

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF KENTUCKY
3 PADUCAH DIVISION

3 UNITED STATES OF AMERICA,) Case No. 5:06-CR-19
4)
4 Plaintiff,)
5)
5 VS.)
6)
6 STEVEN D. GREEN,)
7) May 13, 2009
7 Defendant.) Paducah, Kentucky

8 *****
9 TRANSCRIPT OF TESTIMONY OF GARY SOLIS
10 FROM JURY TRIAL
11 BEFORE THOMAS B. RUSSELL
12 UNITED STATES DISTRICT CHIEF JUDGE
13 *****

11 APPEARANCES:

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21 [Defendant present.]

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25 Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 (Begin proceedings in open court at 9:45 a.m.)

2 GARY SOLIS, DEFENDANT WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MR. WOLFF:

5 Q. Good morning, Mr. Solis. If you would, introduce
6 yourself to the jury, please.

7 A. I'm Gary Solis. A little background?

8 Q. Yeah. A little bit of background, please.

9 A. I'm a retired Marine Corps officer, 26 years
10 active duty, two tours in Vietnam. After retirement,
11 I -- well, while in the Marine Corps, I got a law degree
12 and a second law degree. And when I retired, my wife
13 and I moved to London where she was stationed as a
14 civilian.

15 And I got a doctorate in law and taught at the
16 London School of Economics for three years and then
17 moved to West Point where I taught as a civilian law
18 professor teaching the law of armed conflict, the law of
19 war. And I eventually retired from West Point in 2006.
20 And since then, I have been teaching at Georgetown
21 University Law School in Washington, D.C. And I'm an
22 adjunct still at West Point, which means they can have
23 me come up and teach for free.

24 And I'm writing -- I write books and so forth.

25 Q. Let's talk about your tours in Vietnam, if we

1 can. Can you tell the jury what your MOS, what your job
2 was and what you did during your tours in Vietnam?

3 A. I was an amtrac officer, an armor officer. My
4 first time in Vietnam, I went before the landings, and I
5 was a lieutenant commander of 33 Marines, 32 Marines and
6 1 corpsman. And that was a short tour, was only four
7 months.

8 I came back to the states and then a year and a
9 half later returned to Vietnam as a captain, and I was a
10 company XO, second in command. And then when the CO was
11 killed, I flected up, became the company commander. So
12 most of my tour in Vietnam the second time was as a
13 company commander of an armored unit. And that's --
14 after that tour, I went to law school and became a judge
15 advocate.

16 Q. All right. When you were in Vietnam, did you
17 ever fire your weapon at the enemy?

18 A. Yes.

19 Q. Can you explain how many times that happened?

20 A. Frequently. I have no idea how many times, but
21 my second tour was a 14-month tour, 13 months plus. And
22 it was a pretty regular occurrence.

23 Q. Would you be comfortable if we said that you were
24 a combat veteran?

25 A. Yes.

1 Q. Now, when you came back, you've obviously told us
2 that you entered the teaching arena, and you've done
3 that for quite some time. During that time, you also
4 have published a lot of different articles as well as a
5 book or two; is that right?

6 A. That's correct.

7 Q. All right. Primarily, what was your focus when
8 you were writing and teaching?

9 A. Two things. History, military history, and the
10 law of armed conflict. Military history because while
11 on active duty, I was assigned to the Marine Corps'
12 history and museums division where I wrote my first
13 book, *History of Military Law in Vietnam*. And then I
14 took a break from West Point, and I was the deputy chief
15 of history for the Marine Corps for three years and
16 headed the oral history program for the Marine Corps in
17 Iraq and Afghanistan.

18 MR. WOLFF: May I approach, Judge?

19 THE COURT: Yes, you may.

20 Q. Mr. Solis, I'm going to hand you a copy of what I
21 believe to be your curriculum vitae. Is that, in fact,
22 your curriculum vitae?

23 A. Yes.

24 Q. Let me have it back. Thank you, sir.

25 MR. WOLFF: Judge, the defense offers

1 Exhibit 79.

2 THE COURT: Motion's granted.

3 (Defendant Exhibit 79 admitted in evidence.)

