.

MJ: PFC Trefny, do you have any questions about this pretrial agreement?

ACC: No, I do not, sir.

MJ: Do you believe you fully understand it?

ACC: Yes, sir.

MJ: Do you still want to be bound by it?

ACC: Yes, sir.

MJ: Very well. I find the pretrial agreement to be in accord with appellate case law, not contrary to public policy or my own notions of fairness, and it is accepted.

PFC Trefny, do you have any questions about anything we have done so far?

ACC: No, I do not, sir.

MJ: Do you still want to plead guilty?

ACC: Yes, I do, sir.

MJ: Very well. I find the accused has knowingly, intelligently, and consciously waived his rights against self-incrimination, to a trial of the facts by this court-martial, and to be confronted by the witnesses against him.

I further find the accused's pleas to be made

voluntarily and with a factual basis and they are accepted.

Trial counsel?

TC: Sir, the government moves to withdraw and dismiss the charges to which the accused has pled not guilty, without prejudice, to ripen into prejudice upon announcement of sentence.

MJ: Any objection?

DC: No, sir.

MJ: The motion is granted.

Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Private First Class Jeremiah J. Trefny, United States Marine Corps, it is my duty as military judge to inform you that, in accordance with your pleas, this court finds you:

Of the charges and specifications thereunder:

Guilty.

Please be seated.

The accused and his counsel did as directed.

MJ: And I -- am I correct, counsel, that there has been no pretrial restraint?

TC: Yes, sir.

DC: That's correct, sir.

MJ: PFC Trefny, you have a right to present matters in extenuation and mitigation. That is matters about yourself or the offenses that you want this court-martial to consider in determining a sentence.

Included in your right to present such matters is your right to testify under oath, to make an unsworn statement, or to remain silent. If you elect to testify under oath, then you may be cross-examined by the trial

counsel and questioned by The Court. If you make an unsworn statement, you may not be cross-examined by the trial counsel nor may The Court ask you questions.

You may make an unsworn statement orally, in writing, personally, or through counsel, or you may use a combination of those methods. If you elect to remain silent, that cannot be use against you in any way.

Do you understand these rights?

ACC: Yes, sir.

MJ: Government?

TC: Sir, the government requests that the matters addressed in providency be considered for the purposes of sentencing.

MJ: Any objection?

DC: No, sir.

MJ: Very well. I will.

TC: Sir, may I approach?

Government offers Prosecution Exhibit 1, marked for identification and asks that that the words "for identification" be deleted. And I will be calling a witnesses to explain the pictures included therein.

MJ: Any objection? Come on up here and look at them.

The defense counsel did as directed.

DC: No objection, sir.

MJ: Very well. Absent objection, Prosecution Exhibit 1 will be admitted, the words "for identification" deleted.

MJ: Captain (b)(6)

TC: Sir, the government calls Captain (b)(6)

MJ: We are going to take a recess while you get that witness.

The court-martial recessed at 1437, 14 May 2004.

The court-martial was called to order at 1443, 14 May 2004.

MJ: The court will come to order. The record will reflect all those present when the court recessed are again present.

Government?

TC: Sir, the government will proceed with Captain (b)(6)

Captain (b)(6) U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution (Captain (b)(6))

Q. Captain (b)(6) please state your name, rank, and unit, and spell your last name.

A. (b)(6) I am a captain. And I am with Task Force 4/4.

Q. What is your current billet with 2/2?

A. I'm the judge advocate on the staff.

Q. What does that mean?

A. I'm the advisor to the Colonel on legal issues. I handle all the claims, solacia payments. And also my duties are to -- back at Mahmudiyah, I was the OIC of the detention facility, and still handle detention operations, the detainees.

Q. In the month of April, then, were you the officer in charge of the detainment facility?

A. Yes, I was.

Q. What were your duties then?

A. With the detention facility?

Q. Yes.

A. Just to ensure the -- the operation of the detention facility, the in-processing, out-processing the detainees, and ensure the -- that they were provided for. And also from the judge advocate standpoint, I was also responsible for all the paperwork that accompanied them and their case files.

Q. Okay. Do you know PFC Trefny?

A. I do.

- Q. How do you know him?
A. He was one of the guards at the detention facility.
- Q. How many guards do you have?
A. There were 16 guards and one staff NCO.
- Q. Did you make efforts to inform these guards of their duties as it pertained to the detention facility?
A. Constantly.
- Q. Why do you say "constantly"?
A. As a judge advocate coming here to Iraq, I knew that I was going to have a large role with the detention facility. I didn't know I was going to be the OIC of the detention facility, but I knew that I would have a big part to play with training the Marines on -- on the importance of handling the detainees. It was something that we were prepped for prior to coming, all the judge advocates, down to battalion level.
- Q. What specific efforts did you make?
A. Prior to coming over, I knew a few months ahead of time. Even -- even the months before coming, there were many articles in the news about detainee abuse issues, to include a lieutenant colonel in the Army who was facing a court-martial. So I would always cut those out and save them. And my initial brief to the Marines at Camp Lejeune and then a follow-on brief that I gave, training that I gave to all the guards, always included reading these articles and telling them what could happen if they didn't do their duties properly.
- Q. When you say "always" and before you had said "constantly," on what kind of basis? Is that a week-by-week basis, day-by-day basis?
A. It was day by day. I was -- I was, honestly -- this was something that -- that -- that I was fearful of.
- Q. When you say "this," meaning this incident where a detainee was shocked?
A. Abuse issues, care for detainees, it was something that -- that I was very afraid of, knowing, having seen -- when we -- when we got to Mahmudiyah, there were over 20 cases pending for detainee issues that the Army had. And my -- my guidance to the Marines was always, you know, we can't have that, it is -- it is just not acceptable. And it was so high profile.

- Q. Was PFC Trefny part of these talks and conversations?
A. Yes, he was.
- Q. Did you ever mention the use of electricity specifically?
A. I did.
- Q. How?
A. Well, it was -- we had just heard even long ago just how Saddam used to torture people. And some of the things I used to tell the guards was, We don't do that. You know, this is not Saddam's torture chambers, just hearing how he would shock people into submission. And I was just confident that -- that nothing like that would ever happen with us.
- Q. For what reasons would you detain an Iraqi?
A. Several different reasons, potentially. Sometimes we would actually target an individual. Sometimes someone else would target the individual and they would tell us to go get this person. But usually a unit would actually witness the individual or think that they witnessed the individual -- the individual engaging in anti-Coalition activities.
- Q. Are all these detainees necessarily guilty of something?
A. No. In fact, a large -- it is -- it is -- at the time we left Mahmudiyah, we had detained approximately 70 individuals. And I believe that only 13 were continued for detention. And that means that we moved them from our short-term tent, which was a short-term holding facility, to the Regimental holding facility. So the majority of these detainees go back to their families in Iraq.
- Q. Do you have knowledge of the specific detainee that was mistreated in this incident that we are talking about today?
A. No, I don't.
- Q. Do you know what has since happened to that detainee, just by his mere presence as -- presence at the detention facility?
A. I just know from -- after everything happened, I didn't have anything to do with the investigation. I just know that through process of elimination that we had let go -- we had released, repatriated, several detainees that weekend.

Q. Does that mean that this detainee was released back into society?

A. I -- I -- yes. Yes.

Q. To your knowledge, did any detainees complain to you or anybody else about abuse they had received?

A. Never.

Q. Do you make efforts to ascertain whether they have been mistreated?

A. I always did. If -- the detainees -- the detainees that we sent to Regiment were always -- I never discussed much with them at all. It was -- we are instructed not to. You know, even -- even so much as to telling them, You're going -- you're going up. You're staying in jail for a long time. It is just better that the exploitation teams do that.

The detainees that are being released, because of the guidance that we -- we've been getting ever since this mission was put together to win the hearts and minds of the Iraqi people, if we were letting someone go into society, we were doing so for a couple of reasons, either maybe they shouldn't have been apprehended at all, or, even if they were apprehended, they should not have been -- we didn't have enough information to hold them, which means they were going to go back into society.

Well, I knew enough that they were going to be out there and that even if they were potentially bad people that this was an opportunity that I had as a member of the command to maybe even try and win the hearts and minds, not only while they were detained, by treating them fairly, but by talking to them when we release them. So --

Q. Am I correct in that your concern is what these detainees may say once they are released out into society?

A. Yes.

TC: Thank you, Captain (b)(6) That is all I have at this time.

Thank you, sir.

MJ: Defense?

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. Good morning, Captain (b)(6) How are you doing?

A. Good.

Q. What was your training in regards to how to handle detainees?

n A. Just as a Marine, Corp's values, as a -- as a -- to handle detainees just as a human. These individuals were flex-cuffed, hooded. My training came from seeing so many cases of abuse previously; just TBS training that we had there about how to handle forward EPWs, segregation, silence, speed to the rear, and safeguard, and tag; and just the -- just personal beliefs that I grew up -- grew up with. You know, you care -- care for somebody who is in your -- in your control.

