

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

04 Civ. 4151 (AKH)

Plaintiffs,

v.

SECOND DECLARATION OF  
MICHAEL G. SEIDEL

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT OF  
AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION, OFFICE OF  
INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE POLICY AND REVIEW,  
FEDERAL BUREAU OF INVESTIGATION;  
DEPARTMENT OF STATE; AND CENTRAL  
INTELLIGENCE AGENCY,

Defendants.  
.....

I, Michael G. Seidel, declare as follows:

(1) I am the Chief of the General Litigation Branch, United States Army Litigation Division, United States Army Legal Services Agency, Arlington, Virginia 22203. As Chief, General Litigation Branch, I am responsible for Freedom of Information Act (FOIA) and Privacy Act litigation on behalf of the U.S. Army, to include the litigation team specially organized to represent the Army in this case.

(2) I am familiar with the plaintiffs' FOIA requests and the pleadings and motions in this

case. My duties specific to this case include overseeing the receipt, review, processing, and release of responsive documents; coordinating with other Department of Defense (DoD) and Army activities on the identification, status, and release of records in this litigation, to include the Army Criminal Investigation Division (CID), Army prosecution officials, and international law advisors; and making legal determinations relative to document responsiveness, release, and denial. Moreover, I have reviewed the photographs, identified as the “Darby photos” (see Second Declaration of Phillip J. McGuire, para. 3-4), on which the plaintiffs seek summary judgment for release. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. I have previously submitted one declaration in this case.

(3) The plaintiffs’ Memorandum of Law in Opposition to Defendant’s Motion for Partial Summary Judgment concludes that “[t]here are no less intrusive means to obtain” the information depicted in the Darby photographs. Plaintiff’s Memorandum of Law, pg. 26. However, there are alternative, less personally intrusive means of obtaining information about the conduct depicted in the Darby photographs. The Army has already released documents in this litigation which provide descriptive accounts of the conduct depicted in and associated with these photographs, continues to process documents which detail such conduct, and will continue to release such documents as they become available and are processed.

(4) Documents already released in this litigation which describe and are associated with the conduct in the Darby photos include CID reports of investigation (See the First McGuire

Declaration) and records of trial by courts-martial.<sup>1</sup> One recently released record of trial by courts-martial, Specialist Jeremy Sivits, is particularly illustrative. Then Specialist Sivits was found guilty of conspiring to maltreat detainees with six other soldiers at the Abu Ghraib prison in November, 2003. *See* Army releases, pg. 005933 (hereinafter A-005933).<sup>2</sup>

(5) The Sivits record of trial is replete with descriptions of the abusive conduct depicted in some of the Darby photos. As evidenced by the stipulation of fact admitted in the trial (A-006159 through 006166), the criminal investigation surrounding detainee abuse at Abu Ghraib prison was triggered by Specialist Joseph Darby<sup>3</sup> sliding a compact disk of pictures--hence the "Darby photos"--under the door of an Army CID office. A-006160. The stipulation of fact further outlines in graphic detail the conduct surrounding the abuse depicted in some of the photos and specifically refers to the photographing which occurred during the misconduct: "The co-conspirators then began photographing, and posing for photographs with the detainees in humiliating and degrading positions," A-006162; "taking a photograph of CPL [redacted] posing with his knees on the top of the detainees as the detainees were clothed in a pile on the floor," A-006162; and "CPL [redacted] asked the accused to take a photograph of him posed cradling a detainee's head in a headlock as though he was going to punch the detainee in the head." A-006164. Furthermore, the trial testimony of now Private Sivits provides vivid descriptions of

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<sup>1</sup> The Ambuhl, Cruz, and Sivits records of trial by courts-martial, all which dealt with charges stemming from the conduct depicted in and associated with the Darby Photos, were released on April 14, 2005.

<sup>2</sup> This document, together with all court martial transcripts referred to in this declaration, are attached as Exhibit A to this Declaration.

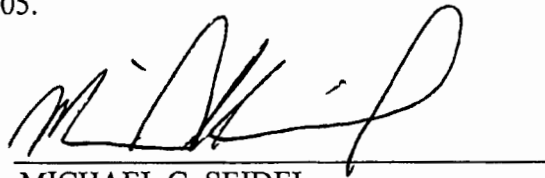
<sup>3</sup> Specialist Darby's name is redacted on the release.

the conduct surrounding and depicted in various Darby photos, to include “that’s when a photograph was taken of PFC [redacted] pointing with a smile on her face and a cigarette in her mouth at the detainees and giving a thumbs up.” A-006067; See generally A-006050 through 006166.