4 Q. Mr. Solis, in addition to your teaching
5 experience and your military experience in Vietnam, you
6 were also, as you've stated, a judge advocate, right, in
7 the Marine Corps?

8 A. Correct.

9 Q. And as a judge advocate, you were a prosecutor?

10 A. Correct.

11 Q. Can you tell us about your prosecution experience
12 as far as the number of cases?

13 A. Four hundred and something. I forget. After
14 Vietnam, it was a target-rich arena for prosecutors. We
15 had a lot of cases, a lot of drug problems and a lot of
16 racial problems.

17 MS. FORD: Objection, Your Honor.

18 MR. WOLFF: Judge, just giving the general
19 background. I'm not asking him any specific cases.

20 THE COURT: I think we can -- I'll sustain
21 the objection as to where we are now. Okay?

22 A. About 400.

23 THE COURT: Just ask another question.

24 Q. Were you also a defense attorney at one point, or
25 were you only a prosecutor?

1 A. Only a prosecutor.

2 Q. All right. And you also -- after prosecuting, my
3 understanding is you became a military judge?

4 A. That's correct.

5 Q. And how many cases as a military judge do you
6 think you saw?

7 A. Three hundred thirty.

8 Q. And I assume those were all types of different
9 cases?

10 A. That's correct.

11 Q. All right. Now, with your experience in Vietnam
12 and your training and experience that you've already
13 discussed with us, do you think you have a fairly good
14 understanding of what the military training process
15 involves?

16 A. Yes.

17 Q. Okay. Can you explain to the jury what the
18 military training process involves from both an enlisted
19 standpoint as well as an officer standpoint?

20 A. Well, training, as in any organization which
21 depends upon a hierarchy of authority, is absolutely
22 essential in the military. I think it's obvious that an
23 individual comes in without the background necessary to
24 operate effectively in a military organization.

25 Military training imbeds an awareness and an

1 appreciation of authority. It imbues one with
2 obedience, obedience to orders, obedience to authority,
3 obedience to written documents. It trains an individual
4 to respect and respond to authority.

5 It also trains an individual to respond
6 immediately, because obviously in a military
7 organization, you can't have a debating society. You
8 must have response and immediate response to
9 instructions. And it attempts to make this response to
10 authority instinctive.

11 In a combat situation, you can't discuss an
12 order. You can't discuss direction. You must respond
13 and must respond immediately to the military authority
14 over you. And that is what training for enlisted
15 personnel is designed to do.

16 And for officers, the training is much the same
17 overlaid by further training to make you -- to make the
18 officer appreciate the power and authority and
19 responsibility of leadership, of leadership of these
20 young Marines or soldiers who are going to have to
21 follow your instructions hopefully instinctively and
22 hopefully immediately.

23 Q. And, of course, in the ideal situation, you've
24 got an officer who is leading troops, right? So we've
25 got enlisted troops being led by the officer. And

1 unfortunately it doesn't always break down that way; is
2 that right?

3 A. Correct.

4 Q. So we've got the -- in a lot of cases, we've got
5 troops leading other troops. When I say "troops," of
6 course, I'm referring to enlisted personnel. And the
7 rank structure doesn't just apply from an
8 officer-enlisted perspective. It also goes for the
9 enlisted, as well, right?

10 A. Absolutely.

11 Q. So the senior enlisted are in charge of junior
12 enlisted?

13 A. Yes.

14 Q. Is that safe to say? And can you explain to the
15 jury why that's important?

16 A. Well, for example, in Vietnam, I had five
17 platoons in my company, and two of those platoons were
18 led by enlisted Marines because the lieutenants had been
19 killed or wounded.

20 Rank in the military is the sine qua non of the
21 authority. Rank represents authority. Rank is the
22 visible representation. It's on your shoulder or on
23 your arm so that everybody in the military knows your
24 rank, your authority, your position in the hierarchy.