Q. Now, your MOS, you are a 4402. Is that correct?

A. I am a judge advocate. Yes.

Q. And you never received any training concerning detainee handling at Naval Justice School?

A. No. As far as the operations of a detention facility?

Q. Correct.

A. No.

Q. And you never received any other sort of class, at TGAGSA for example?

A. No. They didn't teach an operations -- detention facility operations course.

Q. So your training, essentially, you made up or acquired from newspaper clippings. Is that correct?

A. No. The -- I taught myself. Well, I got the -- the Division SOP, the Division guidance on the -- the care of -- the running of a operation facility, the Division SOP that was issued. I believe it was a draft when I got it at the BOLT course and -- that you were at as well, in California. I think it was mid-February, was the course. I received a draft from Division, started putting together my guidance to brief the Marines on -- on how to handle it. And once we got here, I drafted

the Battalion SOP on detention operations off of the Division SOP for operations.

Q. Now, this class that you gave in -- in Lejeune, how long was that class? Do you recall?

A. I --

Q. How many hours?

A. It was -- it was an hour. I gave an hour rule of engagement class. And I gave an hour detainee class. I attached to 2/2, I think it was four days before we flew to Iraq. Well, I was in Lejeune with them for four days. And -- and I went to a week of SASO training in Lejeune right after the BOLT course. So --

Q. And that was to the Battalion, that class?

A. It was to Battalion wide -- yes. It was in the theater at Lejeune. Everyone came at Lejeune -- or I believe everyone came at Lejeune. I know that the theater was full and there were --

Q. Now, was that a Power Point presentation?

A. It was a Power Point. Yes.

Q. And did you have a mike?

A. I didn't -- I did have a microphone. Yes, I did.

Q. So everybody could hear you. Do you think?

A. Absolutely. The microphone was -- was pretty loud.

Q. Now, you discussed on direct that you were briefed from the turnover from the Army when you all turned over at Al Mahmudiyah, that they had 20 incidents of abuse?

A. No. Not at -- not at Mahmudiyah. The Mahmudiyah guards, in the -- I believe they were there for seven months. When they turned over with me, they had only one incident that -- that they told me of, at the facility. And that was a soldier had thrown a MRE heater and -- and made an explosion in the tent. The 20 cases that I was referring to was cases that I had read about prior to coming over here. And what really highlighted it most in my mind was the lieutenant colonel who, during OIF, had discharged his weapon next to a detainee in order to obtain information. So my guidance to the Marines was, you know, Listen, this -- this is such an important issue. We have got to care for these individuals. They are under our charge. And I just really made it clear to them that -- and it was

something that all Marines should know, not just a judge advocate. But I felt like I had a better perspective on the magnitude of -- of where these things would head in a court of law if we did anything wrong. So I put the -- the legal spin -- I tried my best to make it clear to them that these are high profile cases, and if we did anything that their faces were going to be -- their names and faces were going to be on CNN, and that we needed to do all we could do to care for them. So I tried to scare them and train them at the same time.

Q. So in the process of training the Marines, you told them to treat these Iraqis humanely. Is that correct?

A. Absolutely.

Q. And the mission also -- well, your mission was to hold suspected Iraqis. Is that correct?

A. Yes.

Q. And they were suspected of -- of what exactly?

A. Well, it depended. The -- the units who apprehend are out in the field. And it is -- it's hard. They try to make their best judgment call on whether or not to bring someone in. So the -- the care and handing of all detainees -- the caring for them starts right from the very beginning because units unfortunately sometimes in the heat of the moment potentially apprehend someone they shouldn't. If you see someone -- an IED goes off, and the unit would see someone fleeing. Well, they will -- they will apprehend him. And it is not up to them to decide whether or not to let that person go or not. So the reason why it is so important to care for them right from the very beginning, and for the guards especially to care for them, is because it is up to the human exploitation team to question them, interrogate them, and then make recommendations to the Colonel on whether or not this person really, for example, detonated an IED or not.

Q. Now, if a Marine unit in that same scenario, an IED explodes, or in another scenario, if they are engaged and capture these Iraqis, they bring them back to your facility and that's where they are questioned. Correct?

A. That is correct.

Q. So there is a difficulty in bringing in aggressors into your detainee facility and then holding them and caring for them. Is that a difficult job, would you say?

A. It is -- it is a job that requires a great amount of responsibility. But --

Q. Because it is so high profile and so visible. Is that correct?

A. Well, it's -- it -- it -- it -- it's -- you are caring for another individual. You're -- you're -- this -- this person is coming in --

Q. And it is also because, like you said, we want to win the hearts and minds. Is that correct?

A. Right. And it's -- it's -- it's not the responsibility of the guards ever to assist in the interrogations.

Q. And it is a very important job and it requires a great deal of responsibility. Is that correct?

A. It does.

DC: Okay. I have no further questions?

MJ: Anything else?

TC: No, sir.

MJ: I have no questions.

The witness was excused and withdrew from the witness chair.

MJ: The court is in recess.

The court-martial recessed at 1459, 14 May 2004.

The court-martial was called to order at 1504, 14 May 2004.

MJ: The court will come to order. The record will reflect everyone with the exception of Captain (b)(6) who were present before the court recessed are again present.

With my permission, Captain (b)(6) has been excused from the remaining of the proceedings.

MJ: Lieutenant (b)(6)

ATC: Sir, the government calls Major (b)(6)

Major (b)(6) U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution (First Lieutenant (b)(6))

Q. Sir, please state your name, rank, and unit.

A. (b)(6) I'm a major. And I'm with Second Battalion, Second Marines.

Q. And, sir, what is your billet with 2/2?

A. I'm the executive officer.

Q. Please describe your duties as the executive officer for 2/2.

A. My duties entail supervision of the staff, on a daily basis, the functioning of the Battalion, particularly in the areas of logistics and administration.

Q. And, sir, did you become aware of an incident on 13 April of this year, involving a detention facility and the shocking of a detainee by your guards?

A. Yes, I did.

Q. Please describe how that incident came to light, sir.

A. I was informed by Captain (b)(6) who was the officer in charge of the detention facility. He had been informed by Gunnery Sergeant (b)(6), who had been informed by (b)(6) that members of the guard force had shocked one of the detainees in the facility.

ATC: Sir, permission to approach?

MJ: You want to just give him this prosecution exhibit?

ATC: Yes, sir.

MJ: I can hand it to him.

ATC: Thank you, sir.

The military judge is handing to the witness Prosecution Exhibit 1.

Questions by the prosecution (1st Lieutenant (b)(6)) (continued):

Q. Sir, please take a look at those pictures and describe them one by one, starting with the first page.

A. The first picture is a picture of what was --

Q. Sir, let me interrupt you for a second.

A. Okay.

Q. I apologize. Please describe -- explain to me if you recognize those pictures.

A. Yes, I do recognize them.

Q. And as a whole, what do they appear to represent, sir?

MJ: Just --

I'm sorry.

Please get on with it. Just describe them one by one please.

ATC: Aye aye, sir.

WIT: Yes, sir. They are photographs. The first one is of a white box, which was told to me was a transformer that was in the detention facility and was used to shock the detainee.

Now, the second photograph is a -- is a broader picture of the detention facility, a desk inside on the right on which the transformer lies, and was in the vicinity of where the detainee was shocked.

The third picture taken from just inside the door of the detention facility shows the length of detention facility with the desk on the right with the transformer and then the cages where the detainees were -- were kept.

The -- let's see. The fourth picture was the -- the backside of the transformer. In particular, the reason I took it was because it indicates the voltage of 110, which the Marine, a PFC Sting, stated that he -- he knew it to be 110 and he used it to plug the -- the wires in that he then used to shock the detainee.

And then the final picture is the -- the front entrance to the detention facility itself.

ATC: Thank you, sir.

Sir, permission to approach?

MJ: Do you want to just have him give them back to me?

ATC: Yes, sir.

MJ: Okay.

Questions by the prosecution (1st Lieutenant (b)(6)) (continued):

Q. Sir, in mid-April of this year, was 2/2 engaged in combat operations?

A. Yes. Mid-April, we were located in Forward Operating Base Al Mahmudiyah in Al Mahmudiyah area, which is located south of Baghdad.

Q. Sir, could you please describe for The Court some of these combat operations that 2/2 was involved in?

A. Broadly, what 2/2 was involved with was both support and stability operations and then combat operations of patrolling of the area, civil/military affairs operations throughout Mahmudiyah and the Greater Lutafiyah area.

Q. And, sir, with regard to the detention facility incident, the shocking of the detainee, did that have an impact on the command?

A. The impact that it had was that it -- it required, one, the relief of the guard force to allow the investigation to move forward. That involved my having to stand up an entire new guard force to replace the members currently in place at the time.

I had also required a logistical and administrative burden in having to bring various witnesses and accused together to allow the -- both the -- the investigation to occur and this -- and this court-martial to happen.

ATC: Thank you, sir.

Sir, I have nothing further.

MJ: Defense?

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. Good afternoon, sir.

A. Good afternoon.

Q. From the day of the incident until the present, has PFC Trefny continued to be a member of Second Platoon, Golf Company?