(6) As is publicly known, other Abu Ghraib co-conspirators have been tried by courts-martial or are pending trial, including now Private Grainer and Private First Class England. In fact, the log of responsive documents provided by the Army in October 2004, refers to the Grainer, England and Frederick investigations. As these, and other responsive records describing the conduct within and surrounding the abuse in the Darby photos become available and are processed, the Army will release these records.

Pursuant to 28 U.S.C. § 1746, I declare the foregoing to be true and correct.

Executed this 19<sup>th</sup> day of May, 2005.

A handwritten signature in black ink, appearing to read "M. G. Seidel", written over a horizontal line.

MICHAEL G. SEIDEL  
Lieutenant Colonel  
U.S. Army  
Chief, General Litigation Branch

DEPARTMENT OF THE ARMY  
Headquarters, III Corps  
Victory Base, Iraq  
APO AE 09342-1400

SPECIAL COURT-MARTIAL ORDER  
NUMBER 13

18 December 2004

Specialist Jeremy C. Sivits, U.S. Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq, was arraigned at Victory Base on the following offenses at a special court-martial convened by the Commander, III Corps.

Charge I: Article 81. Plea: Guilty. Finding: Guilty.

Specification: At or near Baghdad Central Correctional Facility, Abu Ghraib, Iraq, on or about 8 November 2003, conspire with Staff Sergeant [REDACTED] Sergeant [REDACTED], Corporal [REDACTED], Specialist [REDACTED] Specialist, [REDACTED] and Private First Class [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: maltreatment of subordinates, and in order to effect the object of the conspiracy, the said Specialist [REDACTED] took a photograph of nude detainees being forced into a human pyramid position. Plea: Guilty, excepting the words, "the said Specialist [REDACTED] took a photograph of," and substituting therefore the words, "that a photograph be taken of." To the excepted words: Not Guilty. To the substituted words: Guilty. Finding: Guilty.

Charge II: Article 92. Plea: Guilty. Finding: Guilty.

Specification: Who should have known of his duties at or near Baghdad Central Correction Facility, Abu Ghraib, Iraq, on or about 8 November 2003, was derelict in the performance of those duties in that he negligently failed to protect detainees from abuse, cruelty and maltreatment, as it was his duty to do. Plea: Guilty. Finding: Guilty.

Charge III: Article 93. Plea: Guilty. Finding: Guilty.

Specification 1: At or near Baghdad Central Correction Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat a detainee, a person subject to his orders, by escorting the detainee to be positioned in a pile on the floor to be assaulted by other soldiers. Plea: Guilty. Finding: Guilty.

Specification 2: At or near Baghdad Central Correction Facility, Abu Ghraib, Iraq, on or about 8 November 2003, did maltreat several detainees, persons subject to his orders, by taking a picture of said detainees who were laying on a pile on the floor, while another guard, Corporal [REDACTED] kneeled on top of the pile of detainees. Plea: Guilty. Finding: Guilty.

005933

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1 ACC: Yes, I did, Your Honor.

2 MJ: Now, let's move forward to, we have a pile on the ground  
3 now. What happened, now, you said they were naked on the pile on the  
4 ground and some other people took pictures of that?

5 ACC: Yes, Your Honor.

6 MJ: You didn't take a----

7 ACC: No, Your Honor.

8 MJ: What happened next?

9 ACC: After they were done with the human pyramid, they had the  
10 detainees stand up against the wall, and they were--PFC [REDACTED] was  
11 commenting about the size--their sizes of their penises, Your Honor,  
12 and that's when a photograph was taken of PFC [REDACTED] pointing with a  
13 smile on her face and cigarette in her mouth at the detainees and  
14 giving a thumbs up. And that went on for a few minutes. There was a  
15 picture of that, and then after that is when they placed one detainee  
16 standing up, and they put another one on his knees in front of the  
17 detainee standing up to make it look like he was giving the detainee  
18 oral sex. They took some photos of that.