25 Well, rank is where training is implemented, the

1 training that the soldiers, Marines, and officers have
2 previously received. Rank is supposed to be
3 commensurate with leadership. So the higher the rank,
4 the greater degree of leadership must be exercised
5 commensurate with that rank.

6 So anytime you have two soldiers, one is senior,
7 one is junior, and they know that. They know that
8 because it's represented by what's on their sleeve. So
9 when the lieutenant goes down, the sergeant first class
10 knows to take over immediately without direction. When
11 the sergeant first class goes down, the corporal squad
12 leader takes over immediately without direction, and so
13 on down the line.

14 So rank, leadership is absolutely critical in the
15 military and particularly in a conflict situation.
16 Soldiers, enlisted soldiers and officers, soldiers and
17 non-commissioned officers are the governors -- as in on
18 a car engine, governors on a car engine. They are the
19 governors of the behavior and the conduct of their
20 subordinates.

21 So in a situation, in a tense situation where
22 soldiers may be inclined to, for example, take a
23 position and then start firing on everything and anyone
24 there, it's the officers, it's the NCOs, the enlisted
25 soldiers who say, "Wait a second, gents. Get control of

1 yourselves." They control the conduct and behavior of
2 subordinates, which is why leadership and rank is so
3 absolutely critical in any military organization.

4 Q. And is it in your experience that that rank that
5 the seniors hold, if something goes wrong, typically the
6 seniors are more culpable in the eyes of the military
7 than the junior enlisted?

8 A. Certainly. As they say in the service,
9 everything that happens on your watch or fails to happen
10 is your responsibility, lieutenant or captain or major
11 or whatever it is. It's a top-down thing, and it's a
12 bottom-up thing. You have to be responsible for your
13 conduct and you have to be responsible for the conduct
14 of your men and women, as well, if you're a
15 non-commissioned officer; that is, an enlisted man, a
16 sergeant or above.

17 So, yes, seniors can be more culpable. An
18 officer who had no active role in an event may be held
19 responsible for that event. For example, the officer --
20 the commanding officer of a submarine who is asleep in
21 his bunk, his submarine runs aground, he's relieved. He
22 wasn't there. He had nothing to do with it.

23 It's very common in the military for seniors, be
24 they officers or enlisted superiors, to be culpable or
25 responsible for the acts of their subordinates. And I

1 think that's how it must be.

2 Q. Now, when we put our young men and women in
3 combat, there's stressors that are on them on a daily
4 basis, safe to say?

5 A. Yes.

6 Q. Can you talk to us about the stressors that one
7 might experience in combat given that you've been there?

8 A. Combat is where training and leadership is
9 tested. It's the crucible of all the training that's
10 gone before. It's the measure of leadership, both
11 officer and enlisted.

12 Combat erodes training. Combat tests leadership,
13 especially, in my view, an insurgency like Iraq or
14 Afghanistan. In Vietnam, we knew that the Vietnamese
15 were potentially our enemy no matter what they were
16 doing or where they were, but that's nothing compared to
17 Iraq or Afghanistan in a built-up area where every
18 individual, every approaching vehicle --

19 MS. FORD: Objection, Your Honor.

20 THE COURT: I'll sustain the objection.

21 Q. Just generically speaking, what factors would you
22 say lead to a person having perhaps diminished judgment
23 in a time of combat?

24 A. It's the stress of combat itself.

25 Q. Sort of the fog of war?

1 A. Well, that too. That's part of it. It's the
2 heat. It's humping an 80-pound ruck day after day.
3 It's getting four hours of sleep, if that, at night.
4 It's dealing with all the vagaries of a combat zone that
5 would bear on your well-being. It's an extremely
6 difficult environment in the best of combat
7 environments, particularly so, in my opinion, in Iraq
8 and Afghanistan.

9 And that's why leadership is so critical in a
10 situation like -- in any combat situation, particularly
11 like Iraq or Afghanistan. And it's not long before
12 judgment is degraded there. Soldiers become blasé, they
13 become calloused, and that's what leaders are for.
14 That's why the corporals and the sergeants are so
15 critical. They are the individuals who are right there.