A. Yes, he has.

DC: Thank you, sir.

MJ: Anything else?

ATC: No, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Major, do you know if he was ever relieved of his duties?

A. No, sir. I am not aware of that. He was returned to his platoon and employed by the company commander as he saw fit, sir.

Q. Do you know what his MOS is?

A. He is an infantryman, sir.

Q. 0311?

A. Yes, sir.

Q. And as far as you know, he continued to serve in that capacity down in his platoon?

A. Yes, sir, he did.

MJ: Questions in light of mine?

ATC: No, sir.

DC: No, sir.

The witness was excused and withdrew from the witness chair.

MJ: Government?

ATC: Sir, the government requests that matters addressed during providency be considered for purposes of sentencing?

MJ: Any objection?

DC: No, sir.

MJ: Very well. I will.

Anything else?

ATC: No, sir. The government rests.

MJ: Captain (b)(6)

DC: Yes, sir. The defense calls Corporal (b)(6)

Corporal (b)(6) U.S. Marine Corps, was called as a witness by the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution (First Lieutenant (b)(6)):

Q. Please state your name, rank, and unit, and spell your last name.

A. Corporal (b)(6) 2/2, Golf. Last name, (b)(6)

ATC: Thank you.

MJ: Captain (b)(6)

DC: Thank you, sir.

Questions by the defense:

Q. Good afternoon, Corporal. How are you doing?

A. Pretty good, sir.

Q. Do you know PFC Trefny?

A. Yes, I do, sir.

Q. And how do you know him?

A. He is in my team. I have been a team leader for about eight months now, sir.

Q. And that's a fire team leader?

A. Yes, sir.

Q. And can you describe for the military judge some of the things that you, as a fire team leader, have done for your unit and the Marine Corps?

A. Check, sir. As a fire team leader, it is a small unit leadership. I am in charge of a group of Marines. And we take care of certain things for the squad leaders, as far as making sure the Marines under us are taken care of and that they are always up on their gear, and EDO, and things like that, to lessen some stress on the squad leader.

Q. And PFC Trefny is in your fire team?

A. Yes, sir.

Q. And how long have you known him?

A. I have known him for eight -- about eight months, sir.

Q. And what type of interaction have you had with him during that eight months?

A. He has been in my team the entire time since he came to the fleet. So he has always worked under me.

Q. So daily interaction?

A. Yes, sir.

Q. Pretty much all day every day?

A. All day every day, pretty much, sir.

Q. And when did you all deploy, leave the States for Iraq?

A. We left in February, sir.

Q. And what sort of operations have you all been involved in?

A. We have been in numerous operations as far as counter ambush, counter mortars, patrolling, things like that, sir.

Q. So you have been involved in hostile fire fights?

A. Yes, sir.

Q. And have you had the opportunity to observe PFC Trefny?

A. Yes, I have, sir. PFC Trefny does very well as -- as a

Marine. He is not a Marine that I need to talk to a lot about things. He takes care of himself, as far as takes initiative to get things done on his own.

DC: Thank you. I have no further questions.

MJ: Government?

ATC: Nothing, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. When you say that he has been involved in action with you, that would be at a time other than when he was assigned as the -- one of the guards of the detainee facility?

A. That is correct, sir. The last couple weeks while we were out at our company firm base, he was out there with us acting in our squad.

Q. And what type of activities was he engaged with?

A. He was engaged in going out on patrols with us. We're -- set up counter ambush, counter mortar positions, OPs, things like that, sir.

Q. Was he -- I guess, did he ever get involved in firefights or things of that nature?

A. We -- we were involved in some mortar attacks at the FOB, sir.

Q. That were -- you were subject to the attacks?

A. Yes, sir. The firm base was attacked, sir. We went out on a QRF mission that evening, and we were engaged in some hostile fire out there, sir.

Q. And how did PFC Trefny do?

A. He did good, sir. He conducted himself very well under pressure and under stress. And I was -- I was able to confide in him and know that he would get his job done and not have to worry about it, sir.

MJ: Questions in light of mine?

Defense?

DC: No, sir.

MJ: Trial counsel?

ATC: No, sir.

The witness was excused and withdrew from the witness chair.

MJ: Captain (b)(6)

DC: Yes, sir. The defense next calls Lieutenant (b)(6)

First Lieutenant (b)(6) U.S. Marine Corps, was called as a witness by the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution (First Lieutenant (b)(6))

Q. Would you please state your name, rank, and unit, and spell your last name.

A. (b)(6) . Lieutenant, 2/2, Golf Company, Second Platoon.

ATC: Thank you.

MJ: Defense?

DC: Thank you, sir.

Questions by the defense:

Q. Good afternoon, Lieutenant (b)(6) How are you doing?

A. How are you doing, sir?

Q. What is your current MOS?

A. 0302, sir.

Q. And what is your current billet?

A. Platoon commander of a rifle platoon.

Q. And how long have you had that billet?

A. Since September of 2003.

Q. And what do your duties entail?

A. What are you asking, like day-to-day or overall?

Q. Correct. What do you do on a daily basis?
A. Mostly, I'm tactically in charge of a rifle platoon in an infantry battalion.

Q. And how many Marines do you have under your charge?
A. Thirty-six.

Q. And do you know PFC Sting?
A. Yes, I do, sir.

Q. And PFC Trefny? I'm sorry.
A. Yes, I do, sir.

Q. And how do you know him?
A. He is a rifleman in my platoon, sir.

Q. How long have you known him?
A. Since he came to the fleet, sir.

Q. And that was in approximately November of 2003?
A. Yes, it was, sir.

Q. And what kind of -- what type of interaction have you had with him?
A. A lot since we have been in country, sir, definitely every day, sir.

Q. And so you have had ability to observe his performance?
A. Yes, I have, sir.

Q. What sort of things has he been tasked with that you have been able to observe?
A. Any kind of training that we have done, I have stepped back and watched the squad leaders train the Marines, stepping in when I feel I need to.

Q. Do you recall any hostile fire that PFC Trefny has been involved in that you have been able to observe?
A. Yes, I have, sir.

Q. And what was that?
A. When we were in Yusafiyah, we were called on numerous QRF missions.

Q. And what does that stand for?
A. Quick reaction force, sir.

Q. Okay. Go ahead.

A. And that is so -- the city council building in Yusafiyah would be attacked pretty much on a nightly basis with RPG and small arms fire. So we would go and secure the building, sir.

Q. How many Marines were on the QRF?
A. Usually around two squads, sir, two or three squads.

Q. Approximately 24 Marines?
A. Yes, sir.

Q. And you have to trust those Marines?
A. Absolutely, sir.

Q. During these occasions, how would you rate PFC Trefny's performance?
A. I would say he did his -- he did his job very well, sir.

Q. Thank you.
A. No problem, sir.

DC: No further questions.

MJ: Government?

ATC: No questions, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. When was he relieved of his duties as a guard?
A. I would say the middle of April, sir.

Q. So while he was assigned as a guard, were you able to observe his performance?
A. No, I was not, sir.

Q. Was there times while he was assigned as a guard that he would also serve duties with the platoon?
A. Yes, sir. Those QRF missions, he was so involved with the platoon, he wanted to be part of the platoon, help the platoon out, that he would go out with the platoon even when he knew he had guard duty the next day.

Q. And he would volunteer to do that?
A. Yes, he would, sir.

Q. Would you describe those as dangerous missions?
A. Absolutely, sir.

Q. Were they missions in which you expected and sometimes encountered hostile actions?
A. Yes, sir.

Q. Were you able to observe him perform during those missions?
A. Yes, sir.

Q. How did he do?
A. He did very well, sir.

Q. And then once he was relieved, did you return him to his normal duties within the platoon?
A. Yes, sir.

Q. Did you see any change in his performance before as opposed to after the relief?
A. Not at all, sir. If -- if anything, he stayed just as focused before as now, regarding platoon missions.

MJ: Questions in light of mine?
Captain (b)(6)

DC: No, sir.

ATC: No, sir.

The witness was excused and withdrew from the witness chair.

MJ: Captain (b)(6)

DC: Yes, sir. PFC Trefny requests to make an unsworn statement.

MJ: Proceed.

ACC: I would like to start off by apologizing to the detainee. I realize it was wrong for us to abuse him. I would also like to apologize to my chain of command and to the Marine Corps. It was wrong of me to abuse my position of authority and to lie about what happened. It brought embarrassment upon myself and to the Marine Corps. Because of this, I testified for the government at an Article 32 on the 12th of May 2004.

A little bit about myself, I am from Lebanon, Pennsylvania. I have two parents that are awesome. I have four brothers. I joined the Marine Corps to help me get my life on track and get started in a good direction.

I've been in 2/2, Golf Company, since mid-November 2003. We deployed to Iraq in the beginning of March of 04.

Some of my duties over here have been EPW watch. At that time Sergeant Travis was in charge of my post. I was also there with PFC Sting and PFC Gabby. I have also done patrols, everything from cordoned searches, meet-and-greet patrols, to assaults and raids.