19 MJ: At this time, all of the detainees are naked except for the  
20 bag on their head.

21 ACC: Correct, sir.

22 MJ: Go ahead.

006067

1 this? First, Sergeant First Class ██████ and Sergeant First Class  
2 ██████ all testified that Specialist Sivits can immediately transition  
3 back into civilian life. Even Specialist ██████ the government's  
4 own witness testified as to Specialist Sivits' rehabilitative  
5 potential. Second, Specialist Sivits not only came before the court,  
6 indeed, the entire world to admit his wrongdoing, but he did so as  
7 soon as he was asked about what happened. Third, Specialist Sivits  
8 knows that he should have stopped the other soldiers from mistreating  
9 detainees, that he should have protected those detainees and that he  
10 should have not taken the photograph. And finally, Specialist Sivits  
11 has a job as a garage mechanic waiting on him. Although the job  
12 might not look like much to most people, it speaks volumes to who  
13 Specialist Sivits is, where he comes from, and just how out of his  
14 element he was at Abu Ghraib.

15 Specialist Sivits stands as an example to other soldiers  
16 that the actions of every individual in the Army are important. Our  
17 Army is strong enough to acknowledge to the Iraqi people that we are  
18 made up of individuals who all work hard to do good and sometimes  
19 fail. Our Army is also strong enough to accept those individual  
20 failures and not cast out those who, like Specialist Sivits, can  
21 still contribute. We are a nation and a military that follows the  
22 rule of law. Here today, in this historical place, the defense would

1 ask the court to show our soldiers, the Iraqi people, the people of  
2 the world that our rule of law is about punishment, but it is also  
3 about justice and appropriate punishment based before the court--  
4 based on the evidence before the court alone. Follow the rule of law  
5 today, Your Honor, and determine an appropriate punishment for what  
6 Specialist Sivits did based on the totality of who he is and not on  
7 the other soldiers. Thank you.

8 MJ: Court is closed.

9 [Court closed at 1554, 19 May 2004, and reopened at 1622, 19 May  
10 2004.]

11 MJ: Court is called to order. All parties are again present  
12 that were present when the court closed.

13 Lieutenant [REDACTED], have you advised the accused orally and  
14 in writing of his post-trial and appellate rights?

15 DC: I have, Your Honor.

16 MJ: And that's been reduced to Appellate Exhibit IV.

17 DC: Yes, sir.

18 MJ: Specialist Sivits, is that your signature on Appellate  
19 Exhibit IV?

20 ACC: Yes, sir.

21 MJ: And Lieutenant [REDACTED] that's your signature below his?

22 DC: Yes, sir.



1 MJ: Specialist Sivits, did your defense counsel explain his  
2 post-trial and appellate rights to you?

3 ACC: Yes, sir.

4 MJ: Do you have any questions about your post-trial and  
5 appellate rights?

6 ACC: No, sir.

7 MJ: Accused and counsel, please rise. [The accused and his  
8 counsel stood.]

9 Specialist Jeremy C. Sivits, this court sentences you:

10 **To be reduced to the grade of Private E1;**

11 **To be discharged with a bad-conduct discharge; and**

12 **To be confined for 1 year.**

13 Please be seated. [The accused and his counsel resumed  
14 their seats.]

15 May I see Appellate Exhibit III, please? [Court reporter  
16 hands document to MJ.]

17 Reading the pretrial agreement, part of the pretrial  
18 agreement was to refer it to this level of court, and therefore, the  
19 convening authority is free to approve the adjudged sentence. I do  
20 have one question though. The pretrial agreement also states,  
21 Lieutenant [REDACTED] that the convening authority agrees to waive all  
22 automatic forfeitures and direct such forfeiture be provided to

1 support Specialist Sivits' family, understanding that when he reaches  
2 his ETS, assuming--and we're going to be close, because 6 months, I  
3 believe, is the maximum. When he reaches his ETS, the convening  
4 authority will not be able to waive any more forfeitures. Do you  
5 understand that?

6 DC: Yes, Your Honor.

7 MJ: And Specialist Sivits, do you understand that?

8 ACC: Yes, Your Honor.

9 MJ: And despite that limitation, like I told you earlier, you  
10 still wanted to plead guilty and you still want the pretrial  
11 agreement.

12 ACC: Yes, Your Honor.

13 MJ: So it's no misunderstanding that the waiver provision may  
14 stop at your ETS.

15 ACC: No, Your Honor.

16 MJ: And the second provision here says that Specialist Sivits  
17 has absolute immunity from further prosecution. So I read that, use  
18 of immunity for anything related to this matter in the future.

19 DC: Yes, Your Honor.

20 MJ: So the convening authority is free to approve the adjudged  
21 discharge, reduction and period of confinement. Is that the  
22 understanding of the defense?