16 That's why officers have to constantly be aware
17 of the circumstances of their command in combat, why
18 NCOs have to be constantly aware and in touch with their
19 subordinates.

20 Q. Isn't it safe to say that the stressors of war,
21 the diminished judgment can end up leading in many cases
22 to criminal conduct?

23 A. Unfortunately, yes. That happens all too often.
24 We read about it in the papers. Haditha, My Lai, things
25 like that.

1 MR. WOLFF: Okay. One second. Mr. Solis,
2 thank you. The prosecutors may have a question or two
3 for you.

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Good morning.

7 A. Ma'am.

8 Q. Is it Mr. Solis? Is that a yes?

9 A. I'm sorry?

10 Q. It's pronounced Solis?

11 A. Solis, yes.

12 Q. Okay. Thank you. Mr. Solis, as I understand it
13 from looking at your CV, you got your JD, your law
14 degree, in 1971; is that correct?

15 A. Yes.

16 Q. All right. And you got your law degree after
17 your two tours in Vietnam?

18 A. Correct.

19 Q. All right. So your time in Vietnam would have
20 been 1968, '69, '70, in there?

21 A. The first time I went over actually was in '64.

22 Q. '64.

23 A. And the second time I went over was November of
24 '66, and I returned in December of '67.

25 Q. Okay. So your service was, I guess, over

1 40 years ago; is that correct?

2 A. That's correct.

3 Q. All right. And as I understand it also from your
4 testimony, you were in the Marines; is that correct?

5 A. For 26 years.

6 Q. Twenty-six years. Not the United States Army?

7 A. That's correct.

8 Q. All right. And I don't have any prior military
9 experience, but my understanding is that the Marines
10 have a much smaller number of personnel than the Army.
11 Is that accurate?

12 A. It is.

13 Q. Okay. And I do know -- I've got a lot of
14 experience myself in law enforcement. For example, I
15 know that generally at least among members of the FBI --
16 other law enforcement agencies may not feel the same
17 way, but the FBI considers themselves kind of to be the
18 elite in terms of federal law enforcement agencies.

19 Is the same thing true of the Marine Corps, they
20 generally view themselves as the elite among the armed
21 services?

22 A. Well, a little more proficient perhaps.

23 Q. All right. Which would be -- sounds like lawyer
24 speak to me for we think we're the best; is that
25 accurate?

1 A. It is.

2 Q. All right.

3 A. But, of course, I spent seven years at West
4 Point, too, so I have a high regard for the Army.

5 Q. And I don't mean to suggest that you have any
6 disregard for the Army. But I guess what I'm getting
7 at, the Marines typically consider themselves to be
8 fairly selective in who becomes a Marine and have a much
9 smaller sort of number of personnel within the Corps?

10 A. Generally speaking, that's true. During the
11 Vietnam era, unfortunately it wasn't. Because during
12 the draft era, we had trouble making our numbers, as did
13 the Army. So we had to take Category IV enlistees,
14 lower mentally qualified individuals, and we had our
15 share of jailhouse enlistments.

16 Q. Okay. Based on the work that you're doing today,
17 do you have any idea just in terms of sheer numbers what
18 kind of force the Marines have in Iraq or Afghanistan
19 versus what the United States Army has?

20 A. No, not numbers. Obviously, the Marine Corps
21 presence is proportionally lower.

22 Q. Uh-huh. You talked some about the importance of
23 military training and how from the very beginning of
24 basic training soldiers are trained to follow orders and
25 the importance of officer versus enlisted and that

1 enlisted men follow orders. We've heard some prior
2 testimony, for which you were not present, about
3 training that soldiers from the moment of basic training
4 in the Army receive in terms of what do you do if you
5 are ordered to do something which is unethical.

6 And I'm assuming that in the Marines that you got
7 the same kind of training, that if you are ordered to do
8 something which is unethical, you are not obligated to
9 follow that order. Is that correct?

10 A. I would put it if you're ordered to do something
11 unlawful rather than unethical, but yes.

12 Q. All right. Well, that was my next question. If
13 you are ordered to do something which is either unlawful
14 or illegal, criminal, you as a soldier, officer or
15 enlisted, are not obligated to follow that order; is
16 that correct?