Some of the hardships my platoon has suffered through, we've been through mortar attacks. We -- we got hit pretty hard at the last FOB we were at. We lost a gunny. And we got hit pretty close to where our POS was.

In the light of all this, however, I am requesting a (b)(6) I understand the full weight and negative consequences of my doing so, sir.

MJ: Anything else, Captain (b)(6)

DC: No, sir. Defense rests.

MJ: Is there a case in rebuttal?

ATC: No, sir.

MJ: For purposes of sentencing, I am going to treat the violation of Article 92, dereliction of duty, and the violation of Article 93 as one offense rather than two separate offenses.

Any questions on that?

ATC: No, sir.

DC: No, sir.

MJ: Argument?

ATC: Yes, sir.

Sir, you have heard some mitigating evidence here today. You have heard some evidence that PFC Trefny has served honorably after this incident in a combat environment in combat operations. And government submits that it is appropriate for PFC Trefny to receive credit in consideration for that.

However, sir, it is not appropriate for that information to -- that information, sir, doesn't erase what the accused did. It doesn't erase what PFC Trefny's actions -- the consequences of those actions. And he needs to answer for those actions, sir.

You heard it from Captain (b)(6) and from Major (b)(6) sir, that 2/2 -- the Marine Corps as a whole but 2/2 in particular -- has a delicate mission here in Iraq. Security and stabilization operations are a difficult business. And we are here to win hearts and minds.

Sir, it is difficult for 2/2 to win hearts of minds of the Iraqi people when 2/2 Marines are applying live electric wires to shock the bare skin of their detained individuals.

PFC Trefny's actions in this regard were directly contrary to the mission of his unit and the mission of the Marine Corps. And, sir, on an individual level, PFC Trefny's actions were cruel and they were malevolent.

PFC Trefny was in a position of authority over this detainee. The detainee was absolutely powerless. He had a sandbag over his head. His wrists were flexicuffed together. And he could do absolutely nothing to stop what was happening to him. All he could do was just hope that -- hope that the Americans were better than the regime that they took over from.

Now, that detainee, sir, that Iraqi national detainee, you have heard evidence that he most likely went back out to his community. And, sir, he might very well have gone back out to that community and spread the word that the Americans are no better than Saddam Hussein. Saddam Hussein used to torture us in prison. Americans do the same thing.

And that's why, sir that it's important that This Court send a counter message both to those Marines that are serving in that capacity, guarding detainees --

admittedly a very difficult mission, but a very important mission and one that is taking place all over Iraq -- that it is not acceptable for those Marines to abuse their position of authority over those -- those detainees. And it is also important, sir, to send that counter message to the Iraqi people, that this is not Saddam's regime.

Accordingly, sir, an appropriate sentence in this case would include, most importantly, the (b)(6) from the Marine Corps that the accused himself has requested, no less than eight months confinement, two-thirds forfeitures, and reduction to E-1.

Thank you, sir.

MJ: Thank you, Lieutenant (b)(6)

Defense, argument?

DC: Yes, sir.

These facts present probably the toughest duality of being a Marine in a combat environment.

On one hand, PFC Trefny goes out into the streets of Iraq, and fights the fight. He is engaged and returns fire. And then on the other hand, he is in charge of treating prisoners who may have very well just fired on him, treating them humanely. A difficult task, one which Captain (b)(6) taught the Marines.

Captain (b)(6) though, received no formal training, no hard training on detainee handling. He received most of his training from newspaper clippings and various OJT, on the job training, in terms of dealing with detainees. And this was passed down the line. And PFC Trefny understood his duties, that he had to treat prisoners humanely.

But again, the difficulty in the mission. And again, the failure in leadership at the lowest level where you have a sergeant, an NCO of Marines, who has under his wing a Marine who has been in the fleet for six months, who has to deal with the problems of, one, aggressing and then, two, treating that same aggressor after the fact. Which certainly does not excuse what PFC Trefny has pled guilty to, but it is certainly a matter in

mitigation as far as dealing with the human element.

Now, PFC Trefny has accepted responsibility for what he has done. He has cooperated with the government. He has testified at an Article 32 hearing.

In addition to that, as illustrated by Lieutenant (b)(6), and Corporal (b)(6) he has performed well in a combat environment. He has been a member of the quick reaction force. He has received fire. And he has returned fire.

However, in light of PFC Trefny's request --

MJ: Captain (b)(6) I am having trouble here making the connection in your argument because I have heard nothing from the accused or anything else that would indicate that his actions in shocking this detainee in any way had anything to do with his experiences in combat.

Can you, in some way, tie that together for me? Because I'm not seeing it. And I -- and I certainly understand that people might go out and be involved in combat and come back and not be able to turn it off and in some way be unusually harsh in their treatment of a detainee. But that is not what has been described here. This was a very premeditated activity that wasn't designed to get something back because of some hardship that the accused had suffered, but rather it was a premeditated activity designed in order to change the behavior of this particular detainee. And I am not seeing the connection there in your -- in what I've heard in the argument you are making. And I wonder if you can somehow tie that together.

DC: Well, sir, the argument is -- is that it is difficult. And to, on one hand, be an aggressor, to fight the fight, to take rounds --

MJ: Well, I guess I can assume that. But nobody has come in here and said that. The accused certainly didn't say it in anything he presented. He never indicated he was having trouble adjusting from the night operations or the stability ops and then coming back to acting as a guard at this facility.

What he explained is it was suggested by the sergeant that if they were to shock this individual, then he

would -- he, the detainee, would be more compliant with their directions, not that he was having trouble adjusting to the two different missions, which seems to be what you are arguing. And I'm not seeing -- I'm not seeing any evidence of that.

Is there something you can point me to in either the statements by the accused during the care inquiry or somewhere else that would lead one to believe that that is what precipitated this?

DC: Well, the basis of the argument comes from Captain (b)(6) testimony concerning the mission at hand. When I asked him on cross, did he consider it a difficult mission, he said it did and it required a great deal of responsibility because we had to treat Iraqi detainees who we didn't know exactly why they were being held, either they had been witnessed showing aggression towards the United States or they had been identified as showing aggression, and that that requires those same Marines who are engaging the enemy are then holding the enemy and then treating the enemy humanely. I'm pointing out merely that there is a difficulty in that, in that process.

MJ: All right.

DC: However, in light of PFC Trefny's request for a (b)(6) and considering all the mitigating factors, his performance as an infantryman on the frontline, an appropriate punishment is 60 days confinement, reduction to E-1, and forfeitures of two-thirds base pay for 60 days.

MJ: The record will reflect I have deliberated in open court.

It will also reflect that I have considered all the matters that are properly before this court, to include the accused's record, albeit short, his actions here in Iraq as evidenced by his platoon commander and his fire team leader. I have also considered the nature of the offenses to which the accused has pled guilty and the accused's unsworn statement. This sentence reflects not the desires of the accused but an assessment by This Court as to the severity of the offenses and the impact that those offenses have on the mission of the command here, potential impact, as well as the need to deter such conduct, not only by this accused but others that

may consider such activity.

Accused and counsel, please rise.

The accused and his counsel did as directed.

MJ: Private First Class Jeremiah J. Trefny, United States Marine Corps, it is my duty as military judge to inform you that this court sentences you:

To be confined for a period of 8 months;

To forfeit \$795.00 pay per month for a period of 8 months;

To be reduced to the pay grade of private, E-1; and

To be separated from the Marine Corps with a (b)(6)

(b)(6)

Be seated please.

May I see the remaining portion of the pretrial agreement?

DC: The defense is handing to the military judge the sentence limitation portion of the pretrial agreement.

MJ: All right. As I look at this thing, PFC Trefny, it appears that the convening authority is free to approve the punitive discharge that was adjudged.

Do you understand that?

ACC: Yes, sir.

MJ: He is also free to approve the confinement adjudged. However, should you submit a request for voluntary appellate leave within 10 days of today's date, he is obliged to suspend all confinement in excess of 180 days for a period of 12 months from the date of his action.

Do you understand that as well?

ACC: Yes, sir.

MJ: And lastly, he is -- well, not lastly. He is also free to approve the other punishments as adjudged.

Do you understand that as well?

ACC: Yes, sir.

MJ: And lastly, as an additional matter, should for some reason your pleas be rejected, he has the option of referring this matter up to the GCM convening authority for referral to a general court-martial.

Do you understand that as well?

ACC: Yes, sir.

MJ: All right. Any questions about it?

ACC: No, sir.

MJ: Very well. I continue to find the pretrial agreement to be in accord with appellate case law, not contrary to public policy or my own notions of fairness. And I continue to accept it.

PFC Trefny, I have Appellate Exhibit IV, which is appellate rights statement.

Do you have a signed copy of that in front of you?

ACC: Yes, I do, sir.

MJ: Is that your signature that appears on that document?

ACC: Yes, it is, sir.

MJ: Prior to your signing it, had you fully read it and discussed it with your defense counsel?

ACC: Yes, I did, sir.