1 DC: Yes, Your Honor.

2 MJ: Is that the understanding of the government?

3 TC: Yes, Your Honor.

4 MJ: And most importantly, Specialist Sivits, is that your  
5 understanding?

6 ACC: Yes, Your Honor.

7 MJ: Any other matters to take up before this court adjourns?

8 TC: No, sir.

9 DC: No, sir.

10 MJ: This court is adjourned.

11 [The court-martial adjourned at 1625, 19 May 2004.]

12 [END OF PAGE.]

**AUTHENTICATION OF RECORD OF TRIAL**

in the case of

United States v Specialist SIVITS, Jeremy C., JS Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq APO AE 09342

  
COL, JA  
Military Judge

\_\_\_\_\_  
2004

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

  
ILT, JA  
Defense Counsel

2MAY 2004

**AUTHENTICATION OF RECORD OF TRIAL**

in the case of


United States v Specialist SIVITS, Jeremy C., US Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), HI Corps, Victory Base, Iraq APO AE 09342

*Rec'd 26 May 04*

  
COL, JA  
Military Judge

26 May 2004

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

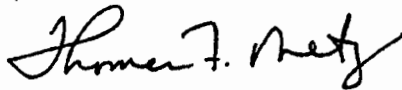
  
1LT, JA  
Defense Counsel

25 MAY 2004

ACTION

DEPARTMENT OF THE ARMY  
Headquarters, III Corps  
Victory Base, Iraq  
APO AE 09342-1400

In the case of Specialist Jeremy C. Sivits, [REDACTED], U.S. Army, Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne), III Corps, Victory Base, Iraq, the sentence is approved and, except for the part of the sentence extending to bad-conduct discharge, will be executed. The automatic forfeiture of pay and allowances required by Article 58(b), UCMJ, are hereby ordered waived effective 22 May 2004, for a period of six months, with the direction that those forfeitures be paid to the accused's wife for her personal financial support.



THOMAS F. METZ  
Lieutenant General, USA  
Commanding

DEC 18 2004

006157

PROSECUTION EXHIBITS ADMITTED INTO EVIDENCE

006158

UNITED STATES )

v. )

STIPULATION OF FACT

SIVITS, Jeremy C. )  
SPC, U.S. Army, )  
Headquarters and Headquarters Company, )  
16th Military Police Brigade (Airborne) )  
III Corps, )  
Victory Base, Iraq, APO AE 09342 )

16 May 2004

**I. NATURE AND USES OF THE STIPULATION:**

1. It is agreed between Specialist Jeremy C. Sivits ("the accused"), the Defense Counsel and Trial Counsel, that the following facts are true, susceptible to proof, and admissible in evidence. These facts may be considered by the military judge in determining the providence of the accused's plea of guilty; to establish the elements of all charges and specifications; and they may be considered by the sentencing authority in determining an appropriate sentence. For these purposes, the accused expressly waives any objection that he may have to the admission of these facts, and any referenced attachments, into evidence at trial under any evidentiary rule, applicable case law, or Rule for Courts-Martial that might otherwise make them inadmissible.

**II. THE ACCUSED:**

2. The accused is 24 years old and was 23 years old on the date of the charged offenses. He entered active duty on 7 January 1999 and attended Light Wheel Vehicle Mechanic School at Fort Jackson, South Carolina. He completed his MOS training and was released from active duty on 29 May 1999. He was voluntarily mobilized in support of OPERATION JOINT FORGE for service in Bosnia from 4 August 2001 until 11 March 2002. His only MOS is 63B, Light Wheeled Vehicle Mechanic. The accused was activated for his current period of service in support of OPERATION ENDURING FREEDOM on 24 February 2003. The accused has a total of approximately five years and five months of service in the United States Army Reserve. As a civilian, he worked at Wal-Mart as a stocker. The accused received Geneva Convention and UCMJ training during basic training.

3. At the time of the charged offenses, the accused was on active duty in the United States Army. He was originally assigned to the 372d Military Police Company, 320th Military Police Battalion and arrived in Iraq on 13 May 2003. The accused is now assigned to Headquarters and Headquarters Company, 16th Military Police Brigade (Airborne). At all times relevant to the charged offenses, the accused was on active duty. This court has proper jurisdiction over the accused and the charged offenses.