17 A. You are obligated to not do so.

18 Q. All right. So, in fact, it is -- you are
19 obligated not to follow the order. If someone --

20 A. Yes, ma'am.

21 Q. -- orders you to commit a crime or to do
22 something which is unlawful, your obligation as a
23 soldier is to not follow that order?

24 A. Yes, ma'am.

25 Q. All right. You also talked some about the --

1 just the importance of the rank structure, as I
2 understood it, as that relates to leadership, and this
3 is something that I've heard other people talk about.

4 You talked about how if the lieutenant goes down,
5 the first sergeant is expected to step up and assume a
6 leadership role. And if the first sergeant goes down in
7 combat, the soldier below the first sergeant is expected
8 to step up and become -- take a leadership position.
9 Did I understand you correctly?

10 A. Yes.

11 Q. Okay. And based on your experience and training,
12 would you say the same thing is true in the United
13 States Army?

14 A. Oh, yes.

15 Q. All right. And am I correct that that is
16 sometimes referred to as "training two down" I think is
17 the expression I've heard used? And I may be using that
18 incorrectly, but basically --

19 A. You're trained to take the position of two people
20 above you.

21 Q. Two people above you. Is that --

22 A. I've not heard it referred to in that way, but it
23 doesn't sound unreasonable.

24 Q. Okay. But the concept would be the same; that
25 is, as casualties are sustained -- for example, if the

1 platoon leader goes down, then squad leader may --
2 somebody has to step up?

3 A. Uh-huh.

4 Q. I think in your analogy, the sergeant would step
5 up?

6 A. Whoever is next senior.

7 Q. Okay. And if squad leader goes down, then team
8 leader has to step up and be a leader. And that's the
9 way it goes in the Army or the Marines, either one?

10 A. Even the Air Force.

11 Q. Even in the Air Force or the Navy. All right.
12 You also talked some about the responsibility that the
13 officers and the senior non-commissioned officers have,
14 and I think you referred to it as top-down and
15 bottom-up. And that is that, for example, an officer --
16 company commander -- you served as company commander on
17 your second tour in Vietnam is what I heard you say.

18 So as a company commander, you had responsibility
19 or were responsible for the actions of those soldiers
20 under your command; is that correct?

21 A. Yes.

22 Q. All right. But if the -- but that responsibility
23 does not extend -- you are not responsible, for example,
24 if the soldiers underneath you, below -- under your
25 command, if those soldiers commit criminal acts or

1 illegal acts?

2 A. In most cases, that would be correct. If it was
3 I think the lawyers refer to it as a frolic that you're
4 not aware of, you're not responsible for that. But, of
5 course, it's your position and your responsibility as a
6 leader to try to maintain a feeling for the pulse of
7 your unit and recognize problem areas and problem
8 individuals that may be arising and do something to
9 prevent it.

10 Q. Of course. But that's not -- that's not -- that
11 may not always be possible. And as I understand what
12 you're saying, if you have soldiers who go on what
13 you've described as a frolic without your knowledge and
14 engage in criminal or illegal behavior, you are not
15 responsible as an officer or senior enlisted for that
16 conduct?

17 A. That's right. As it says in the manual for law
18 of land warfare, a commander is responsible if he knew
19 or should have known. If he or she did not know and had
20 no reason to know, then they would not be responsible.

21 Q. Right. And, Mr. Solis, I think I have one last
22 question. There was a reference towards the end of your
23 testimony, you were talking some about the stresses of
24 war and how that can wear soldiers down. And I think
25 Mr. Wolff asked you something about things that may

1 happen in the fog of war, which is another phrase that
2 we sometimes hear in connection with combat situations.

3 Isn't it correct, though, that if we talk about
4 things which occur in the fog of war -- you used the
5 example of Haditha -- that isn't it accurate to say you
6 were talking about instances where soldiers, for
7 example, may be on a patrol, on a mission, clearing a
8 house, and they react impulsively or instinctively to a
9 set of circumstances with which they are presented and
10 perhaps because they're tired or worn down they may
11 react differently in those circumstances, but they are
12 on a combat mission or on a patrol and perhaps react in
13 a way that they might otherwise not?