MJ: And did you understand that you were asking that your copy of the record of trial along with the staff judge advocate's recommendation, for it to be given to your defense counsel?

ACC: Yes, sir.

MJ: Is that still your desire?

ACC: Yes, sir.

MJ: Did you otherwise understand all of your appellate rights,

and do you have any questions about those rights?

ACC: No, I do not, sir.

MJ: And you understand them?

ACC: Yes, sir.

MJ: All right. Anything further from either side?

ATC: No, sir.

DC: No, sir.

MJ: Very well. The court is adjourned.

The court-martial adjourned at 1540, 14 May 2004.

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of

Private First Class Jeremiah J. Trefny, (b)(6) U.S. Marine
Corps, 2d Battalion, 2d Marine Regiment, 1st Marine Division
(REIN), Forward Operating Base Fallujah, Al Fallujah, Iraq.

(b)(6)

Colonel, U.S. Marine Corps
Military Judge

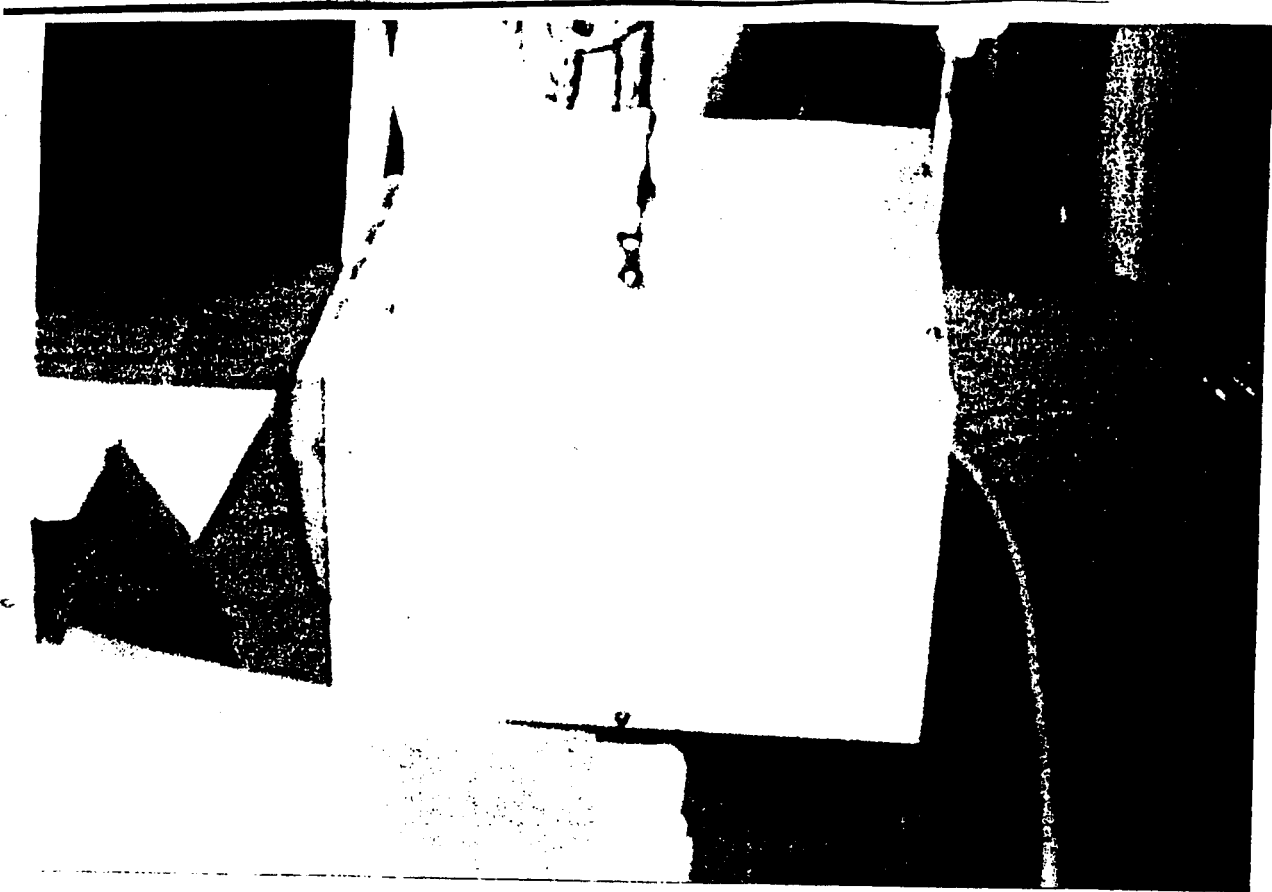
27 May 04

I have examined the record of trial in the foregoing case.

(b)(6)

First Lieutenant,
U.S. Marine Corps Reserve
Assistant Trial Counsel

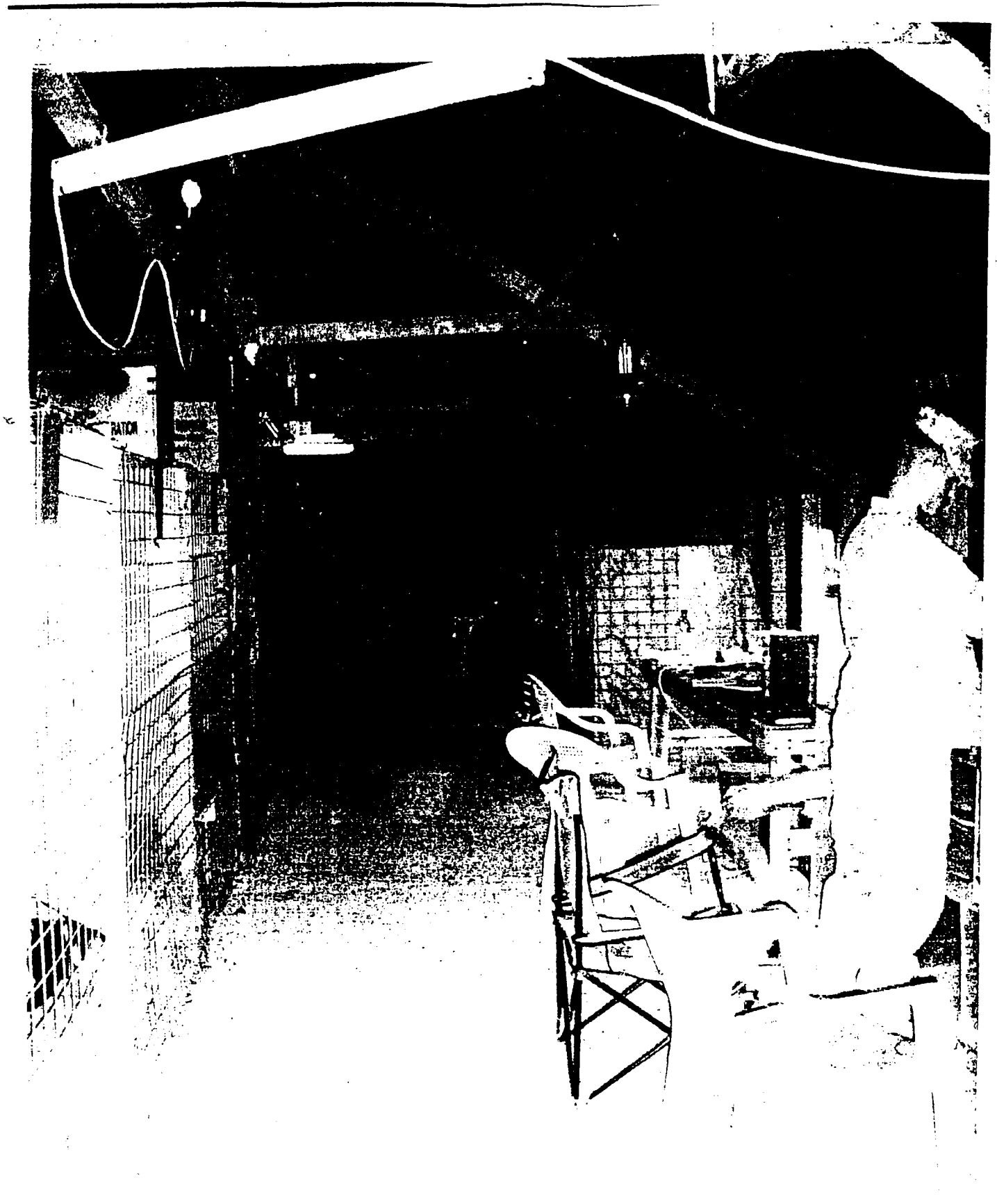
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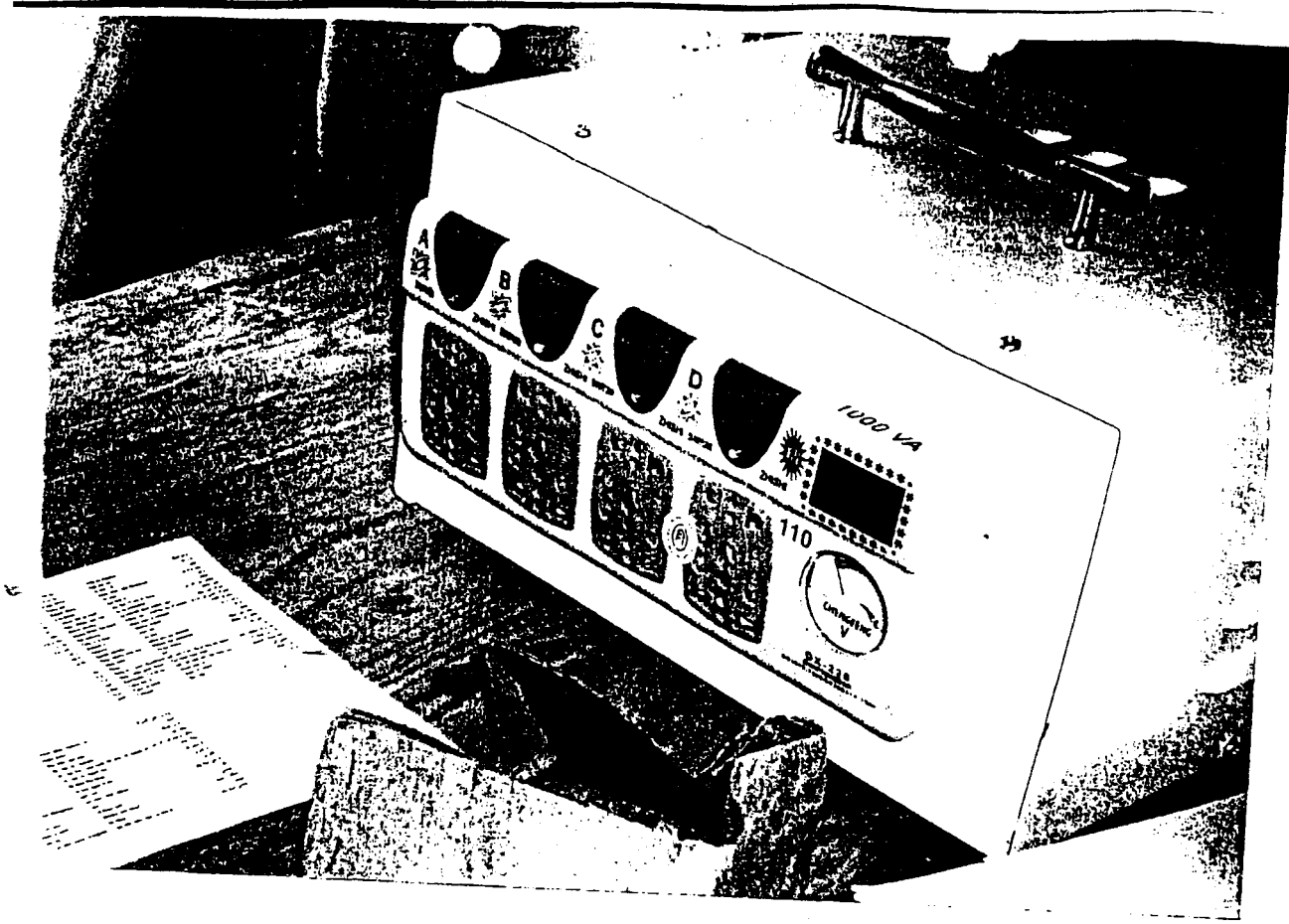
Prosecution Exhibit 1
Page 1 of 5