PROSECUTION EXHIBIT

OFFERED R. 14 ADMITTED R. 14

006159



**III. THE INITIATION OF THE INVESTIGATION:**

4. The accused learned from the CID case file provided to his counsel that the investigation began on 13 January 2004 when SPC ██████ slid a compact disc containing images of detainee abuse under the office door of the criminal investigation division (CID) at Baghdad Central Confinement Facility (BCCF) near Abu Ghraib, Iraq. SPC ██████ had received two compact discs from CPL ██████, another soldier assigned to BCCF, a few days earlier. SPC ██████ had asked for pictures of the hardsite. SPC ██████ downloaded the images from both discs to his computer without looking at them. After saving the pictures, SPC ██████ opened the files which included innocuous pictures of palaces in Iraq and soldiers working at the BCCF. The images also included pictures of naked detainees in forced sexual positions (Attachments 2 and 6). SPC ██████ returned the two discs to CPL ██████ and then burned the images to a compact disc that he anonymously provided to CID. The disc also contained images of CPL ██████ having sexual intercourse with a female soldier at BCCF. Before turning the disc over to CID, SPC ██████ showed some of the detainee abuse images to his roommate.

5. The CID investigation further showed that the day after SPC ██████ slid the disc under CID's door, SPC ██████ spoke to investigators and made a sworn statement describing the abuse of detainees at the BCCF. In his statement, SPC ██████, a junior enlisted soldier, explained that he knew abusing detainees was wrong and wanted it to stop. He did not cite any rule of law or policy of the facility; he stated that he simply "felt the pictures were morally wrong."

6. The CID investigation further revealed that CID reviewed the disc and started questioning suspects. After questioning two of the soldiers photographed on the disc, investigators questioned the accused. The accused voluntarily waived his rights under Article 31, UCMJ, cooperated with CID once he was identified as a suspect and consented to a search of his living area. Prior to preferral of charges, the accused provided two sworn statements about his misconduct and the abuse he and other soldiers committed against detainees at the facility. CID investigators found the accused's statements to be truthful and his attitude cooperative in providing statements.

7. Charges against the accused were preferred on 20 March 2004 and the accused unconditionally waived his right to an Article 32 hearing. As part of his pre-trial agreement, the accused assisted the Government in its investigation and prosecution of other soldiers and agreed to continue his cooperation once his case has concluded.

**IV. CHARGE 1, THE SPECIFICATION – Conspiracy to Maltreat Subordinates  
(In Violation of Article 81, UCMJ).**

8. On or about 8 November 2003, the accused was working on a detail as a generator mechanic at BCCF. Staff Sergeant (SSG) ██████ the noncommissioned officer in charge (NCOIC) of the BCCF hard site and a Military Police officer, came by the accused's work area and asked the accused to come down to the hard site. The hard site is a section of BCCF that houses civilian internees, security internees, and

Stipulation of Fact – United States v. Sivits

criminal detainees in cells much like a normal prison facility. It is a hallway with prison cells lining the walls. SSG [REDACTED] told the accused that new detainees had arrived and he wanted the accused to come talk with him. The accused agreed to come down to the hard site to visit with SSG [REDACTED] SSG [REDACTED] and the accused went to the hard site where seven detainees were located in a holding cell.

9. The accused asked SSG [REDACTED] if SSG [REDACTED] wanted the accused to escort one of the detainees down to 1A tier. The 1A tier is a section in the hard site where detainees are kept segregated from one another in individual cells. SSG [REDACTED] told the accused to go ahead and escort one of the detainees. Following the discussion with SSG [REDACTED] the accused escorted the detainee to the 1A tier. The detainee that the accused escorted and six other detainees were tossed into a human pile, clothed, lying on top of one another, in the middle of the floor. All of the detainees were flex-cuffed with their hands behind their backs and sandbags on their heads. They were unarmed, restrained, and did not pose any threat whatsoever to the accused or anyone else.

10. The detainees were subject to the orders of the accused and the other co-conspirators. The accused and the other co-conspirators are soldiers in the United States Army. The detainees are subject to the orders of members of the military of the United States under the Geneva Convention, and under the provisions of AR 190-8.

11. The accused was told by SSG [REDACTED] that the detainees were ordered to be put in isolation in Tier 1A as punishment for a riot earlier that night.

12. Once the accused began to escort the detainee to the 1A tier of the hard site, the accused entered into a nonverbal agreement, with, SSG [REDACTED] (SGT) [REDACTED], Corporal (CPL) [REDACTED], Specialist (SPC) [REDACTED] Specialist (SPC) [REDACTED] and Private First Class (PFC) [REDACTED] to maltreat the detainees (subordinates), a violation of Article 93 of the Uniform Code of Military Justice. The agreement was based on the presence of personnel in the tier on or about 8 November 2003 and the participation as well as failure of the accused to intervene or stop the maltreatment on that date. SSG [REDACTED] was the NCOIC of the hard site facility, CPL [REDACTED] was the NCOIC of 1A tier, SPC [REDACTED] was the NCOIC of the 1B tier, and SGT [REDACTED] was the NCO of an unrelated tier. SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED], and SPC [REDACTED] are Military Police officers.