14 Is that what we're talking about when we talk
15 about things which happen in the fog of war?

16 A. Fog of war is not a term that I would ever use,
17 because it seems to me that that's what leadership is
18 about, to prevent the fog, to cut through the fog.

19 Certainly in a combat situation where soldiers
20 have been stressed for a long period of time, bad things
21 can happen, but that's what I was trying to get at about
22 training and leadership. Usually when things go south
23 in the military, it can be attributed to two things,
24 training and leadership. And the first thing you look
25 at is leadership. So if you have somebody do bad stuff

1 taking down a house, the first thing I look at is who
2 was the leader.

3 Q. Okay. Well, that was -- I didn't phrase my
4 question particularly well. It didn't really even come
5 out like a question, I don't think.

6 But what I hear you saying is that, for example,
7 if something bad happens when soldiers are on patrol and
8 something happens in a house -- and actually maybe it
9 wasn't that bad a question. Perhaps you just didn't
10 answer it. Mr. Wolff used the expression "fog of war,"
11 so let's not use that expression.

12 But what I'm asking you is that when we talk
13 about -- or when you were talking about the stresses of
14 war and you gave some specific examples like Haditha,
15 those are instances in which soldiers were on patrol
16 missions, they were on combat missions, and perhaps
17 engaged in some conduct which was affected by the
18 stresses that they were under. Is that correct?

19 A. Yes, ma'am.

20 Q. All right. And so we have a wholly different
21 situation -- let me back up for a minute. Actually, I
22 think that's the answer to my question, that you're
23 saying that leadership is critical in a combat
24 situation?

25 A. Yes.

1 MS. FORD: All right. Let me see if my
2 colleagues have some questions. That's all I have, Your
3 Honor. Thank you.

4 Oh wait. Perhaps I have one more. That's
5 all I have, Your Honor. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. WOLFF:

8 Q. Mr. Solis, Ms. Ford just asked you about military
9 crimes that happened while on patrols and engaged in
10 other military-related activities and how judgment
11 during those military-related activities can lead to
12 this judgment impairment that leads to these military
13 crimes.

14 But you're familiar with cases where it wasn't on
15 a military patrol, where crimes were committed by people
16 in a military setting, unlike what she's referring to,
17 right?

18 A. Correct.

19 Q. Can you tell us about some of those?

20 MS. FORD: Objection, Your Honor.

21 MR. WOLFF: Judge, she opened the door.

22 THE COURT: Approach the bench.

23 (Bench conference on the record outside the hearing
24 of the jury.)

25 THE COURT: Your objection is going into

1 specifics. I think you could ask him if the same
2 stressors could cause illegal activities to occur even
3 when you weren't on a patrol generically without going
4 into --

5 MS. FORD: Yes, I agree.

6 THE COURT: -- he knew somebody in Vietnam
7 that did this, ran out of the barracks unprovoked and --

8 MS. FORD: I was just trying to clarify his
9 testimony on direct, which was that he said -- and I
10 have it in my notes -- that leadership is critical in a
11 combat situation, and he talked about things like
12 Haditha.

13 THE COURT: Your question was all over the
14 place.

15 MS. FORD: I know. It was bad.

16 MR. BOULDIN: The thing is that now the
17 only -- because of those questions, the only
18 distinction, the only thing they've heard about is
19 crimes within a combat situation like Haditha and that
20 type of situation.

21 THE COURT: In a non-combat situation, are
22 you aware that people have gone out and done illegal
23 activities when they weren't being attacked? You know,
24 you can ask him in the generic sense. I think you can
25 say just leave their barracks and go out and do

1 something illegal.

2 MS. FORD: Yes. I think that's fair.

3 MR. WOLFF: Okay.

4 (End of bench conference.)