Prosecution Exhibit 1
Page 2 of 5



Prosecution Exhibit 1
Page 3 of 5



Prosecution Exhibit 1
Page 4 of 5



Prosecution Exhibit 1
Page 5 of 5

IN THE SIERRA JUDICIAL CIRCUIT
SPECIAL COURT-MARTIAL

UNITED STATES OF AMERICA)
)
v.) STIPULATION OF FACT
)
JEREMIAH J. TREFNY)
(b)(6))
PRIVATE FIRST CLASS)
UNITED STATES MARINE CORPS)

1. I am Private First Class Jeremiah J. Trefny. I enlisted in the Marine Corps on 16 June 2003. I have been continuously on active duty since that date. I have not been discharged from the United States Marine Corps in that time. The charge to which I am pleading guilty occurred while I was a member of 2nd Battalion, 2nd Marines, 1st MarDiv, Camp Pendleton, CA.

2. I am entering this Stipulation of Fact of my own free will. No one has forced or threatened me to enter this Stipulation of Fact. I understand that I have the right NOT to enter this Stipulation of Fact and that this Stipulation of Fact will not be accepted without my consent. I have read and discussed this Stipulation of Fact with my counsel. Everything contained within this Stipulation of Fact is true. I understand that if admitted into evidence this Stipulation of Fact will be used in the following three ways.

- a. To determine if I am guilty of the offenses to which I have pled guilty;
- b. To determine an appropriate sentence; and
- c. To be considered by appellate courts and reviewing authorities in reviewing my case.

I agree to these three uses and consent to this Stipulation of Fact being admitted by the Military Judge.

3. The following general facts are provided to establish the factual predicate that I am guilty of each element of the offenses to which I am pleading guilty.

At approximately 1030 on 13 April 2004, at FOB Al Mahmudiya, Iraq, Sgt Matthew Travis found a plug that split into two bare wire ends that were approximately two feet in length. A certain detainee, whose name I do not know, was giving our team (Sgt Matthew Travis, PFC Andrew J. Sting, PFC Joshua Gabbey, and myself) problems. By problems, I mean that he was talking when he was not supposed to talk and he would not stand when we wanted to him to stand. Sgt Travis then stated, in the presence of PFC Andrew J. Sting, PFC Joshua Gabbey, and myself that shocking the detainee would make him cooperate, that is, shocking him would keep him quiet.

1
Appellate Exhibit I
Page 1 of 6

From Sgt Travis' statement, I understood the plan to be that PFC Sting would insert the plug into the transformer that produced 110V and that PFC Sting would touch the wires to the detainee as the detainee walked by the table on which the transformer was placed.

At approximately 1100, PFC Gabbey escorted the detainee from the head into the detention facility. PFC Gabbey walked the detainee by PFC Sting too quickly for PFC Sting to shock the detainee. PFC Sting and I then told PFC Gabbey to walk the detainee back out of the facility and past PFC Sting who was holding the bare wires that were connected to the transformer. PFC Gabbey did as we directed and walked the detainee back. PFC Sting placed one end of the wire to the detainee's back and the other end of the wire to the detainee's chest. The wires produced no effect presumably because the wires touched the detainee's clothing and not the detainee's skin. PFC Sting then placed both wires on the detainee's forearm, which produced a shock. The detainee reacted by jumping back and lifting the sand bag from his eyes. During this event, Sgt Travis was inside the tent and within six feet of the detainee.

On 16 April 2004, Maj (b)(6) the executive officer of 2nd Battalion, 2nd Marines, questioned me concerning the incident that occurred on 13 April 2004. Maj (b)(6) did not advise me of my rights in accordance with Article 31b of the UCMJ. Maj (b)(6) asked me whether Sgt Matthew Travis was present in the detention facility at the time when PFC Sting shocked the detainee. I told Maj (b)(6) that Sgt Travis was not in the detention facility. My statement to Maj (b)(6) was a lie because Sgt Travis was in the detention facility.

After Maj (b)(6) questioned me, he ordered me not to discuss any information about the investigation with anyone. I understood the order and I believe that the order was a lawful order. After I received this order, I discussed the incident and Maj (b)(6) questioning of me with PFC Sting. I knew at the time that I was violating Maj (b)(6) order.

After I discussed the incident with PFC Sting, Maj (b)(6) questioned me again. Maj (b)(6) did not advise me of my rights in accordance with Article 31b of the UCMJ. Maj (b)(6) asked me whether I had discussed any information about the investigation with anyone. I said that I had discussed information about the investigation with PFC Sting, which was in direct violation of his order.

4. The following specific facts are provided to establish the factual predicate that I am guilty of each element of the offenses to which I am pleading guilty.

CHARGE I:

SPECIFICATION:

The agreement came about as described in paragraph 3. We did not formally discuss what part each of us, that is, Sgt Travis, PFC Sting, PFC Gabbey, and myself, would play in the agreement. The agreement was to assault the detainee that was giving us problems. The assault was the touching of the electrical wires to the detainee. I clearly understood the plan and what was being discussed. I agreed with Sgt Travis, PFC Sting, and PFC Gabbey

to assault the detainee. The conspiracy encompassed each and every element of the underlying offense of assault. The agreement was in existence when the overt act was performed. The touching of the wires to the detainee was done in furtherance of the conspiracy to assault the detainee. I remained a party to the agreement throughout the conspiracy. I never made any attempt to withdraw or abandon from the conspiracy while the agreement was in existence. No person or thing forced me into the conspiracy to assault the detainee. I could have avoided joining the conspiracy if I had wanted to. I joined the conspiracy because of a freely made decision on my part.

I understand that though I did not touch the electrical wires to the detainee I am liable, as a co-conspirator for all the offenses committed pursuant to the conspiracy while I remained a party to the conspiracy.