13. While the agreement to maltreat detainees continued to exist, and while the accused remained a party to the agreement, the accused and/or at least one of his co-conspirators did maltreat the detainees for the purpose of bringing about the object of the conspiracy. In particular, the accused and/or at least one of his co-conspirators committed the following overt acts in furtherance of the conspiracy to maltreat the detainees, and for the purpose of bringing about the object of the conspiracy

a. The accused escorted a detainee to the 1A tier of the hard site. The tier is an open hallway with cells on each side. The tier also includes a second level of cells with small walkways on both sides that allow passersby to look down on the tier. The Iraqi detainees were pushed into a pile on top of each other to the floor in the middle of the

Stipulation of Fact – United States v. Sivits

hallway. The prisoners' hands were tied behind their backs with flex-cuffs and empty sandbags covered their heads.

b. Because the detainees were wearing flex-cuffs and were effectively blindfolded, they posed absolutely no danger to the accused or the other soldiers.

c. After the soldiers piled the detainees on the floor, SSG [REDACTED] SGT [REDACTED] and CPL [REDACTED] jumped on the detainees. The detainees cried out in pain as the soldiers jumped on them. SGT [REDACTED] also walked around the pile of detainees and deliberately stepped on their hands and feet while he was wearing military combat boots. When he stomped on the detainees' hands and feet, they cried out in pain.

d. SSG [REDACTED] and CPL [REDACTED] stripped the detainees of their clothing. The accused has since been told that the act of exposing genitals in front of females and other males is a particularly unacceptable and humiliating practice in the Arab culture.

e. SSG [REDACTED] and CPL [REDACTED] placed the detainees into the humiliating and demeaning position of a naked human pyramid. Because the detainees did not speak English, they were physically pushed and forced into these degrading positions. The co-conspirators then began photographing, and posing for photographs with the detainees in humiliating and degrading positions. Other co-conspirators took multiple photographs and the accused took a single photograph at CPL [REDACTED] request. The accused did not pose for any photographs but watched other co-conspirators pose for photographs.

f. The co-conspirators then forced the detainees to masturbate or attempt to masturbate in front of each other, as well as in front of male and female soldiers, the accused did nothing to protect them. The Iraqi detainees were forced into positions to simulate homosexual acts, fellatio, or other sexual demeaning and degrading positions. As with the prior abuse that evening, the detainees did not speak English so SSG [REDACTED] and CPL [REDACTED] physically placed the detainees into the positions. At no time did the accused attempt to stop the abuse or alert his chain of command.

g. The accused engaged in the maltreatment by taking a photograph of CPL [REDACTED] posing with his knees on top of the detainees as the detainees were clothed and in a pile on the floor. The taking of this photograph was humiliating to the detainee in the photograph.

h. SSG [REDACTED] SGT [REDACTED] CPL [REDACTED] SPC [REDACTED] SPC [REDACTED] PFC [REDACTED] and the accused were all present for, observed the acts described above, and by these actions, agreed to these acts. No one ordered the accused to abuse detainees at BCCF. The accused does not believe that the other soldiers were ordered to abuse the detainees or that any member of the United States Armed Forces or other agent of the United States government, to include contract employees and employees of other government agencies directed, encouraged, or otherwise ordered the accused or his co-conspirators to abuse or maltreat these detainees. There was no legitimate or

Stipulation of Fact – United States v. Sivits

acceptable reason known to the accused for forcing these detainees to humiliate themselves while being photographed by American soldiers.

j. The accused has since learned that the humiliating and sadistic acts of maltreatment and dehumanization described herein are unacceptable in any culture, but especially so in the Arab world. Homosexual acts are against Islamic law and Arab men consider it humiliating to be naked in front of others. Placing the detainees on top of one another in simulated acts of homosexuality and forcing them to masturbate or simulate masturbation seriously violated the tenets of Islamic law and degraded the detainees.