5 BY MR. WOLFF:

6 Q. So again, Mr. Solis, in your experience, those
7 factors that we discussed that lead to soldiers engaging
8 in illegal activities, those aren't merely confined to
9 wartime conditions?

10 A. No, sir.

11 Q. All right. So you're familiar with other
12 cases -- and I don't want to know the specifics of those
13 cases, but you're familiar with other cases where
14 soldiers have not been in that combat situation but have
15 engaged in illegal activity?

16 A. Yes, sir.

17 Q. Okay. And Ms. Ford also asked you about illegal
18 orders, and you said that, of course, soldiers are
19 obligated not to follow illegal orders. You remember
20 saying that?

21 A. Yes, sir.

22 Q. You were pretty adamant about that. Remember
23 that?

24 A. (Witness moves head up and down.)

25 Q. The direct examination, though, we went over the

1 stressors that are placed on our young men and women and
2 how that can impair their judgment. Can you talk to the
3 jury about how those two coincide, interact, and end up
4 coming in conflict with each other?

5 A. That's the problem in combat. That's how combat
6 stresses training. In a combat situation and the more
7 prolonged the combat, the more pronounced the issue. It
8 degrades one's judgment. It makes soldiers less
9 perceptive, less careful, less discerning. It allows
10 them to do things which back in the states in the
11 barracks they wouldn't do.

12 That's why training and leadership are so
13 important, because it's in combat where those otherwise
14 prohibited acts become less clear to junior individuals.
15 It's the duty, it's the responsibility of officers and
16 non-coms, non-commissioned officers, to see that bad
17 things don't happen when the stressors of combat are
18 applied. And that's why training and leadership is so
19 important in combat.

20 Q. All right. And on that training and leadership
21 importance issue, if, hypothetically speaking, you've
22 got a TCP -- which, of course, traffic control point.
23 You've got a TCP that's got four individuals at it, and
24 we've got one that is a specialist promotable, we've got
25 one that is a specialist -- and specialist promotable,

1 of course, is promotable to a sergeant. He's not yet a
2 hard striper, but he, in essence, is carrying that rank.
3 And then we've got two PFCs that are at that same TCP.

4 Is that when the leadership importance becomes
5 important to the extent that PFCs are going to rely on
6 those senior leaders at that TCP?

7 A. Absolutely. Absolutely. The specialist, the
8 senior individual, has a greater degree of authority and
9 responsibility. The promotable, the next degree of
10 responsibility and authority. And it is the
11 responsibility of that specialist to exercise control,
12 to exercise his or her authority to maintain discipline,
13 fire discipline, personal discipline, discipline of all
14 sorts over the few individuals that he or she controls.

15 Q. And as you said earlier, to exercise the judgment
16 that we expect?

17 A. Yes.

18 Q. To stop our soldiers from doing stupid things?

19 A. That's why they're promoted, because we see in
20 those individuals the potential for the exercise of a
21 greater degree of maturity, control, authority.

22 MR. WOLFF: Thank you, Mr. Solis.

23 MS. FORD: Just a couple questions, Your
24 Honor.

25 RE-CROSS-EXAMINATION

1 BY MS. FORD:

2 Q. Mr. Solis, you're talking generally about the
3 importance of leadership in the armed forces; is that
4 correct?

5 A. Yes, ma'am.

6 Q. All right. And you -- Mr. Wolff just gave you a
7 hypothetical, an example about a traffic control point,
8 but it appears to me -- and correct me if I'm wrong, but
9 you haven't reviewed the specific case materials in this
10 case, have you?

11 A. Some I have, yes.

12 Q. All right. Have you reviewed the statements of
13 the defendants, the co-conspirators, from the traffic
14 control point?

15 A. The statements themselves, no, ma'am. What I
16 reviewed was a summary of the Article 32 investigation
17 conducted by the military.

18 Q. Okay. So you reviewed a summary of that hearing?

19 A. That's correct.

20 Q. All right. But you have not reviewed
21 specifically the statements, for example, of James
22 Barker or Paul Cortez or Jesse Spielman?