I understand that touching the live electrical wires to the detainee resulted in bodily harm. I understand that bodily harm means any physical injury to or offensive touching of another person, however slight. The touching of the live electrical wires to the detainee produced such an injury. I know this because I saw the detainee react as indicated in paragraph 3 and common sense dictates that 110V will cause some injury. The touching of the wires to the detainee was an intentional act in that we planned to cause the detainee harm.

CHARGE II:

SPECIFICATION:

On 16 April 2004, I received an order from Maj (b)(6) as detailed in paragraph 3. I clearly heard Maj (b)(6) give me the order not to discuss any information about the investigation with anyone. I understood what I was not supposed to do. I believe Maj (b)(6) command was lawful because it related to a military investigation. His order was reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the command and was directly connected with the maintenance of good order and discipline in that Maj (b)(6) was conducting an investigation involving members of his unit that implicated the discipline and good order of one of the unit's missions.

Maj (b)(6) was and is the executive officer of 2nd Battalion, 2nd Marines. I am a Marine in 2nd Battalion, 2nd Marines. I knew that Maj (b)(6) was the executive officer of 2nd Battalion, 2nd Marines at the time he gave the order. Maj (b)(6) was in uniform at the time he gave me the order and he was wearing the appropriate insignia of a Major in the United States Marine Corps. I am a Private First Class in the United States Marine Corps.

I willfully disobeyed Maj (b)(6) command as detailed in paragraph 3. I believe that I had a duty to obey the command. I disobeyed the command because I wanted to talk to PFC Sting about the incident and the investigation. My talking to PFC Sting was an intentional act. I do not have any legal justification or excuse. I could have avoided disobeying the command if I had wanted to. No person or thing forced me to disobey the command. I disobeyed the command because of a freely made decision on my part.

CHARGE III:

SPECIFICATION:

On 13 April 2004 I had a duty to treat the victim-detainee with dignity and respect and to protect the victim-detainee from physical harm. I knew I had these duties because I had been trained on the proper treatment of detainees. The training occurred in March 2004 and lasted approximately three to four days. The training included treating detainees with dignity and respect and to protect detainees from harm.

I was assigned my duties by the commanding officer of 2nd Battalion, 2nd Marines. I understood my duties. I was instructed to treat detainees with dignity and respect and to protect detainees from physical harm. I failed to perform my duties as described in paragraph 3. The dereliction was willful in that Sgt Matthew Travis, PFC Andrew Sting, PFC Joshua Gabbey, and myself intentionally planned to electrically shock the victim-detainee.

I could have performed my duties properly if I had wanted to. I did not have permission or authority to willfully derelict my duties. In order to not derelict my duties, I should have told Sgt Matthew Travis, PFC Andrew Sting, and PFC Joshua Gabbey that it was wrong to electrically shock the victim-detainee and I should have informed my chain of command before the incident occurred.

CHARGE IV:

SPECIFICATION:

On 13 April 2004, the victim-detainee was subject to my orders in that he had to do what I, or a member of my team told him to do. He was subject to mine, and our orders because he was held as a detainee who was possibly suspected of crimes against Americans. I did not know who the victim was except that I knew he was a detainee held under my charge. I was cruel and maltreated the victim-detainee as described in paragraph 3.

I agree that my behavior constituted unwarranted, harmful, abusive, rough, or other unjustifiable treatment which, under all the circumstances resulted in physical or mental pain or suffering, and was unwarranted, unjustified and unnecessary for any lawful purpose. I believe this because electrically shocking the victim-detainee with 110V caused the victim-detainee harm as described in paragraph 3.

No person or thing forced me to conspire and electrically shock the victim-detainee. I could have avoided conspiring and electrically shocking the victim-detainee. Conspiring and electrically shocking the victim-detainee was a freely made decision on my part.

CHARGE V:

SPECIFICATION:

On 16 April 2004, I made an official statement as described in paragraph 3. When I made the false statement I do so in my official capacity as a Private First Class in the United

States Marine Corps. I had a duty to make the statement because Maj (b)(6) ordered me to make a statement. The statement was made to Maj (b)(6) who was discharging his official duties as the investigating officer of detainee abuse.

The statement concerning Sgt Travis was false as described in paragraph 3. I made the statement in an effort to make Maj (b)(6) believe as true that which was false. I intended to deceive Maj (b)(6). I lied to Maj (b)(6) because I did not want him to know that Sgt Travis was in the detention facility during the incident.

I lied voluntarily. I did not have any legal justification or excuse for making the false statement. No person or thing forced or coerced me into making the statement. I made the statement because of a freely made decision on my part. I could have told the truth if I had wanted to.

UNITED STATES MARINE CORPS
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES)	
)	
v.)	SPECIAL COURT-MARTIAL
)	
JEREMIAH J. TREFNY)	PRETRIAL AGREEMENT
(b)(6))	
PRIVATE FIRST CLASS)	
U.S. MARINE CORPS)	
)	

I, PRIVATE FIRST CLASS JEREMIAH J. TREFNY, U.S. Marine Corps, the accused in a special court-martial, freely and voluntarily certify that:

1. For good consideration and after consultation with my defense counsel, I agree to enter a plea of GUILTY to the charges and specification listed below, provided that the sentence approved by the convening authority will not exceed the sentence agreed upon in the Sentence Limitation to this Agreement.

In return for my pleas of guilty, and following the military judge's acceptance of my pleas as set forth in paragraph 10, the convening authority agrees to withdraw the charge and specification to which I have plead Not Guilty. Upon announcement of the sentence by the military judge, the withdrawn charge and specification will be dismissed with prejudice by the convening authority.

2. I am satisfied with my defense counsel, Captain (b)(6) _____, in all respects and believe his advice to be in my best interest.

3. I have been advised that this offer and Agreement cannot be used against me in the determination of my guilt on any matters arising from the charges and specification against me in this court-martial.

4. I understand that for the purpose of this Agreement, the sentence is considered to be in these five parts: (1) punitive discharge; (2) period of confinement; (3) amount of forfeiture of pay and/or allowances; (4) reduction in rate or grade; and, (5) any other lawful punishment (such as hard labor without confinement, restriction, reprimand, or fine).

5. Should the court-martial adjudge a sentence which is less, or a part thereof which is less, than that set forth and approved in the Maximum Sentence Limitation to this Agreement, then the convening authority may only approve the lesser sentence.

6. My defense counsel has fully advised me of the meaning and effect of the following UCMJ provisions: Article 57, Effective dates of sentences; Article 58b, Automatic forfeitures; Article 58a, Automatic reduction; and, JAGMAN section 0152c, Automatic reduction of enlisted accused. I also understand that if the adjudged sentence is subject to any of these provisions, this Agreement will have no effect on the application of those provisions on the adjudged sentence, unless the effect is specifically indicated in the Sentence Limitation to this Agreement.

7. My defense counsel has fully advised me of the meaning and effect of my guilty plea, and its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this Agreement, and that, depending on the circumstances, such discharge may be characterized as other than honorable.

8. I understand that if my guilty plea does not remain in effect for any reason through the announcement of the sentence, then the convening authority may withdraw from this Agreement.

9. I understand that I may ask permission to withdraw my guilty plea at any time before sentence is announced, and that the military judge may permit me to do so.

10. I will plead as follows:

<u>CHARGE</u>		<u>PLEA</u>
Charge I:	Violation of Article 81, UCMJ	GUILTY
Spec:	Violation of Article 81, UCMJ	GUILTY
Charge II:	Violation of Article 90, UCMJ	GUILTY TO LESSER INCLUDED OFFENSE, ART 92
Spec:	Violation of Article 90, UCMJ	GUILTY TO LIO, ART 92
Charge III:	Violation of Article 92, UCMJ	GUILTY
Spec:	Violation of Article 92, UCMJ	GUILTY
Charge IV:	Violation of Article 93, UCMJ	GUILTY
Spec:	Violation of Article 93, UCMJ	GUILTY
Charge V:	Violation of Article 107, UCMJ	GUILTY
Spec:	Violation of Article 107, UCMJ	GUILTY

Charge VI: Violation of Article 128, UCMJ

NOT GUILTY

Spec: Violation of Article 128, UCMJ

NOT GUILTY

11. If provided a grant of testimonial immunity, I agree to testify truthfully if called as a witness in both the Article 32 Pretrial Investigations and the cases of United States v. Sergeant Matthew K. Travis, United States v. Private First Class Andrew J. Sting, and United States v. Private First Class Joshua R. Gabbey. I further agree to fully and truthfully cooperate in both the Article 32 Pretrial Investigations and the court-martial process, to include interviews with appropriate law enforcement authorities and counsel involved in the case, as well as any other reasonable request made of me.