14. While the abuse was occurring, CPL ██████████ and PFC ██████████ joked and laughed. SPC ██████████ smiled and wrote the word "rapeist [sic]" on a detainee's leg. While some of the maltreatment surprised the accused, he also laughed at some of the abuse. The accused knowingly, intentionally, and willfully participated in the acts set forth above. At the time, the accused thought it was "funny" to see naked detainees in a human pyramid. Some of the abusive acts also disgusted the accused. In a statement made to CID, the accused admitted was asked if the incidents that night were wrong; he replied, "All of them were." He added, "To be honest, it was mistreating prisoners. I know the war has stopped, but I know if they are POW's that is abuse of the Geneva Convention."

15. The agreement between the accused and his co-conspirators to maltreat and the overt acts in furtherance of that conspiracy described herein were wrongful. The accused had no legal justification or excuse for these offenses. In fact, recognizing the illegality and deplorability of these acts, and in an attempt to keep them secret, SSG ██████████ told the accused "you did not see shit."

16. The accused did not report these crimes even though he knew he had a duty to report them. The accused knowingly, intentionally, and willfully failed to prevent or report the abuse and maltreatment. To the contrary, he was a willing participant in the abuse of detainees on or about 8 November 2003.

**V. CHARGE II, THE SPECIFICATION – Dereliction of Duty  
(In violation of Article, 92, UCMJ)**

17. On or about 8 November 2003, the accused was derelict in his duties in that he failed to protect Iraqi detainees from abuse, cruelty and maltreatment. The accused was under orders from his chain of command to not harm and to take care of prisoners. The accused had a duty to treat all detainees with dignity and respect and to protect detainees and prisoners in his presence from illegal abuse, cruelty, and maltreatment.

18. The accused knew of his duties with respect to the detainees. The accused knew that abusing the detainees was wrong. The accused failed to protect the detainees in his presence, as was his duty, or report the abuse to superiors or the chain of command.

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19. The accused photographed detainee abuse and watched as other soldiers forced Iraqi men to simulate masturbation and oral sex. He did not report this abuse in November, December or January but once identified as a suspect, the accused answered questions on several occasions from CID about the abuse in mid-January 2004, provided two sworn statements and allowed CID to search his living area.

**VI. CHARGE III, SPECIFICATION 1 – Maltreatment of Detainee  
(In violation of Article 93, UCMJ)**

20. On or about 8 November 2003, the accused maltreated a detainee by escorting the detainee to be positioned in a human pile on the floor and assaulted by other soldiers. As an American soldier acting as an agent of the U.S. Army, the detainee was subject to the orders of the accused, and therefore subordinate to the accused.

**VII. CHARGE III, SPECIFICATION 2 – Maltreatment of Several Detainees  
(In violation of Article 93, UCMJ)**

21. On or about 8 November 2003, the accused maltreated several detainees by taking a picture of them while they were forced to lie in a human pile on the floor, and while another guard, CPL [REDACTED] the NCOIC of 1A tier, knelt on top of them. CPL [REDACTED] asked the accused to take a photograph of him posed cradling a detainee's head in a headlock, as though he was going to punch the detainee in the head. The accused maltreated the detainee by taking the photograph. The detainees were subject to the orders of the accused as previously set forth in paragraph 10. The detainees were escorted to the hard site tier 1-A as described above in paragraphs 8 and 9. The detainees were flex-cuffed with their hands behind their backs and had sandbags over their heads. The detainees were restrained, unarmed, were not a threat to the guards, and were complying with the orders given to them by SSG [REDACTED], the NCOIC of hard site facility, and CPL [REDACTED]

22. After ordering the detainees to lie in the pile on the floor, SGT [REDACTED] ran across the corridor and jumped on the pile of detainees. CPL [REDACTED] said to another soldier to "come and get some," meaning to jump on the detainees. SGT [REDACTED] also ran and jumped on the detainees. When SGT [REDACTED] jumped on the detainees, he hurt them and they cried out in pain. SGT [REDACTED] wearing combat boots, then stomped on the detainees' fingers and bare toes.

23. The co-conspirators removed the detainees' flex-cuffs. CPL [REDACTED] and SSG [REDACTED] then ordered the detainees to take off their clothes. Because the detainees did not speak English, the soldiers directed the undressing with hand gestures. The detainees were visibly uncomfortable while removing their clothing and standing in the hallway in the nude. The accused has since learned that this was particularly humiliating abuse in the Muslim world, a culture in which male nudity is considered shameful and homosexual acts are a violation of Islamic Law. CPL [REDACTED] and SSG [REDACTED] ordered one detainee at a time to strip.