23 A. Correct. I have not.

24 Q. All right. So let's assume another hypothetical.
25 Just assume for the sake of argument that the defendant

1 in this case, PFC Green, was in -- was at a traffic
2 control point, and assume for the sake of argument that
3 either a specialist or a sergeant promotable at the
4 traffic control point there had ordered the defendant to
5 go and kill an innocent civilian non-combatant.

6 What would the defendant's obligations have been
7 under those circumstances?

8 A. Under those circumstances? Under any
9 circumstances, that's not a lawful order, and it should
10 not be obeyed.

11 Q. Assume also hypothetically that he had been
12 ordered to leave his duty position, the traffic control
13 point at that point, to go to the home of innocent
14 civilian non-combatants and to engage in the gang-rape
15 of a 14-year-old. What would the defendant's
16 obligations have been under those circumstances?

17 A. Well, there's several directions in that -- in
18 that scenario. Leave the position, that's more tenuous.
19 Obviously, to engage in a rape would not be a lawful
20 order, which should not be obeyed.

21 Q. And if the evidence in the case showed that that
22 discussion had occurred between the defendant and others
23 at the traffic control point before they ever left the
24 traffic control point, then your position would be he
25 never should have left, that was something he --

1 assuming that he had received an order to do that, even
2 arguably been ordered to do that, his obligation would
3 have been not to do that; is that correct?

4 A. Well, I would certainly say the obligation to not
5 engage in misconduct, but you were asking me --

6 Q. It's not just misconduct, Mr. Solis. It's a
7 crime. It is criminal activity.

8 A. Right.

9 Q. Isn't it?

10 A. Certainly.

11 Q. All right.

12 A. But to leave the traffic control point, that's
13 another --

14 Q. I understand your distinction. And assume that
15 the evidence showed that the discussion was at the
16 traffic control point about engaging in rape and murder
17 before they ever left. Then even leaving your post of
18 duty at that point to engage -- that would be an
19 agreement to leave your post to engage in illegal
20 activity, wouldn't it?

21 A. Yes.

22 FURTHER REDIRECT EXAMINATION

23 By MR. WOLFF:

24 Q. Mr. Solis, you were intending to get out some
25 words here that Ms. Ford didn't let you answer, so I

1 want to go back.

2 And it appeared to me when you were talking about
3 an unlawful order and how a lawful order is something
4 that should be followed and an unlawful order should not
5 be followed and she was using the hypothetical about the
6 TCPs, you were going to add something to that, and you
7 were cut off. Do you remember what you were going to
8 state?

9 A. Oh, yes. That's the point I've been trying to
10 make, that certainly given the scenario, those are
11 unlawful orders which no soldier, Marine, or anyone else
12 should obey.

13 But that's the problem with combat. I don't -- I
14 certainly don't imply that misconduct can, therefore, be
15 engaged in, but in a combat situation, in a stressful
16 situation, perceptions -- perceptions become blunted.
17 And as I said before, that's what tests the training
18 that an individual has received, that individuals in
19 situations as stressful as combat sometimes do things
20 that would never be done in ordinary situations.

21 MR. WOLFF: Thank you, Mr. Solis.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you, Mr. Solis.

24 MS. FORD: Nothing further.

25 THE COURT: Mr. Solis, thank you very much,

1 sir. You may be excused, sir.

2 THE WITNESS: Thank you, Judge.

3 (Proceedings concluded at 10:26 a.m.)

4

5 C E R T I F I C A T E

6 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT

7 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED

8 MATTER.

9

10 s/Terri L. Turner
11 Registered Professional Reporter
Official Court Reporter

May 29, 2009
Date

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I N D E X

WITNESSES:

GARY SOLIS

Direct Examination by Mr. Wolff - page 3
Cross-Examination by Ms. Ford - page 14
Redirect Examination by Mr. Wolff - page 23
Recross-Examination by Ms. Ford - page 27
Further Redirect Examination by Mr. Wolff - page 30

EXHIBITS ADMITTED:

Defendant Exhibit 79 - Curriculum vitae of Gary
Solis - page 6

Reporter Certificate - page 32