12. For the purpose of this Agreement, misconduct is defined as any act or omission I commit in violation of the UCMJ.

13. All the provisions of this Agreement are material.

a. If I violate any provision of the Agreement or commit any misconduct before trial, the convening authority may withdraw from this Agreement; or

b. If I violate any provision of the Agreement or commit any misconduct between the date of trial and completion of my sentence, including suspension periods, the convening authority may order executed the full sentence, and I may lose the benefit of any disapproval or suspension provision contained in the Maximum Sentence Limitation portion, following a vacation hearing pursuant to Rule of Courts-Martial 1109, Manual for Courts-Martial (2002 edition).

14. The maximum sentence to be approved by the convening authority is contained in the Maximum Sentence Limitation to this Agreement.

15. I agree to request trial by military judge alone, and waive my right to a trial by members.

16. I agree to waive the presence of any non-local witnesses at government expense. I offer this as an inducement to the Convening Authority for acceptance of this agreement. This provision does not interfere with my ability to effectively present a sentencing case.

17. There are no other agreements, oral or written, express or implied, between myself and the convening authority, or any other representative of the government, except those written and contained in this agreement.

UNITED STATES MARINE CORPS
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES)	
)	
v.)	SPECIAL COURT-MARTIAL
)	
JEREMIAH J. TREFNY)	SENTENCE LIMITATION
)	
(b)(6))	
PRIVATE FIRST CLASS)	
U.S. MARINE CORPS)	
)	

1. Punitive Discharge: As adjudged; however, should a punitive discharge not be adjudged I agree to waive any administrative discharge board, which includes any charge(s) and specification(s) which is/are the subject of this Agreement and understand any administrative discharge will be characterized in accordance with service regulations. This provision originated with me and my defense counsel and is offered as an inducement to obtain this Agreement I fully understand that my command may recommend to the separation authority that I receive an other than honorable discharge. My waiver is voluntary and nobody has pressured or forced me to give up this right. I do not waive my right to submit statements, documents or other evidence to the separation authority in rebuttal to any proposed separation.

2. Confinement: As adjudged; however, should a punitive discharge be adjudged the accused agrees to submit an appellate leave request within ten (10) days of trial, then all confinement in excess of one hundred and eighty (180) days will be suspended for a period of twelve (12) months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

3. Forfeitures: As adjudged.

4. Reduction: As adjudged.

5. Other lawful punishments: As adjudged.

In return for my pleas of guilty, the convening authority agrees to refer the charges and specifications to a special court-martial. Should I fail to plead providently, the special court-martial convening authority may withdraw the charges and specifications from a special court-martial, and forward them to the Officer exercising General Court-Martial Convening Authority for disposition.

I understand that an Article 32, UCMJ, Pretrial Investigation has been scheduled by the special court-martial convening authority to determine whether probable cause

exists to believe that I committed any of these offenses, and to make a recommendation to the special court-martial convening authority as to the proper forum for the disposition of this case. As an inducement for acceptance of this Agreement, to have the offenses adjudicated at a special court-martial, I agree to unconditionally waive this Pretrial Investigation. Should I fail to plead providently at a special court-martial, the special court-martial convening authority may withdraw my case from a special court-martial, and use this waiver to forward the offenses to the Officer Exercising General Court-Martial Convening Authority for disposition.

This agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this agreement. The period of deferment will run from the date of trial until the date the convening authority acts on the sentence.

Accused:

Jeremy Trefny
JEREMIAH J. TREFNY
Private First Clas
U.S. Marine Corps

Date: 16 May 04

(b)96)

Defense Counsel:

Captain
U. S. Marine Corps

Date: 17 May 04

The foregoing pretrial agreement is approved.

(b)96)

CONVENING AUTHORITY

Date: 040513

You are advised that your counsel is required by law to fully explain to you the following post-trial and appellate rights, and that you have the right to request the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Record of Trial

A copy of the record of trial will be prepared and given to you. You may request that your copy of the record of trial be delivered to your defense counsel.

Staff Judge Advocate or Legal Officer's Recommendation:

If you received a punitive discharge or were sentenced by general court-martial, the convening authority's staff judge advocate or legal advisor will submit a recommendation to the convening authority. Before forwarding the recommendation and the record of trial to the convening authority, this legal advisor will serve a copy of the written review and recommendation upon your defense counsel. A separate copy will be served on you. If it is impracticable to serve the recommendation on you for reasons including, but not limited to, your transfer to a distant place, your unauthorized absence, or military exigency, your copy will be forwarded to your defense counsel. You may also request on the record at this court-martial or in writing that your copy be sent to your defense counsel instead of yourself.

Submission of Matters to the Convening Authority:

You have a right to submit matters to the convening authority before that officer takes action on your case. In this regard, you have the right to request deferment of any sentence to confinement. These matters must be submitted within 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer is served on you or your defense counsel, whichever is later. The convening authority may extend these periods, for good cause, for not more than an additional 20 days. Failure to submit matters within the time prescribed waives the right to submit matters later.

Action by the Convening Authority:

The convening authority will take action on the sentence adjudged and may, in his discretion, take action on findings of guilty. The action to be taken on the findings and sentence is within the sole discretion of the convening authority and is matter of command prerogative. The convening authority is not required to review the case for legal errors or factual sufficiency. In taking action on the sentence, the convening authority may approve, disapprove, commute, or suspend the sentence in whole or in part. Under no circumstance may the convening authority increase the severity of the sentence. The convening authority is not empowered to reverse a finding of not guilty; however, the convening authority may change a finding of guilty to a charge or specification to a finding of guilty to a lesser offense included within that charge or specification, may disapprove a finding of guilty and order a rehearing, or may set aside and dismiss any charge or specification.

Review

If you were tried by a special court-martial and your sentence, as finally approved by the convening authority, does not include a punitive discharge, your case will be reviewed under the direction of the staff judge advocate for the convening authority's superior general court-martial convening authority. You may suggest, in writing, possible legal errors for the judge advocate to consider and that judge advocate must file a written response to legal errors noted by you.

After such review, and completion of any required action by the general court-martial convening authority, you may request the Judge Advocate General of the Navy to take corrective action. Such a request must be filed within two years of the convening authority's action, unless the time is extended for good cause.

If you were tried by a general court-martial and your sentence, as finally approved by the convening authority, does not include a punitive discharge or at least one year's confinement, your case will be forwarded to the Office of the Judge Advocate General. You may suggest, in writing, possible legal errors or other matters for consideration by the Judge Advocate General. The record may be examined for any legal errors and for appropriateness of the sentence and the Judge Advocate General may take corrective action, if appropriate.

If your sentence, as finally approved by the convening authority, includes a punitive discharge (regardless of the type of court-martial), dismissal, a year's confinement or more, or death your case will be reviewed by the Navy-Marine Corps Court of Criminal Appeals for legal errors, factual sufficiency, and appropriateness of sentence. This review is automatic. Following this, your case could be reviewed by the United States Court of Appeals for the Armed Forces, and finally it might be reviewed by the United States Supreme Court.

Waiver of Review:

You may waive appellate review, giving up the foregoing rights, or you may withdraw your case from appellate review at a later time. Once you file a waiver or withdrawal, your decision is final and appellate review is barred. If you waive or withdraw appellate review, your case will be reviewed by a judge advocate for certain legal errors. You may submit, in writing, suggestions of legal errors for consideration by the judge advocate, who must file a written response to each. The judge advocate's review will be sent to the general court-martial convening authority for final action. Within two years after such final action, you may request the Judge Advocate General to take corrective action in your case. Two years period may be extended for good cause.

You have the right to the advice and assistance of counsel in exercising or deciding to waive your post-trial and appellate rights.

Right to Counsel:

It is your defense counsel's responsibility to represent you during the convening authority's action stage of your court-martial conviction. Your defense counsel is responsible for examining the record of trial for errors and, where applicable, the post-trial recommendation of the staff judge advocate or legal officer for errors or omissions. It is your defense counsel's obligation to advise and assist you in preparing matters for submission to the convening authority for consideration prior to action being taken on the record of trial.

If your case is reviewed by the Navy-Marine Corps Court of Criminal Appeals, military counsel will be appointed to represent you at no cost to you and, if you choose, you may engage a civilian counsel at no expense to the United States. If your case should be reviewed by the United States Court of Appeals for the Armed Forces or by the United States Supreme court, you would continue to have the same appellate counsel rights before these courts.

Acknowledgment:

I acknowledge: (1) that, prior to adjournment of my court-martial, I was provided with the above written advice; (2) that I have read and understand my post-trial and appellate rights; (3) that I discussed them with my lawyers prior to signing this form; and (4) that the military judge will discuss my appellate rights with me on the record prior to adjournment of the court, if I so desire.

I specifically request that my written copy of the record of trial be delivered to (me) (my counsel) Captain (b)(6) USMC.

I specifically request that my written copy of the staff judge advocate/legal officer review be delivered to (me) (my counsel), Captain (b)(6) USMC.

14 May 04 (date)

Jeremy Trefny (Signature of Accused)

14 May 04 (date)

(b)(6) _____ (Signature of DC)

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - This form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (*chronology sheet*) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (*unless included at the point of arraignment in the record*).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (*e.g., requests concerning delay, witnesses and depositions*).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (*real or documentary*), and briefs of counsel submitted at trial.