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24. Next, CPL █████ knelt down by one naked detainee with a sand bag over his head. CPL █████ put the detainee in to a cradled head lock, position and punched the detainee with a closed fist and extreme force to the temple of his head. CPL █████ hit the detainee so hard in the temple he knocked the detainee unconscious. The accused walked over to the detainee to make sure if he was still alive. The detainee was still breathing. CPL █████ said, "damn that hurt" referring to hurting his hand when he punched the detainee.

25. CPL █████ then went to the pyramid of clothed detainees and knelt on top of the detainees. At CPL █████ request, the accused took a photograph of █████ kneeling on the human pile of detainees. SSG █████ then struck a detainee in the chest with a closed fist. SSG █████ struck the detainee with so much force that the detainee could not breathe. While waiting on the medic to arrive, the accused assisted the detainee in catching his breath, although the accused took no action to prevent the assault on the detainee and did nothing to report the illegal assault on the detainee.

26. CPL █████ then ordered the rest of the detainees to remove their clothing. Several detainees were seated on the floor. CPL █████ and SSG █████ forced other naked detainees into a seated position on the backs of the detainees seated on the floor. CPL █████ then forced the detainees into a human pyramid by physically pushing them into position. Detainees knelt on the bottom and CPL █████ placed the next row on top of the first row by kneeling the second row on the backs of the first row of detainees. SSG █████ and CPL █████ then ordered the nude detainees to masturbate. SSG █████ took his hand and placed it on the hand of the detainee and moved the detainees hand back and forth on the detainee's penis to simulate the motion of masturbating. SSG █████ performed this disgusting, degrading act on several of the detainees until he had several performing the act of masturbation at the same time. While the detainees were masturbating, the soldiers, including the accused, watched the humiliation. The humiliation was photographed by CPL █████ and PFC █████ although the accused did not take any photographs of this abuse.

27 The accused's and his co-conspirators' maltreatment of the detainees was wrongful and without any legal justification or excuse.

**VIII. ADDITIONAL INFORMATION:**

28. The accused provided the following truthful answers when questioned by CID:

Q: If a member of the chain of command, including SFC █████ [Acting First Sergeant], or SSG █████ [Assistant Hardsite Wing Nightshift Supervisor], was present would the abuse have happened?

A: Hell no.

Q: Why not?

A: Because the command would have slammed us. They believe in doing the right thing. If they saw this going on, there would be hell to pay.

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To the accused's knowledge, no one in his chain of command was aware of this abuse or otherwise endorsed these actions at BCCF.

29. The accused now knows that: in addition to the CID criminal investigation, the Army initiated other investigations into detainee abuse at BCCF. Following SPC [REDACTED] revelation of the abuse of detainees at BCCF, Lieutenant General Ricardo S. Sanchez, Commander, Combined Joint Task Force Seven, appointed Major General Antonio Taguba to conduct an investigation into detainee abuse at the facility. On 11 May 2004, Major General Taguba was called to testify at the Senate Armed Services Committee hearing regarding his investigation. Because of the high level of public interest in this case, the hearing was televised live on several cable news channels. At the hearing, Major General Taguba stated, "We did not find any evidence of a policy or a direct order given to these soldiers to conduct what they did." The unclassified version of the Article 15-6 Investigation conducted by MG Taguba will be admitted as a defense exhibit during presentencing proceedings without objection from the government.

30. Over the past two weeks, both Middle Eastern and Western media outlets have broadcast some of the attached photographs, among others of the accused and his co-conspirators' abusing detainees. The accused's and his co-conspirators' acts, as reflected in these photographs and others, have tarnished the reputation and image of the United States Armed Forces and the United States.

**IX. STIPULATION TO ADMISSIBILITY OF EVIDENCE**

31. The government and the defense agree that this stipulation of fact plus attached enclosures are admissible at trial and may be considered by the military judge in determining the providence of the accused's pleas and in determining an appropriate sentence.

[REDACTED]

1LT, JA  
Defense Counsel

[REDACTED]

SPC, USA  
Accused

[REDACTED]

CPT, JA  
Trial Counsel

**Attachments:**

1. Photograph of CPL [REDACTED] cradling detainee (taken by SPC Sivits).
2. Photograph of detainees masturbating.
3. Photograph of naked detainees in human pyramid (from front).
4. Photograph of naked detainees in human pyramid (from back).
5. Photograph of naked detainees in human pyramid (with soldiers).
6. Photograph of naked detainee simulating fellatio.

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